

Township of Randolph  
Randolph, NJ 07869  
January 26, 2022

A regular meeting of the Randolph Township Board of Adjustment was called to order at 7:30 PM by Chairman Sesko. Adequate notice of the meeting was given to the official newspaper and an agenda was posted on the Township bulletin Board.

**ROLL CALL:**

Present: Comrs. Norman, O'Neill, Stracco, Alt. Tatch, Vice Chairman Dunn, Chairman Sesko, Darren Carney, Assistant Manager/Planning and Zoning Administrator, Richard Schneider, Board of Adjustment Attorney

Absent: Comrs. Asbaty, Bell, Alt. Fiscella

**ACTION ON MINUTES OF:**

January 12, 2023

Vice Chairman Dunn made a motion to approve the minutes and Comr. Stracco seconded the motion. All in favor.

**PUBLIC COMMENTS:** None heard.

**MEMBERS COMMENTS:** Chairman Sesko thanked the Board for electing him to chairman. He presented Comr. Stracco a volunteer award from the volunteer award event.

**CORRESPONDENCE:** Annual Report Draft - The Board discussed the Annual Report.

**RESOLUTION:**

**DATE CREATED: January 17, 2023**

**REVISED:**

**TOWNSHIP OF RANDOLPH  
BOARD OF ADJUSTMENT**

**RESOLUTION MEMORIALIZING THE GRANTING OF VARIANCE  
RELIEF TO THE APPLICANT, JOSE I VARGAS, RELATING TO  
PROPERTY LOCATED AT 127 HIGH STREET, AND DESIGNATED**

**AS BLOCK 142, LOT 2 ON THE OFFICIAL TAX MAPS OF THE  
TOWNSHIP OF RANDOLPH**

**NAME OF APPLICANT:** Jose I. Vargas

**LOCATION OF PROPERTY:** *127 High Street*  
*Block 142, Lot 2*  
*Randolph, NJ*

**APPLICATION NO:** 22-15

**ZONE:** R-2

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**WHEREAS**, Jose Vargas (“Applicant”) has applied to the Randolph Township Board of Adjustment (“Board”) for permission to enclose a hot tub for which permits have been previously granted with a gazebo on property located at 127 High Street and designated as Block 142, Lot 2 on the official tax maps of the Township of Randolph; and

**WHEREAS**, the Board conducted a public hearing on January 12, 2023 in accordance with the jurisdictional requirements of the Randolph Township Land Development Ordinance and the New Jersey Municipal Land Use Law; and

**WHEREAS**, the Board hereby makes the following findings of fact and conclusions of law:

1. The Applicant is an owner of the subject property, and has the right to request the relief sought herein.
2. By way of background, the Applicant recently received approval from the Board for permission to construct a pool as an accessory structure pursuant to a memorializing Resolution adopted by the Board on September 9, 2021, memorializing an approval granted to the Applicant on August 12, 2021. As reflected within said Resolution and further presented in conjunction with this application, the subject property is located in the R-2 Zone District and contains 0.36 acres. The property is presently improved by a framed residential dwelling. By virtue of the property being a “through lot”, the property is deemed to have two front yards. Notwithstanding same, physical access to the dwelling is via an asphalt driveway from High Street. To the functional rear of the dwelling is Route 10. However, based on the applicable definitions of the Randolph Township Land Development Ordinance, the area between the dwelling and Route 10 constitutes a second front yard.

3. In conjunction with the prior Resolution, the Applicant received approval to construct a 14' x 28' pool to be located between the residential dwelling and Route 10. That designated area is now reflected on the survey that was submitted in conjunction with this application. The Board, in that case, granted required relief, including specifically relief to permit an accessory structure, the pool, in a front yard, where accessory structures are not permitted to be located in a front yard. The Board recognized there the unique nature of the subject property being a through lot with frontage on both Route 10 and High Street and concluded that the application accordingly met the statutory criteria pursuant to N.J.S.A. 40:55D-70c(1).
  
