

**RESOLUTION OF THE BOARD OF ADJUSTMENT
TOWNSHIP OF LONG HILL
MORRIS COUNTY, NEW JERSEY**

RESOLUTION 2018-11-ZBA

**GUSTAVO AND KIRSTEN ALVAREZ
26 HICKORY TAVERN ROAD
GILLETTE, NEW JERSEY 07933
BLOCK 13803, LOT 1
APPLICATION NO.: 18-15Z**

**Hearing Date: October 2, 2018
Board Action: October 2, 2018
Memorialization: November 20, 2018**

WHEREAS, Gustavo and Kirsten Alvarez (the “Applicants”) are the owners of vacant land located at 26 Hickory Tavern Road in Gillette, identified as Block 13803, Lot 1 (the “Property”) on the Long Hill Township Tax Map, in the R-2, Residential, zoning district; and

WHEREAS, the Applicants applied to the Board of Adjustment of the Township of Long Hill (the “Board of Adjustment” or “Board”) with an application requesting relief from certain bulk standards in order to construct a new home on the Property; and

WHEREAS, the Applicants requested the following relief from the Board (the “Relief Requested”):

Height variance in accordance with N.J.S.A. 40:55D-70d(6) from the height requirement in the Land Use Ordinance, as follows:

Maximum building height (Section 131):
Permitted: 35’; Proposed: 39.75’;

Bulk variances in accordance with N.J.S.A. 40:55D-70c(1) and/or c(2) from the requirements in the Land Use Ordinance, as follows:

Critical Area Front Setback from Magna Drive (Section 142.1):
Required: 50’; Proposed: 17’;

Critical Area Side Yard Setback from Magna Drive (Section 142.1):
Required: 25’; Proposed: 6’; and

WHEREAS, the Applicants submitted the following plans and documents in support of the Application, which plans and documents were made a part of the record before the Board, as follows:

Application with addenda, dated June 23, 2018;

Plans entitled, "26 Hickory Tavern Road, Block 13803, Lot 1, Township of Long Hill, Morris County, New Jersey", prepared by Page-Mueller Engineering Consultants, PC, dated June 26, 2018, last revised September 10, 2018, consisting of 3 sheets;

Plans entitled, "Gustavo & Kirsten Alvarez", prepared by MTN Design, dated November 14, 2014, last revised October 17, 2017, consisting of 8 sheets;

Plans entitled, "Partial Topographic Survey of Tax Lot 1 - Block 13803", prepared by James P. Deady Surveyor, LLC, dated December 3, 2014, last revised December 24, 2014, consisting of one sheet;

"Drainage Report for 26 Hickory Tavern Road, Block 13803, Lot 1, Township of Long Hill, Morris County, New Jersey", prepared by Page-Mueller Engineering Consultants, PC, dated June 2018;

Four color photographs of the Property, dated June 15, 2018;

One aerial photograph of the Property, undated;

Long Hill Township Soil Erosion and Sediment Control Certification, dated June 25, 2018; and

WHEREAS, the Applicants met all jurisdictional requirements enabling the Board to hear and act on the Application and appeared before the Board on the Hearing Date, as specified above; and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicants, represented by attorney, Frederick Zelle, Esq., were given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, the Applicants presented testimony from the following individuals:

1. Gustavo Alvarez, Applicant;
2. Kevin Page, PE, Applicant's Engineer; and

WHEREAS, a member of the public, Jane Hess, appeared to ask questions about and to speak with regard to the Application, as more fully set forth on the record; and

WHEREAS, the Applicants introduced the Application and presented testimony to the Board as more fully set forth on the record, as follows:

1. Gustavo Alvarez testified regarding describing the Property indicating that an old structure was razed and the Property is now vacant. Mr. Alvarez described the proposed single-family home stating that a separate area has been designed for the Property Owner's parents. Mr. Alvarez stated that there is no separation or physical barrier between the in-law suite and the rest of the home. Mr. Alvarez indicated that the dwelling is an open single-family home. The home is

designed to resemble a log cabin. Mr. Alvarez described the architectural renderings and the floor plans.

2. Kevin Page testified regarding his qualifications as a professional engineer and was accepted by the Board as such. Mr. Page testified describing the Property as a large piece of vacant land. The critical steep slopes bisect the Property. Mr. Page testified indicating that the new dwelling will be placed in the same location as the original house that had been removed and will face Hickory Tavern Road. Mr. Page indicated that a few trees will need to be removed to construct the new dwelling. Mr. Page addressed the variances that will be required in order to construct the dwelling indicating that the band of steep slopes gives rise to the need for a variance and the height also exceeds the ordinance limits due to the manner in which the ordinance requires height to be measured from the walk out basement. Mr. Page explained that the proposed location of the home will work with the natural topography and grades on the Property to minimize disturbance. Mr. Page testified that the Applicants attempted to overcome the height variance by lowering the house but lowering the house will require further land disturbance. Mr. Page indicated that by lowering the height of the house, additional excavation would be required and that might have jeopardized the old trees on the neighboring property. Mr. Page testified that all of the existing trees in the middle of the Property will remain. Mr. Page indicated that the trees provide a thick buffer between the Property and neighboring properties. Mr. Page stated that the height of the proposed dwelling will not be visible from Magna Drive or Hickory Tavern Road because of its location on the Property.

With regard to the driveway, Mr. Page indicated that it was relocated slightly in accordance with the Board Engineer's suggestion. The driveway entrance will be relatively level and there will not be steep areas on the driveway. The driveway is designed with a turn-around to discourage backing out of the driveway onto the roadway. Mr. Page testified that the gas, sanitary and water services are already underground in a noncritical area. The storm sewer pipe will also run through that same noncritical area. Mr. Page testified that any roof runoff will run to an underground pipe that will run to an existing utility area and then to Magna drive. Mr. Page testified that the Applicants will dedicate a 25' half width right of way located on the frontage of the Property.

With regard to the planning aspects of the Application, Mr. Page testified that the proposed location of the dwelling is the best possible location on the Property. The variances necessary in order to locate the dwelling in the proposed location are modest. The location of the proposed dwelling takes advantage of the natural topography and ensures that any impacts on neighboring properties are minimal. With regard to the variance for the height, the proposed height enhances the aesthetics of the home and is imperceptible from the public's view. The only area where the height might be experienced is from the rear of the Property.

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The Property is comprised of a large, wooded vacant lot designated as Lot 1 in Block 13803 in the R-2, residential zoning district. The Property is located on the southeast corner of the intersection of Magna Drive and Hickory Tavern Road. The Applicants purchased the Property in 2014 and razed an old dwelling, therefore the Property is currently vacant.

2. The Applicants propose to construct a six bedroom dwelling with attached three car garage. The Applicant's proposed improvements cause deviations from the permitted height and required setbacks from critical areas, as enumerated in the Relief Requested. Thus, the Applicant has requested relief from the Board in the form of height and bulk variances in accordance with N.J.S.A. 40:55D-70d(6) and N.J.S.A. 40:55D-70c(1) and (2), as specified above in the Relief Requested.

3. All jurisdictional requirements of the Application were met and the Board proceeded to hear the Application and render its determination which is memorialized herein.

4. Because the Applicants' proposed dwelling exceeds the permitted height limitation, the Applicants require and have applied for a variance in accordance with N.J.S.A. 40:55D-70d(6). An applicant seeking a (d)(6) variance must show special reasons or the so-called positive criteria have been satisfied and that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance, or the so-called negative criteria. An applicant may establish special reasons by showing undue hardship or establishing that the increase in height does not offend any purposes of the height restriction and is nonetheless consistent with the surrounding neighborhood. In order to satisfy the negative criteria, an applicant must demonstrate that the height deviation does not cause substantial detriment to the public good and that the deviation on the applicant's specific property can be reconciled with the municipality's determination that the height limitation be imposed on all uses in that zoning district.

5. An applicant requesting a bulk variance under subsection "c" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria, as well. The positive criteria in bulk variance cases may be established by the Applicant's showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created. The positive criteria may also be established by a showing that the application for variance would advance the purposes of the Municipal Land Use Law and the benefits of the deviation would substantially outweigh any detriment in accordance with N.J.S.A. 40:55D-70c(2). In order to establish the positive criteria for a c(2) variance, an applicant must show that the proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the Municipal Land Use Law, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

In order to satisfy the negative criteria for a "c" variance, an applicant must show that the variance can 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 requirement that the grant of the variance not substantially impair the intent and the purpose of the zone plan and zoning ordinance focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate. Unlike use

variances, reconciliation of a bulk or dimensional variance with the zone plan and zoning depends on whether the grounds offered to support the variance, either under subsection c(1) or c(2), adequately justify the board's action in granting an exception from the ordinance's requirements.

6. The Board finds that relief may be granted for the deviations resulting from the Applicant's proposal to construct a single-family residential dwelling in a residential zoning district, as specified in the Relief Requested. With regard to the height variance, the Board finds that the deviation is minimal and will not be visible to the public. The Board further finds that the topography of the Property causes the requirement for the height variance as the Property slopes in the rear of the proposed dwelling, exposing more of the exterior surface of the home to be visible. The Board finds that the proposed dwelling, despite its slight increased height, is aesthetically pleasing and conforms to the neighborhood in which it will be located. The proposed dwelling's height therefore will not cause any substantial detriment to the public good. Further, the proposed dwelling's height will not be readily discernible but will enhance the aesthetic quality of the proposed home, therefore the deviation will not substantially impair the zone plan or the zoning ordinance. With regard to the bulk variances for encroaching into the steep slope setbacks, the Board finds that the location of the critical areas does not allow for strict compliance with the zoning regulations without relief in order to construct and locate a reasonably sized dwelling in an appropriate location on the Property. The Property's constraints and topography are unique and the requested deviations are not substantial. In addition, the proposed location of the dwelling preserves a substantial number of existing trees and serves to buffer the dwelling from surrounding properties. Thus, the dwelling's location is appropriate in relation to the critical areas and the neighborhood and therefore its proximity to the critical areas is unavoidable. The Board finds that the benefits of the proposed deviations occasioned by the Property's existing conditions and the variances needed in order to implement Applicant's plan substantially outweigh any detriments. The Board further finds that the Applicant's proposal to construct a residential dwelling on a vacant lot in a residential zone despite the physical constraints on the Property, does not cause substantial detriment to the public good, the zone plan or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Board of Adjustment does hereby GRANT the Relief Requested as noted above, subject to the following:

1. The Applicants are required to comply with the following conditions:
 - a. The Applicants shall comply with the Applicants' representations to and agreements with the Board during the hearing on this Application.
 - b. The Applicants shall comply with the recommendations in the memorandum of the Board's Engineer, Thomas R. Lemanowicz, P.E., P.P., C.M.E., C.F.M, dated September 28, 2018 to the satisfaction of the Board Engineer.
 - c. The Applicants shall amend the architectural plans to reflect the revision date of October 2, 2018, to the satisfaction of the Board Engineer
 - d. The Applicants shall ensure that any lights installed on the dwelling are downward facing and shall further ensure that the light illuminating the house number on the mailbox is downward facing, to the satisfaction of the Board Planner.

- e. The Applicants shall ensure that any lighting installed along the driveway is low voltage lighting, to the satisfaction of the Board Planner.
- f. The Applicants shall provide a deed containing a description of the half-width roadway dedication, for review by the Board Engineer and Board Attorney.
- g. The Applicants shall correct the Front Yard Setback dimension to Hickory Tavern Road on the plan to match the Zoning Information Chart, to the satisfaction of the Board Engineer.

2. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, or the requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the Applicant in any approvals, as memorialized in resolutions adopted by the Township of Long Hill Board of Adjustment or Planning Board except as specifically stated in this Resolution.

3. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.

4. All fees and escrows assessed by the Township of Long Hill for this Application and the Hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicants shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property.

