

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

**MORRIS COUNTY, NEW JERSEY**

**MATTER OF: Conquer Properties, Inc.**

**PROPERTY LOCATION: Block 2602, Lot 20, 476 Newark - Pompton Turnpike**

**APPROVED: June 2, 2016**

**MEMORIALIZED: August 4, 2016**

**WHEREAS**, Conquer Properties, Inc. (“Applicant”) has requested preliminary and final site plan approval, a variance for expansion of a non-conforming use pursuant to the New Jersey Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-70(d)(2) and variances for maximum impervious surface coverage and provision of sidewalks in between a parking area and a principal building pursuant to the MLUL, N.J.S.A. 40:55D-70(c)(2) to permit the renovation, conversion and expansion of a former medical office building for use as an educational training facility on property located at 476 Newark - Pompton Turnpike, known and designated as Block 2602, Lot 20 on the Tax Maps of the Township of Pequannock (“Township”) 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 June 2, 2016; and

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

**WHEREAS**, Applicant, represented by Joseph Rasa, 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 1.077 acres (46,914.12 square feet) and is L - shaped. Said Property is located at Block 2602, Lot 20, 476 Newark-Pompton Turnpike in the Township’s R-11 zone district.
3. The Property is currently improved with a one-story building (“Building”) on the east side of the Property.
4. Said Building was, for many years, used as a medical x-ray facility, a non-conforming use in the R-11 zone. Said non-conforming use, together with two non-conforming bulk conditions, lot width and lot frontage (see Paragraphs 9 and 10 below), were the subject of a previous approval by the Board in 1960.
5. Applicant intends to renovate, convert and expand the Building for use as an educational facility for the training of mathematics teachers.

6 To expand the Building, Applicant seeks to erect a 3,002 square foot addition to the south end of the Building (“Addition”), expanding the Building’s footprint from 2,126 square feet to 5,128 square feet.

7 To construct the Addition, Applicant will require a variance for the expansion of a non-conforming use pursuant to the MLUL, N.J.S.A. 40:55D-70(d)(2).

8 Applicant also requires bulk variance relief from the Township Zoning Ordinance (“Zoning Ordinance”) for maximum impervious coverage (40% permitted under the Zoning Ordinance, 53.1%) proposed) and from Zoning Ordinance requirements for provision of sidewalks in between a parking area and a principal building.

9 The Property has two (2) non-conforming bulk conditions, lot width and lot frontage, which were previously approved by the Board in 1960.

10 With regard to lot width, a minimum lot width of 90 feet is required under the Zoning Ordinance. The Property has a lot width of 67.13 feet. As to lot frontage, a minimum of 90 feet is required by the Zoning Ordinance, and the Property has a lot frontage of 67.13 feet.

However, neither of these previously approved non-conforming conditions will be exacerbated by the proposed development.

11 Applicant’s proposal is depicted on a map prepared by Darmofalski Engineering Associates, Inc., Paul P. Darmofalski, P.E., P.P, entitled “Proposed Site Development Plan, Lot 20, Block 2602 (476 Newark-Pompton Turnpike), situated in the Township of Pequannock, County of Morris, New Jersey”, consisting of seven (7) sheets, dated May 11, 2016.

12. Mr. Darmofalski also prepared and filed a planning report, entitled "Planning Report for: Nancy Schultz Conquermath, 476 Newark Pompton Turnpike, Pompton Plains, NJ 07444, Block 2602, Lot 20, Pequannock Township, Morris County, NJ", consisting of twenty-one (21) pages, dated May 11, 2016.

13. Mr. Darmofalski further supplied a document entitled "Drainage Calculations For 476 Newark-Pompton Turnpike, Block 2602, Lot 20, Pequannock Township, Morris County, NJ", consisting of four (4) pages, dated May 11, 2016.

14. Applicant's architect, Byrne Design Associates, Inc., William P. Byrne, R.A., submitted architectural renderings of the Building and Addition, consisting of three (3) sheets, dated April 22, 2016.

15. The Board also received a report from the Township Planner, Jill A. Hartmann, P.P., A.I.C.P., dated June 1, 2016 with regard to the application. Said report is incorporated by reference as if set forth at length herein.

16. Applicant's attorney, Mr. Rasa, summarized the application before the Board.

17. Mr. Rasa proffered, and the Board admitted as evidence, Exhibit A-1, a three (3) page fact sheet describing Applicant's operations; Exhibit A-2, a scale model of the Property and proposed development thereon; and A-3, a scale rendering of the Building and Addition.

18. The Board heard the testimony of Nancy Schultz, Applicant's owner.

19. Ms. Schultz testified as to the information set forth in the fact sheet she provided as Exhibit A-1.

20. Ms. Schultz testified that she owns Conquer Properties, Inc. and Conquer Mathematics.

21. Ms. Schultz testified that Conquer Mathematics, founded in 2009, is an instructional program which trains teachers in mathematics instruction.

