

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

**PATRICK DWYER  
58 DELAWARE AVENUE  
STIRLING, NEW JERSEY 07980  
BLOCK 13204, LOT 20  
APPLICATION NO.: 2020-09Z**

**Hearing Date: March 2, 2021  
Board Action: March 2, 2021  
Memorialization: April 6, 2021**

WHEREAS, Patrick Dwyer (the “Applicant”) is the owner of property located at 58 Delaware Avenue in Stirling, identified as Block 13204, Lot 20 (the “Property”) on the Long Hill Township Tax Map, in the R-2, Residential, zoning district; and

WHEREAS, the Applicant applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application requesting relief from certain bulk standards and waivers in order to construct an addition to an existing single-family home and to install an in-ground swimming pool on the Property; and

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

Bulk variances 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:

Minimum Lot Area (Ordinance Section 131) – Existing Condition:  
Required: 45,000 sq. ft.; Existing and Proposed: 25,408;

Minimum Lot Width (Ordinance Section 131) – Existing Condition:  
Required: 150’; Existing and Proposed: 120’;

Minimum Front Yard Setback (Ordinance Section 131) – Existing Condition:  
Required: 75’; Existing and Proposed: 50.7’;

Minimum Side Yard Setback (Ordinance Section 131) – Existing Condition:  
Required: 25’; Existing and Proposed: 18’;

Minimum Side Yard. Both Yards (Ordinance Section 131) – Existing Condition:  
Required: 36’; Existing and Proposed: 34.75’;

Maximum Lot Coverage (Ordinance Section 131):  
Permitted: 20%; Existing: 20.6%; Proposed: 26%;

Location of an accessory use within a steep slope area (Ordinance Section 142.1a);

Rear Yard Setback from Critical Area (Ordinance Section 142.1d):  
Required: 50'; Proposed: 8';

Height of Retaining Wall with Guardrail (Ordinance Section 154.1e.3):  
Permitted: 6'; Proposed 6.5'; 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 November 1, 2020;

“Plot Plan & Grading Plan, Proposed Addition and Pool at Block 13204, Lot 20, Long Hill Township, New Jersey,” prepared by Finelli Consulting Engineers, dated June 16, 2020, last revised September 8, 2020, consisting of two sheets;

“New Addition for Mr. & Mrs. Dwyer, Stirling, NJ,” prepared O’Brien Architects, Inc., dated February 1, 2018 and revised through September 20, 2020, consisting of 9 sheets;

Property Survey entitled “Map of Property situated in Township of Long Hill, Morris County New Jersey” prepared by Benjamin & Wizorek, Inc., dated October 3, 2014;

Morris County Soil Conservation District Soil Erosion & Sediment Control Plan review letter dated November 23, 2020 deeming the application incomplete; 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:

Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated February 12, 2021;

Memorandum from Board Engineer, Richard Keller, PE, PP, CME, dated February 26, 2021;  
and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicant, appearing pro se, 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. Patrick Dwyer, Applicant;
2. Erin Dwyer;
3. Joseph Modzelewski, P.E., Applicant’s Engineer; and

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

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

1. Patrick and Erin Dwyer were sworn and testified regarding describing the proposal. Ms. Dwyer stated that the addition will contain a family room. Ms. Dwyer also stated that a walk out will be constructed from the basement that will be consistent to other homes in the neighborhood. Ms. Dwyer indicated that landscaping could be installed to screen the Property. Mr. Dwyer testified that a small deck area will be installed outside of the proposed addition. Mr. Dwyer stated that two egress doors are needed from the basement area. In response to public questions, Mr. Dwyer testified that the only fence proposed will surround the pool. The project will take anywhere from 5 to 9 months.

2. Joseph Modzelewski was sworn, provided his qualifications and was accepted by the Board as a licensed, professional engineer. Mr. Modzelewski indicated that the lot coverage was calculated with the deck. The proposed addition will be slightly larger than the deck, the pool will contribute to the increase in lot coverage. The swimming pool will comprise 540 square feet and the hardscape surrounding the pool is proposed to be 4' in width. Mr. Modzelewski stated that the entire backyard is within the critical slope area. A tiered retaining wall (consisting of 2 walls) is proposed within 6 feet of the concrete walkway. Mr. Modzelewski testified describing the stormwater management being implemented and the new drywell. The runoff will be directed toward the rear of the Property and not toward any neighboring properties. Mr. Modzelewski indicated that he would provide verification that the proposed limit of disturbance will not impact the nearby wetlands area. Mr. Modzelewski testified that the swimming pool and spa will be at least 10' away from the dwelling and the coverage of the noncritical area will be 40% and does not require a variance. Mr. Modzelewski testified that the Applicant does not have the ability to purchase additional land as the adjacent lots are improved. The Property to the rear is open space. The new drywell will mitigate any runoff created by the new impervious coverage. Mr. Modzelewski stated that the Applicant will comply with the required 54" fence height around the swimming pool and that the fence will contain a self-latching gate.

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

1. The Property is comprised of an improved 25,408 square foot parcel designated as Lot 20 in Block 13204, more commonly known as 58 Delaware Avenue, in the R-2, residential zoning district. The Property is improved with a two-story frame dwelling with an attached garage and rear deck and a shed in the northeast corner. The Property contains steep slopes in excess of 15% on approximately 5,140 square feet in the location of the rear yard.

2. The Applicant proposes to remove the existing deck and construct a single-story addition to the dwelling as well as an additional egress from the basement. The Applicant further proposes to construct a kidney shaped in-ground swimming pool and spa with appurtenant pool pad, concrete walkway, retaining walls, and drywell 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.

6. The Board finds that relief may be granted for the deviations resulting from the Applicant’s proposal to construct an addition to the single-family residential dwelling and to install an in-ground 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 Property is also encumbered by critical slopes in the rear. The Board finds that the naturally occurring physical constraints present a hardship. The Board further 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 is satisfied that the open space located to the rear of the Property together with the Applicant’s agreement to comply with the conditions that have been imposed herein mitigates any negative aspects of the proposed development. The Board is further satisfied that the Applicant’s proposal to construct the pool and addition 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 comments and requirements in the Board Engineer's report dated February 26, 2021.
- c. The Applicant shall correct any discrepancies on the plans and shall resubmit said plans, to the satisfaction of the Board Engineer and Board Planner.
- d. The Applicant shall investigate the potential for moving the drywell in order to save the 16" caliper tree, to the satisfaction of the Board Engineer.
- e. The Applicant shall ensure that the swimming pool and spa is constructed at least 10' away from the principal dwelling structure's foundation, to the satisfaction of the Board Engineer.
- f. The Applicant shall ensure that the fence enclosing the swimming pool is at least 54" in height, to the satisfaction of the Board Engineer.
- g. The Applicant shall provide a landscape plan for landscaping around the perimeter of the swimming pool, to the satisfaction of the Board Engineer and Board Planner.

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. 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.


WHEREAS, A Motion was made by Mr. Molloy and seconded by Mr. Grosskopf to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on April 6, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Gianakis, Grosskopf, Hain, Malloy, Rosenberg, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo, Johnson, Pesce.

RESOLUTION DATE: April 6, 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			X		
ARONEO			X		
GIANAKIS					X
GROSSKOPF	X				
MALLOY	M				
ROSENBERG					X
PESCE – ALT 1			X		
HAIN – ALT 2	2 <sup>ND</sup>				

I hereby certify this to be a true copy of the Resolution adopted on April 6, 2021.

  
 Debra Coonce,  
 Board Secretary

STATE OF NEW JERSEY

SS.

MORRIS COUNTY

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 15th day of April, 2021  
 in said newspaper.

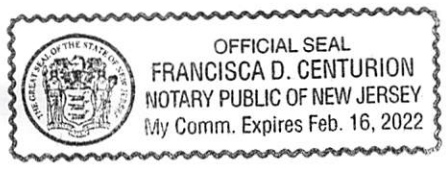
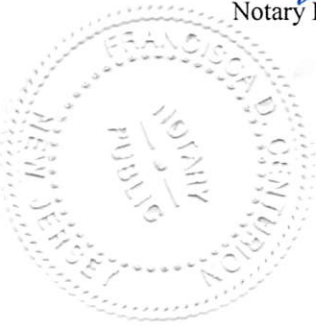


Sworn and subscribed before me this

19th day of April, 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 April 6, 2021:

**Resolution of Approval Memorialized**  
 Use Variance  
 Block 10515 / Lot 7 / Zone B-D  
 44 Plainfield Road  
 Application No. 2020-02Z  
 Jonathan Rocker

**Resolution of Approval Memorialized**  
 Bulk Variances  
 Block 13001 / Lot 3 / Zone R-3  
 62 Central Avenue  
 Application No. 2020-08Z  
 Walter Thievon

**Resolution of Approval Memorialized**  
 Bulk Variances  
 Block 13204 / Lot 20 / Zone R-2  
 58 Delaware Avenue  
 Application No. 2020-09Z  
 Patrick Dwyer

**Resolution of Approval Memorialized**  
 Bulk Variances  
 Block 13801 / Lot 69 / Zone R-2  
 44 Magna Drive  
 Application No. 2020-12Z  
 Sean & Kristen Conner

All documents relating to this application may be examined 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.\$48.45 04/15/21