

**Borough of Caldwell
Zoning Board of Adjustment
February 3, 2016**

A Public Meeting of the Board of Adjustment of the Borough of Caldwell was held on January 6, 2016 at 7:03P.M.in the Municipal Building, 1 Provost Square, Caldwell, New Jersey. Chairman Kurus opened the meeting and read the opening statement.

ROLL CALL: Mr. Stieve, Mr. Vere, Mr. Piazza, Mr. Kurus, Mr. Colaizzo, Ms. Donovan, Mr. Alonso, Mr. Tucci and Mr. San George

PLEDGE OF ALLEGIANCE TO THE FLAG

APPROVAL OF MINUTES:

The public minutes of January 6, 2016 were approved. Ms. Donovan abstained.

NEW BUSINESS: Application Z16-001, Tristan and Michelle Cummings, 14 Cherry Lane, Block 73, Lot 9. Side line setback.

Ms. Yolanda Michelle Peterson was sworn in as the applicant.

Mr. Thomas K. Hoffmann was sworn in and qualified as the Architect.

Exhibit:

A-1 Letter from Applicant, Applicants Realtor and Fixtures and Finishes

Ms. Peterson gave a summation:

- They are not originally from this area. When looking for a place to live they fell in love with the Cedars.
- Homes are well maintained.
- 3 Bedroom house.
- Beautiful Master bedroom.
- Two bedrooms downstairs and are not comfortable with their children downstairs.
- They are looking to erect a dormer on the second floor above the garage.
- They don't want to change the height of the roof lines.
- Removing vinyl siding and shutters.
- Enhance the charm.
- Main level - there is a family room the garage is on the opposite side of our fireplace and is too narrow for a car. The family room and dining room are connected. On the main level there is a bedroom which they use as an office and another bedroom as a guest room.
- Master bedroom is on the 2nd floor and across the hall way is a small bedroom which is used for a nursery.
- There is a finished basement where the laundry room is.
- Driveway accommodates two cars.
- 1 Bedroom is currently used as a guest bedroom.
- Small nursery upstairs.
- Finished Basement with Laundry room.
- Compressor buffered by the garage.

Exhibit (Photos taken 2/1/16)

- A-2 Neighbor to the left
- A-3 House photo
- A-4 Neighbor to the right

Ms. Peterson continued:

- The space on the second floor is about 13' x 14'.
- The air conditioning will go in the attic above the kitchen.
- Compressor will be moved in the back of the house.

OPEN TO PUBLIC:

Mrs. Carmel Mc Hale, 46 Bowers Road, had questions about the letter that was received from the applicant and it stated that you are planning on not doing much and just adding dormer and a face lift. Ms. Peterson responded that as far as classifications go they are not adding a second story to the house because they are not extending the height of the roof. They are only dorming the section over the existing garage. Ms. Mc Hale asked if under the dormer there will be a room and Ms. Peterson responded yes.

Ms. Marybeth Praisner, 15 Cherry Lane, asked how you applied to the variance as a hardship and Ms. Peterson responded that she worked with the Board and nothing has been determined yet she needs to prove her case.

CLOSED TO PUBLIC

Mr. Hoffmann gave a summation:

- Proposed floor plan.
- Master bedroom would have a dormer.
- There are existing two bedrooms upstairs and they are proposing to add the third over the garage.
- Elevation is keeping the roof line down over the garage.
- The bedroom above family room is about nine feet wide which is used as a nursery across from the master bedroom. This will still be a bedroom
- The master bedroom will have a dormer out the side.
- The height of the roof is at 26 feet and the new roof will be going up a foot which is in the height regulations.
- Side is 3 ½ feet which is the variance they are seeking.
- The existing house has painted brick and vinyl siding and asphalt shingles.
- They will bring back a Dutch style door and bringing the brick back to rustic look and cedar shakes.
- Where the garage door is now there will be three windows put in.
- The new windows will be casement windows.
- The existing lot requirement is 10,500 and we are an undersized lot at 9,884. The lot width required is 75 feet and they are at 49.96.
- The front yard is 35 feet existing and proposed is 35.1 so according to the zoning, we are not required to have a front yard variance.
- Side yard minimum requirement is 10 feet and existing is 2.8 and proposed is 2.8. Total side yard should be 20 feet and existing and we are at 6.4 feet.
- Very small lot and the house is covering it.
- Rear yard is 30 feet and they are greater than 30 feet.
- The existing first floor is 1,448 square feet and the existing second floor is 929 square feet. The second floor proposed is adding 217 square feet.
- Total second floor 1, 146 square feet.

- The total square footage of existing house is 2377 square feet. Proposed square footage of house is 2595 square feet.
- The roof will tie into existing shingles.
- They are not seeking an extension of the driveway.
- They have spoken to the police department about parking in the street.
- The project should be less than 6 months closer to 4 months.
- There will be no trees removed.
- Condensing unit will be relocated to the back of the house.
- Air handler will be located in the attic.
- All roof venting will be up to code.

OPEN TO PUBLIC FOR QUESTIONS OF THE ARCHITECT:

Mrs. Carmel McHale, 46 Bowers Road had question on the lighting in front of the house and the living space.

CLOSED TO PUBLIC

OPEN TO PUBLIC FOR COMMENTS:

Residents with comments and concerns were sworn in.

Mrs. Carmel McHale, 46 Bowers Road.

Exhibit:

- B 1- Front of House
- B 2 – Front of House
- B 3- Garage of house and where the AC is located.
- B4 – Back of House
- B5 – Closer picture
- B6 – McHale’s yard to the side of applicant’s house
- B7 – Garage
- B8 – Neighbors Garage to House

Mary Beth Praisner, 15 Cherry Lane.

Exhibit

C-1 Letter from Praisners

CLOSE TO PUBLIC

Board Attorney advised the Board that he reviewed this as C1A variances do to the nature of the property in questions. The nature of the property itself is less than the lot width set forth in the ordinances 250-12 and it’s the nature of the width of that property. We are not talking about expanding the non-conformity; we are talking about keeping the existing exterior sides the three foot diameter on each side of the non-conformity and moving up as the testimony has described here.

Board members discussed the application.

Board members gave the Conditions of this application:

AC equipment relocated to rear yard.

Trash storage kept in rear yard.
Side yards kept clear.
Porch lighting low level minimum wattage.
Exhibit A-1 – character of materials held to on this sheet
Restoring to look like original.
Roofing material will be the same look.

Motion to approve Application Z16-001 with conditions by Mr. Piazza, seconded by Mr. Alonso.

Mr. Stieve yes
Mr. Vere yes
Mr. Piazza yes
Mr. Kurus yes
Mr. Colaizzo yes
Ms. Donovan yes
Mr. Alonso yes

Approved 7-0

8:22PM - Recess

8:31PM – Roll Call

Mr. Stieve, Mr. Vere, Mr. Piazza, Mr. Kurus, Mr. Colaizzo, Mr. Alonso, Mr. Tucci and Mr. San George. Ms. Donovan absent.

OLD BUSINESS: Request for Adjournment, Application Landmark Real Estate Developers, Inc., 14 Lane Avenue, Block 41, Lot 3 Proposed 20 Unit Condominium Complex.

Mr. Ralph Salerno, Genova Burns, LLC, appeared representing the applicant, Landmark Real Estate Developers, Inc., as everyone is aware the application has been going on for some time. We started in May, 2015 and the last time we were here was in October, 2015. There are a number of reports that have been rendered in connection with this application both on behalf of the board and the applicant. Mr. Salerno would like to offer all of those as exhibits in evidence so they are part of this record. Mr. Salerno would like to call Mr. Steck, planner as a witness to briefly re-cap his testimony as it relates to the critical proof issues in a use variance application.

Mr. Steck continued his summation:

- On June 19, 2015 he submitted a report that summarized the application and the rationales.
- On October 20, 2015 he submitted a subsequent report because of an amendment to the application.
- Originally the application had the same number of units but part way through the applicant elected to have four (4) dwelling units to become eligible of COAH units that are low and moderate income units.
- The report dated October 20th was to amend his initial report to reference those four (4) units and where the location would be.
- There are two rows of buildings. One row has two bedroom units and the other row has one bedroom units.
- They are hybrid units which look like town houses but are integrated.
- They meet the definition of multi-family and are not permitted in the RB Zone.
- The height of one to two family homes in Caldwell cannot be higher than 2 ½ stories these units are ½ story higher than allowed.
- RCIS requires 41 parking spaces; we are proposing 39 parking spaces.
- The area is close to Bloomfield Avenue with bus service.

- There are multi-family two family homes in the area.
- It is just outside of the Bloomfield Avenue business corridor.
- The last master plan is 1998, which is very old.
- The last re-examination was 2005 so the Borough is beyond of the ten year period.
- The Borough is starting on a re-examination report.
- The master plan that the Borough has lumped single family dwellings with town homes.
- In the re-examination report it talks about wanting to study the situation with multi-family and it has not apparently been studied. It stated that the planning board should study it because it might weaken the base of the business district.
- He cited several purposes of the Municipal Land Use Law; purposes A, E, G, I and M.
- (A) Incurring the most appropriate use of land. (E) Establishing appropriate population densities. (G) Providing sufficient space in an appropriate location. (I) promoting a desirable visual environment. (M) Encouraging more efficient use of the land.
- There are consequences for the Master plan and re-examination report out of date.
- The Borough's responsibility is for 144 low and moderate income housing from the period of 1999-2025.
- The applicant is seeking a D-1 Variance; they have a use that is not permitted and they need five (5) affirmative votes.
- The applicant has the responsibility to show there are special reasons that the site is particularly suited to the long narrow lot.
- Close to multi-family and close to convenient shopping on Bloomfield Avenue and bus services.
- The one bedroom unit is for \$225,000.00 per unit and the two bedrooms is \$245,000.00 per unit.
- They meet all the setbacks.

Lisa Phillips responded to the COAH obligation. This Board doesn't have control over that, but there are issues with the Borough that need to be recognized as well as the Master Plan. She agrees that Mr. Steck has addressed the positive criteria and the biggest issue is the negative criteria.

Lisa Phillips gave a summation:

- Mr. Steck has provided all the testimony and we had questions and he has come back two or three times with the density calculations.
- As he has stated a lot of these buildings are not in zones that are permitted but over time whether it was this Board or another Board approvals were granted.
- When you look at the maps you should see what densities do surround it. Whether it's a single family or not he is proximate to that.
- In terms of the density she feels the application is under the density that exists presently within the immediate area.
- The biggest issue is the negative criteria. That's a burden that the board has to evaluate the consideration of that wall.
- The most critical thing is to look at the environmental impact in the wall.
- The wall is 25 feet high. There was one revision that the wall was pulled forward but at another meeting there was talk about possibly tearing that wall even more because of the substantial impact.
- Even though she said the positive things about the positive criteria this case comes down to if it was a pristine flat lot she would not have as many issues with it but the fact that the wall is going to be 25 feet high.
- It seems out of character and out of place with the neighborhood.
- If there is a way to maintain the density to a tier system that's what she would recommend.

- At this point the master plan is not valid and the things in it are so out of date in terms of the census and demographic data.
- The negative criteria to the public good are the other arm to that and that's where her concerns lie is the detriment to the public good.

Mr. Salerno responded that with regard to the wall there was a lot of discussion to its design and specifically to Mr. Marucci's report required separate engineer who specifically deals with structural type issues to engineer that wall. His client has had experience here in Caldwell developing another town house site which also had slopes and using a tier wall system and the applicant is willing to use a tier wall system to cut it back so there is not that imposing wall and it would be around 23 feet at its highest point.

Mr. Tucci asked for the sake of clarity are you referring to the development on Central Avenue and Mr. Salerno responded yes and if you are familiar to that wall the material would be the same material which is a finish project not a cement block wall.

Mr. Tucci responded that we are discussing this and treating it as a two family zone for the purposes of the bulk and Ms. Phillips responded no because they are subsumed under the use variance so we don't have a zone to compare it to we were just using the ranks of the heights from a single family. The RB Zone is what you use to calculate your building height.

Mr. Salerno brought up a case in the appellant court in 2005 where the court stated when you have a non-conforming development it must consider the overall site design not the single family zoning requirements and any C variances become subsumed in the D variance. That is consistent to what your planner has indicated.

Mr. Tucci asked about the density of the square footage of the lot and Ms. Phillips replied the density is 20 units per acre. What are permitted in your garden apartment zone are 12 to the acre but as Mr. Steck has stated and put into these exhibits that the reality is different than is what zoned. In a two block area, it is a vast array of different densities.

Board members continued discussion on the densities in the area.

OPEN TO PUBLIC FOR QUESTIONS TO MR. STECK:

Barbara Solomon, 16 Klimback Court, West Caldwell, asked about the variances sought and zoning in the area.

Charles Alberta, 15 Lane Avenue, West Caldwell, asked about the zoning and the variances.

CLOSED TO PUBLIC

OPEN TO PUBLIC FOR COMMENTS:

Richard Ruotolo, 15 Highview Road, Caldwell was sworn in.

Exhibit

Ruotolo - photos of the back of his property to lot.

Mr. Salerno objects to the pictures being put in exhibit.

Residents with comments and concerns were sworn in:

Brian Zaorski, 13 Lane Avenue, West Caldwell

Alise Freed, 19 Klimback Court, West Caldwell
Joanne Dickson, 97 Lane Avenue, West Caldwell
Barbara Solomon, 16 Klimback Court, West Caldwell
Anthony Bananno, 5 Klimback Court, West Caldwell
Charles Alberta, 15 Lane Avenue, West Caldwell

CLOSED TO PUBLIC

Mr. Salerno gave a brief summation.

Mr. Coyle addressed the Board:

There was a suggestion about the invalidity of the master plan or rather the non-compliance of the statute requiring the re-examination within ten years. New Jersey courts have addressed this issue specifically in the question of without a validly renewed master plan what does this fall with respect to the Board and consistently every time it has been addressed in the courts a decision that is not an issue for the court for the Board to consider. That is a question of statutory presumption for the court and it is not appropriate as a matter of fact it is arguably prohibited from the Board taking into consideration as to the ultimate effect of this. There is a master plan that you are bound to make your decisions however you are evaluating the master plan the fact that it has not been property renewed does not change your responsibility. It doesn't negate or expand your power to grant variances or to deny variances. That is where it would be taken into account by case law with the New Jersey Supreme Court and New Jersey Appellate Division has made that ruling. For the record he cited the two cases which are Vidal vs. LaSante Foods 292 N.J. Super. 555 in 1996 and Lionshead Woods Corp vs. Kaplan Brothers 243 N.J. Super.678 which is a law division case from 1990 which held at the invalidity of the non-renewal of the master plan does not change your responsibility.

This is a D1 Variance we are talking about three (3) primary variances. A use variance for this property beyond an RB Zone, a variance from the slope, a variance from the height and the di minimis parking which is under C standard. This requires five (5) votes for a D variance.

10:32 Recess

10:37 Roll Call

Mr. Stieve, Mr. Vere, Mr. Piazza, Mr. Kurus, Mr. Colaizzo, Mr. Alonso, Mr. Tucci and Mr. San George.

Board members had discussion on this application.

Motion to approve the D1 use Variance.

Mr. Stieve no
Mr. Vere no
Mr. Piazza no
Mr. Kurus no
Mr. Colaizzo no
Mr. Alonso no
Mr. Tucci no

Motion to approve the slope variance.

Mr. Stieve no
Mr. Vere no
Mr. Piazza no

Mr. Kurus no
Mr. Colaizzo no
Mr. Alonso no
Mr. Tucci no

Motion to approve the story variance.

Mr. Stieve no
Mr. Vere no
Mr. Piazza no
Mr. Kurus no
Mr. Colaizzo no
Mr. Alonso no
Mr. Tucci no

Motion to approve the di minimis parking.

Mr. Stieve no
Mr. Vere no
Mr. Piazza no
Mr. Kurus no
Mr. Colaizzo no
Mr. Alonso no
Mr. Tucci no

11:00PM

Motion to move into executive session to discuss the Zoning Board Attorney by Mr. San George, seconded by Mr. Piazza. All in favor.

11:12PM

OPEN TO PUBLIC

The meeting adjourned at 11:12PM.

Respectfully Submitted,

Lisa O'Neill
Zoning Board Secretary