

**EAST WINDSOR TOWNSHIP ZONING BOARD OF ADJUSTMENT
MINUTES OF November 16, 2016**

The meeting of the East Windsor Township Zoning Board was held on Thursday, November 16, 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. Cosenza, Mr. Katawick, Ms. Shifman, Mr. Primiano, Mr. Rago

Members Absent: None

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

REPORTS/CORRESPONDENCE/ANNOUNCEMENTS

PUBLIC FORUM

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

MINUTES

October 21, 2016

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

MOTION SECONDED BY: Mr. Rago

ROLL CALL

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

NAYES: None

ABSTAIN: Mr. Cosenza

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

Chairperson Shifman stated that Mr. Cosenza had listened to the meeting tapes and reviewed the exhibits from the previous meeting, so he was able to vote on the matter.

Chairperson Shifman stated that at the conclusion of the last meeting, the Board had asked the applicant to provide additional materials. She stated that the Board received the latest materials from the applicant, but that they were not in full compliance with the Board's request. She stated that the drawing of the floorplan was not very clear and it appeared to be printed backwards. Ms. Lerner stated that it was printed backwards because their house is unusual and they could not find another floorplan. Ms. Shifman stated that it was difficult to read the dimensions and the details on the floorplan. She also stated that some of the photographs the applicant submitted were blurry and hard to examine.

Ms. Lerner stated that Photograph One from the applicant's submission showed the area the addition would go. She stated that she drew a line on the photograph to show where the addition would end.

Mr. Cosenza stated that the submitted floorplan appeared to have scaling issues. Ms. Lerner stated that she was aware that the scaling was not completely accurate. Mr. Cosenza stated that the line Ms. Lerner drew on Photograph One might not be completely accurate, but it appeared close to where the addition would likely end.

Mr. Cosenza asked Ms. Lerner to identify the trees that would be removed. Ms. Lerner stated that three trees would be removed on the right side of her home. Ms. Lerner stated that Photograph Three of the submission showed the trees that would be removed.

Ms. Lerner stated that Photograph Five showed all of the existing landscaping in the rear of her home to show the Board how much landscaping in on her property. Ms. Lerner stated that Photograph Six showed her rear kitchen and dining room windows. She stated that this photograph showed the only open space she had in her backyard. She stated that Mr. Primiano had suggested at the last hearing to relocate the addition to the area behind her dining room. She stated that would require the removal of all of the landscaping to the rear of her home in that area. Ms. Shifman asked Ms. Lerner what the wooden box in the photograph was. Ms. Lerner stated that was a planter for vegetables.

Ms. Lerner stated that Photograph Six showed the same area of her backyard in Photograph Five, but this photograph was taken from another angle. She stated that a fence ran along the property line behind her home. She stated that they liked the privacy the trees provided for her home.

Mr. Bailey stated that at the last meeting, the applicant had mentioned an air conditioning unit that was directly underneath the dining room windows. He asked if this unit was visible in any of the photographs. Ms. Lerner stated that it was there but it was not visible because it is behind shrubs.

Ms. Lerner stated that Photograph Eight shows the existing swimming pool and deck in the backyard. She stated that there was not much room in that area for the addition, so that was not an option. Ms. Lerner stated that there was approximately ten to twenty feet of shrubs and plants stretching from the pool area to the property line. Ms. Shifman asked Ms. Lerner if they had considered removing some of the landscaping. Ms. Lerner stated that they were living things and that the Board had shown concern for the other trees they were looking to remove. Ms. Shifman asked if they had considered removing some of the shrubbery to provide more room for the addition. Ms. Lerner stated that wouldn't work because there is no room in that area to attach the addition to the home. Ms. Shifman stated that one of the things the Board had asked the applicant to provide were some other locations and configurations for the addition they had considered but were not feasible in order to show the Board why the proposed location of the addition was the only option. Ms. Lerner stated that she had prepared that exhibit but had forgotten it at home. Ms. Lerner stated that she could explain why the other locations would not work for the addition. Ms. Shifman stated that the Board had asked for a visual exhibit at the last hearing for the record and for clarity. Ms. Lerner stated that she had originally wanted to do an addition that measured 20 feet by 30 feet, but a contractor had told her the only way that was going to work was to put the front access door on the side of the addition and that would be too far for her daughter to walk.

Ms. Lerner stated that Photograph Nine was taken from her deck facing her back yard. Mr. Cosenza asked if the applicant had considered putting the addition in that area. Ms. Lerner stated that the pool and deck were located there. She stated that they had looked at every possible situation for the addition, and the only other option were to put it behind the existing garage, but there was existing landscaping in that area as well. She stated that the only sunny spot in her yard is where the pool is located, so they cannot move the pool because it would be in the shade. Ms. Lerner stated that Photograph Ten shows the eastern side of her home by the pool. Ms. Lerner stated that Photograph Twelve shows the row of trees on the western side of the property. Mr. Cosenza asked Ms. Lerner if they would still have privacy in their backyard if they removed those trees. Ms. Lerner stated that they would not. Mr. Cosenza asked Ms. Lerner if they were going to be putting foundation plantings along the addition. Ms. Lerner stated that they might but they had not considered it yet. Mr. Cosenza stated that if they had a landscaping plan to mitigate some of the view of the addition from the road, it would help him visualize the impact of the addition better. Ms. Lerner stated that they are willing to add landscaping in that area if the Board wanted. She also stated that they had considered adding a fence on that side of the home as well. Mr. Cosenza asked what kind of fence they were considering and Ms. Lerner stated that they were not sure. Mr. Primiano stated that a review of the zoning ordinance requirements for a fence setback might be required, as corner properties have different zoning requirements than other properties for setbacks. Ms. Lerner stated that other fences in the neighborhood that were much closer to the street than she was proposing. She added that she asked Mr. Petruniak about the setback and he told her it would need to be at least 15 feet away from the property line. She added that she might not put in a fence, as they had not decided yet.

Ms. Lerner stated that the addition would make the house more symmetrical and more like a classic colonial style. She stated that she would consider it an aesthetic addition to the neighborhood. Mr. Cosenza stated that he would like to discuss the landscaping, as landscaping would help to screen the view of the addition. Ms. Lerner stated that other residents do not have to screen their homes. Mr. Cosenza stated that they are applying for a variance, so they have to consider all aspects of the

variance, including the visual impact on the streetscape. He suggested that the applicant consider adding shrubbery or landscaping near the addition to screen it from view. Ms. Lerner stated that they would consider it, but they had not made any decisions yet because they did not have a full design, they had an idea for an addition and that is why they are before the Board tonight. Ms. Lerner stated that her ultimate goal was to design the addition to look as if it was always a part of the home.

Mr. Primiano stated that there are a list of requirements of what an applicant is required to submit when making an application to any planning or zoning board of adjustment in the state of New Jersey. He stated that the photographs submitted by the applicant were blurry and were hard to distinguish details from. Ms. Shifman agreed. Mr. Primiano stated that at the last meeting, the applicant was asked to provide a floorplan and an elevation to show the design of the addition. Mr. Primiano stated that while the floorplan that was submitted was backwards and was not to scale, he was personally okay with it because it is clear enough to distinguish what the applicant is requesting. He stated that the Board asked for the floorplan to see if there were any other options for the location of the addition instead of the proposed location, which has the 95% of the addition in the setback. He stated that it the responsibility of the applicant to present to the Board and make the case why there is a hardship on the property that requires that applicant to request the variance. He stated that none of the documents submitted by the applicants were prepared by a professional architect, and while he understood the applicants' concerns over cost of professional plans, he would have hoped that the comments the applicant received from the Board at the last hearing would have encouraged them to consult with a professional to get some guidance on the layout of the addition. Mr. Primiano stated that at the last hearing, there was some discussion of the potential of adding a ramp to the entrance in the future. He also stated that in that scenario, he would also have concerns over the bathroom, as it is not ADA compliant. He stated that these are things a design professional or an architect would have considered for them and would have been able to assist them in designing the plan.

Mr. Primiano stated that the submitted survey shows a 31.9 foot setback on the side of the home by the garage. He stated that the required setback in that area is 10 feet. He asked the applicants if they were aware they could construct a 21 foot addition on the left side of the home and convert the garage to a living space the make the same size they are requesting for the addition. He stated that all of that would not have required a variance and would provide an ADA accessible entryway for their daughter. Ms. Lerner stated that she did not think the setback was correct. Mr. Primiano stated that it was on the survey the applicant submitted. Mr. Primiano asked Ms. Lerner if they had considered putting the addition on that side of their home. Ms. Lerner stated that she did not think the setback was correct. Ms. Shifman stated that the setback is shown as 31.9 feet on the certified survey they submitted. Mr. Primiano stated that regardless, a professional would have been able to explore these options with the applicants and come up with a solution that might not require a variance. Ms. Lerner stated that they had a shed in that area. Mr. Primiano stated that the shed could be relocated if necessary. He stated that he was just asking the applicants if they had considered other options such as the one he outlined. Ms. Lerner stated that she considered every option. Mr. Primiano stated that the applicant had not shown the Board what other options they had considered to prove their case as to why the addition needed to go where they are proposing.

