

TOWNSHIP OF SOUTH ORANGE VILLAGE

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT

Decided: March 7, 2017

Memorialized: April 4, 2017

**APPROVAL OF APPLICATION
PETER AND JAIME EBRIGHT
FOR "C" VARIANCE RELIEF
443 PROSPECT STREET
BLOCK 2211, LOT 15
ZBA APPLICATION #1027**

WHEREAS, Peter and Jaime Ebright ("Applicant") having made application for "c" variance relief to the Township of South Orange Village Zoning Board of Adjustment (Application #1027) regarding property located at 443 Prospect Street, South Orange, NJ (the "Premises"), and known as Lot 15 in Block 2211 on the tax map of the Township of South Orange Village (the "Village"); and

WHEREAS the Board having accepted jurisdiction based upon proof of publication and notices provided in accordance with the Municipal Land Use Law; and

WHEREAS, a public hearing having been conducted at meeting held on March 7, 2017 and the Applicant's architect Douglas Miller, AHM Architects, LLC of Millburn, N.J., having appeared and the Board having heard testimony of the Mr. Miller, and the Board having considered the reports from its planners Philip Abramson, P.P., and Chris Kok, P.P., dated January 31, 2017 and February 27, 2017, and considered the exhibits submitted by Applicant, and deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was submitted in support of and in opposition to the application and considered by the Board:

1. The Board received the application and the documents submitted therewith, including the drawings prepared by Douglas Miller, Registered Architect (3 pages) dated January 17, 2017; a survey prepared by Richard J. Hingos, Inc. dated May 2, 2013; a modified survey prepared by Douglas Miller, A.I.A., R.A., showing deck location, a 2-page partial existing site plan dated

February 17, 2017 prepared by Douglas Miller, A.I.A., R.A., and a set of nine (9) photographs (five (5) pages). Applicant sought waivers and/or failed to provide certain submissions as detailed in the report from Philip Abramson, P.P. and Chris Kok, P.P, dated January 31, 2017.

2. The Board accepted into evidence the following exhibit:

A-1 Photo Board prepared by Douglas Miller dated February 7, 2017.

3. Applicant's architect Mr. Miller, who was qualified as an expert in architecture, and who was previously sworn, testified that the residential property on Prospect Street is located between Roland Avenue and Prospect Place in the RA-50 zone. The driveway wraps around to the rear of the property, where there is a detached garage. Mr. Miller explained that the property is sloped and that it drops off toward the rear yard. He explained that the Applicant would like to remove the existing rear patio made of brick pavers and replace it with a wood deck, which as designed, will reduce the amount of impervious surface and become conforming. He explained the details on plan sheets A-1, A-2 and A-3, which were submitted with the application, and oriented the Board as to the dimensions with the survey prepared by Richard J. Hingos, Inc, and Mr. Miller's modified survey. Mr. Miller then explained the new deck would be 6.4 feet away from the garage, necessitating a "c" variance because a twenty (20) foot setback is required between principal and accessory structures. Mr. Miller then showed the Board the nine photographs of the existing garage and rear yard and those of the surrounding properties, to demonstrate that the proposed deck would be more in keeping with surrounding properties, and their garage and rear yard arrangements. He testified that the removal of the patio and construction of the deck would improve the appearance of their property and yard and bring it into synch with the surrounding properties.

4. Mr. Miller further testified that a c(2) variance was appropriate for this project because the house and garage are already built and sit on the particular lot in an already developed neighborhood, and that the purposes of the plan and zone would be advanced and the benefits of the proposed deviation substantially outweigh any detriment; he further testified that the benefits outweigh the detriments because the proposal creates a public benefit by improving the aesthetics of the home, yard and garage arrangement with no negative impact and because the existing deck is non-conforming and the new deck will be conforming as to size and impervious surface. With regard to the negative criteria, Mr. Miller also testified that although the ordinance has a 20-foot setback, there is no apparent reasoning for same in the ordinance and same is not required by the building code which only requires a fire-rated wall between the garage and the house if there is five feet or less between the two structures. Mr.

Miller further offered on behalf of the Applicant that if the construction official requires any other specific condition, the Applicant will comply with same.

6. No questions were asked of Mr. Miller by the public, and there was no testimony from the public at the public hearing portion of the Board's consideration of this Application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The subject premises is located in the RA-50 zone in which single family residences including garages as an accessory structure are permitted.

8. Applicant seeks variance relief in connection with proposed removal of a brick paver patio which is over-size, and construction of a conforming wood deck which is intended to improve the aesthetics of the home and rear yard and to make it more consistent with surrounding homes and garages in the Prospect Street neighborhood. Because the new deck, albeit conforming in terms of size, will have a different configuration, it will be closer to the garage (6.4 feet away) than the required twenty (20) foot setback between structures. Applicant also seeks certain waivers as detailed in the report from the Board's planners dated January 31, 2017 which waivers the Board finds appropriate to grant for this application.

9. The Board finds the variance requested should be granted under the c(2) analysis. The Board finds that the benefits of improving the exterior of this home outweigh any insubstantial detriment to the public good or minor detriment to the zone plan. The house and garage are already built and the proposed deck will constitute an improvement because it is conforming and reduces impervious surface. The benefits outweigh the detriments because the proposal creates a public benefit by improving the aesthetics of the home, yard and garage arrangement with no negative impact, and because, based on the photographs of the surrounding properties, the deck will be more in keeping with the neighborhood properties. Although the ordinance has a 20-foot setback, same is not required by the building code which only requires a fire-rated wall between the garage and the house if there is five feet or less between the two structures.

THE DECISION AND CONDITIONS

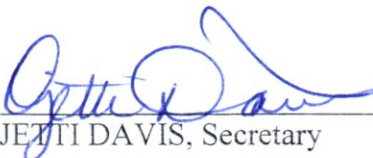
WHEREAS, the Board, having reviewed the application for a "c" variance and having considered the impact of the proposed application on the Village and its residents and the surrounding property owners, and having considered whether the proposal complies with and furthers the goals of the master plan and zoning ordinances of the Township of South Orange Village and the Municipal Land Use Law; hereby, concludes

that good cause has been shown to approve the application as set forth during the hearing and the "c" variances therein.

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of the Township of South Orange Village that the application for "c" variance as set forth in the plans, photographs, surveys, reports, representations, testimony, stipulations offered by the Applicant is hereby approved subject to the following conditions.

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.
2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
3. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
4. The Applicant shall pay all outstanding taxes, application fees, technical review fees, inspection fees and performance guarantees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Chairman and Secretary on the 5th day of April, 2017.


OJETTI DAVIS, Secretary

Vote on the Action Taken by the Board

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene			X			
Dahn	X		X			
DiScala		X	X			
Levine			X			
Parlapiano						X
Reeves			X			
Semper			X			
Shapiro			X			
Cranko						X

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene		X	X			
Dahn			X			
DiScala	X		X			
Levine			X			
Parlapiano						
Reeves			X			
Semper						
Shapiro			X			
Cranko						