

**TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
MORRIS COUNTY, NEW JERSEY**

**MATTER OF:** Anna Ormsby

**PROPERTY LOCATION:** Block 1802, Lot 1.01, 210 Woodland Court

**APPROVED:** July 18, 2013

**MEMORIALIZED:** September 19, 2013

**WHEREAS**, Anna Ormsby (“Applicant”) has requested variances for front yard setback and building coverage for property located at 210 Woodland Court, known and designated as Block 1802, Lot 1.01 on the Tax Maps of the Township of Pequannock in the “R-15” zone district (“Property”); and

**WHEREAS**, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock (“Board”) on July 18, 2013; and

**WHEREAS**, the Board heard the testimony by Applicant and its witnesses, as well as receiving testimony from the Board’s own experts; and

**WHEREAS**, Applicant filed an Affidavit of Proof that Notice of Hearing was given as required by law; and

**WHEREAS**, a complete application has been filed, the fees required by ordinance have been paid, and the jurisdiction and powers of the Board have been properly invoked and exercised;

**NOW, THEREFORE, BE IT RESOLVED** that the Board makes the following findings of fact with regard to the application.

1. Applicant provided adequate notice of the application and the hearing in accordance with the New Jersey Municipal Land Use Law (“MLUL”).
2. The Property, owned by Applicant, measures 11,685 square feet and is located at Block 1802, Lot 1.01, 210 Woodland Court in the Township of Pequannock (“Township”) in the

Township's R-15 zone district.

3. The Applicant previously obtained development approvals for the Property from the Board in 2005 (a variance for a lot not fronting on an approved street pursuant to N.J.S.A. 40:55D-35 and 26) and 2012 (variances for building coverage [15.9%] and for an aggregate side yard setback of 32.5 feet).

4. The terms and conditions of those prior approvals are incorporated by reference herein.

5. Applicant has returned to the Board to seek additional variances to permit the construction of a new one-story frame dwelling on the Property.

6. The proposed new dwelling will be moved forward on the Property from the location which has previously approved by the Board pursuant to Applicant's 2012 approval.

7. A bulk variance will be required for front yard setback. 50 feet is required pursuant to the Township's Zoning Ordinance ("Zoning Ordinance"). Applicant proposes 24.02 feet.

8. Applicant will also require a variance for additional building coverage at the Property. 15% is required pursuant to the Zoning Ordinance, and, as indicated above, Applicant previously received variance relief in 2012 to allow building coverage of 15.9. Applicant now requests additional variance relief to permit building coverage of 16.1%.

9. Applicant's proposal is depicted on a site plan prepared by Paul P. Darmofalski, P.E. of Darmofalski Engineering Associates, Inc. entitled "Proposed Site Development Plan for Block 1802, Lot 1.011, situated in the Township of Pequannock, Morris County, New Jersey" consisting of one (1) sheet, dated June 21, 2013 and revised through July 1, 2013.

10. Applicant also provided one (1) overhead photograph of the Property and its

surrounding properties which Mr. Darmofalski had downloaded from Bing Maps, a public access internet site.

11. The Board also received a report from its Professional Planner, Eileen F. Banyra, P.P., dated July 17, 2013, the contents of which are incorporated herein by reference.

12. The Board further received copy of a March 20, 2013 letter ("Letter") from the Department of Water and Sewer Utilities, Division of Sewers and Water Supply of the City of Newark ("City of Newark"), which owns and controls viaducts which will be crossed by a proposed bituminous driveway to be installed by Applicant on the Property.

13. The aforesaid Letter, incorporated by reference herein, expressly stated that the City of Newark has no objection to Applicant's proposed development.

14. The Board heard the testimony of the Anna Ormsby, the Applicant.

15. Applicant testified that after commencing construction on the foundation for the new dwelling in the location approved by the Board in 2012, she discovered that said location was too far in the rear of the Property.

16. Applicant testified that she would like to place the dwelling in a location consistent with those of neighboring dwellings. This would also result in an increased, and more aesthetically attractive, rear yard at the Property.

17. Applicant testified as to the requested front yard setback variances. She compared the requested front yard setback at the Property with the front yard setbacks of neighboring lots.

18. The front yard setbacks of certain lots in the neighborhood of the Property are approximately 25 feet, which is comparable to Applicant's proposed setback dimensions. 19.

