

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

Case # 2013-28-V

Motion by: Mr. Shawn Klein

Second by: Mr. Christopher Bardi

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 June 25, 2013, the following findings of fact and conclusions are made:

1. The applicant is Florence Leibell.
2. The property is commonly known as 25 Berkeley Terrace and is taxed as Block 4401; 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 reconstruct fence in the rear and side of a single-family residence.
5. Violations of Livingston Zoning Ordinances:
 - (a) Section 170-91B(2)(b) Front Yard Fence – 4' & 50% open allowed, 6' & closed fence proposed; 2' & closed fence variance requested
 - (b) Section 170-91B(5) Ordinance 20-2010 – Fence facing street or public right of way and taller than 4' requires plantings. Variance requested for no plantings.
 - (c) Section 170-91B(4)(c)(3) / Ordinance 20-2010 – Fence Setback – 3' required, 0' proposed; 3' variance requested.
6. The following persons testified at the hearing: The applicant and her husband, Mr. Leibell.
7. The following persons objected to or expressed interest the application at the hearing: Razah Gonella of 24 Berkeley Terrance and Royse Woshin of 23 Berkeley Terrace. Both supported the application.
8. The applicant explained that the rear of the residence faced the Township basketball courts and recreational facilities which were lighted at night and used almost continuously causing noise. Also this was a replacement fence as the prior six foot fence had fallen down and now wanted to replace it with a vinyl fence for security and buffering. Further the fence sections adjacent to the side of the residence were necessary to prevent people from cutting across the property to get to the high school or recreational facilities.

9. The applicant has satisfied the statutory requirements of 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 because the location of the lot adjacent to the recreational facilities.

10. Based upon the above findings, there will be no detriment resulting to the public good, nor will there be an impairment of the zoning plan or municipal zoning ordinance. Now, therefore, be it **RESOLVED** by the ZONING BOARD OF ADJUSTMENT of the Township of Livingston that the application herein submitted is granted the following variances from the Ordinance:

Variance from Section 170-91B(2)(b) Front Yard Fence to permit a 6' & 0% open variance for all fences to be constructed;

Variance from Section 170-91B(5) Ordinance 20-2010 Fence facing street or public right of way and taller than 4' requires plantings for the fence in the rear adjacent to the basketball court; however fence on the side of residence would require plantings in accordance with the Ordinance except where there was a gate.

Variance from Section 170-91B(4)(c)(3) Ordinance 20-2010 Fence Setback 3' variance granted.

This approval is subject to all other requirements of the Township ordinances, building code, and the right of appeal by any interested party. Also, as required by Livingston Ordinance 170-27(A), construction must be commenced within one year of the date hereof or the variance shall expire.

Copies of the Applicant's survey showing the proposed improvements and architectural plans are attached hereto as an exhibit to indicate the final version thereof.

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on June 25, 2013 in which Board voted to four in favor and none opposed to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:



ALAN OZAROW

Dated: July 23, 2013

Prepared by: HERBERT S. FORD, ESQ.