

**EAST WINDSOR TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MINUTES OF October 20, 2016**

The meeting of the East Windsor Township Zoning Board was held on Thursday, October 20, 2016, in the East Windsor Township Municipal Building, 16 Lanning Boulevard, East Windsor, New Jersey, 08520. Zoning Board of Adjustment Chairperson Rochelle Shifman called the meeting to order at 8:04 p.m.

**STATEMENT OF ADEQUATE NOTICE**

Pursuant to the Sunshine Law, a notice of this meeting's date, time, place, and agenda was mailed to the news media, posted on the Township bulletin board, and filed with the Municipal Clerk.

**ROLL CALL**

Members Present: Mr. Bailey, Ms. Berdzik, Mr. Katawick, Ms. Shifman, Mr. Primiano, Mr. Rago

Members Absent: Mr. Cosenza

Professionals and Staff Present: Allison Quigley, Zoning Board Secretary  
Roman Petruniak, Zoning Officer  
Michael O'Donnell, Board Attorney  
Kate Keller, Township Planner

**NEW AND REAPPOINTED MEMBERS**

Caroline Berdzik, Term Expires: December 31, 2019

Mr. O'Donnell administered the Oath of Office to Ms. Berdzik.

**REPORTS/CORRESPONDENCE/ANNOUNCEMENTS**

**PUBLIC FORUM**

Chairperson Shifman opened the meeting to the public. There being no public comment, the public forum was closed.

**MINUTES**

**January 21, 2016**

MOTION TO APPROVE JANUARY 21, 2016 MINUTES MADE BY: Mr. Bailey

MOTION SECONDED BY: Mr. Rago

ROLL CALL

AYES: Mr. Bailey, Mr. Katawick, Ms. Shifman, Mr. Primiano, Mr. Rago

NAYES: None  
ABSTAIN: Ms. Berdzik

**APPLICATIONS/PUBLIC HEARING**

**EWT File #ZB16-002      Bernard and Amy Lerner**  
2 Sheffield Road  
Block 71, Lot 1  
East Windsor, NJ  
Application for Bulk Variance

Mr. O'Donnell swore in the applicants Bernard and Amy Lerner and the Township professionals: Roman Petruniak, Township Zoning Officer; and Kate Keller, Township Planner.

Mrs. Lerner stated that for her presentation she will be following the Preferred Topic Sequence that had been provided to her by the Board Secretary. Mrs. Lerner stated that they are applying for a bulk variance request as they are requesting a hardship variance on behalf of their daughter, Carrie, who is disabled. Mrs. Lerner stated that her daughter can now begin living independently with their assistance, so they would like to construct a first floor addition to serve as a living space for her. She stated that they have recently become qualified for additional assistance from state programs that would have allowed them to place their daughter in a residential program, but they would like for her to stay in their community where she has lived her whole life. Mrs. Lerner stated that she worked with Mr. Petruniak to explore all the different layout options for the addition. She stated that they cannot put the addition on the second floor because their daughter has mobility issues and they are unsure if the stairs will eventually present a challenge for her. She stated that the first floor addition would include a bedroom, a bathroom, and a great room to serve as an apartment for their daughter. She stated that they did look into other alternatives such as a group home, but due to safety concerns they would like for her to stay with them at the family home. Mrs. Lerner stated that because their daughter receives one on one assistance at home, the separate addition for her would allow everyone to have their privacy. She added that they believe the addition would only enhance the appearance of the house and contribute to the existing colonial style.

Mrs. Lerner stated that she provided a picture of the front of their home to the Board. She stated that the house is a Chesterfield colonial. The garage is a one story addition onto the opposite side of the home and the rest of the house is two stories. She stated that by adding the one story addition onto the opposite side of the house, the home will appear more symmetrical and will improve the appearance of the home. She stated that they would match the existing siding and roof lines to make the addition appear seamless to the existing structure. Mrs. Lerner stated that she did consider other designs, but a second floor addition was not an option for her daughter and putting the addition along the rear of the home would only measure eleven feet wide and would take up a large portion of their backyard. Mrs. Lerner stated that Mr. Lerner tried placing the floorplan onto the photo of their home that was submitted to illustrate where the addition would be located. Mrs. Lerner stated that they have 52 feet of space from their existing home to the sidewalk and the addition would measure 25 feet wide.

