

**TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY**

MATTER OF: Caribbean Blue & Gunitite Masters, Inc.

PROPERTY LOCATION: Block 2701, Lot 11, 347 Route 23 South

Pompton Plains, New Jersey 07444

APPROVED: March 7, 2019

MEMORIALIZED: ~~April 4, 2019~~ *May 8, 2019*

WHEREAS, Caribbean Blue & Gunitite Masters, Inc. (hereinafter designated as the “Applicant”) has made Application to the Township of Pequannock Board of Adjustment (hereinafter referred to as the “Zoning Board”), for preliminary and final site plan approval together with a use variance and bulk variances for minimum lot width and maximum parking in the front yard to permit the Applicant to construct building renovations and site improvements to its pool and gunitite supply business, and to permit outdoor storage on the subject property known and designated on Township of Pequannock Tax Map as Block 2701, Lot 11, 347 Route 23 South, Pompton Plains, New Jersey 07444, Pompton Plains, New Jersey 07444 (hereinafter the “Subject Property” or “the Property)have storage use; and,

WHEREAS, the Zoning Board deemed the Application complete on October 4, 2018; and,
WHEREAS, the Resolution deeming the Application complete was memorialized on November 1, 2018; and,

WHEREAS, Thomas J. Molica Jr., Esq., the attorney for the Applicant through correspondence dated February 7, 2019, directed to the Secretary of the Zoning Board of Adjustment, and in a statement made to the Zoning Board granted an extension of the time necessary for the Zoning Board to adjudicate the Application to March 7, 2019; and,

WHEREAS, the Application was reviewed at the regular meeting of the Zoning Board of Adjustment on March 7, 2019, at which time the hearing was conducted, and the Zoning Board rendered its decision; and,

WHEREAS, proper notice of the hearing of the Application having been provided in compliance with the requirements of the Municipal Land Use Law and Pequannock Township Ordinances; and,

WHEREAS, the Zoning Board having considered the testimony presented on behalf of the Applicant and having reviewed the exhibits submitted by the Applicant and its consultants in support of the Application;

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board does hereby make the following findings of fact and conclusions of law in regard to the Application:

Applicant is the operator of swimming pool sales and service and gunite businesses conducted through a building located at the Subject Property, in the Township of Pequannock's C-Commercial Zone. The Application before the Zoning Board seeks preliminary and final site plan approval together with use variance approval to permit outdoor storage of equipment, material and vehicles to be used in conjunction with the pool and gunite businesses while maintaining the existing pool sales and office use. In addition to the use variance approval, a bulk variance approval would be needed for minimum lot width. The lot has a width of 119.26' whereas a 200' lot width is required in the zone and maximum parking in front yard.

Applicant was represented at the hearing by its Attorney, Thomas J. Molica Jr., Esq., the Applicant's Civil Engineer and Professional Land Use Planner, Thomas A. Boorady, PE and Mark Warner, the principal of the Applicant, provided testimony in support of the Application.

Exhibits Submitted with Application

1. Preliminary & Final Site Plan entitled "Caribbean Blue & Gunite Masters, Inc. 347 N.J.S.H. Route 23 South, Block 2701, Lot 11, Pompton Plains, New Jersey 07444," consisting of four (4) sheets each dated May 7, 2018, prepared by Darmofalski Engineering Assoc., Inc., and labeled as follows:
 - i. Sheet CVR – Cover Sheet;
 - ii. Sheet C-1 – Maps, Notes & Legends;
 - iii. Sheet C-2 – Site Development Plan; and,
 - iv. Sheet C-3 – Soil Erosion & Sediment Control.

Testimony Presented to the Zoning Board

The Subject Property was previously used by a business known as Argyle Block for retail sales and storage of cinderblock and related type materials from the 1940s to the 1980s. There was open storage for those materials at the back of the parcel in the area which the Applicant now proposes to use for storage in connection with a gunite business.

