

Holland Township Board of Adjustment

Minutes of the December 18, 2019

The meeting was called to order by the Chairman: William Martin.

“I call to order the December 18, 2019 Regular Meeting of the Holland Township Board of Adjustment. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Board of Adjustment Secretary on December 13, 2018 by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Published in the December 13, 2018 issue of the Hunterdon County Democrat
3. Faxed to the Express Times for informational purposes only.

Flag Salute:

Chairman Martin asked all too please stand for the Pledge of Allegiance.

Identification of those at the podium for the benefit of the recording machine:

Present: Jerry Bowers, Ginger Crawford, Peter Kanakaris, William Martin, Kelley O’Such, Gail Rader, Attorney Blake Width for David Pierce, Esq, and Maria Elena Jennette Kozak, Secretary.

Absent: Bill Ethem and Michael Welsh. Board Professionals Ian Hill, Engineer(for Robert Martucci), Darlene Green, Planner, Court Reporter Lucille Grozinski, CSR were excused per Chairman Martin.

Let the record show there is a quorum.

Minutes: A motion was made by Peter Kanakaris and seconded by Jerry Bowers, to dispense with the reading of the November 20, 2019 minutes and to approve as recorded. All Present were in favor of the motion. Motion carried.

Completeness

There was no Completeness to be discussed on the agenda.

Public Hearing

There was no Public Hearing to be discussed on the agenda.

Resolution

Eric & Emily Torres – Block 9 Lot 21 - 65 Adamic Hill Road
Variance Relief – hardship. Rec’d into our office August 22, 2019. The 45-day completeness review deadline is October 6, 2019. Deemed complete September 25, 2019. Public Hearing October 30 2019 – extended to November 20, 2019 – Board approved with conditions November 20, 2019 – authorized Attorney to prepare a draft resolution. Board Action needed to memorialize resolution.

Board Attorney David Pierce prepared a draft resolution for consideration. It was reviewed by the board, professionals, applicant and is as follows:

RESOLUTION 2019-00_

THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF HOLLAND

RESOLUTION APPROVING THE APPLICATION
FOR A VARIANCE TO PERMIT AN ACCESSORY STRUCTURE WITHIN THE FRONT YARD AND
FOR A SIDE YARD SETBACK VARIANCE FOR
BLOCK 9, LOT 21,
LOCATED ON 65 ADAMIC HILL ROAD,
BY APPLICANT, ERIC AND EMILY DETORRES

WHEREAS, Eric and Emily DeTorres, 65 Adamic Hill Road, Milford, New Jersey (the “Applicant”) have applied to the Holland Township Board of Adjustment (the “Board”) for variance relief for, and is the owner of, Block 9, Lot 21, located on 65 Adamic Hill Road, in the Township of Holland, County of Hunterdon, State of New Jersey (the “Subject Property”);

WHEREAS, The Subject Property is situated in Holland Township’s Residential “R-5” zone;

WHEREAS, the application, dated August 16, 2019, was filed on or about August 22, 2019 (the “Application”);

WHEREAS, the Applicant proposes to install an in-ground swimming pool and a pump house within the front yard and within the side yard setback on the Subject Property;

WHEREAS, the Applicant seeks the following relief from the Township of Holland Land Use Ordinance:

1. Variance relief under N.J.S.A. 40:55D-70c(1) from Section100-10, which provides that accessory structures are not permitted within the front yard; and
2. Variance relief under and N.J.S.A. 40:55D-70c(1) from Section100-46, which provides that the side yard setback is 75 feet.

WHEREAS, the current Application was the subject of a completeness hearing on Wednesday, September 25, 2019, at which time the Board, on recommendation of the Board Engineer, deemed the Application complete;

WHEREAS, the following documents were submitted with regard to the application, are on file with the board, and are part of the record in this matter:

1. Application for Variance Relief , dated August 16, 2019 and filed on August 22, 2019, including the following:
 - a. Site Walk Authorization;
 - b. Request For 200 Foot Property Listing, dated August 13, 2019;
 - c. Draft Notice Of Hearing On Appeal Or Application For Development, undated;
 - d. Copy of Ordinance No. 2004-14;
 - e. Letter designating Fire Company Liaisons, dated March 8, 2007;
 - f. Certification of Ownership, dated August 16, 2019;
 - g. Highlands Preservation Area Checklist;
 - h. Fee Calculation Form;
 - i. IRS Form W-9;
 - j. Section “H” Checklist for Determining Completeness;
 - k. Correspondence dated August 1, 2019, from Lawrence D. Creveling, Holland Township Zoning Officer denying Applicant’s requested relief;
 - l. Holland Township Tax Assessor’s “Certified List of Property Owners Within 200 Feet,” dated August 22, 2019;
 - m. Holland Township Tax Collector’s Certification of payment of real estate taxes, dated August 15, 2019;

- n. Deed for the Subject Property, dated December 28, 2004 and recorded in the Hunterdon County Clerk's office on February 1, 2005 in Deed Book 2114, Page 5;
 - o. Photographs of the Subject Property showing the existing low retaining wall;
 - p. Survey prepared by Ryan G. Warford, N.J.P.L.S. of Bohren And Bohren Associates, Inc., dated August 9, 2019, with a last revision date of September 26, 2019;
2. Email correspondence dated September 26, 2019 from Keri Green, Highlands Council to Maria Elena Kozak, Board secretary confirming that the Application is not subject to Highlands Council review;
 3. Holland Township Board of Adjustment Planner's updated review memorandum dated November 1, 2019;
 4. Holland Township Board of Adjustment Engineer's review letter dated September 23, 2019;
 5. Proof of Service/Publication Package including Affidavit of Publication dated November 11, 2019 evidencing a November 7, 2019 publication in the *Hunterdon County Democrat*, and the Affidavit of Proof of Service signed by the Applicant's attorney's assistant;

WHEREAS, the Applicant having satisfied all jurisdictional requirements and the Board having jurisdiction to proceed, a public hearing was held on the Application on November 20, 2019, at which hearing appeared the Applicant, Eric DeTorres;

WHEREAS, all jurisdictional requirements have been satisfied by the Applicant;

WHEREAS, the Board of Adjustment of Holland Township having reviewed the Application and Exhibits submitted by the Applicant, and the Board having heard and considered the evidence and testimony given by the Applicant, and members of the public in attendance, and the Board having heard from the Township's professionals, Ian Hill, P.E., Darlene A. Green, P.P., A.I.C.P., and David R. Pierce, Esq., with respect to the Application, the Board makes the following findings of fact:

1. The Board has jurisdiction to proceed as all necessary notices were served and published in accordance with law;
2. All taxes for the Subject Property have been paid;
3. Application fees were paid and review escrows established;
4. The Applicant, as the Owner of the Subject Property was authorized to seek the relief herein requested;
5. The Application has been deemed complete;
6. Eric DeTorres, after being duly sworn according to law, testified during the hearing, and which testimony is part of the record in this matter, that:
 - A. He is the owner of the subject Property;
 - B. The Subject Property is technically a corner lot because Adamic Hill Road wraps around the Subject Property.
 - C. The Subject Property is an odd shaped parcel and the width of the lot along the North/South axis of Adamic Hill Road is only 197.82 feet.
 - D. The existing dwelling is located within the front yard setback and encroaches to within 17.46 feet of the front property line.

- E. The Applicant proposes to construct an in-ground pool at a distance of 15.16 feet from the side lot line.
- F. The proposed pool will be 15 feet by 30 feet and will be enclosed by a fence.
- G. The style of security fencing and gate has not yet been selected, but the fencing and gate will be constructed in conformance with the applicable Township Ordinances.
- H. The existing deck and pergola on the property are attached to the existing dwelling and encroach into the side yard setback.
- H. The Applicant proposes to build a pump house to accompany the proposed pool.
- I. The proposed pump house will be located within the side yard setback and will be 36.23 feet from the side yard, resulting in an encroachment of 38.77 feet.
- J. The pump house will be located within the front yard, but it will be to the rear of the front of the existing dwelling.
- K. The pump house will measure 11 feet by 7 feet and will be 8.5 feet high at the peak of the roof.
- L. The pump house will be constructed of stone to be similar to the existing structures on the Subject Property and will also use similar hardware and roofing materials.
- M. There are substantial difficulties involving the installation of a swimming pool on the Subject Property, including the presence of powerline easements, the shape of the lot and the location of the existing structures on the lot.
- N. The Subject Property is a unique property with the curvature of Adamic Hill Road around the property.
- O. The existing retaining wall is approximately 2 to 3 feet high and is constructed of stone.
- P. The retaining wall will be relocated further away from the front lot line as shown on the Plat, will be reconstructed with stone and will not exceed 3.5 feet in height.
- Q. The proposed improvements will not have any negative impact to air and light available to surrounding properties.
- R. The proposed improvements will result in the creation of approximately 1,187 square feet of additional impervious coverage and would not trigger the imposition of any stormwater management requirements.