Chairperson Shifman stated that Ms. Keller was present on behalf of the Township Planner and helped prepare a memorandum that was provided to the applicant prior to the meeting. Mrs. Lerner stated that she had received a copy of the memorandum and was prepared to address the questions raised in it. Chairperson Shifman asked Ms. Keller to go through the memorandum first and stated the applicant could address the questions as they came up. Mrs. Lerner agreed. She stated that there was a mistake on the application and the addition would measure 602 square feet. The addition will have two doors, with one on the front of the home approximately 20 feet away from the existing front door with a paving stone path connecting it to the existing front door. There will also be a door in the rear to allow their daughter access to the backyard and pool. Mrs. Lerner stated that for item number four in the memorandum, the addition would be considered a mother daughter house, and clarified that they would not be renting it out to anyone and it would only be for their daughter's use. She added that a door will connect the addition to the existing living room to allow them complete access.

Chairperson Shifman asked if there would be any cooking facilities in the addition. Mrs. Lerner stated that they would install a small kitchenette that would be used by her one on one aid to prepare meals for their daughter. Mrs. Lerner stated that there was a question raised in the Planner's memorandum regarding about the removal of trees. She stated that they would be removing four trees that are already dead and need to come down anyway. The applicant brought pictures of the trees in question for the Board. She stated that they would not replace the trees removed as they would like natural sunlight for the addition.

Mrs. Lerner entered Exhibit A-1, titled "Pictures of Trees to be Removed," dated October 20, 2016, into evidence.

Ms. Keller stated that item number six in the memorandum asked if there would be any storm water impact on the neighboring residences due to the addition. Mrs., Lerner stated that the property naturally slopes toward the street and the addition wouldn't be closer to their neighbors than the existing home so there shouldn't be any impact. She added that their contractor would follow all the rules and regulations required to obtain building permits for the project. Ms. Keller stated that they just wanted to clarify that. Ms. Keller stated that item number four in the memorandum addressed the possibility of a use variance for the requested addition. She stated that she believed the applicant provided information where the addition could be considered an accessory apartment so it doesn't meet the definition of a two family home per the Township ordinances. She stated that her recommendation would be to add a condition of approval stating that it shall only be used for immediate family members of the residents of the main home to prevent any future owners of the home from renting it out as a separate unit. Mrs. Lerner stated that made sense and stated that she would assume the addition would add value to the home for any multigenerational families who would see this as a benefit to the home. Mrs. Lerner stated that the addition is their first step in their plan for giving their daughter some more independence but would allow them to be there to help her in the event of an emergency. Mrs. Lerner stated that she had met previously with Mr. Petruniak and other Township officials to discuss this idea and that she had received a lot of support and help, so she wanted to say thank you for all the help she had received so far.

Chairperson Shifman asked Ms. Keller if she had any further comments and Ms. Keller stated that she did not. Chairperson Shifman asked Mr. Petruniak if he had any comments. Mr. Petruniak stated that he had met with the applicants previously and they did go over all of the possible configurations for the addition. He stated that he did tell the applicants that the addition could be placed in the back of the home and then the addition would not require a variance. Mrs. Lerner stated that if they put the addition in the back, it would only measure 11 feet wide. Mr. Petruniak stated that was why they decided to come before the Board for the variance request. Mr. Lerner stated that if the addition was in the rear it would cut off the natural light entering the existing dining room and they would have to relocate the existing air condition compressor unit, so that's why it wasn't a viable option.

Chairperson Shifman asked Mrs. Lerner if the trees they are removing face Sheffield Road. Mrs. Lerner stated that they faced Dorchester Drive. Chairperson Shifman asked if there would be anything to buffer the view from the street. Mrs. Lerner stated that there wouldn't be but stated that they didn't have any neighbors nearby on that side so she didn't think it would be an issue. Chairperson Shifman stated that was the nice thing about having a corner lot, that the property had two front yards essentially, but it also presented a challenge when looking to place an addition.

Chairperson Shifman asked the Board if they had any questions. Mr. Rago stated that there would be a small and larger basement window eliminated with the addition and asked Mr. Petruniak if that would present any issues. Mr. Petruniak stated that there wouldn't be any problems with the elimination of the windows, as the applicants would still have light and ventilation for the basement. He also stated that there were no construction standards as to how many windows a basement needs.