Lot 9 located at the rear of the parcel is a vacant property owned by Pequannock Township. That parcel was formerly improved with homes which have been razed. Access to the parcel is through a right-of-way having a width of 14.96' on the northerly side of the subject property. South of the property is a vacant lot.

The lot slopes down from Route 23. The proposed storage area would be located behind the existing commercial building. Applicant proposes to renovate the commercial building to eliminate the retail sales area for retail sales of pool supplies and equipment. Storage for the gunite business

would be at the rear of the building in an area which was previously disturbed and had been used in connection with the business operated by Argyyle Block.

The existing business use for pool sales and service and gunite supply is permitted use however, Applicant proposes outdoor storage which is not permitted, and such use would require a use variance pursuant to N.J.S.A. 40:55D-70d(1). In addition, a variance would be required for preexisting lot width where 200' is required and 119.26' exists. A variance would also be required for maximum parking in the front yard. 87% exists whereas 70% is permitted.

The commercial building contains three (3) garage bays accessed at the back of the building. Those bays would be used for Applicant's proposed business for storage of vehicles and equipment.

Applicant's site plan illustrates Meyers Brook as running through the southerly portion of Applicant's parcel. There is an existing culvert maintained by the Applicant which provides access to a portion of the Applicant's parcel located at the southerly rear corner of the lot. Applicant proposes to remove 12" of an existing material from that site and restore that area with 12" of clean crushed stone. Applicant would locate equipment used in connection with the gunite business on that area of the parcel.

Structures described in the site plan as low-profile silos would be located at the back of the property. Applicant describes these structures as metal sealed water-proof tanks which would be elevated 12' and filled with gunite. Applicant's gunite trucks would be loaded in that area with gunite material by driving under these silos. The site plan illustrates a sand pile area having a dimension of 60' x 30' located to the north of the silos. That area would be stock piled with manufactured sand and would be surrounded by concrete block. That area is improved with a concrete pad and would be surrounded by 4' x 2' x 2' blocks to prevent the sand from leaving the compound in the event of flooding.

A fence would be installed along the rear and left side lines of the parcel. Existing storage bins would be used to store gravel. There would be no construction debris brought to the site and any construction debris on the site would be removed.

The site plan illustrates two (2) sealand containers located to the left of the silos. The sealand containers would be used for storage of tools and equipment in connection with the gunite business. No gas or oil would be stored in the sealand containers. Applicant does propose a diesel dispenser for use by the equipment and the vehicles used on site at the rear of the parcel. The diesel dispenser will be required to have a containment system subject to the New Jersey Department of Environmental Protection ["NJDEP"] approval and approval by the Engineer of the Zoning Board.

Eight (8) Photographs were submitted by the Engineer for the Zoning Board and labeled as GE [‘Golden Engineering’] Nos. 1 through 8. The photographs were taken on April 2, 2018, and December 5, 2018. The photographs show construction debris and pallets on the property and a portion of Meyers Brook subject to flooding and the eroded banks of Meyers Brook. The conditions shown in the photographs did not necessarily depict the current conditions since the Applicant has undertaken clean-up operations at the rear of the site.

Applicant’s Testimony

Applicant would agree to replace the culvert on Applicant’s parcel which provides access to a vehicle storage on the far side of Meyers Brook on Applicant’s parcel. Pegannock Township will obtain the necessary New Jersey Department of Environmental Protection (“NJDEP”) permitting which would authorize the replacement and cleaning of the brook area for a width of 100’ on each side of the culvert. The Applicant will line the disturbed area with boulders to help restore the banks on each side of Meyers Brook. Work would be subject to review and approval of Joseph R. Golden, PE, the Engineer for the Zoning Board.

Report of Engineer for Zoning Board

The Zoning Board received a report dated December 5, 2018, prepared by its Engineer, Joseph R. Golden, PE. The report was reviewed by the Board members and with the Applicant.

