

TO: Borough of New Providence, Zoning Board of Adjustment

FROM: M. McKinley Mertz, PP, AICP, LEED Green Associate
Lauren Purdom, AICP

RE: 167 The Fellsway, LLC
167 The Fellsway
Block 282 Lot 5
Preliminary and Final Major Site Plan Approval; C Variances

DATE: January 18, 2021

As requested, we have reviewed the following application materials:

- Borough of New Providence Variance and Site Plan Application with associated checklists and documentation, undated; and
- Borough of New Providence Zoning Board of Adjustment Resolution 89-4, dated March 6, 1989;
- 2-sheet set of Variance Plan drawings prepared by Murphy & Hollows Associates LLC, dated November 5, 2020;
- 3-sheet set of Architectural drawings prepared by Roger C. Winkle, AIA, dated November 16, 2020.

Property Description

The subject property is known as Lot 5 in Block 282, located at 167 The Fellsway, just south of its intersection with Forest Road and within the Borough's R-2 Zone. The property is a 9,000-square-foot lot with 60 feet of frontage on The Fellsway. The property is developed with a one-and-a-half story single-family frame dwelling with an attached garage and associated driveway and walkways. There are also considerable grade changes throughout the property. The rear property line is bounded by a fence, and a small fenced-in area is also existing in the northwest corner of the property. The property is surrounded by other single-family dwellings.

Previous Approvals

The subject property previously received bulk variance approval from the Zoning Board of Adjustment via Zoning Board of Adjustment Resolution 89-4, dated March 6, 1989. At that time, the applicants received approval to enclose the existing porch above the garage in order to create a family room. Relief was granted for the existing side yard setback at the garage. The Board found that because the applicants were proposing to construct an addition above the area of the existing garage, which was already encroaching into the side yard, the proposed work would not cause a noticeable additional intrusion and relief was therefore granted.

Project Proposal

The applicant is now proposing to demolish the existing improvements and construct a new, 3,080 square foot single-family home with five (5) bedrooms and an attached front-facing two-car garage. The proposed conditions plan illustrates that the dwelling will be located in roughly the same location, with a larger footprint. As part of the proposed improvements, the applicant is proposing to provide a patio in the rear of the dwelling, new concrete walkways, and to reconfigure the existing stacked driveway to a side-by-side driveway.

Aerial Map of Subject Property



Zoning

The subject property is located in the R-2 Residential Zone, where single-family homes are a permitted principal use. The following bulk requirements are applicable to this project:

R-2 Zone Bulk Standards (Ch. 310)				
	Required	Existing	Proposed	Variance
Min. Lot Area	15,000 SF	9,000 SF	9,000 SF	ENC-V
Min. Lot Width at ROW	60'	60'	60'	-
Min. Lot Width at Setback Line*	110'	60'	60'	ENC-V
Min. Lot Width at Setback Line for 40 Feet into Rear*	110'	60'	60'	ENC-V
Min. Front Yard Setback	40' or prevailing	40.0'	40.5'	-
Min. Single Side Yard Setback	8' or < 60% of building/addition height**	8.2'	9.8'	-
Min. Combined Side Yard Setback	30% of lot width (18')	19.7' (32.8%)	22.5' (37.5%)	-
Min. Rear Yard Setback	40' or 35% of lot depth (52.5')	73.9'	59.3'	-
Max. Building Height	30' / 2.5 stories	1.5 stories	29' / 2.5 stories	-
Max. Principal Building Coverage	20% of first 7,500 SF and 10% of additional SF (1,650 SF)	13.7% (1,237 SF)	18.8% (1,694 SF)	V
Max. Improved Lot Coverage	40% (3,600 SF)	22.9% (2,058 SF)	33.6% (3,020 SF)	-
Driveway Width*	10' – 16'	10'	20'	

(V) = Variance Required

(ENC-V) = Existing Nonconforming Condition, Variance Required

* Measurements were omitted from the bulk requirements table and therefore have been calculated by our office.

** Given the grade changes on site, we defer to Mr. Lynch regarding this calculation.

Variances Required

- **Minimum Lot Area – Schedule II** – A minimum lot area of 15,000 square feet is required, where 9,000 square feet is existing and proposed. This is a pre-existing non-conforming condition that is not proposed to change as a result of the application.
- **Minimum Lot Width – Schedule II** – A minimum lot width of 110 feet is required at the setback line, where 60 feet is existing and proposed. This is a pre-existing non-conforming condition that is not proposed to change as a result of the application.

- Minimum Lot Width at Setback Line for 40 Feet into Rear – Section 310-13 – Where minimum lot widths at the setback line are required, the specified width shall be maintained from the setback line for an additional 40 feet toward the rear lot line. The minimum required lot width at the setback line is 110 feet, where the existing lot is 60 feet wide. This is a pre-existing non-conforming condition that is not proposed to change as a result of the application.
- Maximum Principal Building Coverage – Schedule III – A maximum building coverage of 20% of first 7,500 square feet and 10% of each additional square foot (1,650 square feet) is permitted where 1,694 square feet is proposed.
- Chapter 310 Section 20D(2) – Off-street parking requirements – Driveways ranging from 10 feet to 16 feet are permitted for single-family homes, where a driveway measuring 20 feet in width is proposed.

Waivers Required

There are no design waivers created by this application.

Planning Comments

1. C Variances: The applicant requires c-variance relief for several aspects of the application. The applicant shall provide testimony that demonstrates how the request for relief may be granted based on one of the standards provided in the MLUL at N.J.S.A. 40:55D-70.c. It is the applicant's responsibility to bear the burden of proof.

In order to satisfy the positive and negative criteria for each c variance enumerated above, the applicant should provide testimony that satisfies either the c(1) hardship criterion or c(2) flexible criterion as set forth in the MLUL.

- a. Positive criteria: There are two types of c variances - the **c(1) hardship** and the **c(2) flexible variance**.

The c(1) hardship criteria states that a "hardship" will occur if the variance is not granted. The hardship relates to the physical or topographical features of the property and cannot relate to financial or personal hardship. Hardship relating to property can include:

- i. Narrowness, shallowness, or irregular shape
- ii. An exceptional topographic condition
- iii. Other unique conditions or features affecting the property

The c(2) flexible variance states that by granting the variance, the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and that the benefits of granting the variance substantially outweigh the detriments.

- b. Negative criteria: The applicant must satisfy the two-prong test of the negative criteria:
 - i. The variance can be granted without substantial detriment to the public good; and
 - ii. The variance can be granted without causing substantial detriment to the zone plan.
- c. The applicant's testimony regarding the negative criteria should address any potential impacts that the proposed variances may have on the neighborhood, as well as how the proposed development is consistent with, or in potential conflict with, both the zoning ordinance and the Master Plan of the Borough.

General

- 2. The applicant shall provide testimony indicating the height calculations for the side yard setback requirement pursuant to Schedule IIA: "In no event shall any new building or addition be permitted to be closer to any side lot line than 60% of said building's or addition's height." Given the grade changes on site, we defer to Mr. Lynch to confirm these calculations. If the applicant does not meet the 60% requirement, an additional variance will be required.
- 3. Values were only provided for the lot width at the front yard setback line (40 feet) and at the right-of-way line. However, pursuant to the Borough Ordinance, the required lot width is to be maintained from the setback line for an additional 40 feet. The applicant shall provide testimony to confirm the missing values.
- 4. We note for the Board that the ground floor where the garage enters is considered a "basement" pursuant to Borough definitions and is not considered an additional floor.
- 5. The bulk requirements chart indicates that the ground floor area of the principal building is 1,694 where the calculation detail indicates 1,634 square feet. The applicant shall provide testimony to clarify the square footage of the ground floor.
- 6. The subject property is significantly undersized for the R-2 Zone, thus requiring variances related to the lot area and width. The applicant is proposing a building footprint approximately 727 square feet larger than the existing home and adding a full story to its height. The applicant shall provide testimony as to whether the larger structure will overburden the site, given the lot's undersized nature, and should discuss the reasoning and need for the larger structure.

Site Layout, Architecture, Lighting, Landscaping

7. The applicant should provide testimony regarding all proposed site changes, including topographic conditions, specifically related to grade changes and run-off.
8. The elevations do not indicate proposed materials or colors. The applicant should provide testimony regarding the proposed materials, design, colors, etc. of the dwelling and how the intended aesthetics are appropriate for the surrounding community and the Borough as a whole.
 - a. A colorized rendering would be beneficial for the Board.
9. The applicant is proposing an attached two-car garage. The site plan drawings include an explanation of the reasoning behind the decision to include a two-car garage.
 - a. The applicant shall provide testimony to demonstrate the appropriateness of a two-car garage.
10. The applicant is proposing to reconfigure the driveway, which includes a widening at the garage that extends beyond the edge of the house. The width of the curb cut is approximately 20 feet based on our office's measurements, which exceeds the permitted maximum for a single-family home double driveway by four feet (4'). The applicant shall provide testimony to justify the need for an excessively wide driveway.
11. The proposed roof is steeply pitched; however, the applicant has not indicated that there will be a usable attic space. The applicant shall provide testimony to clarify whether a finished attic is proposed, and if so, how it will be accessed and how large it will be. If a usable attic is not proposed, the applicant should confirm the need for such a steep roof.
12. The applicant is proposing to remove four (4) trees from the property. The applicant should confirm what measures were taken to preserve as many mature trees as possible. The applicant should additionally confirm if they intend to plant any additional landscaping or replacement trees.
13. The applicant should provide testimony regarding any proposed exterior lighting.

Mechanical/Misc. Comments

14. Does the applicant propose any condensers or other mechanical equipment? The applicant should provide testimony confirming where any and all outside mechanical equipment will be located, including any generators.

Photographs of Property taken 1/12/2021



Front of Existing House



Front of Existing House



Northern Side Property Line (stakes appear to indicate property boundary)



Southern Side Property Line (stake appears to indicate property boundary)

Neighborhood Properties for Neighborhood Context