Applicant testified that because no building may be located on the existing viaducts

owned by the City of Newark, while Applicant's proposed front yard setback of its dwelling will be 24.02 feet, the dwelling will actually be located 95 feet from the Woodland Court right-of-way.

20. Applicant testified that while the "forward" movement of the dwelling's location on the Property would require setback variance relief, the proposed location of the dwelling would make both the dwelling and Property more compatible with surrounding lots.

21. Applicant testified that the proposed front yard setback will also reduce existing impervious surface coverage at the Property.

22. The Board expressed concern that the site plan submitted by Applicant inaccurately depicted the property lines of Applicant's Property, as well as the boundaries of neighboring properties, the City of Newark's viaducts, and easements affecting all of the foregoing. The site plan also lacks a "true north" arrow.

23. Applicant's site plan also failed to properly identify and provide ownership information for paved and unpaved rights-of-way in the area of the Property, most notably an unidentified triangular portion of land in front and to the left of the Property ("Unidentified Land").

24. On the Board's information and belief, the Unidentified Land is owned and controlled by the Township.

25. The Board noted that it is possible that existing tax map depictions of the Property and neighboring lots may not be completely current, and that said maps should be revised.

26. Notwithstanding, in preparing site plan maps, the burden rests with the Applicant to provide an accurate depiction of lands subject to and affected by a development application.

27. The Board requested, and Applicant agreed, that Applicant would correct all

deficiencies in its site plan and provide a final, revised site plan, which would be reviewed and approved by the Board's Planner, Ms. Banyra. This will be a condition of approval.

28. Concern was also expressed by the Board in connection with the proximity of the Property to the Unidentified Land adjacent to the Property's front yard.

29. Applicant testified that she would use and maintain the Unidentified Land. The Board directed that the boundaries of the Unidentified Land shall be established and shown on Applicant's site plan, and ownership in this portion shall be ascertained by the Applicant in conjunction with the Township. This will be a condition of approval.

30. The Board further recommended that Applicant and Applicant's Engineer work with the Township Engineer and Township Attorney to obtain fee simple title in the Unidentified Land from the Township or, in the alternative, an easement from the Township to utilize and maintain the Unidentified Land.

31. The foregoing recommendation is reflective of the Board's lack of authority to require or effectuate transfers of land or rights in land as a condition of development approval. Authority for such transfers is reserved to the Township's governing body.

32. The Board notes that Ms. Banyra's report provided no objection to the requested setback variance.

33. Turning to the requested building coverage variance, Applicant testified that in receiving the previous building coverage variance in 2012 (permitting building coverage of 15.9% on the Property), Applicant had submitted a survey which contained miscalculations of the dimensions of the Property.

34. Subsequently, Applicant discovered the errors in the survey and determined that due to the miscalculations in the previous survey, the actual building coverage needed to build

the proposed dwelling would be increased to 16.1%, necessitating an additional variance for the non-conformity.

35. In her report, the Board's Planner, Ms. Banyra advised that she had confirmed with Applicant's engineer, Mr. Darmofalski, that the dimensions of the Property as shown on Applicant's site plan had been corrected and were accurate.

36. Applicant testified that significant financial hardship and time delays would result if she were forced to revise the existing dimensions of the dwelling set forth in her building plans to accommodate the additional 0.2% in building coverage.

37. Applicant testified that, in her 2012 presentation for variance relief before the Board, she had been asked to reduce the size of the proposed dwelling and had complied in good faith with the request. However, the present situation is distinguishable in that a professional made an undisclosed survey error, upon which Applicant reasonably relied in her commencement of construction at the Property.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing findings, the Board makes the following conclusions of law:

1. Applicant has shown by testimony, exhibits and other evidence that the relief sought can be granted.
2. The variance requested by Applicant for front yard setback can be granted.
3. As indicated in Applicant's plans, the Property is uniquely burdened by the right-of-way and viaducts owned by the City of Newark in front of the Property. This is an extraordinary and exceptional situation which uniquely burdens the Property.
4. In such circumstances, the strict enforcement of the front yard setback of the Zoning Ordinance would inflict an unreasonable hardship upon Applicant.

