

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF WEST ORANGE**

**ERIC WILLIAMS  
Block: 76 - Lot: 6  
6 Merrywood Drive, West Orange  
Case No. ZB-22-01**

**RESOLUTION**

**WHEREAS, ERIC WILLIAMS** (the "Applicant") has applied to the Zoning Board of Adjustment of the Township of West Orange (the "Board"), for bulk variance relief, in connection with his proposal to construct an addition, which would function as an attached garage, to the existing dwelling on property located within the R-4 (Residential) Zone, identified as Lot 6 within Block 76 on the Official Tax Map of the Township of West Orange, more commonly known as 46 Merrywood Drive, West Orange (the "Property"):

1. A bulk variance to permit a deficient side-front-yard setback of 22', whereas the minimum required side-front-yard setback in the R-4 Zone is 30', pursuant to Section 25-7.1 of the Township of West Orange Land Use Regulations Ordinance (the "Ordinance");
2. A bulk variance to permit an excessive lot coverage ratio of 50.29%, whereas the maximum permitted lot coverage ratio in the R-4 Zone is 40%, pursuant to Section 25-7.1 of the Ordinance<sup>1</sup>; and
3. A bulk variance to locate a garage within the Property's front-yard, whereas garages are not permitted to encroach upon a minimum required front-, side-, or side-front-yard setback, pursuant to Section 25-12.4(a)(1) of the Ordinance; and

**WHEREAS**, public hearings, on notice, were held on such application on March 16, November 16, and December 21, 2023, at which time interested citizens were afforded an opportunity to appear and be heard; and

**WHEREAS**, the Board, after carefully considering the evidence presented by the

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<sup>1</sup> The Applicant initially proposed a lot coverage ratio of 51.46%, but, by the November 16, 2023 hearing, reduced the proposed lot coverage ratio to 50.29%.

Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board and the Board's Professionals reviewed the application and deemed it to be complete.

2. The Property is a corner lot that comprises an area of approximately 0.44 acres in the R-4 Zone. The Property fronts Merrywood Drive to the south and east, and Merrywood Drive, a private street, actually runs over portions of the Property. Bordering the Property to the north and west, and to the opposite side of Merrywood Drive, are single-family residential uses. The Property is improved with a two (2)-story, single-family dwelling, paved walkways and driveways, and an in-ground swimming pool.

3. The Applicant proposes to construct an addition upon the existing single-family dwelling on the Property. The proposed addition would measure 11.17' by 21' and serve to expand the existing dwelling's one (1)-car attached garage into a two (2)-car attached garage. Additionally, the existing garage's overhead door would be removed and replaced with two (2) new overhead doors, and the Property's existing driveway would be expanded to provide access to both proposed doors accordingly. With the proposed addition, the footprint of the Property's dwelling would be expanded, such that it would pose a deficient side-front-yard setback of 22', where a minimum 30' setback would otherwise be required. Additionally, with the proposed improvements, the Property would have an excessive lot coverage ratio of 50.29%, where a maximum of 40% is permitted. Also, the proposed addition serving as a garage would encroach upon the Property's side-front-yard, while garages are not permitted to encroach upon minimum required side-, front-, and side-front-yard setbacks. These proposed deficiencies require bulk variance relief governed by the criteria of N.J.S.A. 40:55D-70(c).

4. The Applicant's proposal is depicted on, and otherwise supported by the following items submitted with its application:

- i. A combined engineering and architectural plan set, prepared by AC Design & Development Corp., dated September 2023, last revised November 6, 2023, same consisting of seven (7) sheets;
- ii. An architectural plan set prepared by Robert Murphy Architect, LLC, dated September 15, 2022 without revision, same consisting of five (5) sheets;
- iii. A soil removal plan, prepared by Sandra Caceres, P.E., dated August 8, 2023 without revision, same consisting of one (1) sheet; and
- iv. A boundary survey of the Property, prepared by George R. Pronesti, P.L.S., of Pronesti Surveying, Inc., dated January 24, 2022, same consisting of one (1) sheet.

