TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Adventure Holdings I, LLC
PROPERTY LOCATION: Block 2705, Lot 1, 101 Alexander Avenue
APPROVED: November 5, 2015
MEMORIALIZED: January 21, 2016

WHEREAS, Adventure Holdings I, LLC ("Applicant") has requested, pursuant to the New Jersey Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-70(b), an interpretation of the Zoning Ordinance of the Township of Pequannock ("Zoning Ordinance") that a coffee bean roasting and packaging process to be conducted by Applicant is a permitted use in the I-1 zone district pursuant to §189.06.010 of the Zoning Ordinance; and

WHEREAS, the property where Applicant proposes to conduct the aforesaid activities is located at 101 Alexander Avenue, known and designated as Block 2705, Lot 1 on the Tax Maps of the Township of Pequannock ("Township") in the Township's I-1 zone district ("Property"); and

WHEREAS, a public hearing was held on the request for interpretation before the Zoning Board of Adjustment of the Township of Pequannock ("Board") on November 5, 2015; and

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

WHEREAS, Applicant, represented by 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, N.J.S.A. 40:55-D-1 et seq. ("MLUL").

2. The Property, owned by Applicant, measures 12.24 acres (533,174 square feet), is the location of an 118,080 square feet structure approved for manufacturing at Block 2705, Lot 1 in the Township's I-1 Industrial zone district.

3. For many years, dating to at least 1930, the Property was the location of Edwards Engineering, an approved manufacturing facility.

4. Applicant's proposed tenant, TOCA Coffee Company ("TOCA"), seeks to lease 1,950 square feet of the Property to use for the purposes of roasting raw coffee beans, packaging and selling same on a wholesale basis.

5 TOCA applied to the Township for a zoning permit for the proposed use on or about August 21, 2015.

6. Under date of August 27, 2015, the Township Zoning Officer denied TOCA's permit request, as the proposed use was deemed to be a prohibited use in the I-1 zone pursuant to §189.06.010 of the Zoning Ordinance, which states, in prominent part, as follows:

"In the I-1 Industrial District, the following regulations shall apply:

A. Use Regulations. A building may be erected or used and a lot may be used or occupied for the following uses and no other:

(1) Permitted uses.

(a) Offices.

(b) Veterinary Hospitals.

©) Research laboratories.

(d) Product development laboratories.

(e) Warehousing.

(f) Metal-and-wood fabricating facilities.

(g) Wholesale distribution.

(h) Assembly of parts manufactured elsewhere.

(I) Packaging of products manufactured or assembled elsewhere.

(j) Any combination of permitted uses, provided that each use occupies a minimum of one thousand (1,000) square feet of floor area.

....

(4) Prohibited uses.

(a) Those uses which are not specifically permitted in the I-1 Zone are hereby prohibited.

(b) Specifically, those prohibited include the following:

(1) Residences.

(2) Airports or aviation fields or heliports.

(3) Ammonia, chlorine or bleaching powder manufacture.

(4) Disinfectant, insecticide or poison manufacture.

(5) Fertilizer manufacture.

(6) Commercial incineration, reduction storage, private or commercial dumps, sanitary landfill depots or depositories for disposal of solid or liquid waste material.

(7) Sulphurous, sulfuric, nitric, pitric, carbolic or hydrochloric acid manufacture.

(8) Vinegar manufacture.

(9) Dog kennels.

(10) Stockyards.

(11) Slaughtering of animals.

(12) Animal black, lamp black or bone black manufacture.

(13) Rawhide or skin storage, cleaning, curing or tanning.

(14) Soap manufacture from animal fat.

(15) Glue, size or gelatin manufacture, where the processes include the refining or recovering of products from fish, animal refuse or offal.

(16) Grease, lard, fat or tallow rendering or refining.

(17) Wool pulling or scouring.

(18) Storage, sorting or baling of scrap paper, iron, bottles, rags or junk.

(19) Automobile junkyards.

(20) Explosives manufacture or storage, except small arms ammunition.

(21) Pyroxylin plastic manufacture or the manufacture of articles therefrom.

