

**BOROUGH OF NEW PROVIDENCE
BOARD OF ADJUSTMENT
MEETING MINUTES - MONDAY, December 15, 2014 – 8:00 p.m.**

Present: Mr. Nadelberg, Mr. Ammitzboll, Mr. DeSarno, Mr. Grob, Mr. Hoefling, Ms. Jaynes, Mr. Karr, Mr. Ping, Phil Morin, Board Attorney, and Margaret Koontz, Secretary

Absent: Mr. Pennisi

A. CALL TO ORDER

Chairman Nadelberg called the meeting to order at 8:07 p.m.

B. PUBLIC NOTICE

Chairman Nadelberg stated that this is a meeting of the Board of Adjustment of the Borough of New Providence, County of Union, and State of New Jersey. Adequate notice of this meeting was given in accordance with P.L. 1975, Chapter 231, in that a notice was made in conformance with Section 13 of the Act. He also stated the protocol for the meeting.

D. RESOLUTIONS

Our House, Inc. Application #2014-18
340 Central Avenue. Block 271, Lot 46.01, R-2 Zone, New Providence, NJ
Chapter 310, Section 310-12, Permitted Uses; Schedule I and Article VI Conditional Uses Section 310-37 for permission to sublease existing classroom space from Morris-Union Jointure Commission. The proposed sublease of existing classroom space to ARC of Union County for use as a life skills training center for students over the age of 21 does not conform to the requirements of the R-2 District. The proposed use is B-Business occupancy and is not permitted in the district. The sublease creates an intensification of the existing conditions.

The resolution for this application will be memorialized on January 12, 2015.
Members eligible to vote in favor: Mr. Grob, Mr. Hoefling, Mr. Karr, Mr. Pennisi, Mr. DeSarno and Mr. Nadelberg

Marta Knauff Application #2014-29
38 Pittsford Way, Block 102, Lot 12, R-1 Zone, New Providence, NJ
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a deck. The proposed side-yard setback is 9.20 feet with a combined total of 20.45 feet to the deck whereas 12 feet with a combined total of 30 feet is the minimum required. The existing driveway abuts the property line.

The resolution for this application will be memorialized on January 12, 2015.
Members eligible to vote in favor: Mr. Ammitzboll, Mr. Grob, Mr. Hoefling, Mr. Karr, Mr. Pennisi, Mr. Ping and Mr. Nadelberg.

Rafael Cortes Application #2014-31
24 Edgewood Avenue, Block 75, Lot 6, R-2 Zone, New Providence, NJ
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a

second-floor addition. The proposed side-yard setback is 9.1 feet to the second-floor addition whereas 12 feet is the minimum permitted. The existing shed is .8 feet from the property line.

**The resolution for this application will be memorialized on January 12, 2015.
Members eligible to vote in favor: Mr. Ammitzboll, Mr. Grob, Mr. Hoefling, Mr. Karr, Mr. Pennisi, Mr. Ping and Mr. Nadelberg.**

E. PUBLIC HEARINGS SCHEDULED FOR DECEMBER 15, 2014

Joe and Sharon Licari
Application #2014-32
14 Crescent Drive, Block 74, Lot 21, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a second-floor addition. The proposed side-yard setback is 8.5 feet to the second-floor addition whereas 12 feet is the minimum permitted. The property has a previously approved variance (appl. 2004-64) approved on February 7, 2005, for the lack of a garage. The existing driveway is 2 feet from the property line. The existing shed is 5 feet from the rear property line. The existing deck at the right rear of the property is on the property line.

Joe and Sharon Licari and their architect, Carol Hewit of Carol Hewit Architecture & Engineering, were sworn in. Ms. Hewit described the application for a second-story addition to the small cape to enlarge three bedrooms and provide more headroom and add a master bathroom. A photo board with photographs of the house from different angles was marked as Exhibit A-1. The children's bedrooms have one window and the front entrance is small. The addition requires a variance for the side yard on the right side of the house where there is vegetation between them and the neighbors. The shed is an existing non conformance as is the deck which has been there for 13 years. Ms. Hewit described the addition. The house is built on a slab. The first floor which has a bedroom and full bath will not be changed except for the addition of a portico. The roof will be removed to add the second floor with an attic for the HVAC units and storage. No additional bedrooms will be added on the second floor. The existing bedrooms will be changed to make them more habitable, a master closet and bathroom will be added and the ½ bathroom will be converted to a full bathroom.

