

**ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
SEPTEMBER 12, 2018**

**CALL TO ORDER BY CHAIRMAN GARY**

**SILENT PRAYER**

**PLEDGE OF ALLEGIANCE**

**OPEN PUBLIC MEETINGS STATEMENT:** “adequate notice of this meeting has been provided indicating the time and place in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star-Gazette and The Express-Times and by posting a copy on the bulletin board in the Municipal Building”.

**ROLL CALL:**

**Present:** Members Horun, Unangst, Rutledge, Woolf and Chairman Gary.

**Absent:** Members Devos, Bittone and Vice-Chairman Larsen

**OLD BUSINESS:**

- Approve the July 11, 2018 Meeting Minutes

**Motion by:** Member Rutledge

**Seconded by:** Member Unangst

**ROLL CALL:**

**AYES:** Members Horun, Unangst, Rutledge, Woolf and Chairman Gary

**NAYS:** None

**OLD BUSINESS:**

- Adopt Resolution 18-07 - Walter & Helen Thomas - Block 93.02, Lot 5 – Granting Variance Relief to Permit a 54” High Fence in the Front Yard – Located at 12 Spring Run Lane – Block 93.02, Lot 5

**18-07**

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP  
OF LOPATCONG, WARREN COUNTY, NEW JERSEY,**

**GRANTING VARIANCE RELIEF PURSUANT TO N.J.S.A. 40:55D-70(c)(2) TO  
WALTER THOMAS CONCERNING PROPERTY LOCATED AT 12 SPRING RUN  
LANE AND DESIGNATED AS BLOCK 93.02, LOT 5**

**Case No. 2018-07**

**WHEREAS, WALTER S. THOMAS** (hereinafter referred to as “Applicant”), has applied to the Township of Lopatcong Zoning Board of Adjustment (hereinafter referred to as “Board”) for variance relief to permit a 54-inch high fence in the front yard pertaining to the premises located at 12 Spring Run Lane, in the Township of Lopatcong and as designated on the Tax Map of the Township of Lopatcong as Block 93.02, Lot 5 (hereinafter referred to as “Subject Property”), and as located within the R5 zone district; and

**WHEREAS**, this application falls under the jurisdiction of the Board for approval pursuant to N.J.S.A. 40:55D-1 et seq.; and

**WHEREAS**, the Applicant appeared *pro se*; and

**WHEREAS**, the Applicant provided proof of service and publication of all proper notices and advertisements as required pursuant to the Municipal Land Use Law; and

**WHEREAS**, a public hearing was held on the application on July 11, 2018, during which time the Applicant presented testimony, reviewed the variance application and the case was opened for public comment; and

**WHEREAS**, the Board heard testimony, reviewed exhibits and reports, and established a record that may be characterized in summary as follows:

1. The following reports and/or correspondence were received and reviewed by the Board:

- A. Lopatcong Township Variance Checklist.
- B. Lopatcong Township Application for a Variance dated May 15, 2018 with appended photographs of subject property and fence.
- C. Certification of Taxes.
- D. Application for zoning permit dated April 4, 2018.
- E. Survey segment depicting fence.
- F. Zoning permit denial dated April 9, 2018.
- G. Notice of Zoning denial dated April 9, 2018.
- H. June 29, 2018-report of George Ritter of Ruggiero Plante Land Design, LLC.

2. The following is a summary of the testimony introduced at the hearing:

A. The Applicant, Walter S. Thomas, came forward and was sworn. Mr. Thomas explained that he owns the subject property which sits on a corner lot and therefore technically has two front yards. Mr. Thomas testified that the fence was designed to protect the backyard, but insofar as the side of his property on the corner is considered a front yard. He was told that there is a maximum height of 48 inches for the fence whereas his fence is 54 inches in height. Mr. Thomas indicated that the primary purpose of the fence is for a dog and indicated that the fence is composed of black aluminum and more than 50% of the fencing material is open. Mr. Thomas indicated that all the fence is within the property limits and is not

obtrusive to the surrounding neighborhood. Moreover, Mr. Thomas indicated that the fence does provide for safety and security for his family.