(22) Rubber or gutta percha manufacture or treatment.

(23) Smelting of iron, copper, tin, zinc or lead from ore.

(24) Starch, glucose or dextrin manufacture.

(25) Petroleum refining.

(26) Sand, gravel or clay pits and the washing or processing of sand, gravel or clay.

(27) Commercial recreational uses.

(28) Outdoor movies.

(29) Animal zoos.

(30) Trucking depots or storage yards.

(31) Stone yards or monument works.

(32) Retail merchandising.

(33) Mortuaries or funeral homes.

(34) Garages used primarily for either automobile or commercial vehicle service.

(35) Any other trade or use that is noxious or offensive or extremely hazardous by reason of the emission of odor, dust, smoke, or gas or explosive potential.

(36) Open-front stores and outdoor displays or storage of food and merchandise.

(37) Dispensing of food, drink or merchandise through an opening of an exterior wall of a building or providing curb service.

...."

7. Applicant now seeks an interpretation of §189.06.010 of the Zoning Ordinance to determine if TOCA's proposed activity is prohibited under said ordinance.

8. Mr. Schepis, Applicant's attorney, briefly summarized the interpretation request and the requested use at the Property.

9 The Board heard the testimony of Robert McLean, TOCA's owner.

10. Mr. McLean testified as to TOCA's coffee bean roasting, cooling and packaging process. Said process is mostly automated.

11. Coffee beans are loaded, de-stoned and roasted. Dust is removed from the beans at each stage of the process.

12. Mr. McLean testified that the roasting process is smokeless in nature, using a highly efficient coffee roasting machine. Coffee is roasted in 30 pound batches for 15 - 20 minute intervals.

13 Odors produced by the roasting of the coffee beans will be recycled back into the coffee roasting machine.

14. After roasting, the coffee beans are cooled by ambient air circulation, vacuum

lifted and placed in 8 or 12 ounce bags. .

15. Mr. McLean testified that wholesale customers would come to the property to test "raw" coffee after it is roasted.

16. Said customers would not swallow the coffee, but instead taste and spit coffee beans with hot water poured over them. This activity is called "test cupping" but does not involve consumption of coffee. No cups of coffee will be sold to customers.

17. In response to questions by the Board, Mr. McLean testified that the premises to be leased by TOCA will not be open to the general public.

18. Mr. McLean testified that he is seeking a separate facility where the general public could consume TOCA's coffee. However, no cups of coffee will be sold to customers or the general public at the leased premises or on the Property. This will be a condition of approval.

19. In further response to questions from the Board and its professionals, Mr. McLean compared the proposed use to that of a test kitchen. Such a facility is analogous to a research or product development laboratory, a permitted use pursuant to §189.06.010 A(1) (c) or (d) of the Zoning Ordinance.

20. Mr. McLean testified that the activity to be carried on by TOCA, while a process, did not result in the manufacture of coffee.

21. Mr. Schepis further pointed out to the Board that the proposed use, though not expressly permitted, was not among the prohibited uses listed in §189.06.010 A(4) of the Zoning Ordinance.

22. Members of the Board also expressed the opinion that the proposed use did not appear to be a prohibited manufacturing process or business. Furthermore, as the proposed use involved the testing of coffee beans, it was comparable to one or more uses which are expressly

permitted in the I-1 zone (See also Paragraph 19 above).

CONCLUSIONS OF LAW

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

1. Applicant has shown by testimony, and evidence that the coffee bean roasting and packaging process described and proposed by TOCA can be interpreted as a permitted use in the Township's I-1 zone district.

2. The process described and proposed by TOCA is analogous to a research, testing or development facility. Said uses are permitted in the I-1 zone pursuant to §189.06.010 A(1) (c) and (d).

3. Based upon the aforesaid testimony and evidence, as well as review of the uses both described in §189.06.010 of the Zoning Ordinance as permitted and prohibited in the I-1 zone, the Board, pursuant to the authority conferred on the Board by the MLUL, N.J.S.A. 40:55D-70(b), hereby concludes and interprets that the proposed coffee bean roasting and packing process is a permitted use in the Township's I-1 zone.

