

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

MORRIS COUNTY, NEW JERSEY

MATTER OF: Gzime Asani

PROPERTY LOCATION: Block 503, Lot 11, 17 Mead Place

APPROVED: January 17, 2019

MEMORIALIZED: February 7, 2019

WHEREAS, Gzime Asani (“Applicant”) has requested variance relief for minimum front yard setback to permit the construction of a new two (2) story single-family dwelling on property located at 17 Mead Place, known and designated as Block 503, Lot 11 on the Tax Maps of the Township of Pequannock in the R-22 zone district (“Property”); and

WHEREAS, a public hearing was held before the Zoning Board of Adjustment of the Township of Pequannock (“Board”) January 17, 2019; and

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

WHEREAS, Applicant, represented by David Wigfield, 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 (“MLUL”).
2. The Property, owned by Applicant, measures 26,269 square feet and is located at

Block 503, Lot 11, 17 Mead Place in the Township of Pequannock (“Township”) in the Township’s R-22 zone district.

3. The Property is unimproved and is located in a Special Flood Hazard Area. Over 50% of the Property is comprised of wetlands. In addition, a twenty foot (20') drainage/utility easement runs the entire length of western boundary of the Property.

4. Applicant requests approval to construct a two (2) story, single-family dwelling with a paver patio/terrace in the rear yard off the kitchen/breakfast area.

5. The dwelling will be built on a slab foundation.

6. Applicant will require a variance for minimum front yard setback. A minimum setback of 50 feet is required under the Township Zoning Ordinance (“Zoning Ordinance”). Applicant proposes 25.1 feet.

7. Applicant’s proposal is depicted on a plan prepared by Dykstra Walker Design Group, P.A., Mark Gimigliano, P.E., consisting of two (2) sheets, dated July 9, 2018.

8. Applicant also supplied the Board with a proposed “Single Family Residence Plan” prepared by Bleeker Architectural Group, John G. Bleeker, R.A. consisting of one (1) sheet, dated March 9, 2018.

9. The Board also received a report from its Professional Planner, Jill A. Hartmann, P.P., A.I.C.P., dated November 28, 2018, and a report from its Engineer, Joseph R. Golden, P.E., P.P., C.M.E, dated January 16, 2019. The contents of these reports are incorporated herein by reference.

10. Applicant’s attorney, Mr. Wigfield, briefly summarized the application.

11. The Property is located at the end of Mead Place and one of the few remaining

undeveloped lots left on that street. A substantial portion of the rear yard of Property is comprised of wetlands.

12. Applicant desires to build a two (2) story, 1,765 square foot (s.f.) single-family dwelling on the Property. The dwelling will not have a basement or crawl space and the first floor will be constructed above the flood plain.

13. Due to the location of wetlands in the Property's rear yard, it was necessary for Applicant to request a wetlands permit from the New Jersey Department of Environmental Protection ("NJDEP").

14. While NJDEP approved said permit in January 2017, a condition of that approval requires Applicant to locate any dwelling as far in the front yard of the Property as possible so as not to disturb the existing wetlands in the rear yard.

15. As a result of the aforesaid condition of the NJDEP approval, Applicant was forced to locate its proposed dwelling with a front yard setback of 25.1 feet, substantially less than the 50 foot minimum required under the R-22 requirements of the Zoning Ordinance. Accordingly, Applicant must obtain variance relief from the Board.

16. The Board heard the testimony of Mark Gimigliano, P.E., Applicant's Engineer and Gzime Asani, the Applicant.

17. Mr. Gimigliano testified that, in addition to the NJDEP condition as to location of Applicant's proposed dwelling, NJDEP has advised that it will not issue its permit if the Board does not approve the instant application.

18. Mr. Gimigliano testified that if the dwelling were built in compliance with the R-22 setback requirements, it would be located at or near the edge of the wetlands area, which is

not permitted by the NJDEP.

19. Mr. Gimigliano testified that a failure to grant the requested variance could result in the Property not being usable for any purpose. No other land is available for purchase which would obviate the need for the variance.

20. Mr. Gimigliano testified that Applicant will comply with all conditions and requirements of the NJDEP permit.

21. Mr. Gimigliano testified as to the November 28, 2018 report of the Township Engineer, Mr. Golden.

22. Mr. Gimigliano testified that Applicant shall place a small amount of fill under the dwelling's slab foundation. However, no fill will be installed outside of the dwelling.

23. Mr. Gimigliano testified that Applicant shall provide Mr. Golden with all flood hazard area permits issued for the Property. This will be a condition of approval.

24. Mr. Gimigliano testified that Applicant shall provide Mr. Golden with architectural plans for Applicant's proposed dwelling and a metes and bounds description of the Property. This will be a condition of approval.

25. Mr. Gimigliano testified that Applicant shall provide the Board with all NJDEP permits issued for the Property. This will be a condition of approval.

26. Mr. Gimigliano testified that Applicant shall comply with the comments and recommendations set forth in the November 28, 2018 report of Ms. Hartmann and the January 16, 2019 report of Mr. Golden. This will be a condition of approval.

27. There were no objections to the requested variance by the Board's professionals or members of the interested public.

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 from the minimum front yard setback requirements of the Zoning Ordinance can be granted.
3. The Property is uniquely and exceptionally burdened by the location of wetlands on over 50% of the Property's area. Moreover, no land is available for purchase by Applicant which would enable the Property to be brought into compliance with the front yard setback requirements of the R-22 zone.
4. The strict application of the minimum front yard setback requirements upon the Property would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon Applicant.
5. The variance for minimum front yard setback will not conflict with the purposes of the R-22 zone district.
6. The variance for minimum front yard setback will not be detrimental to the public good.
7. The variance will not substantially impair the intent and purpose of the Township Master Plan or Zoning Ordinance.
8. Accordingly, the Board concludes that a variance for minimum front yard setback of 25.1 feet shall be and hereby is granted pursuant to the authority conferred on the Board by N.J.S.A. 40:55D-70(c)(1).

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 variance requested by Applicant for minimum front yard setback as outlined above. The Board voted on January 17, 2019 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's Planner and/or 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.

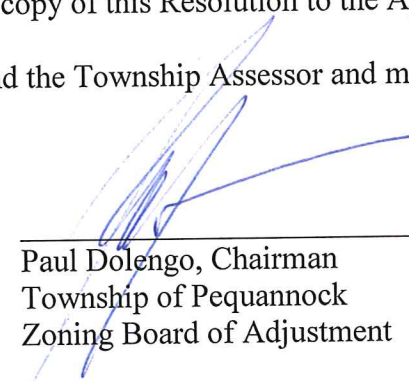
6. Applicant shall provide Mr. Golden with all flood hazard area permits issued for the Property.

7. Applicant shall provide Mr. Golden with architectural plans for Applicant's proposed dwelling and a metes and bounds description of the Property.

8. Applicant shall provide the Board with all NJDEP permits issued for the Property.

9. Applicant shall comply with the comments and recommendations set forth in the November 28, 2018 report of Ms. Hartmann and the January 16, 2019 report of Mr. Golden.

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 Applicants' 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.



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 February 7, 2019.

Linda Zacharenko 2/7/19

Linda Zacharenko, Secretary
Township of Pequannock
Zoning Board of Adjustment

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

Yes: *Aikey, Driesse, Mebert, Melleno, Quigley, Shuttlesworth, Skvarca, Deleng*

No:

Abstain: