



MEMORANDUM

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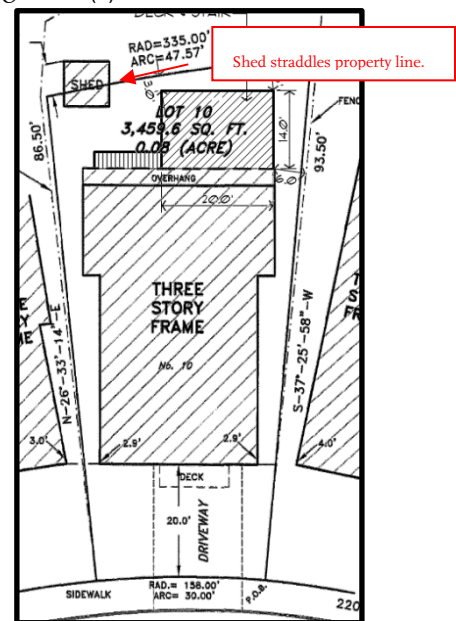
To: City of Bayonne Zoning Board of Adjustment
From: Brian Slaugh, PP, AICP
James Clavelli, PP, AICP
Re: **Ali Qureshi**
Bulk Variance for Two-Family Dwelling
Block 473.02, Lot 10
10 Elm court
R-2, Detached/Attached Residential District
Date: May 2, 2023

1. APPLICATION DESCRIPTION

1.1. Applicant's Proposal. The applicant is proposing a 280 sf. deck and 34 sf. staircase (combined for 314 sf.) that is to be attached to the rear of an existing two-family dwelling located on 10 Elm Court. The site, which already exceeds the maximum permitted lot coverage, will have the nonconforming lot coverage further intensified by the proposed deck, necessitating a “-(c)” variance for the development of the deck to proceed.

1.2. Existing Site Conditions. The existing dwelling is located at 10 Elm Court in the R-2 district. Elm Court is a dead end street that is accessed via Oak Street. The area is in the southeastern portion of the City, just south of U.S. Route 440. The building, which is a two-family dwelling with a shared entrance, consists of a single garage door on the ground floor with a two-car driveway the composes the entirety of the front yard. The dwelling contains a rear yard with a shed, which is enclosed by a chain link fence to either side, though no fence is located along the rear property line. The survey indicates a storage shed in the rear yard that straddles the rear property line as indicated in the image to the right in red.

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
Mary Beth Lonergan, AICP



Applicant's Survey with Proposed Deck Included.



- 1.3. Neighborhood Context. The site is in the R-2 residential district. The entirety of Elm Court features similar style buildings of a similar age, indicating that the area was developed holistically. The rear of the property abuts a jughandle that connects N.J. Route 440 North to East 5th Street. Historic aerials from Google Earth Pro indicate that the development was constructed between 1995 and 2002, and the jughandle had been developed at least since 1995, again according to historic aerials.



Aerial Based on Google Maps Data Dated June 11, 2022 and Accessed May 2, 2023. Subject Property is Outlined in Red.

- 1.4. Development Beyond the Property Line. There appears to be development beyond the property line as indicated in the preceding aerial within the blue triangle. Elsewhere in this report the shed, which the survey indicates straddles the property line, is discussed as being nonconforming. **The applicant should testify as to the development beyond the property line.**



- 1.5. Environmental Factors. The site is not in a flood zone, nor are there wetlands located within the vicinity of the site. A known contaminated site is located approximately 200 ft. to the southwest of the site¹.
- 1.6. Site Plan Approval is not Required. The Municipal Land Use Law prohibits requiring site plan approval for one- and two-family dwellings. This report will only review zoning regulations relating to the variance and will not serve as a general site plan review.



Image of Front of Subject Property from Elm Court

2. ZONING

- 2.1. Permitted Use. Pursuant to §35-5.3.a.2, the existing detached two-family dwelling is permitted in the R-2 zone.
- 2.2. Permitted Accessory Use. Pursuant to §35-5.3.c.1, structures customarily associated with a residential use are permitted. Decks are commonly associated with residential uses. The plan complies.

¹ <https://njogis-newjersey.opendata.arcgis.com/datasets/njdep::known-contaminated-site-list-for-new-jersey>



Table 1: R-2 Area, Yard and Structure Requirements ~ §35-5.26 (Schedule 1)				
	Standard	Existing	Proposed	Complies?
Lot Standards				
Max. lot coverage	70%	77.5%	86.47%	No(1)
Minimum area.	3,000 sf.	3,511 sf.	No change	Yes
Min. lot frontage.	30 ft.	> 30 ft.	No change	Yes
Min. lot width.	30 ft.	> 30 ft.	No change	Yes
Principal Building Standards				
Min. front yard setback.	20 ft.	20 ft.	No change	Yes
Min. rear yard setback.	20 ft.	17 ft. 3 ¾ in.	No Change	No (2)
Min. side yard setback (one).	3 ft.	3 ft. 1 ¾ in.	No change	Yes
Min. side yard setback (aggregate).	6 ft.	6 ft.	No change	Yes
Max. bldg. height (ft. and stories)	35 / 2.5	<35 / 2.5	No change	Yes
Accessory Structure Standards				
Min. rear yard setback (existing shed)	3 ft.	-5.6 ft.	No Change	No (2)
Min. side yard setback (existing shed)	3 ft.	2 ft. 7 ½ in.	No Change	No (2)
Min. rear yard setback (proposed deck)	3 ft.	NA	3 ft.	Yes
Min. side yard setback (proposed deck)	3 ft.	NA	6 ft.	Yes
Max. structure height	15 ft.	NA	?	?
⁽¹⁾ - A variance from §35-5.26 (Schedule 1) is required. ⁽²⁾ - Preexisting Nonconformity.				



