

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

KIMBERLYANN & KEVIN HIGGINS

115 Shawnee Path

Millington, New Jersey

Block 12702, Lot 30

APPLICATION NO. #22-08Z

Hearing Date: September 6, 2022

Board Action: September 6, 2022

Memorialization: October 4, 2022

WHEREAS, KIMBERLYANN AND KEVIN HIGGINS (the “Applicants”) are the owners of the property located at 115 Shawnee Path, Millington, identified as Block 12702, Lot 30 (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 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 install a rectangular shaped 18 ft. by 36 ft. inground swimming pool in the northeast section of the rear yard of the single-family residence at the Property:

- a. A bulk variance for a proposed lot coverage of 25.3%, whereas the existing lot coverage is 21.7% and the maximum permitted lot coverage in the R-2 Residential Zone is 20%, pursuant to Section 131, Schedule of Bulk Regulations, of 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 115 Shawnee Path, signed by Kimberlyann Higgins, dated 7/8/2022;
- b. Six site photos;
- c. Plan entitled “Survey of Property for Lot 30 in Block 12702;” prepared by David J. Von Steenberg, Professional Land Survey; dated December 2, 2022; and
- d. Plan entitled “Pool Plot Plan 115 Shawnee Path;” prepared by R.C. Burdick, P.E., P.P.; dated May 18, 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 an undersized lot (31,400 sq. ft. whereas 45,000 sq. ft. is required) located in the R-2 (Residential Zone) of the Township of Long Hill on Shawnee Path, just north of the intersection with Puddingstone Lane. The Property is bordered by developed, single-family residential properties on all sides.

The Property contains 0.72 acres. The Property is developed with a one-story frame dwelling, and accessory improvements including a paved driveway, a paver walk, a wooden deck, and a detached one-car garage. The rear of the Property behind the dwelling and deck is maintained lawn area.

The Applicants are proposing to construct an 18 ft. by 36 ft. inground pool with a 3 ft. concrete patio around the perimeter. Fencing around the Property is proposed to be upgraded in order to meet pool code. A drywell is proposed to manage stormwater from the pool area.

The Applicants are seeking a variance from Ordinance Section LU-131, which permits a maximum Lot Coverage of 20% in the R-2 zone, whereas the existing lot coverage is 21.7%, and the proposed coverage is 25.3%; 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. Kimberlyann Higgins, owner of the Property (the “Applicant”) and her husband, Kevin Higgins; and
2. Anthony Lipari, the principal of Lipari Pools, the Applicants’ contractor; 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, Elizabeth Leheny, PP, AICP, Board Planner and Larry Plevier, PE, CME, CFM, the substitute Board Engineer, were duly sworn according to law; and

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

1. Mrs. Higgins provided an overview of the proposal, the requested relief, the witnesses to be presented, and the materials submitted as part of the application.

2. Mrs. Higgins testified that the Applicants have lived in the Township for 8 years and bought the Property because of the large backyard with the desire to install a pool for their family. She testified that the pool is 18 ft. by 36 ft. (648 sq. ft.), with a 3-foot-wide patio surrounding the perimeter.

3. On questioning by the Board Planner, it became apparent that there was no practical location to eliminate existing impervious coverage, and the coverage exceedance was, in part, a function of the undersized nature of the lot, the significant footprint of the one-story (ranch) dwelling, the side-loaded garage requiring a significant paved area to maneuver vehicles so they need not back out onto Shawnee Path, and the location of the additional detached garage.

4. The Applicants stipulated to compliance with all of the items on both the Board Engineer and the Board Planner's memos. The Applicants also stipulated to provide a landscape plan subject to the review and approval of the Board Planner, primarily intending to screen the view of the pool from, and to, the dwelling on adjacent Lot 29 to the north.

5. Mr. Lipari, on behalf of the Applicants, introduced into evidence as Exhibit A-1, a Drywell Detail, and as Exhibit A-2, an updated pool plot plan, dated 8/10/2022.

6. On questioning by the Board Planner, Mrs. Higgins said the pool was located to the north side, rather than the center, of the rear yard, because of the topography in that area and the Applicants desire to have a larger rear yard area available for their children to play sports, etc.

7. On Board member questioning, Mr. Lipari testified that the rear property line fence was permitted in the 20' wide drainage easement.

8. William Miron, 127 Shawnee Path, the owner of the dwelling on adjacent Lot 29 and the most effected neighbor, was duly sworn and testified regarding existing drainage issues and potential concerns, which concerns were addressed by the Board Engineer and Mr. Lipari, and incorporated into conditions of approval stipulated to by the Applicants. He also expressed privacy concerns due to the proximity of the pool to his property line and dwelling, which concerns prompted the Applicants' stipulation with respect to providing a landscape plan and landscape screening.