5. Paul Grygiel, A.I.C.P., P.P., the Township/Board Planner, John J. Hess., P.E., P.P., C.M.E., the Board Engineer, and Zayibeth Carballo, P.E., the Assistant Township Engineer (the "Board Professionals"), were duly sworn according to law.

6. The Applicant offered testimony, in support of the application, from the following witnesses:

- a. Eric Williams, the Applicant, having an address of 6 Merrywood Drive, West Orange;
- b. Robert Murphy, R.A., of Robert Murphy Architect, LLC, having a business address of 1341 Hamburg Turnpike, Suite 2-6, Wayne;
- c. Aishah Coleman, A.I.A., R.A., A.I.B.D., of AC Design & Development, the Applicant's Architect, having a business address of 20 Burling Lane, Suite 6-4, New Rochelle, New York; and
- d. Francine A. Alheid, R.A., of AC Design & Development, the Applicant's Architect, having a business address of 20 Burling Lane, Suite 6-4, New Rochelle, New York.

7. The Applicant submitted no additional Exhibits during the proceedings.

Testimony Offered at the March 16, 2023 Hearing

8. Mr. Williams was duly sworn according to law and testified as a fact witness.

9. Mr. Williams testified that: (i) he owns and resides on the Property - a corner lot along Merrywood Drive; (ii) by way of this application, he proposes to construct an addition to the existing dwelling on the Property, which would serve as an expansion of the existing attached garage; (iii) the proposal also includes the expansion of the Property's existing driveway, for purposes of providing driveway access to the overhead garage doors of the proposed addition; and (iv) the proposed additional garage space would be for personal use.

10. On questioning by members of the Board, Mr. Williams testified that: (i) none of his neighbors have expressed concerns about the proposal to him; (ii) he owns several vehicles and seeks to park some of them within the space provided by the proposed garage addition; (iii) he is retired and does not, and has no plans to, run a business out of the dwelling on the Property; (iv) within the rear yard of the Property exists a portable, non-permanent shed for which a permit was never issued; (v) the proposed addition would include the demolition of the easternmost wall of the existing dwelling; (vi) the proposed addition's footprint would extend approximately 8' into an unpaved area within the Property's front and east side yards; (vii) the proposed driveway expansion would be constructed with asphalt and concrete; (viii) the height of the proposed addition would match the height of the existing garage; (ix) construction of the proposed improvements should take about three (3) months; (x) the proposed addition would have attic space; and (xi) stormwater runoff generated on-site is and would be routed into storm sewers along Merrywood Drive.

11. Mr. Murphy was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the field of architecture.

12. Mr. Murphy presented the submitted architectural plans prepared by his office and testified to the composition of the proposed addition and the associated modifications to the existing dwelling. In this regard, he testified that: (i) the proposed additional garage space would be situated to the east side of the existing dwelling, being connected to the dwelling's existing garage; (ii) a 12' by 7' pitch would be utilized to meld the proposed addition into the existing dwelling; (iii) the proposed addition's siding would match the siding of the existing dwelling; (iv) the proposal would include the removal of the existing garage's overhead door, which would be replaced with two (2) new overhead doors on the east side of the proposed addition; (v) the proposed driveway extension would be marked with decorate pavers along its outer edge; (vi) Merrywood Drive is a private street that spans over portions of the Property; (vii) the proposed addition would be setback 22' from, and deficiently situated within, the Property's side-front yard; and (viii) the proposed improvements would render the Property with an excessive impervious coverage ratio of 51.46%.

13. On questioning by members of the Board and the Board Professionals, Mr. Murphy testified that: (i) the curvature of Merrywood Drive likely creates the necessity for a sight triangle within the eastern portion of the Property; (ii) roof leaders are depicted on the plans prepared by his office; (iii) regarding the proposed driveway extension, there would be about 12' to 13' of curb drop that would meet Merrywood Drive, which has a width of approximately 35' to 40', though he would seek to adjust or taper off said curbing; and (iv) the proposed addition would be setback approximately 15' from the center of Merrywood Drive.

14. Mr. Grygiel advised that, because Merrywood Drive is oddly configured, using the same as an indicator for the location of Property lines would be inadvisable.