5. The variance requested will enable the location of the proposed dwelling on the Property in a manner compatible and consistent with the location of neighboring homes.

6. The variance will not be detrimental to the public good nor will it substantially impair the intent or purpose of the Township's Master Plan or Zoning Ordinance.

7. Accordingly, the Board concludes that a variance for front yard setback shall be and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(1).

8. The variance requested by Applicant to permit additional building coverage can be granted.

9. Applicant's testimony indicates that the error made in her previous application was not attributable to any intentional wrongdoing or bad faith on her part, but resulted from the inadvertent miscalculation of a professional acting on her behalf.

10. The additional building coverage is moderate in nature and, in fact, may be offset by the Unidentified Land, which the Board believes is owned by the Township and which the Board has recommended be acquired by Applicant from the Township as set forth above.

11. The impact of the additional building coverage on surrounding lots will be negligible. There will be no interference with provision of light, air and open space and the existing visual environment will not be changed from the building coverage variance already granted by the Board in 2012.

12. Based upon the foregoing, the benefits to be obtained from permitting the variance for building coverage requested by Applicant outweighs any detriments which might result from permitting this variance from the terms of the Zoning Ordinance.

13. Accordingly, the Board concludes that a variances for building coverage shall be

and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(2).

**NOW, THEREFORE, BE IT RESOLVED**, the Board having reviewed the application and considered the impact of the proposal on the Township and its residents, and having determined whether the proposal is in furtherance of the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the intent and purpose of the Zoning Ordinance and the laws of the Township of Pequannock and whether the proposal is conducive to the orderly development of the Property and the general area in which it is located, the Board concludes that good cause has been shown to grant the front yard setback and building coverage variances requested by the Applicant as outlined above. The Board voted on July 18, 2013 to approve the application for development as above described.

**BE IT FURTHER RESOLVED** that the Board hereby memorializes the approval of the application for development subject to the following terms and conditions:

1. Applicant shall submit proof of payment of all real estate taxes applicable to the property.
2. Applicant shall submit a copy of this Resolution with accompanying documentation to verify the satisfaction of each condition stated herein to the Township Zoning Official. Said documentation shall be numbered to indicate compliance with these conditions.
3. Applicant shall pay in a timely manner all outstanding and future fees, including, but not limited to, development fees, escrow charges, connection fees and usage fees, and shall post all performance and maintenance bonds and guarantees in connection with the review of this application prior and subsequent to the approval of this application.
4. Applicant shall be bound by all representations made in testimony, exhibits and

reports presented to the Board as well as all representations set forth in the transcripts of the hearings on the dates referred to above.

5. Applicant shall obtain the approval of any and all other necessary and appropriate City, County, State and Federal governmental agencies and comply with any and all governmental regulations except those specifically waived or modified in this Resolution.

6. Applicant shall continue to comply with the terms and conditions of all previous land use approvals for the Property, including, but not limited to, those issued by the Board in 2005 and 2012.

7. Applicant shall correct all deficiencies in its site plan, including, but not limited to those set forth in this Resolution, and shall provide a final, revised site plan for review and approval by the Board's Planner, Eileen F. Banyra, P.P., A.I.C.P.

8. Applicant shall coordinate with the Township to ascertain the title ownership in the unidentified triangular portion of land in front and to the left of the Property ("Unidentified Land"), and shall show the ownership and boundaries of the Unidentified Land on Applicant's revised site plan.

**BE IT FURTHER RESOLVED**, that the Board Secretary is hereby authorized and directed to cause a notice of this Resolution to be published in *Suburban Trends* at the Township's expense and to send a certified copy of this Resolution to the Applicant, the Township Clerk, the Township Engineer and the Township Assessor and make same available to all other interested parties.



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Stephen Cielusniak, Acting Chairman  
Township of Pequannock  
Zoning Board of Adjustment

I hereby certify this to be a true and accurate copy of a resolution adopted by the Township of Pequannock Zoning Board of Adjustment, Morris County, New Jersey, at a public meeting held on September 19, 2013.

