

The Meeting of the North Caldwell Board of Adjustment was held on Wednesday, October 21, 2020 starting at 8:09pm via tele/video-conference due to the COVID-19 pandemic.

Chairman Wangner announced that the meeting was held in accordance with the Open Public Meetings Law and notice of this meeting was provided in accordance with the requirements of Chapter 231, P.L. 1975.

Board Members Present: Mr. Salan, Mr. Curcio, Mr. Floria-Callori, Mrs. Jenkins, Mr. Michelotti, Mr. Sceppaguercio, and Chairman Wangner. Absent: Mr. Roth, Mr. Rentzis

Also present were Lisa Thompson, Esq., Board Attorney; Steve Bolio, PA from Ferriero Engineering, Board Engineer; and Tami Michelotti, Zoning Board Secretary.

Mr. Wangner asked Mr. Michelotti to lead the Pledge of Allegiance.

### **APPLICATIONS**

#### **Mrs. Renee Paladino – 711-713 Main Street, Block 2103, Lot 7**

Use Variance

Mr. Robert Gaccione from the firm Gaccione Pomaco, PC, 524 Union Avenue in Belleville stated that he represents the Applicant, Renee Paladino who is the owner of 711-713 Main Street in North Caldwell. He explained that the Application requests a modification to a prior Board of Adjustment approval allowing an expansion of a restaurant with the condition that there would be parking at the gas/service station across the street. He further explained that the Applicant's property has been used as a tavern and restaurant for many years. Mr. Gaccione explained that in 1995, the operator of the restaurant applied to the Board to increase the seating capacity to 32 by adding two (2) tables of four (4) seats. He stated that the Board approved the request for eight (8) additional seats based on the operator's good-faith effort to obtain off-street parking. He stated that in 1998, the restaurant operator increased the number of seats and hours with an agreement for parking. He added that in 2002, the operator again sought a variance to expand the seating from 32 to 60 which was approved subject to written acknowledgement from Joe Garamella, service station owner, acknowledging and authorizing Sofia's Restaurant to use his gas station property for parking. Mr. Gaccione noted that Mr. Garamella no longer owns the service station property and that the current owner has not responded to requests to continue the parking arrangement. Mr. Gaccione summarized that the current Application seeks to excise the condition of the 2002 Resolution and return to the approval granted in 1998. He further stated that the present Application seeks approval to allow operations for only 20 seats, less than what was originally approved in 1995. He noted that the proposed use is pre-existing and was never abandoned. Mr. Gaccione stated that the witnesses that will be testifying are the Applicant's spouse, Glenn Paladino; Architect, Scott Abromowitz, and Traffic Expert, Joe Staigar.

Mr. Floria-Callori asked Mr. Gaccione if the Application was revised since its initial submission in late 2019. Mr. Gaccione stated that the original Application sought more seats and is now revised to 20 seats.

Chairman Wangner asked Mr. Gaccione if he was aware of parking regulations in the neighborhoods surrounding the property in question. Mr. Gaccione stated that the parking regulations were changed in 2017 and noted that he is familiar with the area and aware of the existence of some permit-only parking. Chairman Wangner asked if the permit-only parking would impact the proposed business. Mr. Gaccione stated that the traffic expert would address the question and the proximity to Little Falls Township. He stated that Little Falls residents were also noticed regarding the Application.

Mr. Glenn Paladino, 32 Anita Drive in East Hanover, spouse of Renee Paladino, property owner, was sworn in. Mr. Paladino stated that the property was purchased by his wife's family in 1972 and is partially situated in Little Falls. He stated that it was initially a bar and then became a deli, then a pizzeria/restaurant, then a Mexican restaurant and, most recently, was known as Sofia's Restaurant. Mr. Paladino stated that the most recent tenant vacated four (4) years ago due to personal issues. He noted that they had been trying to rent the property since Sofia's vacated which has been difficult due to the availability of only on-street parking. Mr. Paladino confirmed that numerous emails and phone

calls placed to the service station property owners were unsuccessful. Mr. Gaccione asked Mr. Paladino if they have found a perspective tenant who has what they think is a reasonable potential use of the property. Mr. Paladino confirmed that he had been speaking with a perspective tenant over the past six (6) months who was interested in opening a traditional pizzeria/restaurant with about 20 seats. Mr. Paladino stated that hours of operation would likely be Monday through Thursday from 10:00am to 10:00pm, Friday and Saturday from 10:00am to 11:00pm and Sunday 10:00am to 10:00pm. Mr. Paladino projected that there would be four (4) employees plus one (1) delivery driver on the weekdays and two (2) drivers on Fridays and Saturdays. He confirmed that the restaurant will conduct primarily pickup and delivery orders with 20 seats inside the restaurant; no outdoor seating was planned. Mr. Paladino explained that the business owners would primarily get supplies by going to suppliers but would also utilize the ten (10) minute drop-off parking on the side street for van deliveries. He added that the driveway could be used for short-term deliveries which he noted was agreeable to the residential tenants of the building.

Chairman Wangner asked for comments and questions from the Board. Mr. Salan asked if the proposed restaurant operator has relevant experience. Mr. Paladino stated that the operator has over 20 years' experience and is looking to expand his current business, Pergo's Restaurant and Pizzeria, with his son by adding a second location. Mr. Salan asked if the second location is similar in size to the first location. Mr. Paladino stated that he wasn't sure of the size of the first location. Mr. Floria-Callori asked Mr. Paladino about the process taken to secure a leasee over the past four years. Mr. Paladino stated that he had a few potential tenants that were denied approval for use of the property. Mrs. Jenkins noted that the main issue in the area is availability of parking. Chairman Wangner asked if there were any other questions or comments from the Board. There were none.

Chairman Wangner asked if there were any questions or comments from the public.

Ms. Jody Lazarski from 4 Hillside Avenue came forward. Ms. Lazarski asked if the Applicant's amendment was for parking or for seating capacity. Mr. Gaccione stated that they are seeking to excise the condition that was placed against the restaurant in 2002 when they sought to increase the capacity from 32 seats to 60 seats within the restaurant. He added that the condition was to obtain permission for parking at the gas station across the street which no longer exists. He stated that they are looking to have that condition removed and go back to less seating capacity than what existed prior to that condition being imposed. Ms. Lazarski questioned how this would affect Hillside Avenue. Mr. Gaccione stated that the traffic expert would address the concern.

Mr. Scott Abramowitz from 25 Kingsley Street in West Orange, NJ was sworn in and stated that he is a licensed architect in the State of New Jersey since 1983. He further stated that he graduated from Pratt Institute with a Bachelor's Degree in Architecture in 1977 and received a Master's Degree in Urban Design in 1979. He added that he has testified before other zoning boards and planning boards and has been accepted as an expert witness in every occasion. The Board accepted Mr. Abramowitz as an expert witness.

Mr. Gaccione asked Mr. Abramowitz to describe the existing structure. Mr. Abramowitz stated that the structure is an odd building with retail/restaurant space on the ground level and residential space above. He confirmed that no alterations were planned for the building but noted that there could be a small possible change on the interior to enlarge the existing cooking area to accommodate the new tenant's needs. He confirmed that there would be 20 seats in the proposed restaurant.

Chairman Wangner asked if the Board had any questions or comments for Mr. Abramowitz. Mr. Floria-Callori asked Mr. Abramowitz if there are any eating areas, like standing bar tops, other than the proposed table seating. Mr. Abramowitz noted that there is a designated service area for take-out orders as shown on the plan. Mr. Floria-Callori asked if there are any structures included in that area that would encourage people to stand and linger or if the area was specifically intended for pick-up orders. Mr. Abramowitz confirmed that the area is designated for customers to pick up orders and leave unless they were waiting to be seated in the table seating area. Mr. Abramowitz confirmed that the seating area would include five (5) tables with a total of 20 chairs. Mr. Floria-Callori asked about the

existing interior condition of the building. Mr. Abramowitz stated that it is currently set up as a restaurant with more chairs and tables than needed which were left from the previous business that served more people. Mr. Floria-Callori stated that the building has been vacant for a while and asked if there were any concerns with the structure or condition of the interior. Mr. Abramowitz stated that it appears that the building is a safe structure. Mr. Floria-Callori asked for an explanation about the parking that is depicted on the plans. Mr. Gaccione stated that the traffic expert would be testifying on the parking.

Mr. Salan asked how many people would fit in the waiting area assuming that all five tables are filled. Mr. Abramowitz stated that the waiting area is 126 square feet which would accommodate about 10 to 15 people. He noted that it is a sizable space. Mr. Salan questioned the future cooking area. Mr. Abramowitz stated that a proposed cooking area was depicted on the plan if the tenant needs the additional space. Mr. Salan asked Mr. Abramowitz if he has experience with these types of designs for pizzerias/restaurants. Mr. Abramowitz confirmed that he has worked with several fast food restaurants. Chairman Wangner opened the meeting to the public for any questions or comments for Mr. Abramowitz. No one from the public came forward.

Mr. Joseph Staigar from 245 Main Street in Chester, NJ 07930 was sworn in. Mr. Staigar provided his education credentials including a Bachelor of Science and a Master of Science Degree in Civil Engineering from New Jersey Institute of Technology where he is an adjunct professor of traffic engineering courses. He stated that his specialty is traffic engineering and added that he holds a professional engineer's license in New Jersey as well as other states in the Northeast. He stated that he has appeared before this Board and other boards in Essex County and throughout New Jersey. The Board accepted Mr. Staigar as an expert witness.

Mr. Gaccione asked Mr. Staigar to review the proposed site and parking plans. Mr. Staigar stated that the proposal is for a restaurant with a diminished number of seats. He explained that there is a driveway on Main Street and a two-car detached garage in the rear of the property with a tenant above the proposed restaurant. He further explained that the tenant will be permitted use of two parking spaces in the rear of the building and the manager of the restaurant would use the third space. He added that the stem of the driveway would be used for the one or two delivery employees depending on the peak times. Mr. Staigar testified that there is parking for up to a maximum of five vehicles at the site.

Mr. Gaccione asked Mr. Staigar to review the existing roadway conditions in the area. Mr. Staigar stated that the key road is Main Street, which does not allow for parking, and the site is located at the fork with Fairfield Avenue. He stated that there are no other parking sources for customers other than public on-street parking. He explained that they are asking for a variance for parking as they need ten (10) spaces for restaurant use as per Borough Ordinance, where two to three spaces are provided for the business employees. Mr. Staigar stated that parking surveys were taken during peak times on Friday and Saturday evenings within a 500-foot walking distance to the proposed restaurant. He communicated his awareness of the parking permit restrictions on Hillside Avenue and he, therefore, discounted any restaurant parking there. He noted that there is a space on the corner of Main Street and Hillside Avenue with a 10-minute short-term parking restriction which could be utilized for restaurant pickups. Mr. Staigar stated that he examined Park Place, Hillside Avenue, Clarence Avenue, Mozart Avenue and Cherry Street. He noted that traffic counts were taken on Friday, May 17<sup>th</sup> and Saturday, May 18<sup>th</sup>, 2019 from 6pm to 9pm. He added that the survey counts were updated on Friday, December 20<sup>th</sup> and Saturday, December 21<sup>st</sup> 2019. He explained that the results were comparable and there was not much change but noted that the counts were taken before the COVID-19 pandemic began. He stated that during those time periods while discounting Hillside Avenue, there is a minimum of 20 vacant spaces that could be utilized by the public to park within walking distance to the site during peak periods. He added that they anticipate a need for ten (10) spaces as per the Borough Ordinance. He noted that the manager and delivery employees would be parking on-site. He explained that he felt that the off-site parking could supplement the on-site parking in a sufficient manner to meet the peak demands of the proposed restaurant.

Mr. Gaccione asked Mr. Staigar to review typical procedures for an employee food delivery and for a customer pickup. Mr. Staigar referred to the plan and explained that the four (4) spaces designated as 10-minute parking would be utilized for customer pickups. He added that the delivery employees would be out on the road for the majority of time and could use the designated space in the driveway closest to Main Street. Mr. Staigar stated that the site is a small restaurant with a relatively low trip generator, limited seating, and is family-oriented with cars generally having more than two (2) patrons. He added that there will always be inefficiency in table seating as they are set with four (4) seats per table which will likely not all be occupied. He noted that they are anticipating 14 trips during the weekday and 17 trips during the evening peak hours with minimal impact on the neighborhood. He expressed that the 21 to 22 on-street parking spaces within walking distance will meet the demands for parking for this proposed use.

Chairman Wangner asked the Board if they had any comments or questions for Mr. Staigar. Mr. Floria-Callori asked Mr. Staigar explain the difference in safety considerations related to sit-down dining establishments versus a quick-service take-out establishment. He explained the Board's concerns with past applications were related to parking but noted that the concern has now shifted to safety. He described that the delivery car would need to back out of the driveway onto Main Street close to the three-way intersection. He further explained that a quick-service establishment would require more vehicles pulling in and out which would create increased noise for the neighbors. Mr. Staigar responded that there are no safety concerns from a traffic perspective and added that dine-in customers would limit the amount of trips in and out of the site. He acknowledged that there would be a higher trip frequency for this type of restaurant than for a longer-term dining experience. He added that he did not think the frequency had a direct relationship to safety and highlighted that there is proper sight distance at this location.

