

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Virtual Online Meeting
Tuesday, December 1, 2020
—MINUTES—

1. CALL MEETING TO ORDER:

Chairman Sweeney called the Virtual Online meeting to order at 7:30 pm.

ANNOUNCEMENT: For the duration of the Corona virus Health Emergency, the Municipal Complex is closed to the public and meetings will be held digitally, connected by conferencing software provided by RingCentral.com. Members of the public are invited to view meetings live using RingCentral webinar, which also allows them to “raise a hand” and contribute when they are invited to do so during public portions of the meeting. Instructions for Virtual online meeting:

1. Download RingCentral meetings on preferred device: <https://www.ringcentral.com/apps/rc-meetings>
2. At the advertised start time of the meeting, enter: <https://webinar.ringcentral.com/j/1497344650> into your browser. **This method allows listening & participation*

Please note: You may also join via telephone: Dial: +1(213)-250-5700, Webinar ID: 1497344650* *telephone access allows only listening and not participation.* If you would like to make a comment, text 1(908) 912-4247 with name, contact information, and comment for the Board and it will read into the record.

2. OPEN PUBLIC MEETING ANNOUNCEMENT:

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act N.J.S.A.10:4-6. On November 24, 2020 proper notice was sent to the Courier News and the Star-Ledger and filed with the Clerk at the Township of Bridgewater and posted on the bulletin board at the Municipal Building. Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:15 pm and no new testimony will be taken after 10:30 pm. Hearing Assistance is available upon request. Accommodation will be made for individuals with a disability, pursuant to the Americans With Disabilities Act (ADA), provided the individual with the disability provides 48 hours advance notice to the Planning Department Secretary before the public meeting. However, if the individual should require special equipment or services, such as a CART transcriber, seven days advance notice, excluding weekends and holidays, may be necessary.

3. SALUTE TO FLAG:

4. ROLL CALL:

Donald Sweeney- present	Jeff Foose -present
Evans Humenick- absent	Daniel Ahern- present
John Fallone - presant	Donna Kelly - absent
Dawn Guttschall- present	Andrew Fresco - present
Pushpavati Amin- present	Gary La Spisa -present
James Weideli - present	

Others present: Board Attorney Steven Warner, Esq., Board Planner Scarlett Doyle, PP, Board Engineer William Burr, IV, PE, and Land Use Coordinator Zuzana Karas

5. MINUTES FOR APPROVAL:

September 15, 2020 Virtual Meeting (pending)
September 29, 2020 Virtual Meeting (pending)
October 6, 2020 Virtual Meeting (pending)
October 20, 2020 Virtual Meeting (pending)
November 17, 2020 Virtual Meeting (pending)

6. MEMORIALIZING RESOLUTION(S):

MICHAEL AND AMIE NOLFO - 1390 WELL RD
Block 649 Lot 113
#20-013-ZB- VARIANCE ADDITION

Chairman Sweeney asked if any board members or board professionals had any comments on the Nolfo resolution. Board attorney, Mr. Warner, advised the Board that page 2, paragraph 3, and page 6 condition number 7 were revised. He read the changes into the record. No one had any follow-up questions or concerns with the amended language.

The Chairman asked for a motion from the Board to approve the resolution with the amended changes. Motion for approval was made by Ms. Guttschall and second by Mr. Foose.
AFFIRMATIVE: Mr. Sweeney, Ms. Guttschall, Mr. Fallone, Ms. Amin, Mr. Weideli, Mr. Foose, and Mr. Ahern
ABSENT: None
NOT ELIGIBLE: Mr. Humenick, Ms. Kelly, Mr. Fresco, and Mr. La Spisa
DENIED: None

LUIS F. UMANA - 158 MAPLE STREET
Block 154 Lot 9
#20-023-ZB- BULK VARIANCE

Chairman Sweeney asked if any board members or board professionals had any comments on the Umana resolution. No comments were made.

The Chairman asked for a motion from the Board to approve the resolution. Motion for approval was made by Mr. Weideli and second by Ms. Amin.
AFFIRMATIVE: Mr. Sweeney, Mr. Fallone, Ms. Guttschall, Ms. Amin, Mr. Weideli, Mr. Foose, and Mr. Ahern
ABSENT: None
NOT ELIGIBLE: Mr. Humenick, Ms. Kelly, Mr. Fresco, and Mr. La Spisa
DENIED: None

7. HEARING AND DELIBERATIONS:

Board attorney, Mr. Warner, addressed the Board to inform them that the third application, Fernando and Alexandria Batista, listed on the agenda would not be heard. Regrettably, the applicant published and certified mailed their notices less than 10 days before the hearing. Due to MLUL, the Board would not be able to hear the application. The applicant would now need to come back once they have satisfied the notice requirement 10 days prior. The matter was scheduled for January 19, 2021. Mr. Warner informed the applicant that an extension of time would need to be requested. This was to be handled off the record.

Ms. Amin questioned why no reports from the professionals were distributed on the application. Mr. Warner recommended that all conversations about the application be held off until the applicant adequately notices. The discussion concluded with Ms. Doyle confirming she would have a report ready for the Board on the application before the scheduled hearing on January 19, 2021.

MARY BEHOT - 495 KNOLLWOOD DRIVE

Block 500 Lot 50

20-019-ZB- BULK VARIANCE AND SETBACKS VARIANCES SHED

Applicant Mary Behot came before the Bridgewater Township Zoning Board of Adjustment seeking site plan approval with variance relief related to an as-built horse shelter and associated horse run/corral. The property is identified as Block 500, Lot 50 on the Tax Map, more commonly known as 495 Knollwood Drive. A variance for a side-yard setback of 12 feet to the as-built horse shelter was requested, whereas the minimum required setback is 50 feet to any property line. A variance for the rear-yard setback of 31.6 feet to the as-built horse shelter was requested, whereas the minimum required setback is 50 feet to any property line. A variance for a side-yard setback of 2 feet from the as-built horse run/corral, whereas the minimum required setback from a run/corral area is 25 feet to any property line. Setback requirements are all according to Section 126-339(E) of Bridgewater's Land Use Ordinance.

In 2019, the applicant requested a zoning permit to construct a second fencing area for no specified use. The proposed 6-foot high fence was described as a deer fence, not a horse corral. This area was assumed to be the area used for the horse, although the enclosure's geometry relative to the barn favors the swimming pool fenced-in area.

On November 23, 2019, the Zoning Officer, Ms. Zuzana Karas, issued a Notice of Violation ("NOV") citing Section 126-339(E) of the ordinance regarding setback requirements for horse barns and corral areas. The applicant sought approval for side- and rear-yard setback deviations for the horse barn attached to an already existing shed and the horse corral area. The horse barn would have a greater width than the existing shed (currently 30 feet by 12 feet), given the proposed dimensions of 16 feet by 16 feet (256 square feet).

Concerning the application, the Board received the following: Survey prepared by Robert J. Templin, P.E., P.L.S., dated May 24, 2019, a copy of the survey with the applicant's proposal sketched thereon; Specifications for the proposed pole barn, photographs of a barn similar to what the applicant proposes. A Review Memorandum prepared by Scarlett Doyle, P.P., the Board Planner, and William H. Burr, IV, P.E., the Board Engineer, dated September 23, 2020. A report from Steve Rodzinak, the Construction Code Official, dated September 17, 2020, and a Memorandum from Zuzana Karas, the Zoning Official, dated September 17, 2020.

Applicant Mary Behot, the applicant's sister Gail Behot, the Township Planner, Scarlett Doyle, P.P., and the Acting Township Engineer, William H. Burr, I.V., P.E., were all sworn in according to law.

Mary testified that she was asked to relocate the horse because she visited him too much and wanted to provide him extra food. While the horse was at the barn, he was diagnosed with a severe hoof disorder, which resulted in a three-month stall rest recovery due to surgery. Mary further explained that she moved the horse to her property for numerous daily hoof treatments.

Mary confirmed that she was seeking variance relief to keep the horse barn attached to an existing shed. She explained that she constructed a temporary structure to accommodate the horse in September of 2019 and that she did not know that she would have to obtain variance relief.

Gail Behot ("Gail"), having an address of 35 Deer Path Circle, Green Brook, New Jersey, testified that the horse barn could be constructed in a conforming location but would require variance relief for the total number of accessory structures permitted on the property. Gail explained that there is currently a blue tarp roof on the temporary barn attached to the shed.

Gail/Mary testified that the existing fence complies with the applicable pool fence requirements and that the wire/deer fence for which a permit was previously issued is solely for the use of the horse corral.

Gail/Mary testified that the horse had escaped the property twice when being walked in the yard. During questioning of how many animals are currently on the property, Mary testified that there is only one horse and one dog. During testimony, it was confirmed that the horse's diagnosis was confirmed to be an ongoing problem still. Mary testified that she was not aware of any such issues about complaints about the horse. Many of her neighbors across the street advised her that they do not object to the horse being on the property. Mary informed the Board that the horse's age was five years old.

During questioning what the horse barn would look like, Mary referred to the Amish-style barn photograph included in the application. She explained, however, that the horse barn would be a pole barn with a stone dust foundation (rather than an Amish-style barn), but it would otherwise look similar to the barn shown in the photograph. The applicant stipulated that the horse barn would be painted the same color as the shed. When questioning whether the applicant had obtained a building permit for the 16 by 16-foot barn, she explained that she had not done so. She was advised that even if the application were approved, she would still need to obtain a building permit for the horse barn. During questioning of the condition of the fence along Vogt Drive, the applicant stipulated, as a condition of approval, to repair and continue to maintain all fencing on the property.

During testimony given on whether the horse has caused any damage when escaping previously, Mary advised that it had not caused any injury to persons and/or property. The Board discussed whether it would be appropriate to limit the length of the variance relief, if granted, to the duration of the horse's life or until rehabilitation therapy is no longer necessary. On further discussion, the applicant stipulated a variety of conditions regarding the removal of waste, cleaning of the barn, inspections by the Township Board of Health and Somerset County Regional Animal Shelter, and other applicable governmental authorities, keeping the horse on all current vaccinations, storage of feed, hay, and medication, utilizing rodent-proof containers, and maintenance of the fence.

According to law, JP Levin, residing at 491 Knollwood Drive, was duly sworn. He testified that he lives two houses down from the applicant. He explained that he has a history involved with show horse jumping and is quite familiar with horses' care and training. He also expressed his knowledge of the design and management of barns. Mr. Levin questioned whether the proposed barn would be visible, further asking whether the horse had done any damage to his property when he escaped. Mary advised that there might have been hoof damage, but the damage had been repaired, and the grass was re-planted in its place since the incident. During questioning, the applicant confirmed that the horse would not be in training and that any training in the future would be done off-site. During examining the horse's current medical condition, the applicant advised that the horse is no longer on daily medication. As a condition of approval, the applicant stipulated to work in good faith with the Board Planner to create a landscape plan. Mr. Levin questioned whether the horse could jump over the fence and get into the pool. Mary advised that the horse does not have sufficient space to get enough momentum to jump the fence, and the horse does not prefer to jump. During questioning on the horse's lifespan, Mary advised that it could be up to 35 years. During the discussion of the shed's existing tarps, Mary further suggested that the tarps would be replaced with a permanent roof.

Mr. Levin introduced evidence as Exhibit O-1 photographs of the shed taken from his property and, as Exhibit O-2, pictures of the property's fence. He testified that he had taken the pictures that day to constitute accurate depictions of the property as viewed from his home. Mary advised that the shed is open and closed off in the winter. While questioning whether the horse could get into the dog pen area, Mary declared that he could not. Mr. Levin asked whether the applicant's proposal will exacerbate the existing nonconforming conditions and was advised that it would do so.

Mr. Levin testified that he is concerned about the horse's safety and the applicant, given his equestrian background. He explained that rescue horses taken off the track could be "wired" and, although he seems tame, he is an animal and could be unpredictable. Mr. Levin further testified that he is concerned about the area's property values if the applicant does not properly maintain the horse barn and necessary fencing. He explained that he did not believe the property could support the horse barn but expressed a willingness to assist the applicant with the horse if this proposal was approved.

No other public member commented or had a question regarding the applicant's testimony.

After reviewing the evidence submitted, the Board, by a vote of 7 to 0, found that the applicant had failed to satisfy her burden of proving entitlement to the required variances for the horse barn and horse run/corral setback deviations, under either N.J.S.A. 40:55D-70(c)(1) or (c)(2).

The Board found that the nonconforming location of the horse barn and the horse corral resulted in a significant reduction in the available light, air, and open space and has a substantial negative aesthetic impact on the existing neighborhood's character. In this regard, the Board recognized that the proposed location would be only 12 feet from the side property line and only 31.6 feet from the rear property line, whereas 50 feet is required. The Board further recognized that the associated horse run/corral would only be set back 2 feet from the side and rear property lines, whereas the minimum required setback is 25 feet. Moreover, the Board noted that it appears that the applicant could locate the horse barn in a conforming location and that doing so would have less of a detrimental impact on the public good and the character of the existing neighborhood. The Board further noted that the applicant was unable to demonstrate any other properties of the same, or similar, size as the property, with matching improvements (horse barn and horse corral), located in similar nonconforming locations, such as the applicant's proposal. This would appear to be entirely out of character with the neighborhood. As such, the Board found that the horse barn's location and the horse corral will substantially cause a detriment to the public good.

Furthermore, the Board found that the applicant had not demonstrated that the relief could be granted without substantial impairment of the zone plan and the zoning ordinances. The applicant failed to point to any provision of the Master Plan that would reconcile, or even support, permitting the applicant to maintain the as-built horse barn and horse corral in the significantly nonconforming location close to the property lines and adjacent neighbors.

The Zoning Board of Adjustment of Bridgewater Township found the application submitted by Mary Behot for site plan approval and variance relief, as aforesaid, denied.

The Chairman asked for a motion from the Board to deny the application.

Motion for denial was made by Mr. Foose and second by Ms. Amin

AFFIRMATIVE: Mr. Sweeney, Mr. Fallone, Ms. Guttschall, Ms. Amin, Mr. Weideli, Mr. Ahern, and Mr. Foose

ABSENT: Mr. Humenick and Ms. Kelly

NOT ELIGIBLE: Mr. La Spisa and Mr. Fresco

DENIED: None

Chairman Sweeney recommended the Board take a short break 5-minute break.

Upon return at 9:56 pm, a roll call vote was taken, as requested by Chairman Sweeney, to ensure all members had returned.

SKYMANOR PROPERTIES, LLC - 5 SKY HIGH TERRACE
Block 904 Lot 5

#20-007-ZB - Variance -Construct New Home on Vacant Lot

At the December 1, 2020 hearing, Mr. Belardo confirmed that the applicant had adequately re-noticed for the hearing. Board attorney Mr. Warner confirmed that the notice was sufficient for content and timeliness, meaning the Board had jurisdiction to hear the matter. Mr. Belardo explained that the applicant revised plans to relocate the dwelling and the driveway closer to Sky High Terrace. With the new plans, a reduction in the proposed impervious coverage would be lessened by 1,400 square feet. He further explained that the applicant also had reduced the height of the proposed retaining walls from 17 feet to 10 feet, reducing the number of trees which were proposed to be removed. This would further reduce the overall area of disturbance by 3,000 square feet and modified the plans to include drywells.

Mr. Parker introduced into evidence, as Exhibit A-1, a Grading Plan Exhibit, dated November 5, 2020. He testified that the new plans would reduce the impervious coverage by more than 1,000 square feet, such that the proposed impervious coverage would be 35.6%, rather than 49.27% as initially proposed. He further testified that the applicant reduced the proposed retaining wall's height by adding additional "tiered" walls. Mr. Parker advised that this would reduce the total disturbance from about 18,000 square feet to 15,000 square feet.

Mr. Parker testified that the revised plans included drywells located below the proposed retaining walls and that they will capture stormwater runoff from the roof of the proposed dwelling. During questioning whether soil logs had been obtained, Mr. Parker testified that they had not. Further questioning how he could be sure the drywells would function appropriately, he explained that the applicant would do all necessary testing to confirm it. He also testified that he did not believe blasting would be required. He explained that other stormwater management systems could be used instead of drywells, such as a shallower system or additional pipe storage. As a condition of approval, the applicant stipulated to work in good faith with the Township Engineer to design the stormwater management improvements.

Mr. Parker introduced into evidence, as Exhibit A-2, a Lot Coverage Worksheet. While questioning why the dwelling's footprint had increased from 1,737 square feet to 1,870 square feet, Mr. Parker explained that these calculations included the porch, whereas the prior estimates may not have done so. Further questioning whether the proposed retaining walls had been included in the calculations, Mr. Parker explained that the walls may not have been included but that they would add only 240 square feet of impervious coverage, resulting in total impervious coverage of 37.8%. Mr. Parker acknowledged that the proposed impervious coverage is still more than twice the maximum permitted amount of impervious coverage. The Board suggested that the applicant consider reducing the proposed impervious coverage. Mr. Parker noted that porous pavers might not reduce the proposed coverage, but he stipulated, as a condition of approval, to utilizing the same to the extent possible. He explained that the applicant had already reduced the driveway's width from 16 feet to 10 feet, and he opined that the driveway's width could not be reduced any further. Mr. Parker further explained that the applicant also reduced outside impervious areas, such as the proposed patio, porch, and sidewalk. The Board Chair requested that the applicant consults with the Township Engineer about porous pavers' use.

Mr. Parker introduced into evidence, as Exhibit A-3, a Floor Area Ration Calculation Worksheet. During a discussion, the Board questioned whether the dwelling's size could be reduced and whether the residence would be in character with the existing neighborhood. Discussion about whether the applicant could further reduce the proposed impervious coverage and FAR. The applicant's counsel, Mr. Belardo, suggested that the matter be carried to give the applicant additional time to review its proposal to make further modifications. The applicant's request was granted, and the hearing was carried on January 19, 2021.

No questions from the public were presented on the application and/or testimony given.

At the applicant's request, the application was carried to the Board's January 19, 2021 meeting without the need for further notice.

8. MEETING OPEN TO THE PUBLIC:

Members of the public wishing to comment to the Board on any matter not listed on the agenda were able to do so at that time. Please note that under the Municipal Land Use Law and case Law, any questions or comments about a pending application must be made in the hearing on that specific application.

No member of the public wished to address the Board.

Mr. Warner informed the Board of the annual report prepared for 2019. He briefly explained some of the recommendations made and included in the draft.

The Board collectively agreed that those recommendations should include front porches, the definition of building height, livestock animal ordinances in place, mostly about horses, and height regulations. All the topics were discussed in brief.

The Board ended their discussion and stated it would be revisited at the next meeting scheduled for December 15, 2020. This would allow board attorney, Mr. Warner, to get more information for the Board to review. The Board agreed to have this squared away by the December 15, 2020 meeting.

The Master Plan was also discussed and the importance of such a review.

9. OTHER BOARD BUSINESS:

None.

10. EXECUTIVE SESSION:

There was no need for Executive Session.

11. ADJOURNMENT

The meeting was adjourned at approximately 11:00 pm with a motion made by Mr. Weideli and second by Mr. Fallone.

Respectfully submitted,
Ms. Zuzana Karas
Land Use Coordinator