- 2.3. Maximum lot Coverage. Pursuant to §35-5.26 (Schedule 1), the R-2 zone permits a maximum lot coverage of 70%. The site contains a lot coverage of 77.5%. The proposed deck will increase the lot coverage to 86.47%. **A variance for maximum lot coverage is required.**
- 2.4. Preexisting Nonconformities. Pursuant to §35-5.26 (Schedule 1), the R-2 zone requires a minimum rear yard setback of 20 ft. for principal buildings, a minimum rear yard setback of 3 ft. for accessory structures and a minimum side yard setback of 3 ft. for accessory structures. The principal building rear yard setback is 17 ft. 3 ¼ in. The existing rear yard setback of the existing shed is 5.6 ft (it straddles the property line), and the existing side yard setback of the existing shed is 2 ft. 7 ½ in. **These are preexisting nonconformities for which the applicant may wish to receive variances if none have been granted previously.**
- 2.5. Maximum Accessory Structure Height. The plan does not indicate the height of the proposed deck. It is obviously elevated as it utilizes a staircase. The applicant should update the plans to include the height of the proposed deck to ensure that it conforms with the maximum permitted height of 15 ft.

3. POSSIBLE LOT COVERAGE MITIGATION

- 3.1. Existing Shed. As noted above, a shed is located on the property that does not conform to two setback requirements. Additionally, it contains a lot coverage of approximately 24 sf. (the portion of the shed on the applicant's property). The applicant may consider removing the shed to eliminate the preexisting nonconformities and reduce the increase in impervious coverage.

4. VARIANCE COMMENTS

- 4.1. **Overall Comment.** The following sections summarize the “c” variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variances. The applicant must justify the “c” variances separately and each variance must satisfy both parts. We defer to the Board Attorney for any additional comment on the “c” variance criteria.
- 4.2. **Consideration of the Positive Criteria.** To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:



- By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
- Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:
- Where in an application or appeal relating to a specific piece of property to purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

4.3. **Consideration of the Negative Criteria.** Should the applicant satisfy the positive criteria, it must also be demonstrated that that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan. These factors are referred to as the negative criteria.

5. APPLICANT AND THEIR PROFESSIONALS

- Applicant. Ali Qureshi, 236 Grand Avenue, North Caldwell, NJ. Tel: 201-339-0924.
- Owner. Abrar A. Solatch, 503 West Pleasant Rove Road, Westchester, PA 19382.
- Attorney. Raff, Masone & Weeks, P.A., 1083 Avenue C, Bayonne, NJ 07002. Tel: 201-339-0924.
- Planner. Ali Qureshi, 236 Grand Avenue, North Caldwell, NJ. Tel: 201-757-5117.

6. MATERIALS REVIEWED

The following materials were reviewed in the preparation of this report:

- Application, dated February 2, 2023.



- *Zoning Officer Letter*, prepared by Tracey Tuohy, dated October 4, 2022.
- *Narrative Statement of Applicant*, undated.
- Copy of Property Deed.
- *Survey of Property*, 1 sheet, prepared by Joseph T. Caulfield, PLS, Caulfield Associates, LLP., dated February 14, 2023.
- *Site Plan, Zoning Data, Deck Floor Plan*, 1 sheet, prepared by Asgher Ali Qureshi, Architect. Ali Qureshi Architect LLC. Dated September 23, 2022, revised to February 20, 2023.

7. LIST OF NECESSARY RELIEF

Based on our initial review, the following variances and exceptions are required or may be required, depending on the additional information submitted by the applicant. This list is not exhaustive and may be augmented by analysis performed by other Board professionals.

7.1. Variances:

- §35-5.26 Maximum lot coverage.
 - §35-5.26 Minimum rear yard setback for a principal building*.
 - §35-5.26 Minimum rear yard setback for an accessory structure*.
 - §35-5.26 Minimum side yard setback for an accessory structure*.
- * *Denotes a preexisting nonconformity.*

We would be pleased to answer any questions concerning this review.

Cc. Alicia Losonczy, Land use Administrator
Richard N. Campisano, Esq., Board Attorney
Robert J. Russo, PE, PP, CME, Board Engineer
Suzanne T. Mack, PP, AICP, CTP, FITE, AHP, City Planner
Tracey Tuohy, Zoning Officer

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