  
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Linda Zacharenko, Secretary  
Township of Pequannock  
Zoning Board of Adjustment

The Vote on the Resolution to approve this Memorialization was as follows:

Yes: *Cielusniak, Dolengo, Hebert, Skvarca, Wasy, Melleno*

No:

Abstain:

**TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT**  
**RESOLUTION OF MEMORIALIZATION**  
**MORRIS COUNTY, NEW JERSEY**  
**MATTER OF:** Demetro and Kim Carbone  
**PROPERTY LOCATION:** Block 1501, Lot 12, 17 Sunset Road  
**APPROVED:** August 1, 2013  
**MEMORIALIZED:** September 19, 2013

**WHEREAS**, Demetro and Kim Carbone (“Applicant”) have requested modifications of certain Conditions of Approval imposed by the Zoning Board of Adjustment of the Township of Pequannock (“Board”) upon the Board’s May 2, 2013 grant to Applicant of preliminary and final site plan approval with variances and design standard relief which was memorialized in a Resolution adopted by the Board under date of June 6, 2013 (“June 6, 2013 Resolution”); and

**WHEREAS**, the property which is the subject matter of the approval for which the aforesaid modifications are requested is located at 17 Sunset Road, known and designated as Block 1501, Lot 12 on the Tax Maps of the Township of Pequannock in the “R-87” zone district (“Property”); and

**WHEREAS**, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock (“Board”) on August 1, 2013; and

**WHEREAS**, the Board heard the testimony by Applicant and its witnesses, as well as receiving testimony from the Board’s own experts; and

**WHEREAS**, Applicant, appearing through The Law Office of Steven C. Schepis, L.L.C., Steven C. Schepis, Esq., filed an Affidavit of Proof that Notice of Hearing was given as required by law; and

**WHEREAS**, a complete application has been filed, the fees required by ordinance have been paid, and the jurisdiction and powers of the Board have been properly invoked and exercised;

**NOW, THEREFORE, BE IT RESOLVED** that the Board makes the following findings of fact with regard to the application.

1. Applicant provided adequate notice of the application and the hearing in accordance with the New Jersey Municipal Land Use Law (“MLUL”).
2. The Property, owned by Applicant, measures 2.28 acres and is located at 17 West Sunset Road in the Township of Pequannock (“Township”) in the Township’s R-87 zone district.
3. In addition to the terms and conditions of June 6, 2013 Resolution, the Property is subject to the terms and conditions of a prior subdivision and variance approval granted by the Township’s Planning Board on May 18, 1998 and memorialized by Resolution dated June 15, 1998 (“Planning Board Resolution”).
4. Applicant supplied a copy of the Planning Board Resolution as Exhibits A-1 and A-2 during Applicant’s presentation of the instant application.
5. The terms and conditions of the June 6, 2013 Resolution and Planning Board Resolution are incorporated by reference as if set forth at length herein.
6. Applicant’s attorney, Mr. Schepis, summarized Applicant’s request for relief before the Board.
7. In the course of prosecuting the Applicant’s May 6, 2013 request for preliminary and final site plan approval with variances and design standard relief, which approval is contained in the June 6, 2013 Resolution, Mr. Schepis advised the Board as follows, set forth in Finding of Fact #34 of the June 6, 2013 Resolution:

“that pursuant to the to the 1998 subdivision approval for the Property, Applicant’s predecessor in title was required to connect to the municipal sewer system (a manhole connection is located to the east of the Property on West

Sunset Road) but did not do so.”

8. Mr. Schepis further stated to the Board that Applicant would effectuate said connection, as set forth in Finding of Fact #35 of the June 6, 2013 Resolution:

“Mr. Schepis advised the Board that Applicant would effectuate connection of the Property to municipal sewer and water.”

9. Consistent with Mr. Schepis’ representations, in adjudicating and approving the Applicant’s request for preliminary and final site plan approval with variances and design standard relief, the Board required Applicant to connect the Property to municipal water and sewer facilities, as set forth in Condition of Approval #6 of the June 6, 2013 Resolution:

“Applicant shall effectuate the connection of the Property to Township water and sewer facilities, and shall revise its plans to reflect said connection to the satisfaction of the Board’s Consulting Engineer.”

10. The Board also required Applicant to install certain landscaping at the Property, as set forth in Condition of Approval #11 of the June 6, 2013 Resolution:

“Applicant shall install landscaping on the portion of the Property having frontage upon West Sunset road and along the upon [sic] rear portion of the Property which abuts the access right-of-way to the Sunset Valley Golf Course.”