Mr. Primiano stated that at the last hearing, the applicants had concerns that placing the addition in the rear of their home would result in the loss of their dining room windows. Ms. Lerner stated that was correct. Mr. Primiano asked why the dining room windows couldn't be moved to the side of the home. Ms. Lerner stated that the addition would only be eleven feet wide, so it wouldn't have worked. Mr. Primiano stated that the applicant did not provide any documents or drawings as requested by the Board to show why that would not work. Mr. Primiano stated that the applicant was requesting a 50% reduction in their setback area with 95% of the addition located in the side setback. He stated that it was not clear to him that the applicant explored other potential locations for the addition that might minimize or eliminate the need for a variance. He asked the applicants again if they had explored any of these options and if they had any drawings or documents to show why other options would not work. Ms. Lerner stated that she just told the Board why those other options would not work. Ms. Shifman stated that the applicants were asked to submit those drawings at the last hearing.

Mr. Primiano stated that this was not how a meeting was typically conducted and that applicants often have a checklist of required documents that they need to submit for consideration by the Board. He stated that the Board is still giving the applicants the opportunity to present their variance request with the documents that they submitted, but from a land use standpoint the Board has the jurisdiction to require the applicants submit professional drawings and elevations. He stated that he would accept what was submitted by the applicant, but that the burden of proof was on the applicant to demonstrate to the Board why the addition had to go in this location and cannot go anywhere else, and he did not think the applicants satisfied that criteria. Mr. Primiano stated that he also drove through the area and examined several corner properties and found that no other corner property had an addition that encroached so far into the setback. Mr. Primiano stated that he did not think the applicant fully explored other options for the addition.

Mr. Cosenza stated that he would agree with Mr. Primiano's concerns over the bathroom as well, as it is not ADA compliant. Ms. Lerner stated that her daughter did not require an ADA compliant bathroom, but that they would make it ADA compliant if they needed to. She stated that the submitted floorplans and photographs were intended to give the Board an idea of what the addition would look like, because once they receive the Board's approval, they would still have to go through the building permitting process and make sure that everything was up to the code standards. Mr. Primiano stated that regardless, the applicants were required to make the case to the Board that the variance was necessary due to a hardship that came with the land that would prevent the addition being located anywhere else on the site.

Mr. O'Donnell stated that the Board is trying to be helpful to the applicant. Mr. Lerner stated that the Board was fixated on the possibility of putting the addition behind the garage, but that was where the pool filter and heater were located. Mr. Primiano asked Mr. Lerner what was to the left of the garage. Mr. Lerner stated that there was a small piece of property to the side of the garage, but that he did not believe the setbacks were accurate on the survey. Mr. Primiano asked if there is any equipment on that side of the garage. Mr. Lerner stated that there was not, just a small piece of fence that leads to the backyard. Mr. Primiano asked Mr. Lerner if he thought they could put an addition to the left of the garage. Mr. Lerner stated that he thought it would be too close to his neighbor. Mr. Primiano stated that the property survey shows a setback of 31.9 feet. Mr. Lerner stated that he did not think that was accurate. Ms. Keller stated that was a moot point, as the only

thing the Board has to consider is the certified survey that the applicant submitted. Mr. Primiano stated that he is offering other suggestions for the addition because he is trying to help them and they are trying to be compassionate to the applicants' situation. Mr. Lerner stated that he did not understand then why other properties in the neighborhood were permitted to have privacy fences all the way up to the property line. He stated it was not fair that they could have fences in that area but they could not place an addition. Mr. Primiano stated that there are different zoning regulations for fences versus additions.

Ms. Keller stated that as far as the Municipal Land Use Law states, there are two types of C variances. A C-1 variance is a hardship variance where the applicant proves that due to constraints caused by the land, they cannot comply to the zoning regulations. The second case is the C-2 variance, which is a flexible variance, which Ms. Keller stated is what is being considered tonight. Ms. Keller stated that for clarity, what needs to be proven is that the applicant has to show what they are proposing will have more benefits than detriments on the zoning standards. Ms. Keller stated that the applicant has to establish the positives of the addition and explore any negatives caused by the addition. Ms. Keller stated that the applicant has established the reasons why they need the addition and that the location of the addition would improve the look of the house and would be the most convenient. She stated that Board has questions regarding the visibility of the addition from the road and from neighboring properties to explore any possible detriments caused by the addition. Mr. Lerner stated that if the Board looks at Photograph One, they will see the lot is already heavily landscaped.

Mr. Cosenza asked if the aide for the applicants' daughter would be living in the house. Mr. Lerner stated that they would not, they would come in on shifts. Mr. Cosenza asked if that is why they want a separate area for their daughter. Mr. Lerner stated that was accurate.

