

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, 102 Livingston, LLC is the owner of 102 Livingston Avenue, New Providence, New Jersey (the "Applicant"), 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 a new home. The proposed lot area is 10,708 square feet whereas 15,000 square feet is the minimum required. The proposed lot width at the setback is 105 feet whereas 110 feet is the minimum required. The proposed front-yard setback to the house along Fourth Street is 31 feet and 27.4 feet along Livingston Avenue whereas 40 feet is the minimum required. The proposed rear-yard setback to the house is 23.9 feet whereas 40 feet is the minimum required. The proposed driveway curb cut is 19 feet whereas 16 feet is the maximum allowed. The property is designated as Block 143, Lot 10 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 Applicant at the hearings conducted on September 11, 2017, and October 2, 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, 102 Livingston, LLC, is the owner of 102 Livingston Avenue, New Providence, New Jersey. The property is designated as Block 143, Lot 10 on the Borough Tax Map, and lies in the R-2 Single Family Residential District.

2. The Applicant proposes to construct a new home. The proposed lot area is 10,708 square feet whereas 15,000 square feet is the minimum required. The proposed lot width at the setback is 105 feet whereas 110 feet is the minimum required. The proposed front-yard setback to the house along Fourth Street is 31 feet and 27.4 feet along Livingston Avenue whereas 40 feet is the minimum required. The proposed rear-yard setback to the house is 23.9 feet whereas 40 feet is the minimum required. The proposed driveway curb cut is 19 feet whereas 16 feet is the maximum allowed. The proposed construction is in violation of the set back requirements set forth at Chapter 310, Article IV, Section 310-10, Schedule II, and Article V, 310-20(2).

3. Jeffrey Kantowitz, attorney for the Applicant, introduced the application to construct a new home on a currently vacant lot. The proposed house requires variances, some of which are for existing non-conformances. Christine Miseo, Miseo Assoc., P.A. Architects, was sworn in, presented her credentials as a licensed professional architect and planner, and was accepted as such. A colorized version of the Variance and Boundary Survey, with the proposed footprint of the house superimposed on the survey and the outline of the 200 foot radius map marked to show the front-yard setbacks for the houses within 200 feet of the subject property was marked as Exhibit A-1.

4. A two-story, single-family house is proposed on the corner lot with a Livingston Avenue address although the front door of the house will front Fourth Street not Livingston Avenue. A board with photographs from the lot facing west, north, east and south and photographs of surrounding buildings and the parking lot behind the lot was marked as Exhibit A-2.

5. The Board asked Ms. Miseo why the house is oriented toward Fourth Street and not Livingston Avenue. Ms. Miseo described the orientation of the surrounding houses testifying

that most of them do not face Livingston Avenue. In addition, she opted to orient the house on Fourth Street for safety reasons so the driveway would not be on Livingston Avenue which is a busy street.

6. Three variances are required. The lot size and lot width at setback are existing non-conformances. The property is an undersized lot and the lot width at setback is less than what is required. The Borough has identified the rear-yard setback of 23.9 feet. The Borough has also identified variances for the front-yard setbacks of 31 feet along Fourth Street and 27.4 feet along Livingston Avenue.

7. Mr. Grob inquired about the front-yard setback for the property to the rear (block 43, lot 1) on the corner of Livingston Avenue and Fifth Street. This house has a setback of 30 feet. Mr. Grob then asked why the proposed house could not be moved to the east 3 feet to increase the front-yard setback on Livingston Avenue so that it would be similar the house behind it. Ms. Miseo said this could be done.

8. Ms. Miseo provided a description of the left-side elevation (western façade). Referring to Sheet A-1 of the architectural plans, Ms. Miseo described the front elevation which will have a single entry and a two-car garage on the right. To the left of the entry is the living space with bedrooms above. Note: The right and left elevations on Sheet A-1 are mislabeled. The gable end of the house (labeled on the plan as the left elevation but is really the right elevation) will face Livingston Avenue. Ms. Ananthakrishnan commented that the façade that will face Livingston Avenue is 31 feet, 8 inches of flat wall without any articulation. Ms. Miseo responded that she can add rooflines to break up the façade. The Board would like to see this in addition to moving the house 3 feet to the east.

8. The Applicant agreed to carry the hearing to October 2, 2017, so it can make

changes to the plan.

9. At the October 2, 2017 hearing, Jeffrey Kantowitz, attorney for the Applicant, recapped the previous hearing on September 11, 2017, and thanked the Board for the constructive and helpful discussion at the hearing. The Applicant took into consideration the discussion about the side of the house facing Livingston Avenue; the location of the house on the property and moving it back 3 feet from Livingston Avenue; and, changing the orientation of the house to front on Livingston Avenue rather than Fourth Street because of the activities at the community center on Fourth Street.

10. The Applicant filed revised plans that reflect the discussion at the prior hearing. The orientation of the house has been changed so that it faces Livingston Avenue for a better visual. The footprint of the house has been moved back on Livingston Avenue, and the house has been oriented to keep the garage on Fourth Street. As a result of the revisions, two variances previously sought have been eliminated. The only variance now required is for the rear-yard which backs up to the parking lot and only impacts the parking lot.

11. Christine Miseo, previously sworn in on September 11th, re-designed the entire house. The house now faces Livingston Avenue with the right elevation facing Fourth Street. The left side of the house is a more simple elevation. The rear elevation, which is visible when driving on Fourth Street toward Livingston Avenue and faces the parking lot, now has a double gable and additional windows. Ms. Miseo described the first-floor plan which has a front porch and entry, dining room in front with the kitchen and dinette behind it and a family room in the back off of the dinette. The second floor has four bedrooms, three bathrooms and a laundry room.

12. The proposed house is now approximately 2,700 square feet which is slightly

larger than the house originally proposed. Ms. Miseo believes the house is more aesthetically pleasing than the one she originally designed. The left side-yard setback is now 15 feet and the house has been pushed back on Livingston Avenue to match the setback for the house next door. The setback on Fourth Street is 30 feet to match the setback of the house on the other side of the parking lot (on Fourth Street). The rear-yard setback is 35 feet which requires a variance for 5 feet that results from moving the house back on Livingston Avenue to line up with the house next door on Livingston. Ms. Miseo does not believe the rear-yard setback is a detriment because it abuts the parking lot and the yard is screened by tall evergreens.

13. Changing the orientation simplified the variances. The revised plans eliminated the variance for the front-yard setback which is now within the prevailing front-yard setback of dwellings within 200 feet on the same side of the street. Ms. Miseo submitted the revised plans to the Board without vetting them with the owner so it is possible that the owner may reduce the footprint when he applies for permits resulting in larger rear and side yards: The variance relief for the setbacks would be less for a smaller footprint than what is being sought.

14. Mr. Grob stated that he was okay with shrinking the size of the house but asked if it would be a problem if the Board approved the application as presented and the plans submitted for construction permits are for a smaller house. Mr. Lynch responded that it is okay for the Board to approve the bulk variances requested.

15. Ms. Ananthakrishnan asked about the side-yard setback on the gable end of the house. The height of the gable appears to be 33 feet and the side-yard setback can be no closer than 60 percent of the height of the building which requires a 19.8 feet side-yard setback, and, therefore a variance. Ms. Miseo responded that she could put a hip roof to avoid the need for a variance but this would not be attractive and it would be better to ask for a variance. Mr.

Kantowitz noted that if the house as submitted for permits is smaller, a variance for the side-yard setback might not be needed but agreed that the Applicant should request a variance for the side-yard setback. Mr. Morin noted that these types of amendments to the application are allowed.

16. Mr. Kantowitz summarized the application. The application requires variances for the rear-yard setback and the side-yard setback as it exceeds 60 percent of the height of the building. The plans submitted for permits may be to the extent presented or less. Mr. Kantowitz thanked the Board for acknowledging the local conditions at the previous hearing as the revised house is better.

17. 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.

CONCLUSIONS OF LAW

1. The proposed new home does not comply with the requirements for this lot as established by Chapter 310, Article IV, Section 310-10, Schedule II, and Article V, 310-20(2). The request to permit the construction of a new home requires the granting of "c" variances pursuant to N.J.S.A. 40:55D-70(c).

2. Through the testimony and exhibits 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.

NOW, THEREFORE, BE IT RESOLVED, on this 16th day of October, 2017, that 102 Livingston, LLC's application for "c" variances be and hereby is **GRANTED**, subject to the following conditions:

1. The new home shall be constructed in accordance with the plans and testimony presented to the Board although it may be built with less square footage so long as it does not require additional variance relief; and

2. The Applicant must obtain a building permit and commence construction within twelve (12) months from the date of its issuance and complete construction within twenty-four (24) months thereafter; and

3. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance; and

4. 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

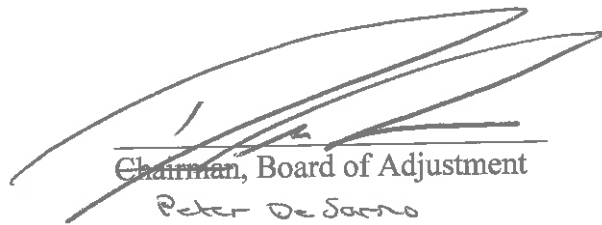
Those in Favor: Mr. DeSarno, Mr. Morgan and Mr. Sorochen

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 October 16, 2017.

ATTEST:

Margaret Keaty
Secretary, Board of Adjustment


Chairman, Board of Adjustment
Peter DeSarno