

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Robert and Lauren Lomoriello
PROPERTY LOCATION: Block 1406, Lot 11, 5 Kenmore Road
APPROVED: September 19, 2013
MEMORIALIZED: November 7, 2013

WHEREAS, Robert and Lauren Lomoriello (“Applicants”) have requested variances for front yard setback to permit the construction of a covered portico and for side and rear yard setback to permit the location of an existing shed, along with waiver relief for property located at 5 Kenmore Road, known and designated as Block 1406, Lot 11 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 September 19, 2013; and

WHEREAS, the Board heard the testimony by Applicants, as well as receiving testimony from the Board’s own experts; and

WHEREAS, Applicants 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. Applicants 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 Applicants, measures 13,196 square feet and is located at Block 1406, Lot 11, 5 Kenmore Road in the Township of Pequannock ("Township") in the Township's R-11 zone district.

3. At present, the Property is improved with a one (1) story residential dwelling and driveway.

4. Applicants previously received approval from the Building Department of the Township of Pequannock ("Township") for a major addition to the existing residential dwelling, including a second story and 2-car garage.

5. Pursuant to the present application, Applicants seek a front yard setback variance to permit the further addition of a 13.1 foot by 4 foot covered portico over the front steps of Applicants' residential dwelling.

6. The covered portico will reduce the front yard setback of the dwelling from 35.83 feet to 31.85 feet.

7. Pursuant to the Township's Zoning Ordinance ("Zoning Ordinance"), a front yard setback of 50 feet is required in the R-11 zone. However, setback averaging is also permitted, with the average front setback in the Property's neighborhood measuring 35 feet.

8. Applicants also request variances for side and rear setback to permit the location of an existing shed which was previously located on the northeast (rear) corner of the Property in violation of the Zoning Ordinance.

9. Investigation by the Township's Planner, Ms. Banyra, found that no permit had been issued for the shed.

10. The shed is located 2 feet from the rear property line and 4 feet from the side property line. The Zoning Ordinance requires all sheds to be located no less than 5 feet from all property lines.

11. Applicants also request a waiver from checklist requirements for provision of a current survey.

12. Applicants have submitted a survey of the Property prepared in 2009, together with a letter from the Applicants advising that there have been no site changes since the preparation of said survey.

13. Applicants' proposal is depicted on a map prepared by James P. Cutillo, R.A., P.P., of James P. Cutillo & Associates, R.A., P.P., entitled "Addition and Alterations for Mr. & Mrs. Lomoriello, 5 Kenmore Road, Pompton Plains, NJ" consisting of three (3) sheets, dated July 1, 2013, revised as of August 1, 2013.

14. The Board also received a report from its Professional Planner, Eileen F. Banyra, P.P., A.I.C.P., dated September 4, 2013, the contents of which are incorporated herein by reference.

15. The Board heard the testimony of Robert Lomoriello and Lauren Lomoriello, the Applicants.

16. Mr. Lomoriello testified with regard to the front setback variance.

17. The installation of the portico will be a part of a broader renovation of Applicants' dwelling.

18. Mr. Lomoriello testified that the portico would add functional value to the dwelling by providing visitors protection from weather conditions when ascending the steps and landing leading to the front door of the dwelling.

19. The portico will also be usable for limited outdoor seating.
20. The portico will enhance the appearance of the dwelling by complimenting the other improvements already approved for construction.
21. Mr. Lomoriello testified that the size and appearance of the dwelling with the portico will be consistent with other homes in the neighborhood.
22. The Board's Planner, Ms. Banyra, stated that notwithstanding the front yard setback violation, the Township has permitted front yard setbacks in the R-11 zone which are consistent with the average setback in a particular area or neighborhood.
23. Ms. Banyra further stated that the resulting front setback at the Property will be consistent with other properties in the Applicants' neighborhood.
24. Turning to the variance for the existing shed, Mr. Lomoriello testified that the shed was installed in its present location when Applicants purchased the Property.
25. The shed is mounted on a permanent foundation which cannot be relocated.
26. Mrs. Lomoriello testified that the bushes are planted around the shed, which screen the shed from adjacent properties.
27. Mrs. Lomoriello further testified that one of the lots which adjoin the Property has a shed installed in a comparable location.
28. The Board suggested that Applicants add landscaping at the rear and sides of the shed to make it less visible.
29. Ms. Jennifer Kemp of Block 1406, Lot 10, 7 Kenmore Road, appeared and testified in opposition to the application.

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. The proposed portico is modest in scale and the variance requested will not result in a dramatic reduction of the Property's front yard setback.