Mr. Cosenza stated that he was concerned over the separate front door entrance for the addition, as that might make it a two family dwelling. Ms. Keller stated that her review of the project yielded the same concerns, but ultimately she determined that the house with the addition would not meet the ordinance definition of a two family dwelling. She stated that one of the factors contributing to this was the access door that would connect the family room in the existing home to the addition. Ms. Shifman suggested a formal deed restriction that would mandate that only members of the immediate family of the home could occupy the addition.

Mr. Lerner stated that they had consulted with a few architects to see how much it would cost to get professional drawings. He stated that it would have cost at least \$4,000 to obtain professional drawings. He stated that the contractors they are working with helped them design the submitted floorplan. Ms. Shifman stated that the addition would cost a good amount to construct, so it would be a good investment to consult with a professional for the drawings. Mr. Primiano asked Mr. Lerner if they had considered other interior layouts. Mr. Lerner stated that they had, but this layout made the most sense to provide everything they needed for their daughter.

Ms. Keller asked Mr. Lerner how far the shrubbery extends from the dining room window. Mr. Lerner stated that the landscaping extends to the rear property line. He also stated that there is a chain-link fence on that side of the property. Ms. Keller stated that those things would present challenges in placing the addition in the rear. Ms. Keller asked Mr. Lerner how big the deck is in

the rear yard. Mr. Lerner stated that it extends from the edge of the family room to the end of the kitchen. Ms. Keller asked Mr. Lerner if the pool is 20 feet from the rear wall. Mr. Lerner stated that was correct. Ms. Keller stated that was helpful, as the site survey did not show all of this, and that probably contributed to the Board's confusion.

Chairperson Shifman asked if anyone had any other comments. Chairperson Shifman opened the meeting to the public.

Linda November came forward and stated that she is a family member of the applicants. She asked for clarification on the deed restriction. Mr. Cosenza stated that the deed restriction would just attach any resolution of memorialization to the Deed and stipulate that it could not be occupied by two families and it must be sold as a one family home.

There being no further public comment, the public forum was closed.

Mr. Primiano stated that the Board asked the applicants to provide details on the other options that the applicants considered to demonstrate to the Board why there was a need to locate the addition in the setback. He stated that the applicant did not provide those details that were requested of them. Mr. Lerner stated that they submitted photographs. Mr. Primiano stated that the Board specifically requested floorplans and elevations. Ms. Shifman agreed. Mr. Primiano asked Mr. Lerner if they would consider putting the addition on the left side of the garage if the setback was 31.9 feet as it was represented in the survey. Mr. Lerner stated that he did not think it was correct, but if it was they would consider it. He added that they would have to remove trees in that area. Ms. Shifman stated that single family homeowners are permitted to remove three mature trees in a year without needing a permit or adding trees, so that would help.

Mr. Rago stated that the Board wanted to work with the applicant but the materials provided were not clear and did not show the entire situation. He stated that was why the Board was asking so many questions. Ms. Shifman stated that there was no way the Board could vote on the application as it stood tonight. Mr. Cosenza suggested allowing the applicants to get the information together regarding the other options they explored and then return to the Board. Ms. Shifman agreed that the applicants would have to provide the information that was requested of them at the previous hearing. Mr. Bailey stated that he believed the Board could only consider the proposal submitted to them by the applicants and they could only make a decision based on what was submitted by the applicant. Mr. Primiano stated that he was also concerned about setting a precedent for allowing applicants to continue to return if they do not provide the information that is requested of them. Ms. Shifman agreed with Mr. Primiano. Mr. Primiano asked Ms. Shifman what would be requested of the applicant if they were permitted to return. Ms. Shifman stated she would like to see the floorplans of the other options they had considered. Mr. Primiano stated that he was not sure the Board had the jurisdiction to design the application for them. Mr. O'Donnell agreed with Mr. Primiano and suggested the Board give the applicants one more opportunity to return. Mr. Primiano stated that he would ask for floorplans to scale, proposed elevations with options on the location for the addition. Ms. Shifman stated that she would be willing to give the applicants one more chance to submit the requested information. Mr. Primiano stated that he would ask the applicants to submit a revised survey, as the submitted survey was dated 1959. He would also

suggest a survey design showing the different locations the applicants considered for the addition. Mr. Primiano stated he would also ask for elevations of the front and of the side of the home.

MOTION TO ALLOW THE APPLICANTS TO RETURN WITH THE REQUESTED DOCUMENTATION MADE BY: Mr. Bailey

MOTION SECONDED BY: Mr. Katawick

ROLL CALL

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

NAYES: Mr. Cosenza, Mr. Rago

ABSTAIN: None

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 16th day of February, 2017.

Allison Quigley, Board Administrative Secretary
East Windsor Township