

APPLICANT: DYKEMAN ASSOCIATES  
APPLICATION NUMBER: ZB20/13  
BLOCK: 5213  
LOTS: 1  
ADDRESS: 522 S. RIVERSIDE DRIVE, NEPTUNE  
ATTORNEY FOR APPLICANT: KENNETH L. PAPE, ESQ.  
RESOLUTION NUMBER: ZBA#20-16



**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF NEPTUNE  
FOR BULK VARIANCE RELIEF  
FOR AN ENCROACHMENT OF A LANDSCAPE/RETAINING WALL AND  
DISTURBANCE OF A STEEP SLOPE**

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WHEREAS, BOARD MEMBER James Gilligan, offered the following Resolution moved and seconded by BOARD MEMBER William Franz:

WHEREAS, DYKEMAN ASSOCIATES by and through their Attorney, Kenneth L. Pape Esq., hereinafter referred to as the “applicant” filed an application with the Zoning Board of Adjustment of the Township of Neptune, (hereinafter referred to as the “Board”) seeking the following relief:

The property is located in the R-3 Zone and is designated as Block 5213, Lot 1 on the tax map of the Township of Neptune, and is commonly known as 522 South Riverside Drive, Neptune, New Jersey.

The applicant is the owner of the above property on which one (1) single family dwelling is proposed to be constructed. The Applicant is seeking approval from the Township of Neptune Zoning Board of Adjustment for bulk variance relief associated with the construction of a new single-family dwelling including the following:

1. Disturbance of Steep Slopes
2. Installation of Retaining Walls

Applicant also seeks any other variances and/or waivers as may be required by the Zoning Officer and/or Neptune Township Zoning Board of Adjustment.

WHEREAS, the application pertains to premises known and designated as Block 5213, Lot 1 on the Tax Map of the Township of Neptune, which premises are located at 522 South Riverside Drive, Neptune Township, New Jersey; and

WHEREAS, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

WHEREAS, the Board held a public hearing with regard to the referenced application on the following dates, September 2, 2020 and October 7, 2020; and

WHEREAS, the following items were entered as Exhibits at the hearing:

None. All Exhibits provided in Application, Board Package.

WHEREAS, The Board listened to the Testimony of the following:

1. DAVID BOESCH, LLA
2. AMY JONES, SENIOR BIOLOGIST

WHEREAS, The Board took Questions from the following member of the Public as to the witnesses presented:

1. CAROL LAVITT
2. MICHAEL LAVITT

WHEREAS, The Board took Commentary on the Application upon conclusion of the witness testimony as follows:

1. NONE.

WHEREAS, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. Property of 522 S. Riverside Drive was damaged by a fire and currently sits vacant and damaged. The property has 74 percent more area than other single-family houses in this zone.
2. The driveway on the property is old and needs repair. Plan is to reuse the curb cut and bring the driveway's slope to a lesser percentage than what it previously was. At the western side of the driveway, the slope is currently sitting at 51% while the eastern side of the driveway's slope is at 26.5%. The slope is larger and steeper on the western edge.
3. 57% of the lot will remain completely undisturbed and will carry right up to the retaining wall. The final numbers on the new driveway will be 14% of the plot covered. 43% of the area will be disturbed, but the portion that will be disturbed by the steep slope is not currently known.
4. Tree removal is currently planned to remove over thirty trees on the lot. One of the trees has a nest of a native bird that with minor modifications to the plan can be saved. The tree that has branches that overhang South Riverside will remain in-tact.
5. In a review of Leanne Hoffman's report, the plan submission is tied into the sanitary sewer. The different lines cross in the proposed documents.
6. There is 7-foot wall 2 feet from the house's property line with no safety provisions for children. The builders would have to put up a safety fence to build interlocking masonry unit for the wall which would cause a disturbance in the slope at 8 feet around the foundation. 570 square feet of slope is being disturbed which equates to 20.6% compared to the regulated 25% that is permitted.
7. The driveway provides several spaces at a slope that meets ordinance requirements without any disturbances to the steep slope, however, plans were never submitted to the board.

8. Three (3) Yellow Crown Night Heron nests are documented at the site. This is a NJDEP protected species. The state will only regulates the bird when it is in an environmentally sensitive area which the land is not. The site will still follow environmental regulations for the bird.
9. A slit fence will be created to limit the disturbance to the areas where the nests are located. There will be no construction from April to October 1<sup>st</sup> due to breeding season.
10. Updated plot plans were brought forward to clarify comments for the Township Engineer. A slope study showed yellow and red areas; critical steep slope and brown will be disturbed along with purple. 33.3% of critical slopes accounting for 2,254 sq. feet of the total 5,000 square feet. 25% of those slopes would be disturbed to build the house. 65% of the land would have no disturbances at all to build the house.
11. The wall design will be set back 5 feet and the garage will stand 7' 10" high.
12. For the tree removal, there will be a geo-grid on the wall, a safety fence installed and an Allen block wall with construction details will be established. The fence will be located on the top of the retaining wall and will be immediately adjacent to the retaining wall. They are made with "estate fence" vertical metal pickets so that a child will be unable to get through the wall. The fence stands 4' high and will be unclimbable. There will be no fence located on South Riverside Drive because a safety fence is not needed there.
13. A variance is needed for the wall in the front yard as the height of the wall exceeds 4'.
14. Bird habitat is considered seasonal and the trees will be persevered. There will be no construction when the birds are in residence from April to August.
15. The highest portion of the retaining wall is 17 feet from the western property line. The shortest portion is 10' off property line sitting at 8' tall.
16. Three trees will be protected due to the bird species protected by NJDEP; one tree is in the right-of-way; however, not on the client's property, while two are directly on the property. Proper protection will take place for all 3 trees in the area.

WHEREAS, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Neptune that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:
  - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Township of Neptune.

- c. The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.

**BE IT FURTHER RESOLVED**, by the Board of Adjustment of the Township of Neptune that the following be and are hereby **GRANTED**:

The Applicant is **GRANTED** a variance per their notice, and given relief for the approval to construct a new single-family dwelling where the last one was destroyed due to fire damage.

**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
  - a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - c. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
  - d. COMPLIANCE WITH TOWNSHIP ENGINEER'S COMMENTS
  - e. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
  - f. FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARDS'S PROFESSIONALS.
  - g. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.
  
- (2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

ROLL CALL VOTE: Offered by: James Gilligan Seconded by: William Frantz

THOSE IN FAVOR: Barbara Bascom, James Gilligan, Naomi Riley, Ashley Vidal, Derel Stroud, and William Frantz

THOSE OPPOSED: None.

ABSENT: Dr. James Brown, Thomas Healy

ABSTAINED: None.

MEMORIALIZATION VOTE: Offered by: Barbara Bascom Seconded by: Derel Stroud

THOSE IN FAVOR: Derel Stroud, Ashley Vidal, Naomi Riley, Barbara Bascom, and William Frantz

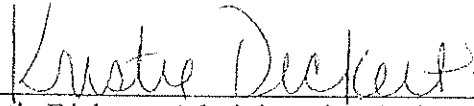
THOSE OPPOSED: None.

ABSENT: James Gilligan

ABSTAINED: None.

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Neptune at its meeting on October 7, 2020 and memorialized at the meeting held on November 4, 2020.

Date: April 5, 2021

  
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Kristie Dickert - Administrative Officer of the  
Zoning Board of Adjustment  
Township of Neptune