Mr. Primiano asked if anyone researched the site triangles for the site. Ms. Keller stated that they did not address that in their review memorandum. Mr. Primiano stated that almost 95% of the addition would be within the setback towards a primary intersection, so it is not a small relief request. He asked who prepared the submitted floorplan of the addition. Mrs. Lerner stated that she and her husband did. Mr. Primiano asked if they had considered consulting with an architect to come up with alternative design options. Mrs. Lerner stated that one of the contractors they are working with helped them prepare the submitted floorplan. She stated that they would go to an architect once they get an approval, but they were not willing to do so if they weren't sure they were going to receive the Board's approval. Mr. Primiano stated that when an application is requesting an encroachment like this, the burden has to show that this location is the only spot on the property to place the addition. He stated that it is difficult to make that decision without the floorplan of the existing home because he can't see if there were any other locations that would work in this case. He stated that this design might have a negative impact as the front of the home would look flat and suggested pushing the addition halfway down the side of the home to form an L-shaped addition, which would add visual interest and reduce the encroachment into the side setback. He stated again that it was hard to see what other options there might be for the property without a floorplan of the existing home, pictures of the home, or any architectural studies or drawings and that he would have liked to see more information. Mrs. Lerner stated that if he put the addition toward the rear of the home they would lose the windows to their existing dining room. She stated that she could draw the floorplan of the existing home for the Board if they wished. Mr. Primiano stated that he understood their concerns about their dining room but that

there are always pros and cons to any addition and that losing the windows and moving the air condition compressor might be negligible in the scheme of the project. He stated that he wouldn't view those items as justification for placing an addition in the proposed location. He stated that he has several concerns because they do not have enough information to see exactly what the addition would look like. Mrs. Lerner stated that the addition would have the same roof lines as the existing home because they made it the same depth as the existing layout. She stated that they felt this was the most attractive way to do it because it would make the home look more like a colonial. She reiterated that the addition was to benefit her daughter and keep her safe. Mr. Primiano stated that he understood their motivation for the project, but that if there had been some time and money invested into the project they might have found different options that wouldn't require such a relief request. He stated that he would have liked to see that they explored other options and presented those and why they didn't work for the property because the reasoning that the addition would take up too much of their backyard isn't strong enough to grant such a variance. Mrs. Lerner stated that they have a pool in the backyard which presents a challenge and that she had met with Mr. Petruniak who helped her explore all the different possible configurations until they determined that this was their only viable option.

Mr. Primiano asked if the pool that is shown on the survey is in the accurate spot. Mrs. Lerner stated that it was. Mr. Primiano asked the applicants what is directly behind the other side of the house. Mr. Lerner stated that is where the air condition compressor is and the windows to the existing dining room. Mrs. Lerner stated that there were some trees and bushes in the area as well. Mr. Primiano asked if they would be removing trees if they built the addition as proposed. Mr. Lerner stated that they would, but those trees are rotting and would need to come down regardless. Mr. Primiano pointed out that regardless of the location of the addition, trees would have to be removed. Mrs. Lerner stated that was correct, but they would also lose their dining room windows if they put the addition in the rear. Mr. Primiano asked what other rooms are along the back of the home. Mrs. Lerner stated that the dining room is in the rear westerly corner, along with the living room, dining room, kitchen, and the family room with an attached deck leading to the pool. Mr. Primiano asked how wide the dining room is. Mrs. Lerner stated that the dining room is 11 feet wide. She added that they worked with Mr. Petruniak for several hours and found that the proposed location for the addition was the only option that would work. Mr. Petruniak stated that he had suggested to the applicants to place the addition in the rear, which would not require a variance, but they opted to request the variance as they did not want to lose the windows to their dining room. Mrs. Lerner stated that the addition could only be 11 feet wide if placed in the rear of the home. Mr. Primiano stated that is only the case because they are assuming the addition can only be as wide as the dining room, but another option would have been to have the addition measure 24 feet wide with 11 feet behind the dining room and only 13 feet encroaching into the setback. Mrs. Lerner stated that they wouldn't have any windows in their dining room with that plan. Mr. Primiano stated that he did not think that was a valid argument to request such a large encroachment because the applicant did not want to lose a dining room window. He stated that he was concerned this would set a precedent for corner properties in the area, especially with such a large reduction into the setback. He added that he would like to hear any other comments from the Board because if he was the only one who had these concerns, he would rest.

