

**BOROUGH OF NEW PROVIDENCE  
BOARD OF ADJUSTMENT  
MEETING MINUTES – MONDAY, JANUARY 27, 2020 – 8:00 p.m.**

Present: Mr. Ammitzboll, Ms. Ananthkrishnan, Mr. Dunscombe, Mr. Kogan, Mr. Morgan, Mr. Ping, Mr. Sorochen and Mr. Nadelberg. Also present, Phil Morin, Board Attorney and Margaret Koontz, Secretary.

Absent: Mr. Grob.

Also present: Leigh Fleming, Borough Planner; Kevin Boyer, Borough Engineer; and, Keith Lynch, Director of Planning and Development

**A. CALL TO ORDER**

Chairman Nadelberg called the meeting to order at 8:00 p.m. This meeting was held in the Council Conference Room on the third floor.

**B. RESOLUTIONS**

Nicholas Palines Application #2019-33  
11 Birch Place, Block 72, Lot 20, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article V, Section 310-19 I and 310-20(2) for permission to expand the driveway. The proposed driveway expansion is 2 feet from the property line whereas 6 feet is the minimum required.

**Mr. Sorochen moved this and Mr. Ping seconded same. Members voting in favor: Ms. Ananthkrishnan, Mr. Morgan, Mr. Ping, Mr. Sorochen, Mr. Kogan and Mr. Nadelberg.**

Yan Fen Chen Application #2019-30  
87 Passaic Street, Block 53, Lot 1, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II & III, Article V, Section 310-20 (2) for permission to construct a new home. The proposed lot size is 11,863 sq. ft. whereas 15,000 sq. ft. is the minimum required. The proposed lot width at the right of way 58 feet whereas 60 feet is the minimum required. The proposed lot width at the setback 72 feet whereas 110 feet is the minimum required. The proposed front yard on Passaic Street is 26 feet and 17 feet on Lincoln Ln whereas 40 feet is the minimum required. The proposed side yard setback is 8 feet whereas 12.6 feet is the minimum required. The proposed building coverage is 2010 sq. ft. whereas 1936 sq. ft. is the maximum allowed. The proposed curb cut is 32 feet whereas 18 feet is the maximum allowed.

**Mr. Morgan moved this and Ms. Ananthkrishnan seconded same. Members voting in favor: Mr. Ammitzboll, Ms. Ananthkrishnan, Mr. Morgan, Mr. Ping, Mr. Sorochen and Mr. Nadelberg.**

### C. PUBLIC HEARINGS SCHEDULED FOR JANUARY 27, 2020

Revathi Ananthakrishnan Application #2019-34  
76 Woodland Road, Block 231, Lot 8, R-2 Zone, New Providence, NJ 07974  
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed side-yard setback to the addition is 9.5 feet with a combined total of 24.9 feet whereas 12 feet with a combined total of 30.6 feet is the minimum required. The existing front-yard setback to the stoop is 34 feet and 38 feet to the house.

Ms. Ananthakrishnan recused herself from the hearing as she was the architect for the applicant.

Revathi Ananthakrishnan and her architect, Malathi Ananthakrishnan, were sworn in. Ms. Malathi Ananthakrishnan presented her credential as a licensed professional architect and was accepted as such. Ms. Revathi Ananthakrishnan would like to add a powder room next to the dining room. She is disabled and works from home a lot. She has a bathroom upstairs and one on the ground level, but it would be much easier for her to have a bathroom on the dining room level.

Ms. Malathi Ananthakrishnan described the house and the proposed addition. The 5.5' addition would be located on the left side of the house which is a split level. There is no bathroom on that level. The dining room is only 8.5' wide making it difficult for Ms. Revathi Ananthakrishnan to walk around the dining room chairs with her walker. The addition will expand the dining room to provide more accessibility for the applicant and provide a powder room. The lot is pie shaped which presents a hardship. The property is 75' wide along Woodland Road but only 35' across the back with an average of lot width of 55' so variances for the side-yard setback of 9.5' and the combined side-yard setback are required. Ms. Malathi Ananthakrishnan didn't have a side elevation, but the addition will have two windows, one in the dining room and one in the powder room. The gable roof will be extended out 5.5'. The following were marked:

- Exhibit A-1 – Sheet with four photographs showing the distance between the applicant and the neighbor to the left, the property in question, a similar extension done at 90 Woodland Road; and the dining room.
- Exhibit A-2 – Photograph of the tree to rear of the current dining room.