NOW, THEREFORE, BE IT RESOLVED, the Board having reviewed the request for interpretation of §189.06.010 of the Zoning Ordinance and considered the impact of the interpretation on the Township and its residents, and having determined that the interpretation 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, Master Plan and laws of the Township of Pequannock, the Board concludes that good cause has been shown to grant the Applicant's request for an interpretation that TOCA Coffee Company's proposed coffee bean roasting and packing process is a permitted use in the Township's I-1 zone. The Board voted on November 5, 2015 to approve said interpretation as above described, ***subject, however***, to the condition that no

cups of coffee will be sold to customers or the general public at the premises leased by TOCA Coffee Company or on the Property.

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.

Paul Dolengo, 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 January 21, 2016.

Linda Zacharenko

Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: Hebert, Imfeld, Way, Drucose, Dolengo

No:

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Kujtim and Nderim Dauti
PROPERTY LOCATION: Block 503, Lot 18, 3 Mead Place
APPROVED: December 3, 2015
MEMORIALIZED: January 21, 2016

WHEREAS, Kujtim and Nderim Dauti ("Applicants") have requested a bulk variance for minimum aggregate side yard setback pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the installation of a two (2) car garage and addition on a dwelling located at 3 Mead Place, known and designated as Block 503, Lot 18 on the Tax Maps of the Township of Pequannock in the Township's R-22 zone district ("Property"); and

WHEREAS, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock ("Board") on December 3, 2015; and

WHEREAS, the Board heard 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, N.J.S.A. 40:55-D-1 et seq. ("MLUL").

2. The Property, owned by Applicants, measures 25,000 square feet and is located at Block 503, Lot 18 in the Township's R-22 Residential zone district.

3. The Property is improved with a bi-level single-family residence, an in-ground pool and a shed. A 20-foot wide drainage and utility easement traverses the rear of the Property.

4. Applicants desire to install a two (2) car garage and second story addition on the southern side of the existing residence. Also included with the addition are a new laundry room and storage room on the first floor and a new office/gym on the second floor.

5. To permit said installation, Applicants require a variance from the requirements of the Zoning Ordinance for minimum aggregate side yard setback. A 40 foot aggregate side yard setback is required pursuant to the Zoning Ordinance. Applicants propose 34.8 feet.

6. The Property meets all other bulk requirements in the R-22 zone.

7. Applicants' proposal is depicted on a map prepared by David Cochran, Architect, entitled "Addition & Alteration to Dauti Residence, 3 Mead Place, Pompton Plains, Morris County, New Jersey, Block 503, Lot 18" consisting of four (4) sheets, dated November 2015 (Sheet 1) and October 2015 (Sheets 2-4).

8. The Board also received a report from the Township Planner, Jill A. Hartmann, P.P., A.I.C.P, dated December 1, 2015 with regard to the application. Said report is hereby incorporated by reference as if set forth at length herein.

10. At the December 3, 2015 hearing, the Board heard the testimony of Kjutim and Nderim Dauti, the Applicants.

11. Applicants briefly summarized their request for relief from the Board.

12. Applicants testified that the proposed addition and related improvements will upgrade the dwelling and Property.

13. In addition, as the Property is oversized, the proposed configuration will actually improve the diversity of side yard setbacks in the neighborhood where the Property is located.

14. There were no objections to the requested minimum aggregate side yard setback variance by the Board's professionals or members of the interested public.

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 for minimum aggregate side yard setback can be granted.

3. The requested deviation from the minimum aggregate side yard setback requirements of the Zoning Ordinance will not result in a negative impact on the Property, surrounding lots or the neighborhood.

4. The new addition to Applicants' dwelling and related improvements will enhance the appearance of the Property and the surrounding neighborhood. This is a purpose of zoning set forth in the MLUL, N.J.S.A. 40:55D-2(i). In addition, the improvements will enhance the diversity of the Township's residential housing stock, also a purpose of zoning set forth in the MLUL, N.J.S.A. 40:55D-2(g).