Report of Planner for Zoning Board

The Zoning Board received a report dated December 5, 2018, prepared its Planner, Jill A. Hartmann, which was reviewed by the Board members and with the Applicant. The report indicates that approval of the application would require a use variance pursuant to N.J.S.A. 40:55d(1) for the outdoor storage of equipment and supplies at the Subject Property, together with bulk variances for minimum lot width and front-yard parking and aisle. The required lot width is 200’ and the existing lot width is 119.23’. The permissible front-yard devoted to parking and aisle is 70% and the existing is 87.31%.

Burden of Proof

It is the Applicant’s burden to provide proofs in accordance with N.J.S.A. 40:55D-70c(1) or c(2) to establish entitlement to the bulk variances required for approval of the Application. In order to provide proofs in accordance with Section “c(1)”, the Applicant must demonstrate that there is a particular characteristic of the lot such as exceptional narrowness, shallowness or shape or exceptional topographic conditions or an extraordinary and exceptional situation uniquely affecting the Applicant

parcel which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicant if the variances would not be granted. In accordance with Section “c(2)”, the Applicant must demonstrate that the benefits in granting the variances would substantially outweigh any detriments and in accordance with both sections, the Applicant must demonstrate that the variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance.

The Burden of Proof for a “D” variance has a different focus than the proof required for the “C” variance. To satisfy the Burden of Proof in regard to the positive criteria for a “D” variance, Applicant must prove that there are special reasons to justify the approval of the variance such as through promotion of the Municipal Land Use Law and that the use promotes the general welfare because the site is particularly suitable for the proposed use. If a proposed use is inherently beneficial, the inherently beneficial use presumably satisfies the positive criteria and the burden of proof for Applicant are significantly lessened in a use variance. Personal storage is not an inherently beneficial use.

The “Burden of Proof” as to the negative criteria, however, requires that the Applicant shown that the variances can be granted without substantial detriment to the public good through an enhanced quality of proof. In addition, the “Burden of Proof” as to the negative criteria requires that the Zoning Board make a clear and specific finding that the grant of the variance is not inconsistent with the intent and purpose of the Master Plan and the Zoning Ordinance.

In seeking approval of a “D” variance, Applicant must provide adequate evidence addressing each of the factors the Zoning Board must consider in determining whether to grant or deny the variance. To obtain a use variance, Applicant must prove:

1. That use promotes the general welfare because the proposed site is particularly suitable for the proposed use;
2. That the variance will not “substantially impair the intent and purpose of the Zone Plan and the Zoning Ordinance;”
3. That the variance can be granted “without substantially detriment to the public good;”
4. That the general welfare is served because the use is peculiarly fitted to the particular location for which variance is sought.

Findings

The Zoning Board finds that the Applicant has provided proofs in accordance with N.J.S.A. 40:55D-70c to be entitled to the bulk variances required for approval of this Application.

The Zoning Board finds that the variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance for the following reasons.

The Zoning Board finds that the bulk variances for minimum lot width and maximum front-yard devoted to parking and aisle are preexisting conditions, the nonconformity of which would not be exacerbated through the improvements proposed by the Applicant. It does not appear that there is any practical way for the Applicant improve these conditions without reducing the parking which may be needed for the business operation or without acquiring additional properties which does not appear to be feasible. It is noted that there is an easement along the northerly line of the Applicant's parcel.

With regard to the d(1) variance required for the proposed outdoor storage at the Subject Property, the record created before the Zoning Board demonstrates that Applicant's parcel does appear to be especially suited to the proposed use. The historic use of the property entailed storage of materials at the rear of the parcel which remains a disturbed area. The view of the proposed storage area is somewhat blocked by the existing commercial building which is located on a higher elevation. To the rear of the parcel is a vacant parcel owned by Pequannock Township which is used for open space. There will be no retail sales conducted at the facility and there will no customers accessing the rear of the parcel. Essentially, the rear area will be used as a contractor's yard.

In view of the topography and the surrounding uses and historic use of the property and improvements proposed by the Applicant, the parcel does not appear to be especially suited to the intended use. The Zoning Board is mindful that the intended use continues the historic use of the Subject Property with regard to outdoor storage, although the Applicant did not seek a certificate of pre-existing, non-conforming use for the Subject Property. The Zoning Board also notes that there will be less than one (1) acre of disturbance since the area proposed to be used by the Applicant is an already disturbed area.

