

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

**YURIY SYMCZYK
197 River Road
Millington, New Jersey
Block 12204, Lot 2
APPLICATION NO. #22-11Z**

**Hearing Date: November 1, 2022
Board Action: November 1, 2022
Memorialization: November 15, 2022**

WHEREAS, YURIY SYMCZYK (the “Applicant”) is the owner of the property located at 197 River Road, Millington, New Jersey, identified as Block 12204, Lot 2 (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 install a rectangular shaped 13ft. by 30ft. in-ground swimming pool in the northeast section of the rear yard of the single-family residence at the Property:

- a. A bulk variance for a proposed lot coverage of 21.75%, whereas the existing lot coverage is 20.1% and 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”); 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 197 River Road, signed by Yuriy Symczyk, dated 9/26/2022, including a completed checklist;
- b. A single series of four (4) color site photographs;
- c. Property survey entitled “Boundary Survey of the Property Located At: 197 River Road, Township of Long Hill, NJ 07946-1361 County of Morris, Lot 2, Block 12204” prepared by Andrzej Namyslak, PLS of Geospatial Surveying & Layout dated September 18, 2022;
- d. Plan showing a proposed 30’ by 13’ pool on the survey entitled “Boundary Survey of the Property Located At: 197 River Road, Township of Long Hill, NJ 07946-1361

County of Morris, Lot 2, Block 12204” prepared by Andrzej Namyslak, PLS of Geospatial Surveying & Layout dated September 18, 2022;

- e. An undated, untitled, pool diagram, without apparent authorship, consisting of one (1) sheet; and
- f. An undated Google Maps printout depicting an overhead and front view of the Property, consisting of one (1) sheet; 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 October 27, 2022, same consisting of three pages; and
- b. Memorandum from Board Engineer, Samantha J. Anello, PE, CME, CFM, dated October 17, 2022, same consisting of three pages; and

WHEREAS, the Property is a moderately undersized lot (23,264.78 sq. ft. in area whereas 30,000 sq. ft. is required, and 120 ft. in width whereas 150 ft. is required) located in the R-3 (Residential) Zone of the Township of Long Hill on River Road, just north of the intersection with Vickie’s Place and just south of the intersection with Francine Place. The Property is bordered by developed, single-family residential properties on its rear and both side yards.

The Property contains 0.53 acres. The Property is developed with a two-story, single-family dwelling, and accessory improvements, including a paved driveway, a slate walk to a covered front porch, a rear multi-level deck, and rear slate patio. The rear yard of the subject Property behind the improved areas is maintained lawn area.

The Applicant is proposing to construct an in-ground pool with coping around its perimeter, totaling in its dimensions at 13 ft. by 30 ft.

The Applicant is seeking a variance from Ordinance Section LU-131, which permits a maximum Lot Coverage of 20% in the R-3 zone, whereas the existing lot coverage is 20.1%, and the proposed coverage is 21.75%; 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. Yuriy Symczyk, owner of the Property (the “Applicant”); and

WHEREAS, no 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, Elizabeth Leheny, PP, AICP, Board Planner and Samantha J. Anello, PE, CME, CFM, the Board Engineer, were duly sworn according to law; and

WHEREAS, Mr. Symczyk was duly sworn according to law and testified as a fact witness.

1. Mr. Symczyk provided an overview of the proposal, the requested relief, and the materials submitted as part of the application. Mr. Symczyk also confirmed that he took the photographs included with the application and that they represent an accurate depiction of the Property as it exists.

2. Mr. Symczyk testified that he and his wife have lived in the Township for several years and would like to improve their large backyard with a pool for the benefit of their three young children. He testified that the proposed pool with coping would measure 13 ft. by 30 ft. (390 sq. ft.) in total.

3. On questioning of Mr. Symczyk by the Board and its professionals, it became apparent that the coverage exceedance was, in part, a function of the undersized nature of the lot, the significant footprint of the two-story dwelling, driveway, and slate walkway and patio, and that the existing exceedance of impervious coverage arose most likely from an error in prior construction.

4. Mr. Symczyk stipulated to compliance with all of the items on both the Board Engineer's and the Board Planner's respective memorandums. He also stipulated to providing a landscape plan subject to the review and approval of the Board Planner, primarily intending to further screen the view of the pool from, and to, the property on adjacent Lot 3 to the northeast.

5. Mr. Symczyk, introduced into evidence as **Exhibit A-1**, an updated version of the already-submitted Boundary Survey, without a revision date, that includes a zoning table, the location of proposed pool equipment, and the location of a 75 sq. ft. existing equipment pad. Mr. Symczyk stated that the revised Survey did not include measurements for the dimensions of the dwelling, but stipulated to further revising the plan to include such.

6. On questioning by the Board, Mr. Symczyk said the pool would be constructed of fiberglass and was proposed to be located to connect to the existing slate patio area in the rear yard, set towards the northwest boundary, in order to retain and afford a larger usable backyard area for his children to play.

7. Also, on questioning by the Board, Mr. Symczyk testified that the pool would be approximately 54 in. at its deepest point for safety reasons and that a firepit depicted in one of the provided photographs would be removed from the Property in order to install the pool.

8. Mr. Symczyk testified that he was already in the process of replacing a fence surrounding the perimeter of the rear yard. In doing so, he referred to another one of the provided photographs that, in part, depicts a newer section of fencing, added to the norther corner of the rear yard, and stated that this particular section hosted a self-latching gate and is representative of the aesthetics of the rest of the new fencing. He also testified that the new fence would meet the Township's 54 in. height requirement and stipulated to same.

9. Upon further questioning from the Board, Mr. Symczyk testified that a significant landscaping buffer already existed on all boundaries of the rear yard; that the dwelling has an attached, two-car garage; that the pool would not be visible from the dwelling on neighboring Lot 3; and that all soil excavated during construction would be hauled off-site.

10. On questioning by the Board Engineer, Ms. Anello, Mr. Symczyk testified that the discrepancy between the survey's and application's stated lot area arose from a rounding error on his part, stemming from the angle of the rear property line boundary, and that the survey's lot area calculation (23,264.78 sq. ft.) was correct.

11. On questioning by the Board, Ms. Leheny testified that pools are considered as impervious surfaces under the Ordinance, but they are, by some, considered to be stormwater neutral.

DECISION

12. After reviewing the evidence submitted, the Board, by a unanimous vote of 7 to 0, finds that the Applicant has demonstrated an entitlement to the requested bulk variance relief sought herein under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

The Bulk Variance – Positive Criteria:

13. 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.

14. 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.

15. Here, the Board finds that the requested bulk or “c” variance relief may be granted under subsection c(1) and subsection c(2) of N.J.S.A. 40:55D-70.

16. 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 an undersized, narrow lot, and the excess impervious coverage is largely a product of the undersized nature of the lot, the significant footprint of the two-story dwelling, driveway, front walkway, front porch, and modest rear yard patio.

17. 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 Applicants’ proposal and the stipulated to conditions, which will further mitigate such relatively modest detriment.

18. The Board recognizes that the proposal results in a relatively modest increase in impervious coverage, all of which relates to the pool, which is sometimes referred to as “stormwater neutral”, and the pool coping. The Board recognizes that granting the requested variance relief for the lot coverage deviation will allow the Applicant to improve the functionality and aesthetics of the Property without substantially increasing the impervious coverage thereon. The Board further recognizes that impervious lot coverage is typically raises concerns with stormwater management, and with the Applicant’s existing stormwater management system, the Board relies on its Engineer to conclude that the deviation will not create substantial detriment to the neighboring properties. Moreover, the pool setback itself meets the Ordinance requirements, nevertheless the Board considers the landscape screening of the view from Lot 3 to be a material condition of its approval.

19. As such, the Board finds that the Applicants have demonstrated the positive criteria for all of the requested variance relief under subsection c(2) of Section 70 of the MLUL.

The Bulk Variance – Negative Criteria:

20. 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.

21. 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 lot coverage is not increasing substantially from what currently exists and the Applicant stipulated to landscape screening. The Board recognizes that no members of the public objected to the Applicant's proposal, further evidencing that the proposal is not substantially out of character with the subject neighborhood.

22. 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.

23. Here, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested bulk variance relief under the bases for same under N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

WHEREAS, the Board took action on this application at its meeting on November 1, 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 shall revise and resubmit, to the satisfaction of the Board Planner and Engineer, the provided Boundary Survey to include a zoning table, impervious coverage table, location of proposed pool equipment, location of the 75 sq. ft. equipment pad, and dimensions of the dwelling;

2. The Applicant shall fully replace the fence surrounding the rear yard, matching the style depicted in the provided photographs, in accordance with Section LU-154.1(d)(3) which requires that a private residential swimming pool be surrounded by a fence at least 54 inches in height, but no more than 6 ft. in height, with a self-latching gate;

3. Per Long Hill Township Code Chapter 14, Lot Grading, as the disturbance does not exceed 1,000 square feet and the project does not propose a net increase of more than 400 square feet of impervious cover, Lot Grading approval need not be obtained;

4. The Applicants shall follow all design standards of Chapter 14;

5. The Applicants shall comply with all of the items on both the Board Engineer's and the Board Planner's respective memoranda;

6. The Applicants shall provide a landscape plan, subject to the review and approval of the Board Planner, primarily intending to screen the view of the pool from, and to, the property on adjacent Lot 3 to the northwest, via the planting of large evergreen trees;

7. 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;

8. 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;

9. 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;

10. 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

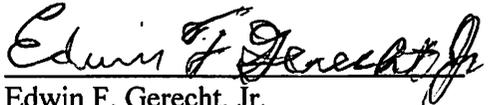
11. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction, and which require approvals by any third-party agencies. 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 to, or received by, the Applicant.

WHEREAS, a Motion was made by Mr. Rosenberg and seconded by Mr. Hain to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on November 15, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Rosenberg, Hain, Gianakis, Lindeman, Brennan, Johnson, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Aroneo, Grosskopf.

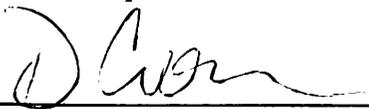
ATTEST:


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	M				
ARONEO			X		
GIANAKIS					X
GROSSKOPF			X		
HAIN	X				
ROSENBERG					X
LINDEMAN - ALT 1					X
BRENNAN - ALT 2	2nd				

I hereby certify this to be a true copy of the Resolution adopted on November 15, 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 1st day of December, 2022
in said newspaper.

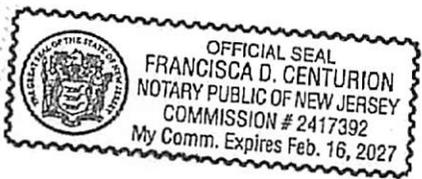


Sworn and subscribed before me this

1st day of DECEMBER, 2022



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 November 15, 2022:

Resolution of Approval Memorialized
Bulk Variance
Block 13098 / Lot 24.01 / Zone R-2
127 Gillette Road
Application No. 22-10Z
Sten & Hartini Nielsen

Resolution of Approval Memorialized
Bulk Variance
Block 12204 / Lot 2 / Zone R-3
187 River Road
Application No. 22-11Z
Yurty Symczyk

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 12/01/T1