3. The application was opened by the Board for public comment and no public comment was received.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Lopatcong, that it hereby makes the following findings of fact and conclusions of law based upon the testimony given in this matter, and the reports, documents and materials that have been provided to the Board:

1. Applicant, Walter S. Thomas, is the owner of real property located at 12 Spring Rune Lane in the Township of Lopatcong and as designated as Block 93.02, Lot 5. The subject property is located in the R5 zone district and is over 2 acres in size. The subject property improved with a single-family dwelling and the Applicant has placed a fence 54 inches in height in what is considered to be the “backyard” of the property and is seeking approval for same.
2. The subject property is located on corner lot, which under the zoning ordinance of the Township of Lopatcong is considered to have two (2) front yards. Section 243-64.1 B. (4) (a) prohibits fencing in the front yard greater than 48 inches in height.
3. The fencing as installed by the applicant is going to be 54 inches in height, however, the house is oriented so that the home on Spring Run Lane and its side yard fronts along Stone Row Lane. The 54-inch fence that is placed along the Stone Row Lane aspect of the property is approximately 104 feet from the street line, which is far greater than the minimum front yard setback of 50 feet that is otherwise applicable.
4. The Board notes that the fence is otherwise conforming as to material, design and location and the Board finds that there is no negative aesthetic impact as related to the fence in its current location at its current height.
5. The Board finds that the Applicant has met its burden in justifying variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) inasmuch as the fencing as installed is a minor violation of the zoning ordinance requirements and that the fencing advances the purposes of the municipal land use law in its promotion of appropriate residential use, the promotion of a desirable visual environment and the promotion of the health, safety and welfare of the Applicant and the community. The Board that the benefits of deviation substantially outweigh any appreciable detriment that could be perceived, especially insofar as the fence is set back significantly from the roadway and is commonly perceived to be a side yard of the property.

**BE IT FURTHER RESOLVED**, by the Zoning Board of Adjustment of the Township of Lopatcong as follows:

Variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) from Section 243-64.1 B. (4)(a) is hereby granted to Applicant so as to permit a fence height of 54 inches within considered front yard area where a height of 48 inches is otherwise permitted.

1. The variance approval granted herein is subject to and upon the following conditions:

A. The Applicant shall comply with any and all conditions, requirements and agreements as set forth within this Resolution, as well as any and all representations made to the Board, both orally and in writing, whether contained in this Resolution or not. Further, Applicant shall comply with all comments and conditions set forth within the reports of the Board professionals and Township employees as provided to the Applicant.

B. The Applicant shall satisfy and post any and all required escrows and pay any and all outstanding taxes as required by law or by ordinance.

**BE IT FURTHER RESOLVED**, by the Planning Board of the Township of Lopatcong that:

The foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Lopatcong at its meeting of September 12, 2018.

Date: September 12, 2018

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Phyllis Coleman, Secretary

**Motion by:** Member Unangst

**Seconded by:** Member Rutledge

**ROLL CALL:**

**AYES:** Members Horun, Unangst, Rutledge, Woolf and Chairman Gary

**NAYS:** None

- Adopt Resolution 18-06A - Dr. Kirsten Wurzburg – Granting Preliminary and Final Major Site Plan Approval for Canyon River Run Veterinary Clinic – Located at 169 Belview Road – Block 87, Lot 1.01

**18-06A**

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP  
OF**

**LOPATCONG, WARREN COUNTY, NEW JERSEY,**

**GRANTING PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL TO  
KIRSTEN WURZBURG (CANYON RIVER RUN VETERINARY CLINIC)  
CONCERNING PROPERTY LOCATED AT 169 BELVIEW ROAD AND DESIGNATED  
AS BLOCK 87, LOT 1.01**

**WHEREAS, KRISTEN WURZBURG (CANYON RIVER RUN VETERINARY CLINIC)** (hereinafter referred to as “Applicant”), has applied to the Township of Lopatcong Zoning Board of Adjustment (hereinafter referred to as “Board”) for preliminary and final site plan approval to establish a veterinary clinic in an unoccupied manufacturing building pre-existing to premises located at 169 Belview Road in the Township of Lopatcong and as designated on the Tax Map of the Township of Lopatcong as Block 87, Lot 1.01 (hereinafter referred to as “Subject Property”), and as located within the R2 zone district; and

**WHEREAS,** this application falls under the jurisdiction of the Board for approval pursuant to N.J.S.A. 40:55D-1 et seq.; and

**WHEREAS,** the Board further has jurisdiction over this approval pursuant to N.J.S.A. 40:55D-76(b) inasmuch as this Board has previously granted variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) so as to permit the proposed veterinary clinic in 2017; and

**WHEREAS,** the Applicant was represented by William Edleston, Esq.; and

**WHEREAS,** the Applicant provided proof of service and publication of all proper notices and advertisements as required pursuant to the Municipal Land Use Law; and

**WHEREAS,** a public hearing was held on the application on July 11, 2018, during which time the Applicant presented testimony, reviewed the preliminary and final site plan plat and the case was opened for public comment; and

**WHEREAS,** the Board heard testimony, reviewed exhibits and reports, and established a record that may be characterized in summary as follows:

1. The following reports and/or correspondence were received and reviewed by the Board:
  - I. Completed Lopatcong Township Subdivision and Site Plan Application.
  - J. Completed Preliminary Site Plan Details Checklist.
  - K. Completed Final Major Site Plan Details Checklist.
  - L. June 26, 2018, waiver request for completeness.
  - M. Plans entitled “Major Site Plan – Canyon River Run Veterinary Clinic-Block 87, Lot 1.01, Tax Map Sheet No. 2-Lopatcong Township, Warren County, NJ” consisting of four sheets prepared by Christopher R. Nusser, PE, of Engineering

and Land Planning Associates, Inc., dated April 9, 2018, and revised through June 25, 2018.

