

BOROUGH OF NEW PROVIDENCE
BOARD OF ADJUSTMENT
MEETING MINUTES – MONDAY, AUGUST 3, 2020 – 8:00 p.m.
VIRTUAL MEETING

Present: Mr. Ammitzball, Ms. Ananthkrishnan, Mr. Dunscombe, Mr. Grob, Mr. Kogan, Mr. Nadelberg, Mr. Ping and Mr. Sorochen. Also present: Keith Lynch, Director of Planning and Development; .Phil Morin, Board Attorney, and Margaret Koontz, Secretary.

Absent: Mr. Morgan

A. CALL TO ORDER

Chairman Nadelberg called the meeting to order at 8:02 p.m. Per Governor Murphy's Executive Order No. 103 issued on March 9, 2020 declaring a State of Emergency and Public Health Emergency in the State of New Jersey, and extended by Executive Orders No 119 on April 7, 2020, No. 138 on May 6, 2020 and No 151 on June 4, 2020, this meeting was held remotely by conferencing software provided by zoom.us.

B. RESOLUTIONS

Kevin and Jennifer Nixon [Application #2020-13](#)
26 Ridgeview Avenue, Block 33, Lot 1, 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 yard along Holmes Oval is 4 feet high whereas 30 inches is the maximum height allowed.

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

Anthony Mangarella for Rustic Appeal LLC [Application #2020-14](#)
424 Central Avenue, Block 277, Lot 2, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article V, Section 310-19I and 310-20(2) for permission for location and width of a driveway. The proposed driveway is on the property line whereas 6 feet is the minimum required. The proposed driveway is 9.7 feet wide in a section whereas 10 feet is the minimum required.

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

Dylan Paul Henry [Application #2020-15](#)
54 Pleasantview Avenue, Block 130, Lot 9, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article V, Section 310-32(B) to install a fence. The proposed fence in the front yard along Hickson Drive is 4 feet high whereas 30 inches is the maximum height allowed.

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

Mr. Nadelberg.

E. REQUEST FOR EXTENSION OF TIME

TALAE 77 LLC

[Application #2018-16](#)

1682 Springfield Avenue, Block 180, Lot 1, R-2 Zone, New Providence, NJ 07974

Preliminary and final major site plan approval; variance relief to permit the expansion and modification of the pre-existing non-conforming commercial use and/or in the alternative a use variance; location of an entrance or exit driveway on Springfield Avenue; an access driveway for a non-permitted use; maximum lot coverage; maximum improved lot coverage and rear-yard setback together with all other relief in the form of variances, appeals, interpretations, waivers or exceptions.

The applicant was unable to obtain building permits and start construction within twelve months of adoption of the resolution as specified and is requesting an extension of time to do so. The applicant had started the process in February when the pandemic brought the matter to a temporary halt in March. The applicant has hired a Licensed Site Remediation Specialist (LSRP) to address the groundwater contamination and is prepared to move forward. The governor has extended the time allowed to apply for permits and this would apply here. The Board discussed the length of the extension as a specific request for time was not included in the letter from the applicant and agreed to a one-year extension from the expiration date (May 2020) to apply for the permit or two years from the date of approval (May 2019) of the application.

Mr. Ammitzboll moved to grant the applicant a one-year extension of time from the date of the expiration to file for permits as specified in the resolution memorialized on May 6, 2019. Mr. Grob seconded the motion. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Ping, Mr. Sorothen, Mr. Kogan and Mr. Nadelberg.

F. PUBLIC HEARING SCHEDULED FOR AUGUST 3, 2020:

Christopher and Shannon Naughton

[Application #2020-16](#)

32 Northview Road, Block 273, lot 13, 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 32.5 feet whereas 40 feet is the minimum required. The existing front-yard setback is 38.7 feet.

Shannon Naughton was sworn in and testified that the existing patio is in need of repair and has already been repaired two or three times. She would like to construct a deck over the existing patio. The property is a corner lot with a large front yard and a smaller back yard because the house is set on an angle. The rear left side of the deck complies but the rear right encroaches into the setback. Ms. Naughton spoke the neighbor who had no problem with the deck since it's going over the existing patio.

