

Adopted: 4/15/14

**RESOLUTION
of the
Absecon Zoning Board of Adjustment**

RESOLUTION #1-2014

**RESOLUTION OF MEMORIALIZATION OF THE
ABSECON ZONING BOARD OF ADJUSTMENT
GRANTING IN PART AND DENYING IN PART BULK
VARIANCE RELIEF TO MICHAEL S. MARTIN FOR
PROPERTY LOCATED AT 200 EAST FAUNCE LANDING
ROAD AND OTHERWISE KNOWN AS BLOCK 93, LOT 14
AS SHOWN ON THE TAX MAP OF THE CITY OF
ABSECON**

WHEREAS, an application was filed by **Michael S. Martin** seeking bulk variance relief so as to permit the replacement of an existing wood stockade fence, the construction of pole barn and a kitchen extension; and

WHEREAS, said premises are located in the Moderate Density Residential District (R2); and

WHEREAS, the said application sought "bulk variance" relief pursuant to N.J.S.A. 40:55D-70(c)(2); and

WHEREAS, the application consisted of the form application with attachments including a survey of the property as prepared by Arthur W. Ponzio Co., & Associates dated December 29, 1989; and

WHEREAS, the Applicant Michael Martin appeared *pro se* before the Absecon Zoning Board of Adjustment on February 18, 2014 and March 18, 2014; and

WHEREAS, the Absecon Zoning Board of Adjustment having duly considered the evidence presented reached the following factual conclusions:

1. Proper subject matter jurisdiction before the Absecon Zoning Board of Adjustment was established with respect to the relief being requested and the statutory powers granted to the Board by the

New Jersey Legislature and as embodied at N.J.S.A. 40:55D-70(c)(2).

2. The Applicant has properly notified surrounding property owners of his application and has satisfactorily published notice of the application and the Board's meeting to consider the same in an edition of the Atlantic City Press as required by N.J.S.A. 40:55D-12.

3. The Applicant is the owner of the premises which premises are presently improved with a single family residence. The premises, Block 93, Lot 14 on the Absecon Tax Map, are located at 299 East Faunce Landing Road, Absecon, New Jersey and are within the R-2 Zoning District.

4. Initially the application was heard by the Board on February 18, 2014. Because of missing information and a variety of serious inquiries with relation to the proposed structure and its placement upon the Applicant's lot, the application was tabled at the request of the Applicant until the March 18, 2014 meeting. In advance of the March 18, 2014 meeting the Applicant submitted revised materials in support of his application. Those revised materials depicted two different options for the Applicant's proposed pole barn. Option #1 depicted a proposed 24' x 34' pole barn to be located along the rear property line somewhat directly behind the existing residence. Exhibit A-1. Option #2 depicted a proposed 24' x 34' pole barn in the northwest corner of the property. Exhibit A-2. In addition to the variances tied to the proposed pole barn, the Applicant required fence variances which were identical under either option. An explanatory exhibit as to the Applicant's requested fence variances was prepared by the Board Engineer and marked as Board Exhibit 1.

5. Ultimately, at the request of the Applicant, the Board considered and voted upon Option #1. As noted below, the pole barn gross area variance, which was identical under either Option #1 or Option #2, was denied.

6. As to the pole barn under either Option #1 or Option #2, the Applicant required the following bulk variance relief:

- a. The pole barn, as an accessory structure with dimensions of 24' x 34' consists of 816

sq. ft. of area where 120 sq. ft. of area is permitted.¹

7. As to the fence, the Applicant required the following relief, see also Board Exhibit 1:

- a. A fence height of 6' where 3' is permitted, for lots fronting on more than one street with solid privacy fences located within the primary or secondary front yard, including the extension of the fence along the rear property line into the secondary front yard.
- b. A fence setback of 0' from the secondary front property line (along Lisbon Avenue) where a setback of 10' is required for solid privacy fences which exceed 3' in height and which extend along the rear property line into the secondary front yard.

8. Significant colloquy transpired between the Board and the Applicant with respect to the size of the proposed accessory structure. Essentially the proposed accessory structure would equal the area of the existing residence. The Board noted that accessory structures, particularly in developed communities, are subordinate in size to the primary permitted use, a single family residence. The Board could find no justification to permit the Applicant to construct an accessory structure that would be at least 80% larger than permitted.

9. The Applicant also explained his replacement of his prior fence with the new fence following Hurricane Sandy, albeit without the necessary permits.

10. After hearing the testimony of the Applicants the Board considered the testimony of its Engineer, Edward E. Dennis, Jr., P.E. who delivered his reports of February 11, 2014 and March 11, 2014. Many of Mr. Dennis' comments echoed concerns articulated by the Board with relation to the spatial requirements of the proposed accessory structure. As to the fence issues, Mr. Dennis expressed no negative comments because even though the fence was constructed without permits, it was constructed in the exact same location and with the same dimensions as the prior fence which had been destroyed by Hurricane Sandy.

¹ The Applicant's proposals under Option #1 and Option #2 presented different setback variances. Ultimately the Applicant requested that the Board vote upon Option #1, thereby abandoning the proposed Option #2 as a part of the within application. Because the accessory structure gross floor area variance was denied under the Option #1 proposal, which gross floor area variance would have been identical had the Board voted on Option #2, the setback variances required for Option #1 were never voted upon by the Board, the need for those setback variances having been mooted by the Board's denial of the accessory structure floor area variance, as noted herein.

11. Thereafter the meeting was opened to the public, at which time no member of the public spoke for or against the application.

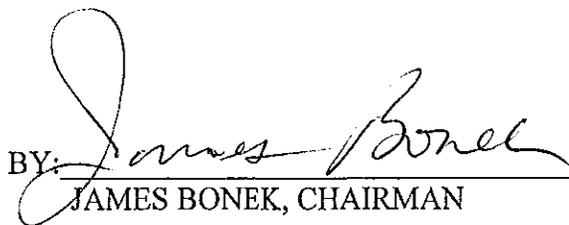
12. The Board concluded that the variance relief requested and identified at Paragraph 6 above could not be granted because the benefits of granting the requested relief did not outweigh any detriments from enforcing the ordinance and because the relief could not be granted without substantial detriment to the general welfare, zone plan or master plan.

13. The Board concluded that the variance relief requested and identified at Paragraph 7 above could be granted because the benefits of granting the requested relief outweighed any detriments from enforcing the ordinance and because the relief could be granted without substantial detriment to the general welfare, zone plan or master plan.

ON MOTION by Baltera, second by Roswell, it was moved to grant the Applicant the a gross floor area variance for an accessory structure as noted at Paragraph 6 above. The motion was thereafter **DENIED** by a vote of one (1) in favor and five (5) opposed.

THEREAFTER, ON MOTION by Corkhill, second by Roswell, it was moved to grant the Applicant the fence variances noted at Paragraph 7 above. The motion was thereafter **APPROVED** by a vote of four (4) in favor and two (2) opposed.

Dated: April 15, 2014.

BY: 

JAMES BONEK, CHAIRMAN

Michael S. Martin

200 East Faunce Landing Road, Block 93, Lot 14

DECISION AND RESOLUTION

Meeting Date: February 18, 2014 and March 18, 2014

Motion To Grant Gross Area Variance for Accessory Structure

<u>ROLL CALL VOTE:</u>	Motion	Feb 18	March 18	<u>YES</u>	<u>NO</u>
JAMES BONEK, Chairman		P	P		X
PATRICK MALIA, Vice Chairman		P	A		
STEVE BALTERA	M	P	P	X	
ALEX CORKHILL		P	P		X
WILLIAM FRITZ*		A	P		X
MATTHEW LAWLER		P	P		X
JOSEPH POLISANO		P	A		
JEFF ROSWELL (1 st Alternate)	2 nd				X
<u>Vacant</u> (2 nd Alternate)					

The said motion was defeated by a vote of one in favor and five opposed.

* Before voting on March 18, 2014, the Board Solicitor confirmed with Mr. Fritz that he had fully familiarized himself with the testimony of February 18, 2014. Beyond that, the Board Solicitor concluded that the Applicant's revised presentation of March 18, 2014 was at substantial variation to the original application so as to be considered on its own and independent of the February 18, 2014 proofs.

Michael S. Martin
200 East Faunce Landing Road, Block 93, Lot 14
DECISION AND RESOLUTION
Meeting Date: March 18, 2014

Motion to Grant Fence Related Bulk Variances

<u>ROLL CALL VOTE:</u>	Motion	Feb 18	March 18	<u>YES</u>	<u>NO</u>
JAMES BONEK, Chairman		P	P		X
PATRICK MALIA, Vice Chairman		P	A		
STEVE BALTERA		P	P	X	
ALEX CORKHILL	M	P	P	X	
WILLIAM FRITZ		A	P	X	
MATTHEW LAWLER		P	P		X
JOSEPH POLISANO		P	A		
JEFF ROSWELL (1 st Alternate)	2nd			X	
<u>Vacant</u> (2 nd Alternate)					

This motion was approved by a vote of four in favor and two opposed