22. Ms. Schultz testified that Conquer Mathematics' teacher training facility is presently located in Fairfield, Essex County.

23. Ms. Schultz testified that Conquer Mathematics' clientele consists primarily of school districts in northern New Jersey. Teachers from Grades K - 12 participate in Conquer Mathematics' training programs. Ms. Schultz has presented programs to eighty-one (81) school districts. Student tutoring is not provided.

24. Ms. Schultz testified that she purchased the Property in March 2016.

25. Ms. Schultz testified that as presently constructed, the Building cannot accommodate Applicant's programs and must be modernized and expanded.

26. Ms. Schultz testified that Applicant's programs require a small classroom for technology, a large classroom to host workshops and administrative offices.

27. Ms. Schultz testified that, as teachers often travel to the Property individually or in small groups, parking must be added in front of the Building and Addition.

28. To this end, Applicant proposes to enlarge and redesign the existing access driveway and parking lot. The access driveway will be realigned to make access to and from the Property safer. The driveway has been straightened, widened and a separating island installed to

define the Property's ingress and egress lanes. A new parking area consisting of fifty (50) parking spaces is also proposed.

29. Applicant also seeks to locate a 31.5' x 16' (567 square feet) patio at the rear of the Building as a casual meeting/outdoor break area for the program participants and Applicant's staff to discuss workshops and eat lunch in temperate weather conditions.

30. Ms. Schultz testified as to the Applicant's operations.

31. Applicant's teacher training programs will consist of a maximum of forty-eight (48) teachers, Ms. Schultz and one (1) of Applicant's staff members. A minimum of eight (8) to ten (10) school districts will attend programs on a single day.

32. Ms. Schultz testified that Applicant's hours of operation. Applicant's programs ordinarily take place between the hours of 8:30am and 2:30pm.

33. While programs will begin at staggered times to permit participants to travel from varying distances to reach the Property, all programs will end at 2:30 to permit sufficient time for participants' return travel.

34. The Board heard the testimony of Paul P. Darmofalski, P.E., P.P., Applicant's engineering and planning consultant.

35. Mr. Darmofalski testified as to the existing conditions at the Property and Applicant's proposed building and floor plans.

36. Mr. Darmofalski testified that the Property is flag-shaped, measuring over one (1) acre in area and is very deep. The Property has an eastern slope. There are no wetlands on the Property. The Property is not in a flood zone.

37. The Property is surrounded on three (3) sides by residences. The Pequannock Library and Middle School are across Pompton Turnpike.

38. Mr. Darmofalski testified that beginning in or about 1960, the Property was the location of a medical X-ray facility.

39. Mr. Darmofalski testified that the Building on the Property is a framed structure measuring one and one half (1½) stories. Said Building's interior is in disrepair.

40. The Property has a existing septic system, which will be upgraded.

41. Mr. Darmofalski testified that there is an accessory shed and other accessory structures and buildings on the Property. All of these will be removed by Applicant.

42. Applicant proposes to locate an L-shaped parking area in front of the Building and Addition. Said parking area will accommodate fifty (50) vehicles and will be fenced with a six foot (6') fence.

43. Mr. Darmofalski testified that the existing twenty-four foot (24') curb cut at the existing driveway entrance to the Property cannot be enlarged. However, Applicant will effect improvements at the driveway entrance to enhance safety for vehicles entering and exiting the Property.

44. Mr. Darmofalski testified that there will be minimal lighting at the Property, as most activity at the Property will take place during daytime hours.

45. Mr. Darmofalski reiterated Ms. Schultz's testimony that participants in Applicant's programs will begin the day at staggered times. He further testified that Applicant

was exploring the option of coordinating its dismissal time to avoid conflict with the dismissal time of the Pequannock Middle School.

46. Lighting will be installed on eight (8) light poles measuring twelve feet (12') in height. A shoe-box fixture with a low-level one-half (1/2) footcandle bulb will be mounted on each pole. The fixtures are identical to those used at the Pequannock Library across the Newark-Pompton Turnpike. Applicant will also provide lighting near the driveway entrance to the Property.

47. Mr. Darmofalski testified that there will be no change to utilities presently serving the Property.

48. Mr. Darmofalski testified that Applicant will install fencing to match the existing vinyl fencing installed by neighbors at the rear (south) of the Property.

49. Applicant will also install a landscape buffer to shield the Property from neighboring homes. The buffer will be installed inside the existing fencing and consist of eighty-eight (88) "Green Giant" arborvitae. This variety of trees grows an average of three feet (3') per year. Said trees are resistant to deer and drought conditions.

50. Mr. Darmofalski testified that the fencing and landscape buffer will fully comply with all applicable Township regulations.