5. In accordance with the adopted ordinance provisions and the current requirements of the Township of Long Hill, to the extent applicable, the Applicants shall be required to contribute to the Township's "Affordable Housing Trust Fund" and/or otherwise address the impact of the subject application for development upon the affordable housing obligations of the Township, in a manner deemed acceptable by the Township Committee and in accordance with COAH's "Third Round Substantive Rules" and/or in accordance with enacted legislation and/or in accordance with direction from the Courts.

6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicants securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicants shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicants and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent or received by the Applicants.

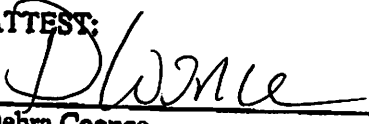
WHEREAS, A Motion was made by Mr. O'Mullan and seconded by Mr. Johnson to GRANT approval of the Relief Requested as set forth herein.


BE IT FURTHER RESOLVED, that this Resolution, adopted on November 20, 2018,

memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Grosskopf, O'Mullan, Johnson, Malloy, Rosenberg, Verlazza, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aronco, Gianakis.

RESOLUTION DATE: November 20, 2018

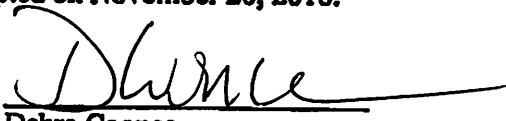
ATTEST:


Debra Coonce,
Board Secretary


Edwin F. Gerecht, Jr.,
Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT			✓		✓
VICECHAIR O'MULLAN	✓				
ARONEO			✓		
GROSSKOPF			✓		
JOHNSON	M				
MALLOY	2nd				
ROSENBERG					✓
GIANAKIS, ALT 1			✓		
VERLAZZA, ALT 2	✓				

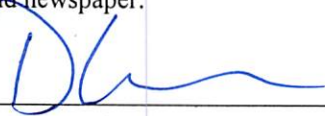
I hereby certify this to be a true copy of the Resolution adopted on November 20, 2018.


Debra Coonce,
Board Secretary

STATE OF NEW JERSEY
MORRIS COUNTY

SS.

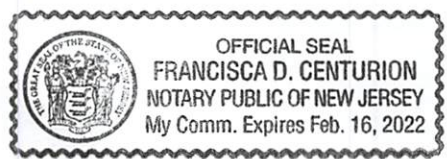
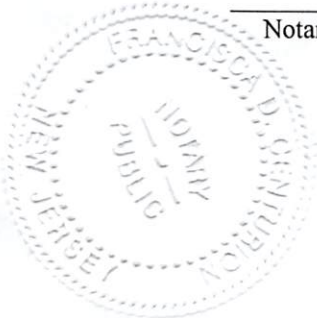
I, Debra Coonce, being of full
age, being duly sworn upon her oath, certifies:
that a notice of which the annexed is a true copy, was
published in the Echoes Sentinel which is a newspaper
published in Morris County, New Jersey;
on the 29th day of November, 2018
in said newspaper.



Sworn and subscribed before me this
29th day of NOVEMBER, 2018



Notary Public of New Jersey



Long Hill Township
Public Notice
NOTICE OF DECISION OF THE township of LONG HILL
zoning board of adjustment

Public notice is hereby given that the following action was taken by the Township of Long Hill Zoning Board of Adjustment at its meeting on November 20, 2018:

Resolution of Approval Memorialized
Variances
Block 13803 / Lot 1 / Zone R-2
26 Hickory Tavern Road
Application No. 18-15Z
Kirsten & Gustavo Alvarez

All documents relating to this application may be examined by the public in the Planning & Zoning Office in the Township of Long Hill Municipal Building located at 915 Valley Road, Gillette, NJ. Office Hours are as follows: Monday, Tuesday & Thursday - 8:30 AM to 4:30 PM, Wednesday 8:30 AM to 6:30 PM and Friday - 8:30 AM to 2:30 PM.

Debra Coonce
Planning & Zoning Coordinator
Township of Long Hill

P.F.\$26.01 11/29/T1