Ms. Naughton responded to questions from the Board. The deck will be flush to the back door which is three steps off the ground so the deck will be three steps high. The deck will have lighting on one step and on every post. The deck will only have ambient lighting. The deck will have lattice underneath and Ms. Naughton doesn't plan to use the area under the deck for storage. Mr. Lynch asked the Board to require a revised survey as a condition of the resolution should it approve the application since the applicant has

done a large addition since the survey submitted with the application was done.

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

There were no questions from the public.

The hearing was opened to comments from the public.

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

Discussion: Mr. Nadelberg commented that the deck isn't very intrusive. Mr. Ammitzboll noted that the deck is at the radiant point of the adjoining pie-shaped lots on Forest Road that back up to the applicant's property and doesn't really face toward the other houses. It will have a minimal impact and he had no issue with it. Mr. Ping agreed and also had no issue with the deck

Mr. Ammitzboll moved to approve the application with the condition that the applicant will provide an updated survey after completion of the deck. Mr. Ping seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Ping, Mr. Sorothen, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

Anthony J. Zotti

[Application #2020-07](#)

25 Fairmount Road, Block 191, Lot 25.03, R-2 Zone, New Providence, NJ 07974
Subdivision approval of Lot 25.03, resulting from a previous subdivision in 1995 per Resolution #1995-26, into two single-family lots for the construction of two new single-family homes and termination of the pre-existing non-conforming landscape yard for the construction of the two new homes.

The following exhibits were pre-marked:

- Exhibit A-1 – Rendered Existing Conditions
- Exhibit A-2 – Rendered Landscape Plan, and
- Exhibit A-3 - Revised House Location

Anthony Zotti was sworn in. Mr. James Webber of Dempsey, Dempsey & Sheehan, attorney for the application, then described the application which started 25 years ago with an application to subdivide the pre-existing non-conforming landscape yard into three lots and created Lots 25.01 and 25.02. Because the landscape yard was reduced, a D variance was required because the operation of a non-conforming use on a smaller parcel could be considered as an expansion of a non-conforming use. A condition of the resolution approving the subdivision limited the future development of Lot 25.03 to no more than two single-family dwellings. The applicant now proposes to subdivide Lot 25.03 and construct two single-family homes one on each lot. Lot 25.03, which was created in the prior subdivision application, is a flag lot. The application requires variances for the 20' lot width at setback and right-of-way for the flagstuffs of each of the proposed lots. These are existing non-conformances. As noted in the Borough Planner's report dated June 11, 2020, variances for rear-yard setbacks on proposed Lots 25.04 and 24.05 are also required.

Mr. Webber noted that the applicant, after talking to the neighbors on Springfield Avenue, has pulled the proposed homes forward from the lot lines along Springfield as shown on Exhibit A-3 to get 40' side-yard setbacks even though the required setback is only 21.' The applicant is now proposing a rear-yard setback of 50' on Lot 25.04 where 55.3' is required and a 50' rear-yard setback on Lot 25.05 where 57.4' is required. The proposed houses are oriented to provide as much privacy to the homeowners of the lots as well as the surrounding lots. The proposed house on Lot 25.04 is situated on the same angle and is designed to mirror Lot 11 on Heather Court (20 Heather Court) with a 50' rear-yard setback. The proposed houses have 40' front-yard setbacks and 40' setbacks to the properties on Springfield Avenue. The proposed lots will be landscaped as well as fenced with 6' fences of two different styles to break up the 300' property line along the Springfield Avenue property line. The fence may extend along other lot lines. The 20' access easement on Lot 25.01 off of Central Avenue will not be used for the subdivision. The only access to the subdivision will be from Fairmount Road.

The Board asked about vacating the easement and removing the driveway. Mr. Webber responded that the driveway which services Lot 24 on Central Avenue will not be removed. Several Board members questioned why the access easement should continue to exist because there will be no need for it. Mr. Webber stated that Mr. Zotti will vacate his right to the easement but Lot 24 hasn't done so. Moreover, the scope of the Board's authority over the title is limited, but Mr. Webber assured the Board that the driveway will not be used. The Board asked for assurance of this. Mr. Webber stated that the subdivision will probably be memorialized by map and not deed: On the map, the 20' access easement to Lot 25.03 will be vacated. Filing of the map to show this could be a condition of approval should the Board approve the application.

