

**LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
NOVEMBER 13, 2019**

CALL TO ORDER

SILENT PRAYER

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETINGS STATEMENT: "Adequate notice of this meeting has been provided indicating the time and place of the meeting 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 Rutledge, Unangst, Woolf and Chairman Gary

Absent: Member Horun, Member Bittone and Vice-Chairman Larsen. Also absent, the Board Professionals-released from coming.

OLD BUSINESS

- Approve the Regular Meeting Minutes from October 9, 2019

Motion by: Member Rutledge

Seconded by: Member Unangst

ROLL CALL

Ayes: Members Rutledge, Unangst, Woolf and Chairman Gary.

Nays: None

- Approve Resolution 2019-04 – Edward Sambucci – Block 18, Lot 3 – 401 Aurora Street –Granting Site Plan and Use Variance to use the existing building on the property as a two family residence.

R 19-04

**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(d)(1)
TO EDWARD SAMBUCCI CONCERNING PROPERTY LOCATED AT
1401 AURORA STREET AND DESIGNATED AS BLOCK 18, LOT 3**

Case No. 2019-04

WHEREAS, Edward Sambucci (hereinafter referred to as "Applicant"), has applied to the Township of Lopatcong Zoning Board of Adjustment (hereinafter referred to as "Board") for variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) so as to permit a multi-family residence on premises located at 401 Aurora Street in the Township of Lopatcong and as designated on the Tax Map of the Township of Lopatcong as Block 18, Lot 3 (hereinafter referred to as "Subject Property"), and as located within the R-75zone 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-70(d)(1); and

WHEREAS, the Applicant is a contract purchaser and the owner of the Subject Property, Lynx Asset Services, LLC, has consented to the within Application.

WHEREAS, the Applicant was represented by Mark Peck, Esq. of Florio, Perrucci, Steinhardt and Cappelli; 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 October 9, 2019, during which time the Applicant presented testimony, reviewed the application materials 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. Completed Lopatcong Township Variance Application.
- B. Completed Variance Checklist.
- C. January 8, 2019 Zoning Determination.
- D. Tax status.
- E. W-9.
- F. Survey prepared by Main Street Surveying under the signature of Michael L. Roman, P.L.S., dated February 15, 2019, and revised July 23, 2019 to show garage removal and variance plan.
- G. Floor plans.
- H. Letter of September 9, 2019 of Mark Peck, Esq. amending application from requested three (3) family to two (2) family residence.
- I. Review memorandum of George A. Ritter, P.P. dated March 27, 2019

2. The following exhibits were introduced at the hearing:

- Exhibit A-1 – Array of four photos of Subject Property.
- Exhibit A-2 – Copy of Property Record Card from 1990.
- Exhibit A-3 – Copy of 1998 Appraisal.
- Exhibit A-4 – Property Assessment information 2013.
- Exhibit A-5 – Ariel Area and Lot Depiction.
- Exhibit A-6 – Google Map of Subject Property.
- Exhibit A-7 – Google Map of Subject Property and surrounding area.

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

- A. While unsworn, Mark Peck appeared on behalf of the Applicant and reviewed the application. Mr. Peck noted that the property is located at 401 Aurora Street at the intersection of North Fourth Street and designated as Lot 3 and Block 18. It is currently owned by Lynx Asset Services, which acquired title in March of 2013 through a foreclosure. The property is 0.27 acres in size in the R-75 zone and

is unoccupied. Mr. Peck indicated it has been historically used as a three-family residence without approval and this application was originally requesting to continue that use, but the application has been amended to request a two-family use instead. No exterior changes to the principal structure are proposed, except the existing garage encroaches 7 feet over the adjacent property line. If an accommodation cannot be made with the neighbor, the garage will be relocated. There are five to six parking spaces if the garage is included. Mr. Peck indicated that Township property records show that as far back as January of 1990 there was a conversion use—two living rooms, two kitchens, two bedrooms, two bathrooms. There is a 1998 appraisal that shows it as a two-family home. Property tax records from April of 2006, show that the property was recognized as a “Multi-Family 3.” In 2013, property tax records from the Township also show the property as Multi-Family 3.

B. The Applicant, Edward Sambucci, was sworn. Upon questioning, Mr. Sambucci testified as to his relationship to the owner of the Subject Property and that the property was purchased out of a foreclosure. At the time of the acquisition, the property was being utilized as a three-family residence. Mr. Sambucci testified as to Township records he received through public records requests and reviewed the documents he received that showed that the Township knew the property was being used as a three family.

C. Edward Snyder was called and sworn. The Board accepted Mr. Snyder as an expert in Professional Planning. Mr. Snyder testified that the property is located in the R75 Zone, which requires a minimum lot area of 9,000 square feet. The property is about 12,195 square feet, which is just shy of 1.4 times the minimum area required. Mr. Snyder testified that the Applicant is seeking a “D1 Variance”, i.e. a variance for a use not permitted in this zone, but here the zone permits residential uses, but only single-family residential uses and what is proposed is a two-family use. Mr. Snyder testified that the legal standard requires the Applicant to demonstrate that there are special reasons that would warrant the granting this variance and that this site is particular suited to the use and not inconsistent with the Master Plan. The Applicant need also satisfy the negative criteria, that there be no substantial negative impact on the neighborhood and zone plan. It was Mr. Snyder’s opinion this standard is met. The property operated as a three-family house for years and the application is reducing the intensity. The application provides housing opportunities and a variety of housing options. The property is particularly suited to the use; it’s been operated as a three-family home for years and there are no known complaints. Mr. Snyder opined that it is not inconsistent with the Master Plan because there is nothing in the Master Plan that says two family uses should not be permitted in a single- family zone and it is not uncommon in municipalities to allow conversion of a one to a two family to provide less expensive housing. Mr. Snyder opined that there will be no substantial negative impact in the neighborhood zone plan and concluded is that there will be no substantial negative impact to the neighborhood or the zone plan.

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:

1. The Applicant, Edward Sambucci, is a contract purchaser and the owner of the Subject Property, Lynx Asset Services, LLC, has consented to the within Application. The Subject Property is located at 401 Aurora Street in the Township of Lopatcong and as designated on the Tax Map as Block 18, Lot 3 within the R-75 zone district and is approximately 0.27 acres in size. It contains a preexisting residential structure, with parking area, driveway and encroaching garage.
2. The Subject Property has been operated as a multifamily residence for over twenty-five years but is not a lawfully preexisting use, as the R-75 zone district only allows for single-family and there was no prior approval for the multifamily use. The Township, however, has recognized the multifamily use. The Applicant is seeking variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) to lawfully permit the continued use of the property as a two-family residence.
3. The Board finds that the Applicant has met its burden in demonstrating special reasons for the relief sought. Regardless of the historical use, the Subject Property is oversized for the zone district and the site is particular suited for the use with adequate off-street parking and improvements appurtenant to a two-family use. The application also reduces the intensity of the prior historical use.
4. The Board finds that the Applicant has met its burden in demonstrating the negative criteria. In this regard, the application is reducing the preexisting intensity of use and historically there has not been any identified complaint or issue with the multifamily use. The residential nature of the continued use is consistent with the residential zone in which the property is located and there are no other improvements proposed that would affect the surrounding area. The Board does not find that there are substantial detriments associated with the application.

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(d)(1) is granted to Applicant to permit a two-family residence on the Subject Property as proposed;

1. 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 Applicant shall be required to address the encroaching garage and if no formal easement can be accommodated within six months, the Applicant shall be required to relocate the garage to comply with the setback requirements or obtain dimensional variance relief for the relocation.
- D. The Applicant shall post any and all required inspection fees as it may be determined to be appropriate by the Board Engineer, if applicable.
- E. No commercial site signage shall be permitted.

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 November 13, 2019.

Date: _____, 2019 _____

Phyllis Coleman, Secretary Zoning Board of Adjustment

Motion by: Chairman Gary

Seconded by: Member Rutledge

ROLL CALL

Ayes: Members Rutledge, Unangst, Woolf and Chairman Gary.

Nays: None

- Approve Resolution 2019-09 of an Interpretation of §243-75 of the Zoning and Land Use ordinance concerning the ROM Research Office Manufacturing Zone and answering a Special Question as to whether a proposed excavation and septic business with associated private garage and outdoor bulk storage is a principal permitted use with said zone, on Block 95, Lot 11.03, 210 Belview Road, in regards to an application from Robert Samson – Samson Septic & Excavation, LLC.

R 19-09

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF LOPATCONG, WARREN COUNTY, NEW JERSEY,
INTERPRETING §243-75 OF THE TOWNSHIP OF LOPATCONG
ZONING AND LAND USE ORDINANCE CONCERNING THE ROM
RESEARCH OFFICE MANUFACTURING ZONE AND ANSWERING A
SPECIAL QUESTION AS TO WHETHER A PROPOSED EXCAVATION
AND SEPTIC BUSINESS WITH ASSOCIATED PRIVATE GARAGE AND
OUTDOOR BULK STORAGE IS A PRINCIPAL PERMITTED USE
WITHIN SAID ZONE.**

WHEREAS, the Planning Board of the Township of Lopatcong (hereinafter referred to as “Planning Board”), has submitted a request of interpretation/special question to the Township of Lopatcong Zoning Board of Adjustment (hereinafter referred to as “Zoning Board”) concerning §243-75 and whether a proposed excavation and septic business use with associated private garage and outdoor bulk storage is permitted within the ROM Research Office Manufacturing Zone; and

WHEREAS, this application falls under the jurisdiction of the Zoning Board for interpretation and as a special question pursuant to N.J.S.A. 40:55D-70(b) and

WHEREAS, this request concerns an application made to the Planning Board regarding property located at 210 Belview Road, Block 95, Lot 11.03; and

WHEREAS, the Planning Board provided for the 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 this matter on October 9, 2019, during which time the Board received testimony, argument and the matter 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, reviewed and marked as exhibits by the Board:
 - A. Exhibit O-1 – June 19, 2019, correspondence of Mark R. Peck, Esq., of Florio, Perrucci, Steinhardt & Cappelli, LLC, to the Lopatcong Township Planning Board.
 - B. Exhibit B-1 – June 25, 2019, opinion memorandum of George Ritter, P.P., of Ruggiero Plante Land Design, LLC, Township Planner.
 - C. Exhibit S-1 – Aerial view of 210 Belview Road and surrounding area.
2. The matter was opened by the Zoning Board for public comment and the following is a summary of the testimony introduced at the hearing:

A. Robert Samson, the owner of Samson Septic & Excavation, LLC, which is the Applicant for site plan approval, came forward and was sworn. Mr. Samson testified that he has owned the business for approximately three years and it is currently located at 120 South Main Street in Phillipsburg, New Jersey and that he currently maintains equipment for his business in Harmony Township. Mr. Samson indicated that he purchased the property on Belview Road to host his business operations. In describing his business activity, Mr. Samson testified that he has a full-time office with a secretary from which the business is run and that generally excavation equipment is moved from job site to job site. Mr. Samson indicated that the business employs two drivers that he would anticipate going to the office to retrieve dump trucks to drive to job sites. Mr. Samson testified that during a typical day the equipment is in the field and that the clerical and business management occurs at the office. Upon questioning, Mr. Samson indicated that he does have two dump trucks, a backhoe, a trailer and that this equipment and trucks will be parked on the proposed site when not in use. Mr. Samson said he could not operate his business without having a business office. Mr. Samson indicated that the normal working hours would be from 6 a.m. until 8 p.m. and that he does provide emergency snow plowing for the State in the winter time.

B. Mark Peck, Esq., appeared on behalf of Jeff and Kathleen Decker who live at 1292 Strykers Road. Mr. Peck indicated that it is his clients’ position that the

proposed business is not a permitted use within the ROM Zone District and that the application should be before the Zoning Board of Adjustment for a use variance. Mr. Peck pointed out that the property will not generally receive clients, but only accommodate an assistant who fields phone calls and takes in the mail. Mr. Peck stated that it is not important that the clerical operations and site operations of the business be together. Mr. Peck indicated that the Applicant is seeking to construct a 7,200 square foot building with 4,800 square feet of the building being garage space and only 2,400 square feet being an office. Mr. Peck noted that the Applicant wants to create a storage yard for equipment and vehicles necessary to operate the excavation business and that it is not an office driven use enumerated as a permitted use within the ROM Zone District. It was Mr. Peck's assertion that the Applicant is proposing a contractor's yard that is defined as a site used for the storage, maintenance and staging the vehicles, equipment and materials relating to contracting work in any of the building trades; landscaping, road building, sewer installation, transport and hauling, or similar professions in which work is principally conducted off-site. Mr. Peck conceded that his definition of contractor's storage yard was not from the Lopatcong Zoning Ordinance and was found in a Planner's handbook.

C. Eric Snyder was called by Mr. Peck and was sworn. Mr. Snyder was accepted by the Board as an expert in professional planning. Mr. Snyder indicated that the question is what is, in fact, a principal use as distinguished from an accessory use of the property. Mr. Snyder testified as to his opinion that through an overly broad reading, any use can be offered as a permitted use in the ROM if an office is attached. Mr. Snyder indicated that as the Zoning Officer in Liberty Township, he had made a determination that a similar use to what is proposed, qualified as a contractor's yard because while it had an office, the more intense part of the use was truck and bulk storage. Mr. Snyder indicated that if you look at the building itself, more than 2/3 of the building is for garage space and inquired as to what's really going onto the property. It was his opinion that it was a proposed contractor's yard and not permitted in the ROM Zone District as the office is accessory. Mr. Snyder indicated that here, the ROM Zone District immediately abuts a residential development and inquired as to what the thought process of the Planning Board was when they adopted the Master Plan and what types of uses are, in fact, reasonably consistent with what is in the surrounding area. Mr. Snyder indicated that a contractor's storage yard is not consistent with the area. Upon questioning, Mr. Snyder confirmed that the decision he made in Liberty Township was not subject to any type of judicial review and that the applicant there applied for a use variance. Upon questioning, Mr. Snyder indicated that he did not go to various properties located within the ROM Zone and did not know about various locations when questioned. Upon questioning, Mr. Snyder indicated that because only 33% of the principal structure is office, the balance of the site is the principal use and the office is accessory. Upon questioning whether there were similar uses in the ROM Zone District, Mr. Snyder confirmed that there may be but he has not done an analysis. Upon questioning, Mr. Snyder confirmed that the contractor storage yard definition discussed was not part of Township of Lopatcong regulations and Liberty Township does not have an ROM Zone District like in Lopatcong but it does have what is known as the B1 Business Zone, which has fewer businesses that are permitted than does Lopatcong's ROM Zone District. Mr. Snyder further confirmed that the Lopatcong ROM Zone District allows outdoor bulk storage as an accessory use and that the proposed storage of construction equipment would meet the definition of Lopatcong's ordinance.

D. The Board's expert professional planner George Ritter was sworn. Mr. Ritter testified as to his opinion that the ROM Zone District allows for the principal permitted use of a business office as proposed and that the outdoor bulk storage and private garage facilities are permitted accessory uses within the ROM Zone District. Mr. Ritter identified that the proposed building of 7,200 square feet with an office of 2,400 square feet, or approximately 33.3%, and the remainder of the building is to be used for storage of vehicles. To place this into perspective, Mr. Ritter indicated that in the ROM Zone District one could build a warehouse or distribution center for trucking, have an industrial manufacturing activity, the manufacturing of light machines and assembly of electronic products, printing and things also permitted are offices for business, executive, professional and administrative purposes. It was Mr. Ritter's opinion that the primary use of the site would be for the running of a business with a business office and that the other uses, such as the private garage and outdoor bulk storage, are identified as permitted accessory uses within the zone. Mr. Ritter cited the zoning ordinance noting that private garage space for the storage of business vehicles in conjunction with a permitted business use is acceptable as is the outdoor bulk storage as an accessory use. Mr. Ritter identified other similar uses within the zone, such as Precast Manufacturing. Upon questioning, Mr. Ritter confirmed that if there were a manufacturing facility on the site in question, there would also be trucks, deliveries and other comings and goings. Upon questioning, Mr. Ritter confirmed that the Precast site is in the same zone district.

E. Forrest Sohn came forward and was sworn. Mr. Sohn indicated that he did not know what the truth was and what his real purpose to use the property is. Mr. Sohn indicated that Mr. Samson said it was going to be used as a mechanic shop. Mr. Sohn indicated that his property is adjacent and is a pre-existing use and he has six residencies there and it does not comply with an ROM zone.

F. Bill Kowalchuk of 1286 Strykers Road came forward and sworn. Mr. Kowalchuk indicated that in 2007 this property came before the Board and the Board granted a variance for two residential homes and that the approval was challenged and the Judge sided with the Township. Mr. Kowalchuk confirmed that the subdivision was never perfected but he did say that the Court agreed with the Zoning Board that the best use of the property was a residential use and that the property should have been changed to a residential zone instead of kept as ROM.

G. A member of the audience, Karina Abrahams, indicated from the gallery that she thinks allowing the use would be very bad for the neighbors, the use would create noise and that the neighbors pay a lot of taxes.

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:

5. The current matter before the Board is a referral from the Lopatcong Township Planning Board for an interpretation and special of the Zoning Ordinance. In this regard, the Planning Board referred the matter to the Zoning Board because an application has come before it in

which the Applicant is seeking site plan approval to establish a septic and excavation business use on property located at 210 Belview Road, Block 95, Lot 11.03, located within the ROM Zone District. Upon the receipt of an objection to its jurisdiction, the Planning Board was concerned as to whether or not the use is or is not permitted in the zone district.

6. The Zoning Board of Adjustment has jurisdiction over this matter pursuant to N.J.S.A. 40:55D-70(b), which authorizes the Zoning Board to hear and decide requests for interpretation of the Zoning Ordinance and for decisions upon special questions as authorized by the Municipal Land Use Law.
7. The application that is the subject matter of this issue is for a site plan approval pertaining to the aforementioned property in the ROM Zone District. The Applicant is seeking to establish a septic and excavation business use at the property and the Applicant further indicates that the business performs emergency snowplowing under a contract with the State of New Jersey. The Board finds credible that the general equipment utilized by the business moves from job site to job site as required during the busy season and may be stored on the subject property during an off-season. The Board further finds credible that the Applicant has additional equipment and vehicles that are to be stored on the subject property and that the business vehicles generally are to be maintained on the property on an overnight basis and to be brought to job sites on days of work. The Applicant's proposal includes a 7,200 square foot building, where 2,400 square feet is to be dedicated to office and administrative business uses, and 4,800 square feet is to be dedicated as a private garage. The Applicant further indicates various areas on the property for the outdoor storage of construction equipment.
8. The primary ordinance at issue is the ROM Research Office and Manufacturing Zone as found at §243-75. §243-75 prescribes 12 permitted principal uses and in relevant part, §243-75A(4) allows for "Offices for business, executive, professional and administrative purposes." The Board notes that there are a myriad of permitted principal uses within the zone, which include farms, warehousing and distribution centers, industrial processing, assembly and packaging, manufacturing, and scientific and laboratory uses amongst several others. The Board further notes that the ordinance enumerates three permitted accessory uses at §243-75B, which include accessory uses as permitted in §243-74B and outdoor bulk storage subject to the provisions of §243-64.2. Taken in turn, the permitted accessory uses as enumerated at §243-74B include "private garage space for storage of business vehicles used in conjunction with a permitted business use" and §243-64.2B defines outdoor bulk storage as "the stockpiling or warehousing of vehicles, merchandise, materials and machinery outside the enclosed confines of a building, including but not limited to sand, gravel, soil, asphalt, lumber, pipes, plumbing supplies, metal, concrete, insulation, construction equipment, construction vehicles, construction materials, storage trailers and containers." That section continues on to regulate the placement and limits of outdoor bulk storage on properties in which same is permitted as an accessory use.
9. In interpreting the ordinance at issue, the Board is mindful of the general principles of interpretation, which include understanding legislative intent, precedence of specific provisions over general provisions and understanding the context of the ordinance. The Board is further mindful that the ordinance is to receive a reasonable construction and not depart from the plain meaning of the language of the ordinance which is free from ambiguity. The ordinance should be construed in accordance with the ordinary meaning of the words and phrases used. In this regard, §243-3 of the Township of Lopatcong Zoning and Land Use

Ordinance requires that terms not defined in either the Building Code, the ordinance itself or the Municipal Land Use Law shall have the meanings established by the common usage of the words unless the context clearly indicates to the contrary and §243-4, regarding word usage, indicates that the word “use” and the word “used” refer to “any purpose for which a lot or land or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for the use and to any purpose for which a building or structure or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use or erected, reconstructed, altered, enlarged, moved, or rebuilt with the intention or design of using the same.”

10. The Township Ordinance at §243-5 provides various governing definitions. In this regard, an accessory building or structure is defined as “[a] subordinate building or structure, the use of which is customarily incidental to that of the main building and which is located on the same lot as that occupied by the main building.” An accessory use is defined as “[a] use customarily subordinate and incidental to the principal use of a building, lot or land or part thereof.” A private garage is defined as “[a] garage for the storage of motor vehicles not conducted as a business” which is distinguished from a public garage where the storage of motor vehicles is conducted as a business. A principal building is defined as “[a] building within which is conducted the main or principal use of the lot on which said building is situated.” The terms “business” and “office” and “administrative purposes” are not specifically defined within the ordinance, the Municipal Land Use Law or the Building Code, and must be afforded their ordinary meaning.
11. Quite clearly, §243-75A(4) permits offices for business, executive, professional and administrative purposes as a principal use. As applied in the context of the matter under consideration, the proposal is for a use that is a business that seeks to establish an office for business and administrative purposes. A business is commonly understood to be a commercial enterprise or occupation and/or trade engaged in commerce. Clearly a septic and excavating company is an entity engaged in a commercial enterprise and an office is commonly understood to be a place in which business or professional activities are conducted. Accordingly, a business office for the septic and excavation business as considered in this context is a business office and is, therefore, a permitted principal use within the ROM Zone District. Further, the Board is mindful that approximately 1/3 of the proposed building structure is to be dedicated to business office use whereas 2/3 of the building is to be dedicated to a private garage purpose. Noting that a private garage is a permitted accessory use, defined as for the storage of business vehicles used in conjunction with a permitted business use, the ordinary meaning of the language militates that the proposed garage is properly determined to be an accessory use. Finally, the outdoor bulk storage is an accessory use within the ROM Zone District and what is proposed for the septic and excavation business is clearly embraced by the definition. In this regard, as specifically permitted at §243-64.2A is the warehousing of vehicles, materials, machinery, construction equipment, construction vehicles, construction materials and the storage of trailers consistent with the business as proposed. Accordingly, the Board interprets §243-75A(4) so as to permit the establishment of a septic and excavation business with a principal business office use and accessory private garage and outdoor bulk storage within the ROM Zone District.
12. The Board acknowledges the contention that the proposed use shares elements of a contractor’s yard as defined by Mr. Peck. Portions of the site are anticipated to be used for the storage, maintenance and staging of vehicles and equipment and materials related to contracting work in the business trade. However, the Board notes that such site uses are

permitted as accessory uses within the ROM zone district and the Township of Lopatcong does not otherwise define or regulate a “contractor’s yard.” The term simply does not exist within the Township’s Zoning Ordinance and is neither identified as a principal, accessory, conditional or prohibited use. The Board does, however, see the use as being appropriate for the storage and maintenance and staging of vehicles, equipment and materials relating to contract work and any of the building trades, etc., so long as the principal office is attached for the operation of the business. In this regard, the Board finds the proposal under consideration to be similar to that of a plumbing or other trade business where a tradesman would maintain a business office with an associated garage for the storage of business vehicles and outdoor storage of plumbing or trade supplies. Likewise, the Board does not find the contention that a decision made in a separate Township with a different and distinct zoning code is in any way analogous or relevant to the question before this Board. In this regard, quite clearly, other municipalities may have a multitude of ways in which they define and regulate land uses that are not specifically applicable to the Township of Lopatcong and its Zoning Ordinance. Accordingly, how a zoning ordinance was interpreted in a different municipality has no specific bearing on the issue at hand. The Board is further considerate of the contention that because 2/3 of the proposed building is to be dedicated to a private garage use and only 1/3 to business office use, that the relative proportion of uses should establish the principal use. The Board finds this contention, however, without merit and contrary to the Zoning Ordinance as expressed. In this regard, common sense dictates that the storage of business vehicles generally occupies more space than would the business office commonly associated with such storage. Plainly, filing cabinets, copiers, computers, desks and office equipment, bathrooms and other needs are much smaller in dimensional proportion than the storage of vehicles for business use. Here, the business requires a business office that is permitted within the Zone District and that business has associated vehicle storage requirements that are accessory and incidental to the business needs. In further demonstration of the fallacy of the argument, it is clear that if a property owner within the ROM Zone District sought to construct a 2,400 square foot business office and a separate and detached 4,800 square foot private garage for the storage of business vehicles and proposed associated outdoor storage, same would be undoubtedly permitted within the ROM Zone District. The simple fact that the office and private garage space are contained within a single structure is, therefore, immaterial to the analysis.

BE IT FURTHER RESOLVED, by the Zoning Board of Adjustment of the Township of Lopatcong that it interprets the ROM Zone District at §243-75 so as to permit as a principal use of a business office that has an associated accessory private garage and outdoor bulk storage and the Board finds that variance relief pursuant to N.J.S.A. 40:55D-70(d) is not required for the site plan application as referred by the Planning Board and that the Planning Board retains jurisdiction pursuant to N.J.S.A. 40:55D-20.

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 November 13, 2019.

Date: _____, 2019 _____

Phyllis Coleman, Secretary Zoning Board of Adjustment

Motion by: Member Unangst

Seconded by: Member Woolf

ROLL CALL

Ayes: Members Unangst, Woolf and Chairman Gary.

Nays: None

NEW BUSINESS:

- James Callinan - Block 93, Lot 15.07 – 5 Scotts Mountain Road – To construct a detached two (2) car garage to house applicant’s vehicles; having less than required side yard setback – minimum required 20 feet; Proposed 13 feet, in the R-5/2 Zone. Application to be carried to the December 11, 2019 Meeting. Notice will be carried.

PUBLIC COMMENT

No one present from public. Chairman Gary asked the Board and secretary to keep Vice-Chairman Larsen in our prayers, because of his accident.

ADJOURNMENT

Motion to Adjourn by: Member Unangst

Seconded by: Member Woolf

AYES: Members Rutledge, Unangst, Woolf and Chairman Gary

NAYS: None

Respectfully submitted by:

Phyllis D. Coleman, Secretary

Fred Gary, Chairman

Date: _____

Date: _____