11. The Board heard the testimony of the Applicant, Demetro Carbone.

12. Mr. Carbone first testified with regard to the connection of the Property to public sewer facilities.

13. Subsequent to the Board’s approval of the aforesaid application and memorialization of the June 6, 2013 Resolution, Applicant determined that there was substantial confusion as to the existence and location of a sewer lateral to which the Property could be connected.

14. Applicant provided Exhibits A-3 and A-4 to the Board. Said exhibits were

portions of site plan maps, retrieved from Township records. Mr. Carbone testified that A-3 indicated a proposed location for the sewer lateral, while A-4, a portion of an "as-built" site plan map, depicted the sewer lateral in a different location.

15. Mr. Carbone testified that while he understood the Board's intent that he connect the Property to public sewer, the existence and location of the sewer lateral had yet to be

verified. 16. Mr. Carbone testified that the Township Engineer had advised Applicant that the foregoing Condition of Approval #6 of the June 6, 2013 Resolution imposed a condition precedent upon Applicant to connect to municipal sewer and water facilities before any building permits could be obtained for the approved development at Property.

17. As approval of a sewer connection to the Property would invoke Township jurisdiction as well as that of the New Jersey Department of Environmental Protection, significant delays would be visited upon Applicant before connection to municipal sewer could be approved.

18. Mr. Carbone testified that said condition precedent also eliminated any option available to Applicant to establish private septic facilities which could serve the Property, which might prove necessary.

19. As a result of the foregoing, Applicant has not been able to commence development activity at the Property.

20. While Applicant strongly believes that he will effectuate the connection of the Property to municipal sewer, rather than have that connection as a prerequisite to the issuance of a building permit, as set forth in Condition of Approval #6 of the June 6, 2013 Resolution, Applicant requests modification of that condition to provide Applicant with the option to (a) extend a sanitary sewer line from the Property into West Sunset Road; (b), locate and connect

the existing sewer lateral to the Property; or (c) install a subsurface disposal system serving the Property.

21. The successful completion of one of the foregoing options set forth in Paragraph 20 would be required as a condition of the Township's grant of a Certificate of Occupancy for the Property, rather than a building permit.

22. Turning to the issue of connection of the Property to public water, Mr. Carbone testified that the Property could either be served by (a) the Property's existing well, (b) public water from an existing branch of a Township water main located behind the Property, which is metered to the County of Morris and serves the County's Sunset Valley Golf Course, (c) a new well to be dug on the Property, or (d) an additional public source of water. As with sewer service, Applicant requests modification of Condition of Approval #6 of the June 6, 2013 Resolution to permit Applicant to choose among these options.

23. Once again, the successful completion of one of the foregoing options set forth in Paragraph 22 would be required as a condition of the Township's grant of a Certificate of Occupancy for the Property, rather than a building permit.

24. Mr. Carbone also testified as to a request to modify Condition of Approval #11 of the June 6, 2013 Resolution.

25. Mr. Carbone testified that while he has no objection to the installation of landscaping on the portions of the Property set forth in the aforesaid Condition of Approval #11, he also had hoped to remove certain trees from the Property, which he would replace on a one-to-one basis.

26. After further testimony and discussion between Applicant, his attorney and the Board, the Board recommended, and Applicant agreed, that Condition of Approval #11 would be

modified to add an additional sentence indicating that Applicant's final landscaping plan shall be subject to the review and approval of the Board's Planner.

27. Approval of said final landscaping plan shall be required as a condition of the Township's grant of a Certificate of Occupancy for the Property, rather than a building permit.

### **CONCLUSIONS OF LAW**

Based upon the foregoing findings, the Board makes the following conclusions of law:

1. Applicant has shown by testimony, exhibits and other evidence that the modifications sought can be granted.
2. The application for modification of Conditions of Approval #6 and #11 of the Board's June 6, 2013 Resolution is reasonable and can be granted.
3. Modification of Condition of Approval #6 will permit development of the Property but will also encourage Applicant to connect said Property to public water and sewer if possible. However, if, after good faith efforts, Applicant concludes that such connections are not feasible, Applicant will have the option to establish private sewer and water service at the Property.
4. Modification of Condition of Approval #11 will permit Applicant to use its discretion in formulating a landscaping plan in accordance with the unique characteristics of the Property, while ensuring that said landscaping plan will be acceptable from a planning standpoint.
5. Accordingly, the Board concludes that the application for modification of Conditions of Approval #6 and # 11 of the Board's June 6, 2013 Resolution is in the public interest as proposed and is hereby granted, subject to any conditions related thereto.

