

**MINUTES**  
**JUNE 21, 2016**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:00 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meetings on the municipal bulletin board, by sending a copy to the Courier News and Echoes-Sentinel and by filing a copy with the Municipal Clerk IN January 2016.

**MEETING CUT-OFF**

Chairman Behr read the following statement: Announcement was made that as a matter of procedure, it was the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any Regular or Special Meeting of the Board unless a motion was passed by the members then present to extend the meeting to a later specified cut-off time.

**CELL PHONES AND PAGERS**

Chairman Behr read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll, the following were Present:

Excused:

E. Thomas Behr, Chairman  
Edwin F. Gerecht, Jr., Vice-Chairman  
Jerry Aroneo, Member  
Richard Keegan, Member  
Michael O'Mullan, Member  
Thomas Sims, Member  
Jeffrey Wills, 1<sup>st</sup> Alternate  
Brian Johnson, 2<sup>nd</sup> Alternate

Michael Pesce, Member

Dan Bernstein, Bd. Attorney  
Thomas Lemanowicz, Bd. Engineer  
Kevin O'Brien, Bd. Planner  
Cyndi Kiefer, Bd. Secretary

Ms. Kiefer advised Chairman Behr that he had a quorum and could proceed.

**EXECUTIVE SESSION**

It was determined that there was no need to hold an executive session.

**APPROVAL OF MINUTES**

Vice Chairman Gerecht moved approval as written of the minutes of June 7, 2016. Mr. O'Mullan seconded. A **VOICE VOTE** was taken. The minutes of June 7, 2016 were unanimously approved as written. Chairman Behr, Mr. Aroneo and Mr. Wills were ineligible to vote as they were not present at that meeting.

**PUBLIC HEARING**

DANIEL HENN  
426 Mountain Avenue  
Block 11601, Lot 15

#16-02Z  
Bulk Variances  
Development Permit

**PROOF OF SERVICE SUBMITTED**

Applicant waived court reporter appearance

Present: Steven Warner, attorney for the applicant  
Candice Davis, engineer for the applicant  
Daniel Henn, applicant

Daniel Henn applied to the Zoning Board of Adjustment of the Township of Long Hill for submission waivers, a Development Permit Waiver, and bulk and dimensional variances under N.J.S.A. 40:55D-70c for the construction of a modular single family residence on property which was located at 426 Mountain Avenue, Gillette, and designated as Lot 11, Block 11106 on the Long Hill Township Tax Map and located in the R-3 Residential Zone.

Steven K. Warner, Esq. with the firm of **Ventura, Miesowicz, Keough & Warner, P.C.**; Civil Engineer Candice Davis, P.E. with the firm of **Yannoccone, Villa & Aldrich, LLC**; Daniel Henn and Danielle Henn presented the application.

The application was reviewed by Zoning Board Planner Kevin O'Brien, P.P. of the firm **Shamrock Enterprises, Ltd.** and Zoning Board Civil Engineer Thomas Lemanowicz, P.E. of the firm **Remington, Vernick & Arango Engineers.**

The Board, after considering the evidence and testimony presented by the applicants, the Board professional's, Don Farnell of the Long Hill Shade Tree Commission, and adjoining neighbor to the north John Hagel, who resides at 5 Jersey Avenue, has made the following factual findings:

The vacant, rectangular shaped subject property has 200 feet of frontage on Mountain Avenue, side lines of 131.77 and 133.81 feet, and a lot area of 26,557.9 square feet or 0.610 of an acre. The wooded site was within an established residential neighborhood. The subject property was substantially encumbered with 21,754.9 square feet of wetlands. The applicant obtained permit number 1430-16-0001.1 FWW16001 under General Permit No.6 from the New Jersey Department of Environmental Protection (N.J.D.E.P.) on April 29th, 2016 to fill the isolated wetlands on the lot. The site has a high ground water table and there was minimal ground water absorption or infiltration. The site drains from the south to the north. The low point was in the northwest corner of the property.

Submission waivers were requested from checklist items 13, 19, 20, and 23. The Board's professionals recommended approval of items 13, 20, and 23, and deferred on 19 Stormwater Management as the applicant stated that Stormwater Management measures were not feasible due to freshwater wetlands, high seasonal ground water, and hydrologic soil Class C soils. The Board allowed the applicant to proceed with its application without making a determination on the lack of a Stormwater Management Plan.

The applicant, Daniel Henn, proposed to construct a two story, colonial style, modular home. The residence would have a footprint of 1,551 square feet, with a basement, an attached two car garage with about 576 square feet, and a patio of approximately 560 square feet. He presented photographs which showed the proposed dwelling was consistent with the new homes in the area. At the request of the Board, Mr. Henn agreed to put two (2) windows on the left (south) side of the home which was shown as a blank wall. Mr. Henn submitted architectural plans for the proposed home which were examined by the Board and found to be compatible with the homes in the neighborhood with a minor modification by adding two (2) windows to the left side of the home.

Construction of principal buildings and other structures was not permitted in a critical area. A critical area was defined in Section 111 of the Long Hill Township Land Use Ordinance as including "... any wetlands areas ...". The proposed residence will be constructed within a wetlands area. Section 142.1d required a principal building to have a front and rear yard setback of 50 feet and a sideyard setback of 25 feet from any critical area. The proposed home will have no setbacks from the critical area.

Pursuant to Section 142B, all single family residential lots created after the adoption of the Ordinance in 1996 must contain 10,000 square feet of non-critical area. The lot contained less than 5,000 square feet of non-critical area. However, the lot was created prior to the adoption of the Ordinance and therefore Section 142B did not apply.

The subject property contains 26,557.9 square feet while the minimum lot size in the R-3 Zone was 30,000 square feet.

Mr. Warner stated that as previously noted, the subject property contained 26,557.9 square feet, while the minimum lot in the R-3 Zone was 30,000 square feet. Testimony disclosed the lot was one of the largest within the 200 foot radius. Land could not be acquired from adjoining undersized parcels without making them more non-conforming. A classic hardship existed for the slightly undersized lot. Without a variance, it would remain "a lot in perpetuity ..." De Moss v. Watchung, 137

N.J.L. 503, 504 (New Jersey Supreme Court 1948). As noted in *Commons v. Westwood*, 81 N.J. 597, 605-606 (1980):

“‘Undue hardship’ involves the underlying notion that no effective use can be made of the property if the variance was denied. . . . However, when the regulation renders the property unusable for any purpose, the analysis calls for further inquiries which may lead to the conclusion that the property owner would suffer an undue hardship.”

The same hardship was associated with the Development Permit and c-1 variances (N.J.S.A. 40:55D-70c) for construction within a wetlands and the absence of the required setbacks from the critical areas.

Civil Engineer Davis testified that once the property was filled in, pursuant to an N.J.D.E.P. permit, the wetlands would disappear. That being the case, the foregoing non-conformities would become moot.

The applicant was entitled relief under both the hardship rubric and the wetlands mootness scenario.

Attorney Warner contended that the requested relief was also justified under c-2 by advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;” By promoting the general welfare by the construction of a new home.

“e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment” by promoting the establishment of an appropriate population density by the construction of a home on one of the largest lots in the neighborhood.

“i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement” by promoting a desirable visual environment by the construction of an attractive single family residence.

Mr. Warner stated that the benefits from the deviations substantially outweighed any detriments. He added that the requested Development Permit and variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Long Hill.

The applicant's Engineer Davis contended that a Stormwater Management Plan would not operate on the site on account of:

- Wetlands on substantially all of the property.
- High seasonal ground water.
- Hydrologic soil that does not permit infiltration.

Therefore, no Stormwater Management Plan was proposed. The Zoning Board Engineer did not disagree with this assessment.

Chairman Behr noted the time and asked the board members for a motion to extend the meeting by 30 minutes. Vice Chairman Gerecht motioned, Mr. Johnson seconded and by **VOICE VOTE** the meeting was unanimously extended to 11:30 PM.

Chairman Behr asked if there were any questions or comments from the public.

Adjoining neighbor John Hagel was concerned with water runoff to his lot. The applicant's Engineer Davis agreed to revise the plans to provide for swales along the east and northwest corner of the property which would protect adjoining properties while maintaining the existing drainage pattern. The storm water would ultimately flow to a catch basin in Mountain Avenue.

Don Farnell of the Shade Tree Commission was concerned with the number of trees which would be removed from the site and the insufficient replacement. The Board, with the applicant's consent, required in the conditions herein, a landscape plan with water tolerant vegetation which would not only improve aesthetics, but reduce water runoff from the site.

The applicant proposed a water tight basement in his home but agreed to conditions 6-9 which would limit runoff.

Chairman Behr asked if there were any further comments or questions from the public. Hearing none he closed the meeting to the public and the board members began deliberations.

Vice Chairman Gerecht moved approval of the application which was seconded by Mr. Wills. A **ROLL CALL VOTE** was taken. All those in Favor: Vice Chairman Gerecht, Mr. Aroneo, Mr. Keegan, Mr. O'Mullan, Mr. Sims, Mr. Wills, Chairman Behr. Mr. Johnson was ineligible to vote because a maximum of seven members are allowed to vote on an application. The application was approved unanimously subject to the following conditions:

- 1) Submit DEP General Permit #6 plans to the Board Engineer.
- 2) Discuss utility line locations to the home from the right of way with the Board Engineer and with the appropriate utility companies to limit the number of trees removed and to provide a more direct path from the right of way to the house.
- 3) Add a concrete pad and connection to the walkway from the garage entry door, adjusting lot coverage values accordingly.
- 4) The engineering plans indicate a 2 foot drop from the finished floor of the dwelling to the garage floor. However, there are no steps shown down into the garage on the floor plans, and the rear elevation view appears to show the rear sliding doors at the same level as the rear entry door to the garage, again suggesting that garage and first floor elevations are the same. The plans contain a spot grade of 100.0 at the point in the rear wall where the garage meets the dwelling. This was the same location as the rear door to the garage, where the garage slab was at elevation 99.5. The applicant should review this.
- 5) In accordance with Ordinance Section 146.8 d, the plans shall contain a note as follows:  
  
"All roof gutters shall be protected from the accumulation of leaves and litter by the installation of an aluminum gutter cap leaf separation device. Gutter screens or louvers are not acceptable."
- 6) Provide waterproof foundation information to the Board Engineer.
- 7) Board Engineer to work with applicant to locate appropriate sump pump drainage.
- 8) Sump pump to be used for interior water removal only. No groundwater from around or under the basement shall be pumped to the surface.
- 9) Any fill on property shall not be placed near the property line so as to protect neighboring trees.
- 10) Raise all utilities and mechanicals four feet above the basement floor as a flood prevention measure.
- 11) Add two windows on the first floor to Sheet 4.2.
- 12) Add a window on the left side of the home and a window centered on the peak of the garage to Sheet 4.2.
- 13) Add two sconces that face downward and shield the light source onto the garage facade.
- 14) Provide translucent light fixtures that shield the light source on the front and back facades. The following conditions shall be reviewed by and are subject to the approval of the Board Planner or Board Engineer as noted:
- 15) Flatten the grade with gravel infiltration trenches and plant trees for approximately 15 feet of width along the southern and northern boundaries as a stormwater measure. By Board Engineer
- 16) Save as many healthy sustainable trees as possible on the property. By Board Planner
- 17) Prepare a final tree and landscaping plan which was subject to the approval of the Board Planner in consultation with Don Farnell of the Shade Tree Commission. The landscape plan was to be permanently maintained. Dead diseased and missing trees are to be replaced to the approval of the Board Planner.
- 18) Guard against the destruction of any off site trees By Board Planner."
- 19) Payment of all fees and escrows.

20) Proof of payment of real estate taxes through the third quarter of 2016.

21) Construction of home to commence within one year of the adoption of the within resolution or the variance will expire, unless tolled by an appeal.

**PUBLIC HEARING**

NICHOLAS COCUZZA  
Mercer & Main Avenue  
Block 11601, Lot 15

#16-04Z  
Bulk Variances  
Development Permit

**CARRIED TO JULY 5, 2016 WITH NO FURTHER NOTICE**

Vice Chairman Gerecht motioned, Mr. O'Mullan seconded and by unanimous **VOICE VOTE** the meeting was adjourned at 11:30 PM.

Date: \_\_\_\_\_

\_\_\_\_\_  
Cyndi Kiefer  
Planning & Zoning Coordinator