

NOTICE is hereby given by the Board of Adjustment of the Township of Roxbury that a regular meeting of the Board of Adjustment will be held on Monday, August 9th, 2021, at **7:00 p.m.** in the Municipal Building at 1715 Route 46, Ledgewood, NJ and the following action may or may not be taken:

BOARD MEMBERS PRESENT

Mr. Overman, Mr. Klein, Ms. Robortaccio, Mr. Furey, and Dr. Kennedy

ABSENT: Mr. Frequenza, Ms. Dargel, and Mr. D'Amato

PROFESSIONAL STAFF

Mr. Russell Stern, P.P.

Mr. Larry Wiener, Esq.

MINUTES OF JULY 12, 2021, MEETING

Ms. Robortaccio made a motion to approve the minutes of the July 12, 2021, meeting, Mr. Klein seconded.

Roll call: Ms. Robortaccio, yes; Mr. Klein, yes; Mr. Overman, yes; Dr. Kennedy, yes.

RESOLUTIONS:

ZBA-21-011 CALANTROPIO, Bulk Variance relief for property located at 82 Lazarus Drive, Ledgewood, Block 8303, Lot 6 in an R-1.8 zone.

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

Roll call: Mr. Klein, yes; Mr. Overman, yes; Ms. Robortaccio, yes; Dr. Kennedy, yes.

In the matter of Jamie-Lynn & Audra Calantropio

Case No. ZBA-21-011

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

Approved: July 12, 2021
Memorialized: August 9, 2021

WHEREAS, Jamie-Lynn & Audra Calantropio have applied to the Board of Adjustment, Township of Roxbury for permission to construct an in-ground swimming pool for premises located at 82 Lazarus Drive and known as Block 8303, Lot 6 on the Tax Map of the Township of Roxbury which premises are in a "R-1.8" Zone; said proposal required relief from Sections 137.1605G, 13-7.810.1B, 13-7.7.905A of the Roxbury Township Land Use Ordinance; and

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.

Township of Roxbury
Board of Adjustment
August 09, 2021

2. The Applicants were proposing to install a pool in the rear of their home, requiring relief for maximum impervious coverage, accessory structure within the front yard, accessory structure within 10 feet of the principal structure and a fence in excess of four (4) feet in the front yard.
3. The following were marked as Exhibits:
 - a. Exhibit 1 – Application #21-011 dated March 10, 2021
 - b. Exhibit 2 – Tax Map page 83
 - c. Exhibit 3 - Letter of denial dated March 9, 2021, from Tom Potere, the Zoning Officer, noting the following:
 - i. Section 13-7.1605G, maximum permitted impervious coverage is 35%, 35.23% is existing and 40.63% is proposed.
 - ii. Section 13-7.810.1B, no accessory structure is permitted in the front yard, 14 feet by 28 feet in-ground pool proposed in front yard.
 - iii. Section 13-7.905A, swimming pool shall be set back a minimum of ten (10) feet from the foundation of the principal dwelling, pool is proposed four (4) feet from the foundation of the principal dwelling.
 - iv. Section 13-8.809B, no fence or wall which exceeds four (4) feet in height shall be constructed in the front yard, existing six-foot PVC fence will remain.
 - d. Exhibit 3a – Revised Letter of Denial dated June 30, 2021, from Tom Potere, the Zoning Officer, noting the following:
 - i. Section 13-7.1605G, maximum permitted impervious coverage is 35%, 35.23% is existing and 40% is proposed.
 - ii. Section 13-7.905A, swimming pool shall be set back a minimum of ten (10) feet from the foundation of the principal dwelling, pool is proposed five (5) feet from the foundation of the principal dwelling.
 - iii. Section 13-8.809B, no fence or wall which exceeds four (4) feet in height shall be constructed in the front yard, existing six-foot PVC fence will remain.
 - e. Exhibit 4 - Survey prepared by James P. Deady Surveyor LLC, dated August 20, 2015.
 - f. Exhibit 4a – Revised Survey prepared by James P. Deady Surveyor LLC, dated August 20, 2015.

Township of Roxbury
Board of Adjustment
August 09, 2021

- g. Exhibit 5 - Pool Plans, prepared by Cardinal Systems Inc, dated December 16, 2020.
4. A duly noticed public hearing occurred on April 12, 2021 and July 12, 2021 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Governor Phil Murphy's statewide ban on public gatherings 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.
 5. Jamie-Lynn and Audra Calantropio, the Applicants, along with Phil Picarello, from Metro Pools, presented sworn testimony in support of the application. The subject property is a corner lot, which results in two front yards: Lazarus Drive and Cather Court. The Applicants propose to remove the existing patio and install a pool with a new patio in the front yard to provide a recreational area for their family. The proposed pool will be 4 feet from the foundation of the home and the installation of the pool and patio will result in an impervious coverage increase of 40.63% in excess of the 35% permitted.
 6. The proposed pool will have steel walls and vinyl lining. The fence will be removed during construction and reinstalled after the installation of the pool and patio. Additional landscaping is proposed along the Lazarus Drive frontage.
 7. It was noted that the pool is proposed with an existing utility easement, but details regarding the easement are unknown. Additionally, the existing fence and patio are within the easement area. An in-depth discussion took place regarding relocating the pool outside of the easement area. The Applicant agreed to shift the pool in the south-eastern direction and revise the plans to reflect same. It was determined that the fence could remain in the Easement, but the Board requested that the Applicant enter into a Hold Harmless Agreement to protect the Township in the event the obstructions have to be removed, assuming the Easement is held by the Township. If the Easement is held by a utility company, the Applicant will have to amend the application and return to the Board.
 8. It was determined that the fence was an existing condition, that has been there for many years and could remain in the easement without a substantial detriment to the surrounding area. It was further

Township of Roxbury
Board of Adjustment
August 09, 2021

determined that a 3-foot-wide patio around the pool was necessary for safe circulation and the installation of the pool cover.

9. After the initial hearing on April 12, 2021, the Applicants submitted a revised survey, dated August 20, 2015, no revision date, with the pool and related patio sketched in that indicated that the patio and pool were shifted 3 feet in a southerly direction, outside of the easement area, but the plastic fence will remain inside the area.
10. There was no one present from the public opposed to the application.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public 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. Relief can be granted pursuant to N.J.S.A. 40:55D-70C from the following Section of the municipal zoning ordinance:
 - a. Section 13-7.1605G, maximum permitted impervious coverage is 35%, 35.23% is existing and 40% is proposed.
 - b. Section 13-7.905A, swimming pool shall be set back a minimum of ten (10) feet from the foundation of the principal dwelling, pool is proposed five (5) feet from the foundation of the principal dwelling.
 - c. Section 13-8.809B, no fence or wall which exceeds four (4) feet in height shall be constructed in the front yard, existing six-foot (6') PVC fence will remain.
2. N.J.S.A. 40:55D-70C(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. The subject property is a corner lot creating a hardship for the Applicants, as there are two front yards. The pool is proposed in what the Applicant utilizes as a back yard, and the fence has existing for many years without a detriment to the surrounding area.
3. The Applicant has agreed to move the pool out of the easement area, along with the patio, which will improve the subject property. The proposed pool and patio will provide a recreation area for the Applicants' family. 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 12th day of July 2021 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. If it is determined that the Township holds the Utility Easement, the Applicant shall enter into a Hold Harmless Agreement with the Township with regard to the removal of the fence, pavers and other obstructions located in the Utility Easement Area.
3. The pool shall be constructed consistent with the plans submitted to the Board and the representations made during the public hearing.

ZBA-21-018 MCCLOSKEY, Certificate of Non-Conformance for property located at 40 Salmon Lane, Ledgewood, Block 8801, Lot 6 in a B-2 zone.

Ms. Robortaccio made a motion to memorialize the resolution, Mr. Klein seconded.
Roll call: Ms. Robortaccio, yes; Mr. Klein, yes; Mr. Overman, yes; Dr. Kennedy, yes.

In the matter of Matthew McClosky
Case No. ZBA-21-018

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

Approved: July 12, 2021
Memorialized: August 9, 2021

WHEREAS, Matthew McClosky has applied to the Board of Adjustment, Township of Roxbury seeking Certificate of Non-Conformance, pursuant to N.J.S.A. 40:55D-68, for premises located at 40 Salmon Lane and known as Block 8801, Lot 6 on the Tax Map of the Township of Roxbury which premises are in a “LI/OR” Zone; and

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. Edward Dunne, Esquire represented the Applicant.
2. The Applicant is the owner and occupant of the subject premises.
3. The Applicant is seeking a Certification of a Pre-Existing, Non-Conforming Use for an existing 2 ½ story house with enclosed front porch, in the Light Industrial/Office Research Zone where single-family homes are not permitted uses.

Township of Roxbury
Board of Adjustment
August 09, 2021

4. The following were marked as Exhibits:
 - a. Exhibit A-1 – Application #21-018, received April 21, 2021.
 - b. Exhibit A-2 - Tom Potere, Zoning Officer, dated June 18, 2021.
 - c. Exhibit A-3 – Tax Map page 83.
 - d. Exhibit A-4 – Survey prepared by Douglas J. Wesp, dated December 7, 2004.
 - e. Exhibit A-5 – Property Tax Card dated January 4, 2017.
 - f. Exhibit A-6 – Lot Line Adjustment Approval, dated December 21, 2004.
 - g. Exhibit A-7 – Deed Adjusting Boundary Line, dated December 20, 2004.
 - h. Exhibit A-8 – Deed for the property, dated December 20, 2004.
 - i. Exhibit A-9 – Individual Surface Sewage Disposal System Approval, dated September 1, 2018.
 - j. Exhibit A-10 – License to Operate an Individual Subsurface Sewage Disposal System, dated October 7, 2019.
 - k. Exhibit A-11 – Photograph of the home from the 1970s.
 - l. Exhibit A-12 – Aerial Photo of the home from 1957.
5. A duly noticed public hearing occurred on July 12, 2021 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Governor Phil Murphy’s statewide ban on public gatherings 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.
6. Matthew McClosky, the Applicant, presented sworn testimony in support of the application. The Applicant is seeking a Certification of a Pre-Existing Non-Conforming Use, which is a bank requirement to sell the subject property. The Applicant testified that the letter prepared by Mr. Potere (A-2) was mostly accurate, but that the shed belonged to the neighbor. Referring to A-3, the highlighted lot was the subject property.
7. Further testimony indicated that but for a stone patio that replaced the deck, the conditions in the survey (A-4) were the same as when Mr. McClosky purchased the property in 2004. The Property

Township of Roxbury
Board of Adjustment
August 09, 2021

Tax Card (A-5) stated that the house was built in 1830 as a single-family dwelling. There was a lot line adjustment approved just prior to the transfer of property to Mr. McClosky (A-6) which stated the following:

In granting this approval, the Township Planner has determined that no new lots are being created; and that both lots conform to the Ordinance's bulk requirements, and/or that pre-existing nonconformities are not being increased.

The lot line adjustment was set forth in the Deed Adjusting Boundary Line (A-7) and reflected in the Deed of Transfer (A-8).

8. The Septic Approval (A-9) indicated that the property was residential and a License to Operate was issued (A-10).
9. A photo from the 1970s (A-11) and an aerial from 1957 (A-12) both appear to show the existing single-family dwelling. The Applicant testified that he received a permit for the deck that existed on the property. When the patio was installed, the Township did not consider it an expansion of a non-conforming use.
10. Russell Stern, the Board's Planner, explained that the Board must determine if the use existed prior to the enactment of the LI/OR Zone, which occurred in 2001, noting that zoning in the Township was created in the 1950s. Based on the tax record and the aerial photo, it appears the development of this single family home pre-dated the zoning. No variance relief is necessary.
11. There was no one from the public present for this application.

WHEREAS, the Board has determined that the Applicant has met the burden set forth in N.J.S.A. 40:55D-68 to establish that subject single-family dwelling is a pre-existing, non-conforming use that was developed prior to the current zoning of the property and prior to zoning in Roxbury Township. It was determined that the home existed for over 100 years and that there have not been any substantial increases to the dwelling since that time.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 12th day of July 2021 that the approval of the within application be granted.

APPLICATIONS:

ZBA-20-004 SPEICHER, Minor Subdivision, "D2" Variance for property located at 280 Old Ledgewood Road, Flanders, Block 9303, Lot 1, 3 & 4 in a B1-A zone. *Request to be carried to September 13th, 2021, further notification required.*

ZBA-21-016 GUARINO, Bulk Variance relief for property located at 25 Silver Springs Drive, Landing, Block 11601, Lot 16 in an R-3 zone. *Request to be carried to September 13th, 2021, meeting with no further notification.*

ZBA-21-019 RUDE, Bulk Variance relief for non-conforming sign located on property located at 376 Mt. Arlington Blvd., Landing, Block 12103, Lot 3 in an R-3 zone. *Application withdrawn by applicant.*

ZBA-21-020 PINEDA, Bulk Variance relief for property located at 3 S. Hillside Avenue, Succasunna, Block 3603, Lot 6 in a PO/R zone.

Mr. Wiener swore in Mardonia Pineda of 3 S Hillside Avenue, Succasunna, and Viviana Pineda of the same address. Ms. M. Pineda went on to testify that the reason she is seeking a variance is she would like to install a pool and her issue is the property is located within the PO/R zone where pools are not permissible. Ms. M. Pineda went onto state that due to the Covid crisis her family has been unable to vacation so she would like to install a pool for family enjoyment.

Mr. Overman stated he noticed in the zoning denial report issued by Mr. Potere that the PO/R has a much higher threshold of impervious coverage (55%), noting the applicant has an existing impervious coverage of 51.22%.

Mr. Stern stated if you look at the adjacent R-3 District the maximum impervious coverage allowed is 25% and the applicants property is a residential use. Mr. Stern went on to state that when the PO/R zone was created they increased impervious coverage to 55% because the anticipation was that it would be developed with a commercial use that would need greater coverage to accommodate a parking lot, buildings, and other improvements. Mr. Stern noted that there is a lot of pavement on the applicants property, the patio area is very large, and the parking area is very large, he then asked Ms. Pineda if she looked into reducing the amount of pavement. Ms. M. Pineda replied yes that she would like to remove the concrete pad and asked if a permit was required for the demolition. Mr. Stern replied that a drawing would be required to show the extent of what would be removed. Ms. Pineda asked what percentage of impervious coverage would the Board like to see removed? Mr. Stern replied the applicant needs to look at what really is needed and perhaps a larger parking area is required because of the location of the property. Mr. Stern stated that you do not necessarily want to be backing out of your driveway onto a busy Hillside Avenue, so a larger parking area to make a k-turn and exit the property safely is reasonable, but the large concrete pad and perhaps a reduction in the patio area would be reasonable.

Ms. M. Pineda requested to be carried to the October 4, 2021 meeting where she will return with revised impervious coverage calculations and exhibits reflecting the removal of the concrete pad and other improvements in order to reduce the amount of impervious coverage on the property.

ZBA-21-021 SMITH, Bulk Variance relief for property located at 11 Sunnyside Drive, Kenvil, Block 2406, Lot 8 in an R-3 zone.

Mr. Wiener swore in Ms. Melanie Smith of 11 Sunnyside Drive, Kenvil. Ms. Smith went on to testify that her home is located on 11 Sunnyside Drive which is a corner lot that fronts Railroad Avenue as well. Ms. Smith went on to state that her concern is Railroad Avenue is a ingress and egress for County Concrete vehicles such as concrete mixers, eighteen wheelers, pick-up trucks, and utility vehicles. Ms. Smith further testified that the business

is not a 9:00am to 5:00pm business, the vehicles run all hours of the night and while they are good neighbors, the business makes it is a very busy street. Ms. Smith stated she currently has a six-foot wooden fence which is non-conforming that runs along Railroad Avenue and replacement of the fence is the reason she is seeking a variance. Ms. Smith went on state she would like to push the fence back an additional 40 feet to provide the family more space for outdoor activities. Ms. Smith stated Mr. Potere suggested that the fence be installed from the rear corner of the home directly back, but Ms. Smith noted there is a large Oak tree in the way.

Ms. Robortaccio asked Ms. Smith what type of fence she would be installing. Ms. Smith replied, a white vinyl fence. Several Board members suggested she choose a tan color that would not show the dirt that gets kicked up from the daily truck traffic or screen the white vinyl fence with some shrubbery. Mr. Stern agreed and noted that the Board typically is not favorable to 6-foot white vinyl fences on corner lots, but Ms. Smith has an exceptional situation in the fact her home is in the path of County Concrete's ingress and egress of their commercial fleet.

Mr. Stern stated in looking at the tax map for Ms. Smith's property has only a 40-foot right-of-way in front of the home and the property behind the Smith property has a 50-foot right-of-way so ideally the fence should be set back at least 10 more feet from Railroad Avenue and some addition feet perhaps for a landscaped area because if Ms. Smith's application is legitimized, I can see the Board approving others along Railroad Avenue.

Dr. Kennedy asked Mr. Stern to address the placement of the fence. Mr. Stern stated the fence should be brought to what is the future right-of-way line which is 50-feet and if the Board would want to see some landscaping in front of the fence, then that would be a set-back of 10-15 feet. Ms. Smith concurred.

Motion was made to open to the public for questions – none were made
Motion was made to close to the public

Motion was made to open to the public for comments – none were made
Motion was made to close to the public

Ms. Robortaccio made a motion to approve the application, Mr. Klein seconded.
Roll call: Ms. Robortaccio, yes; Mr. Klein, yes; Mr. Furey, yes; Mr. Overman, yes; Dr. Kennedy, yes.

NEW BUSINESS:

OLD BUSINESS: None

Motion to adjourn at 8:03 pm

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Tracy Osetec, Board Secretary
August 31, 2021