5. Based upon the foregoing, the benefits to be obtained from granting the variance for minimum aggregate side yard setback outweigh any detriments which might result therefrom

6. The requested variance will not be detrimental to the Township's Master Plan or Zoning Ordinance.

7. Accordingly, the Board concludes that a variance from Zoning Ordinance requirements for minimum aggregate side yard setback shall be and hereby is granted to

Applicants 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 Applicants' request for a bulk variance for minimum aggregate side yard setback pursuant to N.J.S.A. 40:55D-70(c)(2) as outlined above. The Board voted on December 3, 2015 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. Applicants shall submit proof of payment of all real estate taxes applicable to the property.

2. Applicants 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. Applicants 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. Applicants 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

hearing(s) on the date(s) referred to above and shall comply with all reports and comments submitted by the Board's Planner and/or Engineer in connection with the application.

5. Applicants 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.

Paul Dolengo, 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 January 21, 2016.

Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: Hebert, Imfeld, Way, Deresse, Wintemberg, Dolengo

No:

Abstain:

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Robert and Yolanda Cardillo
PROPERTY LOCATION: Block 4010, Lot 11, 16 Hilton Street
APPROVED: December 3, 2015
MEMORIALIZED: January 21, 2016

WHEREAS, Robert and Yolanda Cardillo ("Applicants") have requested a bulk variance for minimum setback of a pool from the rear of a residence pursuant to N.J.S.A. 40:55D-70(c)(1) to permit the location of an above-ground swimming pool on the side yard of property located at 16 Hilton Street, known and designated as Block 4010, Lot 11 on the Tax Maps of the Township of Pequannock in the Township's R-9 zone district ("Property"); and

WHEREAS, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock ("Board") on December 3, 2015; and

WHEREAS, the Board heard testimony by Applicant, 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, N.J.S.A. 40:55-D-1 et seq. ("MLUL").

2. The Property, owned by Applicants, measures 12,893 square feet, has frontage on Hilton Street and is located at Block 4010, Lot 11 in the Township's R-9 Residential zone district.

3. The Property is improved with a frame dwelling.

4. The Property has the following pre-existing, non-conforming conditions in the R-9 zone: minimum lot depth (125 feet required under the Township Zoning Ordinance ("Zoning Ordinance"), 100 feet provided); minimum front yard setback (35 feet required, 32.5 feet provided); minimum side yard setback (10 feet minimum required, 6.9 feet provided). None of these pre-existing non-conforming conditions will be exacerbated as a result of the proposed development.

5. Applicant desires to install an above-ground swimming pool at the rear (northeast) corner of the Property. Swimming pools are permitted in all of the Township's residential zone districts.

6. To permit said installation, Applicant requires a variance from the requirements of the Zoning Ordinance for minimum pool setback from the rear of a residence. A 10 foot setback is required pursuant to the Zoning Ordinance. Applicant proposes 5.7 feet.

7. Applicant's proposal is depicted on a map prepared by Morgan Engineering & Surveying, F. Frank Sadeghi, P.E., entitled "16 Hilton Street Pool Variance Plan, Lot 11, Block No, 4010, Township of Pequannock, County of Morris, New Jersey" consisting of one (1) sheet, dated September 22, 2015, revised as of October 20, 2015.

8. The Board also received a report from the Township Planner, Jill A. Hartmann, P.P., A.I.C.P, dated December 1, 2015 with regard to the application. Said report is hereby incorporated by reference as if set forth at length herein.

9. At the December 3, 2015 hearing, the Board heard the testimony of Robert and Yolanda Cardillo, the Applicants.

10. Applicants briefly summarized their request for relief from the Board.

11. Applicants testified that they have obtained permits from the Township for and substantially completed installation of a fence at the eastern boundary of the Property.

12. Applicants affirmed in testimony that there is no additional land available for purchase which would permit the Property to be brought into compliance with the pool setback requirements of the Zoning Ordinance.

