

**TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION**

**MORRIS COUNTY, NEW JERSEY**

**MATTER OF:** Jennifer Esposito

**PROPERTY LOCATION:** Block 2603, Lot 8, 6 Virginia Avenue

**APPROVED:** May 5, 2016

**MEMORIALIZED:** June 2, 2016

**WHEREAS,** Jennifer Esposito (“Applicant”) has requested variances for minimum front yard setback, minimum side yard setback, minimum combined side yard setback and maximum building coverage to permit the construction of a two (2) story addition and related improvements to an existing single-family residential dwelling on property located at 6 Virginia Avenue, known and designated as Block 2603, Lot 8 on the Tax Maps of the Township of Pequannock in the R-11 zone district (“Property”); and

**WHEREAS,** public hearings was held before the Zoning Board of Adjustment of the Township of Pequannock (“Board”) on April 7 and May 5, 2016; and

**WHEREAS,** the Board heard the 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. 40:55D-1 et seq.

(“MLUL”).

2. The Property, owned by Applicant, measures 11,717 square feet and is located at Block 2603, Lot 8, 6 Virginia Avenue in the Township of Pequannock (“Township”) in the Township’s R-11 zone district.

3. The Property is rectangular in shape and is improved with a small one (1) story dwelling. An existing shed is also located in the rear of the Property.

4. The Property has a pre-existing, non-conforming condition in the R-11 zone, that of minimum front yard setback. (50 feet required under the Township Zoning Ordinance (“Zoning Ordinance”), 47.76 feet provided).

5. This pre-existing, non-conforming condition will be exacerbated pursuant to the instant application, as Applicant seeks a variance to permit a further front yard setback encroachment of 6.01 feet, resulting in a front yard setback of 41.75 feet.

6. Applicant is in the process of constructing an addition of a second story to the dwelling which would match the footprint of the existing first story and include a two (2) car garage.

7. Applicant previously obtained building permits for this addition, which is under construction.

8. Applicant also proposes the construction of a one (1) story porch, with access landing and stairs, at the front of the dwelling; a second story cantilever located above the southeastern portion of the rear of the dwelling; a new masonry chimney, which will encroach into the existing west side yard; replacement of an existing paver patio in the rear of the dwelling

with a new paver patio; and expansion of the Property's existing driveway to accommodate the new two (2) car garage.

9. To permit the requested development, Applicant seeks variances for minimum front yard setback (50 feet required pursuant to the Zoning Ordinance, 47.76 feet existing, 41.75 feet proposed [see also Paragraphs 4 and 5]); minimum west side yard setback (10 feet required, 9.6 feet proposed); minimum combined side yard setback (25 feet required, 22.6 feet proposed) and maximum building coverage (16 % permitted pursuant to the Zoning Ordinance, 17.7% provided).

10. Applicant's proposal is depicted on plans prepared by Archi-Tap Designs, Inc., Tsampicos A. Perides, A.I.A., entitled "Addition & Renovation, 6 Virginia Avenue, Pequannock, NJ" consisting of two (2) sheets, dated July 22, 2015, revised as of April 22, 2016. .

11. The Board also received a report from its Professional Planner, Jill A. Hartmann, P.P., A.I.C.P., dated March 30, 2016, the contents of which are incorporated herein by reference.

12. At the Board's April 7, 2016 meeting, the Board heard the testimony of Jennifer Esposito, the Applicant, and Tsampicos A. Perides, A.I.A., Applicant's Architect

13. Though Applicant submitted plans and obtained a building permit for the construction of the addition to the dwelling, Applicant subsequently made revisions to the fireplace and chimney and constructed same without receiving approval for said revisions, resulting in the Township's issuance of a Stop-Work Order prohibiting further activity at the Property.

14. Applicant's revised plans also showed an unapproved addition of a porch to the dwelling.

15. The unapproved revisions to Applicant's plans necessitate substantial bulk variance relief (see Paragraph 8). Indeed, the unapproved revisions, if permitted as presented, would have resulted in a building coverage from 15.9 % to 19.49%, far in excess of Zoning Ordinance requirements.

16. The Board's planner, Ms. Hartmann, noted that Applicant's original, approved plans were apparently changed by Applicant during construction, resulting in construction which was expanded from and inconsistent with the approved plans.

17. The Board expressed substantial concern with Applicant's undertaking of construction beyond its approved plans.

18. Ms. Esposito testified that she was now requesting that the Board approve her revised construction plans, which would necessitate a variance to permit an increase of an existing non-conforming front setback violation, minimum west side and minimum combined side yard setback variances to permit a chimney constructed without permits, and a variance for maximum building coverage.

19. The Board noted that the plans submitted by Applicant had numerous inconsistencies and several missing items, including, but not limited to, the chimney, zoning tables with updated, accurate calculations and a survey.

20. The Board also instructed Applicant that, because the chimney and other improvements had been constructed without approval, the Board had the authority to order that these items be removed.

21. The Board recommended that Applicant's proposed porch be deleted from its plans, which Applicant's architect, Mr. Perides, advised would reduce building coverage from

19.49% to 17.2%.

22. The Board further recommended that a row of trees along the side of the Property be removed. This will be a condition of approval.

23. The hearing was then carried to the Board's May 5, 2016 regular monthly meeting.

24. At the May 5, 2016 hearing, Applicant and Mr. Perides again appeared.

25. Applicant testified that she had revised her plans as recommended by the board, including setbacks and building coverage.

26. The Board noted that under Applicant's revised plans, building coverage calculations were 17.7%, in excess of the 17.2% recommended by the Board at the previous meeting.

