

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

JENNIFER AND JOSEPH CLARK

20 Cedar Hollow Drive

Stirling, New Jersey

Block 13203, Lot 9

APPLICATION NO. #22-07Z

Hearing Date: September 6, 2022

Board Action: September 6, 2022

Memorialization: October 4, 2022

WHEREAS, JENNIFER AND JOSEPH CLARK (the “Applicants”) are the owners of property located at 20 Cedar Hollow Drive, Stirling, identified as Block 13203, Lot 9 (the “Property” or the “Site”) on the Official Tax Map of the Township of Long Hill (the “Township”), in the R-2 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 (the “Relief Requested”), as set forth below, in order to construct a second story addition and a front porch to the single-family residence at the Property:

- a. A bulk variance for a proposed lot coverage of 33.75%, whereas the maximum permitted lot coverage in the R-2 Residential Zone is 20% standards modified as lot was created per density modification subdivision, pursuant to Section 131, Schedule of Bulk Regulations, of the Township Land Use Ordinance (the “Ordinance”); and
- b. A bulk variance for a side-yard setback (west) of 13.25 feet, whereas the minimum required side-yard setback is 17.5 feet (standards modified as lot was created per density modification subdivision), pursuant to Section 131, Schedule of Bulk Regulations, of the Ordinance;

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 20 Cedar Hollow Drive, signed by Joseph Clark, dated 6/4/2022;
- b. Plan entitled “Survey of Property for Lot 9 in Block 13203” prepared by David J. Von Steenburg, PLS, dated 4/29/2020; and

- c. Architectural elevations and plans, consisting of 2 sheets, prepared by Nicholas Ferreira, AIA, dated 5/23/2022; and

WHEREAS, the Applicants met all jurisdictional requirements enabling the Board to hear and act on the application and appear 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, PP, AICP, dated August 11, 2022, same consisting of three pages; and
- b. Memorandum from Board Engineer, Samantha Anello, PE, CME, CFM dated August 2, 2022, same consisting of three pages; and

WHEREAS, the Property is located in the R-2 (Residential Zone) of the Township on Cedar Hollow Drive, near the intersection with St. Josephs Drive and Skyline Drive. The Property is bordered by developed, single-family residential properties on all sides.

The Property contains 0.58 acres. The Property is developed with a two-story frame dwelling, and accessory improvements including a paved driveway, landscape retaining walls, a paver walk, and a rear paver patio with block retaining walls. The rear of the Property behind the improved areas is largely maintained lawn area. The Property is within a density modification subdivision.

The Applicants are proposing to construct a one-story addition to the rear of the existing dwelling (proposed bedroom and walk-in closet) for an elderly parent. The addition is approximately 312 square feet. The Applicants propose to reduce the size of the existing patio in the rear yard as part of this application.

The Applicants are seeking a variance from Township Code Section LU-131, which permits a maximum Lot Coverage of 20% in the R-2 zone, whereas the existing lot coverage is 33.75%, and the proposed coverage is 30.6%. The Property is non-conforming as it relates to Lot Area, Lot Width, and Front Yard Setback; however, this application does not exacerbate any of these pre-existing non-conforming conditions; and

WHEREAS, during the public hearing on the application on the Hearing Date, 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. Joseph and Jennifer Clark, owners of the Property (the Applicants); and
2. Nicholas Ferreira, A.I.A., the Applicants' Architect; 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, Larry Plevier, PE, CME, CFM, the substitute Board Engineer, and Elizabeth Leheny, PP, AICP, both were duly sworn according to law; and

WHEREAS, Mr. and Mrs. Clark were duly sworn according to law and testified as fact witnesses.

1. Mr. Clark testified that his wife is a lifelong resident of the Township, the couple have owned other homes in the Township, and they recently purchased the Property with the intention of having Mrs. Clark's elderly mother move in with them. The home has a room off the back of the kitchen and the Applicants intend to expand it so there is room for Mrs. Clark's mother. The room will have separate ingress / egress from the balance of the dwelling, but will share the home's kitchen and other facilities.

2. Mr. Clark testified that the Applicants intended to mitigate the impact of increased lot coverage, given the existing exceedance, and therefore the addition will be constructed where a portion of the rear patio is currently located and another portion of the patio will be replaced with landscaping and vegetation, so as to result in a net decrease in the existing lot coverage from 33.75% to 30.8%.

3. The Applicants stipulated that the colors, materials and architectural style of the exterior of the addition will be substantially similar to that of the exterior of the balance of the dwelling, except for the front of the home which has brick face. On questioning by Board members, Mr. Clark surmised that the existing impervious coverage exceedance occurred without municipal approval by the prior owner.

4. The Applicants stipulated to returning all areas where impervious coverage (patio) is removed to vegetation / grass / landscaping. The Applicants also stipulated to complying with all comments of the Board Engineer in the August 2nd memo, including obtaining the requisite lot grading approval set forth at comment #4, with the additional stipulation that the Applicants will provide the stormwater management measures, if any, required by the Township Engineer, in his reasonable discretion.

5. Mr. Clark testified that he took the photographs submitted with the application materials about 6 weeks or so ago, and that they provide an accurate depiction of what presently exists on the Property.

6. Nicholas Ferreira, A.I.A., with a business address of 29 Greenwood Drive, Millington, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of Architecture. Referencing the Architectural Plans submitted with the application materials, Mr. Ferreira provided an overview of the proposed improvements.

7. Mr. Ferreira testified that the side-yard setback (on the eastern side) is only 13.25 feet as a result of the angle / articulation of the driveway on the lot. Mr. Clark testified that there exists some landscape screening; however, the Applicants stipulated to providing additional landscaping to screen the rear of the addition from adjacent Lot 10 to the west, subject to the review and approval of the Board Planner.