**NOW, THEREFORE, BE IT RESOLVED**, the Board having reviewed the application

and considered the impact of the proposal on the Township and its residents, and having determined whether the proposal is in furtherance of the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the intent and purpose of the Zoning Ordinance and the laws of the Township of Pequannock and whether the proposal is conducive to the orderly development of the site and the general area in which it is located, the Board concludes that good cause has been shown to grant the relief requested by the Applicant for modification of Conditions of Approval #6 and #11 in the Board's June 6, 2013 Resolution as outlined above.

As a result of the Board's conclusion and approval as set forth herein, the former Condition #6 shall be modified to create new Conditions 6 and 6A, which shall read as follows:

***“6. With regard to sewer service for the Property, Applicant shall have the option to (a) extend a sanitary sewer line from the Property into West Sunset Road; (b), locate and connect the existing sewer lateral to the Property; or (c) install a subsurface disposal system serving the Property. The successful completion of one of the foregoing options shall be required as a condition of the Township's grant of a Certificate of Occupancy for the Property.”***

***6A. With regard to water service for the Property, Applicant shall have the option to (a) utilize the Property's existing well; (b) connect to public water from the existing branch of the Township water main located behind the Property, which is metered to the County of Morris and serves the County's Sunset Valley Golf Course; (c) dig a new well on the Property; or (d) connect to an additional public source of water. The successful completion of one of the foregoing options shall be required as a condition of the Township's grant of a Certificate of Occupancy for the Property.”***

As a further result of the Board's conclusion and approval as set forth herein, the former Condition #11 shall be modified to read as follows:

***“11. Applicant shall install landscaping on the portion of the Property having frontage upon West Sunset Road and along the rear portion of the Property which abuts the access right-of-way to the Sunset Valley Golf Course. Applicant's final landscaping plan shall be subject to the***

*review and approval of the Board's Planner. Approval by the Board's Planner of Applicant's final landscaping plan shall be required as a condition of the Township's grant of a Certificate of Occupancy for the Property."*

The Board voted on August 1, 2013 to approve the application for modification as above described.

**BE IT FURTHER RESOLVED** that the Board hereby memorializes the approval of the application for modification subject to the following terms and conditions:

1. Applicant shall submit proof of payment of all real estate taxes applicable to the property.
2. Applicant shall submit a copy of this Resolution with accompanying documentation to verify the satisfaction of each condition stated herein to the Township Zoning Official. Said documentation shall be numbered to indicate compliance with these conditions.
3. Applicant shall pay in a timely manner all outstanding and future fees, including, but not limited to, development fees, escrow charges, connection fees and usage fees, and shall post all performance and maintenance bonds and guarantees in connection with the review of this application prior and subsequent to the approval of this application.
4. Applicant shall be bound by all representations made in testimony, exhibits and reports presented to the Board as well as all representations set forth in the transcripts of the hearings on the dates referred to above.
5. Applicant shall obtain the approval of any and all other necessary and appropriate City, County, State and Federal governmental agencies and comply with any and all governmental regulations except those specifically waived or modified in this Resolution.

6. Applicant shall continue to comply with all terms and conditions of the previous development approval granted by the Planning Board for the Property and memorialized by Resolution dated June 15, 1998.

7. Applicant shall continue to comply with all terms and conditions of the previous development approval granted by this Board for the Property and memorialized by Resolution dated June 6, 2013, except as modified herein.

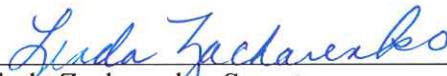
**BE IT FURTHER RESOLVED**, that the Board Secretary is hereby authorized and directed to cause a notice of this Resolution to be published in *Suburban Trends* at the Township's expense and to send a certified copy of this Resolution to the Applicant, the Township Clerk, the Township Engineer and the Township Tax Assessor and make same available to all other interested parties.



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Donald Bruno, Chairman  
Township of Pequannock  
Zoning Board of Adjustment

I hereby certify this to be a true and accurate copy of a resolution adopted by the Township of Pequannock Zoning Board of Adjustment, Morris County, New Jersey, at a public meeting held on September 19, 2013.



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Linda Zacharenko, Secretary  
Township of Pequannock  
Zoning Board of Adjustment

The Vote on the Resolution to approve this Memorialization was as follows:

Yes: Cielusniak, Melleno

No: Skuarcia

Abstain:

**TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
MORRIS COUNTY, NEW JERSEY**

**MATTER OF:** Jody Beringer

**PROPERTY LOCATION:** Block 2603, Lot 20, 3 Hanna Court

**APPROVED:** August 1, 2013

**MEMORIALIZED:** September 19, 2013

**WHEREAS,** Jody Beringer (“Applicant”) has requested a variance for rear yard setback and building coverage for property located at 3 Hanna Court, known and designated as Block 2603, Lot 20 on the Tax Maps of the Township of Pequannock in the “R-11” zone district (“Property”); and

**WHEREAS,** a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock (“Board”) on August 1, 2013; and

**WHEREAS,** the Board heard the testimony by Applicant and its witnesses, as well as receiving testimony from the Board’s own experts; and

**WHEREAS,** Applicant filed an Affidavit of Proof that Notice of Hearing was given as required by law; and

**WHEREAS,** a complete application has been filed, the fees required by ordinance have been paid, and the jurisdiction and powers of the Board have been properly invoked and exercised;

**NOW, THEREFORE, BE IT RESOLVED** that the Board makes the following findings of fact with regard to the application.

1. Applicant provided adequate notice of the application and the hearing in accordance with the New Jersey Municipal Land Use Law (“MLUL”).
2. The Property, owned by Applicant, measures 13,355 square feet and is located at Block 2603, Lot 20, 3 Hanna Court in the Township of Pequannock (“Township”) in the

Township's R-11 zone district.

3. Applicant seeks a rear yard setback variance to construct a second-story deck on the rear of Applicant's residential dwelling at the Property.

4. The deck will be connected to the dwelling's kitchen, which will allow Applicant's family to dine outdoors in the warmer weather if desired.

5. Pursuant to the Township Zoning Ordinance ("Zoning Ordinance"), a rear setback of 30 feet is required.

6. The Property is irregularly shaped, in the form of a trapezoid, and the rear yard of the Property has a non-conforming setback of 24.4 feet.

7. The Property was an approved, conforming subdivision lot when it was originally created; a subsequent revision to the Zoning Ordinance created the present 30 foot setback standard, resulting in the Property's present dimensional non-conformity.

8. Applicant requests a variance to permit a rear setback of 12.4 feet.

9. Applicant's proposal is depicted on a map prepared by William F. Zimmerly, P.L.S. of Wm. F. Zimmerly & Associates, Land Surveyors, entitled "Variance Map for Jody & Kristi Beringer, Situated in Township of Pequannock - Morris County - New Jersey, Being Tax Lot 20 in Block 2603" consisting of one (1) sheet, dated May 13, 2013

10. The Board also received a report from its Professional Planner, Eileen F. Banyra, P.P., A.I.C.P., dated July 25, 2013, the contents of which are incorporated herein by reference.

11. The Board heard the testimony of Jody Beringer, the Applicant.

12. Mr. Beringer testified that while the proposed rear yard setback will be reduced by the construction of the deck, because of the location of a storm drain easement owned by the Township and located behind Applicant's rear lot line, the impact of the proposed setback will be

mitigated.

13. Mr. Beringer testified that because of the presence of the easement, the actual setback distance (though not the official setback) between the deck structure and Applicant's neighboring property owner at the rear of the Property will be 28.5 feet, very close to the setback requirement set forth in the Zoning Ordinance.

14. Mr. Beringer testified that he maintains the Township's easement, which is not identified and is indistinguishable from the Property.

15. Even absent the requested variance, the unique size and shape of the Property precludes its compliance with the rear yard setback requirements of the Zoning Ordinance.

