

BYRAM TOWNSHIP PLANNING BOARD AGENDA
For Thursday, November 21 2024, at 7:30 P.M.
Meeting Held at: 10 Mansfield Drive, Byram Township NJ

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **OPENING STATEMENT:** Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.
4. **FLAG SALUTE**
5. **MEETING MINUTES-** November 7, 2024
6. **RESOLUTIONS**
Z18-2024 Michael Koval, 2 Jones Lane, Block 360 Lot 28, R-3 Zone
Application for detached garage

Resolution for Closed Session
7. **OLD BUSINESS**
Z14-2024 Rupesh Patel (Kyosis LLC), 1 Catalina Drive, Block 337 Lot 9.14, R2 Zone
Application for new home construction
****CARRIED TO 12/19****
8. **NEW BUSINESS**
Z17-2024 David Del Franco, 175 Lake Drive, Block 255 Lot 1, R5 Zone
Application for 6-foot fence, a chicken coop, and above-ground pool

SP10-2024 Lou Coviello (Mountainside Country Store), 198 Route 206, Block 226 Lot 3, NC Zone
Application for height of garage
9. **REPORTS FROM COMMITTEES**
Architectural Review Committee
Environmental Commission
Open Space
Township Council
Zoning Report
10. **OPEN TO THE PUBLIC**
11. **ADJOURNMENT**

The Board Engineer and Planner are sworn in at the beginning of each year and are deemed to be under oath on a continuing basis.

CALL TO ORDER: Chairman Shivas called the meeting to order at 7:30 p.m.

ROLL CALL: Mss. DeMagistris, Colligan, and Raffay; Mayor Rubenstein; Messrs. Proctor, McElroy, Morytko, Walsh, and Chairman Shivas

Members Absent: Messrs. Serrilli and Smith

Also Present: Engineer Cory Stoner, Attorney Alyse Hubbard, Secretary Caitlin Phillips

OPENING STATEMENT: Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

FLAG SALUTE: led by Chairman Shivas

MINUTES: October 17, 2024. Mr. Proctor motioned to approve the minutes, seconded by Mr. McElroy.

Ayes: Messrs. Proctor, McElroy, Walsh, DeMagistris, Colligan, Chairman Shivas

Abstaining: Ms. Raffay, Mayor Rubenstein

Absent: Messrs. Morytko, Serrilli, Smith

None opposed. Motion carried.

RESOLUTIONS

Z16-2024 Oluwasijibomi Oluwalanke, 5 Crescent Drive North, Block 283 Lot 242, R5 Zone

Application for retaining wall in front yard

Mr. McElroy motioned to approve the resolution, seconded by Mr. Proctor.

Ayes: Messrs. Proctor, McElroy, Walsh, DeMagistris, Colligan, Chairman Shivas

Abstaining: Ms. Raffay, Mayor Rubenstein

Absent: Messrs. Morytko, Serrilli, Smith

None opposed. Motion carried.

OLD BUSINESS

Z08-2024 Diane and William Carkhuff, 82 South Shore Road, Block 189 Lot 1, R-5 Zone

Application for construction of a new single-family dwelling

Mr. Proctor motioned to carry the application to 01/16/2025, seconded by Mr. McElroy.

Ayes: Mss. Raffay, DeMagistris, Colligan, Mayor Rubenstein, Messrs. Proctor, McElroy, Walsh, Chairman Shivas

Absent: Messrs. Morytko, Serrilli, and Smith

Mr. Morytko entered the meeting at this time.

NEW BUSINESS

Z17-2024 David Del Franco, 175 Lake Drive, Block 255 Lot 1, R5 Zone

Application for 6-foot fence, a chicken coop, and above-ground pool

Mr. Proctor motioned to carry the application to 11/21/2024, seconded by Mr. Morytko.