9. Shannon D'Janoos, 12 Elliott Road, was duly sworn and testified in favor of the application. She identified several neighboring lots with families with young children and shared

what she perceived to be the excitement of the neighborhood that there will be a pool for the children in the area.

DECISION

10. 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:

11. 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.

12. 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.

13. 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.

14. Pursuant to N.J.S.A. 40:55D-70(c)(1), the Board finds that granting the requested relief is appropriate as the Applicants 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 since the Property is a significantly undersized lot, and the excess impervious coverage is largely a product of the undersized nature of the lot, the significant footprint of the one-story (ranch) dwelling, the side-loaded garage requiring a significant paved area to maneuver vehicles so they need not back out onto Shawnee Path, and the location of the additional detached garage.

15. 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.

16. The Board recognizes that the proposal results in a relatively modest increase in impervious coverage, some of which relates to the pool itself, which is sometimes referred to as "stormwater neutral." The Board recognizes that granting the requested variance relief for lot coverage deviation will allow the Applicants to improve the functionality and aesthetics of the Property without any substantial change in the impervious coverage on the Property. The Board further recognizes that impervious lot coverage is typically associated with stormwater management, and with the Applicants' existing stormwater management system, the deviation will not create substantial detriment to the neighboring properties. While the pool setback itself just meets the Ordinance requirements, nevertheless the Board considers the landscape screening of the view from Lot 29 to be a material condition of its approval.

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, the increase in the lot coverage is not changing substantially from what currently exists and the Applicants stipulated to lot grading / stormwater management and landscape screening. The Board recognizes that only one member of the public objected to the Applicant's proposal, and, in fact, one neighboring members of the public attended to speak in favor of the application, 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 September 6, 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 put a zoning table on the plat plan;
2. The Applicants shall install a fence around the swimming pool in accordance with Section LU-154.1(d)(3) which requires that a private residential swimming pool be surrounded by a fence at least 54 inches in height but no more than six feet in height, with a self-latching gate;
3. Per Long Hill Township Code Chapter 14, Lot Grading, as the disturbance exceeds 1,000 square feet and the project proposes a net increase of more than 400 square feet of impervious cover, Lot Grading approval shall be obtained;
4. The Applicants shall follow all design standards of Chapter 14;
5. The Lot Grading Plan shall require a stormwater management design per Long Hill Township Code Section LU-146, Stormwater Management;
6. A construction detail for the proposed drywell, as well as sizing calculations, shall be provided. The drywell design shall comply with all parameters indicated in Long Hill Township Code section LU-146.3, b & c;
7. The Applicants shall install a sumped inlet prior to the drywell for debris collection and removal prior to discharge to the tank, subject to the review and approval of the Township Engineer;
8. The Applicants shall extend the swales to the high side of the pool as needed, subject to the review and approval of the Township Engineer;
9. The Applicants shall comply with all of the items on both the Board Engineer and the Board Planner's memos;
10. The Applicants shall provide a landscape plan subject to the review and approval of the Board Planner, primarily intending to screen the view of the pool from, and to, the dwelling on adjacent Lot 29 to the north;
11. 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;

12. 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;

13. 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;

14. 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

15. 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 Applicant.

WHEREAS, a Motion was made by Mr. Aroneo and seconded by Mr. Lindeman 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:, Aroneo, Lindeman, Grosskopf, Johnson, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Gianakis, Hain, Rosenberg, Brennan.

ATTEST:

Debra Coonce
Debra Coonce,
Board Secretary

Edwin F. Gerecht, Jr.
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				
ROSENBERG			X		
HAIN			X		
LINDEMAN – ALT 1	2nd				
BRENNAN – ALT 2			X		

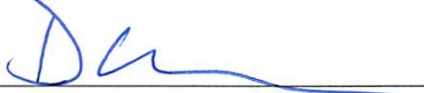
I hereby certify this to be a true copy of the Resolution adopted on October 4, 2022.

Debra Coonce
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.

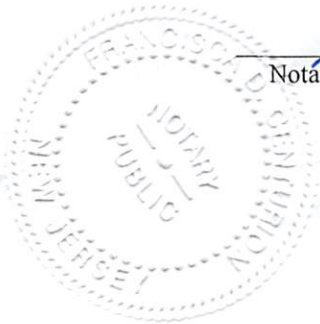


Sworn and subscribed before me this

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