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Pequannock Township
Anello Residence
22 Foothills Drive
Bulk Variances: Block 202, Lot 4
Planners Report/Outline for Testimony
August 19, 2020
Public Hearing: September 3, 2020

Expert Witness Qualifications:

Experience Education

Property Description:

- 1. Location: 22 Foothills Drive Pequannock, NJ.
- 2. Block, 202, Lot 4
- 3. Zoning Classification: R 22

<u>Variance Proposal:</u> The purpose of this application is to address the previous owners' ordinance violations on the property since 2005, while seeking Board approval for any variances required and to modify a resolution condition of the previously granted garage approval.

The Applicant requests a modification of the previously approved Zoning Board Application for the Accessory Structure (garage and pool storage). The previous

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owner installed a toilet and a sink without construction permits or approvals from the Board of Adjustment since the accessory structure received a variance for height. The following bulk or "c" variances are required:

- 1. Ord. Section 189.03.030-7.: Maximum Impervious Coverage is 30% where 42.97% is the as-built condition and 39.62% is proposed reducing the violation by 3.35%. Variance deviation from the ordinance requested is 9.62%.
- 2. Ord. Section 189.03.030-3. Height: maximum Height is 35 Ft, where 37.9 is the as-built condition and the proposed. Variance deviation of 2.9 Ft.

Planning Basis:

The basis and framework of my planning testimony is the application, plan documents submitted, the application, site observations and testimony offered by the other witnesses. I will add my professional observations, knowledge, opinions, and the MLUL requirements to form my professional conclusions for this Board to consider approving this Application.

Photographic Information: The following pictures provide a visual perspective of the site with the surrounding neighborhood.



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#6

Request to modify the previous Zoning Board Resolution:

The resolution is very clear, and I can understand the frustration of the Board and the Professionals. The previous owners did not comply with the approved plans of the hearing of December 1, 2005 and proceeded to do as they pleased without any regard to the testimony and plans, they provided.

We need to seek the following changes to the resolution of approval granted December 1, 2005.

1. Condition #1 to be modified to include the revised architectural plans by Byrne Design. Noting the two-fixture bathroom consisting

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of a sink and toilet only, no shower. A limited wet bar area which opens to the pool area.

- 2. Condition #3 to be modified by eliminating the last sentence about being finished for storage only.
- 3. Condition #5 to be modified to permit a sanitary sewer connection to the house for a toilet and sinks only.

Why should you entertain this?

- 1. The Anello's are not the Handles and in fairness they should not be judged by the actions of the prior owners.
- 2. Significantly, there are also Planning Reasons to justify the changes to the Resolution.

Planning Reasons and Justification:

- 1. Photo #4 shows the distance from the pool entertaining and sitting area through the gate to the deck stairs and the doorway to the house on the right-hand side. The bathroom on the first floor is in the front third of the house. The distance is significant for young children and the elderly causing a hardship and safety concerns. The Anello's have younger children and older parents along with friends with children. We are just trying to avoid bodily accidents.
- 2. The same can be said about the wet bar as a place to serve cold drinks, light snacks and storage. There is no stove or oven being

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proposed in this application for cooking or baking. The distance is great to carry beverages and snacks from the house.

<u>Pequannock Township Master Plan</u>: Several documents pertaining to Planning in Pequannock Township have been reviewed including the 2019 Master Plan and various reports concerning compliance with the Highlands Master Plan.

Application of Master Plan to "c" Variances Requested:

- 1. There are several Goals and Policies from the 2019 Master Plan that apply to this development proposal.
 - a. Goal #1 "Maintain the character of the Township in established neighborhoods."
- 2. Land Use Element Recommendations:

Residential

- a. (8.) Remove flag lot provisions from the Zoning Code.
- b. (12.) Remove deck coverage exceptions from the Zoning Code.

The granting of proposed variances requested would further the Master Plan Objectives and Policies by the following:

1. The site development scale, massing and architectural character is consistent and compatible with neighborhood. The existing height variance condition cannot be seen from the road as shown on photos 1, 2 and 3. It can only be seen from the rear of the house as shown in photo #4. There are not any neighbors abutting the rear of the property. The property depth far exceeds the ordinance

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requirement along with the lot area exceeding the standard by more than 2 times.

2. The proposed development plan reduces the existing impervious coverage under 40% to 39.62%, whereby lessening any negative and environmental impacts. We respectfully note that this reduction is a product of a, true good faith attempt by the current owners to reduce and lessen a condition that was created solely by the prior owner.

Ordinances:

Impervious Coverage has been a moving target in the State of New Jersey and Pequannock for many years. Flooding caused by over development has been a life safety and economic issue for many communities. Reduced impervious coverage and permeable soils are critical to reducing runoff that surges of sewer systems causing flooding. Ordinance changes have been made over the years to address the issue.

- 1. The original home was approved when gravel was not considered impervious coverage and complied with the prior ordinance. Many communities recognized compacted gravel was more impervious than pervious. Including Pequannock Township, where it is no longer considered a pervious surface.
- 2. On this property, the gravel was converted into concrete pavers without consideration of the Township Ordinances but not by this owner.
- 3. New Jersey Best Management Practices recommend pervious pavement surfaces including pavers for surfaces requiring vehicle

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> and pedestrian activities to increase soil absorption to reduce runoff. The paved surfaces offer this approach reducing runoff.

4. Mr. Anello the new owner has reduced the current Imperious Coverage by removing driveway curbing, driveway pavers, sidewalks pavers and pool paver decking to bring the amount of impervious coverage to 39.62% where 30% is permitted. The previous owner's impervious coverage was 42.97%.

Every effort has been made to reduce the impervious coverage to comply with the ordinance requirement without impacting the safe use and function of the residential home and pool area. Consideration was given to safe movements of vehicles in the driveway, and people movements around the home and to pool based on professional design standards.

Municipal Land Use Law:

NJSA 40:55D – 70 – c – 1 & 2: The applicant is requesting variances pursuant to N.J.S.A. 40: D – 70(c)1 commonly known as the hard "c" variance. An applicant requesting a "c (1)" must demonstrate 1 of 3 situations. C:1-a "by reason of exceptional narrowness or shape of a specific property"; or b. by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or by c. by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, property, the strict application of any regulation pursuant to article 8 of

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this act (40:55D-62 et seq.) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship" on the property owner..."

C:1 - a. applies "by reason of exceptional..., shape of the property"

C:1 - c applies" by reason of an extraordinary and exceptional situation uniquely affecting a specific property, the strict application of the regulation would result in peculiar and exceptional practical difficulties to and undue hardship on the Owner."

Application:

- 1. The approval of the variances would bring the property into compliance from a legal standard. Eliminating a long history of violations.
- 2. The property lot area is more than 2 times the requirement with a long bowling alley shape requiring a longer driveway to utilize the property which contributes to the impervious coverage variance.
- 3. The proposal is an appropriate reduction of impervious coverage on the property with appropriate paved surfaces for this specific property.
- 4. The increased height can not be seen from the neighborhood. The photos show no impact to the visual character of the neighborhood. The home is similar to in size and shape with the other homes in the neighborhood. To remove the small roof portion with the violation would be a hardship to the new owner.

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5. In summary under the hardship variance, the strict application of the ordinances would result in a real hardship to the property's current owner. The long-standing property issues from the previous owner would be resolved.

Or the Board can consider:

N.J.S.A. 40:55D-70(c)2, commonly known as a "(c)2" soft "c" variance. An applicant requesting a c (2) variance must prove the following: 1) that the granting of the variance will advance the intent and purposes of the Municipal Land Use Law; 2) that the benefits of granting the variance substantially outweigh any potential detriments; and 3) address the negative criteria. Pursuant to court decisions concerning the c (2) variance, the applicant must show how the proposal represents a better zoning alternative for the property than the existing requirements of the district. In addressing this issue, the applicant must show how the deviation would benefit the surrounding neighborhood or the community as a whole.

NJSA 40:55D-2 Purposes of Zoning: The Purposes of Zoning under and the MLUL provides the basis to address the proofs to be considered by the Board. Specifically, a., c. and i.

Section a. To encourage municipal action to guide the appropriate use or development of all lands in this state, in a manner which promotes the public health, safety, morals and general welfare;

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Application: The testimony presented, plans submitted, and the planning testimony supports that it is appropriate to consider the modifications to the improvements to this residential property for its intended residential use furthermore in the interest of the general welfare of the neighborhood and the community as a whole. The granting of the variances further this purpose of zoning.

Section c. To provide adequate light and air and open space;

Application: The lot size of over an acre is more than double the zoning requirement off 2,200 square feet. The other requirements are met and slightly exceeded but not in proportion with the lot area. This is a long "narrow" lot that has been improved for residential purposes consist with the neighbor. This development enhances light, air and open space with excessive lot area. The granting of the variances further this purpose of zoning.

Section i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

<u>Application</u>: As shown by the Architectural Plans submitted the architectural character established is consistent and complementary with the surrounding properties in size, massing, scale and architectural details. Therefore, the planning conclusion is that through good civic design this proposal establishes a desirable visual environment which enhances the community as whole. The granting of the variances is supported by this purpose of zoning.

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Negative Criteria:

- 1. The height variance requested cannot be seen by the general public or within the neighborhood. The location to the rear of the house hides the 2.9-foot height requested. There will be no negative impact.
- 2. The "c" variance impervious coverage has been reduced. The property has been designed with proper on-site best management practices and there are no know flooding drainage issues associated with this property. The increase will not have a negative impact.

Better Plan:

This is the "Better Plan" to bring the property into more conformance with the zoning requirements of Pequannock Township. The granting of the deviations from the ordinance with this development plan is consistent with and in the interest of the surrounding neighborhood and the community as a whole. The negative impacts will not be recognized by the public or within the neighborhood. In fact, it is our understanding that the neighbors are supportive of the Applicant and their attempts to obtain legal relief from the Zoning Board.

Conclusion:

In my professional opinion, the benefits or positive criteria presented for this project clearly outweigh any negative impacts. The "c" variances can be granted under c 1 exceptional circumstances based on hardship and or c 2 with the advancement of the purposes of planning and zoning testified too without any substantial detriment to the public good and without substantially impairing the zone plan and zoning ordinance.

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I will review this report in detail during in detail during the public hearing.