Ayes: Mss. Raffay, DeMagistris, Colligan, Mayor Rubenstein, Messrs. Proctor, McElroy, Morytko, Walsh, Chairman Shivas

Absent: Messrs. Serrilli, and Smith

Z18-2024 Michael Koval, 2 Jones Lane, Block 360 Lot 28, R-3 Zone

Application for detached garage

Samantha Koval was sworn in. The current garage is in poor condition, with an added section from the previous owner. This compromised the outside wall so it's not protected from the elements and wildlife,

and lets in moisture. They want to store items, and the current structure's walls are starting to cave in. The proposed is a metal structure, with electric and water. The electric is for the garage doors, and the water is because they'll have kayaks and ATVs, so they'll want a hose and maybe a sink. They're not proposing showers or toilets. Michael Koval was sworn in. The structure is 960 square feet for the proposed, and the height is not over 15 feet. Ms. Koval said for grading, they would need to demo the rock next to and behind it, and demo a rock wall. Mr. Koval said the proposed structure is flat, but they want to re-grade that area and go down, and make it less of a slope. They're not proposing widening the driveway. Mr. McElroy confirmed they're not getting closer to the property line. The front of the garage is beyond the front of the house. Chairman Shivas said this is replacing a non-conforming structure. Mr. Koval said the current garage is from 1950. Mayor Rubenstein confirmed they're seeking the front yard variance. The Board reviewed distances on their plans; **Exhibit A1** was submitted, with markups on the survey. The Board discussed the status of the road.

Ms. Raffay asked about gutters, and recommended having them directed into the yard to avoid icing. Mr. Walsh confirmed the current garage has gutters, and is diverted to the back. Mr. Proctor confirmed the proposed is pre-made, insulated, and heated. Mayor Rubenstein confirmed there is a septic connection for a sink. Ms. Hubbard confirmed they're okay with a condition being that there can't be a bedroom in the garage. Mayor Rubenstein confirmed they are requesting a variance for where the garage is now. Mr. Stoner reviewed the variances. He confirmed they're reconstructing the driveway all the way down to Jones Lane. He recommended getting a variance for the driveway now.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Stoner noted a condition should be Health Department approval since they're hooking up to the septic system, and they should get a consistency determination from Upper Delaware to make sure they don't need permits. Mr. Proctor motioned to approve the application, seconded by Mr. McElroy.

Ayes: Mss. Raffay, DeMagistris, Colligan, Mayor Rubenstein, Messrs. Proctor, McElroy, Morytko, Walsh, Chairman Shivas

Absent: Messrs. Serrilli, and Smith

Motion carried. Ms. Hubbard discussed the appeal period. She suggested having them submit an as-built sketch of the final location. She asked if the Board and applicant consent to this.

DISCUSSION ITEM: Architectural Review Committee status

Mr. Proctor reiterated the previous discussion about the ARC. Mr. McElroy asked what other towns do. He's concerned about having an extra layer of obligation in Byram that other communities may not have. Mr. Proctor said Netcong has an Economic Development Committee that is comprised of the mayor, chairman of the committee, a council member, the Borough Administrator, and the assistant Borough Administrator. They work with the applicant, and meet as needed. Ms. Hubbard noted towns have technical review groups. The ARC may limit how the developer can style their building. Roxbury has a historic commission, and you have to go through them if you're in that district. Chairman Shivas explained the history of the ARC. They took a lot of work off the Board by reviewing it in advance with the applicant. Mr. Morytko said the ARC or a variation of it is not unusual. He noted the value in the process. Chairman Shivas suggested having the ARC meetings on request rather than on set days. Mr. Morytko said one struggle is having long stretches without meetings. They should update the design guide, and maybe that would keep people active. Mayor Rubenstein asked when the ARC was last active. The Board noted it has been a few years. Ms. Raffay noted some sites could have been really bad if they didn't have a review. They lost opportunities with some applications to look more at the architectural plans. Mr. Stoner noted at a hearing there's not a lot of time to look over architecturals, so the ARC gives more time for that. Mayor Rubenstein said some towns almost obligate you to meet with the town before a meeting is scheduled. Ms.

Hubbard noted the architecture information is in the ordinance so people have to comply. Mr. McElroy noted sometimes meetings take up a lot of time and cost for applicants. Maybe they'd have other developments if there weren't as many restrictions. People building here seem to have the same characteristics, like QuickChek and Wawa. Chairman Shivas noted back then there was a lot to be developed, but that's not the case anymore except for the town center. He'd be okay if the ARC was only reviewing the town center. Mr. Morytko noted the Board will need to be prepared for longer meetings. Mr. McElroy noted if the committee has administrative people, that would be a Council decision because they need to allocate time for office staff. Chairman Shivas suggested having completeness and the ARC be one group. Ms. Raffay noted the completeness group is more looking at the checklist. Mr. Walsh said completeness review is different than at the ARC; the groups have different skill sets.

Mayor Rubenstein noted when the town center is worked on, there can be a separate committee just for that. Mr. Morytko asked about bringing in experts for the design guide. Mayor Rubenstein concluded the ARC would not continue in its current form. Either by code or policy, it should mention the VC applications. There would be a subcommittee of the Planning Board, which would take care of the design guide, and have the option to review commercial applications. Mr. Stoner noted the code should discuss the completeness process. Ms. Hubbard noted it's in the rules that are adopted every year. Mr. Morytko confirmed the subcommittee could have flexibility of the number of spots for any additionally interested members. Mr. Proctor confirmed the ARC should be a subcommittee of the Board with the flexibility of number and origin of the members; they should be used for commercial applications only, which will need to clear the ARC before coming to the Board; when the village center is worked on, the application should be reviewed beyond the ARC; and use the ARC for the design guide. Mr. McElroy noted the ARC is advisory, so they need to be reviewed by the ARC but not approved by them. The Board discussed when the ARC would meet. Mayor Rubenstein noted they don't need to notice meetings because it's a subcommittee. The Board noted the ARC could let the applicant know if they think any issues can just be addressed at the completeness review. Mr. Proctor confirmed the requested action of the Council is to codify these decisions. The Board confirmed they agree.

DISCUSSION ITEM: Revised Planning Board Checklist and Application

The Board reviewed the updated checklist and application edits. Ms. Hubbard noted site plan is not defined in the code, and recommended the Council update this. She noted the escrow release request should have a timeframe. Suggestions to the variance and site plan checklists were made. The Board discussed the escrow agreement; they decided to remove the language of the resolution being voided, replaced with the right to lien the property. Edits to the signature pages were suggested. Chairman Shivas noted the NJ Herald is planning to stop hard copy papers. Ms. Hubbard noted there is proposed legislation about this to see if it can be digital. Ms. Phillips noted they may need to appoint different newspapers depending on the timeframe. The utilities list was discussed. Ms. Hubbard noted the municipality needs to provide a list of utilities that want to be served, but there's no provision for removing them. Ms. Colligan noted the list usually comes from the assessor; Mr. Stoner noted the assessor may have updated contacts. Ms. Colligan noted "Planning Board" and "Board" should be defined terms. Mr. Stoner noted since this will be a packet, the different sections should be more defined so people can access them separately. Mr. Stoner suggested moving the survey waiver certification. Mr. Proctor asked about referencing the committees. The Board noted adding information about this to the packet. Ms. Hubbard noted both checklists should be codified. Changes to the key map were suggested. Updates will be made for another review with the Board.

REPORTS FROM COMMITTEES

Architectural Review Committee: This was already discussed.

Environmental Commission: Mr. McElroy said they met last week and reviewed applications. They had an event at the firehouse for avian wildlife. They discussed 2025 goals.

Open Space: Mr. Morytko said there's a meeting next month.

Township Council: Mayor Rubenstein said they awarded Halloween decorating contest winners. They appointed people to the Board of Health and the Environmental Commission. There were ordinances for technology upgrades around the office and a new Alco Test machine for the police department that is used for testing alcohol levels in drivers. Mr. Proctor said they appointed someone to the Recreation Committee and sent a letter to the County to request an extension on the reassessment. Mayor Rubenstein noted the County ordered a reassessment, and they requested an extension. They are now sending another letter to request a second extension into 2026.

OPEN TO THE PUBLIC

Chairman Shivas opened to the public and no one spoke so he closed to the public.

CLOSED SESSION: Professionals Discussion

Mr. McElroy motioned to go into executive session to discuss professionals, seconded by Mayor Rubenstein. All were in favor. Mr. McElroy motioned to exit executive session, seconded by Mr. Walsh. All were in favor.

ADJOURNMENT

A motion to adjourn the meeting was made at 10:30pm by Mr. McElroy, seconded by Mr. Walsh. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips

Resolutions Approved at Previous Meeting

In the matter of Oluwasijibomi Oluwalanke
Case No. Z16-2024
MF#5000.117

BYRAM TOWNSHIP

PLANNING BOARD

RESOLUTION OF MEMORIALIZATION

**RELIEF GRANTED: Steep Slopes Disturbance
 Maximum Height of the Retaining Wall**

WHEREAS, Oluwasijibomi Oluwalanke has applied to the Planning Board of Township of Byram seeking approval to construct a retaining wall for premises located at 5 Crescent Drive North, and known as Block 283, Lot 242 on the Tax Map of the Township of Byram which premises are in a “R-5” Residential Zone;

WHEREAS, by ordinance adopted by the Township Council of the Township of Byram under statutory authority, the Planning Board and Zoning Board of Adjustment were combined into one Board which Board possesses and may exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., said single Board being known as the Planning Board of the Township of Byram; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

1. The Applicant is the owner and occupant of the subject property. The Applicant began construction of a retaining wall in the front yard of the subject property,

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requiring relief, pursuant to N.J.S.A. 40:55D-70c, from the following Sections of the Township's Zoning Ordinance:

- a. Section 240-29.2 – Critical Slopes in excess of 25% cannot be disturbed, the construction will disturb steep slopes.
 - b. Section 240-24A – Maximum height of a retaining wall shall be no greater than 4 feet in the front yard of a residential zone, the height of the wall is proposed at 5.5 feet or greater.
2. The Applicant submitted the following documents, along with the Application for a Variance:
- a. Plot Plan and Retaining Wall Design, prepared by Yogi Engineering, LLC, dated June 27, 2024, consisting of two (2) sheets.
 - b. Boundary Survey, prepared by Pilny Surveying, LLC, dated March 24, 2024
 - c. Photos of the property, six (6) total.
 - d. Notice of Violation, prepared by Nick Cutrone, Zoning and Code Enforcement Officer, dated March 19, 2024, with the following enclosures:
 - i. Two (2) pictures attached.
 - ii. Zoning Violation, issued by Nick Cutrone, Zoning and Code Enforcement Officer, dated March 19, 2024, for Failure to Secure Zoning Permit Approval.
 - iii. Zoning Violation, issued by Nick Cutrone, Zoning and Code Enforcement Officer, dated March 19, 2024, for Tract Disturbance.

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- iv. Property Tax Card, dated March 19, 2024.
 - v. Relevant Section of the Township's Zoning Ordinance.
 - e. Permit from the Sussex County Department of Environmental and Public Health Services, dated July 14, 2023 for repair of an existing sewage disposal system.
3. The Board received a memorandum from Cory L. Stoner, P.E., P.P., the Planning Board Engineer, dated September 26, 2024.
 4. A duly noticed public hearing was conducted on October 17, 2024, at which time Olumasijibomi Oluwalkanke presented sworn testimony in support of the application. The subject property is a slightly irregularly shaped rectangular lot, with 175 feet of frontage on Crescent Drive North. The lot is fully developed with a 2-story frame dwelling and a paved driveway that has access to the roadway on the northeastern side of the home, which runs east in front of the home and provides side access to the garage. The lot is sloped from the rear down to the roadway, with a retaining wall that follows the curve of the driveway.
 5. The Applicant purchased the property in 2023, and the existing retaining wall was in disrepair. The Applicant testified that the septic system was located behind the wall and that the failing wall was allowing the erosion of soil from the area where the septic was located onto the driveway. The Applicant noted that the contractor failed to get a permit, although he advised that he would. The construction of the new wall has started but ceased due to the Violations that were issued.

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6. The retaining wall was located in a critical area of more than 25% slopes and additional area was disturbed during construction, so the disturbance requires variance relief. Additionally, the wall height is approximately 4'6", which requires a variance for exceeding maximum permitted height and will require engineering design, subject to the approval of the Board's Engineer and a construction permit.
7. The wall is being constructed in close proximity to the septic system, which will require review and approval by the Health Department. Additionally, it was noted by the Board's Engineer that the wall is located partially in the right-of-way of Crescent Drive North.
8. The property is located within the Highlands Preservation Area and the construction of the wall can be accomplished under Highlands Exemption #5, which permits the construction of various improvements to single-family dwellings, including the construction of retaining walls.
9. No one from the public was in attendance for this hearing.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Byram for the following reasons:

1. The Board found the witness testimony to be competent and credible. The Board determined that the relief can be granted pursuant to N.J.S.A. 40:55D-70c from the following Section of the municipal zoning ordinance.

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- a. Section 240-29.2 – Critical Slopes in excess of 25% cannot be disturbed, the construction shall disturb steep slopes.
 - b. Section 240-24A – Maximum height of a retaining wall shall be no greater than 4 feet in the front yard of a residential zone, the height of the wall is approved at 5.5 feet or greater.
2. N.J.S.A. 40:55D-70c(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the c(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.
3. The subject property is fully developed, with the driveway and retaining wall constructed in a critical sloped area. The wall is failing and in need of repair or replacement, as the wall supports the existing septic system as well as the driveway. The Applicant replaced the wall due to the concern about the erosion of the front yard.
4. The slope creates a hardship for the Applicant to replace or repair the wall without further disturbing the critical slopes and constructing the wall beyond 4 feet to construct a practical, effective wall. Additionally, the need to maintain the existing septic system to service the home outweighs the detriment that would

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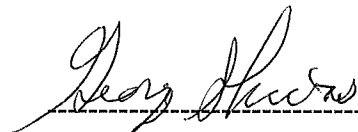
result from permitting the disturbance of the critical slopes. The construction of the retaining wall is consistent with the Township's Zoning Ordinance and Master Plan to permit construction necessary for the welfare of the Applicant and the surrounding area. Accordingly, the Board determined that the benefits of permitting the deviations outweigh and detriment that may occur.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Byram on the 17th day of October, 2024 that the approval of the within application be granted subject, however, to the following conditions:

1. The Applicant shall comply with all the conditions and standards set forth in Section 240 of the Township's Ordinances. The Applicant shall be subject to all other applicable rules, regulations, ordinances and statutes of the Township of Byram, County of Sussex, State of New Jersey, or any other jurisdiction.
2. The Applicant shall be bound to comply with the representations made before this Board by the Applicant, and its professionals, at the public hearing. The representations are incorporated herein and were relied upon by this Board in granting the approval set forth herein and shall be enforceable as if those representations were made conditions of this approval
3. The Applicant shall pay all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
4. Applicant shall obtain permits and approvals from the Township's Construction and Zoning Department prior to the continuation of work, including construction

permits for the retaining wall in excess of 4 feet in height, which will require calculations designed by a licensed Engineer.

5. An inspection of all improvements shall be subject to the review of the Board Engineer prior to the issuance of a Certificate of Occupancy and/or the closure of zoning or construction permits.
6. The Applicant shall secure any and all approvals required from any other public agency or governmental body that may have jurisdiction, including, but are not limited to the Sussex County Health Department. The retaining wall is in close proximity to the existing septic system, which requires approval from the Sussex County Health Department for the location of the wall.
7. The Board takes no position on a portion of the retaining wall that is located in the right-of-way.


George Shivas

On motion of: Mr. McElroy

Seconded by: Mr. Proctor

The vote on the Resolution was as follows:

AYES: Six (6): Mr. Proctor, Mr. McElroy, Mr. Walsh, Ms. DeMagistris, Ms. Colligan, Chairman Shivas

NAYS: Zero (0)

ABSTAINING: Two (2): Mayor Rubenstein, Ms. Raffay

ABSENT: Three (3): Mr. Morytko, Mr. Serrilli, Mr. Smith

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I certify that the above Resolution is a true copy of a Resolution adopted by the Planning Board on November 7, 2024.

Caitlin Phillips

**Caitlin Phillips, Planning Board
Secretary**

Dated: 11/08/2024

Prepared by: Alyse Landano Hubbard, Esq.

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ZONING REPORT

(November 2024 for activity during October 2024)

Zoning Activity

October

ZP Approved

24 (1 post
resolution)

ZP Denied

2

ZP Not Required

1

ZP Var/Site Plan Waiver Compl.

0

ZP Change of Tenant Waiver

1

Investigation of Complaints

October

Property Maint./Zoning Complaints

Complaints Received

9

Open Cases

19

Cases Cleared

3

Summonses Issued

17

October

Signs removed from roadside

27



Nick Cutrone, Zoning and Code Enforcement Officer

NOTES: PB resolutions approval (Kane 3 Sandy's Road). Site plan waiver (change of tenant) for Sunny Paws, LLC)

Summons : 13 of 17 written to one property.