

**A RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE  
BOROUGH OF HADDONFIELD GRANTING VARIANCE APPROVAL  
TO ROBERT AND SARA LIVERMORE  
ZBA #2019-12**

---

A public hearing on this matter was conducted by the Board on June 18, 2019.

APPLICATION NUMBER: ZBA#2019-12

PROPERTY ADDRESS: 211 E. Cottage Avenue  
Block 51, Lot 4.05 on the Tax Map

NAME OF APPLICANTS: Robert and Sara Livermore

OWNER OF PROPERTY: Robert and Sara Livermore

DATE OF HEARING: June 18, 2019

**BOARD MEMBERS PRESENT  
AND VOTING:**

Linda Kuritzkes, Chairperson  
Kevin Burns, Vice-Chairperson  
Wayne Partenheimer  
Brian Mulholland  
Bryan Pukenas  
Colleen Bianco-Bezich (Alternate I)  
Steve Sweet (Alternate II)

**APPEARANCES:**

Robert Livermore, Applicant  
Richard Hoff, Esquire, Applicant's Attorney  
Leah Furey-Bruder, Applicant's Planner  
Gregory J. Sullivan, Borough Engineer  
Tavis A. Karrow, Zoning Officer & Board Secretary  
Francis X. Ryan, Esquire, Board Solicitor

**PROPERTY DESCRIPTION**

ZONING DISTRICT: R-7

LOT DIMENSIONS: 50' x 103'

LOT AREA: 5,150 +/- square feet (irregular)  
STREET FRONTAGE: 50 feet  
STRUCTURES LOCATED ON LOT: 2 story single family residence.

### **DEVELOPMENT PROPOSAL**

1. Construction of deck on rear of house.

### **RELIEF/VARIANCE REQUESTED**

1. A variance from Section 135-32D(2)(d) which requires a minimum rear yard of 35 feet, where 28.7 feet is proposed.
2. A variance from Section 135-32D(4)(b) which limits impervious coverage to 40% and 41.1% is proposed.

### **SUBMISSIONS**

Application and supporting documents.

### **SUMMARY OF TESTIMONY AND EVIDENCE**

Applicant's attorney provided an overview of the application. The proposal is to add a deck to the rear of the existing home. The deck itself will protrude into the rear yard setback by ten (10) feet. The staircase extends another approximately four (4) feet from the deck itself. Although the deck is to be of open design with Trex boards, it is still all considered impervious and it results in the property exceeding the impervious coverage by 1.1%. According to counsel if the steps were removed the deck itself would comply with the total impervious coverage.

The Applicant Mr. Livermore then testified. He indicated that the rear yard of the house has a significant slope. The way the house was built, when you walk out the basement you walk out on to ground level whereas if you walk out the first floor you're elevated over the ground. The plan was to build the deck off the first floor of the house to provide better access to the rear yard from the rear of the house. The proposed deck is 10 feet by 16 feet which he did not consider to be out of portion with the home and property. There is currently a light over the door but there will be no other utilities extended to the deck. The Applicant (and his attorney) were questioned by the Board Engineer concerning the history of this property.

Leah Furey-Bruder, Applicant's planner, then testified. She indicated that with regard to the deck itself 10 by 16 is rather modest and is near a minimum size to render it functional. She did note that the deck itself was only 28.7 feet from the rear property line and it was the 4-foot-wide staircase that further impinged on the rear yard setback. She believed it was appropriate to have the staircase as a means of egress from the house in case of an emergency. She felt that the application was justified under NJSA 4:55D-70(c)(2). She indicated that she had reviewed the Master Plan and Reexamination Report and noted that among its goals is to advance the general welfare of the population and to encourage outdoor gathering space both of which would be advanced by this project. She did not believe that it was a detrimental impact on the zoning scheme and felt that it would enhance property values and also provide a visual benefit which is one of the stated goals under the MLUL. She also commented on the existence of a drywell and surface water detention system that was on the property. She indicated that all roof runoff was directed through gutters and downspouts into the drywell system. It was her opinion that based upon the functionality of the drywell system that the property actually functioned at less than 36.6% coverage. With regard to the rear yard issue she noted that the property and the surrounding areas are somewhat unusual. They are unusual on that the properties immediately to the north that front on Lakeview are located in the R8 zone in which has a 25-foot rear yard setback whereas this property which is similar in size and location requires a 40-foot rear yard setback.

