

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

**ANDREW HART
46 Preston Drive
Gillette, New Jersey
Block 13803, Lot 19
APPLICATION NO. #22-05Z**

**Hearing Date: July 5, 2022
Board Action: July 5, 2022
Memorialization: August 16, 2022**

WHEREAS, ANDREW HART (the “Applicant”) is the owner of property located at 46 Preston Drive, Gillette, identified as Block 13803, Lot 19 (the “Property” or the “Site”) on the Official Tax Map of the Township of Long Hill, in the R-3 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 (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 29.51%, whereas the maximum permitted lot coverage in the R-3 Residential Zone is 20%, pursuant to Section 131, Schedule of Bulk Regulations, of the Township Land Use Ordinance (the “Ordinance”);
- b. A bulk variance for a front-yard setback (north) of 19.62 feet, whereas the minimum required front-yard setback is 30 feet, pursuant to Section 131, Schedule of Bulk Regulations, of the Ordinance; and
- c. A bulk variance for a setback from critical area (steep slopes) of 19’4”, whereas the minimum required critical area setback is 50 feet, pursuant to Section 142.1 of 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 for 46 Preston Drive, signed by Andrew Hart, dated 3/21/2022;
- b. Six site photos; and

- c. Architectural elevations and plans, consisting of 3 sheets, prepared by Jose Gennaro, AIA, dated 3/23/2022; and

WHEREAS, the Applicant 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 June 28, 2022, same consisting of three pages; and
- b. Memorandum from Board Engineer, Richard Keller, PE, PP, CME, dated June 23, 2022, same consisting of three pages; and

WHEREAS, the subject site includes one tax lot (i.e., Block 13802, Lot 19) located on the south side of Preston Drive in Gillette. The lot is in the R-3 Residence zone and is approximately $\pm 13,302$ square feet (i.e., ± 0.30 acres). To the east of the Property, Preston Drive curves around making the subject parcel a through lot with two frontages each on Preston Drive. The frontages are each approximately ± 100 feet in length. The Site is currently improved with a $\pm 1,703$ square foot, 1.5 story, single-family residential home with finished basement. The driveway to the Property is on the north side of the existing home.

The Applicant is proposing to add a $\pm 1,597$ square foot second story, a ± 22 square foot two-story addition to the front of the home, and a ± 112 square foot front porch addition. The home would continue to have its driveway and garage off Preston Drive on the north side of the home. However, the front entry would be oriented on the south side of the home facing the lot's second frontage on Preston Drive.

The proposed second floor would have a 1.5-foot overhang on the north side of the home, for a portion of the addition only. The first story would be renovated and expanded to include a kitchen, great room, study, dining room, powder room, full bathroom, front entry portico, and porch. The proposed second story will have four bedrooms and two full bathrooms. The existing home is clad in brick veneer. The proposed additions will be clad in fiber cement siding; 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, the Applicant presented testimony from the following individuals:

1. Andrew Hart, owner of the Property (the Applicant) and his wife, Ana Hart; and
2. Jose Gennaro, A.I.A., the Applicant's Architect and Professional Planner; 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, Samantha Anello, PE, CME, CFM, the Board Engineer, was duly sworn according to law; and

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

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

2. Mr. Hart testified that he and his wife owned the home for 12 years and reside there with their 3 daughters, ages 13, 11 and 7 years. The home is a 2-bedroom ranch and now each girl needs her own bedroom. The second story addition will provide 4 upstairs bedrooms and there will be a kitchen, living room, dining room, and study on the first floor.

3. Jose Gennaro, A.I.A., with a business address of 193 New York Avenue, Newark, 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 and Professional Planning. Referencing the Architectural Plans submitted with the application materials, Mr. Gennaro provided an overview of the proposed improvements.

4. Mr. Gennaro introduced into evidence the following exhibits:

Exhibit A-1 – revised plot plan, dated 7/1/2022;

Exhibit A-2 – Gennaro response letter to Anello, dated 7/1/2022; and

Exhibit A-3 – Four (4) photographs of the existing dwelling.

5. Mr. Gennaro described the existing dwelling as a very small, 2 bedroom, one and one-half bathroom ranch, with a 1 car attached garage and an unusable porch.

6. He described the proposed expanded dwelling, with 4 bedrooms and 2 bathrooms and a laundry closet on the second floor, a new porch with steps (for aesthetics and to protect from the elements), with brick and fiber cement siding and a fiberglass shingle roof.

7. Mr. Gennaro addressed the existing deviations, including the undersized lot area and lot width, and the fact that the Property is a through lot with 2 front yards, with a conforming southerly front-yard setback and a deficient northerly front-yard setback, which deficient front-yard setback will be exacerbated by a second floor overhang.

8. Mr. Gennaro explained that the Applicant reduced the proposed lot coverage by eliminating a proposed front walkway, such that the proposed lot coverage from the existing lot

coverage increased only 160 square feet from 28.29% to 29.51%, whereas the maximum permitted lot coverage is 20%.

9. Mr. Gennaro introduced into evidence **Exhibit A-4**, a colorized version of the plot plan, highlighting the additional impervious coverage in green, the existing pavers in pink, and the existing asphalt in orange. He confirmed the calculation of the building height at 33'8", thus conforming with the ordinance requirement, and the setback to the steep slope area from the porch addition. He also confirmed that the dwelling would not constitute 3 stories post-addition, despite that there exists a walkout basement.

10. Mr. Gennaro opined that the dwelling post-addition would not be out of character with the neighborhood, particularly given the recent additions and other improvements to a few nearby homes, and, in fact, he opined that the dwelling post-addition will be more in character with the neighborhood than it is at present.

11. The Applicant stipulated to items 2, 3, 10 and 11 in Ms. Anello's June 23, 2022 Engineering Memo, and Ms. Anello confirmed items 7 through 9 were not required and that all of the other items had been satisfied.

12. No member of the public questioned any of the witnesses.

13. Paul White, 25 Daughtery Road, Robert Saushuck, 49 Preston Drive, and Omar Baig, 101 Preston Drive, all spoke in favor of the application and opined that the proposal would render the Property more in character with the neighborhood and constitute a substantial improvement to same.

DECISION

14. 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:

15. 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.

16. 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.

17. 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.

18. 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 Applicant would suffer an undue hardship since the Property is a significantly undersized lot, with a substantial deficiency in both the lot area and the lot width, and it has 2 front yards, and thus is subject to 2 front-yard setback requirements, as it is a “through lot.”

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

20. As to the requested variance relief for the coverage deviation, the Board recognizes that the proposal results in a relatively modest increase in impervious coverage. The Board recognizes that granting the requested variance relief for lot coverage deviation will allow the Applicant 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 Applicant’s existing stormwater management system, the deviation will not create substantial detriment to the neighboring properties.

21. As to the requested variance relief for the “secondary” front-yard setback and the critical area setback, the Board recognizes that the proposal results in a deviation from the Ordinance bulk standards, however, it will allow the Applicant to improve the functionality and aesthetics of the Property without any substantial detriment to the neighboring properties. Moreover, the front-yard setback deficiency is only increased by less than 2 feet and, hence, is de minimis, and the setback from the existing steep slopes is actually greater at the addition than presently exists and it is caused by a second story overhang for a stretch of only about 16 linear feet.

22. As such, the Board finds that the Applicant has 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:

23. 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.

24. 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, the increase in the lot coverage is not changing substantially from what currently exists, and the setback encroachments are relatively modest. The Board recognizes that no member of the public objected to the Applicant’s proposal, and, in fact, 3 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.

25. 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-3 Residential Zoning District.

26. Here, the Board finds that the Applicant has 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 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. All exterior lighting shall be shielded and facing in a downward facing direction so as to not create any light spillage onto neighboring properties;

- c. The Applicant shall submit a Soil Erosion and Sediment Control (SESC) certification, or letter of exemption, from the Morris County Soil Conservation District prior to any land disturbance, if required;
- d. The Applicant shall comply with the requirements and recommendations set forth in the Board Engineer's Memorandum, dated June 23, 2022, including, all necessary updating and revisions to the previously submitted plans;
- e. 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; and
- f. 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.

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. 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

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' 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. Grosskopf 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 August 16, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes:, Grosskopf, Lindeman, Gianakis, Brennan, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo, Hain, Johnson, Rosenberg.


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	M				
HAIN			X		
ROSENBERG			X		
LINDEMAN – ALT 1	2ND				
BRENNAN – ALT 2					X

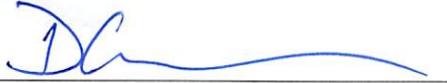
I hereby certify this to be a true copy of the Resolution adopted on August 16, 2022.


 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 25 day of August, 2022
in said newspaper.

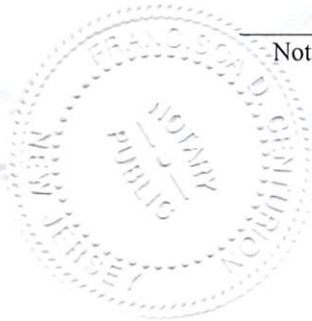


Sworn and subscribed before me this

25 day of AUGUST, 2022



Notary Public of New Jersey



Long Hill Township
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 August 16, 2022:

Resolution of Approval Memorialized
Major Preliminary & Final Site Plan
Block 10515 / Lot 7 / Zone B-D
44 Plainfield Road
Application No. 21-13Z
Jonathan Rocker

Resolution of Approval Memorialized
Bulk Variance
Block 13803 / Lot 19 / Zone R-3
46 Preston Drive
Application No. 22-05Z
Andrew Hart

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. \$35.19 08/25/T1