4. This application proceeds before the Board as a result of permits that were issued to the Applicant to install a hot tub in such location as is depicted on the survey submitted with the application. Apparently, in conjunction with the permitting process, although the permit was granted for the hot tub when the Applicant sought to enclose the same with a gazebo, it was determined that variance relief would be required. Because the hot tub enclosed by the gazebo constitutes an accessory structure and is located in the front yard, variance relief is required to permit an accessory structure in the front yard. The hot tub would be located 6 feet from the side yard property line, and the gazebo 5 feet at its closest point to the side yard property line. In the R-2 Zone, in which the subject property is located, there is a required 20 foot setback for accessory structures necessitating further relief. The Board is able to conclude substantially for the reasons largely set forth in the prior Resolution that the application meets the statutory criteria pursuant to N.J.S.A. 40:55D-70c(1). The Board has previously recognized that, by virtue of the existing physical features affecting the subject property, inclusive of the structures lawfully existing thereon, the strict application of the requirement to prohibit an accessory structure in the front yard, would result in exceptional and practical difficulties and undue hardship upon the Applicant. The Board recognizes that this is a through lot, and that the area between the dwelling and Route 10 where the hot tub is proposed, functionally serves as a rear yard, where accessory structures would be permitted. Upon further inquiry from the Board with specific reference to the requested side yard setback, the Applicant noted the existence of a septic system and related infrastructure, which would preclude the location of the hot tub and gazebo in a conforming condition necessitating the need for side yard setback variance relief. As a result of those physical features and the existing lawful structures existing thereon, the Board is able to conclude that there would be peculiar and exceptional practical difficulties and undue hardship upon the Applicant if variance relief was not granted, and that variance relief is appropriate to relieve such difficulties or hardship. The Board is further able to conclude that, based on the unique status of the subject property as a through lot, there is no detriment to the zone plan or zoning ordinance of the Township, and there will be no substantial detriment to the public good. Accordingly, the Board concludes that the statutory criteria is satisfied and the variance relief may be granted. To eliminate any doubt as to whether the hot tub itself should have required

variance relief, the Board grants to the Applicant variance relief for the hot tub as well as the gazebo subject to the conditions herein set forth.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Randolph that the variance application of Jose Vargas is hereby approved subject to the following conditions:

1. The Applicant agrees to be bound by all stipulations and representations made during the course of the public hearing.
2. The gazebo shall be located no closer than 5 feet from the side yard property line and the hot tub no closer than 6 feet from the side yard property line.
3. This approval is subject to the approval of any other federal, state or local governmental agency with jurisdiction.
4. This approval is subject to the Applicants paying all taxes, fees and escrows required by the Township of Randolph. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.
5. The variance herein granted is subject to the time limitations on variance relief as set forth in Section 15-4.12 as hereinafter may be amended or any subsequent amendments thereto as may apply to this application.

The foregoing Resolution is memorialized on January 26, 2023, pursuant to N.J.S.A. 40:55D-10(g)(2), memorializing an approval granted to the Applicant at meeting of the Board held on January 12, 2023.

APPROVED:

Comrs. Norman, O'Neill, Stracco, Alt. Tatch, Vice Chairman Dunn

NEW BUSINESS:

Mr. Schneider noted that the application 22-06 Newman Turf LLC is carried to the February 9, 2023 with no further notice to the public.

**22-17 Dirty-Jerzy Supplies LLC**  
B 137 L 29, 256 Route 10 West  
B Variance (Interpretation)

Thomas Ambrosio, Esq. appeared to represent the applicant.

Michael Ligus, owner of Dirty Jerzy was sworn.

Mr. Ambrosio noted that the applicant was issued a citation to Dirty Jerzy. He explained that a convenience store definition 15-2-2. He claimed that Dirty Jerzy is a convenience store and after citation was noted to come for an interpretation. The applicant had previously pled guilty at municipal court.

Mr. Ambrosio questioned Mr. Ligus.

Mr. Ligus noted that the store is 800 square feet of retail space.

Mr. Ambrosio questioned if the store is restricted to 21 or over.

Mr. Ligus noted that there is no restriction to age to enter the store.

Mr. Ambrosio asked what is sold in the store.

Mr. Ligus noted that the store sells tobacco, drinks, candy, prepackaged goods, and clothing.

Mr. Ambrosio marked and dated January 26, 2023 photos as Exhibits DJ# 1-7.

Mr. Schneider noted that the history is relevant to the application.

Mr. Schneider reviewed the photos that were submitted by the applicant.

Mr. Schneider noted that the gas station as well as the convenience store were approved by a variance.

There was a discussion about convenience stores and gas stations.

The Board reviewed the photos.

Mr. Schneider explained that in 2004 there was an application for a gas station and convenience store that was not allowed by ordinance and received a variance from the Board of Adjustment. Later the township council changed the ordinance to allow convenience store with gas station. He noted that the Board is not be asked to permit anything. The Board is being asked to interpretation of the use and operation of a convenience store as by ordinance.

Mr. Ambrosio asked if the gas station patrons generally visit the store.

Mr. Ligus stated yes. He asked what the Board would like to see in the store to be a convenience store.

Comr. O'Neill questioned that the applicant pledge guilty about the signage.

Mr. Ligus stated yes.

Comr. O'Neill questioned what is the objections.

Mr. Ambrosio questioned that the Delta 8 is being sold.

Mr. Schneider noted that Mr. Carney was involved in the municipal court proceeding. the Board should hear from Mr. Carney about the municipal court proceeding.

Darren Carney was sworn. He noted that there were two violations, first was for signs and second was for operating a business that was not a convenience. Back in August 2021 was not use as a convenience store was smoke shop. He noted that the applicant pled guilty to sign and pled guilty to operation a convenience store. The judge back in July 2022 sent the applicant t back to the Board for interpretation of a convenience store to the Board.

Mr. Ambrosio explained that in municipal court defendants don't always give a factual representation of the situation.

Mr. Ambrosio questioned if the Board feels that this is a convenience store.

Mr. Schneider noted that the applicant has acknowledge that the store the nature of the operation of the store to be a convenience store.

Mr. Ligus stated that the store has been the was depicted in the photos for the six months.

Mr. Ambrosio noted that the review letter he asked the applicant about the signage that limited prohibits entry of persons under the age of 21.

Mr. Schneider asked Mr. Carney how many times he has visited the site.

Mr. Carney stated three times.

Mr. Schneider questioned the photos of the store.

Mr. Carney noted that there was a requested a floor plan of the store.

Vice Chairman Dunn asked about Exhibit DJ# 7 how much of the front left of the door of the store is devoted smoke shop products.

Mr. Ligus stated that a majority of it is there is also water pipes but there is a section over there that clothing, bracelets, ear rings.

Comr. Dunn asked about how much store square footages is smoke shop products.

Mr. Ligus asked what are you classifying tobacco as because tobacco is probably 80% plus. If you want glass only 20 – 25% maybe.

Comr. Norman questioned what percentage is Delta 8. I stopped in and they also have THC. What percentage of the store is dedicated to that.

Mr. Ligus stated probably 20%- 25%.

Mr. Schneider questioned Comr. Dunn what percentage is dedicated to smoke shop.

Mr. Ligus said what are you talking the space.

Comr. Dunn clarified smoke shop products water pipes bongs.

Mr. Ligus stated just glass probably about 20% percent.

Vice Chairman Dunn clarified 25% percent of the shop is devoted to products.

Mr. Ligus stated yes.

Comr. Norman asked about Delta 8 it is from the Cannabis product gummies, candies and she asked what percentages of the store is devoted to that and he said it takes up 20%-25%.

Mr. Ligus asked if you're talking space wise that it doesn't take up that much room.

Mr. Schneider stated that it seems like the percentages are somewhat important here. He clarified that Vice Chairman Dunn asked about percentage and it was 20-25% he asked what percentage of paraphernalia and if there is an additional percentage for product. Is there an additional percentage for the product itself. What part of the shelf space is devoted to smoke shop paraphernalia and smoke shop products.

Mr. Ligus stated it is kind of hard to say because you will find rolling papers in a convenience store and a smoke shop and that takes up the entire back wall.

Chairman Sesko stated he felt that we are skirting around the issue here. The issue is the gummy bears with THC and Delta 8.

Mr. Ligus stated that almost every gas station around here sells Delta 8.

Mr. Ambrosio asked if Dirty Jerzy is a Cannabis licensed establishment.

Mr. Ligus stated that it is not.

Mr. Ambrosio asked do you sell products that require a Cannabis license.

Mr. Ligus stated no.

Mr. Ligus stated no license is required.

Mr. Schneider questioned if it is customary to have or include clothing items of that nature at a convenience store. If clothing was intended that would be included the definition.

Chairman Sesko opened the meeting to the public.

Alex Jelly asked if when purchasing a product do you receive a gift.

Mr. Ligus stated no.

Vice Chairman Dunn noted that he felt that there is way too much smoke shop to be under the convenience store category.

Mr. Schneider noted that the Board could ask for additional information about floor plan.

Chairman Sesko asked the Board if they had enough information.

**CASE REVIEW:**

The Board discussed the application.

Vice Chairman Dunn made a motion on the interpretation and Alt. Tatch seconded the motion:

**ROLL CALL:**

AYES: Comrs. O'Neill, Vice Chairman Dunn, Chairman Sesko

NAYES: Comrs. Norman, Stracco, Alt. Tatch

ABSTAIN:

Motion failed.

Mr. Schneider noted that the applicant can seek a use variance to amend the original approval to the retail beyond the convenience store.

Mr. Ambrosio asked for a clarification and 5% of smoke shop products.

Mr. Schneider clarified the request.

**22-18 Thomas Veman**

B 142 L 13, 13 Mountainside Road  
Interpretation, C Variance

Bernd Hefele, Esq. appeared to represent the applicant. Back in June 2022 there was a resolution was adopted by this Board. the approval referenced the ranch architectural. He noted his client wants to build a colonial style house and the building and zoning stated that is not was approved. they are asking for an interpretation of the approval.

Chairman Sesko clarified the setbacks.

Mr. Hefele noted that the application is less intensive.

Chairman Sesko clarified the setbacks.

Mr. Schneider noted that the applicant is seeking an interpretation and a variance request if needed.

Mr. Hefele noted that the engineer will address.



Fred Stewart, PE was sworn.

Mr. Hefele asked what was submitted to the building department.

Mr. Stewart noted that there was a relocation of the driveway 5.5 feet instead of the zero setback from previous approval. The front yard setback is the same as previously approved the side yard setback of 20 feet and 47 feet same side yard and combined. The footprint 1,900 square feet where the prior approval was 2,400 square feet. The same driveway on the left the width remains the same. He noted that the impervious coverage was 8.6% was and is proposed at 8.3% of impervious coverage and from a one story to a two-story dwelling.

Mr. Hefele noted that the resolution reflects that the Board requested a colonial instead.

Comr. O'Neill questioned the setbacks.

Mr. Hefele noted that the footprint has be decreased. He requested the approval for the colonial better for driveway and less impervious coverage and requested the approval.

Comr. Stracco questioned what language the attorney did not approve of.

Mr. Hefele noted that # 2 language he noted that the better planning alternative for the neighborhood.

Mr. Schneider noted that he felt that a variance was needed. The previous applicant noted that there was felt that a ranch was a better product. The Board did ask about a colonial and how it would reduce the footprint. There are irregular lots in the area.

Mr. Stewart noted that the applicant followed the setbacks.

Mr. Hefele noted that the two story does create any negative impacts to the neighbors.

Mr. Schneider questioned the location of Lot 12.

Mr. Stewart noted that Lot 12 has a driveway next to the subject lot. It is about 35 feet from the side yard and similar front yard setback.

Chairman Sesko opened to the meeting to the public.

Joe Cattano Lot 12 questioned the setbacks. He noted that not all the houses in the area are colonials.

Mr. Hefele noted that the proposed house is a nice house.

Chairman Sesko questioned if a narrower house was a con.

Alex Jelly Lot 15 asked if the house is for sale and if the applicant was a realtor.

Mr. Veman stated the house is for sale but he has decided to live there. He noted he is licensed realtor.

CASE REVIEW:

The Board discussed the application.

Vice Chairman Dunn made a motion to grant the variance and Alt. Tatch seconded the motion.

ROLL CALL:

AYES: Comrs. Norman, O'Neill, Stracco, Alt. Tatch, Vice Chairman Dunn, Chairman Sesko

NAYES:

ABSTAIN:

Motion carries.

COMMENTS OF THE BOARD:

The Board discussed the Annual Report.

Chairman Sesko asked for any ordinance changes that need to be changed.

Mr. Carney noted that there was a couple for small lots that have double frontage and need a variance. There are at least 200 lots in Randolph that have two front yards. The other issue ordinance provisions that deal with smoke shops.

There was a discussion if the Board think the Council should revisit the definition of a convenience store.

The Board did not feel that the definition needed to be looked at.

Mr. Carney will prepare a memo addressing the issue of two front yards and dealing with accessory structures.

Vice Chairman Dunn left the meeting 9:32pm.

Comr. O'Neill could make a recommendation about shops sell drug paraphernalia.

Mr. Schneider clarified that a gas station and convenience store is an accessory to the gas station.

ADJOURN: A motion and a second to adjourn.

Attest:

Kimberly Coward

January 26, 2023

BOA Secretary

TIME: 9:35PM