

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

**MARCO AND MARILEIDE CAVALLARI
95 E. RAYBURN ROAD
MILLINGTON, NEW JERSEY 07946
BLOCK 12702, LOT 38
APPLICATION NO.: 2021-06Z**

**Hearing Date: May 4, 2021
Board Action: May 4, 2021
Memorialization: June 15, 2021**

WHEREAS, Marco and Marileide Cavallari (the “Applicants”) are the owners of property located at 95 E. Rayburn Road in Millington, identified as Block 12702, Lot 38 (the “Property”) on the Long Hill Township Tax Map, in the R-3, Residential, zoning district; and

WHEREAS, the Applicants applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application requesting relief from certain bulk standards in order to construct an inground swimming pool on the Property; and

WHEREAS, the Applicants 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:

Maximum Lot Coverage (Ordinance Section 131):
Permitted: 20%; Existing: 20.3%; Proposed: 27.1%; 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:

Application with addenda, dated March 10, 2021;

Property Survey of 95 E. Rayburn Road, prepared by Martin A. Grant, dated January 19, 2018;

Pool Site Plan for 95 E. Rayburn Road, prepared by Lantelme, Kurens & Associates, P. C. Engineers & Land Surveyors, consisting of 1 sheet, dated December 30, 2020; and

WHEREAS, the Applicants 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 April 29, 2021;

Memorandum from Board Engineer, Richard Keller, PE, PP, CME, dated May 1, 2021;
and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicants, represented by attorney Michael Selvaggi, Esq., were 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 Applicants presented testimony from the following individuals:

1. Marco and Marileide Cavallari, Applicants;
2. Chris Lantelme, Applicants' Engineer; and

WHEREAS, no members of the public appeared to ask questions about or to speak with regard to the Application; and

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

1. Marco and Marileide Cavallari were sworn and testified regarding describing the proposed inground swimming pool. Mr. Cavallari testified describing the Applicants' proposal to construct an inground swimming pool in the rear of the Property. An existing deck located at the rear of the home will be removed and replaced by a patio. The pool will be surrounded by a paver patio and will contain a hot tub. The Applicants will install landscaping inside of the existing vinyl fence once the construction of the pool is completed. An existing fire pit is being removed.

2. Chris Lantelme was sworn, provided the Board with his qualifications and was accepted as a licensed engineer. Mr. Lantelme testified describing the Property, the proposed improvements and the deviation from the maximum lot coverage requirements. Mr. Lantelme testified that the Property slopes from south to north and that the Applicants will utilize stormwater management techniques in order to mitigate any impacts on neighbors although, Mr. Lantelme indicated that the impacts would be minimal. Mr. Lantelme testified that the location of the home in the far rear of the Property gives rise to the need for a long driveway which increases the lot coverage. The home was most likely located in the rear of the Property in order to take advantage of an existing foundation. As stipulated on the record, the Applicants will comply with the Engineer's report and will provide a perc test before construction on the Property commences. Mr. Lantelme further stipulated on behalf of the Applicants that construction equipment will access the rear of the Property from the driveway and that the construction plans will be amended to include protective fencing around existing trees in order to protect the trees during construction activities.

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

1. The Property is comprised of an improved parcel designated as Lot 38 in Block 12702, more commonly known as 95 E. Rayburn Road, in the R-3, residential zoning district. The Property is improved with an existing single-family residence with a deck, a small shed, and a wooden platform with a fire pit.

2. The Applicants propose to eliminate the existing deck and an existing platform and fire pit and construct a new inground swimming pool with spa and patio surround together with other site improvements as depicted in Applicants' plans. The Applicants' proposed improvement deviates from the bulk standard limiting the amount of lot coverage, as enumerated in the Relief Requested, therefore the Applicant has requested relief from the Board in the form of a bulk variance in accordance with N.J.S.A. 40:55D-70c(1) and (2).

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 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 the Property's size and the location of the home on the Property is preexisting and presents 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 Applicants' 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 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 Applicants are required to comply with the following conditions:
 - a. The Applicants shall comply with the Applicant's representations to and agreements with the Board during the hearing on this Application.
 - b. The Applicants shall comply with the Board Engineer's report dated May 1, 2021;
 - c. The Applicants shall provide a perc test prior to commencement of construction, to the satisfaction of the Board Engineer and shall comply with any further guidance regarding stormwater mitigation measures;
 - d. The Applicant shall ensure that any construction vehicles or equipment access the location of construction utilizing the existing driveway on the Property.
 - e. The Applicants shall amend the plans to show protective fencing around the existing trees and shall install said fencing prior to commencing construction, to the satisfaction of 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 Applicants 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 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.

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

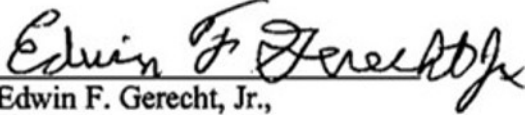
WHEREAS, A Motion was made by Mr. Johnson and seconded by Mr. Grosskopf to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on June 15, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes:, Grosskopf, Hain, Johnson, Malloy, Robertson, Rosenberg, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo, Gianakis.

RESOLUTION DATE: June 15, 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	2ND				
ARONEO			X		
GIANAKIS			X		
GROSSKOPF	X				
MALLOY	M				
ROSENBERG	X				
HAIN – ALT 1	X				
ROBERTSON – ALT 2	X				

I hereby certify this to be a true copy of the Resolution adopted on June 15, 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 1st day of July, 2021
in said newspaper.

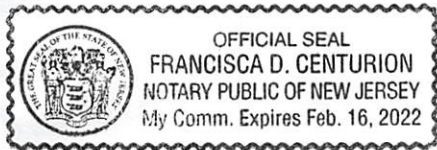


Sworn and subscribed before me this

7TH day of JULY, 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 June 15, 2021:

Resolution of Approval Memorialized
Variance
Block 13407 / Lot 28 / Zone R-3
75 Cottage Place
Application Number 21-01Z
Mr. & Mrs. Jbally

Resolution of Approval Memorialized
Variance
Block 12702 / Lot 38 / Zone R-3
95 E. Rayburn Road
Application Number 21-06Z
Marco Cavallari

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.\$34.17 07/01/T1