Ms. Malathi Ananthakrishnan described the exhibits. The top right photograph on Exhibit A-1 shows the relationship between the applicant's house and the neighbor to the left. The addition would still leave 9.5' to the property line. The photograph on the top right of the exhibit shows an 8' addition at 90 Woodland Road similar to what is proposed. The bottom right photograph shows the dining room which is narrow. It's difficult to walk around the table when the chairs are pulled out. Referencing Exhibit A-2, Ms. Malathi Ananthakrishnan described the 8" diameter tree located at the left rear of the house. The applicant prefers to keep the tree which would be 4' beyond the addition.

Ms. Malathi Ananthakrishnan responded to questions from the Board. The air conditioning condensers will be moved to the rear of the house. The neighbor's garage is to the left of the proposed addition. The siding for the addition will match the existing siding. No exterior lighting is proposed. The addition will have two windows as

previously described. The height of the house is 23' on the right side and 15.4' for the proposed addition.

**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.

**The hearing was opened to comments from the public.**

Alexandra Loureiro, 81 Woodland Road, was sworn in and expressed support for the application. She sees the hardship of Ms. Ananthakrishnan's disability and the addition will help her out.

Discussion: The Board was comfortable granting the variances. The lot is pie shaped which is a hardship and the property is curved so the addition moves away.

Mr. Ammitzball moved to approve the application and Mr. Sorochen seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzball, Mr. Morgan, Mr. Ping, Mr. Sorochen, Mr. Kogan, Mr. Dunscombe and Mr. Nadelberg. Those opposed: None.

Murray Hill Hospitality LLC  
535 Central Avenue and 195 South Street, Block 220, Lots 19 and 20, TBI-II Zone, New Providence, NJ 07974  
Application #2019-29  
Preliminary and final site approval, d(2) expansion of a pre-existing nonconforming use variance and bulk variance approvals to construct a 722 SF elevated wooden deck along the south west corner of the Best Western Plus Murray Hill Hotel and Suites.

This hearing was carried from December 2, 2019. The December 2<sup>nd</sup> meeting was cancelled because of a snow storm.

Stephen Hehl of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C., attorney for the applicant, introduced the application for a d(2) variance for the expansion of a non-conforming use on the property which is occupied by a hotel; a restaurant, Moe's Bistro; and, an office building. The applicant started the construction of a small outdoor deck for seasonal outdoor dining. Mr. Hehl has shown the applicant the Borough's ordinance regarding outdoor seating and confirmed that there will be no music on the deck.

Josh Sewald, Dynamic Engineering Consultants, PC, was sworn in and presented his credentials as a licensed professional engineer and was accepted as a civil engineer. Referring to Sheet 3, Site Plan, of the Minor Site Plan, Mr. Sewald described the property which is located on the corner of South Street and Central Avenue and occupied by the Best Western Hotel, Moe's Bistro and an office building that fronts South Street. Construction of the 722 SF deck on the south side of the hotel by Moe's Bistro required the removal of three parking spaces. Minor improvements to the parking are proposed. The applicant proposes to relocate existing parking spaces by the deck and re-stripe them, install a landscape island on the south side of the property and re-stripe parking on the south side of the property. The site is accessed by a full movement driveway off of Central Avenue and two driveways off of South Street. No new site

lighting is proposed. The site has four charging stations.

Parking on the site is shared with the office space. While 260 parking spaces are required, the site only has 169 and the applicant proposes 166 spaces as three were lost with construction of the deck. The parking operates successfully because of the complementary uses on the site. The office space has peak parking demands during the day while the hotel/restaurant's peak parking demands are in the morning, evening and during the weekend. The loss of the three parking spaces for the deck hasn't caused a problem with the parking.

Mr. Sewald had no issues with the comments in the Borough's professional reviews. These can be addressed during resolution compliance if the applicant is approved.

Mr. Lynch asked for clarifying testimony regarding the loss of three parking spaces noting that two of the parking spaces are adjacent to the 5' high deck which means there is no room to exit a vehicle from the side of the vehicle that abuts the deck. Mr. Sewald responded that a vehicle is 6.5' to 7' wide and 2' is required to open the door. He can shift the parking space on the south side of the deck over 2" into the landscape island to get space to exit a vehicle. Mr. Lynch also noted that the ADA parking space on the south side of the deck is not van accessible. The Board asked how the applicant can move the parking space over on the south side of the deck and still get two spaces and if the applicant planned to move the ADA ramp. Mr. Sewald doesn't believe shifting the parking space will affect the ramp.

Five photographs of the deck as constructed from various angles taken by Mr. Nadelberg were marked as Exhibits B-1 through B-5.

The Board looked at the photograph of the existing ADA spaces on page 10 of the Borough's Planner's review letter dated November 25, 2019. The photograph shows the deck as built, the ADA spaces on the south side of the deck, a gravel area and the ADA ramp. Mr. Sewald stated that the two ADA spaces can be shifted 2' to 3' without impacting the ramp. The Board noted that the site plan shows two ADA parking spaces on the south side of the deck, but the architectural plan shows only one van-accessible ADA parking space. Mr. Sewald stated that there will be two ADA spaces as shown. There are other places on the site where he can locate a van-accessible ADA space. Mr. Boyer didn't think it's possible to provide a van-accessible ADA parking space without losing one parking space and recommended making the two ADA spaces into one van-accessible ADA space and requesting a parking variance for 165 spaces instead of 166 spaces. Mr. Boyer asked about the ADA access to the hotel from the ADA spaces on the south side of the property. Mr. Seward stated that accessing the ramp from those spaces requires going around the island. Mr. Sewald stated that he can move these spaces closer to the ramp as requested by Mr. Boyer. He can also relocate the ADA space lost because of the deck. This just requires re-striping.

After discussing the parking, the applicant agreed to a van-accessible ADA parking space on the south side of the deck and to shift the parking spaces to the north of the deck to allow space to exit a vehicle parked next to the deck. The ADA spaces to the southeast side of the site will be relocated closer to the ramp. The applicant will ask for a parking variance for 165 spaces.

**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.

Emmanuel Kavrakis, Emmanuel Kavrakis Architects, LLC, was sworn in and presented his credentials as a licensed professional architect with expertise in hospitality facilities including hotels and restaurants. The Board accepted him as such. The 722 SF deck is a 45" raised deck made of white PVC material with a white PVC railing around the perimeter. There is a 9" differential between the proposed deck and existing restaurant so an ADA-compliant ramp will be installed to provide a slight incline from the deck into the restaurant. The deck will have an open-air white PVC pergola for ambiance and will be illuminated by two wall packs mounted to the building 11' feet above the deck. Light spillage will be limited. Referring to Sheet A-200.00 of the architectural plans, Mr. Kavrakis described the two 12' wide, aluminum bi-folding doors that will be installed to provide access to the deck. The sliding doors will provide an inside/outside feel.

Mr. Kavrakis responded to questions from the Board. The open deck is for seasonal use and will not have any outdoor fans or awnings. In addition, there will be no outdoor music or bands permitted. The deck enhances the restaurant and provides diversity of seating so that patrons can enjoy outside dining. The deck will have seating for 48 people. The ramp to access the deck is wide enough to accommodate a wheel chair and will have a railing. Mr. Nadelberg asked about the materials used to construct the deck. The deck is made of 6' by 6' wood planks. The columns are white PVC and the deck flooring is Trex with spacing so that it is pervious. PVC is maintenance free. Mr. Kavrakis has used the same materials on other commercial decks. Mr. Nadelberg commented that the PVC isn't really maintenance free and needs to be cleaned when it turns green. He also pointed out that the lattice below the deck, as shown in Exhibits B-1 through B-5, seems to be in disrepair and is cracked which would indicate that it's not maintenance free. Mr. Kavrakis responded that the deck was constructed in July and work was stopped when the applicant was instructed to do so. He thinks the materials were left there haphazardly when the construction stopped. The lattice can be refastened or a better material can be used.

Mr. Lynch asked how the 9" differential between the restaurant and deck will be handled as a 9" step is too high. He added that the deck as constructed is wrong: The deck should be flush with the restaurant. Mr. Kavrakis testified that he can install two 4.5" steps or raise the deck. Mr. Lynch stated that the deck was constructed to residential standards and suggested that the deck be raised so that it is flush with the restaurant eliminating the need for a ramp. Ms. Fleming asked about the exterior materials and how they will blend. There will be a new enclosure surrounding the sliding doors which are aluminum and glass. The building is stucco. Hard stucco will be used. The railing and columns will be white PVC.

Mr. Kavrakis confirmed that the applicant will comply with the Borough's ordinances regarding lighting, outdoor seating and music. He also confirmed that the applicant will comply with the comments in the Borough's professionals' reviews..

**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.

Michael Camassa, general manager of the property, was sworn in and confirmed that the deck will only be used for seasonal seating for the restaurant. There will be no music on the deck and the lattice will be repaired. The restaurant is open from 11:30 a.m. to 9:30 p.m. Monday through Saturday and is closed on Sunday. There is no issue with parking on the site. The hotel parking area is vacant during the day so it's used by the office workers. The reverse occurs at night when the office workers leave and the hotel guests arrive. The applicant will do whatever is necessary to meet the ADA requirements.

The Board asked about use of the deck. The deck cannot be rented/used for private parties and a mobile or satellite bar will not be permitted on the deck. As previously testified, no bands will be permitted on the deck and there won't be any speakers for music. Ms. Fleming asked about the occupancy of the office space as this could be an issue with the parking in the future if the office space isn't fully occupied now. Mr. Camassa didn't have this information. The Board asked if the restaurant could stay open later than 9:30 p.m./10:00 p.m. Mr. Lynch responded that the limitations are tied to the liquor license. Mr. Camassa confirmed that the bar is only open when the restaurant is open and it closes at 9:30 p.m./10:00 p.m.. Access to the deck is through the restaurant.

**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.

Mohamed Elghetty, 158 Gales Drive, New Providence, NJ, the operator of Moe's Bistro, was sworn in and testified that he has operated the restaurant for 4 ½ years. The restaurant is now attracting patrons beyond New Providence and he thought that adding a deck would be a good attraction. The restaurant is approximately 1,500 SF.

The Board asked why he constructed the deck without getting approval. Mr. Elghetty made a bad decision that he regrets because he would be in a much better place had he obtained approval before construction. The side of the restaurant has been boarded up and looks as if it's closed. The look hurts the restaurant but fortunately he has a following of patrons.

The restaurant is spacious and Mr. Elghetty doesn't want it to feel crowded. The restaurant seats 60 with another 16 seats at the bar. There will be no more than 40 people on the deck at ten tables.

**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.

Kathryn Gregory, Gregory Associates, LLC, was sworn in, presented her credentials as a licensed professional planner and was accepted as such. The applicant seeks a d(2) variance for the expansion of the restaurant at the hotel which isn't a permitted use in the TBI-II zone. Ms. Gregory testified that the application meets the positive criteria. There are no residences near the deck and the expansion of the restaurant for the deck

impacts no one. The deck is 95' from the closed property line. The site is suited for the proposed use for the deck.

The applicant requires bulk variances two of which are for existing non-conformances for the minimum front-yard and side-yard setbacks. The number of parking spaces as just agreed will be 165 not 166 and requires a variance. The shared parking on the site is complementary and, as testified, there have been no issues with the parking. The deck is an effective use of the land: The deck was constructed in the parking lot and not all of the parking spaces are needed. The deck will have no impact on light, air and open space. It's a passive recreation space for guests and those who work or live in the area. The site already has a picnic table in the lawn. Finally, the deck upgrades the restaurant.

The deck represents no detrimental impact to the public good and doesn't impair the intent of the zoning plan and ordinance. It also promotes Comprehensive Goal #8 of the 2017 Master Plan Re-Examination to upgrade, preserve and increase the economic and aesthetic viability of existing commercial and residential uses while being sensitive to the adjacent and existing uses.

Mr. Nadelberg asked Ms. Gregory to address Comment #9 in the Planner's review letter dated November 25, 2019, about the reduction in the number of parking spaces and the intensification of use on the site. The different uses on the site are why the shared parking works well and why the applicant can use the parking spaces for the deck. The deck results in less impervious coverage. It's okay that there are fewer parking spaces.

**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.

The Board asked about tree removals. Mr. Sewald responded that no mature trees are being removed.

**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 and no further witnesses..

The Board discussed how the 9" differential between the deck and restaurant would be handled if the deck isn't raised to be flush with the deck. Mr. Lynch stated that there could be two steps which would require a handrail and he's not sure how this would work. It would be easier to raise the deck. Chairman Nadelberg offered the applicant an opportunity to take a break to discuss this with its professionals.

After a short break the applicant agreed to raise the deck to make it flush with the restaurant.

**The hearing was opened to comments from the public.**

Rich Ghandi, manager of Murray Hill Hospitality, LLC, was sworn in. When the deck is raised, the restaurant will gain the space on the deck required for the ADA ramp; there

will be no need to expand the existing layout; and, it won't be necessary to move the ADA ramp. Mr. Lynch disagreed and responded that the only thing that changes is the deck is higher. The Board asked for clarification about the expansion of the existing layout and the ramp. Mr. Ghandi stated that the ADA ramp doesn't go directly to the deck. Prior to the agreement to raise the deck, a patron would have accessed the deck via the ADA ramp in the parking lot to get into the hotel and then use the proposed ramp to get from the restaurant down to the deck. Mr. Kavrakakis added that 60" was going to be added to the south side of the existing deck for the ADA ramp between the restaurant and deck. The Board confirmed that because the deck will be raised, it will not have to be 60" wider. The width of deck as shown on Sheet A-100.00 of the architectural plans at 27'-2" will be reduced by 60" on the south side of the deck, and the square footage of the deck will be approximately 622 SF not 722 SF.

The bump out for the ramp explains the discrepancy in the number of parking spaces shown on the site plan and the architectural plan. Mr. Lynch noted that this discussion clarifies the difference between the plans but it doesn't fix the parking. Mr. Kavrakakis believes the second ADA parking space to the south of the deck can be used. In addition, the two spaces to the north of the deck are 12' by 19' which is generous. These two spaces were intended as employee parking as they are closest to the kitchen. Mr. Lynch noted that the site plan needs to be adjusted and would like to see the proposed parking layout and ADA spaces before the parking lot is re-striped.

Discussion: Mr. Lynch expressed his support of the deck if done properly. Outdoor seating is an asset to the restaurant. As previously stated, he would like to see the new parking layout before the applicant re-stripes the parking lot. The Board asked if the applicant could ever have an awning or enclose the space. Mr. Lynch stated that the applicant would have to come back to the Board for amended site plan for any additional changes. Ms. Ananthakrishnan was comfortable with the deck provided that it is flush with the restaurant. Mr. Ammitzball believes the deck works if the applicant makes it flush with the restaurant as two 4.5" steps aren't good and one 9" step is worse. Mr. Kogan asked Ms. Fleming if she is concerned about the parking especially if the office space isn't fully occupied now. Ms. Fleming did not have a problem with the parking. It's functioning now and it's a text book example of shared parking although it's possible that the occupancy rate of the office building, which wasn't available, could play a role in the shared parking in the future. Mr. Lynch responded that the applicant could expand the parking area if the hotel added another floor or the office building presented an issue because it owns the lot to the north.

Mr. Ammitzball moved to approve the application as testified for the lighting and submission of the final parking layout to the Construction Official prior to re-striping the parking lot with the following conditions: 1) The applicant will raise the deck to be flush with the restaurant, and 2) the applicant has seven (7) days to repair any damage/breakage on the lattice. Mr. Ping seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzball, Ms. Ananthakrishnan, Mr. Morgan, Mr. Ping, Mr. Sorochen, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

#### D. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR FEBRUARY 3, 2020

**Carried from December 16, 2019**

Tiedan Huang and Aidon Zhang

Application #2019-32

25 Division Avenue, Block 121, Lot 20, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The proposed dwelling is inconsistent with the testimony presented and the resolution approved from a previous application. The proposed dwelling has been determined to be a three-story structure.

The applicant submitted revised plans on January 24<sup>th</sup>. The plans are compliant with the terms of the resolution the Board previously approved; therefore, the applicant does not need to come back to the Board.

Joseph Leonard and Grace Pai-Leonard

Application #2019-35

34 Newcomb Drive, Block 84, Lot 6, R-2 Zone, New Providence, NJ 07974

Chapter 310, Article IV, Section 310-10, Schedules I & III and Article V, Section 310-19I for permission to construct an addition and front porch. The proposed front-yard setback to the front porch is 37.01 feet whereas 40 feet is the minimum required. The proposed side-yard setback to the addition is 9.98 feet whereas 12 feet is the minimum required. The proposed building coverage is 2,276 square feet whereas 2,120 square feet is the maximum required. The proposed driveway is 5 feet from the property line whereas 6 feet is the minimum required. The existing shed is 5.86 feet from the rear property line and 5.06 feet from the side property line.

Marc and Atsuko Jones

Application #2019-36

63 Chestnut Street, Block 281, Lot 25, 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 13 feet whereas 40 is the minimum required. The existing front-yard setback is 26.6 feet.

#### E. COMMUNICATION ITEMS

No communications items.

#### F. MISCELLANEOUS BUSINESS

No miscellaneous business.

#### G. MINUTES FROM 1/13/2020

The minutes of January 13, 2020, were approved as submitted.

#### H. ADJOURNMENT

The meeting was adjourned at 9:40 p.m.