

**BOROUGH OF NEW PROVIDENCE  
BOARD OF ADJUSTMENT  
MEETING MINUTES – MONDAY, NOVEMBER 21, 2016 – 8:00 p.m.**

Present: Chairman Nadelberg, Mr. Grob, Mr. Karr, Mr. Morgan, Mr. Ping (8:07 p.m.), Mr. Phil Morin, Board Attorney, and Margaret Koontz, Secretary

Absent: Mr. Ammitzboll and Mr. DeSarno.

**A. CALL TO ORDER**

Chairman Nadelberg called the meeting to order at 8:03 p.m.

**B. PUBLIC NOTICE**

Chairman Nadelberg stated that this is a meeting of the Board of Adjustment of the Borough of New Providence, County of Union, and State of New Jersey. Adequate notice of this meeting was given in accordance with P.L. 1975, Chapter 231, in that a notice was made in conformance with Section 13 of the Act. He also stated the protocol for the meeting.

**C. RESOLUTIONS**

Peter and Elaine Weiss Application #2016-26  
26 Valentine Road, Block 182, Lot 21, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed front yard to the addition is 31 feet whereas 40 feet is the maximum allowed. The proposed building coverage is 2209 square feet whereas 1826 square feet is the maximum permitted. The existing driveway abuts the property line. The existing patio is 1 foot off the property line. The existing shed is 3.5 feet from the side property line. The existing front-yard setback is 29.9 feet.

**Mr. Grob moved this and Mr. Morgan seconded same. Members voting in favor: Mr. Grob, Mr. Karr, Mr. Morgan and Mr. Nadelberg.**

Sean and Amy Newcombe Application #2016-27  
138 Crane Circle, Block 200, Lot 3, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a deck. The proposed building coverage 2,611 square feet whereas 2,385 square feet is the maximum

**Mr. Grob moved this and Mr. Karr seconded same. Members voting in favor: Mr. Grob, Mr. Karr, Mr. Morgan and Mr. Nadelberg.**

Brendan and Melissa Reilly Application #2016-28  
45 Ashwood Road, Block 91, Lot 4, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a deck. The proposed rear-yard setback to the deck is 25 feet whereas 56.66 feet is the minimum required. The existing front-yard setback to the house is 28.17 feet along Sherwood Drive.

**Mr. Karr moved this and Mr. Morgan seconded same. Members voting in favor: Mr. Grob, Mr. Karr, Mr. Morgan and Mr. Nadelberg.**

**D. PUBLIC HEARINGS SCHEDULED FOR NOVEMBER 21, 2016**

Lena Chen Application #2016-02  
87 Passaic Street, Block 53, Lot 1, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II and III, to construct a new house.  
The proposed lot area is 11, 867 sq. ft. whereas 15,000 sq. ft. is the minimum required.  
The proposed lot width at the right of way along Passaic Street is 58 feet whereas 70 feet is the minimum required. The proposed lot width at the setback along Passaic Street is 70 feet whereas 110 feet is the minimum required. The proposed front yard along Lincoln Lane is 15.75 feet and 22.9 feet along Passaic Street. The proposed side-yard setback is 10.48 feet whereas 11.10 feet is the minimum required. The proposed driveway width is 19 feet whereas 16 feet is the maximum permitted. At this time the review cannot be completed due to missing elevation information. The property is on the Borough historical register. The property has two existing sheds one is 3 feet from the property line and the other is in the right of way along Lincoln Lane. Also there is an existing 6'high fence along Lincoln Lane. The application must adhere to the Borough's grading ordinance.

This hearing will be carried to December 5, 2016. Mr. Morin will look into the appropriate Board action if the applicant does not submit revised plans before the extension of time to act granted to the Board expires on December 31, 2016.

George Castellano Application #2016-29  
139 Madison Avenue, Block 80, Lot 2, 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 along Madison Avenue is 5 feet high whereas 30 inches is the maximum height allowed.

Mr. Ping arrived at 8:07 p.m., prior to the hearing, and was eligible to participate in the hearing.

George Castellano was sworn in and described his application to install a 5' high fence across the front of his property on Madison Avenue. Because the lot is an irregular shape, the side yard acts as the back yard. He proposes to replace the existing chain link fence on the south (right) side of the property with a 6' fence that would gradually taper down to 5' to the proposed 5' fence across the front of the property. The fence in front would run parallel to Madison Avenue and then up along the side of the driveway where there would be a gate. The fence along Madison Avenue would be set back 12' which seems reasonable and won't affect the sight line. The fence will provide privacy and security for his children and a future dog. A fence is also proposed on the north (left) side of the house to close off the property: It may or may not have a gate.

Mr. Castellano responded to questions from the Board. Mr. Castellano's neighbor to the north has a white vinyl fence which he would like to match. Mr. Karr noted that the neighbor's fence is 40' not 12' back from the road. Mr. Karr would like to see a natural wood fence. Mr. Grob disagreed with the testimony that the side yard acts as a back

yard stating that the lot is only slightly irregular in shape and is not on a corner so the side yard is a side yard and not a back yard. Mr. Grob added that the fence as proposed is close to the front of the lot and the Board typically doesn't grant a variance for a fence of the height requested when not on a corner lot. Mr. Grob was greatly concerned about and opposed to a 5' fence in the front yard so close to the street and doesn't believe such fence would be an enhancement to the neighborhood. Mr. Castellano responded that installing the fence 40' back significantly reduces the enclosed area for his children to play. In addition, other neighbors have fences in front.

The following exhibits were marked:

- Exhibit A-1: A photograph of the fence on 26 Hedden Place at the corner of Hedden Place and Madison Avenue which is diagonally across the street from the applicant
- Exhibit A-2: A photograph of the fence at 26 Hedden Place taken from the applicant's driveway to show his perspective of the neighbor's fence, and
- Exhibit A-3: A photograph of Madison Avenue looking toward Commonwealth Avenue.

Mr. Castellano believes the fence shown in Exhibit A-1 is 6' high. Diagonally across from the applicant the other direction is a chain link fence but Mr. Castellano didn't have a photograph of it. Exhibit A-3 shows the area where he would put the fence. The fence in the foreground of Exhibit A-3 is a rail fence with chicken wire between the rails. The proposed fence along Madison Avenue would be similar to the fence shown in Exhibit A-1. It would be a white picket fence not solid with shrubbery planted in front of it. Mr. Castellano would not be opposed to removing the three large pines along the front of the property. The proposed fence would be installed behind the pines if he can't remove them. The pines are fairly large, 12" to 16" caliper, and Mr. Castellano believes they are unhealthy. They are about 12' from the road. Mr. Morin clarified that the trees are not part of the application. Mr. Castellano did not talk to any of the neighbors but none was present in the audience. Mr. Grob believes the applicant could put plantings in front of the fence to achieve privacy but could also achieve privacy with a less intrusive fence than proposed. Mr. Grob does not believe the applicant would have to remove the pine trees to plant shrubs in front of the fence and advised the applicant that a landscaper would know what shrubs would grow there.

Mr. Castellano asked how the proposed fence is a detriment when other properties in the neighborhood have fences that are less appealing. He believes the proposed fence is an upgrade not a detriment. He would like to plant *Arbor Vitaes* in front of the fence along Madison Avenue but the pines trees make this tough to do. Mr. Grob pointed out that the plantings shown in Exhibit A-2 are in the public right-of-way (ROW). Mr. Karr added that these were planted in the ROW without a permit. The Board discussed whether the proposed fence would have to be moved back so that the plantings in front of it will be 10' back from the curb out of the ROW. The Board asked if Mr. Castellano would consider a 4' fence. Mr. Castellano prefers a higher fence because his children are young and he's not sure what size dog he will get.

Mr. Grob reviewed the proposed application. A fence this close to the street in a front yard is normally not approved; the white vinyl is not a material of the Board's choice; and, removing the pines is not in the applicant's favor. The proposed remedy would be to move the fence farther back on the property; plant shrubs in front of the fence; and,

leave the pines to maintain the character of the street. Installing the fence 22' back from the curb with plantings in front would still provide yard for the applicant's children to play as well as privacy and security. The Board is charged with maintaining the town's character. Moving the fence back would achieve this and also keep the ROW clear. The Board noted that the line on the survey is the property line and not the curb: therefore, the location of the fence as marked on the survey may be 22' from the curb line.

Mr. Castellano would like the fence to be 12' from the curb but was unaware of the 10' public ROW. He expressed concern about losing 8' of yard if he has to install the fence 22' from the curb. Noting the impasse, Chairman Nadelberg offered Mr. Castellano the option of carrying the hearing so that he can measure from the curb and mark the location of the fence and also mark up the survey to show the location of the trees. Mr. Karr informed the applicant that he can avoid a variance by moving the 5' fence back so that it aligns with the front of the house. He could also install a 30" fence along Madison Avenue in the location as proposed without getting a variance. Mr. Morgan suggested a compromise of locating the fence 20' from the curb.

Mr. Castellano stated that carrying the hearing is not going to get him the fence as proposed in the application and asked to amend the application for a 5' high fence located 20' from the curb. The fence along Madison Avenue will be natural wood board-on-board with plantings in front of it along Madison Avenue. The shrubs to be planted must grow to the height of the fence to screen it within three years. The fence along the side of the property will taper to 5' in front. Mr. Castellano would still like to remove the pine trees because the yard gets no light and grass will not grow there. The Board noted that although the applicant has the right to remove the trees, it would like the applicant to keep them.

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

There were no questions from the public.

**No further witnesses appeared to testify and the hearing was opened to comments from the public.**

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

Discussion: Mr. Grob reiterated that this was a tough application because of the location of the property in the middle of the block and the requested location and height of the fence in the front yard. With the amended application, Mr. Grob stated that he was comfortable approving it. Mr. Karr added that while the applicant probably thought the Board was being hard on his application, he might not appreciate it if his neighbor across the street proposed a similar fence. Mr. Ping appreciated the applicant's willingness to amend the application

Mr. Grob moved to approve the application as amended for a 5' natural wood, board-on-board fence to be installed 20' from the curb with plantings in front of the fence along Madison Avenue that would screen the fence within three years. The Board will retain jurisdiction over the landscaping for three years. Mr. Ping seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Grob, Mr.

Karr, Mr. Morgan, Mr. Ping, and Mr. Nadelberg. Those opposed: None.

#### E. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR DECEMBER 5, 2016

No new hearings are scheduled.

#### F. COMMUNICATION ITEMS

The Secretary reported that New Cingular Wireless "AT&T" has filed building permits to locate its cellular equipment on the PSE&G Tower. Sprint is expected to file permits shortly. Judith Fairweather, attorney for New Cingular Wireless "AT&T" and Sprint is not sure of the outage date for installing the equipment but does not believe it will be installed until late spring. The Board asked when the temporary monopole has to be removed. (Post-meeting note: The temporary monopole and equipment on Springfield Avenue must be removed within two weeks of the "go live" date on the PSE&G tower.)

Mr. Morgan noted that the Board has heard and approved several applications for additions where the applicants testified that they would not use the third floor but are now doing so. Mr. Morin responded that the Building Department has limited ability to police this. Mr. Grob added that this can be enforced when the homeowner applies for a Certificate of Occupancy to sell the house and it doesn't conform.

#### G. MISCELLANEOUS BUSINESS

The Secretary will contact the applicant heard tonight to see if he needs the resolution or if he can wait until the December 19<sup>th</sup> meeting. If the applicant does not need the resolution on December 5<sup>th</sup>, the meeting will be cancelled as there is nothing else on the agenda.

#### H. MINUTES FROM 11/7/2016

The minutes from November 7, 2016, were approved as submitted.

#### I ADJOURNMENT

The meeting was adjourned at 9:10 p.m.