

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

**DANA GONZALES
218 MERCER STREET
STIRLING, NEW JERSEY 07980
BLOCK 11602, LOT 24
APPLICATION NO.: 2021-08Z**

**Hearing Date: September 7, 2021
Board Action: September 7, 2021
Memorialization: October 5, 2021**

WHEREAS, Dana Gonzalez (the “Applicant”) is the owner of property located at 218 Mercer Street in Stirling, identified as Block 11602, Lot 24 (the “Property”) on the Long Hill Township Tax Map, in the R-4, Residential, zoning district; and

WHEREAS, the Applicant proposes to install a +/- 570 sq. ft. inground swimming pool; and

WHEREAS, the Applicant applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application seeking a bulk variance for exceeding maximum lot coverage; and

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

Bulk variance in accordance with N.J.S.A. 40:55D-70c(1) and/or c(2) from the requirements in the Township of Long Hill Land Use Ordinance, 1996 (the “Ordinance”), as follows:

Maximum Lot Coverage (Ordinance Section 131):
Permitted: 25%; Existing 29.2%; Proposed: 33.7%;

Pool Located within Critical Area (Ordinance Section 142.1(a) – if required upon New Jersey Department of Environmental Protection determination that the Property is located within a flood plain); 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:

Application with addenda, dated March 31, 2021;

Smith/Gonzales Variance Plan, prepared by Midstate Engineering Inc., dated March 8, 2021, consisting of two sheets; 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 report from its Planner:

Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated September 3, 2021;

Memorandum from Board Engineer, Richard Keller, PE, PP, CME, dated September 2, 2021; and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicant, represented by attorney, Jared Pape, was 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 Applicant presented testimony from the following individuals:

1. Chester DiLorenzo, Applicant's Engineer and Planner;
2. Dana Gonzales, Applicant;
3. Anthony Schiavone, Applicant's Pool Contractor; and

WHEREAS, members of the public appeared to ask questions about or to speak with regard to the Application, as more fully set forth on the record; and

WHEREAS, the Applicant's attorney introduced the Application and the Applicant presented testimony to the Board as more fully set forth on the record, as follows:

1. Chester DiLorenzo was sworn, provided the Board with his qualifications and was accepted as a licensed professional engineer and professional planner. Mr. DiLorenzo testified describing the Property and detailing the drainage patterns on and around the Property. The Property is undersized for the zone. Mr. DiLorenzo described the existing structures and the proposed swimming pool and patio. None of the existing nonconformities on the Property will be exacerbated. Mr. DiLorenzo testified that the Applicant will go through the NJDEP approval process with regard to the potential flood hazard area permitting. With regard to stormwater, Mr. DiLorenzo indicated that stormwater discharges onto the Property from other properties. The stormwater will be collected and will be discharged toward Mercer Street. Mr. DiLorenzo testified that the proposed improvements will have a net positive impact on surrounding properties in terms of stormwater management. Fencing will be installed on the Property to ensure safety. From a planning perspective, Mr. DiLorenzo testified that the benefits of the proposal outweigh the detriments. The proposed development of the Property will improve stormwater management for the Property and for surrounding properties.

2. Dana Gonzales was sworn and confirmed that the Property's backyard collects water from neighboring properties.

3. Anthony Schiavone was sworn and testified with regard to the proposed pool. Mr. Schiavone indicated that the pool will be 6 feet deep at its deepest area and 3.5 feet at the shallowest area. Mr. Schiavone testified that pools may be built where ground water is present. Upon encountering groundwater, a drywell and pumps are installed. The pumps remain on site to control the groundwater.

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

1. The Property is comprised of an improved 15,714 square foot parcel designated as Lot 24 in Block 11602, more commonly known as 318 Mercer Street, in the R-4, residential zoning district. The Property is improved with a one-story frame dwelling with a rear deck and a shed in the rear yard. The Board acknowledges that the Property may be located within a flood plain and further acknowledges that the Applicant will need to comply with New Jersey Department of Environmental Protection rules in order to construct the proposed pool in a flood plain. The Applicant has agreed to make application to the New Jersey Department of Environmental Protection to determine whether the Property is located in a flood plain and, if so, to make application for a permit to construct the swimming pool within the potential flood plain area.

