

**BOROUGH OF NEW PROVIDENCE  
BOARD OF ADJUSTMENT  
MEETING MINUTES – MONDAY, MAY 21, 2018 – 8:00 p.m.**

Present: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. DeSarno, Mr. Grob, Mr. Karr, Mr. Morgan, Mr. Nadelberg, Mr. Sorochen, Mr. Craig Bossong, Board Attorney, and Margaret Koontz, Secretary.

Absent: Mr. Ping

Also present: Keith Lynch, Director of Planning and Development

**A. CALL TO ORDER**

Chairman Nadelberg called the meeting to order at 8:03 p.m. This meeting was held in the Council Conference Room.

**B. PUBLIC HEARINGS SCHEDULED FOR MAY 21, 2018**

Paul Ellison Application #2018-09  
19 Valentine Road, Block 185, Lot 2, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article V, Section 310-32(B) for permission for a fence. The fence in the front along Central Avenue is 6 feet high whereas 30 inches is the maximum height allowed.

Paul Ellison was sworn in and provided background for his request for a variance to keep the 6' fence along Central Avenue. He applied for a permit for the fence in 2013. The permit was approved and he constructed the fence along his backyard which fronts Central Avenue. Nine months after he notified the Building Department that the fence was ready for inspection, he applied for a building permit for his addition. At that time, he found out the fence had failed inspection for the height. He eventually got the permits for his addition. He has been told that his back yard, where the fence was erected, is a front yard because it fronts a street and he is having trouble with this. His neighbor on the corner of Central Avenue and Valentine Road has a 6' fence. He has three children under the age of six. Central Avenue is a busy road. Through an Open Public Records Act request, Mr. Ellison learned that there have been six accidents in the past two years. He would like to keep the fence for safety reasons and also for privacy. The previous fence was a split rail and his backyard was used as a public park and cut-through from Central Avenue to Valentine Road. The fence provides privacy.

Mr. Ellis responded to questions from the Board. The fence is 6' back from the curb. There is grass between the fence and the sidewalk and then more grass to the curb. The neighbor's fence sits back 5' to 6' from his fence. Mr. Ellison recapped the history of the fence permit. Mr. Ellison was told that he didn't need a variance for the height of the fence when he applied for the permit. The fence is located on his property and is in the same place as the split rail fence that it replaced. The fence is stable and in good condition. Mr. Ellison talked to everyone on the 200' radius list and all said the fence was okay.

Mr. Karr stated that the problem with the fence is that it's white and so it noticeably stands out and doesn't match the neighbor's fence. Mr. Grob thinks the fence is visually disagreeable. Mr. Ellison responded that he wouldn't have erected the fence if he knew it was a problem and asked why his fence is any different from the fence recently erected at 87 Hawthorne Drive at the corner of Cameron Road that sits close to the sidewalk. The following exhibits were marked:

- Exhibit A-1 – Photograph of two sides of the white 6' fence at 87 Hawthorne Drive
- Exhibit A-2 – Photograph of 87 Hawthorne Drive as viewed from Hawthorne Drive
- Exhibit A-3 – Photograph of the fence at 87 Hawthorne Drive looking as viewed from Cameron Road
- Exhibit A-4 - Photograph showing two sides of the fence at 87 Hawthorne Drive
- Exhibit A-5 - Photograph of 87 Hawthorne Drive, and
- Exhibit A-6 - Photograph of 87 Hawthorne Drive taken from the corner of Hawthorne Drive and Cameron Road.

Mr. Ellison responded to additional questions from the Board. He doesn't live on a corner lot. His lot is a through lot and is two houses in from the corner of Central Avenue and Valentine Road. Mr. Grob stated that he lives on a corner lot and understands having two front yards, but the Board probably wouldn't have approved the fence if he had applied for a variance before it was erected because of the location and the materials. Mr. Ellison noted that he is only out of compliance for the height of the fence. The Board asked for input from Mr. Lynch. Mr. Lynch stated that the fence permit was mistakenly issued. He didn't know it was a problem until the fence was inspected and he delayed issuance of the permits for the addition and garage. He subsequently approved the permits with the understanding that Mr. Ellison would come back to the Board for a variance for the fence.

Mr. DeSarno asked if there is some sort of compromise such as planting in front of the fence if there's room. The Board noted that the planting would be in the right-of-way according to the survey which is an issue. Mr. Morgan asked if the fence could be moved in a few feet or if another material could be used on this section of the fence. Mr. Ellison would lose part of his back yard if he moved the fence plus the fence installer informed him that it would be thousands of dollars to move the fence. He would rather leave the fence and get permission to plant in front of it than to move it or change the material. Mr. Karr would like Mr. Ellison to move the fence back to line up with the neighbor's and would prefer a wood fence but would accept the white vinyl if the fence were moved back. Mr. Ellison testified that his fence extends 8' from the neighbor's so he would lose 800 SF of his yard and stated again that he wouldn't have erected the fence if he knew the height was a problem. The Board asked if Mr. Ellison had any other options. Mr. Ellison responded that a 30" fence on Central Avenue is too low for safety and privacy reasons. While he can see the difference between his neighbor's wooden fence and the vinyl fence, the neighbors he spoke to don't mind the vinyl.

The Board asked Mr. Bossong for his legal opinion. Mr. Morgan moved to go into Executive Session for Mr. Bossong's legal opinion. Mr. Grob seconded the motion and all voted in favor. The Board went into Executive Session at 8:33 p.m.

Mr. Grob moved to go back into public session. Mr. Morgan seconded the motion at 8:40 p.m.

Chairman Nadelberg stated that the Board understands the applicant's situation and acknowledged that a mistake was made in granting the permit for the fence. The Board is willing to allow Mr. Ellison to leave the fence in its existing location as long as he resides on the property with the condition that he would plant in front of the fence to mitigate the impact of the fence. The fence, however, would have to be moved back to match the setback of the neighbor's fence prior to the sale of the house. Any permit fees required to move the fence would be waived. The applicant would have to write to Mr. Lynch requesting permission to plant in the right-of-way in front of the fence on Central Avenue. This request would be referred to Council for approval.

**The Board had no further questions for the applicants. 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.**

Frank McAneny, 849 Central Avenue, was sworn in. Mr. McAneny is a former Chairman of the Board of Adjustment and stated that he wouldn't address the aesthetics of the fence as this not a zoning issue. Mr. McAneny further stated that in the past, the Board ruled that a rear yard is not a front yard, and cited several rulings including a fence in the back yard at a property on the upper end of Johnson Drive as well as fences on Woodcrest Drive, the corner property on Maple Street, the house next door to the property in question and the side yard fence at Central Avenue and Fairview Avenue. The fence is not setting a precedent of any kind.

Beverly Ambrosius, 820 Central Avenue, was sworn in. She lives across the street on Central Avenue. Mr. Ellison has done nothing but improve the property since he moved in. The lot had a game pit that the public used and people used to cut through the property before the fence was erected. She thinks it's a beautiful fence and has no problem with the height. The design and color shouldn't come in to play. The fence is a necessity.

Mr. Ellison was comfortable with the compromise proposed. His Certificate of Occupancy (CO) has not been issued because of the fence and he would like to have it issued. Mr. Lynch will issue the CO.

Mr. Ammitzboll moved to approve the application with the following conditions: 1) the applicant may keep the fence until he sells the property at which time the fence must be moved back to match the neighbor's fence, and 2) the applicant will request permission to plant in front of the fence along Central Avenue with such planting to be done within six months of the Borough's approval to plant in the right-of-way. Mr. Karr seconded the motion.

A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Mr. DeSarno, Mr. Grob, Mr. Karr, Mr. Morgan, Ms. Ananthakrishnan and Mr. Nadelberg. Those opposed: None.

Pratik and Paras Raimugia

Application #2018-10

142 Stoneridge Road, Block 252, Lot 9, R-1 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed combined side-yard setback to the addition is 32.3 feet whereas 33 feet is the minimum required. The proposed building coverage is 2,359 square feet whereas 2,298 square feet is the maximum allowed.

Ms. Ananthakrishnan recused herself from the hearing.

Pratik Raimugia was sworn in. Ms. Ananthakrishnan was sworn in, presented her credentials as a licensed professional architect. and was accepted as such. Mr. Raimugia moved to his house in New Providence two years ago. The house is a ranch with three bedrooms and two bathrooms. He has two young children who have asked for their own rooms and his in-laws visit frequently for several months so they need an additional bedroom. He proposes to leave the house as a ranch and add another bedroom in the rear.

Ms. Ananthakrishnan testified that Mr. Raimugia likes the character of the ranch house but needs another bedroom. The master bedroom is in the front of the house with two bedrooms behind it. The applicant proposes to keep the master bedroom and bathroom in front, move the laundry up from the basement, expand the existing two bedrooms and add another bedroom in the rear. Ms. Ananthakrishnan noted that incorrect information was submitted for the zoning review. The combined side-yard setback was calculated based on 112.51', the lot width at the setback. By ordinance, the combined side-yard setback should have been calculated 40' from the front yard property line where the lot width is 106.5' and would require a combined side-yard setback of 31.95' where 32.3' is provided so no variance is required for the combined side-yard setback. Ms. Ananthakrishnan tried to keep the addition under the maximum building coverage but to do this would have resulted in small bedrooms. The addition is 61SF over the allowable building coverage, but the lot is large so the small increase in building coverage will have no impact.

A sheet with photographs of the front, rear and right sides of the existing house was marked as Exhibit A-1. Vehicles driving up Stoneridge from Central Avenue see the two-car garage. Because of the grade of the property, the right-side of the house where the addition will be is almost two stories. Ms. Ananthakrishnan testified that she broke up the right-side elevation with a cross gable. There will be a full basement under the addition. The addition has to have a full foundation because of the grade. Half of the basement is the garage. The large oak tree in the back behind the proposed addition will probably have to be removed, but there are other trees in the yard as well as boxwoods and forsythia. Mr. Grob asked Mr. Raimugia if he would consider restoring the landscape. Mr. Raimugia is not sure where he would plant another tree because there are already trees on the lot. He was agreeable to Mr. Grob's request to try and preserve the tree. Mr. Ammitzboll noted that the addition will be in the drip line of the tree if preserved.

**The Board had no further questions for the applicants. 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's biggest concern with the application was the right façade because it is the most visible part of the house. However, he believes the gable breaks up the façade and is comfortable approving the application. Mr. Karr added that the applicant is only asking for 61 SF in building coverage which isn't much. Messrs. DeSarno and Ammitzball agreed.

Mr. Grob moved to approve the application with the condition that the applicant takes reasonable steps during the excavation and construction to preserve the tree. Mr. DeSarno seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzball, Mr. DeSarno, Mr. Grob, Mr. Karr, Mr. Morgan, Mr. Sorochen and Mr. Nadelberg. Those opposed: None.

Marcus and Caroline Virella  
44 Chestnut Street, Block 282, Lot 13, R-2 Zone, New Providence, NJ 07974  
Application #2018-11  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed rear-yard setback to the addition is 39.73 feet whereas 43.7 feet is the minimum required.

Ms. Ananthakrishnan recused herself from the hearing.

Marcus and Caroline Virella and Malalithi Ananthakrishnan, their architect, were sworn in and Ms. Ananthakrishnan was accepted as a licensed professional architect. The Virellas recently moved to New Providence from West Orange for the good school system for their three children. The house is a split level with an enclosed but unheated porch at the rear of the house and a galley kitchen. They would like to extend and enclose the porch and kitchen to make this area the focus of their family life but need a variance for the rear-yard setback.

Ms. Ananthakrishnan described the traditional split level house. The living room, dining room, kitchen and enclosed porch are on the first floor. The porch doesn't have a foundation. The proposed addition will extend back 14' from the existing house 2' farther back than the enclosed porch which extends back 12.' The addition would extend across the back to enclose the kitchen. The square lot is 125' by 125.' The rear-yard setback for the proposed addition is 37.93' so the variance is for 4' under what is required. The lot is large and the application meets all other requirements for building and impervious coverage. The second-floor addition above the first floor as depicted on the front elevation of the site plan doesn't require any variances: The applicants may not construct this at this time.

The following exhibits were marked:

- Exhibit A-1 – Sheet with three photographs of the front, rear and left and rear side of the house, and
- Exhibit A-2 – Photograph taken from the back of the house showing the rear yard.

As shown on Exhibit A-1, there is a small dormer above the existing living room. The property drops down from the patio. Mr. Virella testified that there is a sufficient area from the patio to the rear property line where there are some trees. Mr. Karr noted that the rear neighbors already look down on the Virella's property so the addition has no impact on the neighbors. The addition will match the existing siding. The existing air conditioning compressor is on the left side of the house. If the applicants construct the second-floor addition, a second condenser will be added next to the existing condenser. The patio is at grade and doesn't require a variance. The lot is large, 15,000 SF, so it can support the addition, Door lights will be installed by the sliding door out to the patio. The rear lights will probably be on sensors or will be low level, enough to provide comfort.

**The Board had no further questions for the applicants. 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: The addition will have no impact. The lot is large enough for the addition.

Mr. Ammitzboll moved to approve the application and Mr. Karr seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Mr. DeSarno, Mr. Grob, Mr. Karr, Mr. Morgan, Mr. Sorochen and Mr. Nadelberg. Those opposed: None.

## C REVIEW OF PUBLIC HEARINGS SCHEDULED FOR JUNE4, 2018

Gail Souren Application #2018-08  
54 Laurel Drive, Block 114, Lot 11, R-1 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed front-yard setback to the second-story addition is 26.8 feet whereas 40 feet is the minimum required. The proposed rear-yard setback to the two-story addition is 21.75 feet whereas 40 feet is the minimum required. The proposed building coverage is 2,291 square feet whereas 1,667 square feet is the maximum permitted. The existing front yard is 18.8 feet. The existing side yard is 12.3 feet.

The Board noted that it previously approved variances for this house.

Hans Nahata and Jain Vandana Application #2018-12  
791 Central Avenue, Block 210, Lot 19, 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 42 feet is the minimum required. The proposed building coverage is 1,635 square feet whereas 1,610 square feet is the maximum allowed.

Ms. Ananthakrishnan will recuse herself from this hearing.

Robert and Teresa Muñoz

Application #2018-13

3 Alison Court, Block 270, Lot 22, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a portico. Porticos in excess of 25 square feet must conform to the front-yard setback. The front-yard setback to the portico is 35 feet whereas 40 square feet is the minimum required.

#### D. COMMUNICATION ITEMS

*130 Livingston Avenue*

The driveway has been removed.

*New Cingular Wireless ("AT&T") and Sprint Spectrum*

Work on the cell tower, which started in January 2018, continues. No final inspections have been scheduled.

*McDonald's Sign*

McDonald's submitted incomplete plans to the Building Department to incorporate the reader board sign into the existing masonry encased sign. Mr. Bossong will contact the applicant's attorney.

#### E. MISCELLANEOUS BUSINESS

No miscellaneous business.

#### F. MINUTES FROM 5/7/2018

The minutes of May 7, 2018, were approved as submitted.

#### G. ADJOURNMENT

The meeting was adjourned at 9:20 p.m.