15. Illya Perchikovsky, an interested neighbor, was duly sworn according to law and,

on questioning by members of the Board, testified that homes along Merrywood Drive are part of a larger home development subdivision project known as "Hutton Park."

Testimony Offered at the November 16, 2023 Hearing

16. Mr. Williams testified that the submitted plans had been revised in accordance with feedback offered by members of the Board at the March 16, 2023 hearing.

17. On questioning by members of the Board and the Board Professionals, Mr. Williams testified that: (i) of his neighbors that he spoke to about the proposal, all indicated that they were in favor of same; (ii) the eastern Property line extends into the street; and (iii) he would not suffer a hardship if forced to strictly comply with the requirements of the Ordinance.

18. Ms. Coleman was duly sworn according to law, provided her credentials, and was accepted by the Board as an expert in the field of architecture.

19. Ms. Coleman testified to changes made to the proposal since the March 16, 2023 hearing. Additionally, Ms. Coleman testified that: (i) while the proposed improvements would increase the Property's overall lot coverage ratio from 48.2% to 50.29%, the Property's building coverage ratio would only be increased from 12.97% to 14.23%; and (ii) the proposal includes a new catch basin, to mitigate the impact of the proposed increase in lot coverage.

20. On questioning by members of the Board and the Board Professionals, Ms. Coleman testified that the proposed change in impervious coverage would be attributed to new construction.

Testimony Offered at the December 21, 2023 Hearing

21. Mr. Williams and Ms. Coleman testified and confirmed that the submitted plans had been revised to detail the proposed sight triangle and to show the locations of the proposed roof leaders and to where same would discharge.

22. No member of the Public asked questions of the Applicant's witnesses.

23. Except for Mr. Perchikovsky, no member of the public commented on, or objected to, the Applicant's proposal.

#### DECISION

24. After reviewing the evidence submitted, the Board, by a vote of seven (7) to zero (0), finds that the Applicant has satisfied its burden of proving an entitlement to the requested items of bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2).

25. The Board first notes that, to establish an entitlement to any variance relief under N.J.S.A. 40:55D-70, an applicant must demonstrate the "positive" and "negative" criteria applicable to the type of relief requested.

26. The Board further recognizes that, to establish an entitlement to bulk relief pursuant to N.J.S.A. 40:55D-70(c)(2) (otherwise known as the "(c)(2)" or "flexible-c" variance), the "positive criteria" is satisfied by an applicant demonstrating that (i) their proposal advances one of the enumerated goals of the New Jersey Municipal Land Use Law (the "MLUL"), as set forth at N.J.S.A. 40:55D-2, and (ii) that the zoning benefits to be derived therefrom substantially outweigh the detriments associated therewith.

27. Additionally, the Board notes that the "negative" criteria for bulk variance is satisfied by an applicant demonstrating that the sought variance relief (i) will not pose a "substantial detriment" to the public good and (ii) will not "substantially impair" the intent or purpose of the municipality's zone plan or zoning ordinance.

28. Here, the Board finds that the Applicant has satisfied the "positive" criteria to establish an entitlement to (c)(2) bulk variance relief by demonstrating that the proposal advances the purposes of the MLUL set forth at subsections "(a)" and "(i)" of N.J.S.A. 40:55D-2. In this

regard, the Board finds that the proposal promotes the public safety and general welfare as the proposed addition would (i) enable the safer and secured storage of the Applicant's (and future Property owners') personal property, and (ii) constitute a positive improvement upon the Property's existing dwelling, thus bolstering the general housing stock in the Township. The Board also finds that the proposed addition would be an enhancement to the visual aesthetic of the existing dwelling and, thus, the Board finds that the proposal promotes a desirable visual environment. The Board finds these benefits to substantially outweigh the relatively modest detriments associated with the proposed deficient setback, excess lot coverage, and deficient garage location.

29. The Board also finds that the Applicant has satisfied the "negative" criteria to establish an entitlement to (c)(2) bulk variance relief by demonstrating that the proposal poses no "substantial detriment" to public good and surrounding neighborhood and no "substantial impairment" to the purpose of the Township Master Plan and the Ordinance.