The Zoning Board finds that the d(1) variance relief will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance in view of the historic use made of the parcel and the nature of the contemplated storage and visibility of the area. The Zoning Board finds that all of the variance relief required for the Application can be granted without substantial detriment to the public good since the little, if any, impact, through the presence of outdoor storage compared to the operation of a business without outdoor storage on the Applicant's site considering the remoteness of the site from any surrounding residentially improved property in the area.

The use is particularly fitted to the Applicant's location and will provide an appropriate site for the Applicant's business.

The Applicant's business hours are proposed to be from 7:00 a.m. – 7:00 p.m. and lighting will be limited but subject to the review and approval of the Engineer for the Zoning Board.

The Zoning Board finds that the variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance in view of the historic use of the property, the limited visibility of the proposed area to be used for storage, and the nature of the surrounding uses.

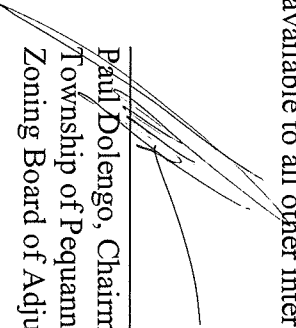
The Zoning Board does therefore find that the Applicant is entitled to preliminary and final site plan approval together with a use variance to permit storage of equipment and materials in connection with Applicant's granite business together with bulk variance approval for minimum lot width and maximum front-yard area devoted to parking and aisles.

This approval is subject to the following terms and conditions:

1. Payment of all current fees, taxes and escrows;
2. Approval of any other governmental entity having jurisdiction in this matter including but not limited to the New Jersey Department of Environmental Protection;
3. Construction is to be in accordance with the Preliminary and Final Site Plan submitted by the Applicant consisting of four (4) sheets each dated May 7, 2018, prepared by Darmofalski Engineering Assoc., Inc. and labeled as follows (i) CVR – Cover Sheet; (ii) Sheet C-1 – Maps, Notes & Legends, (iii) Sheet C-2 – Site Development Plan, and (iv) Sheet C-3 – Soil Erosion & Sediment Control.
4. Applicant will remove and replace the existing culvert installed on Applicant's property on Myers Brook. The culvert will be replaced upon Pequannock Township acquiring the necessary permitting, if applicable. Replacement shall be subject to the review and approval of the Zoning Board Engineer. Applicant will line the streambanks with boulders in accordance with the permitting. Replacement of the culvert and lining of the banks with boulders shall be subject to the review and approval of Joseph R. Golden, PE, the Engineer of the Zoning Board.
5. The diesel dispenser proposed by the Applicant shall have a containment system subject to the review and approval of the New Jersey Department of Environmental Protection and Joseph R. Golden, PE, the Zoning Board Engineer.

6. Applicant shall connect the property to the sewer system when the connection is available to the Applicant.
7. Applicant will clean the drainage inlets on Applicant's parcel.
8. Applicant will submit a lighting plan subject to the review and approval of Joseph R. Golden, PE.
9. Applicant is to comply with the recommendations in the report dated December 5, 2018, prepared by the Zoning Board Planner, Jill A. Hartmann.
10. The variances are granted subject to the accuracy of the representations made by the Applicant to the Zoning Board in written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the Zoning Board, the variances granted may be deemed void, in which case the Applicant must make a new application to the Zoning Board for approval of any and all variances.
11. The Applicant shall be bound to comply with the representations made before this Board by the Applicant and its professionals and the conditions imposed by the Zoning Board at the public hearing, and the same are incorporated herein and all representations upon which this Board has relied in granting the approval set forth herein shall be enforceable as if those representations would made conditions of this approval.

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 Tax Assessor and make same available to all other interested parties.



Paul Dolengo, Chairman
Township of Pequannock
Zoning Board of Adjustment