

TOWNSHIP OF PEQUANNOCK ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MORRIS COUNTY, NEW JERSEY
MATTER OF: Edward & Theresa Tremko
PROPERTY LOCATION: Block 4607, Lot 14, 11 Laurel Avenue
APPROVED: March 7, 2019
MEMORIALIZED: April 4, 2019

WHEREAS, Edward and Theresa Tremko (hereinafter designated as the “Applicant”) has made Application to the Township of Pequannock Board of Adjustment (hereinafter referred to as the “Zoning Board”), for variances for minimum lot frontage, minimum lot depth, and minimum front-yard setback to permit the Applicant to construct a single-family home on a vacant parcel; and,

WHEREAS, the Application deemed complete at the regular meeting of the 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 Application 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 with respect to the Applicant:

Applicant, Edward Tremko, and Applicant’s Engineer/Planner, Thomas A. Boorady, provided testimony in support of the Application.

Exhibits Submitted

The following exhibits were submitted with the Application:

1. Variance Plat entitled, “Proposed Site Development Plan, Block 4607, Lot 14 a/k/a 11 Laurel Avenue,” consisting of three (3) sheets each dated September 14, 2018, and labeled as follows:
 - i. Sheet C-VR – Cover Sheet;

- ii. Sheet C-1 – Proposed Site Plan; and,
- iii. Sheet C-2 – Soil Erosion Control Plans – Notes & Details.

2. Architectural Plans prepared by James P. Cutillo consisting of four (4) sheets, each having most recent revision date of August 22, 2018, and labeled as follows:

- i. Sheet A-1 – Front and Left Side Elevations;
- ii. Sheet A-2 – Rear and Right Side Elevations;
- iii. Sheet A-3 – Ground Floor Plan; and
- iv. Sheet A- 4 – First Floor Plan.

The following exhibits were submitted by Applicant:

1. A-1. Copy of Topographic Survey of parcel in question and showing surrounding properties prepared by Thomas Ernest Myhren. The survey shows an adjoining home with a setback of 22' whereas the proposed setback for the home to be constructed by Applicant would be 24'.

Testimony & Findings of Fact

Applicant testified that there was a home located on the parcel which had been constructed in the 1940s or 1950s. That home had flooded on two occasions and was occupied until August 2011 and was demolished in August 2011. Applicant stated that the home was a rental home and he lived in the vicinity and was very familiar with the home. He stated that the home had at substandard construction including 2x4 floor joists. All that remains of the former home is the foundation.

Applicant stated that he proposes to demolish the foundation and locate the new home slightly further back into the lot providing a greater front-yard setback. The proposed new home would be elevated and have one-story of living space. Flood vents would be installed, and a new driveway would be constructed. The site disturbance would have an area of 6,400 square feet and therefore, a Soil Erosion Permit would need to be issued.

The home is proposed to have a height of 32.11' which exceeds the general permissible building height of 32' however, the height limitation is greater in flood hazard areas. Since the property is located in a flood hazard area, the applicable height limitation is 35' and therefore, no variance would be needed building height.

The required front-yard setback is generally 35' however, the ordinance permits reconstructions behind the prevailing setback line on the same side of the street within the same block. Applicant provided a survey showing the setback for the home located to the right of the Applicant's parcel. That home has a setback of 22' and therefore, Applicant's proposed front-yard setback of 24' is permissible. It is noted that the setback of the former home was 23.9'.

Applicant proposes to install seepage pits to control water runoff. Installation of the seepage pits would be subject to the review and approval of the Engineer for the Zoning Board.

The property is located at the end of Laurel Avenue. A portion of Laurel Avenue was vacated by the Township of Pequannock and Applicant's property was left with a reduced frontage on Laurel Avenue of 50' whereas the frontage prior to the vacation of the road would have complied with the required 75' front-yard setback.

Report of Engineer for Zoning Board

The Zoning Board received a report dated February 12, 2019, prepared by its Engineer, Joseph R. Golden, PE. The report was reviewed by the Board members and the Applicant. The report notes, in part, that a New Jersey Department of Environmental Protection ["NJDEP"] Flood Hazard Permit must be approved since the parcel is located within a floodway. Issuance the appropriate permitting will be a condition of any approval.

Report of Planner for Zoning Board

The Zoning Board received a report dated February 20, 2019, prepared its Planner, Jill A. Hartmann, which was reviewed by the Board members and the Applicant. The report notes that part of the property is located within a floodway and that approval of the Application would require variances for minimum lot frontage and depth. Concerns related to the building height and front-yard setback were resolved by the Applicant based upon the application of the special hazard area standard as to building height and the setback from a home on an adjoining property as to the front-yard setback.

Variances Required for Approval of Application

Approval of the Application would require a variance for minimum lot frontage. The required lot frontage is 75' and the existing frontage is 50'. The approval would require a variance for minimum lot depth. The required lot depth is 125' and the lot has a depth of 84.07'. The preexisting nonconformity for front-yard setback as to the former home would be eliminated as well as a preexisting nonconforming rear-yard setback and side-yard setback.

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 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 Zoning Board finds that the Applicant has provided proofs in accordance with N.J.S.A. 40:55D-70(C)-1 to be entitled to the variances required for approval of this Application. The exceptional depth of the Applicant's parcel and limited frontage on a public road constitute exceptional physical features and exceptional situations uniquely affecting the Applicant's parcel and the strict application of the Ordinance requirements would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant.

The limited lot depth is a preexisting condition which cannot be altered. The limited frontage on Laurel Avenue is also a preexisting condition attributable to the vacation of a portion of Laurel Avenue. It is noted that vacation of a portion of Laurel Avenue did have the effect of increasing the size of the Applicant's lot.

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:

1. The lot was formerly improved with a single-family home with a nonconforming front-yard, rear-yard and side-yard setback. Those nonconformities would be eliminated in the placement of the proposed new home.
2. The new home would be constructed in a flood-resilient manner with all utilities raised. The flood elevation is 176.3' whereas the house would be set 174' and the first floor would have an elevation of 184.5'.
3. The property would be served by public sewer, natural gas and water.
4. The new home would be built to current code requirements and be subject to all permitting requirements.

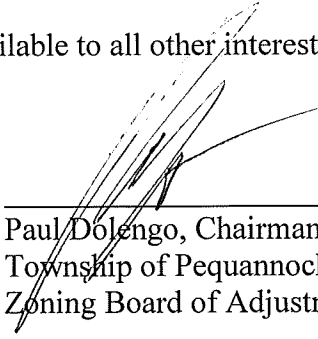
5. Denial of the variances would essentially result in an inability to utilize the subject property since a home could not be built on the lot without the issuance of the required variances.
6. The home would be appropriately sized for the parcel and appropriately positioned on the parcel.
7. If it had not been for the vacation of a portion of Laurel Avenue, a lot depth variance would not be required.

The Zoning Board does therefore find that the Applicant is entitled for variances for minimum lot frontage and minimum lot depth to permit the Applicant to construct a single-family home on the lot. This approval is subject to the following terms and conditions:

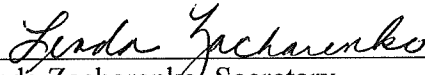
1. Payment of all current fees, taxes and escrows;
2. Approval of any other governmental entity having jurisdiction in this matter including but not limited to the New Jersey Department of Environmental Protection issuance of a Flood Hazard Permit and issuance of a soil erosion control permit by the Passaic County Soil Conservation District in the event that the area of disturbance exceeds 6,500 square feet.
3. Construction is to be in accordance with the Architectural Plans prepared by James P. Cutillo consisting of four (4) sheets each bearing most recent revision date August 22, 2018, and submitted with the Application.

4. Construction shall be in accordance with the Variance Plans consisting of three (3) each dated September 14, 2018, and prepared Darmofalsky Engineering Assoc., Inc., referenced in this Resolution;
5. In accordance with Ordinance – Flood Damage Prevention: Subsection 085.01.030, Applicant is advised that the property owner assumes responsibility in their actions for constructing improvements on a parcel located in a Flood Hazard Area.
6. The proposed seepage pit design and location will be subject to the review and approval of the Zoning Board Engineer, Joseph R. Golden, PE.
7. Applicant is to comply with the recommendations in the report dated February 12, 2019 prepared by the Engineer, Joseph R. Golden, PE.
8. Applicant is to comply with the recommendations in the report dated February 20, 2019, prepared by the Zoning Board Planner, Jill A. Hartmann.
9. The variances are granted subject to the accuracy of the representations made by the Applicant to the Zoning Board in the 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.
10. 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



Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment