

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, Chris and Sue Malley are the owners of 31 Vista Lane, New Providence, New Jersey (the "Applicant"), and have applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for dimensional/bulk variances pursuant to N.J.S.A. 40:55D-70(c) for relief from the Borough's zoning ordinance to permit the construction of a new home. The property is designated as Block 70, Lot 15 on the Borough Tax Map, and lies in the R-2 Residential Zone; and

WHEREAS, the Board has reviewed the application, testimony and exhibits presented by the Applicants at the hearings conducted on May 17, 2021, and June 28, 2021; and

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

FINDINGS OF FACT

1. The Applicants, Chris and Sue Malley, are the owners of 31 Vista Lane, New Providence, New Jersey. The property is designated as Block 70, Lot 15 on the Borough Tax Map, and lies in the R-2 Residential District.

2. The Applicants propose the construction of a new home. The Applicant seeks variance relief pursuant to N.J.S.A. 40:55-70(c)1 and/or (c)2 for various bulk variances.

3. Based upon the plan as submitted, the proposed lot area is 8,930 square feet whereas 15,000 square feet is the minimum required. The proposed lot width at the setback is 70 feet whereas 110 feet is the minimum required. The proposed front-yard setback along Vista Lane is

31 feet and the setback along Walton Avenue is 13.5 feet whereas 40 feet is the minimum required. The proposed rear-yard setback to the new home is 41.4 feet whereas 45.5 feet is the minimum required. The proposed side-yard setback to the new home is 11.5 feet whereas 19.5 feet is the minimum required. The proposed building coverage is 1,846.23 square feet whereas 1,643 square feet is the maximum allowed.

4. Mr. Ammitzboll recused himself from the hearing as he lives within 200 feet of the property.

5. The following exhibits were pre-marked:

- Exhibit A-1 – Tree Removal and Landscaping
- Exhibit A-2 – Filed Map
- Exhibit A-3 – Filed Map
- Exhibit A-4 – Render Front
- Exhibit A-5 – Render Front Side
- Exhibit A-6 – Render Rear
- Exhibit A-7 – Photo 1
- Exhibit A-8 – Photo 2
- Exhibit A-9 – Photo 3
- Exhibit A-10 – Rear-yard Compliance
- Exhibit A-11 – Hip Roof Rendering

6. The Applicants were sworn in. James Webber of Dempsey, Dempsey & Sheehan, attorney for the Applicants, described the application to develop the lot at the corner of Vista Lane and Walton Avenue. It is an undersized lot as the minimum lot size in the R-2 Zone is 15,000 square feet and the lot is 8,930 square feet. The maps in Exhibits A-1 and A-2, from 1949 and

1957, respectively, show the layout of the neighborhood and the 15-foot setback on Walton Avenue that was created in 1949. It appears that the property was to be at the end of a cul-de-sac. The cul-de-sac was vacated when Walton Avenue was developed but this was never recorded. Mr. Webber agreed with the Borough that this is a corner lot even though the survey does not include the “corner” of the lot at Vista Lane and Walton Avenue.

7. The property is non-conforming for lot width at the setback, which is 70 feet. The front yard setback on Vista Lane is proposed at 31 feet, the secondary front-yard setback on Walton Avenue is proposed at 13.5 feet, and 40 feet is required for both. The Applicants and their architect have redesigned the house to reduce the side-yard setback variance on Vista Lane. Exhibit A-9 shows the gable roof initially proposed which triggered the side-yard setback variance. The architect has proposed a hip roof which is attractive and responds to the requirement that a side-yard setback must be 60% of the height of the addition. With the garage and screen porch, the house is 2,600 square feet. The redesigned plans as shown in Exhibit A-10, dated May 14, 2021, also reduce the rear-yard encroachment for the screen porch. The rear-yard encroachment is now proposed at 41.4 feet, rather than 43.4 feet, and is now only 2 feet less than the required 45.5 feet. The existing house is 15 feet off Walton Avenue. The proposed setback from Walton is 12.54 feet to the chimney and bay window. The front-yard setback to the front porch on Vista Lane is 31 feet and 36.6 feet to the main body of the house. The setbacks on Vista Lane and Walton Avenue do not comply. The dotted lines on Exhibit A-10 show the building envelope for a compliant structure demonstrating the undue hardship of this application. The proposed home conforms for lot coverage and is only 200 square feet over the allowed building coverage on the undersized lot.

8. Chris Malley testified that they bought the property at the end of January to construct a new home as their primary residence. They are anxious to start construction if approved and worked with their architect to make the house more conforming. They currently live in Summit, but the house is not suitable for his mother-in-law. The proposed house will give them a fourth bedroom so the Applicants can both work from home at the same time. The flat property is better for his mother-in-law than their steep lot in Summit. The Applicants went through multiple iterations of the plans based on comments in the Borough Planner's review letter but kept the two-car garage. Mr. Malley believes the two-car garage is better than having multiple vehicles parked in the driveway plus they plan to get electric vehicles and need the two-car garage to charge the vehicles.

9. The Board had no questions for the Applicants. The hearing was opened to questions from the public. Chris Cirrotti, 35 Walton Avenue, asked if the Applicants plan to maintain the property before they start to build. Mr. Malley responded that the property will be maintained.

10. Gregory Ralph was sworn in and presented his credentials as a licensed professional architect. The Board accepted him as such. Exhibit A-10 shows all the changes proposed except for the rendering for the hip roof. Mr. Ralph pulled the screen porch back. The originally proposed porch had 12 feet by 12 feet of usable space and extended 12 feet into the rear yard. The porch is now proposed to extend 10 feet into the rear yard. The screen porch was a core design feature and to reduce it even further, it would not be usable. The porch has a roof and is screened for one-season use. Mr. Malley testified that they would agree to a condition that it would always be a one-season porch.

11. The following exhibits were marked:

- Exhibit A-12 - Color rendering of the front of the house showing the proposed hip roof, and
- Exhibit A-13 – Color rendering of the front side of the house showing the proposed hip roof

12. By changing to a hip roof, the required side-yard setback is 11.598 feet (60% of the height to the eve of 19.33 feet) so the proposed setback is only 1.5 inches over. Changing the screen porch also reduces the amount of building coverage.

13. Mr. Gregory reviewed the floor plans in Exhibit A-10. The first floor is 1,158 square feet with an additional 447 square feet for the garage which is 20 feet wide and 21 feet deep with a 16-foot door and 17-foot-wide driveway. The screen porch is 144 square feet, and the front porch is 97 square feet. The screen porch has been reduced 24 square feet and was widened to 15 feet to offset the reduction in depth. The application is still over on building coverage. The living room is 10 feet by 11 feet and the dining room is 11 feet by 13 feet. There is a bay window on the left side of the house and a chimney bay to break up the massing on Walton Avenue. The front porch is purposeful for the occupants. The foyer is two stories. The 1,472 square foot second floor has two bedrooms with a closet laundry. The Applicants would have liked one to two additional bathrooms as is common for a four-bedroom house but are proposing a master bathroom and a hall bathroom. Pull-down steps provide access to the unfinished attic.

14. Ms. Mertz asked about the basement. The basement will be finished. The soil on the property is clay but the water can be mitigated with water proofing and storm water management to which the engineer will testify.

15. Mr. Ralph responded to questions from the Board. The Board commented that the right side of the house does not have many windows. The garage leads to a mudroom where there is access to a pantry. The Applicants wanted smaller windows upstairs. The neighbor's house on this side of the house has four windows. The window above the bay window on Walton Avenue as shown on Exhibit A-13 breaks up the wall. Mr. Ralph did not include a demolition plan, but effectively it is a new house as the existing house is a slab on grade. Ms. Ananthakrishnan asked about moving the house back. The house could be moved back 9 feet as shown by the dotted lines on Exhibit A-10 which would provide a 40-foot setback on Vista Lane. Mr. Ralph discussed this with the Applicants, but they wanted a usable back yard and porch, so the design as proposed made sense. Mr. Malley acknowledged that the house could be shifted back, but this would encroach on the neighbors, and the variance relief for the screen porch would be more. The Applicants would consider shifting the house. The air conditioning condensers will most likely be located at the back right corner of the lot behind the garage. There will be lighting in the ceilings of the front porch and screen porch, along the front pathway and over the garage and rear steps. No lights are proposed on the Walton Avenue side or the right side of the house.

16. Chairman Nadelberg commented that the right elevation is flat and asked if more detail could be added. The window on the right elevation is in the mudroom. Mr. Ralph testified that he can look at bringing the front roof line around to the right side of the house without affecting the setbacks. Mr. Malley agreed to do this. The house will have clapboard siding, an asphalt roof, double-hung windows and Aztec trim.

17. The Board asked about vegetation on the property. Mr. Malley testified that there are short shrubs and then a wooden fence that separates the yards plus a tree at the front between the properties. The two trees in front to be removed are ash trees.

18. The Board had no further questions for the Applicants. The hearing was opened to questions from the public. Mr. Cirrotti had multiple questions about the height of the existing house, height of the new house from the average grade, side-yard setback, existing front-yard compliance, Walton Avenue side features, depth of the current house and the number of two-car garages on Vista Lane, Walton Avenue or Osborne Avenue. Hans Ammitzboll, 15 Birch Place, noted that the proposed revisions answered many of his questions but asked if the Applicants considered a one-car garage to allow architectural features on the side of the house. Mr. Ralph considered a one-car garage, but this was a non-starter for the Applicants as they want to garage their cars: Two-car garages are sought after in New Providence. The garage has a single 16-foot-wide door, so it is not as wide as having two doors. Mr. Ralph felt that he minimized the impact of the two-car garage through the design. There were no further questions for the witness.

19. Kevin Robine, Dykstra Walker Design Group, was sworn in and presented his credentials as a licensed professional engineer. The Board accepted him as such. Referring to Exhibit A-1 – Tree Removal and Landscaping, Mr. Robine described the property. The existing house has foundation plantings, trees and a hedgerow along a portion of Walton Avenue and two 3-foot wooden fences on Walton Avenue and Vista Lane. Two of trees on Walton Avenue are ash trees. There is no final landscape plan yet, but the proposed house will have foundation plantings and screening on Walton Avenue. The existing hedgerow on Walton Avenue consists of overgrown cedar trees that have grown together and have not been maintained. The cedar trees will be removed and replaced with Green Giant arbor vitae planted on 5-foot centers. These grow

fast and will provide screening and are also the most deer resistant of the arbor vitae. The Applicants were agreeable to giving the Board jurisdiction over the landscaping that would require them to be replaced if necessary.

20. Ms. Mertz asked about the existing fence. The Applicants will maintain a 3-foot fence but may replace the existing one most likely with a vinyl fence in the same location. Mr. Malley stated that the fence needs to be replaced and he would be okay with a wooden fence. Ms. Mertz asked about the walkway that goes around the right side of the house back to the screen porch. Mr. Robine responded that the full build-out has not been done but it will show the walkway, fence and gate. Ms. Mertz also asked about the Belgian block curbing on the driveway. Mr. Malley plans to re-use the existing Belgian blocks on the new driveway which will pitch toward the street.

21. Ms. Mertz then asked how the Applicant propose to keep the house dry and if sump pumps are proposed. Mr. Robine responded that the Applicants will prepare a grading plan. The grade will be pitched away from the house to keep the runoff away from the foundation. He proposes footing drains and a sump pump. Because of the clay soil, there is not much infiltration. The runoff will be directed to the front and discharged to Vista Lane and Walton Avenue. The stormwater inlets are upstream from the property so there will not be a physical connection to the storm sewer; therefore, the storm water will be directed to the roadways where it will run to the storm sewers. The site does not have a stormwater management system now.

22. Chairman Nadelberg asked about planting deciduous trees. Mr. Robine responded that there will be full landscaping around the perimeter of the house with the final type of plantings to be determined by the Applicants. Mr. Ping asked what would be planted on Walton Avenue since the house will be 53 feet deep and two trees are being removed. Mr. Robine stated that

deciduous flowering trees such as dogwoods may be planted on Walton Avenue to break up the depth of the house and provide visual appeal. Mr. Webber noted that the Borough does not have a forester and asked who would be responsible for maintaining jurisdiction over the landscaping. The Applicants were comfortable with a condition that the landscaping plan would be subject to review and approval by Mr. Lynch.

23. The Board had no further questions for Mr. Robine. The hearing was opened to questions from the public. Mr. Cirrotti asked about the runoff and if the walkways were included in the calculation of impervious coverage. Dry wells will not work because of the clay soil so the leaders will discharge to grade where the runoff will be directed to the curb lines out to the street. The water will flow to the nearest inlet which is 230 feet to the west on Walton Avenue. The impervious coverage of the walkway will be evaluated when the final plans are submitted. Mr. Cirrotti asked about getting the water from the northwest corner of the property to the street. Mr. Robine responded that it is not possible to get all the water to the street. He does not want to change the existing drainage, but the rear yard will be flattened to get the water to the street and not to the point of the property on Vista Lane. Mr. Robine will prepare a lot grading plan for review by the Borough Engineer and will abide by any suggestions by the Engineer. Mr. Webber confirmed that the lot grading plan will be subject to review by the Borough Engineer and that a detention system may be possible to infiltrate the subsurface if the soil will handle it. Mr. Cirrotti asked if the landscape plan and proposed height and materials for the fence will be submitted to the Board prior to a vote on the application. Mr. Webber responded that the Applicants plan to plant arbor vitae, and if replaced, the fences will be 3-foot wooden fences. Mr. Cirrotti asked about the existing wire fence. Mr. Robine confirmed that there is a wire fence in the hedgerow now which will be replaced. The arbor vitae will be planted between the right-of-way and the

fence and they will screen the fence. Mr. Cirrotti also asked about the grade of the driveway. The grade of the driveway will be maintained to the maximum extent possible. The “knob” in the yard will be removed to increase sheet flow on the property.

24. Mr. Ammitzboll asked about the hedgerow and the wire fence. Both will be replaced. Mr. Ammitzboll noted that a total of 37 trees will be removed, and the Applicant will plant 14 and asked for confirmation of this. Mr. Robine confirmed this stating that the existing cedars are too crowded and are not in good condition. Mr. Ammitzboll stated that the replacement rate is usually one for one and asked if the Applicants would consider planting along Walton Avenue to break up the 53-foot-deep house and if the hedgerow could be extended east. Mr. Robine responded that the Applicants want to plant on that side of the property to break up the façade, but what is proposed will create a “wall” plus the 3-foot fence will have a screening effect. Mr. Ammitzboll asked about the large tree north of the driveway, 6 feet from the driveway on the common property line but mostly on the property in question. The tree is not being removed. Mr. Ammitzboll asked how it will be protected. Mr. Robine responded that the Applicants will be pulling from a shallow surface and there will be no impact on the roots. Mr. Webber stated that the lot grading plan will provide details for tree protection for the trees to be preserved. Mr. Ammitzboll asked about the rear-yard drainage as there is a 3-foot drop off to the property to the west and how runoff will be controlled during and after construction to keep the water off the neighbor’s property. The berm on the property will be eliminated and flattened. A silt fence on Walton Avenue and along the rear and side property lines will keep the water from running to the street and the neighbors’ properties and to prevent soil erosion. Mr. Ammitzboll asked about a swale on the rear property line to prevent water from cascading to the west and to get it to Walton Avenue. The water on the lot flows from south to north not to the west. Mr. Robine understands

the intent to get water to a conveyance system as soon as possible and to protect adjacent properties. Mr. Webber stated that investigating a swale could be a condition of approval.

25. Kristen Gulino, 32 Walton Avenue, asked how long it takes for the arbor vitae to get to maturity. They will be 6 feet tall and 3 feet in diameter at planting and will fill out at the bottom as they grow. The growth rate is 2 feet to 3 feet a year so they will be 12 feet tall tree years after planting. Ms. Gulino asked if they will be planted lower to control the water flow to her yard as the property is up higher now. She also asked about the wire fence. Mr. Robine responded that the property will be re-graded, but this will not change the drainage pattern to her yard. He will look at a swale as part of the drainage plan. The wire fence will be replaced in the same location.

26. There were no further questions for Mr. Robine.

27. Mr. Webber asked for a brief break to consult with the Applicants. Following the break, Mr. Webber confirmed that the Applicants were comfortable with conditions discussed for grading, stormwater management and a landscaping plan subject to review and approval by the Borough. Mr. Webber summarized the application stating that it is an attractive home and provides a visual benefit. The variance for the side-yard setback has been reduced to a minimal degree.

28. The hearing was opened to comments from the public. Ken Tracey, 21 Vista Lane, was sworn in and stated that he is concerned about the front-yard setback on Vista Lane. From an architectural view, the other houses on Vista Lane are in alignment. Traffic comes up Walton Avenue from Passaic Street to Vista Lane and there are a lot of children that walk in the street. The reduction in the front-yard setback results in more of an obstruction for drivers at the corner of Walton Avenue and Vista Lane.