27. In response, Mr. Perides testified that, rather than removing the proposed porch from Applicant's plans, he had revised Applicant's plans to provide a significantly smaller front porch which would greatly reduce the deviation from building coverage requirements.

28. Mr. Perides testified as to the variances requested. Mr. Perides proffered, and the Board accepted as evidence, Exhibit A-1, which set forth front yard setback calculations for the four (4) lots located closest to the Property.

29. Mr. Perides testified that, pursuant to Exhibit A-1, the average front yard setback for the adjacent lots was 43.85 feet. In Mr. Perides' professional opinion, this is not substantially different from Applicant's proposed front yard setback of 41.75 feet.

30. With regard to the side yard setback variances necessitated by Applicant's unapproved relocation and construction of the chimney, Mr. Perides testified that while

Applicant acknowledged its error in constructing said chimney without an approval, said error was neither intentional nor malicious.

31. Mr. Perides testified that the chimney would not cause interference with adjacent lots and that it would be a hardship if the Board were to direct Applicant to remove the chimney.

32. Turning to the building coverage variance, Mr. Perides testified that, in addition to the redesigned porch, Applicant also sought to cover the landing for the double door installed at the front of the dwelling. This covering contributed, along with reduced-size porch, resulted in the 17.7% building coverage for which variance relief was requested.

33. There were no objections to the requested variances by members of the interested public.

34. Because of problems with the accuracy of calculations on Applicant's site plans in the course of the application process, the Board requested, and Applicant agreed, that Mr. Perides would certify all calculations on Applicant's final site plans and architectural drawings. 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 minimum front yard setback can be granted.

3. While the proposed front yard setback violation exacerbates an existing non-conforming condition, the resulting front yard setback will be compatible with the front yard

setbacks of adjacent lots and other properties in the vicinity of the Property.

4. The requested variance will permit construction of a new dwelling which will add diversity to the Township's housing stock. This is a purpose of zoning as set forth in the MLUL, N.J.S.A. 40:55D-2(g).

5. The dwelling will also be substantially upgraded over the existing house on the Property. This is also a purpose of zoning as set forth in the MLUL, N.J.S.A. 40:55D-2(i).

6. The requested minimum front yard setback variance will not conflict with the purposes of the R-11 zone district.

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

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

9. Accordingly, the Board concludes that a variance for minimum front yard setback of 41.75 feet shall be and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(2).

10. The variances requested by Applicant for minimum (west) side yard setback and combined minimum side yard setback can be granted.

11. While the chimney constructed by Applicant on the west side of the Property does result in a violation of the minimum side yard setback requirements, said violation is minor in nature. Similarly, the combined side yard setback violation will be modest in nature.

12. As discussed above, the variances will enable the diversification of the Township's housing stock while permitting the upgrade of the existing home on the Property.

These are purposes of the MLUL, N.J.S.A. 40:55D-2 (g) and (i).

13. The requested minimum (west) side and combined side yard setback variances will not conflict with the purposes of the R-11 zone district.

14. Based upon the foregoing, the benefits to be obtained from granting the variances for minimum (west) side and combined side yard setback outweigh any detriments which might result therefrom.

15. The variances will not be detrimental to the Township Master Plan or Zoning Ordinance.

16. Accordingly, the Board concludes that variances for minimum (west) side yard setback of 9.6 feet shall be minimum combined side yard setback of 22.6 feet shall be and hereby are granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(2).

17. The variance requested by Applicant for maximum building coverage can be granted.

18.. The proposed reductions in the size of Applicant's porch, resulting in a building coverage of 17.7% are an acceptable deviation from the Zoning Ordinance requirements, based upon the unique facts presented before the Board. The variance will not result in a detrimental impact upon the Property or adjacent lots.

19. As previously discussed, the variance will enable the diversification of the Township's housing stock while permitting the upgrade of the existing home on the Property. These are purposes of the MLUL, N.J.S.A. 40:55D-2(g) and (i).

20. Based upon the foregoing, the benefits to be obtained from granting the variance for maximum building coverage outweigh any detriments which might result therefrom.

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

22. Accordingly, the Board concludes that a variance for maximum building coverage of 17.7% 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 variances requested by Applicant for minimum front yard setback, minimum (west) side yard setback, minimum combined side yard setback and maximum building coverage as outlined above. The Board voted on May 5, 2016 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.

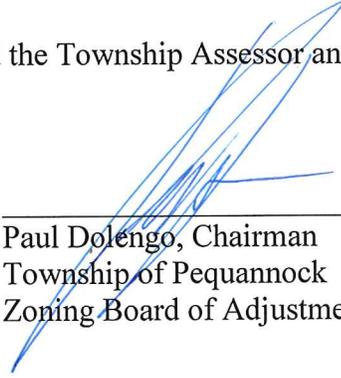
4. Applicants shall be bound by all representations made in testimony, exhibits and reports presented to the Board as well as all representations set forth in the transcripts of the hearing(s) on the date(s) referred to above and shall comply with all reports and comments submitted by the Board's Planner 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. Applicant's architect, Mr. Perides, shall certify the accuracy of all calculations on Applicant's site plans and architectural drawings.

7. Applicant shall remove the row of trees along the side of 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 Applicants, the Township Clerk, the Township Engineer and the Township Assessor and make same available to all other interested parties.



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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 June 2, 2016.

Linda Zacharenko 6/10/16  
Linda Zacharenko, Secretary  
Township of Pequannock  
Zoning Board of Adjustment

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

Yes: *Hebert, Driese, Wintenberg, Solerigo*

No: *Way*

Abstain: