

RESOLUTION NO. 2022-14

Applicant: Ronald and Gina Odegaard

Property: 265 Fairview Avenue
Berlin Township, New Jersey
Block 1309 Lot 9.01

A - "USE" Variance for a Prohibited Structure - "Pole Barn" - Ordinance 340-17.H

B - "Bulk Variances for structure height, size and side and rear yard variances

RESOLUTION OF THE BERLIN TOWNSHIP PLANNING/ZONING BOARD
GRANTING A PRELIMINARY FINAL SITE PLAN - WITH VARIANCE

WHEREAS. The applicant appeared before the Board on July 26th 2022, and is applying for a use variance and preliminary and final Site Plan approval, with variances for property known as Block 1309 Lot 9.01, 265 Fairview Avenue, and

WHEREAS. The applicant has submitted a map of survey prepared by Arthur F. Siefert, which has been reviewed by Charles J. Riebel Jr. P.E., P.L.S., P.P. the Engineer for the Board. The report of the Board's Engineer is dated June 17th 2022. The applicant appeared before the Board and was represented by the law office of Patrick F. McAndrew Esq., and

WHEREAS. Also appearing for the applicant was James Millner P.P., and

WHEREAS. The applicant provided the following reports;

- a. Structural Design, Enclosed Building, dated November 26th 2019, by Moore and Associates Engineering and Consulting Inc. of South Carolina.
- b. Sales Brochure and Price Quote, dated July 25th, for the proposed, and existing 20 feet by 31 feet enclosed car port.
- c. Map of Survey, dated January 25th 2022, by Arthur F. Siefert Jr., P.L.S.
- d. Application Package, dated March 7th 2022.
- e. Letters from Patrick F. McAndrew Esq. dated March 8th , April 19th , May 3rd and May 24th 2022.

And

WHEREAS. The applicant and all intended witnesses for the applicant and the Board's Engineer and Township Zoning/Construction Officer were sworn-in by the Board Solicitor,

WHEREAS. The Board determined that the application is properly before the Board and the proof of notice and publication is appropriate, and

WHEREAS. The Board has received and reviewed all reports filed by the applicant and the Board engineer, and

WHEREAS. The site is located in the R-1 Single Family Detached Residential Zoning District. The proposed Pole Barn is a prohibited in the zoning district. The Pole Barn is a completed structure, having been erected in late 2020 or early 2021. The structure was erected without the applicant obtaining the necessary construction permits, inspections and approvals from and by the

Township Construction Officials, and is in current use by the applicant. and

WHEREAS. The applicant provided testimony/argument that the existing structure was not defined as a "Pole Barn". There was much discussion on the manner of construction of the structure. Following the discussion and comments by the applicant, and applicant's professional, together with arguments by the applicant's attorney, the Board determined that the structure, as currently constructed, fell within the definition of a Pole Barn, and as such was a prohibited structure pursuant to Ordinance 340-17 of the Township of Berlin, and a Use Variance was necessary for the application to continue, and

WHEREAS. Following much continued testimony and discussion on the Pole Barn structure, and after consulting with their attorney, the applicant represented that they would secure all necessary building permits and inspections, with approvals necessary to install the proper building foundation necessary to remove the structure from the definition of a Pole Barn. The applicant further agreed to work with the Board Engineer, and Township Construction Official in the installation of a foundation. With that being an agreed condition, the application proceeded before the Board without requiring a Use Variance for a prohibited structure, and

WHEREAS. The applicant proceeded to introduce the testimony of their Profession Planner to address the bulk variance, and

WHEREAS. The applicant seeks the following bulk variances;

- a. to permit the building height (constructed at 15.25 +/-) to exceed 15 feet (Sec. 340.19.A)
- b. To permit the garage structure (constructed at 20 feet by 31 feet) to exceed the maximum permitted of 12 feet by 20 feet.
- c. To permit a side yard set back (as constructed at 6.28 feet) where 15 feet is permitted, and a rear yard set back (as constructed 12.86 feet), where 25 feet is permitted.
- d. To permit a total floor area to exceed 20% of the existing principal building.

And

WHEREAS. The applicant provided testimony relating to the use of the garage for family vehicles and storage. The use of the garage enables the applicant to remove several items that have been stored in the open yard area. Thereby removing much clutter from the open yard area. The applicant also presented testimony that in the immediate neighborhood there are other garages that exceed the maximum allowed size. The applicant also presented testimony that the location of the garage is set back and is not visible from the street. And

WHEREAS. AS part of their testimony, the applicant placed into evidence pictures showing the garage, the location of the garage as it relates to the rear and side yards, as well as the existing drive access. The pictures presented were marked Applicant Exhibits A, B and C. and

WHEREAS. The applicant's professional Planner provided testimony as to other oversized garages in the neighborhood, as well as the applicant's lot being 80 feet +/- by 221 feet +/- makes it well suited for the size of the garage as constructed. The applicant's professional submitted that the presence of the over sized garage and the location to side and rear yards, although contrary to zoning regulation, is not unreasonable under the circumstances and testimony presented. Arguments were also presented to the

Board that the granting of the variances requested would not be a substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance. And

WHEREAS. The application was opened to the public.

WHEREAS. During the public portion, one resident appeared in opposition to the application. Specifically, the resident expressed opposition to the rear yard variance. The objection expressed the oversized structured and it being placed within 12 feet +/- of his property line without any screening made the structure unsightly and objectionable. The Board Engineer suggested plantings along the rear yard to reduce the impact of the garage size/color. The applicant agreed to work with the Board Engineer in the selection of planting suggested at nine (9) feet in height). and

WHEREAS. Following the public portion, there was no further testimony presented by the applicant.

WHEREAS. In considering the applicant's request for variances, the Board determined that there would be no substantial detriment to the public good nor substantial deviation from the intent and purpose of zoning.

NOW THEREFORE, BE IT RESOLVED, by the Planning/Zoning Board of the Township of Berlin that the application for preliminary and final site plan with variances for the constructed garage be and is hereby GRANTED.

BE IT FURTHER RESOLVED, by the Planning/Zoning Board of the Township of Berlin that the following variances is Granted;

- a. to permit the garage height constructed at 15.25 +/-.
- b. To permit the garage constructed at 20 feet by 31 feet.
- c. To permit a side yard set back constructed at 6.28 feet.
- d. To permit the rear yard constructed set back at 12.86 feet.
- e. To permit a total floor constructed at 31.32+/-.

BE IT FURTHER RESOLVED, that the following conditions of this approval have been approved and agreed to by the applicant;

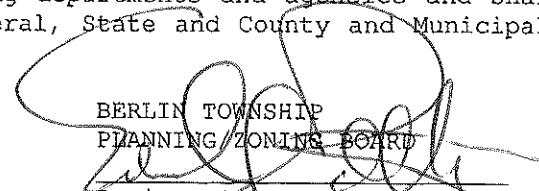
1. The applicant will work with the Board Engineer and Township Construction Official to secure required permits and install appropriate footing (below frost) around the garage. The applicant must secure permits and commence installation of footings prior to October 25th 2022.
2. The applicant will work with the Board Engineer to select and install plantings at the rear yard, to be installed and set a minimum of 9 feet in height.

BE IT FURTHER RESOLVED, the applicant will post any and all performance guarantees required.

BE IT FURTHER RESOLVED, the applicant will seek and receive all approvals and permits necessary from all governing departments and agencies and shall meet compliance with all applicable Federal, State and County and Municipal laws, rules and regulations.

ATTEST:


KELLY SCHENDOCK
Secretary

BERLIN TOWNSHIP
PLANNING/ZONING BOARD

Craig DeGeorge ED RITTS
✓ Chairman

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Berlin Township Planning/Zoning Board at a meeting held on July 26th 2022.


KELLY SHENDOCK, Secretary