Ms. Keller stated that regarding the site triangles, if the Board decided to approve the application, a condition of the approval could be that the plans would be subject to the Township Engineer's

approval. She added that her instinct would say that because the home is so far setback from the road, it shouldn't cause an issue however. She stated that another possible condition of approval could be the architectural elevations would have to be approved before a certificate of occupancy is issued for the property.

Chairperson Shifman asked Mr. Petruniak if he had any further comments and Mr. Petruniak stated that he did not. Chairperson Shifman stated that she would need either a motion to approve or deny the application with the conditions set forth including the architectural elevations and drawings. Mr. Primiano asked if the applicants would be submitting the information to the Board for review or to the Building Department for construction permits. Chairperson Shifman stated that it would have to be reviewed by the Board professionals.

Mr. Primiano asked if they should include a condition of the approval that would limit the addition to a single story. He stated that he was concerned that any future tenants could argue that the setbacks have already been established by the approval of this application and they would request a second story addition, which could set another precedent. Mr. O'Donnell stated that was a fair comment. Ms. Keller agreed but stated that she wasn't sure that could be addressed through the resolution because anyone who wanted to do anything additional in that portion of the property would have to come back to the Board anyway. Chairperson Shifman agreed. Mr. Primiano asked if language could be added to the resolution to reflect that. Ms. Keller stated that a general condition stating that any further encroachments into the setbacks would be subject to future Board review and approval.

Chairperson Shifman stated that she needed either a motion to approve or deny the application, or a motion to table the application until the next meeting to allow the applicant to provide additional information as requested this evening and the Board could further review the application. Mr. Bailey stated that he would prefer to table the application and review the additional information prior to making a decision.

Mr. Rago asked if there would be a step up leading into the addition from the proposed front door entrance. Mrs. Lerner stated that the addition would have to be the same height as the living room so they would either build up the land or put a step in. Mr. Rago asked if the applicant's daughter might need a ramp in the future to access the addition if they install a step. Mrs. Lerner stated that they hope not but if they need to install a ramp in the future they would do so. Mr. Rago stated that he just wanted to make sure that if that were the case, they could put a provision in the approval to allow that later on if needed.

Mrs. Lerner stated that she would be happy to provide any information to the Board that the requested but stated that it would be costly to consult with an architect to prepare professional elevations for submission. She stated that her understanding was that they would not be needed to get an approval from the Board because detailed plans would have to be submitted to the Building Department in order to obtain any construction permits. She stated that it would be difficult for her to invest in architectural plans if they can't be sure their variance request would be approved, but they would be happy to do so after they received the approval. Chairperson Shifman stated that she understood their point but stated that the Board needs more information to make a decision and that she believed the applicant would have brought additional information to the meeting this

evening. Mr. Primiano suggested that the applicant submit a detailed floorplan of their existing home and the proposed addition in order to show the Board why the location of the proposed addition was selected and why other options are not viable. He also suggested that the applicant take additional pictures of their home from all different angles and vantage points to give the Board a better understanding of the existing home. Mr. Primiano stated that he understood that architectural plans can be expensive but that they are typically provided when appearing before the Board for a variance request of this nature. Mrs. Lerner stated that they would be in the middle of winter by the next meeting. Mr. Primiano stated that he understood but that he was concerned this would set a precedent for future applications to provide very little information on the basis they did not want to invest in a consultant when that is the standard procedure. Chairperson Shifman stated that they believed the applicant would have presented more information in response to the memorandum they received from the Township Planner. Mrs. Lerner stated that she was not told to bring any additional materials to the meeting, just that she had to address the questions raised in the memorandum. Ms. Keller stated that the memorandum did request additional photos of the house and architectural elevations if possible.

