

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

**GAURANG and VINITA PATEL  
118 Waverly Avenue  
Millington, New Jersey  
Block 12203, Lot 16.02  
APPLICATION NO.: #22-03Z**

**Hearing Dates:       June 7, 2022  
                              June 21, 2022  
Board Action:         June 21, 2022  
Memorialization:     July 5, 2022**

**WHEREAS, GAURANG and VINITA PATEL** (the “Applicants”) are the owners of property located at 118 Waverly Avenue, Millington, identified as Block 12203, Lot 16.02 (the “Property” or the “Site”) on the Official Tax Map of the Township of Long Hill, in the R-3 Residential Zone; and

**WHEREAS,** the Applicants applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application requesting bulk variance relief, as set forth below, in order to add an approximately 2,000 sq. ft. patio accessed off of the existing covered patio, as well as a drywell, at the Property:

A bulk variance for a proposed impervious coverage of 29.3%<sup>1</sup>, whereas the existing impervious coverage is 22.8% and the maximum permitted impervious coverage is 20%, pursuant to the Township Land Use Ordinance (the “Ordinance”); 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:

- a. Application for Development for 118 Waverly Avenue, signed by Gaurang V. and Vinita G. Patel; signed 1/28/2022;
- b. “Topographic Survey of Tax Lot 16.02-Block 12203, located in the Township of Long Hill, Morris County, New Jersey,” consisting of one sheet; prepared by James P. Deady Surveyor, LLC; dated 9/21/2021;
- c. Eight site photos;
- d. “Plot Plan, Block 12203, Lot 16.02, 118 Waverly Avenue, Township of Long Hill, Morris County, New Jersey,” consisting of 2 sheets; prepared by Kastrud Engineering, LLC; dated 10/07/2021; and

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<sup>1</sup> The Applicant subsequently revised the plans to reduce the proposed impervious coverage to 27.6%.

**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**, the Board considered the following reports from its professionals:

- a. Memorandum from Board Planner, Elizabeth Leheny, P.P., A.I.C.P., dated June 2, 2022, same consisting of 3 pages; and
- b. Memorandum from Board Engineer, Samantha J. Anello, P.E., C.M.E., C.F.M., dated May 27, 2022, same consisting of 3 pages; and

**WHEREAS**, during the public hearing on the application on the Hearing Dates, the Applicants were given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to question all witnesses and comment on the application; and

**WHEREAS**, the Applicants presented testimony from the following individuals:

1. Gaurang (“Gary”) Patel, owner of the Property (the Applicant); and
2. Christian M. Kastrud, P.E. the Applicants’ Civil Engineer; and

**WHEREAS**, no members of the public appeared to ask questions about and/or to comment on the application, as more fully set forth on the record; and

**WHEREAS**, the Board Professionals, Elizabeth Leheny, P.P., A.I.C.P, the Board Planner, and Samantha J. Anello, P.E., C.M.E., C.F.M., the Board Engineer, were duly sworn according to law; and

**WHEREAS**, the subject Site includes one tax lot (i.e., Block 12203, Lot 16.02) located on the western edge of a cul-de-sac at the northern end of Waverly Avenue in Millington. The lot is in the R-3 Residence zone and is approximately ±30,766 square feet (i.e., 0.70 acres) with approximately ± 71 feet of frontage on the Waverly Avenue cul-de-sac. The property is currently improved with a 2-story brick, detached single-family dwelling including a rear, covered patio approximately ±103 square feet in size. There is also a ±106 square foot frame playhouse in the rear yard with wooden deck; and

**WHEREAS**, the Applicants are proposing to add a ±2,000 square foot patio accessed off of the existing covered patio as well as a drywell; and

**WHEREAS**, the testimonial and documentary evidence presented at the hearing was as follows:

1. Frederick B. Zellely, Esq., appeared on behalf of the Applicants and summarized the application. Operating under the presumption that the Applicants required subsection d(4)

F.A.R. relief for a presumed F.A.R. in sq. ft. of 6,558, whereas a maximum of only 4,846 sq. ft. was permitted, Mr. Zellely introduced **Exhibit A-1** (3 page portions of a plot plan prepared by William G. Hollows, P.E., L.S., P.P., last revised May 1, 2000), **Exhibit A-2** (3 page portions of an architectural plan prepared by Robert E. Coleman, AIA, last revised May 5, 2020), and **Exhibit A-3** (1 page bulk zoning table of Long Hill Township alleged to be from 1997) and proffered that same, together with testimony from Mr. Patel, would establish that the F.A.R. deviation was a pre-existing nonconforming condition that did not require variance relief. Through the course of testimony, it was revealed that the Applicants had incorrectly calculated, and thereby, overstated, the proposed F.A.R., which was determined to be only 4,243 sq. ft. and, thus, the floor area did not exceed the maximum permitted and no F.A.R. variance relief was required.

2. Mr. Patel was duly sworn according to law and testified as a fact witness. Mr. Patel testified that he and his wife purchased the Property in 2012, they reside there with their two children and their respective mothers, all existing improvements were present when they purchased the Property (except for the paver driveway which replaced the original asphalt driveway), and that they wish to expand their outdoor living space primarily for the benefit of their elderly mothers to enjoy the outdoor space since they cannot travel away from the home.

3. Mr. Patel testified regarding the proposed location of a firepit and outdoor kitchen facilities on the proposed patio, as well as regarding the existing landscaping around the Property.

4. The Applicant stipulated to providing landscape screening along the southerly property line (but outside the existing 20' wide drainage easement) adjacent to Lot 16.01, subject to the review and approval of the Board Planner.

5. The Board determined that the Applicant can replace the existing 8' x 8' playhouse with a storage shed, with a footprint of no greater than 100 sq. ft., located on crushed stone or a substantially similar foundation.

6. Mr. Kastrud referenced the engineering plans, introducing as **Exhibit A-4**, sheet 1 of 2, plot development plans, dated 10/7/21, last revised 6/6/22. He also introduced as **Exhibit A-4(a)**, an enlarged portion of **Exhibit A-4**. Mr. Kastrud explained the existing and proposed conditions, and highlighted the revisions to the Applicants' prior plan, whereby now the Applicants reduced the square footage of the new patio from 2,000 sq. ft. to 1,848 sq. ft., and then to 1,471 sq. ft., by essentially squaring off the patio with both the northerly side building line of the dwelling and the rear (westerly) property line.

7. Mr. Kastrud explained that the Property slopes to the northwest with about a 4-5 foot grade change, requiring a compliant 2 foot tall retaining wall along a portion of the patio.

8. The Applicant stipulated to maintaining the stormwater management plan and the size of the drywell as originally sized for the 2,000 sq. ft. patio prior to its reduction to 1,471 sq. ft.

9. The Applicant stipulated to the items set forth in the May 27, 2022 memo of Board Engineer Anello.

10. No members of the public commented on, or objected to, the application.

### **DECISION**

11. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have demonstrated an entitlement to the requested bulk variance relief sought herein.

#### **The Bulk Variances – Positive Criteria:**

12. The Board recognizes that an applicant requesting bulk variance relief under subsection “c” of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria. 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 subsection 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.

13. The positive criteria for bulk variance relief may also be established by a showing that the granting of an application for variance relief would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”) and the benefits of the granting such relief would substantially outweigh any detriment associated therewith, in accordance with N.J.S.A. 40:55D-70c(2). Under the subsection c(2) standard, an applicant must prove that the granting of a proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the MLUL, 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.

14. Here, the Board finds that the requested bulk or “c” variance relief may be granted under subsection c(2) of N.J.S.A. 40:55D-70.

15. Pursuant to N.J.S.A. 40:55D-70(c)(2), the Board finds that the benefits of granting the requested relief substantially outweigh the detriment associated therewith, particularly given the modest nature of the Applicants’ proposal and the stipulated to conditions, which will further mitigate such relatively modest detriment.

16. As to the excess impervious coverage, the Board recognizes that the Applicant reduced the size of the patio from 2,000 sq. ft. to 1,848 sq. ft. and then again to 1,471 sq. ft. The Board further recognizes that the patio and associated outdoor living space is a reasonable residential amenity, improves the functionality of the Property and the housing stock of the neighborhood, and the relatively modest detriments associated therewith are significantly mitigated by the conditions stipulated to by the Applicant, including the additional landscape screening and the oversized drywell and stormwater management/drainage system.

17. As such, the Board finds that the Applicants have demonstrated the positive criteria for the requested variance relief under subsection c(2) of Section 70 of the MLUL.

**The Bulk Variances – Negative Criteria:**

18. In order to satisfy the negative criteria for “c” variance relief, an applicant must prove 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 focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

19. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not result in substantial detriment to the neighborhood or the general welfare, particularly since the appearance of the Property will be improved and the impervious coverage increase will not increase stormwater runoff given the oversized drywell proposed. The Board recognizes that no member of the public objected to the Applicants’ proposal, further evidencing that the proposal is not substantially out of character with the subject neighborhood. As to the “substantial impairment” prong of the negative criteria, the Board finds that granting the requested relief certainly does not rise to the level of a rezoning of the Property, particularly since the proposed use as a residential dwelling is a permitted uses in the R-3 Residential Zoning District.

20. Here, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested bulk variance relief under N.J.S.A. 40:55D-70(c)(2).

**WHEREAS**, the Board took action on this application at its meeting on June 21, 2022, 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**, 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; and
  - b. The Applicants shall comply with the requirements and recommendations set forth in the Board Engineer’s Memorandum, dated May 31, 2022, and the Board Planner’s Memorandum, dated June 2, 2022, including, all necessary updating and revisions to the previously submitted plans, if necessary;

2. The Applicants shall submit a Soil Erosion and Sediment Control (SESC) certification, or letter of exemption, from the Morris County Soil Conservation District prior to any land disturbance, if required;

3. Per Long Hill Township Code Section LU 183-9, as the disturbance exceeds 1,000 square feet and includes over 400 square feet of additional impervious coverage, Lot Grading Approval shall be obtained:

- a) Lot Grading Approval shall be required.
- b) Per Long Hill Township Code Section LU-146, Stormwater Management is applicable and shall be revised to meet the following criteria:
  - i. Stone used in the drywell shall be 2-1/2 inches clean stone.
  - ii. A design void ratio of 33% shall be used.
  - iii. The drywell shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible;

4. A construction detail for the paver patio shall be provided;

5. Proposed contours (grading) shall be shown within the proposed patio area that demonstrate flow into the proposed stone trenches. The retaining wall proposed shall be shown on the plan for verification of compliance to applicable Township Codes;

6. The Applicants shall obtain approval from the Township Fire Code Official as to the location of the proposed fire pit, and its proximity to the dwelling;

7. 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;

8. The Applicants shall comply with any and all prior conditions of approval to the extent that same would not be inconsistent with the approval granted herein;

9. The Applicants shall comply with Section 3-15.8 of the Ordinance, which prohibits construction activities between the hours of 8:00 p.m. and 7:00 a.m.;

10. 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;

11. 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;

12. Pursuant to Ordinance Section 172.11, any variance from the terms of this Ordinance hereafter granted by the Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within 12 months from the date of entry of the judgment or determination of the Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Township Committee or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding; and


13. 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 to, or received by, the Applicants.

**WHEREAS**, a Motion was made by Board Member Gianakis and seconded by Board Member Rosenberg to GRANT approval of the Relief Requested as set forth herein.

**BE IT FURTHER RESOLVED**, that this Resolution, adopted on July 5, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes; Gianakis, Rosenberg, Grosskopf, Hain, Lindeman, Johnson, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo.


ATTEST:

  
\_\_\_\_\_  
Debra Coonce,  
Board Secretary

  
\_\_\_\_\_  
Edwin F. Gerecht, Jr.,  
Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT	X				
VICE CHAIRMAN JOHNSON					X
ARONEO			X		
GIANAKIS	X				
GROSSKOPF	2nd				
HAIN					X
ROSENBERG					X
LINDEMAN – ALT 1	M				
BRENNAN – ALT 2			X		

I hereby certify this to be a true copy of the Resolution adopted on July 5, 2022.

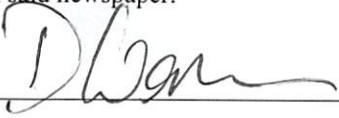
  
 Debra Coonce,  
 Board Secretary



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 14th day of July, 2022  
in said newspaper.

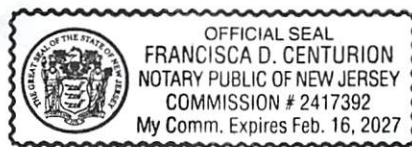


Sworn and subscribed before me this

14th day of July, 2022



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 July 5, 2022:

**Resolution of Approval Memorialized  
Bulk Variance**  
Block 12203 / Lot 13.02 / Zone R-3  
118 Waverly Avenue  
Application No. 22-03Z  
Gaurang & Vinita Patel

**Resolution of Approval Memorialized  
Resolution Extension**  
Block 12402 / Lot 8 / Zone R-3  
00 Oaks Road  
Application No. 19-10Z  
Omar & Anas Elissa

All documents relating to this application may be examined on the website at: <https://longhillnj.gov/BOA/boa-resolutions.html> or by the public by appointment 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  
Zoning Board of Adjustment Secretary  
Planning & Zoning Coordinator  
Township of Long Hill

P.F.\$36.21 07/14/T1