

**BOROUGH OF NEW PROVIDENCE**

**BOARD OF ADJUSTMENT**

**RESOLUTION**

**WHEREAS**, Frank and Annette Mellusi are the owners of 110 Livingston Avenue, New Providence, New Jersey (the "Applicants"), and have applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for a variance pursuant to N.J.S.A. 40:55D-70(c) for relief from the Borough's zoning ordinance to permit the installation of an emergency generator in the front-yard setback. The proposed front yard set back to the emergency generator is 0 feet, whereas 40 feet is the minimum required. The property is designated as Block 142, Lot 12 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 Applicant 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, Frank and Annette Mellusi, are the owners of 110 Livingston Avenue, New Providence, New Jersey. The property is designated as Block 142, Lot 12 on the Borough Tax Map, and lies in the R-2 Single Family Residential District.

2. The Applicants propose to install an emergency generator within their front yard. The proposed front yard set back to the porch is 0 feet, whereas 40 feet is the minimum required. The property is a corner lot and the location of the emergency generator would visually appear to

be within the side yard as the house is situated. The proposed installation is in violation of the set back requirements set forth at Chapter 310, Article IV, Section 310-10, Schedule II.

3. Frank Mellusi was sworn in. Mr. Mellusi installed a free-standing, standby, automatic gas generator. Mr. Mellusi stated that he has one of the smallest lots in New Providence with no setback. His house is on the corner of Fourth Street and is twelve (12) feet from the street. The Senior Citizens Center is right behind the maintenance easement at the back of his property line. He installed the generator on the side of the house because that is where the utilities are. Photographs of the generator were marked as follows:

- Exhibit A-1 - Photograph of the generator showing the base without the landscape screening
- Exhibit A-2 - Photograph of the generator and landscaping taken across Livingston looking toward the Senior Citizens Center
- Exhibit A-3 - Photograph of the generator and landscaping taken from the abandoned condominium across the street
- Exhibit A-4 - Photograph of the generator and landscaping taken from the Senior Citizens Center parking lot looking toward Livingston Avenue
- Exhibit A-5 - Closer view photograph of the generator and landscaping, and
- Exhibit A-6 - Closer view photograph of the generator and landscaping.

4. Mr. Mellusi responded to questions from the Board. Mr. Mellusi also owns the house next door on Livingston Avenue. Mr. Mellusi ran all the plumbing and put in the pad while he waited for the generator. The work was finished when he found out that he needed a variance. The generator is 14 KW, and he exercises it once a week at 2:00 p.m. on Friday for ten minutes. The Senior Citizens Center is empty at that time. Mr. Mellusi does not have central air conditioning. Mr. Karr asked why he needed such a large generator when he does not have central air conditioning. Mr. Mellusi installed the size generator recommended based on what he has in his house. Mr. Mellusi is agreeable to maintaining the landscaping.

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

## CONCLUSIONS OF LAW

1. The proposed installation of the emergency generator 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 installation of the emergency generator requires the granting of a "c" variance pursuant to N.J.S.A. 40:55D-70(c).

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 variance 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 variance will not substantially impair the intent and purpose of the zone plan and ordinance.

**NOW, THEREFORE, BE IT RESOLVED**, at a meeting on 18th day of September, 2012, that Frank and Annette Mellusi's application for a "c" variance be and hereby is **GRANTED**, subject to the following conditions:

- 1. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance; and

2. The variance 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 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. Spill  
Chairman, Board of Adjustment