

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, Joseph and Sandra Fiscelli are the owners of 15 Walker Drive, New Providence, New Jersey (the "Applicants"), and have applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for variances pursuant to N.J.S.A. 40:55D-70(c) and (d) for relief from the Borough's zoning ordinance to permit the construction of a front porch, first floor and second-story addition. The proposed rear yard set back to the addition is 32.83 feet, whereas 40 feet is the minimum required. The proposed Floor Area Ratio is .262, whereas .248 is the maximum allowed. The existing setback of the deck is 25 feet. The existing side yard setback is 11.86 feet. The property is designated as Block 65, Lot 3 on the Borough Tax Map, and lies in the R-2 Single Family Residential Zone; and

WHEREAS, the Board has reviewed the application, testimony and exhibits presented by the Applicants at the hearing conducted on September 18, 2012; and

WHEREAS, the Board has made the following findings of fact and drawn the following conclusions of law:

FINDINGS OF FACT

1. The Applicants, Joseph and Sandra Fiscelli, are the owners of 15 Walker Drive, New Providence, New Jersey. The property is designated as Block 65, Lot 3 on the Borough Tax Map, and lies in the R-2 Single Family Residential District.

2. The Applicants propose to construct a front porch, first floor and second-story addition. The proposed rear yard set back to the addition is 32.83 feet, whereas 40 feet is the

minimum required. The proposed Floor Area Ratio is .262, whereas .248 is the maximum allowed. The existing setback of the deck is 25 feet. The existing side yard setback is 11.86 feet. The proposed addition is in violation of the set back requirements set forth at Chapter 310, Article IV, Section 310-10, Schedule II.

3. Joseph and Sandra Fiscelli and Thomas Hofmann, architect for the applicants, were sworn in. Ms. Fiscelli testified that they had one child when they bought the house seven years ago. They now have three children and would like to have more space on the second floor for bedrooms and a porch in the front. Mrs. Fiscelli would also like to expand the kitchen.

4. Mr. Hofmann described the addition and variances. Six feet of the existing deck will be removed to expand the kitchen and five feet will be added to the right for the dining room. The existing second floor has two fairly large bedrooms and one smaller one. The applicant proposes to add three bedrooms and a bathroom on the second floor and move the laundry room to the first floor. The house is a split level and has a 400-square foot, two-car garage which is included in the FAR calculation. If not for the garage, a variance for FAR would not be needed. The covered porch and gazebo are within the setbacks. The house only covers 15% of the lot because of the odd-shaped size of the lot. There are two existing non conformances for the side-yard and rear-yard setbacks.

5. The Applicants stated that the addition is on the garage side, not living-space side, of the neighbors. The Applicants stated that most of the neighborhood homes are split levels and ranches.

6. Mr. Hofmann proposes to put two air conditioning units between the bump-out and the gazebo at the end of the porch so they are screened by the porch. The Applicants originally wanted a wrap-around porch but revised their plan because of the air conditioning

units. They are willing to screen the units with landscaping. Mr. Fiscelli testified that the yard drain runs underground across several neighbors' properties and drains in to a storm collection system on Elkwood Avenue.

7. The proposed addition is 5.6% over FAR. Mr. Hofmann stated that it is a fair-size lot but it is an odd, pie shape. If it were rectangular like the lot to the left, a variance for FAR would not be required.

8. No one else appeared to testify in favor of or in opposition to the application.

CONCLUSIONS OF LAW

1. The proposed addition does not comply with the requirements for this lot as established by Chapter 310, Article IV, Section 310-10, Schedule II. The request to permit the construction of the porch addition requires the granting of "c" and "d" variances pursuant to N.J.S.A. 40:55D-70(c) and (d).

2. Through the testimony and exhibits presented, the Applicants have established that the application:

- (a) relates to a specific piece of property, namely the Applicants' premises;
- (b) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely the promotion of the public health, safety, morals and general welfare and the preservation of neighborhood character and conservation of neighborhood values;
- (c) that the variances can be granted without substantial detriment to the public good;
- (d) that the benefits of the deviation would substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance.

NOW, THEREFORE, BE IT RESOLVED, on this 18th day of September, 2012, that Joseph and Sandra Fischelli's application for "c" and "d" variances be and hereby is **GRANTED**, subject to the following conditions:

1. The addition shall be constructed in accordance with the plans and testimony presented to the Board and the porch shall not be enclosed; and
2. The Applicants shall provide sufficient landscaping in the form of arborvitae or other plantings acceptable to the Borough Engineer to provide screening of air conditioning units from neighboring properties. The Board shall retain jurisdiction for two years from the issuance of a certificate of occupancy for landscaping; and
3. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance; and
4. The variances granted herein shall not constitute authority to engage in any construction which is not authorized by the Zoning Ordinance of the Borough of New Providence, except as expressly stated herein.

ROLL CALL VOTE

Those in Favor: Mr. Grob, Mr. Karr, Mr. Van Schoick, Mr. Hoefling
and Mr. Nadelberg

Those Opposed: -----

The foregoing is a Resolution duly adopted by the Zoning Board of Adjustment of the Borough of New Providence at its meeting on October 1, 2012.

ATTEST:

Margaret Koontz
Secretary, Board of Adjustment

William B. Fischelli
Chairman, Board of Adjustment