

**PRINCETON ZONING BOARD OF ADJUSTMENT**  
**Minutes of Regular Meeting**  
**Wednesday, February 27, 2013– 7:30pm**  
**Main Meeting Room**  
**400 Witherspoon Street, Princeton, NJ 08540**

**PRESENT:** Barrie Royce, Richard Kahn, Michael Floyd, Penelope Baskerville, Richard Kahn, Sara Segal, Louisa Clayton, Ravi Manchi, Steven Cohen (arrived at 8:30 p.m.) and Doreen Blanc-Rockstrom

**ALSO PRESENT:** Derek Bridger, Zoning Officer; Karen Cayci, Attorney; and Debra Rogers, Secretary

**ABSENT:** None

There were three (3) members of the public present.

The meeting commenced at 7:35 p.m. with Chairman Royce reading the Open Public Meetings Act statement.

Chairman Royce deferred the adoption of the minutes to the end of the meeting.

**1. APPLICATIONS:**

**a) MAHER/KELLY**

51-53 Park Place

Section 28.01, Lot 8, R-4

**“D” FAR and “C” – Bulk Variances for 2 Story Addition**

File No. Z13 13-004UV

Attorney Cayci said all the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Attorney Cayci swore in Derek Bridger, Princeton Zoning Officer.

Mr. Bridgers discussed his memo dated January 31, 2013. He said the applicant is seeking a FAR (floor area ratio) variance to permit construction of a 2 story addition for a 2 family dwelling. He said they are also requesting a c1 variance to permit the construction of the addition and porch in exception to the required building coverage. The proposed porch violates the required combined side yard setback. He said the property is located in the R-4 zoning district and the two-family use is permitted as of right. He noted that the lot is non-conforming with respect to the lot width and the lot area; and the dwelling is non-conforming with respect to

smaller side yard setback, combined side yard setback, building coverage, FAR and building height to setback ratio. He said the applicants would like to construct a 2 story addition to the rear elevation of the property and a 1 story covered porch also at the rear of the property. He said the addition and the porch would require bulk variance relief for lot coverage and required combined side yard setback and FAR. He discussed the standards for the Board to approve the variances.

Attorney Cayci swore in Lin Maher, owner/applicant.

Ms. Maher said she has lived in the Princeton's (Borough and Township) for over 36 years and loves the house that she is in right now. She said she would love to stay in the house, but the downstairs does not have any closets and there is no bathroom on the first floor. She explained that her neighbors Mr. & Mrs. Kelly could not attend the meeting but noted that the construction will encompass both sides of the structure – both owners would very much like to have this addition. She said she talked to her neighbors and the seemed impressed and excited about the design that she presented to them. She said on the neighbors said that he liked the plans but would very much like for her to remove a large tree that sits between his structure and hers.

Attorney Cayci swore in Terry Smith, Architect.

Mr. Smith said that Park Place is a nice little street that has a variety of homes; large, small, single family and duplexes; however the homes are built in very close proximity to each other. He introduced Exhibit A-1 which were photos of the streetscape of Park Place. He discussed the varying facades of the homes and noted how some of the homes back up to Moore Street and some back up to a parking lot in between the street and the Nassau Street businesses. He then introduced Exhibit A-2 which were photos of the rear of the homes. He noted how many of the homes have paved their backyards in order to provide off-street parking. He said this lot is very unique and it's located in a unique neighborhood. He said the most logical place for the addition is in the rear of the property – this is where the cars are parked and when walking back from town this is where the applicants would enter the structure. He also noted that this will enhance the rear of the structure as it has not been kept as nice as the front. He then introduced Exhibit A-3 which showed the footprints of the homes in the neighborhood. Also depicted on that plan was the proposed addition in red. He introduced Exhibit A-4 which were the floor plans – it showed the existing and proposed conditions of the structure. He said Ms. Maher would like to keep the kitchen intact and add a small breakfast area, a bath and a shower – which will protrude out 8 feet 6 inches from the existing line. He also noted that they chose not to design the addition the full width of the existing structure in order to increase the sunlight. He said they tried to be very sympathetic to the zoning requirements. He introduced Exhibit A-5 which was the Site Plan and he explained how the addition came in further than the existing house to lessen the non-conformity. He said the roof lines and the wall of the existing house encroach into the height to setback line; however, the new addition does not. He introduced Exhibit A-6 which was the existing and proposed 2<sup>nd</sup> floor plan. He said they would like to expand the closet and the bathroom so they can shift the bedroom back and will be able to get more sunlight into the room. He said the parameter of the addition is the same on the neighbor's side, but they designed some interior changes with the rooms. He introduced Exhibit A-7 which was the rear elevation. He noted that the back porch will bring a bit of a colonial look like the front of the

house. He said the existing lot coverage is 30% and with the addition they will be at a total of 33%. He said with regards to the FAR, the existing house is on a sub-standard lot which enabled them to use the adjusted FAR calculation but the existing FAR is already above what is permitted. He said the addition will be very modest and they planned and designed the addition very carefully so as not to propose something that was very large.

Chairman Royce asked the applicants to comment on the impacts to the light and air and to address the drainage issues from the new roof of the addition.

Mr. Smith said looking at the rear of the homes, the applicant was very conscience not to bring the whole house out; they actually came in more than the existing home which allows more light to penetrate through.

Chairman Royce asked if there would be shadowing on the neighbors properties.

Mr. Smith said if there is shadowing, it will be very minimal.

Chairman Royce asked where the new roof will be draining to.

Mr. Smith said it will come out to the surface, noting that the soil is very old and dry and it will be hard to be absorbed.

Ms. Maher said he neighbor would like the large tree to be removed and he thinks that it will enable him to regain any light that may be lost with the addition.

Chairman Royce inquired about the slope of the lot.

Mr. Smith said there is not much of a slope on the lot.

Member Blanc-Rockstrom asked if the house could withstand the addition.

Mr. Smith said yes, structurally it would be able to.

Member Blanc-Rockstrom also inquired about the over-hang. She asked if there will be a new overhang on the new addition.

Mr. Smith said the roof over-hang will be similar to what exists now.

Member Clayton asked about the impervious coverage and if the applicant is complying with that requirement.

Mr. Smith said yes.

Member Floyd asked if the basement ran the whole span of the house and what the ceiling height was in the basement.

Ms. Maher said she believes the basement runs the complete span of the house just not under the porches. She said the height varies but she believes the average may be around 6 feet or so.

Member Segal asked if the siding and the windows would be renovated.

Ms. Maher said the outside will eventually be updated but it is not part of this project.

Chairman Royce said that if there will be exterior lighting, it would be beneficial to minimize an impacts it may have on the adjacent properties.

Mr. Smith said the only lighting that has been discussed has been for the porch area.

Ms. Maher said she is very sensitive to lighting and will be conscience of the neighbors.

Chairman Royce noted that if the Board is inclined to approve the application; he would like to see a condition placed on the application that there shall be no storm water drainage on the adjacent properties. He also said that any exterior lighting shall not spill over the property line and is not be visible on other lots.

Chairman Royce asked if there were any members of the public who wanted to comment on the application. Hearing none, he closed the public portion and the Board went into deliberative session.

Chairman Royce asked the applicant for a summation and to give reasons why the Board should grant the variances.

Mr. Smith said the lot is very unique and because of the size of the lot, the applicant is inhibited as to where it can build. He said the addition is very modest and will improve the look of the back of the house. He also noted that the improvements will allow the structure to be more sustainable and will be a more viable home. He said the addition will be a great benefit to the existing structure as well as to the neighborhood. He said this is not a typical neighborhood because it backs up to the businesses on Nassau Street and to a parking lot. He said this request by the applicant is a reasonable one.

Chairman Royce asked for comments from the Board.

Member Floyd said with respect to the bulk variances, he did not find that there is an exceptional hardship or difficulty. He said there is a good sized home on a good sized lot, with a basement that runs the full length of the house. He said the FAR request is not a *diminimus* one. He said this is a tight neighborhood and this will make the lots even tighter. He also noted that the more you expand these homes, the more they are put out of reach for the average person. He said he thinks the house can be upgraded without the need to expand it. He stated that as people get older they talk about downsizing their homes, not expanding them.

Chairman Royce said at first he was not happy with the request, but after seeing all of the presentation, it seems to him that the applicant is not being particularly extravagant. He said

with the conditions discussed about drainage and lighting, he thinks this can be approved. He also noted that he was impressed that the applicant brought the addition in to meet the intent of the side yard setback requirement. He said he feels the proposal is sensible.

Member Baskerville said she agrees that this is a reasonable project. She said there will be no impacts on the neighbors and that she would have more concerns about the project if it was not being located at the rear of the house. She said she thinks it is important to have a bathroom on the first floor of the home.

Member Clayton said the addition backs up to a parking lot and she feels the request is reasonable. She stated that her only concern is the drainage and that it not run onto the adjacent properties.

Mr. Bridger noted that the “borough” homes have typically been there for hundreds of years and the soil is compacted so there won’t be any recharge into the ground. He further stated that is proposal does not fall into a category (by ordinance) to force storm-water management.

Member Kahn said with respect to Member Floyds comments, the Board should stay away from the economics of this. He said the Board should be looking at the negative impacts and he does not see any because the addition backs up to a parking lot and not a residential area.

Member Segal said she thinks this proposal would be a big improvement to the structure and she thinks the request is very modest.

Chairman Royce also stated that he thinks the addition is modest. He asked if anyone else had comments, and if not, he asked for a motion on the application.

**Upon motion made** by Penelope Baskerville and seconded by Ravi Manchi, a motion was made to approve the application with the conditions that there is no water runoff on the adjacent properties and that the lighting shall not spill on to adjacent properties as well.

<b>ROLL CALL:</b>	<b>Aye</b>	<b>Penelope Baskerville</b>
	<b>Aye</b>	<b>Louisa Clayton</b>
	<b>Nay</b>	<b>Michael Floyd</b>
	<b>Aye</b>	<b>Richard Kahn</b>
	<b>Aye</b>	<b>Ravi Manchi</b>
	<b>Aye</b>	<b>Sara Segal</b>
	<b>Aye</b>	<b>Barrie Royce</b>

## **2. MINUTES:**

**Upon motion made** by Penelope Baskerville and seconded by Doreen Blanc-Rockstrom, a motion was made to approve the minutes as written and amended:

**ROLL CALL:**      **Aye**    **Penelope Baskerville**  
                          **Aye**    **Michael Floyd**  
                          **Aye**    **Richard Kahn**  
                          **Aye**    **Sara Segal**  
                          **Aye**    **Steven Cohen**  
                          **Aye**    **Barrie Royce**

**3. EDUCATIONAL SESSION:**

Attorney Cayci discussed the following memo with the Board.

MEMORANDUM

To: Princeton Zoning Board of Adjustment

Cc: Derek Bridger, Zoning Officer  
Debra Rogers, Board Secretary

From: Karen L. Cayci, Esq.

Re: New Jersey Zoning Law

Date: February 27, 2012

As requested, I have provided below for the Board’s review a brief outline of salient aspects of the Board’s powers and obligations under New Jersey law.

**I. Jurisdiction and Powers of Zoning Board of Adjustment**

Pursuant to the Municipal Land Use Law (commonly referred to as the “MLUL”), N.J.S.A. 40:55D-1 et. seq., the New Jersey Legislature has delegated land use powers to the municipalities to be exercised by three agencies, the planning board, the governing body and the zoning board of adjustment. The zoning board exercises quasi-judicial powers because the board makes determinations of not only fact but also of law where required to decide an application. For example, where interpretation of a zoning ordinance is in question for a particular application or if a question involving construction of the MLUL arises, the board would have the authority to make such determinations. The board’s jurisdiction falls into four categories:

(a) Original jurisdiction where the applicant brings its application directly to the board without previous application to the zoning officer for a determination. This would include the power to grant exceptions to the municipality’s zone plan and ordinances such as “c” (bulk

variances”) and “d” variances (use variances);

(b) The power to hear an appeal from the decision of the zoning officer for the purpose of determining whether his decision was in error under the provisions of the municipal zoning ordinance;

(c) Hear and decide requests for interpretation of the zoning map or ordinances or for decisions upon other special questions; and

(d) Ancillary jurisdiction to grant site plan and subdivision approval in connection with an application where the applicant both requires a use variance as well as site plan and/or subdivision approval.

The Zoning Board is also required under the MLUL to provide the governing body and planning board with an annual report on the zoning ordinances which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any.

## **II. C (1) and C (2) Variances (N.J.S.A. 40:55D-70(c))**

(a) Staff will initially review application to confirm type of variance needed and appropriate board of jurisdiction. In addition, staff will provide the Board with comment memo for each application.

(b) Zoning Board will frequently see applications for variances in connection with single-family dwellings as the planning board does not have site plan jurisdiction over one and two-family dwellings.

### **Bulk Variances<sup>1</sup>**

Burden of proof is on applicant to demonstrate both positive and negative criteria have been satisfied.

### **Positive Criteria**

C (1) Variances-Appropriate where by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or physical features which uniquely affect the applicant’s property or by reason of some other extraordinary situation which uniquely affects the applicant’s property or the lawful structures thereon, the strict application of the zoning ordinances would result in a peculiar and exceptional practical

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<sup>1</sup>The planning board has ancillary jurisdiction over “ C” variances if the proposed development also requires subdivision, site plan or conditional use approval.

difficulty to the developer of the property. Generally, an applicant must demonstrate that the conditions at issue are unique to the particular lot and the conditions are not common to the neighborhood. Where the hardships in question affect the entire neighborhood, the remedy would appropriately be through a revision of the ordinances.

Each application must be decided on its own particular facts. Even where a particular use is considered to be inherently beneficial (e.g. hospital, school) that fact alone is not dispositive with respect to granting a hardship variance. Where the hardship in question has been created by the applicant, the board may consider those circumstances in reviewing the application and this may be a basis for finding that the positive criteria have not been met and therefore for denial of the application.

C (2) Variances- Does not require demonstration of undue hardship. Rather, applicant must establish that the application: (1) relates to a specific piece of property; (2) that the purposes of zoning and the MLUL (enumerated in N.J.S.A. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements; (3) that the variance can be granted without substantial detriment to the public good; (4) that the benefits of the deviation would substantially outweigh any detriment and (5) that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Essentially, the focus in granting of C (2) variance should be whether the variance reflects a better zoning alternative for the property which will benefit the community.

### **Negative Criteria**

Applicant for C (1) or C (2) variance must also demonstrate that the variance can be granted (1) without substantial detriment to the public good and (2) without substantially impairing the intent and purpose of the zone plan and ordinances. Board needs to balance positive and negative criteria.

Vote Needed for C (1) and C (2) variances- Vote of majority of quorum present.

### **III. D Variances (N.J.S.A. 40:55D-70(d))**

“D” variances fall into the following six categories:

- (1) To permit a use or principal structure which is not allowed in a zone district;
- (2) To permit expansion of a non-conforming use (which would include expansion of a building in which a nonconforming use is to be carried on);
- (3) To permit deviation from the required standards for a conditional use;
- (4) To permit an increase in the permitted floor area ratio;
- (5) To permit an increase in the permitted density (except as applied in limited situations involving one or two family buildings where lot is isolated undersized lot or resulting from a minor subdivision);
- (6) To permit a height of a principal structure which exceeds by ten feet or 10% the maximum height permitted in the zoning district for a principal structure.

Burden of Proof

Applicant has burden of demonstrating special reasons for granting of variance as well as negative criteria.

Special Reasons

Special reasons may be found where the proposed use inherently serves the public good (such as a school, hospital, public housing), where the owner would suffer undue hardship if required to use the property in compliance with permitted uses in the zone and where the use would serve the general welfare because the proposed site is particularly suited to the proposed use.

Required Vote

“D” variances can be approved only by an affirmative vote of at least five members so mere quorum is not sufficient.

Expansion of Nonconforming Structure

Where the use is permitted but the structure is nonconforming, an expansion of the nonconformity will require a “c” variance unless the expansion touches upon the concerns listed in d (4) through (6) in which case those variances will also be required.

**IV. Special Questions**

Most common special question referred to the board involves whether a particular use is similar to or has same general characteristics as the specific permitted uses listed for the zone.

**V. Appeals of Board Decision**

Any interested party may appeal a decision of the zoning board to the Law Division of the New Jersey Superior Court. On appeal to the Court, the factual determination of the board is presumed to be valid and its decision will not be overturned unless found to be arbitrary, capricious or unreasonable. The burden of proof lies on the plaintiff to establish arbitrary, capricious or unreasonable action by the board.

**VI. Conflicts of Interest**

(a) Standard derived from MLUL, the Local Government Ethics Law (N.J.S.A. 40A: 9-22.1 et. seq.) and common law.

(b) Determination as to whether a particular interest is sufficient to disqualify board member are fact sensitive and depend upon the particular circumstances.

(c) Usually, four types of situations can give rise to conflicts:

(1) Direct monetary interest as when a member is voting on matter involving his own property or where member would realize direct financial gain;

(2) Indirect monetary interest where member votes on matter financially benefits someone closely tied to the member such as a family member or employer;

(3) Direct personal interest where a member votes on a matter that benefits a blood relative or close friend in a non-financial way but in a matter of great importance; and

(4) Indirect personal interest where a member votes on a matter in which his or her judgment may be affected because of membership in some organization.

(d) Under the Local Government Ethics Law, all board members will need to file a financial disclosure form which shows sources of income, sources of fees and honoraria exceeding a specified amount, the name and address of all business organizations in which the member or immediate family member held an interest during the preceding calendar year and the address of all real estate in New Jersey in which the member or immediate family member held an interest in the preceding calendar year.

(e) Where member believes that he or she has a potential conflict of interest with a particular application, it is helpful to advise the board staff regarding the potential problem. The staff is familiar with conflict situations which can arise and both the member and staff can also confer with me. Should it be determined that a conflict exists, the member will need to be recused from participation in the application. Therefore, advising the staff in advance will help to insure that there is an adequate quorum to hear the application or at least five members where the application involves a “D” variance.

## **VII. Communication Among Board Members regarding applications**

(a) Zoning Boards are subject to the requirements and restrictions of the Open Public Meetings Act ( OPMA) ( N.J.S.A. 10:4-6 et. seq.) as well as requirements of the Open Public Records Act (N.J.S.A. 47:1A-1.1 et. seq.)

(b) OPMA requires that the board provide the public with adequate advance notice of all its meetings. OPMA further requires that the board permit all members of the public to attend their meetings. The public may be excluded only from portions of the meeting known as “closed sessions” provided that the board first adopts a resolution authorizing the closed session, indicating generally what will be discussed and when the discussions can be disclosed to the public. OPMA describes those items which can be legally discussed in a closed session. Of most applicability to the board would be any discussion involving pending or anticipated litigation and any matter falling within the attorney-client privilege.

OPMA provides that communications between an effective majority of members of a board by communication equipment (email or telephone) done with the intent to discuss a board matter, may depending upon the circumstances, constitute a meeting and may violate OPMA.

Accordingly, email communications should not, as far as practicable, include an effective majority of the board and should never include an effective majority of the board where a discussion of information related to an application is involved or which involve decision-making or deliberative functions of the board. In addition, any email communication should indicate that there should be no email reply or response for communication. Emails sent by staff for purely administrative reasons (such as distribution of agendas, staff memos) would not fall under this category.

#### **4. CLOSED SESSION:**

Attorney Cayci read the following resolution into the record:

**Whereas**, the Zoning Board has determined that it is necessary to review the status of pending litigation known as Names v. Princeton Borough Zoning Board of Adjustment; and

**Whereas**, N.J.S.A. 10:4-12 permits the Board to conduct a meeting from which the public is excluded for the foregoing purpose; and

**Whereas**, the discussion conducted in closed session shall be made available at such time as the issues discussed therein are resolved and its disclosure would not subvert any particular exception for convening a closed session.

**NOW THEREFORE BE IT RESOLVED**, that the Princeton Zoning Board of Adjustment shall go into closed session for the purpose of discussing pending litigation as permitted by N.J.S.A. 10:4-12.

**A motion was made by Michael Floyd and seconded by Ravi Manchi and the Board voted unanimously to go into closed session.**

**A motion was made by Michael Floyd and seconded by Ravi Manchi and the Board voted unanimously to return from closed session.**

#### **5. ADJOURNMENT:**

**Upon motion made** by Penelope Baskerville and seconded by Steven Cohen, a motion was made to adjourn the meeting at 9:20 p.m.

**ROLL CALL:**      **Aye**    **Penelope Baskerville**  
                         **Aye**    **Louisa Clayton**  
                         **Aye**    **Michael Floyd**  
                         **Aye**    **Richard Kahn**  
                         **Aye**    **Ravi Manchi**  
                         **Aye**    **Sara Segal**  
                         **Aye**    **Barrie Royce**

**Respectfully Submitted,**



**Debra Rogers, Secretary**

Date Approved: March 27, 2013