29. Mr. Cirrotti was sworn in and stated that he has concerns about the application and thinks the Applicants can do more. They are creating a front-yard variance on Vista Lane when there is no need to do so and the proposed setback is out of character with the neighborhood as is the two-car garage. The lot is not big enough to support a two-car garage. He is concerned about the height of the house although the hip roof helps mitigate some of the height. The front-yard setback on Walton Avenue is even worse and the setback would have to be 40 feet for it to be in line with the houses on Walton. He understands it is a corner lot, but the house at the corner of Wellings Road and Walton is the way to situate the house so that there is no further encroachment into the front yard. The longest façade will be on Walton Avenue with the smallest setback which dramatically changes the corner. Setbacks are established for a reason and encroaching farther into the setback on Walton Avenue is a problem. It is a beautiful design, but the Applicants could do more to make the house look as if there are two front facades. The proposed house will be 13 feet higher than the existing house and twice as deep. The drainage has not been thought out and he has no level of comfort that the drainage has been addressed. There is more architectural treatment on Vista Lane and not much on the Walton Avenue façade. There is a lack of specificity on the landscaping. The Board should be careful about stretching the boundaries. He strongly objects to the application and hopes the Applicants withdraw the application and reconsider their plans. He asked the Board to deny the application or not act at this meeting.

30. Mr. Ammitzboll was sworn in. He was wholly against the original application, but the revisions have addressed many of his concerns. The hip roof helps with the setbacks and the massing of the house, and he likes the changes. The rooms are reasonably sized. The master bathroom and hall bathroom are appropriate and are not typical of what is happening now with additions and new construction. He appreciates the efforts to control the mass but shares the

concern about the setback and the traffic. The corner setbacks in the neighborhood are an issue with traffic given that traffic comes in from Passaic Avenue. Maintaining a 40-foot front-yard set is important. Mr. Ammitzboll would like the Board to consider asking the Applicants to give some thought to moving the house back on the lot.

31. Ms. Gulino was sworn in and agreed with Mr. Cirrotti. It is a lot of house on the Walton Avenue side and she has safety concerns about the corner with the proposed front-yard setback. Pushing the house back farther will make the screen porch closer to her property. She believes additional considerations may be needed.

32. Mr. Webber stated that the Applicants have 9 feet to move the house back, but the screen porch is an important element of the Applicants' plan. If the house is moved back; the rear yard setback will be 35 feet. The setback could be ameliorated by landscaping. Mr. Webber asked for a recess to consult with the Applicants.

33. Following a brief recess, Mr. Webber asked to carry the hearing to June 7th with the understanding that it may not be heard that night because there is a full agenda.

34. This hearing was carried from May 17th, June 7th and June 21st. No testimony was heard on June 7th or 21st. Mr. Grob was not present for the testimony on May 17th but watched the video of the proceedings and was eligible to vote on the application.

35. Mr. Webber described the changes the applicant has made to the plans based on comments from the Board and members of the public at the hearing on May 17th that make the dwelling more compliant. At the May 17th hearing the Applicants presented a rendering to show the change to the roofline from gables to a hip roof to reduce the variance for the side-yard setback on Vista Lane. Since then, the Applicants have relocated the screen porch to eliminate the variance for the rear-yard setback and have also eliminated the variance for the front-yard setback. The

Applicants have calculated the side-yard setback on Vista Lane to be 11.5 feet. Mr. Webber noted that the Borough's zoning officer has calculated the minimum to be 12.3 feet. One of the two bump outs on the Walton Avenue side of the house that encroached 2.5 feet into the setback has been removed.

36. The following exhibits were pre-marked:

- Exhibit A-14 – Front Side Rendering 6.28.21
- Exhibit A-15 – Front Rendering 6.28.21
- Exhibit A-16 – Landscape Rendering 6.28.21

37. The roof has been changed from a gable to a hip roof, as shown on Exhibit A-14 which is a color rendering of the front of the house on Vista Lane and Walton Avenue side of the house. The hip roof has reduced the side-yard setback requirement on the Vista Lane side of the house to 12.3 feet with a proposed setback of 11.5 feet. The 15-foot front-yard setback on Walton Avenue is an existing non-conformance. The proposed setback is 12.54 feet at the bump out and 15 feet for the rest of the house. The relocation of the screen porch to the rear right corner of the house has reduced the building coverage. The new porch is two- rather than three-sided and is tucked into the back of the house. As previously testified, the front- and rear-yard setback variances have been eliminated.

38. Mr. Ralph, the Applicants' architect, previously sworn in on May 17th, was recalled. Mr. Ralph moved the house back to maintain a 40-foot front-yard setback on Vista Lane. He also relocated the screen porch to the right rear of the house where the rear landing was previously proposed and reduced the porch by 40 square feet. Moving the porch eliminated the variance for the rear-yard setback. The roofline is now a hip roof reducing the non-conformance for the side-yard setback on Vista Lane. The hip roof on Walton Avenue along with the bay roof

and the proposed landscaping provide architectural interest. A door, windows and landing have been added to the right side of the house for architectural interest and to soften that side of the house plus they are practical additions. The conforming front- and rear yard setbacks help with the massing plus 12 feet of house has been removed from the back of the Walton Avenue side.

39. Mr. Ralph addressed comments in the Planner's revised review letter dated June 22, 2021. In response to comment #5, Mr. Ralph testified that the treads on the front steps are 1 foot each. The steps are 10 feet wide to match the porch. The steps are 40 square feet and do not encroach into the front yard. The revised zoning review does not cite the steps as an encroachment requiring a variance. He believes the width of the steps enhances the look of the house. The screen porch has been relocated to the rear right of the house. The length of the house on Walton Avenue has been reduced from 55 feet to 43 feet. The 8,960 square foot lot inhibits the use of the property as does the lot width at setback. A 17.5-foot-wide building envelop would be allowed on the lot. Mr. Ralph did what he could to reduce the lot coverage. Mr. Ralph believes the proposed building coverage of 1,800 square feet is consistent with the neighborhood and the pattern of development in the neighborhood. The screen porch has been reduced by 40 square feet so the proposed dwelling is now only 150 square feet over the maximum allowed.

40. Mr. Ralph and the Applicants responded to questions from the Board. Chairman Nadelberg asked if the Applicants intend to have a shed roof that would wrap around from the garage on the Vista Lane side of the house as discussed at the May 17th hearing. Mr. Ralph played with wrapping the garage roof around to the side but did not see the benefit and instead added the door and windows to that side of the house. The Applicants would consider adding a roof over the side door. The Board agreed that a roof over the side door would provide another architectural feature on that side of the house as well as shelter from the elements.

The Board had no further questions and the hearing was opened to questions from the public. Mr. Ammitzboll asked about lighting on the screen porch. The porch will have recessed lighting directed downward. Ms. Malley stated that the porch will have a ceiling fan and recessed lighting only. The Applicants were comfortable with a condition limiting the lighting on the screen porch as testified.

41. Mr. Cirrotti asked where the mechanicals will be located as it looks as if they are in the front yard on Walton Avenue. The mechanicals will be located at the rear of the house on Walton Avenue as shown on Exhibit A-16, a color rendering of the landscape plan. Mr. Webber noted that the mechanicals will require a variance although this is not cited in the revised zoning review letter. The unit will be appropriately screened. Two condensers may be required. If a second condenser is needed it will be located to the right of the unit as shown on Exhibit A-16. The condenser is located 17 feet from the property line. It's another 8 feet to the curb and 50 feet to the right-of-way so the unit will be 115 feet away from the house across the street on Walton Avenue. Mr. Grob asked why the condenser must be located there. Ms. Malley responded that the condenser will be screened with landscaping, and they cannot put the condenser right next to the screen porch. Mr. Grob asked if the condenser could be located somewhere else as the shrubs will not stop the sound from the condenser(s). Mr. Webber suggested a solid wood buffer around the condenser(s) in addition to the shrubs. The Applicants were agreeable to installing a solid wood structure around the condenser(s) in addition to the landscaping as a condition of approval.

Mr. Ammitzboll asked if there will be any other lighting in the back yard. There will be no other lighting in the back yard, and the applicants were comfortable with this being a condition of approval.

42. Mr. Robine, previously sworn in on May 17th, was recalled and described the colorized enhanced landscape plan previously marked as Exhibit A-16. Flowering dogwood trees have been added to the front and rear corners of the house on the Walton Avenue side. The cedar tree hedgerow along Walton Avenue will be removed and replaced as testified on May 17th. There will be additional foundation plantings along Walton Avenue and Vista Lane. Hollies, boxwoods, and seasonal grasses will be planted along the foundation on Walton Avenue. The Vista Lane side of the house will have hollies hydrangea, seasonal grasses, and boxwoods. The two cedar trees on the southwest corner of the property obstruct the view driving west to east on Walton Avenue and will be removed for safety. The hedgerow at the back of the property will be replaced and additional hydrangea and rhododendron will be planted at the back right corner of the property. Mr. Robine addressed comment #3 in the Planner's revised review letter regarding the fence. The proposed aluminum fence is 4 feet high and 50% open and will enclose the rear yard. No fence is proposed in the primary front yard.

43. Mr. Robine responded to questions from the Board. Mr. Grob commented that the cedars on the southeast corner of the property provide a visual buffer. Mr. Robine believes they are a safety issue because of the sight distance and removal of them will increase the sight distance to 280 feet. He added that large trees in proximity to a house should be removed for safety. The Applicants will plant two flowering dogwoods along the Walton Avenue side of the house and a river birch in the front by the corner of Walton Avenue and Vista Lane. Mr. Grob does not think the 12-foot trees impact the sight line and asked about trimming them to control the limbs over the

house. He added that the trees reduce energy costs by providing shade which the dogwoods will not do. Mr. Webber asked if removal of one of the trees would improve the sight distance. Mr. Robine responded that the cedars represent a safety issue. Removal of the one closest to the intersection of Walton Avenue and Vista Lane would improve the sight distance. Mr. Grob also asked about the use of the same plants on both sides of the house when the sun conditions on either side are different. Mr. Robine believes the hollies and boxwoods will survive on either side of the house as they can take shade. Mr. Grob asked about tree protection during construction. Tree protection will be included on the lot grading plan. Ms. Malley responded that the neighbor on Vista Lane would like the tree to the right of the property to be removed, but they are not planning to remove it. She is a gardener and will replace plantings should they die. Tree protection of the tree in the right front corner of the property during construction was accepted as a condition of approval. Mr. Robine testified that 25% to 30% of the canopy of the tree in the back yard is compromised and presents a safety hazard and will be removed. Mr. Robine believes that carrying the arbor vitae hedgerow all the way to the front of the house would be too much and would look like a fortress.

44. The Board had no further questions and the hearing was opened to questions from the public. Mr. Cirrotti asked about planting street trees on Walton Avenue as the Applicants propose to remove the large trees on Walton Avenue. Mr. Robine responded that there is limited space from the house to the curb line and he is concerned about large trees overhanging the house which is why he proposed the flowering trees at the corners of the house rather than street trees. Mr. Cirrotti asked if the two dogwoods are reasonable replacements for the trees given the size of the new home. The large existing trees need to be removed for safety: Mr. Robine favors safety

over large older trees. The trees along Walton Avenue are ash trees susceptible to the emerald ash borer. The dogwoods will be 2 inches to 2.5 inches in caliper at planting.

45. Mr. Robine testified that he has not prepared a lot grading plan yet. He will work with the Borough's engineer on storm water management on the site.

46. Mr. Ammitzboll asked about the trees. Mr. Robine does not believe the existing trees provide screening on Walton Avenue and the dogwoods at full height will provide more canopy and screening.

47. Ms. Gulino asked if the hedgerow by her property will be replaced at the same grade and if the fence will be on the other side of her fence. The grade will be maintained for the hedgerow and the 4-foot metal fence will be on the other side of her fence.

48. Mr. Ammitzboll asked about grading at the back of the property as it seems water will drain to the west. He also asked if the Applicants could install a berm or swale to keep the water from running onto the neighbor's property. Mr. Webber responded that the Borough engineer must approve the lot grading plan and consideration of a berm or swale in the lot grading plan could be included as a condition of approval. Mr. Robine responded that a berm could be considered and would be located farther away from the root zone of the existing trees.

49. Mr. Cirrotti asked why Mr. Robine did not look at the grading further to ensure that the Applicants are not making the drainage worse. The lot grading permit is a stipulation of permit approval and is subject to the Borough engineer's approval. Mr. Robine hopes that the Borough has confidence in its engineer to ensure the drainage issues are addressed when the lot grading plan is submitted.

50. Mr. Grob asked about the roof drains. These will be part of the lot grading plan.

51. Mr. Ammitzboll asked Mr. Lynch to describe the requirements of a lot grading plan. The Applicants will have to provide a lot grading plan that provides storm water management and an overflow mechanism. The lot grading permit is not intended to eliminate all water on the property but to ensure that there will be less water on the property. The purpose of the lot grading plan is not to make drainage on the neighbors' properties better but not to make sure it isn't worse. The Applicants' engineer needs to figure out how to collect and manage water so that there will be an improvement.

52. Mr. Cirrotti asked about the drywell and overflow and if the water can flow to the curb line on Walton Avenue. Mr. Lynch responded that the overflow must cut through to get it to the street and not to the neighbor's property. The Applicants can get a road opening permit to get the water to the storm sewer. Mr. Robine responded that the storm basin is 230 feet to the west. There is a storm drain on Vista Lane, but it is uphill. He did not see a pipe from Vista Lane to Walton Avenue. If there is one, he can tap into it to get the water to the storm basin on Walton Avenue.

53. There were no further witnesses or questions from the public. The hearing was opened to comments from the public.

54. Mr. Cirrotti was sworn in. He is happy to see the changes to eliminate or reduce the setback variances and there are some improvement regarding the length of the house on Walton Avenue, but he still has concerns regarding the landscaping, drainage and mass. The Walton Avenue elevation still looks like the side of a house as it did with the first renderings. It does not look like the front of a house even though it fronts the street. It looks like a vanilla box on Walton Avenue. If the house were to be set back to the required distance on Walton Avenue so that it is in line with Dr. Gulino's property to the west, it would have to be situated on the south side of the

screen porch: The house clearly protrudes into Walton Avenue. The Applicants are not willing to move the mechanicals from Walton Avenue and they should be moved. He is thankful no generator is proposed. He would like to see a condition that the house be white or a light color which is important to reduce the massing. No drainage or lot grading plan was provided. It seems as if the Applicants have taken a step in the right direction with these changes, but there needs to be a careful design. There are fewer architectural features along Walton Avenue than in the original plans. Removal of the large trees and replacement with small dogwoods is inadequate. The house still has a two-car garage. The façade is 20 feet longer and twice as tall as the existing house. Mr. Cirrotti does not believe the Applicants have gone far enough in the revised plans.

55. Mr. Ammitzboll was sworn in and stated that he likes the revised plans. The Applicants have addressed many of the concerns from the first hearing. He is not in favor of the two-car garage, but it fits. The Applicants have given up a lot of internal space for the garage rather than making the house bigger. The revised plans meet the criteria in approving an application. The front- and rear-yard setback variances have been eliminated. The house is not overly large, and it fits the direction of development in the neighborhood. Mr. Ammitzboll was impressed with the effort the Applicants and their professionals took to address the Board's and neighbors' concerns. The drainage is important to him. He thinks the Board should recognize it as a good application given the conditions.

56. Ms. Gulino was sworn in and thanked the Applicants for listening to the Board and neighbors at the first hearing. She appreciates that the Applicants are willing to work on the drainage and hopes they will work with the Borough so the drainage on her property does not get worse.

57. The Board requested that Mr. Webber review the proposed conditions of approval should the application be approved, and the hearing was closed.

CONCLUSIONS OF LAW

1. The proposed new home does not comply with the requirements established by Chapter 310, Article IV, Section 310-10, Schedules II & III. The request to permit the construction of the new home requires the granting of "c" variances pursuant to N.J.S.A. 40:55D-70(c).

2. Through the testimony and exhibit 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 deviations would substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance.

3. The Board also found that the new home construction would not negatively impact the neighborhood.

NOW, THEREFORE, BE IT RESOLVED, on this 26th day of July 2021, that Chris and Sue Malley's application for "c" variance relief be and hereby is **GRANTED**, subject to the following conditions:

1. The new home shall be constructed in accordance with the plans and testimony presented to the Board.
2. A small roof will be added over the side door on the Vista Lane side of the house.
3. A request to amend the application to include variance relief for an accessory structure in the front yard for the air conditioning condenser to stay where it is proposed at the back of the house on Walton with the condenser to be screened with a solid fence as well as landscaping.
4. The lighting on the screen porch, which will have a ceiling fan and ceiling lights, will be above the eaves.
5. There will be no additional lighting in the back yard.
6. With respect to the two cedar trees in the southeast corner shown on Exhibit A-14 to be removed, they will be removed if their removal is needed to improve sight distance. This will be subject to a field change as needed.
7. The tree in the right front of the property on Vista Lane will be protected during construction. Tree protection details will be provided on the lot grading plan.
8. A berm or other storm water management system will be installed to keep the water from flowing from the property in question onto Lot 16 (25 Walton Avenue).
9. The final submitted plans relating to the application are subject to review by the Applicants' and the Borough's engineers.
10. The Applicants 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;

11. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance;
12. 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: Ms. Ananthakrishnan, Mr. Grob, Mr. Morgan, Mr. Sorochoen, Mr. Kogan,
Mr. Dunscombe and Chairman 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 August 2, 2021.

ATTEST:


Secretary, Board of Adjustment


Chairman, Board of Adjustment