

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

**CHRISTOPHER AND JANET FINLEY
1552-1554 LONG HILL ROAD
MILLINGTON, NEW JERSEY 07946
BLOCK 12806, LOT 1
APPLICATION NO.: 2021-05Z**

**Hearing Date: August 31, 2021
Board Action: August 31, 2021
Memorialization: October 5, 2021**

WHEREAS, Christopher and Janet Finley (the “Applicants”) are the owners of property located at 1552-1554 Long Hill Road in Millington, identified as Block 12806, Lot 1 (the “Property”) on the Long Hill Township Tax Map, in the R-2, 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 use variances and relief from certain bulk standards in order to permit and ratify two existing principal structures and appurtenant existing accessory structures on the Property; and

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

Use variance in accordance with N.J.S.A. 40:55D-70d(1) to permit two principal residential uses and structures on a single tax lot in contravention of Section LU103.5 of the Township of Long Hill Land Use Ordinance, 1996 (the “Ordinance”);

Floor area ratio variance in accordance with N.J.S.A. 40:55D-70d(4) to permit and ratify the existing floor area ratio to the extent it exceeds 13,318 square feet as required by the Ordinance in Section LU 131;

Bulk variances in accordance with N.J.S.A. 40:55D-70c(1) and/or c(2) from the requirements in the Ordinance, as follows:

Minimum Front Yard Setback (Ordinance Section 131):
Required: 75’; Existing and Proposed: 66.58’ and 65.90’;

Minimum Site Yard Setback (Ordinance Section 131):
Required: 25’; Existing and Proposed (smokehouse): 0’;

Accessory Structures (Ordinance Section 134.4):
An Accessory structure, the smokehouse, is located and will continue to be located less than 10’ from a principal structure;

Accessory Structures (Ordinance Section 134.5):

2 existing barn/garage accessory structures and the icehouse are located and will continue to be located in a portion of the lot forward of the front line of the westerly or main residential structure in contravention of the Ordinance;

Residential Sheds (Ordinance Section 134.7(a):

More than one residential shed is located and will continue to be located on the Property in contravention of the Ordinance;

Garages (Ordinance Section 124.4(a)(1):

The existing barn structure that is currently used as a garage cannot accommodate more than one vehicle where the Ordinance requires storage for at least two vehicles but not more than four;

Swimming Pool (Ordinance Section 125.5(d):

An existing swimming pool is located and will continue to be located in a portion of the lot forward of the front line of the westerly residential dwelling or main residential structure in contravention of 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:

Application with addenda, dated March 9, 2021;

Survey, prepared by James P. Deady Surveyor, LLC, dated February 12, 2021;

Property card for 1552-1554 Long Hill Road, Millington NJ; 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 report from its Planner:

Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated April 25, 2021;
and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicants, represented by attorney, Gianni A. Corleone, 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. Christopher and Janet Finley, Applicants;
2. Carolyn Worstell, Applicants' Planner; and

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

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

1. Christopher and Janet Finley were sworn. Mr. Finley testified that the smoke house has a roof and that neither of the two dwellings contains an accessory apartment. Mr. Finley also testified that the Property does not contain any critical areas. The fenced in area behind the westerly dwelling was a paddock for horses but currently is used to keep deer out of the garden.

2. Carolyn Worstell was sworn, provided the Board with her qualifications and was accepted as a licensed professional planner. Ms. Worstell testified describing the Property and the structures that exist thereon. The main residence contains historic elements. Another residential single-family home also exists on the Property. Neither of the two homes contain any accessory apartments. The two existing barns on the Property are used as garages to store vehicles. The barns are approximately 20' and 16' high. All of the accessory structures are below 20' high. Ms. Worstell described the accessory structures. The icehouse is sunken into the ground. The chicken coop is used to store patio furniture.

Ms. Worstell testified with regard to the use variance for the second residential structure. The Property is particularly suited to having the two principal dwellings due to the historic nature of the dwellings on the Property, as described in the Township's historic records. Family farms typically contained more than one residential structure and multiple out-buildings. The Property contains six acres, is much larger than typical lots in the district and can accommodate two dwellings. The lot frontage is more than twice the minimum required in the zone. The use variance can be reconciled against the Ordinance prohibition because the residential use itself is permitted in the zone. The lot is sufficiently sized and has historically existed and functioned with the two dwellings and associated accessory buildings. Bringing the Property into conformity would require substantial expense and the destruction of an historic structure or structures. Subdividing the Property in order to separate each existing dwelling on its own lot would create further violations of the zoning ordinance and an irregular property line. With regard to the negative criteria, there will be no substantial detriment to the public good as the Property will remain exactly the same as it has for potentially centuries. The Property is sufficiently sized and no additions or alterations are proposed. Ms. Worstell also testified that there will not be substantial detriment to the zone plan and zoning ordinance because the application promotes the Township's Master Plan by preserving the Township's rural and residential character and historic resources.

With regard to the bulk variances, Ms. Worstell testified describing all of the bulk variances required, as enumerated in the Relief Requested, herein. Ms. Worstell testified that, overall, keeping the existing structures in their existing locations advances purposes "a", "c", "i", and "j" of the Municipal Land Use Law by allowing the Property to continue to function in its current condition. The variances will not alter any setbacks and will provide adequate air, light, and open space. The variances will also enable the conservation of historically significant structures. Ms. Worstell testified that there will not be substantial detriment to the public good as the Property will remain the same. In order to bring the Property into conformity with the bulk standards, the various historic structures would need to be moved and potentially damaged. The Master Plan and zoning ordinance will not

be substantially impaired because the Property, in its current state, will promote the Master Plan goals of preserving historic structures.

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 1 in Block 12806, more commonly known as 1552-1554 Long Hill Road, in the R-2, residential zoning district. The Property is improved with two existing single-family residences and several accessory structures including two barns, a smokehouse, an ice house, a chicken coop, and a swimming pool, as depicted on Applicant's plan submitted with the Application and made a part herewith. The presence of the existing residences and the locations of certain accessory structures do not conform to Ordinance standards, as enumerated in the Relief Requested, therefore the Applicants have requested relief from the Board in the form of a use variance in accordance with N.J.S.A. 40:55D-70d(1), a variance for exceeding the allowable floor area ratio in accordance with N.J.S.A. 40:55D-70d(4), and bulk variances in accordance with N.J.S.A. 40:55D-70c(1) and (2).

2. All jurisdictional requirements of the Application were met and the Board proceeded to hear the Application and render its determination which is memorialized herein.

3. An applicant requesting a use variance under subsection "d(1)" or a floor area ratio variance under subsection "d(4)" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria. In order to satisfy the positive criteria for the "d(1)" an applicant must prove, and the Board must specifically find, that either: the proposed use inherently serves the public good; the owner of the property would suffer an "undue hardship" if required to use the property in the manner permitted by the zoning ordinance; or the use would serve the general welfare because the site is particularly suitable for the proposed use. See, Saddle Brook Realty, LLC v. Twp. Of Saddle Brook Zoning Board of Adjustment, 388 N.J. Super 67, 76 (App Div 2006). Here, the Applicant did not maintain that the use was inherently beneficial or that the owner would suffer undue hardship therefore the Applicant's request must be evaluated under the site suitability test of the positive criteria. The site suitability test focuses on (1) why the location of the site within the municipality is particularly suited to the use despite the zoning and (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use. See, Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 280 (1967). It is not enough to merely demonstrate that the proposed use promotes one or more of the purposes of zoning listed in the MLUL at N.J.S.A. 40:55D-2, an Applicant must demonstrate that the site is peculiarly fitted or particularly suitable for the proposed use. See, Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519 (1977). New Jersey Courts have found that "peculiar suitability special reasons exist where, generally, the use is one that would fill a need in the general community, where there is no other viable location, and where the property itself is particularly well fitted for the use either in terms of its location, topography or shape." Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. super 200, 210 (App Div 1999).

In order to satisfy the negative criteria for a "d(1)", an applicant must demonstrate that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. The applicant for a use variance must establish the negative criteria with an enhanced quality of proof. See, Medici, 107 N.J. 1, 21 (1987). The Applicant's proofs and the Board's findings must reconcile the

proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district. Id. at 21-22.

In order to satisfy the positive criteria for a "d(4)" variance, an applicant must prove and the Board must find that, after the relief is granted, the site will accommodate the problems associated with a larger floor area than permitted by the ordinance. See, Randolph Town Center v. Randolph, 324 N.J. Super. 412, 416 (App. Div. 1999). A "d(4)" variance applicant need not show that the property is particularly suited for more intensive development. Id.

As for the satisfaction of the negative criteria for a "d(4)" variance, an applicant must also demonstrate that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. However, the applicant is not subject to the enhanced quality of proof for a "d(4)" variance. In granting an approval of a "d(4)" variance, a board must determine whether conditions can be imposed in its approval to ensure that the deviations from the FAR requirements do not cause substantial detriment to the public good or the intent and purpose of the zone plan and zoning ordinance.

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.

5. The Board finds that relief may be granted for the Applicant's proposal to retain the ongoing uses on the Property. The Board is satisfied that the Property with the existing structures

is an historic farm known as “Walnut Hill” that had existed long before the adoption of the Ordinance. The Board accepts the Applicant’s planner’s testimony and finds that the Applicant has demonstrated that the proposed use, maintaining two principal dwellings on a single lot, serves the general welfare because the site is particularly suitable for the proposed use. The Property is oversized for the zone district and has historically existed and functioned with the two dwellings and the existing associated accessory buildings without issue. The Property’s use and its appearance will not change in any manner from the standpoint of the public. Similarly, any additional floor area ratio will continue to be accommodated on the Property as it has been for potentially centuries without creating any additional problems. The Board further finds that any “d” variance relief will not pose any substantial detriment to the public good as the Property is not being altered in any manner. The Property is residential in nature and will remain so after the grant of any variance. The preservation of the existing dwellings and accessory structures will serve to safeguard a historic place, as noted in the Township’s Master Plan’s historic element and the County’s historic inventory. In addition, the Board accepts the Applicant’s position that a subdivision would further violate the Ordinance’s bulk standards and create unusually shaped lots. In light of the foregoing, the Board is satisfied that the Applicant’s proposal will not cause any substantial detriment to the zone plan and zoning ordinance.

With regard to the bulk variances, the Board notes that the same justifications that the Applicant provided to prove satisfaction of the criteria necessary to obtain “d” variance relief also applies to the criteria needed to satisfy the bulk standards. The Applicant has proven to the Board’s satisfaction that the proposal promotes certain goals of the Municipal Land Use Law, as well as the Township’s Master Plan, such as the promotion and retention of residential, agricultural, and historic uses in a location and on a parcel that is suited to such uses. The Board is satisfied that the bulk deviations which have existed on the Property for a long period of time before the adoption of the Ordinance and which are not being altered do not cause substantial detriment to the public good or detriment to the zone plan or zoning ordinance. The Board further notes that were it not for the Applicant’s request for a use variance to retain multiple dwellings and their appurtenant structures, the bulk variance relief would not be necessary. In such a circumstance the bulk variances are subsumed under the relief requested for the use variance. See, Price v. Himeji, LLC, 214 N.J. 263, 301 (2013). To the extent the bulk variances are subsumed in the request for the use variances, the Board finds that the bulk variances may be granted for the aforesaid reasons pertaining to the “d” variances.

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 amend the site plan in order to correct inaccuracies to the satisfaction of the Board Planner and shall submit same to the Board Secretary.

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.

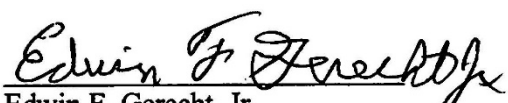
BE IT FURTHER RESOLVED, a Motion was made by Mr. Grosskopf and seconded by Mr. Malloy to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on October 5, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Aroneo, Gianakis, Grosskopf, Hain, Malloy, Rosenberg, Gerech; No: None; Recused: None; Not Eligible: Robertson; Absent: Johnson.

RESOLUTION DATE: October 5, 2021


ATTEST:


Debra Coonce,
Board Secretary


Edwin F. Gerech, Jr.,
Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT	X				
VICE CHAIRMAN JOHNSON			X		
ARONEO	M				
GIANAKIS					X
GROSSKOPF	X				
MALLOY	X				
ROSENBERG	X				
HAIN – ALT 1	2ND				
ROBERTSON – ALT 2			X		

I hereby certify this to be a true copy of the Resolution adopted on October 5, 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 14th day of October, 2021
in said newspaper.

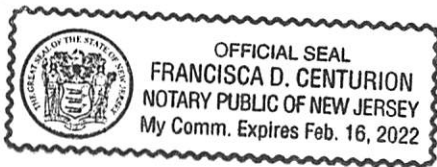


Sworn and subscribed before me this

19TH day of OCTOBER, 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 October 5, 2021:

Resolution of Approval Memorialized
Use Variance
Block 12806 / Lot 1 / Zone R-2
1552-1554 Long Hill Road
Application No. 21-05Z
Christopher Finely

Resolution of Approval Memorialized
Bulk & Use Variances
Block 11513 / Lots 3, 4 & 4.01 / Zone R-4
329 Main Avenue
Application No. 19-04Z
Meek Sook Jeon

Resolution of Approval Memorialized
Block 11602 / Lot 24 / Zone R-4
318 Mercer Street
Application No. 21-09Z
Dana Gonzales

All documents relating to this application may be examined on the website at: LHT - Zoning Board of Adjustment - Township of Long Hill, Morris County, New Jersey (longhillnj.gov) 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.\$41.31 10/14/T1