

LOWER TOWNSHIP ZONING BOARD OF ADJUSTMENT

APPLICATION FOR DEVELOPMENT

JOAN A. BIRSH & ARTHUR TO. BIRSH,
TRUSTEES OF THE JOAN A. BIRSH

Applicant/Appellant's Name: REVOCABLE LIVING TRUST Phone: 609-884-0153

Mailing Address: 2697 BAY DRIVE, VILLAS, NJ 08251

Owner's Name/Address: SAME AS APPLICANT

Subject Property: - Street Address 2695-2697 BAY DRIVE, VILLAS, NJ 08251

Block/Lot Numbers BLOCK 494.02, LOTS 2.01 & 2.11 ("the property")

1. Specify which power(s) of the Zoning Board of Adjustment you are requesting:
- | | |
|---|--|
| <input type="checkbox"/> 40:55D-70a. Appeal | <input type="checkbox"/> 34 Permit to build in street bed |
| <input type="checkbox"/> 70b. Interpretation | <input type="checkbox"/> 35 Permit to build where lot does not abut a street |
| <input type="checkbox"/> 70c.1 Hardship Variance | <input type="checkbox"/> 76 Planning Board powers, where appropriate - eg. subdivision, site plan, conditional use |
| <input type="checkbox"/> 70c.2 Variance | |
| <input type="checkbox"/> 70d Use/Density | |
| <input type="checkbox"/> 40:55D-68 Certificate of Non-Conforming Use. | |
| <input checked="" type="checkbox"/> Other (Specify): <u>APPLICATION FOR EXTENSION OF APPROVAL .</u> | |

2. Request is hereby made for permission to Previous approval granted for construction of a single family dwelling on the property by Resolution No. 03-53-ZBA attached hereto. Applicant respectfully requesting extension of approval. See attached narrative.

contrary to the requirements of Section(s) _____ of the Zoning Ordinance.

2a. LIST by description, not number, all variance sought: Previous approval permitted variance for lot frontage and lot width.

Said property measures 50' x 580' and contains approximately 1.1 Acres square feet

ZONING DISTRICT R-3 Off-site sewer _____ On-site septic X

3. Size of building after (and including) construction/addition(s)
_____ square feet (1st floor) Height _____ Stories _____

4. Setbacks of Principal Building will be:
Front Yard _____; Front Yard _____:(corner lots have 2 front yards)
Side Yard _____; Side Yard _____; Rear Yard _____; Lot Coverage _____%

5. Setbacks of Accessory Building/Use will be:
Front _____; Rear _____; Side _____; Side _____; Lot Coverage _____ %
* Distance to nearest building: _____ Height _____ # of Stories _____

6. Supply a statement of facts showing why relief can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance:

See attached narrative.

7. What is the question sought to be interpreted? (If 70b.)

See attached narrative.

8. What are the EXCEPTIONAL CONDITIONS OF THE PROPERTY supporting the granting of variance? (If 70c)

See attached narrative.

9. What are the special reasons for granting this variance? (If 70d)

See attached narrative.

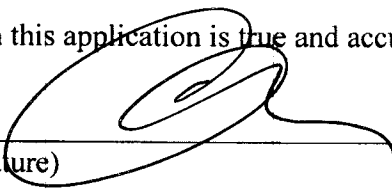
10. All applicants must attached the following to this application:

- Proof of payment of all taxes due on the property.
- Survey of subject property, with all existing structures drawn to scale by a NJ licensed surveyor with dimensions and setbacks marked.
- Signed, notarized affidavit attesting to the fact that said sealed survey is accurate as to the current conditions.
- Twenty copies of said survey, showing proposed additions with dimensions and setbacks marked.

I do hereby certify that the information presented in this application is true and accurate, to the best of my knowledge.

Supply name, address, phone of attorney representing applicant.

CHRISTOPHER GILLIN-SCHWARTZ, ESQ.
GILLIN-SCHWARTZ LAW LLC
1252 NJ 109, CAPE MAY, NJ 08204
P. 609.884.0153 / E. cgs@cgsesq.com



(Signature)

CGS@CGSESQ.COM

(Applicant E-mail address)

Gillin Schwartz | Law

CHRISTOPHER GILLIN-SCHWARTZ, ESQ. ♦
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♦MEMBER OF NJ AND PA BARS

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January 22, 2021

William Galestock, Planning Director
Township of Lower
2600 Bayshore Road
Villas, NJ 08251

Re: APPLICATION NARRATIVE
REQUEST FOR EXTENSION OF APPROVAL
RESOLUTION NO. 03-53-ZBA
BLOCK 494.02, LOT 2.01 & 2.11

Mr. Galestock and Members of the Board:

This is an application for an extension of approval permitting construction of a single-family building on a substantially oversized lot with nonconforming lot frontage.

The applicants Joan A. Birsh and Arthur T. Birsh, Trustees of the Joan A. Birsh Revocable Living Trust U/A/D 8/7/96, own Block 494.02, Lots 2.01 and 2.11 on the Lower Township Tax Map ("the property"). The street address of the property is 2697 Bay Drive.

The property is approximately 1.1 acres and is an undeveloped parcel. The property is located in the R-3 zone which requires 75 ft. of minimum lot frontage and lot width. The total lot size is well above the minimum for the R-3 zone. The lot frontage and width along Bay Drive is 50 ft. However, the lot width in the rear portion of the lot expands to 127 ft.

The applicant made an application to the Zoning Board of Adjustment to permit the construction of a single-family dwelling on the property based on the nonconformities for lot frontage and width. Pursuant to Resolution No. 03-53-ZBA, the Zoning Board approved the application finding that the relief would not be inconsistent with the existing conditions in, and the character of, the surrounding neighborhood and vicinity. The Board also determined the irregularly shaped lot is much larger than required and was subdivided at a time when the Ordinance only required 50 ft. for frontage and width. The

Resolution noted the approval expired after three (3) years if not acted upon by the Applicant. The Resolution is dated July 3, 2003.

No changes to the site have occurred since that approval and no changes are proposed by the applicant. The applicant respectfully requests the board consider this request for extension for two reasons: First, the Permit Extension Act would be applicable to at least some portion of the time that has elapsed between the Resolution and the present application.

Second, "Sunset" conditions imposed on variances are designed to ensure that, in the event conditions have changed at the expiration of the period prescribed, the board will have the opportunity to review the application in light of the current conditions. Rathkopf, The Law of Zoning and Planning (4th Edition updated through 1999), section 38.07. Here, there is good cause for an extension because there is no change to the conditions affecting the site nor any proposed change to the use of the premises previously approved.

As a practical matter, if the applicant were required to submit a new application, the board would be considering identical facts and circumstances that the board reviewed and approved in Resolution No. 03-53-ZBA. On that basis, the applicant respectfully requests the Board revive and extend the approval under these current circumstances for a period of three (3) years. This proposed time period reflects that reality of the need for CAFRA and other governmental agency approval and the practical impact of COVID-19 on the time for government action.

Respectfully submitted,

GILLIN-SCHWARTZ LAW LLC

CHRISTOPHER GILLIN-SCHWARTZ



LOWER TOWNSHIP ZONING BOARD OF ADJUSTMENT

APPLICATION FOR DEVELOPMENT

Applicant/Appellant's Name: Joan A. Birsh & Arthur T. Birsh, Trustees of the Living Trust U/A/D 8/7/96 Phone: 886-6018

Mailing Address: 2695 Bay Drive, Villas, N.J. 08251

Owner's Name/Address: Joan A. Birsh and Arthur T. Birsh, Trustees of the Living Trust U/A/D 8/7/96 2695 Bay Drive, Villas, New Jersey 08251

Subject Property: - Street Address 2697 Bay Drive, Villas, N. J. 08251

Block/Lot Numbers Block 494.02 Lots 2.01 and 2.11

- 1. Specify which power(s) of the Zoning Board of Adjustment you are requesting: () 40:55D-70a Appeal () 34 Permit to build in street bed () 70b. Interpretation () 35 Permit to build where lot does not abut a street (x) 70c.1 Hardship Variance () 76 Planning Board powers, where appropriate - eg. subdivision, site plan, conditional use () 70c.2 Variance () 70d Use/Density () 40:55D-68 Certificate of Non-Conforming Use. () Other (Specify):

2. Request is hereby made for permission to construct a single family home upon a lot which contains lot frontage and lot width

contrary to the requirements of Section(s) 16-4.3 (d) (1) of the Zoning Ordinance.

2a. LIST by description, not number, all variance sought: lot frontage; lot width

Said property measures 50' x 580' and contains approximately 1.1 Acres (irregular) square feet

ZONING DISTRICT R-3 Off-site sewer X On-site septic

3. Size of building after (and including) construction/addition(s) - conforming square feet (1st floor) Height Stories

4. Setbacks of Principal Building will be: Front Yard; Front Yard (corner lots have 2 front yards) Side Yard; Side Yard; Rear Yard; Lot Coverage % conforming

- 5. Setbacks of Accessory Building/Use will be: conforming
 Front _____; Rear _____; Side _____; Side _____; %Lot Coverage _____
 Distance to nearest building: _____
- 6. Supply a statement of facts showing why relief can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance:
 See Attached Schedule

- 7. What is the question sought to be interpreted? (If 70b.)

- 8. What are the EXCEPTIONAL CONDITIONS OF THE PROPERTY supporting the granting of variance? (If 70c)
 See Attached Schedule

- 9. What are the special reasons for granting this variance? (If 70d)

- 10. All applicants must attached the following to this application:
 Proof of payment of all taxes due on the property.
 Signed, estimate of cost of construction.
 Survey of subject property, with all existing structures drawn to scale by a NJ licensed surveyor with dimensions and setbacks marked.
 Signed, notarized affidavit attesting to the fact that said sealed survey is accurate as to the current conditions.
 Fifteen copies of said survey, showing proposed additions with dimensions and setbacks marked.

I do hereby certify that the information presented in this application is true and accurate, to the best of my knowledge.

GAVER AND GAVER, P.A.

By: Eric D. Gaver
(Signature) Eric D. Gaver, Attorney for Applica

Supply name, address, phone of attorney representing applicant.
Eric D. Gaver, Esquire, 20 Decatur St.
PO Box 376, Cape May, N.J. 08204 - 609-884-3407

ATTACHED SCHEDULE

Introduction -

The Applicant files this application in order to make the lot "buildable" for one single family dwelling in preparation for its sale. For this reason, no exact house is proposed or shown on plans. The only variance relief relates to existing conditions of the land, and no such relief has been requested for a proposed residence. Thus, in the absence of the approval of a different application in the future, all structures to be erected upon the lot must honor applicable regulations (i.e., setbacks, lot coverage, height, etc.)

6 & 8 The requested relief may be so granted for the following reasons:

(a) The lot contains in excess of 1 acre of lot area, (i.e., over 43,560 square feet), whereas the required minimum lot area for a single family home is 7500 square feet and for a two family dwelling is 15,000 square feet;

(b) The only deficiencies are the existing lot frontage and lot width. It is argued that the existing street frontage is typical for the immediate area and provides adequate frontage for access purposes. It is also argued that the lot width deficiency only exists at the front of the lot because the lot gets wider toward the rear in the logical location of any future construction.

(c) Other improved lots in the immediate area have very similar conditions.

(d) This application involves the request to build a single family home upon the lot, though a two family home is a permitted use. The lot contains almost three times the area required for a two family home, and almost six times the area required for a single family dwelling, and the same frontage and width are required for both a single and two family home.

(e) There is no ability to acquire additional land in order to bring the frontage and width into compliance without creating width/frontage nonconformities for the adjacent lots. This is because both adjacent lots already contain residences. The adjacent lot to the South has essentially the same frontage/width as this lot, and though wider the adjacent lot to the North does not have sufficient excess width/frontage that could be added to this property to bring it into conformity without creating an additional width/frontage nonconformity for the adjoining lot to the North.

ZBA 2734

RESOLUTION NO. 03-53-ZBA

**RESOLUTION OF FINDINGS AND CONCLUSIONS OF
BOARD OF ADJUSTMENT OF THE TOWNSHIP OF LOWER**

WHEREAS, Joan A. Birsch & Arthur T. Birsh, Trustees of the Joan A. Birsh Revocable Living Trust U/A/D 8/7/96, of 2695 Bay Drive, Villas, New Jersey 08251, have applied to the Lower Township Board of Adjustment for a Hardship variance and to vary the provisions of Section 16-4.3(d)(1) of the Municipal Zoning Ordinance as they pertain to required lot width and frontage for the purpose of constructing a single family dwelling for property located at 2697 Bay Drive, Villas, New Jersey 08251 in the R-3 Zone, and known as Block 494.02, Lots 2.01 and 2.11 on the Municipal Tax Map;

WHEREAS, this matter was heard by said Board on July 3, 2003; and

WHEREAS, the Board, after carefully considering the evidence presented by Applicant and all interested parties, has made the following factual findings and conclusions:

1. Eric D. Gaver, Esquire, appeared on behalf of the Applicant and explained the nature of the application.
2. Applicant has standing to make this application because it owns the property in question.
3. All fees and taxes have been paid and notices are proper.
4. The plan and supporting documents submitted by Applicant are accepted as accurate and are hereby incorporated by reference.
5. Objections were heard from the public.

6. The survey of the property in question by William P. Sweeney, L.L.S. dated 5/26/03 and is accepted as factual and is incorporated herein by reference.

7. The Applicant requires variances from the following requirements: lot frontage and width.

8. The required lot size in this Zone is as follows:

a. proposed minimum lot frontage of 50 feet where a minimum of 75 feet is required.

b. proposed minimum lot width of 50 feet where a minimum of 75 feet is required.

9. Applicant has demonstrated that it has inquired as to whether adjacent undeveloped property is available for purchase and that no such property is available. Letter from the Applicant and adjacent property owners demonstrating the unavailability of adjacent land was marked into evidence.

10. A grant of the requested variance would not be inconsistent with existing conditions in, and the character of, the surrounding neighborhood and vicinity.

11. The property in question is located in the R-3 Zone with an off-site sewer system.

12. There are similar frontages and widths in the immediate vicinity.

14. The property in question is currently being used as a vacant residential lot.

WHEREAS, the Board has determined that failure to grant Applicant the requested relief would result in exceptional and undue hardship to Applicant's property for the following reasons:

1. This is an isolated and non-conforming lot.

WHEREAS, the Board has determined that all the relief requested by Applicant can be granted without substantially impairing the intent and purpose of the Municipal Zone Plan and Zoning Ordinance of the Township of Lower for the following reasons:

1. This irregularly shaped lot is much larger than required and was subdivided when the Ordinance only required 50 feet for frontage and width.

NOW, THEREFORE, BE IT RESOLVED by this Board on this 3rd day of July, 2003, that the application of Applicant for variances for lot width and frontage as aforesaid be granted approval, subject, however, to the following conditions:

1. That the variance relief granted hereunder expire at the expiration of three years if not acted upon by Applicant, its successors or assigns except as otherwise provided under the Municipal Zoning Ordinance.

2. All necessary approvals, as appropriate, relating to the Soil Conservation Service, the Board of Health of the Municipality and/or County, the Cape May County Planning Board, CAFRA, Pinelands Regulations, and any and all other Municipal, County, State and Federal requirements, be obtained.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Applicant and to the Zoning Board for their records.

Dated: July 3, 2003



WILLIAM GALESTOK, Secretary
Lower Township Board of Adjustment