7. No testimony was presented in opposition to the Application.

WHEREAS, the Board of Adjustment of Holland Township, having reviewed the Application and Exhibits submitted by the Applicant, and having heard and considered the evidence and testimony given by the Applicant and the Applicant's attorney, and having heard from its own professionals with respect to the Application, hereby makes the following **Conclusions of Law**:

1. The Board of Adjustment of Holland Township has jurisdiction in this matter with all required parties having been properly noticed in accordance with law;
2. The existing structures situated on the Subject Property constitute lawfully pre-existing, non-conforming structures;
3. Section 100-10 of the Township Code provides that accessory structures are not permitted in the front yard;
4. Section 100-46 of the Township Code provides that the applicable side yard setback for the Subject Property is 75 feet;
5. “C” **Variance:** N.J.S.A. 40:55D-70c, and specifically, N.J.S.A. 40:55D-70c(1) and (2), establishes the Applicant’s burden with respect to satisfying both the positive and the negative criteria attendant to this Application. To satisfy the “positive” criteria, the use must demonstrate either that: a) there is a hardship or practical difficulty to the developer in complying with a standard in the ordinance due to the exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic conditions or physical features uniquely affecting a specific piece of property , or some other extraordinary or exceptional situation uniquely affecting the property itself or the structures lawfully existing upon it; or b) the granting of the variance would promote some purpose of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., and the benefits of approving the variance would substantially outweigh any detriment;
5. **The Positive Criteria / Promote Purposes of Zoning :** The Board found as a matter of law that, the Subject Property is a unique property and that the lawfully existing structures on the property, together with the power line easements and the shape of the lot present exceptional difficulties and or hardship to the Applicant with respect to the construction of an in-ground swimming pool and pump house;
6. **The Negative Criteria / Substantial Detriment to the Public Good:** The Board finds as a matter of law that, provided the conditions imposed are complied with, the proposed construction of an in-ground swimming pool and a pump house will not result in any substantial detriment to the public good for several reasons. First, the proposed pump house will be constructed of materials and in a style that is in keeping with the existing character of the neighborhood and the Subject Property. Second, there will be no adverse impacts to air and/or light availability to neighboring properties. As a result of the foregoing, there is little to no detriment associated with the proposed improvements should the variances be granted;
7. **The Negative Criteria/Substantial Impairment of Intent and Purpose of the Zone Plan and Zoning Ordinance:** The Board finds as a matter of law that the granting of the requested variances will not substantially impair the intent and purpose of the zone plan and Land Use Ordinance of Holland Township for several reasons. First, the Subject Property is an isolated and uniquely situated property with severe constraints resulting from its shape and existing structures and easements. Second, there is no feasible alternative location for the proposed improvements given the constraints applicable to the Subject Property.

8. **Weighing the Benefits Against the Detriments** The benefit resulting from the approval of the application, specifically, allowing the customary accessory use for a residential property, clearly outweighs any potentially negative impact on Holland Township, although no substantial negative impact was noted by the Board.

WHEREAS, on November 20, 2019, the Board of Adjustment of Holland Township voted with respect to the Application and the attendant requested relief as follows:

1. TO GRANT THE FOLLOWING:

- A. Variance pursuant to N.J.S.A. 40:55d-70c(1) and Section 100-10 of the Land Use Ordinance to permit the construction of an accessory structure, namely a pump house, within the front yard of the Subject Property, in accordance with the Exhibits, submissions and testimony presented on the record at the hearing.
- B. Variance pursuant to N.J.S.A. 40:55d-70c(1) and Section 100-46 of the Land Use Ordinance to permit the construction of an in-ground swimming pool to be located 36.23 feet from the side lot line, in accordance with the Exhibits, submissions and testimony presented on the record at the hearing.

2. SPECIFICALLY CONDITIONED UPON THE FOLLOWING:

- A. The retaining wall shall not exceed 3 ½ feet in height;
- B. Any lighting installed shall be in strict conformance with the requirements and limitations of the Township Code;
- C. The security fence and gate surrounding the swimming pool shall be in strict conformance with the requirements of the Township Code;
- D. In the event that the amount of new impervious coverage exceeds 2,000 square feet, the Applicant shall satisfy all stormwater management requirements;
- E. In the event that the total area of disturbance exceeds 5,000 square feet, the Applicant shall obtain a soil erosion & sediment control permit from the Hunterdon County Soil Conservation District;
- F. Prior to the signing of plans:
- 1) The final drawing and detailed plans of the proposed swimming pool, pump house and retaining wall showing details required to meet the requirements of the construction code and sub code officials shall be submitted to and approved by the Board engineer prior to the issuance of any building permits. The final plans shall conform with this approval and the testimony and plans upon which it is based and shall include notes reflecting the imposition of conditions A-E above as part of this approval;
- F. Prior to the start of construction:
- 1) The applicant shall post the required performance guarantee, if any,

and inspection escrow fees in accordance with the Board Engineer's calculations. The form of guarantee shall be approved by the Township

Attorney;

2) A preconstruction conference shall be scheduled and held at the Holland Township Municipal Building;

3) All permits shall have been issued by the Township Construction Official for all items under his jurisdiction;

4) All site work shall be inspected by the Board Engineer or his designee for conformance with the approved site plan. Any proposed deviations from the approved site plan must be either pre-approved by the Board Engineer as field changed or shall be resubmitted to and approved by the Zoning Board, if the deviations are deemed by the Board Engineer to be significant enough to require such approval.

G. The Applicant shall submit an as-built plan after completion of the installation of the swimming pool, pump house and re-construction of the retaining wall;

H. This approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State;

I. The approval herein memorialized shall not constitute, nor be construed to constitute any approval, direct or indirect, of any aspect of the site plan, or of the proposed improvements which is subject to the jurisdiction of any third party agencies and require review and approval(s) by any third party agencies;

J. Applicant shall apply for and obtain any and all Township, County, State and Federal permits as may be required for any aspect of the construction as contemplated by this Application;

K. Applicant shall comply with all other applicable rules, regulations and ordinances of the Township of Holland, the effect of this decision being merely to relax the zoning requirements and restrictions to the specific extent forth herein;

L. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the approvals, terms and conditions set forth herein;

M. The variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within twelve (12) months from the date of this Resolution;

N. That Applicant shall pay all outstanding and /or required review, inspection, and professional escrow fees to the Township of Holland. Neither the Board nor its employees or professionals shall perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The Applicant shall be under a

continuing duty to maintain a positive balance in all accounts until all conditions of this Resolution have been satisfied and all charges have been paid;

- O. All performance requirements as set forth in the findings of fact herein shall be satisfied by the Applicant as a condition of this approval whether or not repeated at length as conditions in this section of the Resolution; and
- P. The terms and conditions of this approval shall be binding upon the Applicant, and the Applicant's successors in interest and assigns. Further, each of the terms and conditions of this approval are material elements of the approval based upon the submission of the Application and the Subject Property in its entirety, and the non-compliance with any term or condition by the Applicant or their successors or assigns shall be deemed a material default subjecting the Application to revocation of this approval. The request to change any single condition, since all conditions are integrally related, shall cause the entire Application to the Board of Adjustment to be reopened for re-consideration and possible re-approval subject to new terms and conditions in addition to those terms and conditions presently existing in this approval.

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
Gerard Bowers	X		X			
Ginger Crawford			X			
Bill Ethem			X			
Peter Kanakaris		X	X			
William Martin			X			
Kelley O'Such			X			
Gail Rader			X			
Michael Welsh						X

Motion Carried By Vote of: Seven Ayes to Zero Nays

THIS RESOLUTION OF THE BOARD IS ADOPTED ON DECEMBER 18, 2019

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
Jerry Bowers						
Ginger Crawford						
Bill Ethem						
Peter Kanakaris						
William Martin						
Kelley O'Such						
Gail Rader						
Michael Welsh						X

Motion Carried By Vote of: _____ Ayes to _____ Nays

ATTEST:

 Maria Elena Jennette Kozak, Secretary
 Township of Holland Board of Adjustment

 William Martin , Chairman
 Township of Holland Board of Adjustment

After some discussion, a motion was made by Peter Kanakaris and seconded by Kelley O'Such to approve and memorialize the resolution as presented. At a roll call vote, all present were in favor of the motion. Motion carried.

Old Business

Just a reminder that the prior meeting the proposed 2020 Board of Adjustment Meeting Schedule was previously approved and as been posted as such..

Township of Holland
Board of Adjustment

2020 Meetings

PLEASE TAKE NOTICE that the Board of Adjustment, Township of Holland, County of Hunterdon, New Jersey, will hold their regular meetings on the following dates in 2020 at 7:30 p.m. to act on public business at the Municipal Building, 61 Church Road, Milford, NJ. Meetings are open to the public.

Meeting Dates

January 29, 2020
February 26, 2020
March 25, 2020
April 29, 2020
May 27, 2020
June 24, 2020
July 29, 2020
August 26, 2020
September 30, 2020
October 28, 2020
November 18, 2020*
December 16, 2020**
January 27, 2021

Agenda Deadline

January 8, 2020
February 5, 2020
March 4, 2020
April 8, 2020
May 6, 2020
June 3, 2020
July 8, 2020
August 5, 2020
September 9, 2020
October 7, 2020
October 28, 2020 *
November 25, 2020 **
January 6, 2021

By ordinance the meetings of the Holland Township Board of Adjustment are held the last Wednesday of the month, with the agenda deadline three weeks prior to the meeting with the following exceptions:

* November meeting will be held on Wednesday, November 18, 2020 with a deadline for submission of Wednesday, October 28, 2020.

*December meeting will be held on Wednesday, December 16, 2020 with a deadline for submission on Wednesday, November 25, 2020.

New Business:

There was no New Business to be discussed on the agenda.

Public Comment

There were no Public Comments.

Kelley O'Such made a motion to adjourn. Motion carried.

Meeting ended at 7:35 p.m.

Respectfully submitted,

Maria Elena Jennette Kozak

Maria Elena Jennette Kozak

Secretary