

Township of Roxbury
Board of Adjustment
June 8, 2020

On Monday, June 8th, 2020 a regular meeting of the Roxbury Township Zoning Board of Adjustment, originally scheduled to take place at 7:00 pm in the Council Room of the Municipal Building, was instead held remotely via Zoom. The meeting was open to the public via alternate means to provide the ability to listen and the opportunity to be heard during the public portions of the meeting by calling the following teleconference line: 1-929-205-6099 (“Welcome to Zoom”), entering Meeting ID: 85187155074#, Participant ID: # and Password: 568652#. All applications of those applicants who were to appear before the Zoning Board of Adjustment on the aforementioned date were available online via our Township website at www.roxburynj.us. The purpose of the Regular Zoning Board Meeting was to conduct routine business.

BOARD MEMBERS PRESENT

Ms. Houtz, Mr. Overman Mr. Klein, Mr. D’Amato, Dr. Kennedy, Ms. Robortaccio, Ms. Dargel, and Mr. Furey

ABSENT: None

PROFESSIONAL STAFF

Mr. Russell Stern, P.P.
Mr. Larry Wiener, Esq.
Ms. Alyse Hubbard, Esq.

MINUTES OF MAY 11, 2020 MEETING

Ms. Robortaccio made a motion to approve the minutes of May 11, 2020, Mr. D’Amato seconded.
Roll call: Ms. Robortaccio, yes; Mr. D’Amato, yes; Ms. Houtz, yes; Mr. Overman, yes; Mr. Klein, yes; Mr. Furey yes; Dr. Kennedy, yes; Ms. Dargel, yes.

RESOLUTIONS:

ZBA-20-004 PIERSON, Variance relief for property located at 29 Sunset Lane, Landing, Block 11904, Lot 5 in an R-3 zone.

In the matter of Gregory & Stephanie Pierson
Case No. ZBA-20-004

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 11, 2020
Memorialized: June 8, 2020

WHEREAS, Gregory & Stephanie Pierson have applied to the Board of Adjustment, Township of Roxbury for permission to construct a deck requiring variance relief for premises located at 29 Sunset Lane and known as Block 11904, Lot 5 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Section 13-7.819 of the Roxbury Township Land Use Ordinance; and

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WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

1. The Applicants are the owners and occupants of the subject premises.
2. The Applicants were proposing to construct a deck on the lake front side of the home, which requires variance relief from rear yard setback and lake front buffer requirements.
3. Applicants received a letter of denial dated March 5, 2020 and a revised letter dated April 17, 2020 from Tom Potere, the Zoning Officer. As noted by Mr. Potere, the Applicants need the following relief:

<i><u>Section</u></i>	<i><u>Permitted</u></i>	<i><u>Existing</u></i>	<i><u>Proposed</u></i>
13-7.819 Stream, Lake and Pond buffer	Notwithstanding any other provision of the Zoning Ordinance of the Township of Roxbury, no disturbance including grading and the erection, construction or expansion of any building or structure shall be permitted within fifty (50) feet from the bank of any stream or from the edge of any pond or lake in the Township of Roxbury. A conservation easement shall be required at a minimum width of fifty (50) feet along the bank of any stream or from the edge of any pond or lake in the Township of Roxbury.	5 ft. by 8 ft. deck with steps Deck is 42 feet away from bank of lake.	14 feet by 28 feet deck with 4 feet by 4 feet deck platform for steps. Deck platform will be 28 feet from the bank of the lake.
13-7.1301D5A	Rear year setback 35 feet	15.5 feet rear yard setback	4 foot rear yard setback

4. The Board received a letter from H. Ronald Smith, Chairman Lake Hopatcong Commission dated April 28, 2020.
5. The Applicants appeared at a duly notice public hearing, that was conducted via Zoom, a web-based video and audio conferencing platform, in light of Governor Phil Murphy’s Executive Order banning public gatherings in response to the Covid-19 Pandemic.
6. The meeting was held on May 11, 2020 and Applicants, Greg and Stephanie Pierson, testified in support of the proposal. There currently exists a small deck, with a few steps down to flagstone pavers, all of which will be removed. Applicants are proposing to construct a 14’ by 26’ wide

deck on the rear of the home, with 4' x 4' platform for the stairs. There will be crushed stone under the deck.

