

BRIDGEWATER TOWNSHIP  
**ZONING BOARD OF ADJUSTMENT**  
Virtual Online Special Meeting  
Tuesday, September 29, 2020  
—MINUTES—

**1. CALL MEETING TO ORDER:**

Chairman Sweeney called the Virtual Online Special 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/1492559726> into your browser. *\*This method allows listening & participation*

Please note: You may also join via telephone: Dial: +1(650)-242-4929, Webinar ID: 1492559726 \**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 special meeting has been given in accordance with the Open Public Meetings Act N.J.S.A.10:4-6. On July 30, 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- present	Daniel Ahern- present
John Fallone - present	Donna Kelly - present
Dawn Guttschall- present	Andrew Fresco - absent
Pushpavati Amin- present	Gary LaSpisa - absent
James Weideli - present	

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

**5. MINUTES FOR APPROVAL:**

November 20, 2018 Regular Meeting (pending)	August 6, 2019 Regular Meeting (pending)
August 20, 2019 Regular Meeting (pending)	September 17, 2019 Regular Meeting (pending)
November 19, 2019 Regular Meeting (pending)	December 17, 2019 Regular Meeting (pending)
January 21, Regular & Reorg. Meeting (pending)	February 18, 2020 Regular Meeting (pending)
June 16, 2020 Virtual Meeting (pending)	July 7, 2020 Virtual Meeting (pending)
July 21, 2020 Virtual Meeting (pending)	August 4, 2020 Virtual Meeting (pending)
September 15, 2020 Virtual Meeting (pending)	

**6. MEMORIALIZING RESOLUTION:**

SKYMANOR PROPERTIES, LLC - 5 Sky High Terrace  
Block 904 Lot 5  
#20-007-ZB –Variance-New Home-Dismissal of Application without prejudice

Chairman Sweeney advised the board on a brief explanation on why the referenced resolution was before the board for dismissal.

Board attorney Mr. Warner explaining that the applicant last appeared before the board on July 7<sup>th</sup>, 2020. Since then, they have however, failed to prosecute the application. Based on New Jersey’s Court Rule 1:13-7(a), the board finds with their authority, they shall dismiss the land development application due to failure in pursue. This protects the town with its time limitation requirements, which apply to all land use applications filed. If, these time restrains are not satisfied, applications are given automatically approved. It was confirmed that the applicant can, still, come back to the board at any time by filing a new application.

Motion for approval was made by Mr. Weideli and second by Mr. Fallone  
AFFIRMATIVE: Mr. Sweeney, Mr. Humenick, Mr. Fallone, Ms. Amin, Mr. Weideli, Mr. Foose and Mr. Ahern

**7. HEARING AND DELIBERATIONS:**

MARY BEHOT - 495 KNOLLWOOD DRIVE  
Block 500 Lot 50  
20-019-ZB- BULK VARIANCE AND SET BACK VARIANCES-SHED

It was announced that Ms. Mary Behot, Application No. 20-019ZB, would be re-scheduled to December 1<sup>st</sup>, 2020. The new hearing date does require the applicant to satisfy all proper notice requirements prior to the upcoming date. It was made clear by the township planner, Ms. Doyle, that the re-notice must include new login information along with the updated ID. Ms. Behot was also advised to that if she’d like to have Mr. Warner involved in the accuracy of her notice that he would make himself available. The applicant’s escrow account would be charged for such service. This application, was also given an extension of time until the end of December, 2020. An email from the board’s attorney, Mr. Warner, would follow confirming such, which would then be filed along with the application.

MARCIN & DARINKA FILIPOWICZ-1002 SUNSET RIDGE (Carried from 8-4-20)  
Block 646 Lot 12  
20-003-ZB- VARIANCE – SFD –ADDITION AND RENOVATION

Chairman Sweeney advised the board that this application was carried from August 4<sup>th</sup>, 2020 due to a severe storm causing power outage. Out of an abundance of caution, the applicant was advised to return at

the board's next available meeting date. This was to ensure the public would have all proper means in attending if they so choose to.

The applicants were back before the board with their professionals, proceeding with testimony on September 29, 2020:

Ms. Linda Barie Gumeny, R.L.A., was duly sworn according to law, providing her qualifications, and accepted by the Board as an expert in the field of landscape architecture. Ms. Gumeny introduced into evidence, Exhibit A-2, a Colorized Planting Plan Rendering, last revised on August 13, 2020. Referencing Exhibit A-2, Ms. Gumeny described the proposed landscaping plan in detail. She testified that the applicant had modified the plans, so that only one tree, rather than four, would be removed during this project. Ms. Gumeny also testified that the revised plans included much more natural landscape materials, such as natural stone, rather than concrete blocks as originally proposed. She explained that the applicant had also decided to replace the entire asphalt driveway with permeable pavers. Ms. Gumeny confirmed that the amended plans would further result in a reduction to the total proposed improved coverage which would further lessen the amount of coverage that currently exists on the property today.

The accuracy in size of the tree canopies shown near the deck and pool on exhibit A-2 were questioned. Ms. Gumeny explained she, herself, measured the canopies and confirmed that they were accurately displayed on the plans submitted.

Mr. Filipowicz explained, after being questioned on the proposed fence that the only reason in replacing the wall was due to its current deterioration.

Mr. Khan, having been previously sworn, testified that, the revised plans would reduce impervious coverage to less than what currently exists. The property currently having 22.46% would lessen to 20.94%, before adjustments for steep slopes were calculated. With adjustments for steep slopes, the lot presently at 27.73% would decrease to a total of 25.85%. Mr. Khan explained that the applicants had also reduced the size of the concrete pool patio and increased the size of the wood deck. Mr. Khan testified that the applicants, in addition, reduced the extent of the disturbance of steep slopes, such that now only a corner of the retaining wall would be located within in the slope area. He further testified that the applicants had relocated the proposed pool equipment shed from 1.5' feet in from the property line to 22.5' feet from the property line, thereby eliminating the need for variance relief.

Mr. Khan emphasized that, even though the applicants had modified their plans to reduce the amount of existing and proposed coverage, they had not reduced the size of the proposed drywell. He explained that the property currently has no existing storm water management facilities, is proposing a system well oversized and designed for a 100-year storm. While being questioned on the location(s) of the proposed inlets, Mr. Khan testified that there is an inlet in the front yard between the two existing driveways. He explained that it would be tied into the drywell system and that the proposed storm water management system would capture sheet flow, reducing storm water runoff. Mr. Khan testified that there is also rip rap and a conduit to the rear of the pool, which the rip rap consists of large decorative stones. This will allow water to flow over them, reducing the rate of flow of current runoff. This system will untimely exceed its need. Mr. Khan clarified that any overflow will follow the existing drainage patterns, ultimately draining into a swale, leading to the inlet located on the street. Mr. Khan stated that the proposed system will only result in significantly less storm water runoff than what exists. He also reminded the Board that the system was designed to accommodate much more runoff than what is now being proposed with the modified plans. Mr. Burr concurred that the proposed storm water management system is an improvement to site. He did request that the applicants install another inlet to capture runoff from the steps/walkways. The applicants had no objection with the request.

The concern of a potential future owner of this property, removing the grass paver driveway to replace it with an asphalt driveway, was discussed. The applicants agreed, as a condition of approval, to record a deed restriction preventing such. The deed restriction would specify that any changes made replacing the grass pavers to impervious material would require an additional application to the Board, requesting variance relief.

The applicants confirmed to also include a maintenance obligation for the property owner, ensuring that the proposed storm water management system remains properly maintained to function effectively.

Mr. Khan advised the board that the applicants had also relocated the fence which was previously proposed to be located on top of an existing retaining wall. The fence, as per the updated plans, will now be located in front of the wall, such that the height of the wall and fence will be in full compliance, with the 6 feet max.

Mr. Khan testified that only a small portion of the proposed retaining wall would cause disturbance to slopes greater than 30%. He reiterated that the steep slopes are not naturally occurring and were likely created when the dwelling was constructed. Mr. Khan further explained that the slope is not an environmental feature that contributes to the community and, therefore, does not need to be preserved. He confirmed that this would not result in any significant detriment to environmentally sensitive areas. Mr. Filipowicz explained that throughout all the alterations made, resulting in eliminating almost the entire steep slope disturbance, the wall was one feature that could not be prevented.

Mr. Burr requested that the applicants address comment #15 from his July 30, 2020 Review Memorandum regarding Section 126-265; of the Hillside Development Ordinance. Mr. Khan testified that the applicant's proposal will control velocity and the overall rate of storm water runoff. Since the property does not currently have any storm water management systems in place, the proposed system, not only being oversized, but since is designed for a 100-year storm, will help with any runoff complications. As to minimizing stream turbidity and change in flow, Mr. Khan explained that tying all the inlets and roof leaders into the drainage system, as well as utilizing rip rap, will only slow the current rate of discharge. As for the protection of environmentally vulnerable areas, Mr. Khan reminded the Board that the steep slopes on the property are manmade and not naturally occurring. He elucidated that the applicants will also utilize soil erosion and sediment control measures, as well as landscaping to protect the existing conditions present. Mr. Khan confirmed that the applicants will stabilize soils and prevent soil slippage by ensuring that no new steep slopes are created by compacting new soil properly. As to minimizing cuts, Mr. Khan advised that the only cut proposed is for the drywell. Finally, as to the preservation of trees and other vegetation, Mr. Khan testified that the applicants are only removing one tree, rather than four trees as original planned. They will be replacing the single tree with additional landscaping which will enhance the property and neighborhood.

Mr. Burr also inquired if any proposed outdoor lighting was being planned with this project. Ms. Gumeny stated that there will be accent lighting, recessed lighting in the canopy over the porch, conventional lighting in front of the garage doors, and ambient lighting near the pool. The applicants agreed that all exterior lighting would be directed downward and shielded appropriately to eliminate light spillage onto any adjacent properties.

Mr. Khan, addressing Ms. Doyle's, July 29, 2020 Review Letter, confirmed that the impervious coverage created by the 8-foot-wide porch in the front of the dwelling had already been included in the impervious coverage calculations. Mr. Khan advised that he would correct the mislabeled arrow on Sheet CO-02 (Comment 8). He also advised the board that no heavy machinery would be required and that the retaining wall itself is tongue-and-groove style and could be constructed piece by piece on the property (Comment 9). The applicants agreed to work with Ms. Doyle to provide sufficient landscape screening and

appropriate bonding. Ms. Doyle's suggestion on having a portion of the driveway removed was answered by Mr. Filipowicz in that removing one of the two driveway entrances would result in the property being out of character with the neighborhood. He further explained that other lots in the neighborhood also have two driveway entrances (Comment 15).

Mr. Bona testified that from a design perspective the applicants' proposal is consistent with the neighborhood. He clarified that the proposed grass pavers will provide elegance and improvement to the view of the property's right-of-way. Mr. Bona further explained that the applicants are not exacerbating the existing setback deviations. He informed the board on the specifics regarding the distance between the property and adjacent dwellings, as well as the topography of the site. He confirmed the modest visual detriment associated with the proposal will be sufficiently mitigated.

Mr. Khan added that the applicants' proposal will advance the goals of the Municipal Land Use Law ("MLUL"), because it only improves the existing conditions, specifically with storm water management. He explained that the proposed storm water management system will be a significant improvement, given the reduction in lot coverage and the oversized nature of the drywell. Mr. Khan further explained that the applicants will be ultimately lessening the amount of improved lot coverage currently existing on the property. Mr. Khan expressed that, overall, the proposed plan constitutes a better proposal than what currently exists.

No member of the public commented on, or objected to, the application.

After reviewing the evidence submitted, the Board found that the applicants had satisfied their burden of proving an entitlement to the requested variances for a deficient side-yard setback, excessive improved coverage (before and after adjustment for steep slopes), disturbance of slopes greater than 30%, and deficient accessory setbacks for the existing deck and proposed deck/patio, under both N.J.S.A.40:55D-70(c)(1) and (c)(2).

The Board found that the applicants had satisfied both the positive and negative criteria required for bulk variance relief under both of the alternative bases for same, specifically N.J.S.A.40:55D-70(c)(1) and (c)(2).

The application for variance relief, as heretofore stated, was granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable).
2. The applicants shall prepare a deed restriction providing that any removal of grass pavers or wood decking and the replacement of same with impervious coverage shall require the property owner(s) to seek relief from the Board. The deed restriction shall also set forth the storm water management system maintenance requirements to ensure that the proposed system is properly maintained and same shall remain an obligation of the applicants and all successors in title. The form of the deed restriction shall be subject to the review and approval of the Township Attorney and/or the Zoning Board of Adjustment Attorney and, upon approval, shall be executed by the applicants and promptly recorded with the Somerset County Clerk's Office.

3. The applicants shall construct the improvements in accordance with the plans and testimony presented to the Board at the public hearings and shall seek building permits in accordance with same.
4. The applicants shall revise the plans to depict all utilities and same shall be subject to the review and approval of the Township Planner and/or Engineer.
5. The applicants shall revise Sheet CO-02 of the plans to correct the description of the arrow pointing to the larger deck. The arrow currently appears to point to the larger deck, but the description of the arrow says "existing fence to be removed".
6. The applicants shall submit a landscaping plan and same shall be subject to the review and approval of the Township Planner. The plan shall include buffer landscape screening for all areas that can accommodate same and some of the replacement trees may be installed as street trees or interior trees. The applicants shall bond for the proposed screening and all landscaping shall be installed prior to the issuance of a certificate of occupancy.
7. All evergreen screening shall be installed at a height of 8 to 10 feet and minor ornamental trees shall be no shorter than 10 feet in height at planting.
8. The applicants shall revise the landscaping detail of the plans to provide:
  - a. The top 1/3 of any wire basket shall be removed in addition to cutting the horizontal wire bands on the remaining 2/3 of the root ball.
  - b. Burlap shall be removed from the top 1/3 of the root ball and remaining strings and twine shall be cut.
  - c. All strings shall be removed from the top 1/3 of the root ball.
  - d. The planting hole shall be twice the size of the root ball.
9. The applicants shall conduct soil testing to ensure that the proposed storm water management system will work without running along underground rock strata onto the adjacent neighbors' properties and same shall be subject to the review and approval of the Township Planner and/or Engineer.
10. The applicants shall revise the plans to provide additional information regarding what areas will drain to the proposed drywell in the rear yard, how pervious the grass pavers are and what material will be used as the underlying sub base, and the sizing of the drywell (what storm event can the drywell handle/drain), and same shall be subject to the review and approval of the Township Engineer.
11. The applicants shall revise the storm water management plans to include an additional inlet to capture storm water runoff from the top of the Property and same shall be connected to the proposed drywell. The plans shall be subject to the review and approval of the Township Engineer.
12. The applicants shall revise the plans to include a legend of the various hatches and shall ensure that the hatches do not make it difficult to read the existing contours and spot elevations and same shall be subject to the review and approval of the Township Engineer.
13. All exterior lighting shall be downward directed or appropriately shielded to ensure that there is no light spillage onto the adjacent properties.

14. The applicants shall affix the revised landscaping plans and renderings to the site/variance plans to represent one plan set.

15. The applicants shall contact the New Jersey One Call System, "Call Before You Dig," 1-800-272-1000, at least three (3) business days prior to construction and same shall be set forth as a note on the Plans.

16. The applicants shall not be required to enter into a Developer's Agreement.

17. The applicants shall comply with the Construction Mitigation Measures set forth in Section 126-243.1 of the Land Use Ordinance.

18. The applicants shall submit a Bridgewater Township Simple Compliance Report prior to the plans and any deeds being signed, and prior to scheduling the pre-construction meeting and issuance of construction permits.

19. The applicants, upon notification by the Planning Department Secretary that the compliance is fully satisfied, shall provide nine (9) copies of the approved plans for township distribution to the Construction Official, Engineer, Planner, Tax Assessor, and others as required.

20. The applicants shall comply with any and all other outside agency permit and approval requirements in accordance with the law, including but not limited to, obtaining a permit from the Somerset Union Soil Conservation District.

21. The variance relief granted herein shall expire by limitation unless the construction or alteration of any structure or building, pursuant thereto, shall have been actually commenced within one year from the date of the adoption of this Resolution, pursuant to Section 126-73 of the Land Use Ordinance.

22. The applicants shall comply with the terms of this approval, which are to be construed strictly in accordance with the plans and testimony presented to the Board, and all such testimony or representations are incorporated into this Resolution by reference.

Motion for approval with conditions was made by Mr. Weideli and second by Ms. Amin.

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

DENIED: Mr. Foose

ABSENT: Mr. Fresco and Mr. LaSpisa

NOT ELIGIBLE: None

The township planner, Ms. Doyle, advised the applicants that the next step required following this board approval would be to fully complete the compliance process required. The applicants agreed.

#### **8. MEETING OPEN TO THE PUBLIC:**

Members of the public wishing to make a comment to the Board on any matter not listed on the agenda where able do so at this time. In accordance with the Municipal Land Use Law and case Law, any questions or comments about a pending application must be made at the hearing on that specific application.

Ms. Doyle, advised the board that she was contact through text from applicant Mr. Larosa pertaining to the Skymanor application, dismissed earlier. The applicant was on the call and proceeded to address the board.

Mr. Larosa expressed his confusion regarding the Dismissal of his application without prejudice which was granted at the start of the meeting. Being the applicant, he anticipated to join the meeting prior to the approval for dismissal being granted. He was surprised that although the agenda listed this item as being scheduled towards the end of the meeting, it was in fact at the start. Both Mr. Larosa and the board attorney, Mr. Warner, discussed the action taken. Mr. Warner advised Mr. Larosa to have his attorney reach out to him directly to have this dismissal altered, understanding that was Mr. Larosa's goal. He further advised the applicant that the board would be meeting in a week and hopeful, with the help of his attorney, can have this resolved then.

No other member of the public wished to address the Board.

**9. OTHER BOARD BUSINESS:**

There was no other Board business.

**10. EXECUTIVE SESSION:**

There was no need for an Executive Session.

**11. ADJOURNMENT**

The meeting was adjourned at approximately 9:35 pm, with a motion made by Ms. Guttschall and a second by Ms. Amin.