N. Architectural Plans prepared by Arthur J. Henn, AIA, and Associates, LLC, consisting of two sheets dated June 21, 2018.

O. July 5, 2018, engineering report prepared by Paul M. Sterbenz, PE, PP, and Adam Wisniewski, PE, of Maser Consulting, P.A.

2. The following exhibits were introduced at the hearing:

Exhibit A-1 – Proposed site plan

3. The following is a summary of the testimony introduced at the hearing:

A. The Applicant introduced Christopher R. Nusser, PE, PP, who was sworn. The Board accepted Mr. Nusser's qualifications as a professional engineer and planner. Mr. Nusser indicated that the Applicant is seeking preliminary and final major site plan approval for the Canyon River Run Veterinary Clinic on the Subject Property. Mr. Nusser indicated that previously this Board had granted the Applicant variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) on a bifurcated application and this is the site plan phase associated with same. Mr. Nusser indicated that the proposed veterinary clinic will be conducted within existing buildings. In this regard, Mr. Nusser indicated and described the general layout of the property indicating that same has a two-story framed dwelling, a pre-existing commercial building with various concrete and paved areas, a garage, several sheds and a gravel area. Mr. Nusser indicated that there is paved drive that leads to Belview Road and that the Subject Property is approximately 5.174 acres in size. Mr. Nusser indicated the amount of waivers that the Applicant was seeking and same were detailed for the Board. The Board upon motion granted the waivers as requested by the Applicant for the purposes of the application and same was deemed complete by the Board. As to the substance of the testimony, the two principal structures on the property are the two-story framed dwelling and the area proposed for the veterinary hospital space. This was previously used for manufacturing. Mr. Nusser indicated that a stream does bisect the property in a north/northwest direction. As part of the prior manufacturing building, there is an approximate 2,000 square foot garage space that is to remain as storage for both the homeowner and for the business as may be needed. The sheds and the detached garage as located on the property are to remain and be maintained by the Applicant. Mr. Nusser indicated that there is a large paved area around the existing manufacturing building that will remain but will be resurfaced and appropriately signed and striped. Mr. Nusser indicated that the paved drive that provides access to the site will be somewhat modified so as to allow for passing of cars. The existing sign at the roadway is to remain, however, it will be resurfaced for appropriate site identification. Mr. Nusser indicated that as to the veterinary clinic, there will be a new entrance located on the eastern aspect of the building and it will be appropriately ADA accessible with ramps. Along the southern aspect of the building, some pavement is to be removed for appropriate landscaping subject to the planner's review and acknowledgement. As to parking,

there are 17 parking stalls that are anticipated to be striped, however, 20 are required. The Applicant indicated that three additional spaces will be provided next to the pre-existing shed, however, they will be unstriped and as to traffic circulation, same will utilize the existing drive areas. Mr. Nusser indicated that the property is served by well and septic that is existing, however, the septic is to be replaced and Mr. Nusser indicated the various septic areas proposed for the site and that system, which is subject to the review and approval of the Board of Health. Mr. Nusser indicated that pre-existing utilities do service the property and they will not be changed. As to site lighting, Mr. Nusser indicated that the Applicant is proposing building mounted and pole mounted lighting especially as to the northeast of the attached garage. Mr. Nusser did indicate that during the prior phase of the application it was estimated that approximately 3,500 square feet of the existing manufacturing building would be utilized for the veterinary use, however, it is approximately the intended use based upon the architectural is 4,825 square feet. It was indicated that there will be approximately 275 square feet of additional asphalt installed for the expansion of the parking areas and the Applicant requested that it be granted permission to bank seven spaces as to stage development and spread out the expense over time.

B. The Applicant, Kristen Wurzburg, was sworn. Upon questioning, Ms. Wurzburg confirmed that the appropriate walls have been designed to account for x-ray radiation and that the design has been approved by a physicist for such purposes.

4. The application was opened by the Board for public comment and no public comment was received.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Lopatcong, that it hereby makes the following findings of fact and conclusions of law based upon the testimony given in this matter, and the reports, documents and materials that have been provided to the Board:

6. Applicant, Kristen Wurzburg, (Canyon River Run Veterinary Clinic) is the owner of real property located at 169 Belview Road in the Township of Lopatcong and as designated as Block 87, Lot 1.01. The subject property is located in the R-2 zone district and is approximately 5.174 acres in size. The subject property is improved with a pre-existing two-story framed dwelling and a pre-existing commercial building with various concrete and paved areas, as well as several sheds, a detached garage and various gravel travel ways.
7. By way of prior application through bifurcation, the Board granted the Applicant variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) so as to permit the proposed veterinary clinic to operate within the pre-existing commercial building that was utilized for manufacturing.

8. The Applicant intends to utilize approximately 4,825 square feet of the pre-existing commercial building for the veterinary clinic purposes. As part of the prior use, the commercial building has an approximate 2,000 square foot storage space that is to remain as storage for both the pre-existing home on the subject property as well the veterinary clinic use.
9. As the site concerns, the Board notes that certain improvements are going to be made to the subject property, including the removal of certain pre-existing concrete areas adjacent to the proposed veterinary building and that certain improvements will be made to the paved drive areas so as to permit an appropriate traffic circulation. The Board notes that the proposed building will be appropriately ADA accessible with ramps.
10. The Applicant did indicate that three (3) additional parking spaces are required and will be supplied on site in the areas denoted and depicted on the plan. However, the parking area will require the addition of approximately 275 square feet of additional asphalt, which the Applicant has asked to bank for the staging of development and spread the expense over time, which the Board is amenable to.
11. The subject property is serviced by well and on-site septic that is existing. A new septic design is being purposed by the Applicant under the jurisdiction of the Board of Health for approval. The Board further finds that the subject property is serviced by appropriate utilities as an existing condition.
12. The Board finds that the Applicant has substantively met the requirements of the Township's site plan requirements, including site lighting, landscaping as depicted and detailed, site egress and ingress and sanitation. Accordingly, the Board finds that it is appropriate to grant to preliminary final site plan approval subject to certain conditions for the Applicant.

**BE IT FURTHER RESOLVED**, by the Zoning Board of Adjustment of the Township of Lopatcong as follows:

Preliminary and final Site approval is hereby granted to the Applicant so as to construct and establish the veterinary clinic as proposed and detailed on the site plan map provided herein;

2. The approval granted herein is subject to and based upon the following conditions:

- A. The Applicant shall comply with any and all conditions, requirements and agreements as set forth within this Resolution, as well as any and all representations made to the Board, both orally and in writing, whether contained in this Resolution or not. Further, Applicant shall comply with all comments and conditions set forth within the reports of the Board professionals and Township employees as provided to the Applicant.



- B. The Applicant shall be required to satisfy and post any and all required escrows and pay any and all outstanding taxes as may be required by law or by ordinance.
- C. The Site Plan shall be revised to depict three additional parking stalls in the gravel area north of the 2,025 square foot garage space.
- D. A note shall be added to the Site Plan that shall read, “Final location of bollards adjacent to the main entrance to the veterinary clinic shall be determined in the field prior to installation and then consultation with the Township Engineer.”
- E. The site plan plat shall be revised to depict a 25-foot wide dedication of the right-of-way to the Township of Lopatcong pursuant to Section 243-45E(4) of the Land Use Ordinance. Such dedication shall be in the form of acceptable to the Township Engineer and Township Attorney and it shall remain subject to acceptance by the Township.
- F. The Applicant shall obtain either an approval or a waiver from the Warren County Planning Board for the within project.
- G. The Applicant shall post any and all required inspection fees as it may be determined to be appropriate by the Board Engineer.
- H. No Certificate of Occupancy shall be issued until such time as the site improvements indicated on the site plan have been constructed and in a manner satisfactory to the Township Engineer and the right-of-way dedication has been provided in a form acceptable to the Township.
- I. The Applicant shall remain obligated to comply with any terms, provisions, and conditions as contained within approval variance resolution immortalized on February 14, 2018.
- J. The Applicant shall complete all parking improvements within twelve months of this approval.
- K. The Applicant shall schedule an in-service lighting test with the Township Engineer to ensure that the final configuration of building mounted and freestanding lighting is adequate and safe for the circulation of vehicles and pedestrians on-site, prior to the issuance of a certificate of occupancy.

**BE IT FURTHER RESOLVED**, by the Zoning Board of Adjustment of the Township of Lopatcong that:

The foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Lopatcong at its meeting of September 12, 2018.

Date: September 12, 2018

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Phyllis Coleman, Secretary

**Motion by:** Member Rutledge

**Seconded by:** Member Horun

**ROLL CALL:**

**AYES:** Members Horun, Unangst, Rutledge, Woolf and Chairman Gary

**NAYS:** None

**PUBLIC COMMENT:**

No one from public present

**ADJOURNMENT:**

**Motion by:** Member Rutledge

**Seconded by:** Member Unangst

**ALL IN FAVOR:** AYE

**NAYS:** NONE

Respectfully submitted by,

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Phyllis D. Coleman, Secretary  
September 13, 2018

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Fred Gary, Chairman