51. Mr. Darmofalski testified as to the variance sought by Applicant for expansion of a non-conforming use pursuant to N.J.S.A. 40:55D-70(d)(2).

52. Mr. Darmofalski testified that while the proposed development will result in expansion of a non-conforming use at the Property, the use will not overburden the Property.

53. Mr. Darmofalski testified that the proposed use is uniquely suited to the Property, since the Property can accommodate Applicant's programs, the intended number of participants and the vehicles those participants will use.

54. The Board notes that the New Jersey Supreme Court established in Medici v. BPR Co., 107 N.J. 1, 4 (1987) that site suitability is a fundamental prerequisite to use variance relief, including relief for expansion of a non-conforming use. Medici has been followed in numerous reported decisions of the New Jersey courts.

55. Mr. Darmofalski testified that, by way of comparison, if Applicant's proposal was for a professional office building with the proprietor an on-site resident, the use would comply with the requirements of the Zoning Ordinance. The proposed use is arguably less intense than a professional office use.

56. Mr. Darmofalski testified that the proposed use provides promotes the general welfare by providing a service to school districts as well as individual public and private schools. This is a purpose of zoning as set forth in the MLUL, N.J.S.A. 40:55D-2(a).

57. Mr. Darmofalski testified that the proposed non-conforming use expansion would advance other purposes of the MLUL, such as the provision of sufficient space for educational uses, N.J.S.A. 40:55D-2(g), and, through the rehabilitation of the Property, promotion of a desirable visual environment, N.J.S.A. 40:55D-2(i).

58. Referencing his report, Mr. Darmofalski testified that the proposed mathematics teacher training facility is compatible with other nearby uses, such as the Pequannock Middle School and Library, as well as numerous other office uses in the R-11 zone.

59. Mr. Darmofalski testified that the use expansion would cause neither substantial detriment to the public good nor substantial impairment to the Township's Master Plan and Zoning Ordinance.

60. It was Mr. Darmofalski's professional opinion that Applicant's requested variance for expansion of an existing non-conforming use could be granted pursuant to the MUL, N.J.S.A. 40:55D-70(d)(2).

61. Mr. Darmofalski addressed the variances requested by Applicant under N.J.S.A. 40:55D-70(c)(2) for maximum impervious surface coverage and provision of sidewalks in between a parking area and a principal building.

62. With regard to the variance for maximum impervious surface coverage, Mr. Darmofalski testified that the additional impervious coverage is caused by the addition of parking at the Property, which is necessary to accommodate the participants in Applicant's teacher training programs. However, the additional parking, while ample for the proposed use, is not excessive and will be screened and buffered from adjacent properties.

63. In response to concerns expressed by the Board regarding the adequacy and quality of Applicant's proposed landscaping of the Property, the Board requested, and Applicant agreed, that Applicant would upgrade its landscaping plan in consultation with and subject to the approval of the Township Planner. This will be a condition of approval.

64. Regarding the variance for provision of sidewalks in between a parking area and a principal building, Mr. Darmofalski testified that the installation of said sidewalks will create more impervious surface coverage requiring much a more substantial variance for that condition.

65. Mr. Darmofalski testified that, in his the requested variances would promote the purposes of the MLUL.

66. The Board expressed concern about the removal of existing trees on the side yard on the north side of the Property along Ryan Lane. To address this issue, the Board requested, and Applicant agreed, that no trees would be removed from the side yard of the Property along Ryan Lane unless a recommendation is made to the Township Planner by a qualified arborist or tree expert. This will be a condition of approval.

67. The Board heard statements from members of the interested public in connection with the application. Said statements were provided by Ms. Kristen Squire, 2 Ryan Lane, Mr. Gary Squire, 2 Ryan Lane and Mr. Giuseppe Aparo, 7 Virginia Avenue.

#### 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. Applicant's preliminary and final site plan is in compliance with the requirements of the Township's site plan ordinance and is consistent with the intent and purpose of the R-11 zone district as set forth in the Township's Master Plan.
3. Applicant's proposed site plan will not be detrimental to the objectives of the R-11 zone district.

4. Accordingly, the Board concludes that the application for preliminary and final site plan approval, as proposed, is in the public interest and is hereby granted, subject to any conditions related thereto.

5. The variance requested by Applicant for expansion of a non-conforming use can be granted.

6. While Applicant's proposal will materially enlarge the Building's footprint (and increase impervious surface coverage for Applicant's additional parking area), the testimony and evidence supplied by both Ms. Schultz and Mr. Darmofalski indicate that the intensity of the actual use at the Property will not significantly intensify.

7. Moreover, as Applicant's programs will be presented during a limited time frame, activity at the Property will not be so intense as to disrupt the peace and quiet enjoyment of residents of adjacent properties.