7. The Applicant would like the proposed deck to entertain family and friends, especially those who are elderly. They testified that the deck would enhance their property, which will be their forever home. Many similarly situated homes, in the area, have a deck in the rear yard so this would be consistent with the neighborhood.
8. There was no one from the public in attendance at the hearing.

WHEREAS, the Board has determined that the relief requested by the Applicant 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 of the Township of Roxbury for the following reasons:

1. The Board found the testimony of the witnesses to be competent and credible.
2. The Board determined that relief can be granted, pursuant to N.J.S.A 40:55D-70C, from the following section of the Zoning Ordinance of the Township of Roxbury:
 - a. Section 13-7.81 requires that the deck be 50 feet away from the bank of the lake; a 28 foot setback has been approved.
 - b. Section 13-7.1301D5A requires a 35 foot setback from the property line; a 4 foot setback has been approved.
3. Subsection c(1) indicates that a variance may be granted under its "hardship" provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the c(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.
4. Accordingly, the deck is proposed in violation, of the rear yard setback requirements, but the deck will be attached to the existing dwelling and cannot be constructed in a conforming manner. The

benefits of allowing the construction of this deck outweigh the detriments that may result from denying the requested relief.

5. It was determined that there would be little impact to the surrounding area and the proposed deck is similar to decks within the neighborhood. Accordingly, the relief granted is without substantially impairing the zoning scheme or Master Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 11th day of May 2020 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. Applicant shall verify the dimensions of the deck and submit same to the construction office for a building permit.
3. The deck shall be built in conformance with the plans submitted to and approved by the Zoning Board.
4. The setback shall not be less than 28 feet from the property line and 42 feet from the bank of the lake.
5. Deck to remain open and uncovered.

Mr. D'Amato made a motion to memorialize the resolution, Ms. Robortaccio seconded.

Roll call: Mr. D'Amato, yes; Ms. Robortaccio, yes; Mr. Overman, yes; Mr. Klein, yes; Mr. Furey, yes; Dr. Kennedy, yes; Ms. Dargel, yes.

ZBA-20-003 GILFILLAN, Variance relief for property located at 28 Kingsland Road, Landing, Block 11002, Lot 7 in an R-3 zone.

In the matter of Robert & Judith Gilfillan
Case No. ZBA-20-003

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: May 11, 2020
Memorialized: June 8, 2020

WHEREAS, Robert & Judith Gilfillan have applied to the Board of Adjustment,

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Township of Roxbury for permission to re-build their single family home requiring variance relief for premises located at 28 Kingsland Road and known as Block 11002, Lot 7 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Sections 13-1301D5(a), 13-1301D6(a), 13-7.819, 13-7.7, 13-7.810.1B, 13-7.905C of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and having conducted a public hearing has made the following factual findings:

1. The Applicants are the owners of the subject premises. Shawn and Victoria Gilfillan, the Applicants’ son, and daughter-in-law, are contract purchasers of the property and appeared at the public hearing to present the application.
2. The Applicants were proposing to demolish the existing structure, which was damaged during a storm, and build a new dwelling in approximately the same location.
3. Applicants submitted the following documents:
 - a. Proposed Tree Damage Rebuild prepared by Fox Architectural Design dated December 2, 2019, consisting of 4 sheets.
 - i. Site Plan/Zoning Notes/Existing Home, revised through February 25, 2020
 - ii. Floor Plans/Elevations, revised through January 13, 2020
 - iii. Elevations, revised through January 13, 2020
 - iv. Proposed Garage, revised through February 20, 2020
 - b. Map of Property prepared by Stewart Surveying and Engineering, LLC, dated September 22, 2019
4. Applicants received a letter of denial dated February 26, 2020, from Tom Potere, the Zoning Officer. As noted by Mr. Potere, the Applicants need the following relief:

<i>Section</i>	<i>Permitted</i>	<i>Existing</i>	<i>Proposed</i>
13-7.1301D5(a) RearYard Setback	35 Feet	34.4 Feet	34.4 Feet
13-7.1301D6(a)	10 Feet	8.6 Feet	8.6 Feet

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Side Yard Setback			
13-7.819 Stream & Lake Buffer	50 Feet	34.4 Feet	34.4 Feet
13.7.7 Nonconforming Buildings	A nonconforming structure shall not be enlarged unless the structure is changed to a conforming structure, provided, however, that where a building meets the use requirements of this Ordinance and is nonconforming because of height or area or yard regulations, said structure may be enlarged providing the height, area and yard regulations are not further violated.	Nonconforming structure due to setbacks.	Expanding the foot print / area of a nonconforming structure.
13-7.810.1B	No accessory building shall be permitted in a front yard.	Two sheds	24 ft. by 38 ft. detached garage.
<i>Section</i>	<i>Permitted</i>	<i>Existing</i>	<i>Proposed</i>
13-7.905C	The total ground area of all accessory buildings shall not exceed fifty (50%) percent of the ground area of the principal building on the same lot.	Two Sheds	24 ft. by 38 ft. detached garage. (912 Sq. Ft.) House 1st floor Sq. Footage is 1,165.

5. The Board received a letter from H. Ronald Smith, Chairman, Lake Hopatcong Commission dated April 28, 2020.
6. A duly noticed public hearing occurred on May 11, 2020 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Executive Order 103 issued by Governor Phil Murphy and the statewide ban on public gatherings, as authorized by the Consent Order of Remand and by P.L. 2020, ch. 11, and in accordance with the Municipal Land Use Law, the Open Public Meetings Act, and the guidance document entitled “Planning Board and Zoning Board of Adjustments Operational Guidance – COVID-19: N.J.S.A. 40:55D-1: Recommendations for Land Use Public Meetings in New Jersey” issued by the Department of Community Affairs, Division of Local Government Services.
7. The following Exhibits were marked for identification:
 - a. A-1 – Application

- b. A-2 – Denial Letter
 - c. A-3 – Tax Map
 - d. A-4 – Survey
 - e. A-5 – Site Plan (4 pages)
 - f. A-6 – Lake Hopatcong Commission Report
 - g. A-7 – Site Plan Color
 - h. A-8 – Photo Board 1
 - i. A-9 – Photo Board 2
 - j. A-10 – Photo Board 3
8. Shawn and Victoria Gilfillan participated in the public hearing and testified under oath that a tree fell during a storm and damaged a portion of the home. Their intent was to demolish the existing home and construct a new home, in approximately the same footprint, which they will occupy.
9. Kenneth Fox, who was accepted as an expert in architecture and a professional planner, testified under oath. The lot is undersized and irregularly shaped, with frontage on Kingsland Road and along the cul-de-sac of Kingsland Road. The driveway currently meets the front of the home, as well as having a turn-around, which will be removed. The existing sheds on the property will be removed as well.
10. The property slopes toward the lake, from the rear of the home. The new home will have a partial walkout basement to the back yard and the front entrance is on grade. There will be a paver walkway from the side door of the garage to the front porch. The lakefront area will be all grass with possibly landscaping; but will be pervious. The Applicant will maintain similar drainage to the existing drainage pattern.
11. Both the home and the garage will have similar architectural design with decorative dormers. The garage has a storage area mezzanine, which is accessed with a pull-down staircase. A proposed detached 3 car garage is located near the cul-de-sac, with a small paver driveway to access same. The location was chosen based on the narrowness of the property and working to

minimize impervious coverage. Mr. Gilfillan noted that he repairs vehicles for a living and likes to work on cars as a hobby, which is why they proposed a 3 car garage, with additional storage.

12. The property is serviced by public sewer, with connection out to Kingsland Road. The existing grinder pump will need to be relocated, which may necessitate a modification to the utility access easement.

13. As a planner, Mr. Fox provided testimony with regard to the necessary variance relief. A variance is needed for rear yard setback, 35 feet is required, and lake front buffer, 50 feet is required; 34.4 feet is proposed for both. The side yards will be virtually unchanged; the east side setback of 8.6 feet will remain and the west side setback will be 12.8 feet with 12.7 feet existing. There is no detrimental impact from the proposed location, as the proposed home will have the same impact as the existing dwelling but will be an aesthetic improvement to the property. The current home was seriously damaged by the fallen tree and needs to be replaced. Applicants were able to take advantage of the slope and expand the basement. The driveway was reduced and angled for better access to the garage. The proposal is conforming for both building and impervious coverage.

14. In response to the Lake Hopatcong Commission's concerns:

- a. A filter fabric sediment fence will be used during construction for soil conservation measures, but the construction does not require approval from the Morris County Soil Conversation District.
- b. The property will be graded across the lot, which is consistent with the existing grade.
- c. There will be additional non-invasive landscaping between the home and the lake that is not on the plans.
- d. The Applicant will use the recommended non-phosphorus fertilizer for new vegetation.

15. It was noted that the Gilfillan Family has lived in the neighborhood for years and that Shawn and Victoria have been planning to move back. The storm damage to the existing home created an urgency to make the move sooner than planned.

WHEREAS, the Board has determined that the relief requested by the Applicant 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 of the Township of Roxbury for the following reasons:

1. The Board found the witness testimony to be competent and credible. Pursuant to N.J.S.A. 40:55D-70(c), the Board determined that the following relief can be granted:
 - a. Section 13-7.1301D5(a) – Rear yard setback required to be 35 feet, 34.4 feet is existing and approved
 - b. Section 13-7.1301D6(a) – Side yard setback required to be 10 feet, 8.6 feet is existing and approved
 - c. Section 13-7.819 – the stream and lake buffer required to be 50 feet, 34.4 feet is existing and approved
 - d. Section 13-7.7 – non-conforming structures shall not be enlarged, provided height, area and yard regulation are not further violated, the expansion of the footprint and area of the non-conforming structure is approved
 - e. Section 13-7.810.18 – no accessory building shall be permitted in the front yard, the 2 existing sheds will be removed, the 24 foot by 38 foot detached garage in the front yard is approved
 - f. Section 13-7.905C – the total ground area of accessory buildings shall not exceed 50% of the ground area of the principal structure, the detached garage of 912 square feet is approved, which exceeds 50% of the 1,165 square foot ground floor of the home
2. N.J.S.A. 40:55D-70(c)(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the c(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set

forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.

3. The dwelling and garage that are proposed require multiple variances, many of which are pre-existing non-conforming conditions, as the new home is being constructed in the same location as the existing home. The existing home was seriously damaged and needs to be replaced. The benefits of allowing the construction of this new home outweigh the detriments that may result from denying the requested relief. The Applicant has taken steps to reduce the impervious coverage on the lot by removing a large portion of the driveway. The home is an aesthetic improvement to the property and the surrounding area. The garage has been designed to be similar in appearance to the house. Both will be visually appealing.
4. It was determined that there would be little impact to the surrounding area and the proposed home is similar to homes within the neighborhood. Accordingly, the relief can be granted without substantially impairing the zoning scheme or Master Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 11th day of May 2020 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. The Applicant shall obtain all necessary permits from the construction department.
3. A filter fabric sediment fence will be used during construction for soil conservation measures.
4. The property will be graded across the lot, which is consistent with the existing grade.
5. There will be additional non-invasive landscaping between the home and the lake that is not on the plans.
6. The Applicant will use the recommended non-phosphorus fertilizer for new vegetation.
7. The fire pit and other improvements shall be removed from the lakefront area and it shall be a pervious area with a seawall entrance to the lake.
8. The driveway shall be constructed with paver stones.

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9. The plans shall be revised to accurately reflect the percentage of impervious coverage on site.
Same to be reviewed and approved by the Township Engineer.
10. The elevation, grading, drainage and sewer connection details are subject to review and approval
by the Township Engineer.
11. The grinder pump shall be relocated, subject to review and approval by the Township Engineer. If
determined necessary, the utility access easement will be modified to reflect the new location.
The easement will be subject to review and approval by the Township Engineer and the Board
Attorney and recorded in the Morris County Clerk's Office.

Dr. Kennedy made a motion to memorialize the resolution, Mr. Klein seconded.

Roll call: Dr. Kennedy, yes; Mr. Klein, yes; Mr. Overman, yes; Mr. D'Amato, yes; Ms. Robortaccio, yes;
Mr. Furey, yes; Ms. Dargel, yes.

OLD BUSINESS:

None

Motion to adjourn 7:18 pm

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Tracy Osetec, Board Secretary
June 8, 2020