

**RESOLUTION OF THE PLANNING BOARD
TOWNSHIP OF LONG HILL
MORRIS COUNTY, NEW JERSEY**

**SWAPNIL NANKAR
57 OLD FORGE ROAD
MILLINGTON, NEW JERSEY 07946
BLOCK 12604, LOT 1
APPLICATION NO.: 22-01P**

**Board Action: May 10, 2022
Memorialization: August 9, 2022**

WHEREAS, SWAPNIL NANKAR (the “Applicant”) is the owner of property located at 57 Old Forge Road, Millington, New Jersey, identified as Block 12604, Lot 1 on the Official Tax Map of the Township of Long Hill, in the R-2 Zoning District (the “Property”) and has standing to bring the within application. The Applicant has requested the following relief from the Planning Board in connection with a proposal to subdivide existing Lot 1 into two lots (Proposed Lot 1 and Proposed Lot 1.02):

1. Minor subdivision approval in accordance with Article 6 of the Land Use Law, N.J.S.A. 40:55D-1, et. seq., and in accordance with the Section 158 of the Land Use Ordinance of The Township of Long Hill (the “Ordinance”);
2. Bulk variance relief for a proposed lot width of 25 feet for Proposed Lot 1, whereas the minimum required lot width is 150 feet, pursuant to Section 131 of the Ordinance;
3. Bulk variance relief for no proposed garage parking spaces for Proposed Lot 1, whereas there shall be provided a garage for each single-family dwelling for at least two automobiles, pursuant to Section 124.4.a.1 of the Ordinance;
4. Bulk variance relief for the proposed height of 38.5 feet for the future dwelling to be located on Lot 1.02, whereas the maximum permitted height is 35 feet, pursuant to Section 131 of the Ordinance;
5. Bulk variance relief for a proposed height of three (3) stories for the future dwelling to be located on Lot 1.02, whereas the maximum permitted height is 2.5 stories, pursuant to Section 131 of the Ordinance;
6. Bulk variance relief for a proposed front-yard setback to the principal dwelling from Dogwood Terrace of 66.5 feet for Proposed Lot 1.02, whereas the minimum required front-yard setback is 75 feet, pursuant to Section 131 of the Ordinance;

7. Bulk variance relief for disturbance (proposed driveway) within a critical area (steep slopes) on Proposed Lot 1.02, whereas no parking area shall be located in whole or in part within a critical area, pursuant to Section 142-1.a of the Ordinance; and
8. Elimination of Condition 3 in the September 29, 1993 Resolution of Approval for Application No. 93-20P, which requires the construction of a two-car garage on Proposed Lot 1; and

WHEREAS, the Applicant submitted the following plans and documents in support of its Application, which plans and documents were made a part of the record before the Board, as follows:

- Application for Development dated February 3, 2022;
- Development Plans prepared by David E. Fantina, P.E., dated November 18, 2021, unrevised, same consisting of three (3) sheets;
- Minor Subdivision Plan prepared by John C. Ritt, P.L.S., dated March 5, 2021, last revised January 7, 2022, same consisting of (1) sheet; and
- A compendium of eight (8) photographs of the Property and surrounding areas; and

WHEREAS, the Board's professionals submitted the following reports, which reports were made a part of the record before the Board, as follows:

- Review Memorandum prepared by Elizabeth Leheny, A.I.C.P., P.P., Board Planner, dated May 4, 2022;
- Review Memorandum prepared by Samantha J. Anello, P.E., C.M.E., C.F.M., Board Engineer, dated May 4, 2022; and

WHEREAS, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application and appeared before the Board on May 20, 2022; and

WHEREAS, the Board makes the following findings of facts:

1. The Property is located in the R-2 (Residential) Zone on Old Forge Road, approximately 800 feet from the intersection with Long Hill Road. The Property is bordered by single-family residential properties on all sides, with an unimproved right-of-way (Dogwood Terrace) running along the northern border.

2. The Property consists of a 5.054 acre (220,142 square foot) flag shaped lot and is presently improved with a two-story frame dwelling in the southwest corner, adjacent to neighboring Lot 1.01 and Lot 9.01. The dwelling has access to Old Forge Road through an existing

easement on neighboring Lot 1.01. The remainder of the Property is undeveloped and wooded in nature. The northeast portion of the Property is impacted by Freshwater Wetlands and Freshwater Wetland Transition Areas.

3. The Applicant proposes to subdivide existing Lot 1 into two lots: Proposed Lot 1 and Proposed Lot 1.02. The Applicant proposes to construct a two-story, single-family dwelling on Proposed Lot 1.02. The existing dwelling on Proposed Lot 1 is to remain, however the driveway is proposed to be relocated such that the easement on Lot 1.01 would no longer be required. The driveway relocation is required as outlined in the "Access and Sewer Easement and Provisions Covering Vacation of Existing Ingress and Egress Easements" recorded with the Morris County Clerk (the "Easement"). Specifically, the Easement notes that, in the event that the subject lot [Lot 1] was further subdivided, the existing easement would be vacated and an alternate means of access be established.

4. The Applicant seeks bulk variance relief as well as the elimination of Condition 3 of the September 29, 1993 Approval for Application No. 93-20P, which provides that the Applicant shall "prepare and submit a subdivision deed . . . Said deed shall contain a restriction requiring the construction of a two-car garage for the existing residence at the time the lot upon which the dwelling is located is conveyed."

5. Frederick B. Zelle, Esq., entered his appearance on behalf of the Applicant and provided an overview of the Applicant's proposal and the requested relief.

6. Samantha J. Anello, P.E., C.M.E., C.F.M, the Board Engineer, and Elizabeth Leheny, A.I.C.P., P.P., the Board Planner, were duly sworn according to law.

7. Swaraj Nankar, having an address of 57 Old Forge Road, was duly sworn according to law.

8. David Fantina, P.E, the Applicant's engineer, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in field of civil engineering.

9. Mr. Fantina described the existing and proposed conditions. He explained that Proposed Lot 1 is encumbered by wetlands and riparian buffers. Mr. Fantina testified that the Applicant obtained a Letter of Interpretation ("LOI") which confirmed that the riparian buffers are subsumed by the wetlands. He further testified that Proposed Lot 1.02 is encumbered by steep slopes and that a portion of the steep slopes will have to be disturbed to construct the proposed driveway.

10. Mr. Fantina explained that existing Lot 1 will be subdivided into Proposed Lot 1 and Proposed Lot 1.02. Proposed Lot 1 will contain the existing dwelling and a new driveway connecting Proposed Lot 1 to Old Forge Road. He explained that, previously, Lot 1 was accessed by way of an easement over Lot 1.01, but that said easement will be vacated in accordance with the December 11, 1995 Easement. Proposed Lot 1.02 will contain a two-story, single-family dwelling.

11. Mr. Fantina introduced into evidence, as **Exhibit A-1**, a revised plan dated May 10, 2022. Referencing same, Mr. Fantina testified that the Applicant had revised the plans to shift the proposed dwelling on Proposed Lot 1.02 to reduce the magnitude of the disturbance of steep slopes associated with the construction of the driveway. He explained that the Applicant could have constructed a driveway from Dogwood Terrace, but that same would require the Applicant to improve a significant portion of the unimproved Dogwood Terrace, resulting in a significant amount of additional impervious coverage and the removal of trees. Mr. Fantina contended that the current proposal, with the driveway on Old Forge Road, constitutes a better planning alternative. He conceded that the proposal results in the creation of a flag lot, but advised that the Ordinance does not prohibit same.

12. As to the stormwater management, Mr. Fantina stipulated, on behalf of the Applicant, to working in good faith with the Board Engineer as to the design of the stormwater management facilities. He further stipulated, as a condition of approval, that the Applicant would work in good faith with the owner of adjacent Lot 1.01 to remove the portions of the driveway proposed to be removed, and to enter into a formal utility easement agreement and, if no agreement can be reached, to relocating the utilities to the extent necessary. The Applicant stipulated that any utility easement agreement would be subject to the review and approval of the Board Engineer and Board and/or Township Attorney, and, once approved, would be recorded with the County Clerk's Office.

13. Mr. Fantina addressed the Review Memorandum prepared by Elizabeth Leheny, A.I.C.P., P.P., Board Planner, dated May 4, 2022 and the Review Memorandum prepared by Samantha J. Anello, P.E., C.M.E., C.F.M, Board Engineer, dated May 4, 2022, and stipulated, as conditions of approval, to complying with the comments and requirements set forth therein.

14. On questioning, the Applicant amended his application to request variance relief for the proposed height of the single-family dwelling to be constructed on Proposed Lot 1.02, both as to feet (38.5' whereas 35' permitted) and number of stories (3 stories whereas 2.5 permitted). On further questioning, Mr. Fantina requested that the Applicant not be required to construct the two-car garage provided for in the Easement, and he explained that, at some point in the future, the existing dwelling would likely be razed. He further explained that if the garage were to be constructed now, its location could be problematic when the existing dwelling is razed and a new dwelling is constructed. Mr. Nankar advised that the existing dwelling is in poor condition and has been expanded in a piecemeal fashion. On questioning, Mr. Nankar advised that he does not presently have plans for Proposed Lot 1 because the current focus is on obtaining the subdivision and variance relief for Proposed Lot 1.02.

15. On discussion, the Applicant stipulated, as a condition of approval, to submitting a copy of the Letter of Interpretation ("LOI") and the stamped plans submitted to the New Jersey Department of Environmental Protection ("NJDEP").

16. Megan James, having an address of 61 Old Forge Road (Lot 1.01), questioned whether the Applicant had submitted plans for a dwelling on Proposed Lot 1. Mr. Fantina advised that no such plans had been prepared or submitted. She questioned whether the Property would be further subdivided. Mr. Fantina advised that same would be unlikely given the existing wetlands.

Ms. James inquired how her property would be restored once the existing driveway easement is vacated. Mr. Fantina advised that the stone would be removed and replaced with lawn. Mr. Fantina testified that the Applicant would seek to enter into an agreement with Ms. James as to the location of the existing utilities for Proposed Lot 1 that are currently on her Property, but that if no agreement could be reached, the Applicant would be required to relocate the utilities.

17. No other member of the public commented on, or objected to, the Applicant's proposal.

18. Mr. Zellely provided a summation and requested that the Board approve the application pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

DECISION

19. The Board finds that all jurisdictional requirements of the application were met and the Board rendered its determination which is memorialized herein in accordance with N.J.S.A. 40:55D-10(g).

20. After reviewing the evidence submitted, the Township of Long Hill Planning Board, after carefully considering the plans, reports, submissions and evidence provided, by a vote of 7 to 0, finds that the Applicant has demonstrated an entitlement to the requested subdivision approval and bulk variance and related relief sought herein.

The Bulk Variance Relief:

21. As to the requested bulk variance relief for the disturbance of critical areas, the Board finds that the Applicant has demonstrated an entitlement to same pursuant to N.J.S.A. 40:55D-70(c)(1) by demonstrating that the strict application of the zoning regulations will result in peculiar and exception difficulties to, or exceptional and undue hardship upon, it as the owner of the Property. In this regard, the Board recognizes that the Property is constrained by steep slopes, wetlands and wetland buffer areas, thereby restricting the Applicant's ability to develop the Property in conformance with the Ordinance requirements. The Board further recognizes that the improvements proposed (the driveway for Proposed Lot 1.02) within the critical areas (steep slopes) cannot be relocated given the limited area within which the improvements can be constructed. Finally, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1).

22. The Board further finds that the Applicant has demonstrated an entitlement to the requested bulk variance relief for the disturbance of critical areas, dwelling height (feet and stories) and front-yard setback for Proposed Lot 1.02 and the lot width and lack of a garage on Proposed Lot 1, pursuant to N.J.S.A. 40:55D-70(c)(2), by demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith.

23. As to the lot width on Proposed Lot 1, the Board accepts the unrefuted expert testimony that the proposed lot width is more appropriate than requiring the Applicant to construct a driveway on Dogwood Terrace, which is currently unimproved. As to the lack of a garage on Proposed Lot 1, the Board concurs with the unrefuted expert testimony that constructing a garage now, before a new dwelling is constructed, would be inefficient because the ultimate location of the garage will depend on the location of any proposed dwelling. The Board recognizes that the Applicant has stipulated that if, and when, a dwelling is constructed on Proposed Lot 1, the dwelling will include a two-car garage. As such, the Board concludes that the Applicant's request for relief from Condition 3 of the September 29, 1993 Approval for Application No. 93-20P should be granted.

24. As to the front-yard setback deviation for Proposed Lot 1.02, the Board again accepts the unrefuted testimony of the Applicant's expert that requiring the Applicant to improve Dogwood Terrace would not represent the best planning alternative, since it would require significant additional coverage and the conversion of a naturally wooded area into a roadway. As to the dwelling height, the Board accepts the unrefuted expert engineering testimony that the height is a function of the grading and the topography of the Property. In this regard, the Board notes that the Applicant has testified that the dwelling will appear to be two-stories as viewed from Old Forge Road, and that the additional story will allow the Applicant to construct a dwelling with a walkout basement.

25. As to all of the requested variance relief, the Board finds that the proposal advances the purposes set forth in MLUL Section 2 at subsections (a), (e), (g), (i) and (j). In this regard, the Board concurs that the proposal provides affordable housing, thereby promoting the general welfare; promotes the establishment of appropriate population densities and concentrations; provides sufficient space in appropriate locations for residential uses; promotes a desirable visual environment; and promotes the conservation of natural resources. The Board finds that the benefits of the proposal, which include the provision of more appropriately sized lots, the efficient use of the Property, and the elimination of an existing driveway easement on Lot 1.01, substantially outweigh the detriments associated therewith. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(2).

26. As to the negative criteria for the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), the Board finds that the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Master Plan and Zoning Ordinance. As to the substantial detriment prong of the negative criteria, the Board recognizes that granting the requested relief will improve the existing neighborhood by providing an attractive development with limited impact on the critical areas that constrain the Property. The Board further recognizes that the most affected neighbor, Ms. James (Lot 1.01), did not formally object to the Applicant's proposal. As to the substantial impairment prong of the negative criteria, the Board recognizes that the proposed use of the Property is permitted and that granting the requested relief will not result in substantial impairment of the Master Plan or Zoning Ordinance. As such, the Board finds that the Applicant has satisfied the negative criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

Subdivision Approval:

27. In evaluating a request for subdivision approval, a board considers the development plan provided by the Applicant, which is required to be compliant with the zoning and site development standards set forth in Section 158 of the Ordinance and Article 6 of the MLUL. As such the Board finds that the Applicant has demonstrated an entitlement to the requested subdivision approval pursuant to the Ordinance and the MLUL.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Long Hill, on this 10th day of May, 2022, that the application of **SWAPNIL NANKAR**, as aforesaid, be, and hereby is, granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
2. The Applicant shall comply with the Applicant's representations to, and agreements with, the Board during the hearing on this application;
3. The Applicant shall comply with the recommendations and requirements set forth in the May 4, 2022 Review Memorandum prepared by the Board Planner, Ms. Leheny; and the May 4, 2022 Review Letter prepared by the Board Engineer, Samantha Anello;
4. The Applicant shall relocate the proposed dwelling on Proposed Lot 1.02 in accordance with the plan marked into evidence as Exhibit A-1. Specifically, the dwelling shall be setback 66.5 feet from the Dogwood Terrace right-of-way rather than 50.6 feet as originally proposed;
5. The Applicant shall work in good faith with the Board Engineer to provide an appropriate stormwater management system and same shall be subject to the review and approval of the Board Engineer;
6. The Applicant shall work in good faith with the adjacent property owner of Lot 1.01 to reach an agreement as to the boundaries of a utility easement and, if the Applicant cannot reach such an agreement, the Applicant shall be required to relocate the existing utilities. To the extent the issue is not resolved, the Board shall retain jurisdiction over same;
7. The Applicant shall work in good faith with the adjacent property owner of Lot 1.01 as to a plan to remove the existing driveway over Lot 1.01 to Proposed Lot 1. Specifically, the driveway shall be removed and replaced with lawn, same to be subject to the review and approval of the Township Engineering Department;
8. The height of the dwelling on Proposed Lot 1.02 shall not exceed 38.5 feet and shall not exceed 2.5 stories or have an appearance of 3 stories as viewed from Old Forge Road. If additional variance relief is required, the Applicant shall obtain same from

the appropriate Board (i.e., if the height exceeds 38.5 feet, a subsection d(6) variance is required and same can only be granted by the Board of Adjustment);