Mr. Zotti testified that he owns the property (Lot 25.03) and would now like to subdivide it to create two lots for the construction of two single-family homes. He has agreed to relocate the houses on the lots as shown on Exhibit A-3 to increase the rear-yard setbacks from 40' to 50.' He has also agreed to install 6' fences along the Springfield Avenue property line. The proposed homes will be similar to those presented in the application. The property was used for a non-conforming landscape business which he will abandon. He lives on Lot 25.02 and will convey a small portion of his backyard as shown on Sheet 3 of 8 of the site plan to the subdivision and on Exhibit A-4 – Copy of Exhibit A-3 with Hearing Notations.

Mr. Zotti prepared the Landscape Plan, Exhibit A-2, and described the plan to landscape the lots to provide a buffer between the two lots and the adjoining neighbors. Most of the plantings will be evergreen. Mr. Zotti described the sizes and type of plantings as indicated on the plant list on Exhibit A-2. He will also transplant some of the existing shrubs. He has not prepared a foundation plan for planting around the homes. He will probably do more planting than what is shown on the preliminary landscape plan but additional planting will be determined after construction. The area between the proposed homes will also have a fence but it will be an open fence such as a split rail fence and the area will be landscaped with evergreens, dogwoods and other shrubs. There will be fairly intense plantings on the perimeter of the lots and Mr. Zotti is willing, at the request of John Sponauer, one of the Springfield Avenue neighbors, to plant additional trees/shrubs if necessary. He is not sure what he would plant because he will have to work around the existing trees..

The Board asked about protecting the existing trees during construction and would like to see some protection from construction equipment and stockpiling of dirt. Mr. Zotti responded that the lot was originally set up as a garden center where plants were stored so 90% of the field has no trees. There are some large deciduous trees parallel to Springfield Avenue and some on the Heather Court property line. There are no trees on the southern portion or northern portion of the lot that would get damaged. Mr. Zotti can fence the trees that need to be protected but most of the construction equipment will be parked in the front area of the lot off of Fairmount Road where the garage is now located. Mr. Zotti agreed to a condition that he would fence the trees on the perimeter of the property to protect them and no dirt will be stockpiled on the critical root zones of the large trees.

Mr. Zotti then described the proposed fence types and locations. A 6' white cedar fence with lattice is proposed along the Springfield Avenue property line for one of the houses and a board-on-board fence is proposed along the Springfield Avenue property line for the other house. A split rail fence will be installed between the two lots and solid fences will be installed parallel to the Central Avenue and Heather Court property lines. The Board asked if the fence types could be identified on the plan. Exhibit A-2 was marked to show the locations of the cedar fence with lattice (purple), the board-on-board fence (blue) and the split rail fences (red). Two sheets with photographs of different wooden fence types was marked as Exhibit A-5.

The Board asked about lighting on the decks and patios. Mr. Zotti may install a security spotlight. Mr. Ammitzball noted that spot lights will spill and since the applicant has made concessions to the neighbors to create more privacy for them, he's concerned about any flood or security lights and would rather see sconces on the decks/patios. Mr. Zotti agreed to minimal lighting on the decks/patios. Mr. Zotti doesn't plan to install generators and assumes the town will tell him where he can put the air conditioning compressors so they comply. Mr. Webber stated that the applicant is not sure where the utilities will be located but assured the Board that the location of the air conditioning compressors will comply with the Borough's ordinances and the applicant will screen them with landscaping.

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

Amy LaMotta, 20 Heather Court, Lot, 11, asked about the fencing. Her back yard is small and she would rather have a split rail fence than a solid cedar fence along her property so her yard doesn't look so small especially since the applicant intends to install lots of landscaping. Mr. Zotti agreed to stop the cedar fence at the corner and replace it with a two- or three-rail fence along the Heather Court property line. Ms. LaMotta doesn't care if it's a two- or three-rail fence. Exhibit A-2 was modified to show a three-rail split rail fence (yellow) between proposed Lot 25.04 and Lot 11. The Board asked how the fences will be joined. Mr. Zotti will put end posts at the corners where the fences meet. Mr. Nadelberg asked if a fence between Lot 25.04 and Lot 11 is even necessary given all of the landscaping proposed. Other members of the Board thought that there should still be a fence to separate the properties.

