

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON
NEW JERSEY**

Case # 2010-57-V

Motion by: Mr. Shah

Second by: Mr. Silverstein

FINDINGS AND CONCLUSIONS

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearing on February 22, 2011, the following findings of fact and conclusions are made:

1. The applicant is Daniel Saland and Gillian Alexander.
2. The property is commonly known as 29 Briar Cliff Road is taxed as Block 1600 Lot 26. The property is in the R-4 Zone.
3. The applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears.
4. The applicant proposes to construct a five foot fence on the property line next to a single family residence in replacement of a fence that deteriorated and was toppled in a storm.
5. Violation of Livingston Zoning Ordinance
(a) Section 170-91(2)(b) Height, Openness and Location of a Side Yard Fence (4' height fence allowed, 5' proposed; 1' variance requested; 50% openness required, 0% openness proposed, 100% variance requested; the fence was to be located on the property line, not three feet behind the line so plantings required by the Ordinance could be planted on the property of the applicant versus the plantings would have to be on the Township right of way.)
6. The applicant was represented by Lewis Kaufman, Esq.
7. The following persons testified at the hearing: The applicant. The applicant testified that the fence was required due to the pedestrian traffic of children to and from the nearby Harrison School and outdoor facilities at the school that were used by neighborhood children. Mrs. Alexander testified that she owed a dog that would be teased by passerby's and that the 100% closed fence five feet high was necessary for the security of her and her children. The proposed fence was in replacement of a fence that existed when the applicant purchased the home but was partially demolished by a windstorm due to its age and deteriorated condition. Counsel for the applicant pointed to the fence across the street and noted that a similar variance was granted to that property which was similarly situated.
8. The following persons objected to or expressed interest in the application at the hearing: Kelly Hirschorn of 17 Briar Cliff Road, James Kedrie of 11 Briar Cliff Road and Joe Ferry of 10 Twin Oak Road, all of whom spoke in favor of the application.

9. The Board questioned the applicant and its counsel to tell it why this application was any different from any other application that was near a school or outdoor recreational facilities or otherwise what hardship entitled the applicant in this case to a bulk variance. The Board noted that it could not use the variance granted a few years ago as a basis to grant these variances. The Board noted that with landscaping the applicant could achieve the same privacy that the 100% fence provided and that locating it on the property line meant that the plantings would be in the Township right of way and the Board did not have the authority to grant permission for the applicant to plant in the Township right of way.

10. The Board determined that the applicant did not satisfied the statutory requirements N.J.S.A. 49:55D-70 (c)(1) for the relief sought by demonstrating that an undue or exceptional hardship would be imposed upon the applicant by a denial due the topography of the lot or otherwise meet the standards for relief under applicable law.

Based upon the above findings, there will be detriment resulting to the public good, and there will be an impairment of the zoning plan or municipal zoning ordinance were the variances granted. Now, therefore, be it **RESOLVED** by the ZONING BOARD OF ADJUSTMENT of the Township of Livingston that the application herein submitted is denied:

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on February 22, 2011 in which Board voted with four votes cast in favor and two opposed to deny the application.

CHAIRMAN:



ALAN OZAROW

Dated: March 22, 2011

Prepared by: Herbert S. Ford, Esq.