8. Applicant's exhibits and the testimony of Ms. Schultz and Mr. Darmofalski further indicate that Applicant's proposed development at the Property will satisfy the positive criteria for use variance relied under the MLUL.

9. Applicant's proposed use of the Property will provide additional space in the Township for educational uses, a purpose of the MLUL, N.J.S.A. 40:55D-2 (g).

10. The use will also result in the rehabilitation and upgrade of the Property, which is presently in a disused state. Such promotion of a more desirable visual environment promotes another purpose of the MLUL, N.J.S.A. 40:55D-2(i).

11. Finally, the proposed use will provide an important service to school districts as well as individual public and private schools throughout the region, promoting the general welfare, another purpose of zoning set forth in the MLUL, N.J.S.A. 40:55D-2(a).

12. As the proposed use will be of comparable intensity to that which existed at the Property pursuant to a use variance for approximately fifty-six (56) years, the requested variance for expansion of the non-conforming use can be granted without further impairment to the intent and purpose of the Township's Master Plan and Zoning Ordinance.

13. Accordingly, the Board concludes that a use variance for the expansion of a non-conforming use as set forth in Applicant's plans shall be and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(d)(2).

14. The variance requested by Applicant for maximum impervious surface coverage can be granted.

15. The proposed impervious surface coverage represents a noticeable increase over that which previously existed at the Property, as well as a material deviation from the impervious surface coverage limits set forth in the Zoning Ordinance.

16. Applicant's exhibits and testimony indicate that the variance for maximum impervious surface coverage is necessary to locate sufficient parking for Applicant to conduct its programs at the Property.

17. To address concerns regarding impact on neighboring properties, Applicant will provide screening and buffering of its parking area, and has also agreed to upgrade its landscaping plan in consultation with and subject to the approval of the Township Planner. This

will ensure that the development will provide a desirable visual environment which does not interfere with neighboring properties, a purpose of zoning under the MLUL, N.J.S.A. 40:55D-2(i). The proposed development will also enhance traffic safety at the Property, a purpose of zoning pursuant to the MLUL, N.J.S.A. 40:55D-2(a).

18. Based upon the foregoing, the benefits to be obtained from permitting the variance substantially outweighs any detriments thereto.

19. Accordingly, the Board concludes that a variance for maximum impervious surface coverage of 53.1% shall be and hereby is granted under the authority conferred upon the Board pursuant to N.J.S.A. 40:55D-70(c)(2).

20. The variance requested by Applicant for provision of sidewalks in between a parking area and a principal building can be granted.

21. As testified to by Mr. Darmofalski and discussed at length above, Applicant's new parking area, while modern and safe in design, necessitates a substantial increase in impervious surface coverage at the Property which requires variance relief. To require the installation of sidewalks would further exacerbate the non-conforming impervious coverage condition.

21. As also testified to by Mr. Darmofalski, the rehabilitation and development of the Property promotes the purposes of the MLUL through the provision of a desirable visual environment and the enhancement of traffic safety, N.J.S.A. 40:55D-2(i) and (a).

22. Based upon the foregoing, the benefits to be obtained from permitting the variance substantially outweighs any detriments thereto.

23. Accordingly, the Board concludes that a variance for provision of sidewalks in between a parking area and a principal building shall be and hereby is granted under the authority conferred upon the Board pursuant to 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 Applicant's request for preliminary and final site plan approval, a variance for expansion of a non-conforming use and variances for maximum impervious coverage and for provision of sidewalks in between a parking area and a principal building as outlined above. The Board voted on June 2, 2016 to approve the application for development as above described.

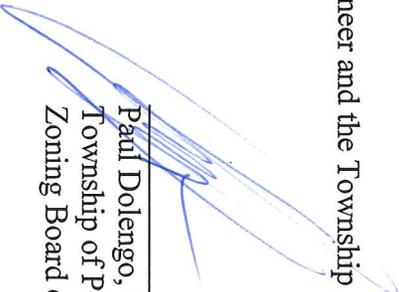
**BE IT FURTHER RESOLVED** that the Board hereby memorializes the approval of the application for development subject to the following terms and conditions:

1. 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 hearing(s) on the date(s) referred to above and shall comply with all reports and comments submitted by the Board or Township Planner and/or Township Engineer in connection with the application.
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 comply with the comments and recommendations set forth in the June 1, 2016 report of the Township Planner except as modified in this Resolution.
7. Applicant shall upgrade its landscaping plan in consultation with and subject to the approval of the Township Planner.
8. Applicant shall not remove any trees from the side yard of the Property along Ryan Lane unless a recommendation is made to the Township Planner by a qualified arborist or tree expert.

**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.

  
08-09-16  
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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 August 4, 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, Melleno, Viccavich, Way, Driesse, Wintemberg, Dolengo

No:

Abstain: