



MEMORANDUM

Clarke Caton Hintz

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To: City of Lambertville Zoning Board of Adjustment  
From: Emily Goldman, PP, AICP *Emily Goldman*  
Re: **Dietrich-Nath Residence  
Fence Variance**  
115 N. Union Street  
Block 1020, Lot 2  
R-2, Residential Single Family District  
Date: August 19, 2020

1.0 PROJECT & SITE DESCRIPTION

1.1. The subject property is a 0.44-acre lot in the R-2 Residential Single Family District. The lot is currently improved with a two-and-one-half (2 ½) story dwelling, frame garage, pool, patios, a deck, walkways, and fences.

1.2. The applicant is requesting after-the-fact variance approval for the installation of a five (5) foot high aluminum fence within the front yard, a new patio in the side yard and the removal of the existing stairs and walkway adjacent to the existing pool.



1.3. Pursuant to §507.2A the application requires a variance for height of the fence in the front yard.

1.4. The application is exempt from requiring site plan approval, pursuant to §516.2, as the property contains a single-family detached dwelling.

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



**2.0 FENCE STANDARDS**

**2.1. Finished Side.** The application is in compliance. §507.1B states “*all permitted fences shall be situated on a lot in such a manner that the finished or non-structural side shall face abutting properties.*” The applicant installed an aluminum fence that has the same finished face on both sides.

**2.2. Prohibited Materials.** The application is in compliance. §507.1C states “*no fence or wall shall be erected of barbed wire, topped with metal spikes, broken bottles and glass, nor constructed of any material or in any manner which may be dangerous to persons or animals*”. The installed fence is an aluminum fence. The applicant is not proposing any barbed wire or other prohibited materials.

**2.3. Location of Fencing.** The application is in compliance. §507.D states “*fences and walls may be placed with the outer face located on the property line.*” The installed aluminum fence that is the subject of this application has been installed on the right-of-way line and along the southerly property line. The subject property also contains an existing wooden fence along the northerly side property line.

**2.4. Stormwater Flow.** The application is in compliance. §507.1E states “*fences and walls shall be erected to avoid damming or diverting the natural flow of water and shall be integrated into a grading plan, where appropriate, that provides for the adequate flow of stormwater.*” The applicant installed an aluminum fence that is not a solid fence and should allow stormwater to flow through the fence; thus not impeding the existing flow of stormwater.

**2.5. Residential District Location of Fencing. Variance relief is required.** §507.2A states “*on any lot in any district, no wall or fence shall be erected or altered so that said wall or fence shall be over 3 feet in height in front yard areas and 6 feet in height in side and rear yards except: (1) a dog run may have fencing a maximum of 7 feet in height provided such area is located in rear yards only and is setback from any lot line at least 5 feet. ...*” The applicant installed a five (5) foot high fence in the front yard and along the side lot





line. The applicant requires after-the-fact approval for a fence five (5) feet in height in the front yard whereas a maximum height of three (3) feet is permitted.

- 2.6. **Swimming Pool Fencing.** The application is in compliance. §507.2B states “*a private residential swimming pool area shall be surrounded by a fence at least four feet, but no more than six feet, in height, with no opening that permits the passage of a four-inch sphere. Any passage through the fence shall be equipped with a self-closing, self-latching gate.*” The existing pool is enclosed by a four (4) foot high masonry wall to the north and the northern westerly boundary; with a wooden fence to the southern westerly boundary and along the western southerly lot line; and the five (5) foot high aluminum fence subject of the application along the remaining portion of the southerly lot line and along a portion of the easterly lot line where in then wraps back around the new knot garden and ends at the corner of the dwelling. Three self-closing, self-latching gates are present within the fencing. One is located within the four (4) foot high masonry wall adjacent to the driveway that extends between North Union and Clinton Streets, one is adjacent to the driveway on Clinton Street south of the frame garage, and one was installed between the new knot garden and the sod area.

#### 4.0 MISCELLANEOUS

- 4.1. **Lot Area. *Additional information is required.*** The lot area identified on the *Survey* is 19,280 square feet whereas the lot area identified on the *Proposed Porch Stair and Landscape Plan* is 15,384 square feet. The applicant should confirm the correct lot area.
- 4.2. **DRCC Approval. *Condition of Approval.*** While the applicant has received a General Permit 2 for the fence installation, the March 2, 2020 Staff report for the additional improvements to the site already by the applicant requires additional information be submitted to the DRCC. Upon review of the March 2, 2020 Staff Report, it has come to my attention that a dry well is proposed to manage additional stormwater; however, the drywell is not shown on the plans submitted to the Board. The DRCC requires a Stormwater Operation and Maintenance Plan be submitted for their review and approval. Upon DRCC approval, the Operation and Maintenance Plan shall be recorded as with the County Clerk and incorporated with the properties deed.



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**5.0 CONSIDERATION OF THE “C” VARIANCE**

While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the “c” variance criteria for 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 variances. The applicant must justify the variances separately and each variance must satisfy both parts.

**5.1. 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, N.J.S.A. 40:55D-2, would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

**5.2. 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.

**6.0 MATERIALS REVIEWED**

**6.1.** *City of Lambertville Planning & Zoning Board Application* and related documents, dated August 28, 2019.



- 6.2. *Plan of Survey*, prepared by Goldenbaum Baill Engineering, Inc., consisting of 1 sheet, dated December 21, 2018, last revised June 15, 2020.
- 6.3. *Proposed Porch Stair and Landscape Plan*, prepared by Gary R. O'Connor, Inc., consisting of 1 sheet, dated August 22, 2019, last revised June 12, 2020.
- 6.4. *DRCC General Permit 2*, dated February 27, 2020.
- 6.5. *DRCC Staff Report*, dated March 2, 2020.
- 6.6. *On Guard Fence Systems fence specifications*, no date.

**7.0 APPLICANT / OWNER / PROFESSIONALS**

- 7.1. **Applicant/Owner:** Mr. and Mrs. Kabir Nath, 115 N. Street, Lambertville, NJ 08530. Telephone: 609.216.0480. Email: kabirnath@hotmail.com.
- 7.2. **Architect:** Gary R. O'Connor, AIA, 8 Coryell Street, Lambertville, NJ 08530. Telephone: 609.397.3635. Email: gary@grocarchitects.com,

**8.0 SUMMARY**

The applicant is seeking after-the-fact variance relief for the installation of a five (5) foot high aluminum fence in the front yard. 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.

- a) Variances  
§507.2A Residential District Location of Fence
- b) Exceptions  
None

Please contact this office with any questions you may have.