2. The Applicant proposes to install an in-ground swimming pool with appurtenant patio and stormwater measures in the location of the rear yard. The Applicant's proposed improvements deviate from certain bulk standards in the Ordinance, as enumerated in the Relief Requested. Thus, the Applicant has requested relief from the Board in the form of bulk variances in accordance with N.J.S.A. 40:55D-70c(1) and (2) and waivers.

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. 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.

5. The Board finds that relief may be granted for the deviation resulting from the Applicant's proposal to construct an inground swimming pool in a residential zoning district, as specified in the Relief Requested. The Property is undersized and, as such, no improvement may take place without Board relief. The Board finds that it is not possible for the Applicant to obtain additional land in order to create a conforming lot as all of the lots surrounding the Property are improved. The Board further finds that the positive aspects of adding an inground swimming pool to a residential property is an attractive and functional improvement and outweighs any detriments. The Board is satisfied that the Applicant's stormwater management measures mitigate against the negative aspects of the proposed development. The Board is further satisfied that the Applicant's agreement to comply with the conditions that have been imposed herein further mitigates any negative aspects of the proposed development. The Board finds that the Applicant's proposal to construct the pool and appurtenant site improvements is well suited with the 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 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.
 - b. The Applicant shall comply with the Board Engineer's report dated September 2, 2021, to the satisfaction of the Board Engineer.
 - c. The Applicant shall comply with the Board Planner's report dated September 3, 2021, to the satisfaction of the Board Planner.
 - d. The Applicant shall redesign and revise the stormwater management plan to accommodate the additional chambers, to the satisfaction of the Board Engineer.
 - e. The Applicant shall revise the plan, entitled "Variance Plan", prepared by Midstate Engineering Inc. to accurately reflect the relief granted by the Board in the plan's zoning table and shall resubmit the corrected plan to the Board Secretary.
 - f. The Applicant shall provide screening along the fence to be installed on the Property, to the satisfaction of the Board Planner and 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 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.

5. In accordance with the adopted ordinance provisions and the current requirements of the Township of Long Hill, to the extent applicable, the Applicant 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.

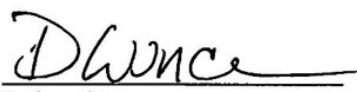
6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies including but not limited to the New Jersey Department of Environmental Protection. This Resolution of approval is specifically conditioned upon the Applicant's 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 or received by the Applicant.

BE IT FURTHER RESOLVED, a Motion was made by Mr. Johnson and seconded by Mr. Hain to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on October 5, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Gianakis, Hain, Robertson, Johnson, Gerecht; No: Aroneo; Recused: None; Not Eligible: None; Absent: Grosskopf, Malloy, Rosenberg.

RESOLUTION DATE: October 5, 2021


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 | M | | | | |
| ARONEO | | | X | | |
| GIANAKIS | | | | | X |
| GROSSKOPF | | | X | | |
| MALLOY | | | X | | |
| ROSENBERG | | | X | | |
| HAIN – ALT 1 | 2ND | | | | |
| ROBERTSON – ALT 2 | | | | | X |

I hereby certify this to be a true copy of the Resolution adopted on October 5, 2021.


 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 October, 2021
in said newspaper.

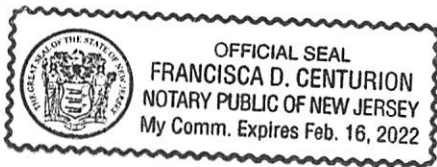


Sworn and subscribed before me this

19TH day of OCTOBER, 2021



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 5, 2021:

Resolution of Approval Memorialized
Use Variance
Block 12806 / Lot 1 / Zone R-2
1552-1554 Long Hill Road
Application No. 21-05Z
Christopher Finely

Resolution of Approval Memorialized
Bulk & Use Variances
Block 11513 / Lots 3, 4 & 4.01 / Zone R-4
329 Main Avenue
Application No. 19-04Z
Meek Sook Jeon

Resolution of Approval Memorialized
Block 11602 / Lot 24 / Zone R-4
318 Mercer Street
Application No. 21-09Z
Dana Gonzales

All documents relating to this application may be examined on the website at: LHT - Zoning Board of Adjustment - Township of Long Hill, Morris County, New Jersey (longhillnj.gov) 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.\$41.31 10/14/T1