

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, Dilip Gohel is the owner of 89 The Fellsway, New Providence, New Jersey (the "Applicant"), and has 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 construction of a fence. The proposed fence in the front yard along Elmore Road is 6 feet high whereas 30 inches is the maximum height permitted. The property is designated as Block 271, Lot 30 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 October 19, 2020; and

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

FINDINGS OF FACT

1. The Applicant, Dilip Gohel, is the owner of 89 The Fellsway, New Providence, New Jersey. The property is designated as Block 271, Lot 30 on the Borough Tax Map, and lies in the R-2 Single Family Residential District.

2. The proposed fence in the front yard is 6 feet high along Elmore Road whereas 30 inches is the maximum height allowed. The proposed fence is in violation of the requirements set forth at Chapter 310, Article V, Section 310-32(B).

3. The Applicant, 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-foot vinyl or wooden fence. He proposes a 6-foot fence because pedestrians will be able to see over a shorter fence.

4. Mr. Gohel responded to questions from the Board. Mr. Grob 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 foot' but his property is small and he does not want to move the fence in more than that. Mr. Ammitzboll stated that he did not see the need to require the Applicant to plant in front of the fence: It is a small lot and if the Applicant wants to plant in the right-of-way, he can do so at his own risk.

5. Ms. Ananthakrishnan agreed with Mr. Ammitzboll and does not 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.

6. Mr. Morgan asked about a 5-foot fence. Mr. Gohel responded that pedestrians can still look over a 5-foot fence so he still would not have privacy. If it were vehicles driving down Elmore Road, a lower fence would work. Ms. Ananthakrishnan believes the situation is different with this fence. Even though Elmore Road has a name, it is not so much a street as a path to Morris Union Jointure Commission.

7. 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.

CONCLUSIONS OF LAW

1. The proposed fence does not comply with the requirements established by Chapter 310, Article V, Section 310-32(B). The request to permit the construction of the fence requires the granting of a "c" variance pursuant to N.J.S.A. 40:55D-70(c).

2. Through the testimony and exhibit presented, the Applicant has established that the application:

- (a) relates to a specific piece of property, namely the Applicant's 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 deviations 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, on this 2nd day of November, 2020, that Dilip Gohel's application for "c" variance relief be and hereby is **GRANTED**, subject to the following conditions:

1. The fence shall be installed in accordance with the plans and testimony presented to the Board and shall be natural wood;
2. The Applicant must obtain a building permit and commence construction within twelve (12) months from the date of its issuance and complete construction within twenty-four (24) months thereafter;
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 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. Ammitzboll, Ms. Ananthakrishnan, Mr. Morgan, Mr. Ping and Mr. Kogan

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 November 2, 2020.

ATTEST:

Margaret Keerty
Secretary, Board of Adjustment

William B. Nashley
Chairman, Board of Adjustment