

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, Diane Harvey is the owner of 118 Commonwealth Avenue, New Providence, New Jersey (the "Applicants"), and has applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for variances pursuant to N.J.S.A. 40:55D-70(c) for relief from the Borough's zoning ordinance to permit the construction of an addition. The proposed side-yard setback to the addition is 8.9 feet, whereas 13.5 feet is the minimum required. There are three existing sheds on the property; one abuts the rear property line and another abuts the rear of the house. The existing driveway is 4.5 feet from the property line and the driveway curb cut is 18 feet. The property is designated as Block 76, Lot 21 on the Borough Tax Map, and lies in the R-2 Single Family Residential Zone; and

WHEREAS, the Board has reviewed the application, testimony and exhibits presented by the Applicants at the hearing conducted on April 17, 2017; and

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

FINDINGS OF FACT

1. The Applicant, Diane Harvey, is the owner of 118 Commonwealth Avenue, New Providence, New Jersey. The property is designated as Block 76, Lot 21 on the Borough Tax Map, and lies in the R-2 Single Family Residential District.

2. The proposed side-yard setback to the addition is 8.9 feet, whereas 13.5 feet is the minimum required. There are three existing sheds on the property; one abuts the rear property

line and another abuts the rear of the house. The existing driveway is 4.5 feet from the property line and the driveway curb cut is 18 feet. The proposed addition is in violation of the requirements set forth at Chapter 310, Article IV, Section 310-10, Schedule II.

3. Darrell Nitti, Diane Harvey-Nitti and their architect, Robert Coleman, were sworn in. Mr. Coleman was accepted as a licensed professional architect. The Applicants would like to construct a full second-floor addition above the garage for a bedroom, closet and sitting room which requires a variance for the side-yard setback. They also propose to expand the front bedroom on the right side of the house but this does not require a variance.

4. The Board asked the applicants to address the other variances. Mr. Coleman responded that he and the Applicants were aware of the side-yard setback when they started the design. There are two sheds at the rear of the property and one plastic shed that abuts the rear of the house. They obtained a permit for the middle shed which Mr. Lynch inspected. Mr. Nitti testified that the rear shed was grandfathered in as it was on the property when they bought the house. It was destroyed when a tree fell on it and they replaced it. They would like to keep all three sheds. Mr. Karr expressed concern about the shed that abuts the house and access to the second floor in the event of a fire. Mr. Lynch believes it is more like a garbage enclosure than a shed but is labeled on the survey as a shed. Mr. Lynch added that a non-conforming rear shed cannot be replaced if destroyed. Mr. Grob noted that the “grandfathered” shed backs up to Oakwood Park and does not affect anyone.

5. Mr. Nitti was surprised about the variance for the curb cut because this was a sticking point with the contractor when he replaced the driveway four to five years ago. He testified that he contacted the Borough at the time and someone confirmed that an 18 foot curb

cut was okay. Mr. Nitti testified that there are other curb cuts this wide in the neighborhood so it is not unusual or out of character for the neighborhood.

6. Mr. Coleman described the addition referencing Sheet 2 of the plans. The second-floor addition above the garage has a 5.5 overhang and will extend to the back of the house with a cantilever. The sleeping area will be in the front of the addition. The closet will be in the middle with a small room off the back. The bedroom on the right side of the house will be expanded to square it off with a full-height wall. No variance is required for this addition. The addition over the garage will not expand the footprint of the house on the grade level. The existing garage runs the length of the house so one car can be stacked behind the other.

7. At the request of Mr. Grob, Mr. Coleman sketched the garage addition in on the right-side elevation of Sheet 2 which was marked as Exhibit A-1. The right side of the garage addition will have one window. Ms. Harvey-Nitti stated that the neighbors will not see this side of the addition because of the 20 foot *arbor vitae* on that side of the house.

8. Mr. Coleman described the left elevation of the addition (Sheet 3) which will have one window in the existing garage, two windows in the second-floor sleeping area, one window in the closet and one window in the back. The dormer in front is designed to keep the same style as the roof line and overhangs the garage with columns. Mr. Nitti testified that the garage will have two windows not one as shown. Mr. Coleman sketched in the roof line for the expanded bedroom on the right side of the house on Sheet 3 as well as the additional window in the garage which was marked as Exhibit A-2. Mr. Nitti stated that they have 20 foot to 25 foot *arbor vitae* on both sides of the house that provide screening from the neighbors. They are tall enough that they cannot see the neighbors from the second floor. Mr. Coleman sketched in the front dormer

that will be added on the right side of the house to Sheet 4 (rear elevation) which was marked as Exhibit A-3.

9. The Applicants responded to additional questions from the Board. The addition will be sided with the same vinyl siding as the rest of the house. The Applicants do not believe they will have trouble getting the matching siding. The Applicants did not have photographs of other homes in the neighborhood but Mr. Coleman stated that this is one of the less aggressive additions on the street. The full second-floor addition and addition over the garage at 87 Commonwealth Avenue is larger. Mr. Nitti uses the garage but Ms. Harvey Nitti parks her SUV in the driveway, but they hope to use the full garage.

10. 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.

11. 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 public hearing was closed.

CONCLUSIONS OF LAW

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

2. Through the testimony and exhibit presented, the Applicant has established that the application:

(a) relates to a specific piece of property, namely the Applicant's 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 addition could not be designed in a way to avoid variance relief given the existing setbacks of the home.

4. The Board found the addition and portico, as designed, would not negatively impact the neighborhood.

NOW, THEREFORE, BE IT RESOLVED, on this 1st day of May, 2017, that Diane Harvey's application for "c" variance relief be and hereby is **GRANTED**, subject to the following conditions:

1. The addition shall be constructed in accordance with the plans and testimony presented to the Board; and
2. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance; and
3. 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: Mr. DeSarno, Mr. Grob, Mr. Karr, Mr. Morgan, Mr. Sorochen,
and Mr. 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 May 1, 2017.

ATTEST:

Margaret Koontz
Secretary, Board of Adjustment

William B. Pasella
Chairman, Board of Adjustment