13. Applicants testified that they will install pool safety ladders and all other required pool safety equipment on the Property.

14. There were no objections to the requested minimum pool setback variance by the Board's professionals or members of the interested public.

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 for minimum pool setback can be granted.

3. The requested deviation from the minimum pool setback requirements of the Zoning Ordinance is moderate in nature and is a result of the unique size, shape and configuration of the Property.

4. In addition, there is no adjacent land available for purchase by Applicants which would bring the Property into further compliance with the requirements of the R-9 zone.

5. In such circumstances, an unreasonable burden would be imposed upon the

Applicant if the minimum pool setback requirements of the Zoning Ordinance were strictly enforced.

6. The requested variance will not be detrimental to the Township's Master Plan or Zoning Ordinance.

7. Accordingly, the Board concludes that a variance from Zoning Ordinance requirements for minimum pool setback shall be and hereby is granted to Applicant 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 Applicants' request for a bulk variance for minimum pool setback pursuant to N.J.S.A. 40:55D-70(c)(1) as outlined above. The Board voted on December 3, 2015 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. Applicants shall submit proof of payment of all real estate taxes applicable to the property.

2. Applicants 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. Applicants 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. Applicants 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 hearing(s) on the date(s) referred to above and shall comply with all reports and comments submitted by the Board's Planner and/or Engineer in connection with the application.

5. Applicants 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.

Paul Dolengo, 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 January 21, 2016.

Linda Zacharenko

Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: Hebert, Imfeld, Way, Dresse, Wintemberg, Dalenge

No:

Abstain:

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Richard Gaba
PROPERTY LOCATION: Block 604, Lot 23, 184 West Parkway
APPROVED: November 5, 2015
MEMORIALIZED: January 21, 2016

WHEREAS, Richard Gaba ("Applicant") has requested a bulk variance for impervious surface coverage pursuant to N.J.S.A. 40:55D-70(c)(1) at property located at 184 West Parkway, known and designated as Block 604, Lot 23 on the Tax Maps of the Township of Pequannock ("Township") in the Township's R-22 zone district ("Property"); and

WHEREAS, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock ("Board") on November 5, 2015; and

WHEREAS, the Board heard testimony by Applicant and its engineer, 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, N.J.S.A. 40:55-D-1 et seq. ("MLUL").

2. The Property, owned by Applicants, measures 22,000 square feet, has frontage on

West Parkway and is located at Block 604, Lot 23 in the Township's R-22 Residential zone district.

3. The Property is improved with a two (2) story single-family dwelling, in-ground pool and surrounding pavers, pool house, shed, wood deck, gazebo and outdoor kitchen area.

4. Applicant acquired the Property in 2008. At that time, the pool, surrounding pavers, pool house, shed, patio and gazebo were installed, and the Property exceeded maximum impervious surface requirements of the Township Zoning Ordinance ("Zoning Ordinance").

5 In 2011, Applicant installed an outdoor kitchen at the Property. Applicant was subsequently notified that he must obtain permits for said kitchen. Upon applying for said permits, the impervious surface violation was discovered. In addition, said violation was increased by the Applicant's installation of the outdoor kitchen.

6. As a result of the foregoing, Applicant seeks a variance from the requirements of the Township Zoning Ordinance ("Zoning Ordinance") for maximum impervious surface coverage (30% permitted pursuant to the Zoning Ordinance, 41.1% proposed).

7. No new construction is proposed.

8. Applicant's proposal is depicted on a map prepared by Darmofalski Engineering Associates, Inc., Paul P. Darmofalski, P.E., entitled "Variance Map & Limited Drainage Plan for 184 West Parkway, Block 604, Lot 23, situated in the Township of Pequannock, Morris County, New Jersey" consisting of one (1) sheet, dated November 27, 2014, revised as of September 3, 2015.

9. The Board also received a report from the Township Planner, Jill A. Hartmann, P.P., A.I.C.P, dated November 2, 2015, and a report from the Township Engineer, Joseph R. Golden, P.E., P.P., C.M.E, dated October 13, 2015 with regard to the application. Said reports

are hereby incorporated by reference as if set forth at length herein.