William Hollows, Murphy & Hollows Associates LLC, was sworn in, presented his credential as a licensed professional engineer and was accepted as such. Mr. Hollows described Sheet 1 of the Minor Subdivision Plan. The property is 58,222 SF or 1.3 acres

and is located 250' in from Fairmount Road and accessed via a 40' wide driveway. To the north of the property is Springfield Avenue and the west is Heather Court. The house on Lot 25.04 is oriented, as previously testified, to keep the same angle as the house on Lot 11 on Heather Court. Mr. Webber noted that the lot area of Lot 25.04 shown on zoning schedule of Sheet 1 of the Minor Subdivision Plan is incorrect and is 31,562 SF not 37,040 SF. This will be corrected if the application is approved. The required lot size in the R-2 Zone is 15,000 SF.

Mr. Hollows described the existing conditions of Lot 25.03 as shown on Sheet 2 of the Minor Subdivision Plan and Exhibit A-1. The driveway in from Fairmount Road is a combination of pavement and grass. The access driveway to Central Avenue is gravel. The tan building is a garage. The gray area on Exhibit A-1 is gravel and the light gray area on Exhibit A-1 is dirt and gravel. There are deciduous trees on the northern and western perimeters of the property. The building envelopes have been changed to address issues raised in the Borough Planner's comment letter dated June 11, 2020, and as a result of talking the neighbors. The building envelopes are now tighter. As shown on Exhibit A-3, the houses have been relocated to create a 40' setback to the north to the property lines along Springfield Avenue, a 21' side-yard setback from Fairmount Road and 50' rear-yard setbacks to the property lines along Lot 11 on Heather Court and along Central Avenue. The flagstaff on Fairmount Road will be split to create individual driveways which results in 20' of frontage for each lot creating the need for variances as the lot widths must be 60' at the setback and 110' at the right-of-way.

The area of the building lot for Lot 25.04 is 31,560 SF with a building box area of 25,600 SF. The building box area of Lot 25.05 is 22,400 SF. Both lots exceed the required lot area of 15,000 SF. The lots require variances for the rear-yard setbacks. Sheet 4 of the Minor Subdivision Plan shows the location of the houses as originally proposed in gray. The site has a 3-4% grade and will have two driveways. The site will use the existing sanitary sewer connection which is deep enough to function via gravity. Dry wells will be installed to capture storm water from the roofs of the houses. Mr. Boyer asked about managing water from the driveways. The applicant intends to extend the storm water system from Central Avenue to Fairmount Road with a trench drain. The Board asked about curbing on the driveways. Mr. Hollows responded that the applicant may install a 2" or 3" curb to keep the water on the driveway. Mr. Boyer responded that he can review the plans to determine if it's possible to lay blocks on the side rather than install a 6" curb. The applicant agreed to capture the water from the driveway to get it to the storm water system at Central Avenue and Fairmount Road as a condition of approval. Mr. Hollows testified that the details shown on pages 5 and 6 of the Minor Subdivision Plan will be included in the lot grading plan.

Mr. Hollows answered questions regarding the storm water management. The leaders from the houses will connect to the drywells shown in the front yards of the proposed houses as depicted on the plan. There will be no runoff or sheet flow to the neighbors. The dry wells will be indicated on the lot grading plan submitted if the application is approved. Mr. Boyer asked about snow removal on the flagstaff noting the 4' on either side of the driveway. Mr. Hollows responded that the snow would be pushed up driveway. Some of it will get pushed off to the sides of the driveways. For Lot 25.04, the plow would turn to the left and push the snow back to the notch at the end of the driveway. For the other lot, the plow would turn to the right and also push the snow to the notch at the end of the driveway as shown on Exhibit A-4 – Copy of Exhibit A-3 with

Hearing Notations. Mr. Ammitzboll commented that the driveway is 120' long and expressed concern about plowing 120' of snow without spilling to the neighbors. Mr. Nadelberg noted that there are 4' on either side of the driveway where it can spill.