16. Mr. Beringer testified that the height of the proposed deck will be approximately 10 feet.

17. Neither the Board's professionals nor members of the interested public voiced objections to the requested variance.

18. The Board did request, and Mr. Beringer agreed, that Applicant's surveyor shall revise and update Applicant's map, and the zoning table thereon, to reflect (a) the correct calculation of building coverage on the Property after construction of the deck is completed, (b) the revision of the rear setback requirements of the Zoning Ordinance as they impact the Property's status as an approved subdivision lot, and (c) the elevation of the deck as constructed. The aforesaid revisions and updates to Applicant's map shall be subject to the review and approval of the Board's Planner, Ms. Banyra. This will be a condition of approval.

### **CONCLUSIONS OF LAW**

Based upon the foregoing findings, the Board makes the following conclusions of law:

1. Applicant has shown by testimony, exhibits and other evidence that the relief

sought can be granted.

2. The variance requested by Applicant for rear yard setback can be granted.

3. The Property is of unique shape and size and was an approved, conforming subdivision lot prior to the Township's amendment of dimensional requirements for the R-11 zone district. This is an extraordinary and exceptional situation which uniquely burdens the Property.

4. In such circumstances, the strict enforcement of the rear yard setback requirement of the Zoning Ordinance would inflict an unreasonable hardship upon Applicant.

5. The variance requested will not be detrimental to the public good, nor will it substantially impair the intent or purpose of the Township's Master Plan or Zoning Ordinance.

6. Accordingly, the Board concludes that a variance for rear yard setback shall be and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(1).

**NOW, THEREFORE, BE IT RESOLVED**, the Board having reviewed the application and considered the impact of the proposal on the Township and its residents, and having determined whether the proposal is in furtherance of the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the intent and purpose of the Zoning Ordinance and the laws of the Township of Pequannock and whether the proposal is conducive to the orderly development of the Property and the general area in which it is located, the Board concludes that good cause has been shown to grant the rear yard setback variance requested by the Applicant as outlined above. The Board voted on August 1, 2013 to approve the application for development as above described.

**BE IT FURTHER RESOLVED** that the Board hereby memorializes the approval of the

application for development subject to the following terms and conditions:

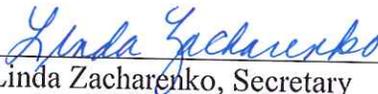
1. Applicant shall submit proof of payment of all real estate taxes applicable to the property.
2. Applicant shall submit a copy of this Resolution with accompanying documentation to verify the satisfaction of each condition stated herein to the Township Zoning Official. Said documentation shall be numbered to indicate compliance with these conditions.
3. Applicant shall pay in a timely manner all outstanding and future fees, including, but not limited to, development fees, escrow charges, connection fees and usage fees, and shall post all performance and maintenance bonds and guarantees in connection with the review of this application prior and subsequent to the approval of this application.
4. Applicant shall be bound by all representations made in testimony, exhibits and reports presented to the Board as well as all representations set forth in the transcripts of the hearings on the dates referred to above.
5. Applicant shall obtain the approval of any and all other necessary and appropriate City, County, State and Federal governmental agencies and comply with any and all governmental regulations except those specifically waived or modified in this Resolution.
6. Applicant's surveyor shall revise and update Applicant's map, and the zoning table thereon, to reflect (a) the correct calculation of building coverage on the Property after construction of the deck is completed, (b) the Property's status as an approved subdivision lot, and (c) the elevation of the deck as constructed. These revisions and updates to Applicant's map shall be subject to the review and approval of the Board's Planner, Ms. Banyra.

**BE IT FURTHER RESOLVED**, that the Board Secretary is hereby authorized and directed to cause a notice of this Resolution to be published in *Suburban Trends* at the Township's expense and to send a certified copy of this Resolution to the Applicant, the Township Clerk, the Township Engineer and the Township Assessor and make same available to all other interested parties.



\_\_\_\_\_  
Donald Bruno, Chairman  
Township of Pequannock  
Zoning Board of Adjustment

I hereby certify this to be a true and accurate copy of a resolution adopted by the Township of Pequannock Zoning Board of Adjustment, Morris County, New Jersey, at a public meeting held on September 19, 2013.



\_\_\_\_\_  
Linda Zacharenko, Secretary  
Township of Pequannock  
Zoning Board of Adjustment

The Vote on the Resolution to approve this Memorialization was as follows:

Yes: *Cielusniak, Skvarca, Way, Mellena, Bruno*

No:

Abstain: