

**BOROUGH OF NEW PROVIDENCE
BOARD OF ADJUSTMENT
MEETING MINUTES – MONDAY, OCTOBER 19, 2020 – 8:00 p.m.
VIRTUAL MEETING**

Present: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Dunscombe, Mr. Grob, Mr. Kogan, Mr. Morgan, Mr. Nadelberg, Mr. Ping Also present: Keith Lynch, Director of Planning and Development; Phil Morin, Board Attorney; and, Margaret Koontz, Secretary.

Absent: Mr. Sorochoen

A. CALL TO ORDER

Chairman Nadelberg called the meeting to order at 8:05 p.m. Per Governor Murphy's Executive Order No. 103 issued on March 9, 2020 declaring a State of Emergency and Public Health Emergency in the State of New Jersey, and extended by Executive Orders No 119 on April 7, 2020, No. 138 on May 6, 2020 and No 151 on June 4, 2020, this meeting was held remotely by conferencing software provided by zoom.us.

B. RESOLUTIONS

Hany and Hanaa Daniel Application #2020-22
117 Commonwealth Avenue, Block 75, Lot 9, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article V, Section 310-32(B) for permission to erect a fence. The proposed fence in the front yard along Edgewood Avenue is 4 feet high whereas 30 inches the maximum height allowed.

Mr. Grob moved this and Mr. Ping seconded same. Members voting in favor: Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Ping, and Mr. Nadelberg

C. PUBLIC HEARINGS SCHEDULED FOR OCTOBER 19, 2020

Dilip Gohel Application #2020-27
89 The Fellsway, Block 271, Lot 30, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Section 310-32(B) for permission to erect a fence. The proposed fence in the front yard along Elmore Road is 6 feet high whereas 30 inches is the maximum height allowed.

Mr. Gohel was sworn in and described his property at the corner of The Fellsway and Elmore Road which is a dead end. His back yard abuts the rear yard of the Morris Union Jointure Commission on Central Avenue. People walk down Elmore Road to cut through to Morris Union Jointure and the park and ball fields. He would like privacy in his back yard and proposes a 6' vinyl or wooden fence to be installed in accordance with the Borough's ordinances. He proposes a 6' fence because it's pedestrian rather than vehicular traffic along Elmore Road and pedestrians will be able to see over a shorter fence.

Mr. Gohel responded to questions from the Board. Mr. Gohel confirmed that it would be a 6' wooden or vinyl fence. Mr. Grob commented that Mr. Gohel proposes to install the fence adjacent to the property line so there's no ability to plant in front of the fence and

it's a long stretch of fence. He added that the Board likes to see plantings to break up the length of the fence and also prefers wooden over vinyl fences. He suggested moving the fence back from the property line to allow for plantings. Mr. Gohel responded that he plans to plant in front of the fence. He would be willing to move the fence in 1,' but his property is small and he doesn't want to move the fence in more than that. His neighbor across Elmore Road has a fence that's right on the curb. Mr. Gohel will plant in front of the fence and keep the area clean. Mr. Grob responded that he can't plant in the public right-of-way. Mr. Nadelberg asked Mr. Grob if 1' is enough to plant. Mr. Grob stated that 4' is enough room to plant and he doesn't think that it would be an incredible hardship to move the fence in 4.' Mr. Ammitzboll disagreed: Elmore Road is a dead end so there's no traffic on the road and a large stretch of fence doesn't matter to pedestrians. He doesn't see the need to require the applicant to plant in front of the fence: It's a small lot and if the applicant wants to plant in the right-of-way, he can do so at his own risk.

Mr. Ping asked about a 4' fence. Mr. Gohel thought about a 4' fence but pedestrians will be able to see over a 4' fence and so it would be a waste of his money. He also looked at planting and it's very costly and is way beyond his budget to have trees. Ms. Ananthakrishnan agreed with Mr. Ammitzboll and doesn't believe plantings are necessary. She thinks a wooden fence is in character in the neighborhood as evidenced by the photographs of the wooden fences shown in pre-marked Exhibit A-1 consisting of photographs of fences at 1) 3 Aspen at the corner of Central, 2) 4 Salem Road; 3) 39 Salem Road, 4) 45 Woodland Road, and 4) 65, 55 and 49 Woodcrest Drive. Mr. Grob stated that he has a problem with 70' of 6' high fence: The yard is 65' wide and moving the fence in 4' to allow for plantings still leaves a big enough back yard. Mr. Gohel noted that the fence is only proposed along the yard behind his house and doesn't extend to the front of the house. He talked to his neighbor who was okay with the proposed fence. Mr. Gohel understands the Board's concern, but he thinks the request to move the fence in to allow plantings is a little unreasonable. He's already willing to change the material from vinyl to wood. Planting *arbor vitae*s was three times more expensive than a vinyl fence. If the Board requires him to plant, he will even if it's in the right-of-way.

Mr. Morgan asked about a 5' fence. Mr. Gohel responded that pedestrians can still look over a 5' fence so he still wouldn't get privacy. If it were vehicles driving down Elmore Road, a lower fence would work. Mr. Grob understands the need for a 6' fence for privacy, but he still has a problem not moving the fence in 4' to allow room for plantings because it won't take too much away from the back yard. Mr. Ammitzboll reiterated that Mr. Gohel can plant in front of the fence in the right-of-way at his own risk and added that the Board generally wants plantings in front of a long stretch of fence but the only way to do this is to require the applicant to move the fence back. The neighbor across Elmore Road has a hedge in the right-of-way. If the Borough doesn't enforce the prohibition against planting in the public right-of-way, then he's conflicted about requiring the applicant to move the fence in to get space for plantings. Ms. Ananthakrishnan believes the situation is different with this fence. Even though Elmore Road has a name, it isn't so much a street as a path to Morris Union Jointure Commission. Chairman Nadelberg asked Mr. Grob's opinion about 2' for plantings. Mr. Grob responded that climbing vines could be planted in a 2' area. Mr. Gohel believes planting is a reasonable request but moving the fence back 4' back is difficult.

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

There were no questions from the public.

The hearing was opened to comments from the public.

There were not comments from the public and the hearing was closed.

Discussion: Mr. Kogan believes that location makes a difference with this application. In any other location in town, he would have a different opinion but he doesn't believe the fence requires plantings although he hopes that the applicant will plant. Mr. Ammitzboll agreed. In other situations, it makes sense to require an applicant to move a fence to accommodate plantings in front to break up the fence, but it doesn't apply here. While the fence is long, he doesn't think pedestrians will be staring at it while they walk on Elmore Road. The location of the fence doesn't warrant Board enforcement of plantings in front of the fence to break up the length. If the applicant wants to plant in front of the fence in the right-of-way, he can do so at his own risk. Mr. Ping is usually concerned about a 6' vinyl fence, but he is okay with a wooden fence.

Mr. Ammitzboll moved to approve the application with the condition that the fence will be a natural wooden fence. Ms. Ananthakrishnan seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Morgan, Mr. Ping and Mr. Kogan. Those opposed: Mr. Grob and Mr. Nadelberg.

Adam M. Novak
119 Ryder Way, Block 356, Lot 5, R-1 Zone, New Providence, NJ 07974
Application #2020-28
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a deck. The proposed rear-yard setback to the deck is 32 feet whereas 40 feet is the minimum required.

Adam Novak was sworn in. He would like to replace his deck which was constructed in 1991 with variance approval. It's a wooden deck and has rot plus his children get cuts and splinters from it. The proposed deck would be greater in length but not in width where the width is defined as the distance it extends from the house into the yard. The width of the deck was approved by variance in 1991. The existing deck doesn't have stairs and can only be accessed from the house which is a safety issue if one of his children gets hurt in the yard because he has to run through the house to get out to the yard.