Crescent Drive curves so the property line angles in from 70' to 54' triggering the variance for the right side-yard setback of 8.5' which is an existing non-conformance. The addition will not encroach further into the existing non-conforming side-yard setback. The second floor addition will not extend over the porch or over the left side on the first floor. A peak will be added to the roofline, the windows on the first floor will not be changed and the second-floor windows will match. The whole house will be re-sided.

A packet with eight photographs of other homes in the neighborhood that have been enlarged was marked as Exhibit A-2. Mrs. Licari testified that seven of the 21 houses on Crescent Drive have added full second stories.

The Board asked about the side-yard setbacks. The side-yard setback on the left side of the house conforms. The existing non-conformance for the side-yard setback on the right side of the house will remain at 8.5.' The left side-yard setback for the existing first floor is 13.7.' The second-floor addition will not extend over the existing mechanical room on the first floor so the left side-yard setback to the second floor is 22.5.' The

Ms. Hewit summarized the application. The lot is undersized and has an irregular shape. The variance is for an existing non-conformance. The second-floor addition is the only feasible location for an addition. Mrs. Licari talked to the neighbor on the right who would be most impacted by the addition and the neighbor was very receptive to the improvements. None of the six closest neighbors had a problem with the addition.

There were no questions from the public.

There were no comments from the public.

Mr. Ping moved to approve the application with additional variances for the lack of a garage and combined side-yard setback. Mr. Karr seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Mr. Grob, Mr. Hoefling, Mr. Karr, Mr. Ping, Ms. Jaynes and Mr. Nadelberg. Those opposed: None.

James Barth, Barth's Market; Karen Luongo, Kapuscinski Luongo Architects; Robert Freud, Dynamic Engineering; Justin Taylor, Dynamic Traffic; and Michael Tobia, planner were sworn in. Bartholomew Sheehan of Dempsey, Dempsey & Sheehan, attorney for the applicant, described the application for B&T Realty, trading as Barth's Market, for preliminary and final major site plan approval, minor subdivision approval, Floor Area

Ratio (FAR) and bulk variances for the properties located at 39-41 South Street (lot 23) and 65 South Street (lot 24). Barth's Market, which is a purveyor of specialty meats and other general food products, needs to expand its production capacity and retail space. Barth's Market is the purchaser under contract to buy 18,157 SF of lot 24 to be subdivided from lot 24 and added to lot 23. Barth's Market proposes to construct a 12,088 SF addition resulting in a 17,168 SF building with 3,990 SF of retail space, 5,566 SF of preparation space, 4,264 SF of storage space and 3,418 SF of office space. Provident Bank on lot 24 will have 27 parking spaces and Barth's Market will have 22 spaces. Reconfiguration of the ingress and egress for both lots and other outdoor improvements are proposed. Mr. Sheehan listed the previous variances granted to Barth's Market for a temporary trailer in 1999, a one-story addition in the rear and parking in 2002, use of a forklift in 2003 and outdoor display and sales area in 2008. The Planning Board heard an application in 2012 for the subdivision of lot 24 for the construction of a 7-Eleven that was withdrawn without prejudice. Mr. Sheehan also reviewed the variances required for lots 23 and 24 listed in the planner's review letter (Heyer, Gruel & Associates dated December 10, 2014). Barth's Market was granted a "d" variance for an outdoor display in 2008, but if an additional variance is required for the expansion of the outdoor sales area as noted in the planner's review letter, the applicant will amend the application.

Barth's Market is a regionally known market for a traditional German line of pork products and expansion of the market is unavoidable. Barth's Market looked for other space without leaving New Providence but the spaces required moving or splitting the production and retail sales areas. The current proposal to subdivide lot 24 and expand the building allows the applicant to stay intact in its current location in the Central Commercial District.

James Barth, Barth's Market, provided a history of Barth's Market which was started by his grandfather in 1939 in Irvington, NJ. His grandfather bought the current property in New Providence in 1958. Mr. Barth grew up in the store, known as Barth's Pork, taking over the business in 1995. The store sells Germany specialty products and expanded the line of products to include produce, seafood, salad, beef, lamb, poultry and other pork products when the building was enlarged in 2003. Barth's Market has other competitors but most of them are wholesale businesses. Barth's Market is not a wholesaler. Eighteen percent of its business is from New Providence. It also serves customers from Somerset, Union, Essex and Morris Counties. Many of the customers come in to buy their meat and then shop elsewhere in New Providence. Mr. Barth also recommends other businesses in New Providence to his customers. Mr. Barth ranks his retail business as second in volume in New Providence behind the A&P. The store is open from 8 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 5 p.m. on Saturday.

The current store has limited work space so Mr. Barth has to stop production to pack product. In addition to more production space, Mr. Barth needs more display space for the meats and dry products. The following were marked as exhibits:

Exhibit A-1: Four photos of the retail space

Exhibit A-2: Four photos of the office spaces

Exhibit A-3: Four photos of the rear of the property with trucks and equipment

Exhibit A-4: Four photos of the basement

Mr. Barth described the photos of the retail cases for salads, seafood, sausages and wursts and the workspace behind the retail counter used for cutting and packing (Exhibit A-1). The salad cases are 8' with 4' of preparation area and have limited space for produce underneath. He doesn't sell much of the product displayed behind the salad cases because the product isn't accessible to customers. Seafood sales have been increasing and Mr. Barth would like to offer more seafood items. With the proposed addition, the drying room will allow Mr. Barth to increase production of smoked products. Mr. Barth then described the photos of the area behind the store (Exhibit A-3) where there is a shed for the forklift, refrigerated trucks and the trailer which is used for storing documents and as a data-entry office. He went back to Exhibit A-2 and described the area off of the kitchen that was used as office space prior to the trailer, the file storage area at the back end of the trailer and the area at the front of the trailer where the phone and laptops are located. The photographs in Exhibit A-4 show the basement including the entrance to the 800 SF basement, the only dry storage area, the new boiler and area for seasonings.

Mr. Barth looked at splitting the operation and moving production offsite but doing so involves a different set of USDA rules. He would also have had to build a 10,000 SF plant which is more space than he needs so this wasn't a feasible option. Also, he wouldn't have the same personal supervision required to ensure quality and service. He couldn't expand to the right because there were too many people involved in the trust that owns the adjacent site and 7-Eleven was proposed to the left so he had no place to expand.

Mr. Barth responded to questions from the Board. Barth's Market supplies one local business, The Stirling Hotel, and doesn't make deliveries. He buys his produce at Hunt's Point. He has no plans to change from a retail business. Mr. Barth will still need his trucks to go to the market to pick up produce so he will continue to keep them onsite if the expansion is approved. The proposed FAR of 61% is 20% over the permitted FAR. Mr. Barth recently met with contractors who informed him the soil couldn't support an excavated basement without extensive pilings and a separate foundation. For a third of the price of excavating the basement, Mr. Barth testified he could add a second story which triggers the FAR variance. If a basement were feasible, the application would not require a variance for FAR. The FAR variance granted in 2002 was 57%. The proposed office and storage space on the second floor are critical for storing pallets of sugar and salt and for taking orders and doing paperwork. Mr. Barth expects to grow the business and plans to employ more people. He has no intention of subletting the space on the second floor. The trailer will be removed if the application is approved. Mr. Barth is agreeable to the turning restrictions onto South Street proposed by the traffic engineer.

The following exhibits were marked:

Exhibit A-5: Existing floor plans for the first floor and basement

Exhibit A-6: Proposed first floor plan (colorized version of Sheet A-2 of the architectural drawings)

Mr. Barth described the layout of the existing first-floor plan shown in Exhibit A-5 including the retail area; the kitchen, office and smokehouses behind the retail space; and, the production area with tables, linking machine, stuffers and slicers, coolers, freezer and the cutting room with a cutting table, patty machines and access to a cooler. Mr. Barth then described the proposed layout of the enlarged store. The store will have

a vestibule, enlarged deli, 8' sandwich preparation area for hot sandwiches, 8' hot food area for soups and hot meals, 20' preparation area for food and salads, larger seafood, poultry, pork veal and lamb cases and a 16' beef case. Mr. Barth anticipates extending business hours until 8:00 p.m. for the sale of prepared meals to be consumed off-site. The retail area will also have three 14' long four-sided shelves for dry goods and stations for six cashiers which should alleviate the lines at peak times. The existing office will be removed for a 30' x 20' professionally laid-out kitchen. The back of the building will have a vestibule where pallets will off loaded and then lifted to the second floor or moved to the processing room. The cutting room will have space for eight pallets of meat: Additional cutting tables can be added as the business grows. The space will allow Mr. Barth to make multiple products at the same time so he will be able to get more product out faster.

The Board asked about the anticipated number of employees and parking. Mr. Barth currently has 30 employees and believes this will increase to 50 if the business grows. He has worked out an arrangement with Our Lady of Peace for employee parking.

A color rendering of the south and east elevations of the proposed storefront was marked as Exhibit A-7. The architect has a rendering of the north elevation. Mr. Barth testified that he has never had the space he needs and the plans for expansion are a dream come true.

Mr. Barth responded to additional questions from the Board. He cannot attest that his business has increased because of the poor parking at the A&P. He offers more personal attention to his customers than the A&P. Barth's Market will be a seven-day operation. Mr. Barth anticipates that he will be able to move customers in and out in five to six minutes. He looked at moving to the old A&P space on Central Avenue but the owner wanted too much of an escrow deposit. He also looked at renting space at 140 Spring Street for production but the space required too much work to get it ready. He has been courted to move to Mountainside and Madison but he likes it in New Providence. Mr. Hoefling briefly described the plans for use of the space behind the property as a river walk. Mr. Barth believes he can stay inside the building if the application is approved without going into the backyard because his biggest need is production space. He will expand his product line offering grab & go items and a deli for individually made sandwiches. He does some catering business now especially turkeys at Thanksgiving and thinks this business will also grow with more space.

Mr. Niehoff had multiple questions. The number of trucks will not increase just the poundage. Truck traffic will not increase either. Barth's Market gets weekly deliveries which are scheduled for 6:00 a.m. Per a previous resolution, tractor trailer deliveries are restricted to before 7:00 a.m. The traffic engineer will discuss peak traffic hours. Employees currently park onsite but not all 30 employees drive. Mr. Barth leases half of the bank parking lot plus there is a road on the right side of the building. The proposed expansion will allow Mr. Barth to free up space in the back of the building for better traffic flow. Use of the parking lot at Our Lady of Peace hasn't been firmed up if Barth's Market is open on Sunday, but Mr. Barth testified that he might be able to use the parking lot at New Providence Community Pool plus he can look at parking the trucks offsite.

Mr. Barth hopes to see a 30% increase in customers with the expanded building and a \$10 increase per ticket in sales. It's possible that the customer base could expand 50% but Mr. Barth definitely sees an increase in ticket sales. The Board asked where the

business will be in 10 to 20 years. The new space has a lift and so there will be less physical strain on Mr. Barth. His son will probably take over the business at some point.

The Board had no further questions for the witnesses. The hearing was opened to questions from the public.

There were no questions from the public.

Robert Freud, project manager at Dynamic Engineering, presented his credentials as a licensed civil engineer and was accepted as such. Mr. Freud agreed to items #7, 8, 9, 10, 13, 14, 15, 16, 17, 21, 27, 31, 33 and 34 in the planner's review letter (Heyer, Gruel & Associates) dated December 10, 2014, as well as approval from the County Planning Board as conditions of approval. Mr. Freud also agreed to #11 in the engineer's review letter dated December 11, 2014, as a condition of approval.

The following exhibits were marked:

Exhibit A-8: Aerial view of the 200' radius of the property and surrounding property dated 12/15/2014

Exhibit A-9: Colorized version of the site plan with landscaping dated 12/15/14 (Sheet 4 of the site plan)

Barth's Market is located on South Street in the Central Commercial District adjacent to an R-2 zone. Provident Bank is located to the south of the market with an extensive parking lot between the two buildings. Barth's Market is 4,266 SF with an 816 SF basement. Provident Bank is 4,172 SF with offices on the second floor. The sites have multiple entrances. A shared inbound and outbound driveway is located to the north of Barth's Market that leads to the service area in the back. The bank has a central inbound and outbound entrance on the south side of Barth's Market. The property slopes east to west at the rear of the properties. Two detention basins discharge to a pipe in the middle of the parking lot. The applicant would agree to installation of a drainage pipe in the easement. The 10- and 100-year flood plains run under the property. The detention basins will accommodate lower-level storms. The applicant has filed an application with the Department of Environmental Protection. A 48" outlet pipe will run through the property with a manhole located between the detention basins and 8" pipes from the detention basin. There is a small increase in impervious coverage.

The Board asked about the soil. The soil is silt and fine gravel that is loosely packed and wouldn't accommodate an expanded basement without pilings. Additional basement space would require waterproofing.

The existing site lighting can be used and repositioned. There is limited landscaping on the north side of the site. The existing utilities can also be used. The service will be upgraded for the loads if needed.

The setback for the new building will match the setback for the existing building which is 4.8' from the right of way. The plan proposes an additional 2.1' encroachment into the front-yard setback for two columns by the door. The canopies proposed over the display windows at Barth's do not encroach into the right of way. The building structure is 30' high. The bank height remains the same.

The FAR variance required for Barth's Market results from subdividing down the center of the property between the buildings. The bank lot will be a little larger than Barth's lot after the subdivision resulting in a FAR of 24% for the bank and 61.7% for Barth's; however, the average FAR for both buildings on the lots is only 40.3% which is below the 50% permitted.

Two individual driveways accessing the parking lot are proposed with one inbound driveway for the bank and an inbound/outbound driveway for Barth's Market. The parking spaces are 9' x 18' except for those spaces in the middle which will be 9' x 20.' Circulation on the properties will be counter-clockwise. A driveway behind Barth's will allow clockwise circulation for delivery trucks. Barth's has agreed to restrict left turns out of the site: Vehicles can make a left turn out of the bank's exit to the south or from the driveway to the north.

Mr. Freud answered questions from the Board. There will be minor grading as part of the DEP application. The finished floor at Barth's Market is 1' above the flood elevation that runs through the property. Mr. Grob asked if any landscaping would be planted to improve the water quality of the run off before it gets to the detention basin or the creek. Mr. Freud responded that the basin serves to filter the runoff from the properties before it going to the pipe plus there is a curb at the rear of the property and grass in between. The proposed landscaping is in the front center and is aesthetic. The area behind the properties is wooded.

The Board had questions about parking. The bank lot will have 27 parking spaces, one short of the number required, but parking demands at banks have changed with online banking. The 27 spaces are more than enough to accommodate the bank's customers. The Board expressed concern about what would happen with the parking if the bank vacates the site. The traffic engineer will testify to the traffic and parking issues. Mr. Karr asked if the subdivision line could be moved to eliminate the FAR variance and increase the number of parking spaces at Barth's. Mr. Sheehan responded that the parking requirements for the component parts of Barth's businesses are less than the 69.8 required by the ordinance. There is already an agreement between the two property owners for snow plowing/removal.

Mr. Freud testified that the existing lights will be used with appropriate lighting levels on the side. Additional lighting is proposed on the pedestrian walkway for safety. While there is light spillage from the three lights on the north side of the property, the illumination level is appropriate for the shared driveway and there is no negative impact.

The bank signs will stay the same. A 36 SF monument sign set back 10' in the middle island perpendicular to the street is proposed. Barth's Market will have three signs, one with the name of the market and two with logos, which trigger a variance although the square footage of the signs is less than the 50 SF permitted.

Mr. Niehoff had several questions. The trucks can be parked in the loading zone at the rear of Barth's which is 20' wide so this wouldn't block circulation. The applicant will have the number of trucks that will be onsite at the next hearing. There is a small increase in the impervious coverage from 75.5% to 79.1%. The pedestrian walkway along Barth's Market will still provide an ADA access route even if the parked cars overhang the sidewalk.

The planner's comments about the landscaping, lighting and fence will be addressed at the next hearing. The applicant will also look at moving the overhead utility lines underground.

The hearing was carried to January 12, 2015. No further notice is required or will be given.

F. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR JANUARY 12, 2015

David and Christine Briganti Application #2014-30
5 Morehouse Place, Block 114, Lot 9, R-1 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10 Schedule II for permission to construct a front porch. The proposed front-yard setback to the covered porch along Morehouse Place is 17.33 feet and the setback along Laurel Drive is 25 feet whereas 40 is the minimum allowed.

Previously scheduled for public hearing on November 17, 2014.

Steven and Tram Harris Application #2014-34
162 Stoneridge Road, Block 252, Lot 7, R-1 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-19 I for permission to construct a shed. The proposed rear-yard setback to the shed is 2 feet whereas 6 feet is the minimum required. The proposed side-yard setback to the shed is 2 feet whereas 6 feet is the minimum required.

G. MISCELLANEOUS

H. MINUTES FROM 12/12/2014

The minutes from December 1, 2014, were approved as submitted.

H. ADJOURNMENT

The meeting was adjourned at 11:28 p.m.