9. The Applicant shall construct a two-car garage as part of any future development on Proposed Lot 1 in accordance with the Ordinance requirements. If the Applicant is unable to comply, the Applicant shall obtain the necessary variance relief from the appropriate Board. The Applicant shall amend the plans to remove the depicted proposed garage shown on Proposed Lot 1;
10. The Applicant shall submit to the Township Engineering Department, a copy of the LOI and the stamped plans submitted to the NJDEP;
11. The Applicant shall comply with the local and State noise regulations, including, but not limited to, N.J.A.C. 7:29;
12. The Applicant shall comply with Section 3-15.8 of the Ordinance, which prohibits construction activities between the hours of 8:00 PM and 7:00 AM;
13. The Applicant shall submit a subdivision deed with metes and bounds descriptions for Proposed Lots 1 and 1.02. The metes and bounds description shall be subject to the review and approval of the Township Engineer and the form of the subdivision deed shall be subject to the review and approval of the Township Attorney. Prior to the perfection of the subdivision by recordation with the Morris County Clerk's Office, the subdivision deed shall be signed by the Board Chair and Board Secretary and, once recorded, copies of the recorded deed shall be submitted to the Board Secretary;
14. Pursuant to the Ordinance, approval of a minor subdivision or site plan shall expire 190 days from the date on which the resolution of the approval is adopted unless within such period a plat in conformity with such approval and N.J.S.A. 46:23-9.9 et seq., or a deed clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Municipal Engineer and the Municipal Tax Assessor. Any such plat or deed accepted for such filing shall have been signed by the chairperson and Secretary of the approving board. In reviewing the application for development for a proposed minor subdivision, the approving board may be permitted by ordinance to accept a plat not in conformity with N.J.S.A. 46:23-9.9 et seq.; provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of the said act;
15. The grant of this Application shall not be construed to reduce, modify or eliminate any applicable County, State or Federal law, requirement, rule, regulation, directive, or resolution including, but not limited to, those enacted, issued, or determined by the Morris County Planning Board, the New Jersey Department of Community Affairs, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the United States Environmental Protection Agency and any other

governmental agency or department exercising third party jurisdiction over the Property;

16. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.
17. All fees assessed by the Township of Long Hill for this application and hearing shall be paid prior to any construction. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property;
18. Any variance from the terms of this Ordinance hereafter granted by the Planning Board permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within 12 months from the date of the adoption of this Resolution, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding; and
19. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction, and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicant and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent or received by the Applicant.

BE IT FURTHER RESOLVED, that this Resolution, adopted on August 9, 2022, memorializes the action of the Planning Board taken on May 10, 2022 with the following vote: Yes: Motion/Pfeil, Second/Malinousky, Rae, Verlezza, Jones, Richardson, Sandow; No: None; Recused: None; Not Eligible: None; Absent: Dill, Hands.

ATTEST:


Debra Coonce
Board Secretary


Dennis Sandow
Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN SANDOW	X				
VICE CHAIRMAN RICHARDSON	X				
(CLASS I) COMMITTEMAN RAE	X				
(CLASS II) MS. DILL			X		
(CLASS III) COMMITTEMAN VERLEZZA					X
MR. HANDS			X		
MR. JONES	M				
MR. MALINOUSKY	2 ND				
MR. PFEIL					X

I hereby certify this to be a true copy of the Resolution adopted on August 9, 2022.


 Debra Coonce,
 Board Secretary

STATE OF NEW JERSEY
MORRIS COUNTY

SS.

I, Debra Coonce, being of full
age, being duly sworn upon her oath, certifies:
that a notice of which the annexed is a true copy, was
published in the Echoes Sentinel which is a newspaper
published in Morris County, New Jersey,
on the 25 day of August, 2022
in said newspaper.



Long Hill Township
NOTICE OF DECISION OF THE TOWNSHIP OF LONG HILL
PLANNING BOARD

Public notice is hereby given that the following action was taken by the Township of Long Hill Planning Board at its meeting on August 9, 2022:

Resolution of Approval Memorialized
Minor Subdivision
Block 12604 / Lot 1 / Zone R-2
57 Old Forge Road
Application No. 22-01P
Swapnil Nankar

All documents relating to this application may be examined by the public by appointment in the Planning & Zoning Office in the Township of Long Hill Municipal Building located at 915 Valley Road, Gillette, NJ. Office Hours are as follows:
Monday, Tuesday & Thursday - 8:30 AM to 4:30 PM, Wednesday - 8:30 AM to 6:30 PM and Friday - 8:30 AM to 2:30 PM.

Debra Coonce
Planning Board Secretary
Planning & Zoning Coordinator
Township of Long Hill

P.F. \$26.01 08/25/T1

Sworn and subscribed before me this

25 day of AUGUST, 2022



Notary Public of New Jersey