Chairperson Shifman stated that it would be beneficial if the applicant returned next month with more details as it would make it easier for the Board to make a decision. Mr. Primiano stated that the applicant has to make their case and show the Board why the addition can't go anywhere else on the property. He stated that they need to show the Board that they have a property driven hardship that prevents them from putting the addition any other location on their property besides within their setbacks. Mrs. Lerner asked what more evidence the Board would need to see that this is a hardship. She stated that she understood from her conversations with Mr. Petruniak and other Township Officials that this request wasn't a big deal, and that she didn't see why it should be on her if a future tenant wanted to add a second story addition. She reiterated that she was trying to do this for her daughter's quality of life. She stated that they could not put the addition in the rear as that would eliminate their dining room windows and that would be illegal. Mr. Primiano stated that would not be illegal. Mrs. Lerner asked if you could have a bedroom without windows. Mr. Primiano stated that they were discussing a dining room. Mrs. Lerner asked if they would want her to do something that would make her house less valuable. Mr. Primiano stated that a dining room is not required to have windows but bedrooms are required to have egress windows. He stated that they haven't given reasoning as to why the addition has to be 25 feet wide and they weren't presented with any other options such as an addition that measures 20 feet wide. Mrs. Lerner stated that her original plan for the addition would measure 20 feet by 30 feet but that the addition would stick out in the back and look funny. She stated that they altered it to match the existing home better, but that if reducing the width to 20 feet made the Board happy, she would do that. Mr. Primiano stated that it wasn't a matter of making them happy but rather they need to present their case for a hardship and why the property driven hardship requires that they are so far encroaching into the side setback. He stated that as a Board they have to evaluate if there are other options and after their testimony it appears that there were other options that were not presented to the Board. He stated that they can only go by what has been submitted to them and that he would have liked to see more information and more options to really explain why the location they are proposing is the only viable option for the addition. Chairperson Shifman agreed with Mr. Primiano and stated that they needed the information for the record as well.

Mrs. Lerner stated that she did not have the ability to make architectural elevations. Mr. Rago suggested that they provide additional pictures of their property. Chairperson Shifman agreed and stated that pictures of the front, side and rear of the home, plus pictures of the location of the proposed addition would be helpful. Mr. Rago stated that lots of boards in other areas wouldn't consider an application without professional drawings but that this Board would be willing to work with her, but they need more information so they can be as clear as possible when they make their decision. Chairperson Shifman agreed and stated that they should also show the Board the other configurations for the addition that they considered and explain why those options would not work.

Mrs. Lerner asked if the Board would be meeting next month. Chairperson Shifman stated that they would be. Mrs. Lerner asked the Board to list exactly what they would like for her to submit. Chairperson Shifman stated that they should provide pictures of their home and their yard from the front, side, back, and the street. She stated they should also provide pictures of the front elevation of their home. Mrs. Lerner asked for clarification on the elevations. Mr. Primiano stated that the architectural elevations would show the entire front of the house in black and white with the proposed addition. Mrs. Lerner stated that she doesn't have the ability to produce that herself without hiring a consultant. Mr. Primiano stated that he would be comfortable without any architectural elevations, but he would request additional pictures of the home and a full detailed floorplan showing the entire existing home and the addition in its proposed location. Mrs. Lerner stated that she could draw that. Mr. Rago asked if they would be able to get a copy of the plans of their home. Mrs. Lerner stated that she should be able to from Zillow or from a realtor. Chairperson Shifman stated that would be fine. Mrs. Lerner stated that she would do what she could but they were not in a position to make a large investment at this time. Chairperson Shifman stated that they would accept the additional pictures, the floorplan, and suggested they also provide drawings or plans of the other configurations they considered and explain why they wouldn't work. Mrs. Lerner stated that they could do that.

Ms. Keller suggested that the applicant submit the materials to the Board Secretary as soon as possible to allow their office to review them prior to the meeting so they can let the applicants know if there were any questions or any additional information they would need to address. Mrs. Lerner stated that they would do that.

Chairperson Shifman made a motion to table the application to the next meeting to review the additional materials the applicant would be submitting with no further notice required by the applicant.

MOTION TO CARRY THE APPLICATION TO THE NEXT MEETING MADE BY: Mr. Bailey

MOTION SECONDED BY: Mr. Rago

ROLL CALL

AYES: Mr. Bailey, Mr. Katawick, Ms. Shifman, Mr. Primiano, Mr. Rago

NAYES: None

ABSTAIN: Ms. Berdzik

**ADJOURNMENT OF MEETING**



There being no further business, the meeting was adjourned.

**CERTIFICATION OF SECRETARY**

I, undersigned, do hereby certify;

That I am the Zoning Board of Adjustment Secretary of the Township of East Windsor Zoning Board of Adjustment and that the foregoing minutes of the Zoning Board of Adjustment, held on October 20, 2016, constitute a true and correct copy of the minutes of the said meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name of said Zoning Board of Adjustment this 17<sup>th</sup> day of November, 2016.

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Allison Quigley, Board Administrative Secretary  
East Windsor Township