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

Jane Fela, Lot 4 on Fairmount Road, asked about the easement. Fairmount Road is a narrow street and she's worried about construction vehicles blocking Fairmount Road so vehicles can't get by. With previous construction on Fairmount Road, the easement was the only way to get out onto Central Avenue. Mr. Zotti responded that he won't use Fairmount Road for construction vehicles and he will keep the easement during construction because Fairmount is narrow. Mr. Ping asked if the driveway on Lot 27 on Fairmount is an easement. Lot 27 has its own driveway. Mr. Zotti clarified that the easement is off of Central Avenue.

Zoltan Spolarics, Lot 18 on Springfield Avenue, asked about the wire fencing between the two proposed buildings along the Springfield Avenue property line and the trees near the fence. The wire fence will be removed, and Mr. Zotti will take care of the trees if they are on his property. If they are dead, he will take them down.

Kate Keller of Philips Preiss Grygiel Leheny Hughes LLC in Hoboken, NJ, was sworn in and presented her credentials as a licensed professional planner. The Board accepted her as such. The C variances required for the application could be considered c(1) variances for a hardship as the flag-shaped lot is a hardship even though it was created by the previous application or c(2) flexible variances because the benefits outweigh the detriments and there is no harm to the public good or substantial detriment to the zone plan.

The application requires six variances, three for each lot: One of the lot width at the setback, one for the lot width at the right-of-way and one for the rear-yard setback. Ms. Keller testified that the applicant has mitigated the impact on the neighbors by repositioning the building envelopes. The application brings the lot from a non-conforming to conforming use. Making the lots residential benefits the land use and outweighs any negatives. The application advances 40:55D-2a of the Municipal Land Use Law as it creates two new residential lots of appropriate density and 40:55D-2g in that it provides sufficient space in an appropriate location for a residential use. The application represents the abandonment of a pre-existing non-conforming use. It advances the Municipal Land Use Law and zoning plan and the residential use will be more harmonious with the zone than the existing use.

Ms. Mertz noted that Ms. Keller covered the positive and negative criteria for approval. The property is unique to New Providence because of the flag staff. New Providence Ordinances don't provide regulations for flag lots or define what constitutes the front-, side- and rear-yard lot lines of a flag lot. While a c(2) variance might be better, a c(1) variance could be granted as there is some hardship because of the shape of the lot. Ms. Mertz believes the applicant did a good job of mitigating any negative impact and was appreciative of the applicant's willingness to work with the Borough and neighbors.

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

There were no questions from the public.

Michael Bazala, Bazala Architects, Warren, NJ, was sworn in and qualified as a licensed professional architect. The houses will be similar to those shown on the architectural plans submitted as part of the application. The houses will be a common type but will be individualized styles and colors that will be marketable and in keeping with the context of the neighborhood.

Mr. Bazala responded to questions from the Board. The houses won't be cookie cutter houses. The color will depend on whether the houses are sold while under construction as the buyer may want to select the color. Mr. Lynch asked about the large family room for the houses given that the houses have been relocated to increase the setbacks. Mr. Bazala responded that the houses will have an approved layout. Mr. Webber reiterated that the family rooms were removed to provide for the new setback and there will have to be an adjustment for the family rooms.

The Board had no further questions for the witness and 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.

Amy LaMotta, 11 Heather Court, was sworn in and asked about the quality of the soil for the new plantings since there is a lot of clay and whether new soil needs to be brought in. She would like the applicant to look at the quality of the soil to make sure the plants will be okay. Mr. Zotti responded that the soil is fairly well amended because of the previous use for the greenhouse. The previous owner left all of the clippings from the greenhouse on the site. The soil is quite good for planting. It's productive soil even though there is a lot of clay and doesn't need to be amended. Mr. Nadelberg added that the Board usually maintains jurisdiction over the landscaping for a period of time should the application be approved.

John Sponauer, 1718 Springfield Avenue was sworn in and stated that he's lived in town for 25 years. There are two properties that back up to the applicant's lot. Mr. Zotti called him about the fencing and plantings for privacy. Mr. Sponauer's only concern is that these be done in a refined way and are respectful of the neighbors. He was pleased that Mr. Zotti worked with him.

Zoltan Spolarics, 1512 Springfield Avenue, was sworn in and seconded Mr. Sponauer's comments. The applicant was very professional and made adjustments on short notice. It was a very positive experience.

There were no further comments from the public and Mr. Webber submitted the application to the Board for consideration.

The hearing was closed.

Discussion: Mr. Ammitzboll's biggest concerns with the application were the front- and side-yards as noted in the Borough Planner's comment letter. He was pleased to see

that the applicant worked with the neighbors and has relocated the houses to create better setbacks. While he was tentative about the application at first, the testimony has alleviated some of concerns because of the revised locations of the houses to create better setbacks and the installation of heavy perimeter landscaping; however, he does not want to see any security lighting on the new lots. He appreciates that the existing non-conforming use of the lot will be returned to a conforming residential use. Mr. Grob was also skeptical of the application at first. The applicant has done a good job of addressing his concerns with quality solutions and Mr. Grob appreciates that the applicant was able to come to a consensus with the neighbors on the setbacks and the plantings to create more of a buffer. He believes the houses will be a nice addition to the town. Mr. Ping agreed and likes the application. The testimony provided mitigated his concerns. Mr. Kogan stated that it was refreshing to see an applicant willing to make accommodations to the neighbors and he applauds this.

Mr. Ammitzboll moved to approve the application as testified with the following conditions:

- The lot area for Lot 25.04 will be corrected on the plans.
- The access easement to Lot 25.03 will be vacated on the map memorializing the subdivision.
- The trees along the perimeter of the property will be fenced to protect them during construction and no dirt will be stockpiled on the critical root zones of the trees
- The houses will not have flood or security lights.
- The types of fences installed will be as marked on revised Exhibit A-2.
- The air conditioning compressors will be located in compliance with the Borough's ordinance and landscaping will be installed to screen them.
- The storm water system will be extended to Central Avenue and water from the driveway will be directed to get it into the storm water system at Central Avenue and Fairmount Road.
- The Board will maintain jurisdiction of the landscaping for two years

Mr. Grob seconded the motion. A resolution will be passed at the next meeting. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Ping, Mr. Sorochen, Mr. Kogan and Mr. Nadelberg. Those opposed: None.

G. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR AUGUST 17, 2020

Darrin and Hope Estep

[Application #2020-17](#)

16 Ridgeview Avenue, Block 32, Lot 8, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedule II and Article V, 310-19 (G & I) and 310-32(B) for permission to construct a garage and fence. The proposed garage is 4.10 feet from the rear property line, 0.5 feet from the front property line whereas 6 feet from the rear property line and 40 feet from the front property line are the minimum required. The proposed fence in the front yard along Holmes Oval South is 6 feet high whereas 30 inches is the maximum height allowed.

Mr. Ammitzboll noted that the applicant appeared before the Board last year and asked if this application is materially different and whether *res judicata* would apply. Mr. Morin

stated that *res judicata* usually applies to applications that have been denied. Even if subject to *res judicata*, the applicant is still entitled to a public hearing. The applicant has some flexibility to seek an amendment to the previous application because the Board didn't deny anything previously.

Danielle Ayer

[Application #2020-18](#)

17 Magnolia Drive, Block 180, Lot 2, 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 32 feet whereas 40 feet is the minimum required. The existing front-yard setback is 39.2 feet.

Ferdinand Jewelers Inc.

[Application #2020-19](#)

571 Central Avenue, Block 220, Lot 21.14, TBI 2 Zone, New Providence, NJ 07974

Use variance for permission to operate a retail jewelry business within the TBI 2 Zone.

Mr. Ammitzboll commented that the jeweler is changing his business to provide more of a concierge service where customers make an appointment rather than walk in and wants to move his business to the professional office building on Central Avenue.

H. COMMUNICATION ITEMS

The Board asked about the fence application at 54 Pleasantview Avenue memorialized at tonight's meeting as the applicant asked if he could install it at his own peril before the Board memorialized the resolution. Mr. Morn sent the applicant an e-mail notifying him that he could do so at his own peril. Mr. Lynch added that the fence permit was issued, but the applicant will be coming back to the Board as the driveway that was relocated from Hickson Drive to Pleasantview Avenue is wider than permitted.

The Board also asked Mr. Lynch about the application for 35 Salem Road which the Board denied. Mr. Lynch received plans that conform and are under review

I. MISCELLANEOUS BUSINESS

No miscellaneous business.

J. MINUTES FROM JULY 20, 2020

The minutes from July 20, 2020, were approved as submitted.

K. ADJOURNMENT

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