10. At the November 5, 2015 hearing, Applicant briefly summarized the situation affecting the Property and the relief requested from the Board.

11. The Board heard the testimony of Mr. Darmofalski, Applicant's Engineer.

12. Applicant proffered, and the Board accepted as evidence, Exhibit A-1, a photograph of the Property taken at the time of Applicant's purchase.

13. Mr. Darmofalski testified that at the time Applicant purchased the Property, there was a total impervious surface coverage of 37.3% thereon.

14. Subsequently, Applicant installed the outdoor kitchen, which increased the impervious surface coverage to 41.1%, further exacerbating this non-conforming condition.

15. Mr. Darmofalski testified that previous Township Engineers have utilized varying interpretations of impervious surface coverage, leading to confusion on the issue. For example, pavers, such as those used by Applicant at the Property, have not always been included in determining impervious surface coverage.

16. The Board's Planner, Jill A. Hartmann, P.P., A.I.C.P, stated that under the present Zoning Ordinance, items such as pavers are considered impervious surface coverage.

17. Mr. Darmofalski testified that Applicant's Property s is well-landscaped and screened

18. Mr. Darmofalski testified that to address drainage issues which are created by the excessive impervious coverage, Applicant will install three (3) seepage pits, one (1) on the north side of Applicant's dwelling and two (2) on the south side of the dwelling. Applicant will also install a new swale on the north side of the dwelling.

19. Mr. Darmofalski testified that he had conferred with the Mr. Golden, the

Township Engineer, with regard to the placement of the seepage pits to ensure that all runoff issues are addressed at the Property.

20. Mr. Darmofalski testified that the seepage pits will improve drainage at the Property and will also reduce drainage from the Property on to neighboring lots.

21. Mr. Gaba testified that he had hoped to also cover his outdoor kitchen. The Board was not agreeable to this request as such coverage would further exacerbate the impervious surface coverage violation.

22. The Board requested, and Applicant agreed, that there will be no further development of any kind on the Property. This will be a condition of approval.

23. There were no objections to the requested impervious surface coverage variance by the Board's professionals or members of the interested public.

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 for maximum impervious surface coverage can be granted.

3. The requested deviations from the maximum impervious surface coverage variance requirements of the Zoning Ordinance, though substantial, are the result of inadvertent error by Applicant and its predecessors, as well as changing interpretations of what the Township has included in the measurement of impervious surface coverage.

4. In addition, there is no adjacent land available for purchase by Applicant which would bring the Property into further compliance with the requirements of the R-22 zone.

5. In such circumstances, a unique and unreasonable burden would be imposed upon

the Applicant if the maximum impervious surface coverage of the Zoning Ordinance were strictly enforced.

6. Applicants' dwelling and Property will remain compatible with other homes in the neighborhood and on West Parkway. Moreover, there will be no further development on the Property.

7. The requested variance will not be detrimental to the Township Master Plan or Zoning Ordinance.

8. Accordingly, the Board concludes that variances from Zoning Ordinance requirements for minimum front yard setback and minimum combined side yard setback shall be and hereby are granted to Applicant 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 Applicants' request for a bulk variance for maximum impervious surface coverage pursuant to N.J.S.A. 40:55D-70(c)(1) as outlined above. The Board voted on November 5, 2015 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. Applicants shall submit proof of payment of all real estate taxes applicable to the

property.

2. Applicants 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. Applicants 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. Applicants 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 hearing(s) on the date(s) referred to above and shall comply with all reports and comments submitted by the Board's Planner and/or Engineer in connection with the application.

5. Applicants 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 comply with the comments and recommendations set forth in the November 2, 2015 report of the Township Planner and the October 13, 2015 report of the Township Engineer except as modified in this Resolution.

7. There will be no further development of any kind on the Property.

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.

Paul Dolengo, 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 January 21, 2016.

Linda Zacharenko

Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: Hebert, Imfeld, Way, Driesse, Wintemberg, Dolengo

No:

Abstain: