

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

**BISHOY SOURIAL
125 Mountain Avenue
Gillette, New Jersey
Block 13401, Lot 3
APPLICATION NO.: #21-11Z**

**Hearing Date: April 19, 2022
Board Action: April 19, 2022
Memorialization: May 17, 2022**

WHEREAS, BISHOY SOURIAL (the “Applicant”) is the owner of property located at 125 Mountain Avenue, Gillette, identified as Block 13401, Lot 3 (the “Property” or the “Site”) on the Official Tax Map of the Township of Long Hill, in the R-2 Residential Zone; and

WHEREAS, the Applicant 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 permit the two previously constructed retaining walls in excess of the permitted retaining wall height on the Property:

A bulk variance for two retaining walls with a maximum height of 6.59 feet each, plus a fence or guardrail on the top of same, not to exceed 48 inches, or 10.59 feet in total height, whereas a retaining walls shall not exceed six feet in height in the side and rear yards, pursuant to Section 154.1(e)3 of the Township Land Use Ordinance (the “Ordinance”); and

WHEREAS, the Applicant 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, Township of Long Hill, Board of Adjustment, Application #21-11Z, including a series of colorized Site photos; and
- b. Property survey titled “Boundary and Topographic Survey of Property Situated at Tax Lot 3 in Block 13401, Township of Long Hill, Morris County, New Jersey”, prepared by David P. Aguanno, P.L.S., of Solstice Surveying, dated August 23, 2021, same consisting of one sheet; and

WHEREAS, the Applicant 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 April 15, 2022, same consisting of three pages; and
- b. Memorandum from Board Engineer, Samantha J. Anello, P.E., C.M.E., C.F.M., dated April 12, 2022, same consisting of three pages; and

WHEREAS, during the public hearing on the application on the Hearing Date, the Applicant was 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, members of the public appeared to ask questions about and 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, Mr. Sourial was duly sworn according to law and testified on behalf of the Applicant as a fact witness. He introduced the application and presented testimony to the Board, as more fully set forth on the record, as follows:

1. Mr. Sourial provided an overview of the Applicant's proposal, the requested relief, and the materials submitted as part of the application.

2. Mr. Sourial testified that he and his wife purchased the Property from a bank within the past year, which had previously foreclosed on the Property pursuant to a lien it had placed on same. He testified that, during the purchase of the Property, he became aware that the two retaining walls in the rear of the Property had been constructed without the applicable construction permits and land use approvals.

3. Mr. Sourial testified that he previously received a temporary certificate of occupancy to live on the Property, but requires approval of the retaining walls prior to obtaining a final certificate of occupancy. He testified that he does not propose any new construction on the Property, but he may need to complete the retaining walls, as certain parts appear to be unfinished.

4. Mr. Sourial testified that he was aware that this application is merely for the height of the existing retaining walls, and that the Board was in no way approving the retaining walls structural integrity, as approval of same would require sufficient evidence to be presented to the construction official.

5. In response to questions from the Board, Mr. Sourial testified that he believes the wall height can be dangerous, and would like to construct a fence or guardrail along the top of the existing retaining wall for safety. As such, Mr. Sourial requested that the Board approve his variance request for the retaining walls that exceeds six feet in height, specifically, 6.59 feet, with an additional fence height of up to and including 48 inches, for a total of 10.59 feet.

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

DECISION

7. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicant has demonstrated an entitlement to the requested bulk variance relief sought herein.

The Bulk Variances – Positive Criteria:

8. 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.

9. 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.

10. 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.

11. 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 relatively modest nature of the Applicant’s proposal and the stipulated to conditions, which will further mitigate such relatively modest detriment.

12. As to the requested variance relief for the excessive retaining wall height, the Board recognizes the topographical conditions of the Property and the need for a functional rear yard area, and that the proposal results in a relatively modest increase in retaining wall height on the Property. The Board further recognizes that while it is the Applicant itself that requires a retaining wall, granting the requested variance relief will allow the Applicant to improve the functionality and aesthetics of the Property, along with the improved safety of the Applicant’s Property with the additional height for a fence or guardrail, without any substantial change to the surrounding neighborhood.

13. As such, the Board finds that the Applicant has demonstrated the positive criteria for all of the requested variance relief under subsection c(2) of Section 70 of the MLUL.

The Bulk Variances – Negative Criteria:

14. 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.

15. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicant has 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, no additional improvements on the Property are proposed, and the size and location of the improvements on the Property are not changing from what currently exists. The Board recognizes that no member of the public objected to the Applicant’s 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 retaining walls are permitted in the R-2 Residential Zoning District.

16. Here, the Board finds that the Applicant has 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 April 19, 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 Applicant is required to comply with the following conditions:
 - a. The Applicant shall comply with the Applicant’s representations to, and agreements with, the Board during the hearing on this application; and
 - b. The Applicant shall comply with the requirements and recommendations set forth in the Board Engineer’s Memorandum, dated April 12, 2022, and the Board Planner’s Memorandum, dated April 15, 2022, including, all necessary updating and revisions to the previously submitted plans, if necessary.

2. The Applicant shall meet all conditions and requirements of Ordinance Section 154, governing “retaining walls,” including, but not limited to, adding a fence or guardrail up to 48 inches to the top of those portions of the retaining wall that are in excess of four feet tall, except as otherwise modified herein, and the base of the upper wall shall be separated from the face of the lower wall, by at least four (4) feet;

3. The Applicant shall obtain all construction permits and final approval for the retaining walls from the Long Hill Construction Office, which shall include, among other things, the submission of signed/sealed stability calculations and construction details for the retaining walls prepared by a New Jersey licensed Professional Engineer in compliance with the Uniform Construction Code (UCC), which shall be subject to the review and satisfaction of the Construction Code Official;

4. 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;

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

6. The Applicant 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.;

7. 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;

8. 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 Applicant 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;

9. 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

10. 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 Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicant 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 Applicant.

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

BE IT FURTHER RESOLVED, that this Resolution, adopted on May 17, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Rosenberg, Gianakis, Lindeman, Johnson & Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo, Grosskopf, Hain & Brennan.

RESOLUTION DATE: May 17, 2022

ATTEST:

Debra Coonce,
Board Secretary

Edwin F. Gerecht, Jr.
Board Chairman

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

I hereby certify this to be a true copy of the Resolution adopted on May 17, 2022.

Debra Coonce,
Board Secretary