4. As pointed out in the report of the Board's Planner, Ms. Banyra, the size of the portico and the requested setback are consistent with the improvements and setbacks in the vicinity of the Property.

5. The portico will also provide the benefit of weather protection to those who enter Applicants' dwelling.

6. Based upon the foregoing, the benefits to be obtained from permitting the variance for front yard setback requested by Applicant outweigh any detriments which might result from permitting this variance.

7. The variance is not detrimental to the Township Master Plan or Zoning Ordinance.

8. 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)(2).

9. The variances requested by Applicant for rear yard and side yard setbacks to permit the existing shed to remain in its present location can be granted.

10. The present location of the shed on a concrete slab is a long-standing pre-existing physical feature which uniquely affects the Property.

11. Though the location of the existing shed is non-conforming, the non-conformity is *de minimus* and unrelated to the development proposed by Applicants.

12. The shed is in adequate condition, neatly landscaped, and does not present an objectionable appearance.

13. To force the Applicant to relocate or remove the shed under said circumstances would inflict an unnecessary hardship on Applicant.

14. The variances are not detrimental to the Township's Master Plan or Zoning Ordinance.

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

16. The Board also concludes that the waiver requested by the Applicant from checklist requirements for provision of a current survey shall be and is hereby granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-10.3.

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 variances and waiver requested by the Applicant as outlined above. The Board voted on September 19, 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. Applicants shall revise their plans and zoning table to indicate the front yard setback measurements of the Property as developed with the portico.

7. Applicants shall revise their plans and zoning table to reflect the location of the shed, the prevailing rear yard and side yard setback requirements and actual setback measurements of the shed.

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 Applicant'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 November 7, 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, Dolengo, Hebert, Skvarca, Way, Melleno, Bruno*

No:

Abstain:

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: East Garden, LLC
PROPERTY LOCATION: Block 902, Lot 25, 28 East Garden Place
DISMISSED: October 3, 2013
MEMORIALIZED: November 7, 2013

WHEREAS, East Garden, LLC (“Applicant”) has applied for a use variance, bulk variances, site plan approval and related relief for property located at 28 East Garden Street, known and designated as Block 902, Lot 25 on the Tax Maps of the Township of Pequannock in the “C-3” zone district (“Property”); and

WHEREAS, despite making the aforesaid development application with the Township of Pequannock Zoning Board of Adjustment (“Board”), and having said application certified as complete pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-10.3 (“MLUL”), Applicant has failed to prosecute said application before the Board, requesting three (3) adjournments of scheduled hearing dates, and has also failed to respond to communications from the Board and/or its professionals requesting an explanation for Applicant’s failure to prosecute; and

WHEREAS, after the aforesaid adjournments, Applicant then failed to appear at the Board’s October 3, 2013 public meeting at which Applicant’s development application was scheduled for hearing, and did not communicate with the Board as to any reason for said failure to appear; and

WHEREAS, pursuant to the MLUL, N.J.S.A. 40:55D-76(b), the Board is required to grant or deny approval of a development application within 120 days from the certification of said application as complete; and

WHEREAS, pursuant to N.J.S.A. 40:55D-76(b), failure by the Board to act upon the pending development application within the aforesaid 120-day period shall constitute approval of said application;

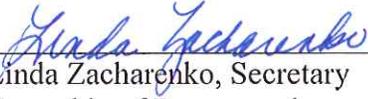
NOW, THEREFORE, BE IT RESOLVED by the Township of Pequannock Zoning Board of Adjustment that the development application of Applicant, East Garden, LLC, shall be and hereby is **DISMISSED** without prejudice. The Board voted on October 3, 2013 to dismiss the development application as above described.

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 Applicant'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 November 7, 2013.



Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: *Dolengo, Hebert, Imfeld, Way, Melleno, Vitcavich, Bruno*

No:

Abstain:

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Kevin and Lisa Nelson
PROPERTY LOCATION: Block 2204, Lot 9, 15 Burt Avenue
APPROVED: October 3, 2013
MEMORIALIZED: November 7, 2013

WHEREAS, Kevin and Lisa Nelson (“Applicants”) have requested a variance for secondary front yard setback to permit the construction of a second automobile garage and dormer expansion on the side of an existing residential dwelling on property located at 15 Burt Avenue, known and designated as Block 2204, Lot 9 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 October 3, 2013; and

WHEREAS, the Board heard the testimony by Applicants, as well as receiving testimony from the Board’s own experts; and

WHEREAS, Applicants 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. Applicants 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 Applicants, measures 19, 424 square feet and is located

at Block 2204, Lot 9, 15 Burt Avenue in the Township of Pequannock ("Township") in the Township's R-11 zone district.