Mr. Novak responded to questions from the Board. The deck is 9'- 9" high but the back yard slopes down from the house. The stairs will go straight down from the deck to the garage/driveway and not towards the neighbor. The variance required is for the rear-yard setback, but Mr. Novak believes the setback is actually 37' and questioned the 32' setback noted in the denial letter. Chairman Nadelberg stated that a variance would still be required for the setback either way as 40' is required. The deck will be constructed of Trex composite material and will have soft white lighting for the stairs and on the pedestals along the rails. The motion-sensitive spotlights under the deck are too bright. Mr. Novak doesn't think he'll need the spotlights under the new deck and removing them will help the neighbor. He was comfortable with a condition to remove the spotlights. The area under the deck doesn't need to be enclosed. Mr. Novak's contractor

mentioned putting a patio under the deck. Mr. Grob cautioned Mr. Novak to be careful about enclosing the deck because of the egress underneath it.

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

There were no questions from the public.

The hearing was opened to comments from the public.

There were no comments from the public and the hearing was closed.

Discussion: Mr. Grob understands that the new deck will extend further across the house but no further out into the yard and the stairs will go straight down. He thinks eliminating the spotlights is an improvement. Mr. Ping agreed. Mr. Ammitzboll is okay with the application as long as the area under the deck isn't enclosed and the spotlights are removed.

Mr. Ping moved to approve the application with the condition that the spotlights under the deck will be removed and the area under the deck will not be enclosed. Mr. Grob seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Ping, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

Brendan and Melissa Reilly
45 Ashwood Road, Block 91, Lot 4, R-1 Zone, New Providence, NJ 07974
Application #2020-29
Chapter 310, Article V, Section 310-32(B) for permission to erect a fence. The proposed fence in the front yard along Ashwood Road is 4 feet high whereas 30 inches is the maximum height allowed.

Brendan Reilly was sworn in and testified that he would like to install a 4' high three-rail split rail fence in his back yard, but because his property is a corner lot, both sides of his back yard are considered front yards. The posts for the fence will be 4' high and the fence will be similar to the fences in the neighboring area on Pine Way. The fence is not for privacy. It's for aesthetics and to contain a puppy that's pretty big. It will have black mesh wire between the rails. His neighbor across the street has a similar fence.

Mr. Grob asked Mr. Reilly if he measured from the property line or the curb. Mr. Reilly responded that the distances shown on the survey were taken from the curb. The fence is 12' from the curb on one side of the property and 14' from the curb on the other side. Mr. Grob commented that the proposed fence then is actually 2' behind the property line on one side and 4' behind the property line on the other side so the marked-up survey is not accurate. There are spruces on the western side of the property where the driveway is located. The spruces are 10' from the curb and the fence will be installed inside the spruces on the western side (Ashwood Road) of the property and outside of the spruces on the eastern (Sherwood Drive) side of the property.

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

There were no questions from the public.

The hearing was opened to comments from the public.

There were no comments from the public and the hearing was closed.

Discussion: Mr. Grob believes it's important to clarify the location of the fence in relationship to the property line since the location was actually measured from the curb not the property line and the distances reflected on the survey are incorrect. The fence will be located inside the spruces on the Ashwood Road side of the property and outside the spruces on the Sherwood Drive side of the property.

Mr. Ammitzboll moved to approve the application with clarification of the location of the fence at 12' from the curb on one side and 14' from the curb on the other side. Mr. Grob seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Ping, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

Edgewood NP LLC Application #2020-24
14 Edgewood Avenue, Block 75, Lot 8, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedules II & III for construction of a new home. The proposed lot size is 8,985 square feet whereas 15,000 square feet is the minimum required. The proposed lot width at the setback is 65 feet whereas 110 feet is the minimum required. The proposed building coverage is 1,672 square feet whereas 1,649 square feet is the maximum allowed.

Joseph Tiboni, attorney for the applicant, introduced the application to construct a new home at 14 Edgewood Avenue that requires variances for the proposed lot size, proposed lot width and building coverage. The 8,985 SF lot does not meet the required 15,000 SF and the lot width at the setback also doesn't meet the required 110 feet as it is only 65' wide at the setback.

Bill Hollows, of Murphy & Hollows Associates LLC, and Howard Weinerman, the developer from 14 Edgewood NP LLC, were sworn in. Mr. Hollows presented his credential as a licensed professional engineer and was accepted as such. The property is located in the R-2 Zone on Edgewood Avenue 140' from the corner of Commonwealth Avenue. The property is 8,985 SF and 65' wide at the setback. The lot was previously occupied by a 1.5 story house as well as a driveway and patios to the rear. The house has been razed. A dead tree in the back has been removed.

The applicant proposes a new house with a patio and driveway. As previously stated, the lot is non-conforming in terms of lot size and is 8,985 SF whereas 15,000 SF is required. Mr. Hollows testified that there are many other 8,500 to 9,000 SF lots in the area. The lot is also non-conforming for the lot width at setback as well as 40' back from the setback. While 110' is required, the property is 65' wide which is a hardship since the applicant can't buy the adjoining property to make the property conform to the lot width at the setback requirement. The houses in the neighborhood were built in the 1950s, and the neighborhood is in transition. Some of the houses have been razed and new homes constructed and some have been updated with additions. Mr. Weinerman liked the house and size of the new construction at 61 Crescent Drive, where Mr.

Hollows was the engineer, and thought a similar house would fit on the property in question. The building coverage for the proposed house is 1,672 SF which exceeds the allowable coverage by 23 SF.

Mr. Hollows presented the positive and negative criteria. The house was in disrepair and needed to be brought up to date. The proposed house will fit the neighborhood and will not be a detriment to the public good or a substantial detriment to the zone plan. The applicant is not overbuilding as the lot coverage will be reduced to 32% from 36%.

Mr. Hollows responded to questions from the Board and comments in the Borough Planner's review letter dated September 23, 2020. Mr. Hollows confirmed that the survey of Lot 8, Block 75, File LF20-043, shows the 1.5 story house which has been razed. A two-story house with a two-car garage is proposed. Mr. Hollows confirmed that the side-yard setback was calculated based on 60% of the building height as measured from the top of the siding and is 13.5' whereas 12.9' is required (comment #5). The bump-outs for the chimney and bay window do not need to be considered in the calculation for the side-yard setbacks as there is no foundation under either (comment #6). Mr. Lynch noted that a chimney is permitted to extend into the side-yard setback and since there is no additional flooring for the bay window, it can extend into the side-yard setback. A 20' wide paved driveway is proposed. The gravel area between the driveway and the northern side of the property line will be removed and returned to grass (comment #7). In response to comment #9 in the Planner's review letter about the two-car garage, Mr. Hollows testified that most new construction has two-car garages. Many of the renovations in the neighborhood have one-car garages and probably didn't have room to add a two-car garage.

Mr. Grob commented that there is nice vegetation on the left side of the property and asked about protection of it during construction. Mr. Hollows responded that the grading plan will include soil erosion and sediment controls and the applicant will install snow fence to protect the trees and vegetation.

Ms. Gable, Borough Planner, noted that a variance is required if the driveway is 20' wide as 18' is the maximum permitted. Mr. Hollows confirmed that the driveway is 20' wide, but the applicant will reduce the width to eliminate the need for a variance. Mr. Lynch clarified that the driveway has to be 18' for the first ten feet and can then be widened to 20'. Exterior lights are proposed at the front and rear doors as well as at the garage. There could be a single light over the garage or lights on either side of it. Mr. Hollows didn't have the lumens for the lights, but they will accommodate 100-watt bulbs. There is no reason for additional lighting. Mr. Weinerman confirmed that the attic plans conform to the ordinance: The habitable floor area doesn't exceed one third of the floor area beneath it. He intends to leave the chain link fence and plant along the fence. No trees will be removed other than the dead one that has already been removed.

Mr. Weinerman doesn't plan to install a generator. The house will have two air conditioning condensers, but Mr. Weinerman hasn't designed the HVAC system yet and is open to suggestions for the location of the condensers. Regardless of the location, Mr. Weinerman attested that the condensers will conform to the side-yard setback requirement.

The Board asked about the garage door. It will be a single door with glass panes and paneling below similar to the garage doors on the houses that he built on Sixth Street.

The Board also asked about the drainage because it is a wet area. Mr. Hollows responded that a dry well will not work because of the soil. He installed a shallow drainage system with gravel trenches along the surface that discharge through a 2' pipe to the curb at 61 Crescent Drive which works. He consulted with the Borough's engineer on this and would propose a similar drainage system for this property.

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

Megan Wong, 42 Walker Drive, lives behind 14 Edgewood Avenue and asked about the back yard. Mr. Hollows responded that the rear-yard setback is 50' where it was previously 48.' Mr. Grob asked how the house will line up with the house to the south. Mr. Hollows responded that the proposed house is being moved forward with a front-yard setback of 41.5' where it was previously 55.'

The Board had additional questions. A section of the attic will be finished space. Mr. Weinerman is calling it an office not a bedroom, but it is habitable space. The habitable space in the attic will conform to the ordinance.

The hearing was opened to comments from the public.

Megan Wong, 42 Walker Drive, was sworn in and stated that she's all in favor of improving the neighborhood but is concerned about the size of the house as it is larger than her house which is on a bigger lot and asked about the total square footage and how the house will fit in the neighborhood. Mr. Weinerman responded that the house is 3,400 SF with the finished basement. The proposed house is being moved forward so the back yard will be deeper than before. Ms. Wong concluded that she appreciates improvements to the neighborhood.

There were no further comments and the hearing was closed.

Discussion: Mr. Grob commented that the proposed house is more compact than the previous one and the applicant did a nice job respecting the setbacks. It will seem like a bigger house but not really considering that the previous house was "sprawly." The neighborhood is changing. Mr. Lynch stated that it's to the Borough's benefit that the applicant is redeveloping the site. This type of application is better than one in which the developer takes down most of the house so that it's basically a new home but presents it as an addition. Most of the houses in the area are built on slabs without basements. With this type of application, the Board gets an opportunity to provide input: This is the way the Borough would like to move forward in improving these lots.

Mr. Ping moved to approve the application with the condition that the applicant will reduce the driveway to an 18' curb cut and will install snow fence to protect the vegetation during construction. Mr. Grob seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Ping, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

D. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR NOVEMBER 2, 2020

Eric and Diana Benites

[Application #2020-26](#)

2 Ridgeview Avenue, Block 32, Lot 11, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition and portico. The proposed front-yard setback to the portico is 36.3 feet whereas 40 feet is the minimum required. The proposed side-yard setback to the addition is 10.29 feet whereas 17.46 feet is the minimum required. The existing front-yard setback along Springfield Avenue is 26.09 feet.

Kevin Hubbard

[Application #2020-30](#)

5 Crest Road, Block 241, Lot 22, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedules II & III for permission to construct an addition. The proposed rear-yard setback to the addition is 32.83 feet whereas 40.24 feet is the minimum required. The proposed building coverage is 2,178 square feet whereas 2,103 square feet is the maximum allowed. The existing driveway width is 21 feet.

E. COMMUNICATION ITEMS

No communication items.

F. MISCELLANEOUS BUSINESS

No miscellaneous business.

G. MINUTES FROM OCTOBER 5, 2020

The minutes from October 5, 2020, were approved as submitted.

H. ADJOURNMENT

The meeting was adjourned at 9:40 p.m.