30. Regarding the "substantial detriment" prong of the "negative" criteria, the Board finds that the proposal poses no substantial detriment to the public good and surrounding neighborhood because: (i) stormwater runoff generated by the proposed improvements would be sufficiently mitigated by the proposed catch basin; (ii) approval of this application would include the condition that no parking or plantings would be permitted within the sight triangle on the Property, thus fostering more efficient and safe traffic along Merrywood Drive; and (iii) the appearance of the proposed addition would match the existing dwelling and so not cause any major visual change to the surrounding neighborhood. The Board also recognizes here that no member of the Public appeared to express concerns about, or otherwise object to the proposal, further evidencing a lack of any substantial detriment to the public good and surrounding neighborhood.

31. Regarding the "substantial impairment" prong of the "negative" criteria, the Board finds that the proposal poses no substantial impairment to the purpose and intent of the Township's Master Plan and the applicable provisions of the Ordinance for the following reasons. First, the Board recognizes that the intent of the Ordinance's: (i) front-yard setback requirements is to preserve the aesthetic of streetscapes by keeping structures at a sufficient distance from roadways; (ii) lot coverage limitations is to mitigate the risk of flooding and noxious stormwater runoff onto neighboring properties; and (iii) prohibition on the location of garages within a front yard is, similar to that of the Ordinance's front-yard setback requirements, to preserve the aesthetic of streetscapes by keeping structures at a sufficient distance from roadways. Here, the Board finds that such intent would not be substantially impaired by the granting of the relief requested here because (i) Merrywood Drive is an irregularly-configured, private street that already features dwellings and other structures that are situated relatively close by and the proposal's impact to the overall streetscape aesthetic would not be substantial, and (ii) the proposed increase in lot coverage would be mitigated by the proposed upgrades to the Property's stormwater management system, thus substantially reducing the risk of flooding and runoff onto neighboring lots.

32. Accordingly, based upon the foregoing, the Board thus finds that the Applicant has demonstrated an entitlement to the requested items of bulk variance relief, pursuant to, and by establishing the "positive" and "negative" criteria under, N.J.S.A. 40:55D-70(c)(2).

**WHEREAS**, the Board acted on this application at its meeting on December 21, 2023 and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of West Orange, on the \_\_\_\_ day of \_\_\_\_\_, 2024, that the application of **ERIC**

**WILLIAMS**, for bulk variance relief, as aforesaid, be and is hereby GRANTED, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall ensure that the siding of the proposed addition is substantially similar in color, style, and materials to the siding of the existing dwelling;
- (3) The Applicant shall tie the proposed catch basin into the existing storm sewerage system along Merrywood Drive and the proposed roof leaders;
- (4) No vehicle parking, or the planting of trees, bushes, or other vegetation, shall be permitted within the area labeled as "Visual Triangle," as depicted on Sheet T-101 of the plan set prepared by AC Design & Development, dated September 2023;
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (6) The Applicant shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County, and State;
- (7) The Applicant shall be bound by all the evidence, including documents and testimony presented by the Applicant at the Public Hearing;
- (8) Pursuant to Sections 25-48.10(a) and 25-48.10(c), of the Ordinance, the variance relief granted by the Board and identified herein shall expire within two (2) years and one (1) day from the date of publication of a notice of the granting of such relief in either the official newspaper of the Township of West Orange or a newspaper of general circulation in the Township, unless, before the expiration of said two (2) year and one (1) day period, either (i) a building or construction permit is secured and issued or (ii) the actions authorized hereby have been taken; and
- (9) These Conditions shall be clearly printed on the engineering drawings submitted for filing in the official records of the Board.

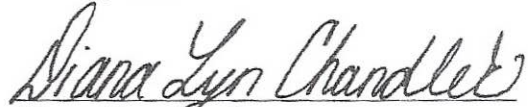
ROLL CALL VOTE:

Those in Favor: 1-Neuer, 2- Barbee, Y- Barbee, Dannemiller, Sussman, Weiss, Neuer

Those Opposed: 0

Those Abstaining: Eben, Scott

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of January 18, 2024.



Diana Chandler, Secretary  
ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF WEST ORANGE,  
COUNTY OF ESSEX,  
STATE OF NEW JERSEY

Dated: January 18, 2024