8. No member of the public questioned any of the witnesses, nor made any comment on the application.

DECISION

9. After reviewing the evidence submitted, the Board, by a unanimous 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:

10. 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.

11. 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.

12. Here, the Board finds that the requested bulk or “c” variance relief may be granted under each of the alternative criteria set forth in subsection c(1) and subsection c(2) of N.J.S.A. 40:55D-70.

13. Pursuant to N.J.S.A. 40:55D-70(c)(1), the Board finds that granting the requested relief is appropriate as the Applicant would otherwise suffer an undue hardship should the requested relief not be granted, and the zoning regulations strictly applied. Specifically, the Board finds that the Applicants would suffer an undue hardship if the lot coverage requirement was

strictly enforced, since the Property is a significantly undersized lot and the long “switchback” type driveway leading to a side loaded garage with a significant turn around area further exacerbates the amount of impervious coverage on the Property. Similarly, as to the side yard setback encroachment, same is a product of the angle / configuration of the lot and the location and orientation of the dwelling lawfully existing thereon.

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

15. As to the requested variance relief for the lot coverage exceedance, the Board recognizes that the proposal actually results in a net decrease in impervious coverage. The Board further recognizes that granting the requested variance relief for the lot coverage deviation will allow the Applicants to improve the functionality of the Property to provide housing for a senior citizen who is a member of the Applicants’ family. The Board further recognizes that impervious lot coverage is typically associated with stormwater management, and with the Applicants’ existing stormwater management system and the lot grading and additional stormwater measures, the deviation will not create substantial detriment to the neighboring properties.

16. As to the requested variance relief for the side-yard setback deviation, the Board recognizes that the proposal results in a deviation from the Ordinance bulk standards, however, it will allow the Applicants to improve the functionality of the Property without any substantial detriment to the neighboring properties. In this regard, the Board again notes the benefits of providing housing to an elderly family member and the existing and proposed landscape screening will mitigate the relatively modest detriment.

17. As such, the Board finds that the Applicants have demonstrated the positive criteria for all of the requested variance relief under both subsection c(1) and 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, lot coverage is actually being reduced from what currently exists, and the setback encroachment is relatively modest. The Board recognizes that no member of the public objected

to the Applicants' proposal, and landscape screening, further evidencing that the proposal is not substantially out of character with the subject neighborhood.

20. 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 improvement to the residential dwelling is a permitted use in the R-2 Residential Zoning District.

21. Here, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested bulk variance relief under both of the alternative bases for same under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

WHEREAS, the Board took action on this application at its meeting on July 5, 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 shall provide a zoning table, with all existing and proposed dimensions on the plot plan;
2. The Applicants shall provide a table outlining the existing and proposed lot coverage on the plot plan for verification of the variance sought;
3. The Applicants shall obtain Lot Grading Approval per Long Hill Township Code Chapter 14, as the disturbance exceeds 1,000 sq. ft.;
4. Run-off from the proposed dwelling addition shall be managed. Run-off shall not be directed toward neighboring properties nor change drainage patterns over existing lot lines;
5. Drywells or other stormwater management devices shall be located and shown on the plans. Consideration shall be given to tying the rear addition into this system if the system can handle the additional capacity. If drywells do not presently exist, consideration shall be given to providing drywells to manage run-off from the addition and patio area subject to the review and approval of the Township Engineer;
6. The colors, materials, and architectural style of the exterior of the addition shall be substantially similar to that of the exterior of the balance of the dwelling, except for the front of the home which has brick face;
7. All areas where impervious coverage (patio) is removed shall be replaced with vegetation / grass / landscaping.

8. The Applicants shall comply with all comments of the Board Engineer in the August 2nd memo, including obtaining the requisite lot grading approval set forth at comment #4, with the additional stipulation that the Applicants shall provide the stormwater management measures, in any, required by the Township Engineer, in his reasonable discretion;

9. The Applicants shall provide additional landscaping to screen the rear of the addition from adjacent Lot 10 to the west, subject to the review and approval of the Board Planner;

10. 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 Applicants 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;

11. 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;

12. 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;


13. Pursuant to LU-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


14. 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 Vice Chairman Johnson and seconded by Mr. Aroneo to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on October 4, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes:, Johnson, Aroneo, Grosskopf, Lindeman, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Gianakis, Hain, Rosenberg, Brennan.


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	M				
GIANAKIS			X		
GROSSKOPF	X				
ROSENBERG			X		
HAIN			X		
LINDEMAN – ALT 1	2 nd				
BRENNAN – ALT 2			X		

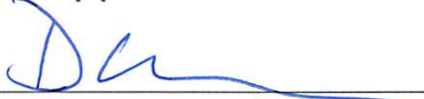
I hereby certify this to be a true copy of the Resolution adopted on October 4, 2022.


 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 13th day of October, 2022
in said newspaper.

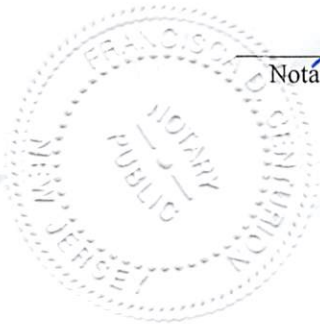


Sworn and subscribed before me this

13TH day of OCTOBER, 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 October 4, 2022:

Resolution of Approval Memorialized
Bulk Variance
Block 13203 / Lot 9 / Zone R-2
20 Cedar Hollow Drive
Application No. 22-07Z J
Jennifer & Joseph Clark

Resolution of Approval Memorialized
Bulk Variance
Block 12702 / Lot 30 / Zone R-2
115 Shawnee Path
Application No. 22-08Z
Kimberlyann & Kevin Higgins

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 10/13/21