At this point the Board Engineer raised a series of questions concerning the water management system. He indicated that this property was somewhat problematic in that the builder had installed the drywell system without obtaining proper approvals. That is, it was installed but not inspected by the Borough. There was some question by the Board as to how a certificate of occupancy could be issued if not all proper inspections were conducted. There was a suggestion that there is a difference between building issues for CO purposes and site plan issues. The engineer's primary concern was that there was no engineering proof to support the planner's opinion with regard to the functionality of the system. In response to those inquiries the planner did concede that she is not an engineer and did not test the system for its functionality but did confirm its existence.

Earl Maitland of 220 Walnut Street appeared and testified. He indicated that his property is located to the north east of the property in question. He has the unfortunate circumstance of being at the bottom of a hill in which houses on both Cottage and Lakeview form something of a funnel which results in his property being inundated not just by water but by dirt as well. He submitted photographs that were marked as P1 through 4 which he indicates showed the condition of his property currently and in fact some of them were taken one or two nights before the meeting. He indicated that during construction he had spoken to the builder who represented to him that the "cisterns" being installed would reduce his runoff. While he conceded that there was some minor reduction there has not been any significant improvement since the house was built along with the companion home.

There was then considerable discussion among the Board as to the functionality of the water management system and concerns about how a house could be given a certificate of occupancy if the systems were not properly engineered and functioning.

### **FINDINGS OF FACT AND CONCLUSIONS**

1. The subject lot is located in the R-7 Zone.

2. The existing dwelling is currently conforming with respect to all bulk, area and coverage requirements. This is probably a function of the fact that the house was only recently built, and the first CO was not issued until February or March of this year. The Board expressed concern over the fact that this appears to be a situation in which the builder built a house which nearly maxed out building and impervious coverage knowing that at some point their customer or the future property owner would most likely feel the need or desire for a deck. This is manifested by the fact that doors were placed on the rear of the house well above the exterior grade of the yard. In other words, that door can only be functional if a porch or deck was added onto the back of the house. The Board has encountered this type of situation in the past and has expressed concerns that builders may be giving false encouragement or information to their customers when selling these homes.

3. Notwithstanding those concerns the Board recognized that it needed to address the application on the merits. In this case the rear yard setback violation for the porch itself is not significant. Choosing between the design of porch with external stairs or no stairs the Board felt that it would be better to have steps to provide egress from the house over the deck. The Board also recognized that the deck itself did not trigger a need for a variance as to coverage; it was only the steps that triggered same and again it is a relatively minor reverence that is needed.

4. To obtain a (c)(2) variance, the Applicant has a burden to show that an application relating to a specific property would advance the purpose of the zoning ordinance by a deviation from the ordinance requirements and that the benefits of the deviation would substantially outweigh any detriment. In other words, the Applicant has to show that (1) the variance pertains to the specific property; (2) that a variance would advance the purpose of the MLUL and the ordinance; (3) the variance does not cause "substantial detriment to the public good"; (4) its benefits substantially outweigh any detriments from the deviation; and (5) the variance does "not substantially impair the intent and purpose of" the Zoning Plan and the Zoning Ordinance. Allowing the deck and rear steps to the rear of the house provides for a better aesthetic on the property and a safer use of the property since it does provide egress from the main living level of the house. The addition of the porch will also improve the aesthetic of the property and otherwise advance the goals of the zone plan.

5. The relief requested can be granted without violating the spirit and intent of the

zoning ordinance, the zone plan and the Master Plan.

6. Due notice has been given in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) and the rules of the Board of Adjustment.

### **RESOLUTION**

**NOW, THEREFORE, BE IT RESOLVED**, by the Zoning Board of Adjustment of the Borough of Haddonfield, that subject to the conditions noted below, that the application for a variance be and is hereby granted, pursuant to N.J.S.A. 40:55D-70(c).

### **CONDITIONS OF APPROVAL**

1. The development approved by this resolution must comply with the plans and specifications submitted with this application.
2. Applicant must comply with all other applicable ordinances and codes including but not limited to Shade Tree Ordinance, building codes, fire codes and all water management requirements.

Motion by: Burns; seconded by Sweet

Board members voting to grant the requested variance: Kuritzkes, Burns, Mulholland, Partenheimer, Pukenas, Bianco-Bezich, and Sweet

Board members voting to deny the requested variances: None

### **CERTIFICATION**

I hereby certify that the foregoing is a true, accurate, and complete copy of the resolution of memorialization adopted by the Zoning Board at its regular monthly meeting on July 16, 2019, memorializing action taken by the Zoning Board on June 18, 2019.

---

Tavis A. Karrow, Board Secretary