3. The Property, situated at the corner of Burt and Leeland Avenues, is rectangular in shape and is improved with a one (1) story "Cape Cod" residential dwelling, single-automobile garage and driveway.

4. The Applicants' dwelling fronts on Burt Avenue with Leeland Avenue being a secondary front yard.

5. Pursuant to the present application, Applicants seek a secondary front yard setback variance to permit the construction of a 12.5 foot by 26.75 foot addition to the existing garage, located on the east side of the Applicants' dwelling.

6. Pursuant to the Township's Zoning Ordinance ("Zoning Ordinance"), a front yard setback of 50 feet is required in the R-11 zone.

7. The Property's existing primary front yard setback on Burt Avenue is 47.2 feet. The Property's existing secondary front yard setback on Leeland Avenue is 40.4 feet.

8. While the Property's pre-existing non-conforming primary front yard setback will not be exacerbated by the proposed development, Applicants' proposed addition will result in an exacerbation of the Property's non-conforming secondary front yard setback on Leeland Avenue to 28.08 feet. A bulk variance will be required for this secondary front yard setback.

9. With the exception of the need for the secondary front yard setback variance, caused by the Property having two front yards, no other variances are required. The Board's Planner, Ms. Banyra, noted that the Property is largely oversized and exceeds all of the remaining bulk criteria for the R-11 zone.

10. Applicants' proposal is depicted on a map prepared by James P. Cutillo, R.A.,

P.P., of James P. Cutillo & Associates, R.A., P.P., entitled "Proposed Addition and Alterations for Mr. & Mrs. Nelson, 15 Burt Avenue, Pompton Plains, NJ 07444" consisting of two (2) sheets, dated June 26, 2013, revised as of September 4, 2013.

11. The Board also received a report from its Professional Planner, Eileen F. Banyra, P.P., A.I.C.P., dated September 30, 2013, the contents of which are incorporated herein by reference.

12. The Board heard the testimony of Kevin Nelson and Lisa Nelson, the Applicants.

13. Mr. Nelson testified that Applicants had purchased the Property in April 2013.

14. At the time of purchase, the existing residential dwelling and landscaping suffered from disuse and required substantial renovation and clean-up.

15. Moreover, the existing one-car garage was virtually unusable, as most vehicles could not fit within the garage's present physical dimensions.

16. The addition will result in a lengthening of the existing garage to permit the parking of standard-size vehicles therein.

17. Mrs. Nelson testified that the newly-configured garage area would be accessible from inside the dwelling.

18. Mr. Nelson testified that Applicants have commenced the necessary renovations at the Property, which have included restoration of the dwelling, and would like to add additional living space, as well as adequate garage space for two vehicles.

19. The proposed dormer expansion/garage addition would be located on and attached to the east side of the existing dwelling. Vehicle ingress/egress would remain from Burt Avenue.

20. Mr. Nelson testified that the addition will result in no negative impact on the primary front yard of the Property on Burt Avenue, and the resulting secondary front yard

setback will remain compatible with other properties on Leeland Avenue.

21. Mr. Nelson testified that he had checked with the Traffic Bureau of the Township's Police Department and had been informed that there were no line of sight issues as a result of the proposed development.

22. Mrs. Nelson testified that Applicants had discussed their development plans with neighboring property owners, who had no objection to the addition and related improvements.

23. No members of the public appeared in opposition to the application.

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 secondary front yard setback can be granted.

3. The location of the Property on a corner lot with two front yards is an extraordinary and exceptional situation uniquely affecting the Property. No additional property is available which would allow the Property to have a complying setback on Leeland Avenue.

4. Though the non-conformity of the Property's secondary front yard setback is exacerbated by the proposed development, the additional non-conformity is not material and will not be detrimental to surrounding lots or the neighborhood in which the Property is situated.

5. The proposed development is moderate in nature and will improve the condition of the existing dwelling and the appearance of the Property.

6. To force the Applicant to comply with the strict front yard setback requirements of the R-11 zone under said circumstances would inflict an unnecessary hardship on Applicant.

7. The variance is not detrimental to the Township's Master Plan or Zoning Ordinance.

8. Accordingly, the Board concludes that a variance for secondary 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).

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 secondary front yard setback variance requested by the Applicant as outlined above. The Board voted on October 3, 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.

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 Applicant'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 November 7, 2013.



Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: *Doleng, Hebert, Imfeld, Way, Melleno, Vitcavich, Bruno*

No:

Abstain: