

Township of Roxbury
Board of Adjustment
August 10, 2020

On Monday, August 10th, 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: 81611972494#, Participant ID: # and Password: 321968#. 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. Klein, Mr. D’Amato, Dr. Kennedy, Ms. Robortaccio, and Mr. Furey

ABSENT: Ms. Dargel, Mr. Overman

PROFESSIONAL STAFF

Mr. Russell Stern, P.P.

Mr. Larry Wiener, Esq.

Ms. Alyse Hubbard, Esq.

MINUTES OF JULY 10, 2020 MEETING

Ms. Robortaccio made a motion to approve the minutes of July 10, 2020, Mr. D’Amato seconded.

Roll call: Ms. Robortaccio, yes; Mr. D’Amato, yes; Ms. Houtz, yes; Mr. Klein, yes; Dr. Kennedy

RESOLUTIONS:

ZBA-20-006 AMATO, Variance relief for property located at 10 Stone Cottage Lane, Wharton, Block 12501, Lot 24.05 in an R-1 zone. *Approved and Memorialized*

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

Roll call: Mr. D’Amato, yes; Ms. Robortaccio, yes; Ms. Houtz, yes; Mr. Klein, yes; Dr. Kennedy

In the matter of Brian & Suzanne Amato

Case No. ZBA-20-006

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

Approved: July 20, 2020

Memorialized: August 10, 2020

WHEREAS, Brian & Suzanne Amato have applied to the Board of Adjustment, Township of Roxbury for permission to construct a 6-foot fence requiring variance relief for premises located at 10 Stone Cottage Lane (mailing address PO Wharton, NJ 07885) and known as Block 12501, Lot 24.05 on the Tax Map of the Township of Roxbury which premises are in a “R-1” Zone; said proposal required relief from Section 13-8.809B 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:

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1. The Applicants are the owners and occupants of the subject premises.
2. The Applicants are proposing to construct a 6' high fence which will be located in the front yard of the subject premises. The Applicant's proposal violates the fence ordinance in that the front yard regulations limit a fence height to 4'.
3. Applicants received a letter of denial dated May 14, 2020 revised to May 21, 2020 from Tom Potere, the Zoning Officer. As noted by Mr. Potere, no fence or wall which exceeds 4-feet in height shall be constructed or maintained between the road right-of-way line and the front foundation wall of the principal building. In the case of corner lots, such restrictions shall apply to both street frontages. No fence or wall shall exceed 6 feet in height within the side or rear yards. Applicant is proposing to install a 6-foot vinyl privacy fence.
4. The Applicants testified at the public hearing. They presented three (3) photographs and a survey depicting where the proposed fence would be located on their property. The subject area is a subdivision on Cottage Lane. Cottage Lane is parallel and north of Route 80. Access to Cottage Lane is via Berkshire Valley Road.
5. The lots that have been identified and developed, in the subject area, are somewhat larger in size. There are various environmental constraints on the properties. The Applicant's proposal involves the easterly side yard – it would intrude approximately 11.5' into the front yard and be contiguous with a fence that is located on the neighbor's side of the property line. The fence would run, as depicted, along the entire easterly side yard, and a small portion of the front yard.

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 finds the Applicant's property to truly be unique. It is located on a subdivision, with large properties, all of which appear to have some type of environmental constraints. In particular, the Applicant's property is constrained by a conservation easement, wetlands buffer zone, and freshwater wetlands.
2. In addition, the front area of the house is skewed. This relates to the existing cul de sac and the way the house is "canted" towards the bulb of the cul de sac.

3. The Board cannot discern any substantial impact the proposed fence would have on the zone plan or zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 20th day of July 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. Fence is to be located as depicted on the drawings submitted with the application.
3. As testified to, by the Applicant, the proposed solid fence has “two good sides” – thus, each side of the fence has the same exact façade.
4. The Applicant shall locate the fence, as proposed. Same shall extend no further than 11.5’ into the front yard.

ZBA-20-008 TAGUE, Variance relief for property located at 18 Mohican Avenue, Landing, Block 12014, Lot 26 in an R-3 zone. *Approved and Memorialized*
Mr. Klein made a motion to memorialize the resolution, Ms. Robortaccio seconded.
Roll call: Mr. Klein, yes; Ms. Robortaccio, yes; Ms. Houtz, yes; Mr. D’Amato, yes; Dr. Kennedy

In the matter of Daniel & Rachel Tague
Case No. ZBA-20-008

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

Approved: July 20, 2020
Memorialized: August 10, 2020

WHEREAS, Daniel & Rachel Tague have applied to the Board of Adjustment, Township of Roxbury for permission to construct a deck requiring variance relief for premises located at 18 Mohican Avenue and known as Block 12014, Lot 26 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Section 13-7.1301D5(a) 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:

6. The Applicants are the owners and occupants of the subject premises.
7. The Applicants are proposing to re-construct and enlarge the existing deck on-site.
8. Applicants submitted a marked-up survey prepared by Lakeland Surveying, dated 9/29/18.

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9. Applicants received a letter of denial dated June 5, 2020 from Tom Potere, the Zoning Officer. As noted by Mr. Potere, the Applicant's proposal would result in the need for a rear yard setback variance - 35' permitted; 26' existing and proposed.
10. The Applicants testified at the public hearing. They noted that there was previously an informal area where the deck extension would be located. At one time, there may have been flowers and some pavers. The rear sliding door of the house is in that location as well.
11. The Applicants stated the location of the existing home left them with little area to create additional decking. In addition, the rear yard is somewhat bisected by a rock wall. The Applicant's proposal would result in a location particularly suited for the Applicant's proposal.

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 finds the testimony of the Applicants to be competent and credible.
2. The Applicant's proposed deck would essentially square-off the rear area of the home. It would be well suited to the area proposed, by the Applicants, and the diminution and setback will have no significant impact on the zone plan or zone scheme.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 20th day of July 2020 that the approval of the within application be granted subject, however, to the following conditions:

5. Payment of all fees, sureties, and escrows required by ordinance.
6. Addition to be sized and located as depicted on the plot plan submitted with the application. Same not to exceed the requested 26' rear yard setback.
7. Applicant shall obtain all appropriate permits.
8. Deck to remain open and uncovered.

2019 ANNUAL ZONING BOARD REPORT *Approved and Memorialized*

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

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

**ROXBURY TOWNSHIP
ANNUAL ZONING REPORT
FOR 2019**

Approved: July 20, 2020
Memorialized: August 10, 2020

WHEREAS, NJSA 40:55D-70.1 of the Municipal Land Use Law requires the Zoning Board of Adjustment at least once a year to review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any;

WHEREAS, said statute requires the Board of Adjustment to send copies of the report and the within resolution to the Governing Body and Planning Board;

THEREFORE BE IT RESOLVED, that the attached Annual Zoning Report for 2019 is hereby designated as the Annual Zoning Report for 2019 in conformance with said statute;

BE IT FURTHER RESOLVED, that after discussion and analysis by the Board of Adjustment, the following specific recommendations are made to the Governing Body and/or Planning Board at this particular time:

- *Provision for conforming and nonconforming single family homes that allows for limited improvements such as porches, porticos, entry foyers and dormers to extend within a slightly reduced front yard setback line. This provides for a more attractive entrance, energy efficient and safer design.*
- *Establishment of LED sign standards specifically applying to the numbers on gas station price signs.*
- *Create standards prohibiting perimeter window lighting on commercial properties.*
- *Provide stronger regulations prohibiting feather/banana flags.*
- *The policy / requirements concerning fencing and sheds along Lake Hopatcong (50ft buffer) should be reviewed (technical interpretation prohibits fences and sheds within 50 feet of the lake).*
- *Air BnB rental & advertising policies should be examined.*
- *Outdoor dining*
- *Clarify commercial vehicle parking standards in the B-2 zone.*

APPLICATIONS:

ZBA-17-012 KINGTOWN DIESEL, Amended Preliminary Site Plan, "D" Variance for property located at 1470 Route 46 East, Ledgewood, Block 9302, Lot 3 in a B-2 zone. *Requested to be carried to September 14th, 2020.*

ZBA-20-010 BURKE, Variance relief for property located at 27 Sunset Lane, Landing, Block 11904, Lot 4 in an R-3 zone.

Dr. Kennedy swore in Joseph A. Gates of Gates Architectural Design Inc., 132 Landing Road, Landing, NJ 07850. Mr. Gates is a licensed Architect in the State of New Jersey. Dr. Kennedy then swore in Christian and Janice Burke of 27 Sunset Lane, Landing NJ 07850. Mr. Burke went on to state that he is before to Board to receive variance relief for a home he would like to build on the property he purchased at 27 Sunset Lane, Landing. The Burkes are looking to build a second home where they can enjoy the outdoor activities that Landing has to offer. It is Mr.

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Burke's hope that they can start building a home that would be complete by the summer of 2021. Mr. Burke stated they chose this specific property for its location, flat graded property and city water and sewer hook-up.

Mr. D'Amato asked the Burkes for clarification on the fact that they plan to remove the existing structure on the property to replace it with a newly constructed property. Mr. Burke replied yes, the old structure will be removed and replaced with a new home.

Ms. Houtz then asked if the Burkes planned to use the existing foundation to build the new home. Mr. Burke replied no, that they plan on building the home without a basement using new footings.

Ms. Robortaccio mentioned that in Mr. Potere's report that there is a garage across the street from 27 Sunset Lane, it was then asked if the Burkes had access to it. Mr. Burke replied yes, that he owns the property the garage resides on. It was purchased under a separate deeded property, but was sold as part of a combined sale.

Ms. Robortaccio then went on to ask Mr. Stern about the impervious coverage that is proposed on the property, which is almost 40%. Ms. Robortaccio asked Mr. Stern how much impervious would the applicant save if the driveway was installed with pavers instead of pavement. Mr. Stern replied a 25% reduction in area depicted. Mr. Gates stated that overall proposed impervious coverage would be brought down to in the range of 33%. Mr. Gates stated the big issue is getting parking on premises. Ms. Robortaccio stated that the Burkes have a large two car garage across the street. Mr. Gates replied yes, that is understood. Mr. Burke went on to state that it isn't the norm in the area to have a garage across the street and he is looking to make his property conform to the others on the street. Mr. Klein made an observation that the Burkes do have the unique opportunity of having a two car garage across the street. The neighboring properties do not have this advantage. Mrs. Burke stated when they purchased the properties, they were very interested in having a lakeside home and property with the garage on it was tied to the listing, like a package deal. The Burkes stated that in the future they may be interested in selling the property with the garage on it. Mr. Stern asked if there was something in the deed that restricted the property with the garage on it from building a principal dwelling. Mr. Burke responded no, that is nothing listed in the deed to reflect the aforementioned. Dr. Kennedy asked what the size of the property is that houses the garage. Ms. Robortaccio responded it is quite large.

Mr. Wiener stated that the piece of property that houses the garage can be part of the solution to the impervious coverage issue by tying the deed to the lakefront property lot, this will allow for more impervious coverage. Dr. Kennedy then asked the Burkes if that would be something they would be interested in. Mr. Gates stated that in doing research on the property, the property with the two car garage had no connection to 27 Sunset Lane, and that is why he proposed parking on the lot. Mr. Wiener stated that this is an opportunity for the applicant to build a home with parking on a modest lot. A possible solution would be if Mr. Burke takes combines the two properties it will provide him more impervious coverage allotment.

Mr. Burke stated that he really wasn't interested in keeping the piece of property with the garage on it. He only purchased it because it was part of the deal to buy the lakefront property. His intent is to sell it in the future. Mr. Stern then stated that if you separate out the parcels, it is required that you have a garage on the lakefront property per Township Ordinance.

Ms. Robortaccio stated the applicant will still have the same issue of building a garage on the lakefront property regardless of the adjacent lot with the garage on it or not. Mr. Burke replied that he is not interested in merging the lots.

Dr. Kennedy stated the Board is always mindful when it comes to impervious coverage around the lake for a multitude of reasons. Mrs. Burke asked if they could use gravel or pavers in lieu of concrete. Ms. Robortaccio stated the gravel is not permissible.

Mr. Wiener then stated the applicants have two directions they can go, they can combine the lots to receive more impervious coverage allowance or reduce the size of the proposed home with the addition of a garage.

Mr. Gates noted that the lot with the garage on it is just shy of 15,000 feet. He also asked if the Board had any further concerns with the application, so when he and the Burkes re-evaluate the plans they can address any other

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issues. Mr. Burke asked if the other lot wasn't in the picture how would the meeting have gone. Ms. Robortaccio replied in the same manner, there is too much proposed impervious coverage and a garage is required.

Mr. Stern asked the Burkes to address as many of the Lake Hopatcong Commission concerns as possible. Mr. Burke asked if a landscape plan is required. Dr. Kennedy replied that for the Board to make a decision they need some type of mechanism to address the Lake Hopatcong Commission's concerns regarding landscaping. The Burkes requested to be carried to the September 14th, 2020 meeting without further notice.

ZBA-20-007 MILLER, Variance relief for property located at 19 Kadel Drive, Succasunna, Block 3002, Lot 12 in an R-3 zone.

Dr. Kennedy swore in Thomas Miller the owner of 19 Kadel Drive, Succasunna, NJ 07876. Mr. Miller testified he is before to Board to receive variance relief for an addition of his home at 19 Kadel Drive, Succasunna. Ms. Robortaccio stated in Mr. Miller's original submission to the Board, it was not noted by the Architect that there were five sheds on the property. Mr. Miller responded that he will remove three sheds and the tiki bar roof, in addition he will replace the patio with pavers. Mr. Miller then stated he was considering not putting down pavers at all and replace the patio area with grass and stepping stones. Ms. Robortaccio stated he must let the Board know exactly what he intends to do so they can make their decision accordingly. Mr. Miller then agreed he would keep it pavers as planned. Mr. D'Amato wanted to confirm that the newly installed pavers will be going by the hot tub. Mr. Miller replied yes.

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

Mr. D'Amato made a motion to approve the application, Ms. Robortaccio seconded.

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

ZBA-20-011 FIVE BAKERS, LLC, Certificate of Non-Conforming Use for property located at 631 Route 46, Kenvil, Block 2704, Lot 10 in a B-2 zone.

Dr. Kennedy swore in David Baker of 2180 Hopkins Lane, Easton, PA. Mr. Baker testified he is owner of the property 631 Route 46, Kenvil, NJ. Mr. Edward Dunne, Attorney represented Mr. Baker and began with questioning. He asked Mr. Baker if he was the owner of Five Bakers, LLC. Mr. Baker replied, yes along with his wife Catherine Baker. Mr. Dunne asked if they were the only owners of the LLC. Mr. Baker replied, yes. Mr. Dunne then asked if they were the owners of 631 Route 46, Kenvil, NJ Block 2704, Lot 10. Mr. Baker replied, yes. Mr. Dunne asked Mr. Baker to describe how the property currently looks in way of physical improvements. Mr. Baker replied the residence is a single family home, along with a deck, a shed, and driveway. Mr. Dunne asked the Board and Applicant to review Exhibit 4 the property survey dated 1998. He then asked Mr. Baker if that is an accurate depiction of the property as it stands today. Mr. Baker replied, yes. Mr. Dunne then asked the Board and Applicant to review Exhibit 5 a photo of the house from Route 46 and then asked Mr. Baker if it was accurate depiction of the property as it stands today. Mr. Baker replied, yes. Mr. Dunne asked Mr. Baker if he looked at Mr. Potere's Exhibit 2, Mr. Baker replied, yes. Mr. Baker noted they were pictures of the property. Mr. Dunne then asked the Board and Applicant to look at Exhibit 7 floor plans, he then asked Mr. Baker if the floor plans accurately depicted the property as it is inside. Mr. Baker replied, yes. Mr. Dunne asked Mr. Baker if he knew when the home was built, Mr. Baker replied 1948 according to the tax records. Mr. Dunne then asked the Board and Applicant to look at Exhibit 13 Deed transaction showing Russell H. Baker as the Grantor to Russell M. Baker and Rose Baker, it also shows that September 4, 1946 Russell H. Baker took ownership of the property. Mr. Baker agreed. Mr. Dunne then asked David Baker if he resided at the home his whole life until 2003, Mr. Baker replied, yes. Mr. Dunne asked if the property had changed over the years. Mr. Baker replied no, there was always a deck on the house as well as a shed. Mr. Dunne asked Mr. Baker when he acquired the property, Mr. Baker replied 1998. Mr. Dunne asked Mr. Baker after he acquired it, did he continue to live there after his college years, Mr. Baker replied, yes from 1998 to 2003 at which time he purchased a second home. Mr. Dunne asked if Mr. Baker had done some permitted work to the property, Mr. Baker replied yes. Mr. Baker stated one of the reasons he purchased the house was so his parent could retire and reside in the house. Some of the improvements made were replacing the deck, a new roof, new carpeting and also put in a second kitchen upstairs.

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Mr. Dunne went on to say that Mr. Baker is asking the Board to determine the current configuration of the home as it exists is how it has been for years before zoning prohibited a single family home in a commercial B-2 district. Mr. Dunne then submitted to the Board that there is sufficient evidence of the pre-existing non-conforming home as shown in the survey dated 1998 provided to the Board.

Dr. Kennedy asked if the kitchen upstairs was installed solely for Mr. Baker's and did it provide you a separate access. Mr. Baker replied yes, the kitchen was installed for his own personal use and there was no separate access to the upstairs. Ms. Robortaccio asked if there was other living space upstairs beside the kitchen. Mr. Baker replied yes, a bedroom.

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

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

NEW BUSINESS:
None

OLD BUSINESS:
None

Motion to adjourn 9:04 pm

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Tracy Osetec, Board Secretary
August 24, 2020