Mr. Floria-Callori asked Mr. Staigar about deliveries executed from the driveway onto Main Street near the busy adjacent intersection. Mr. Staigar stated that if the deliveries are more frequent, the delivery person can park at one of the four spaces on Hillside Avenue. Mr. Floria-Callori asked if there is a noteworthy difference in noise from stopping and starting versus longer term visits. Mr. Staigar stated that there would not be any noise in violation with state or Borough rules that would qualify as a nuisance. Mr. Floria-Callori noted that the traffic study did not include the peak time around lunch due to this location's proximity to the mall and Target. Mr. Staigar stated that parking is less in demand during the midday on weekdays in mixed-use, predominantly residential areas. He explained that the evening is a more critical time because of the residential character of the area.

Mr. Floria-Callori asked if the parking variance is inherently tied to the use variance or if they could be considered separately. Mr. Gaccione stated that the reason for the lack of specificity with the use variance is because this was an approved, permitted use with only a parking issue. He reiterated that the Applicant is looking to excise that condition and revert back to what was in existence prior to the increased seating capacity. Chairman Wangner noted that parking was the condition of the Board approval and not the variance granted. Mr. Gaccione stated that the variance to expand was based on a parking requirement which could not be satisfied today. Mr. Floria-Callori asked for clarification on the effect of a subsequent variance on a prior variance. Ms. Thompson stated that the subsequent variance application extinguishes any contrary rights that were obtained with the previous application. Mr. Floria-Callori questioned if the variance that was most recently granted which conditioned the property use upon the ability to park in the Mavis parking lot extinguishes the prior variance. Ms. Thompson stated that the prior variance was for 32 seats, and the Applicant would like to go back to 20 seats without the parking condition. She noted that if this was approved, the next owner could not go back to 32 seats without a new approval from the Board. Mr. Floria-Callori noted that although the number of seats has been diminished in the Application, the minutes from June, 21 1995 state that the Applicant should not increase or advertise the low volume of take-out orders.

Chairman Wangner asked Mr. Bolio, the Borough Engineering representative, if the traffic expert addressed the issues raised in Mr. Ferriero's report. Mr. Bolio stated that the prior testimony indicated that there would be five (5) or six (6) employees with on-site parking available for three (3); he asked for clarification on where the remaining three (3) employees would park. Mr. Staigar stated that the

manager could park in the back of the driveway with the delivery employees along the stem of the driveway. He stated that the remaining employees would carpool, be dropped off or could park in one of the public parking spaces on the street. Mr. Bolio reviewed testimony regarding the parking calculation that was based on the number of restaurant seats and that seven (7) spaces would be allocated for the customers and three (3) spaces would be allocated for the employees. He noted that ten (10) spaces are required by Borough Ordinance. Mr. Staigar confirmed this and added that the customers can utilize the 10-minute parking spaces on Hillside for pick-up orders. Mr. Bolio asked if vehicles parked on Hillside would have to make a K-turn to exit the street since Hillside Avenue, like Park Place, is a dead end street. Mr. Staigar stated that vehicles would have to make a k-turn to exit those streets. Mr. Bolio asked how the cars would exit the existing parking spaces in the back of the site. Mr. Staigar explained that cars would be able to execute a five-point turn to exit forward and avoid backing out onto Main Street.

Mr. Curcio asked about the estimated number of vehicles anticipated to park on Park Place. Mr. Staigar stated that Park Place could accommodate 18 cars but noted that the street would be very narrow with cars parked on both sides. He, therefore, assumed parking would only occur on only one (1) side. Mr. Curcio agreed that only one side parking should be assumed and inquired as to the number of patrons would be expected to use the nine to ten spaces during peak hours. Mr. Staigar explained that since Park Place is hidden, he would anticipate approximately three (3) cars. Mr. Curcio asked to confirm that the only parking on Hillside Avenue would be in the four (4) temporary spaces which are anticipated for pick-up orders. Mr. Staigar confirmed that this is correct. Mr. Curcio asked if the delivery employees would park on Hillside Avenue on weekend. Mr. Staigar stated that they could alternate spots depending on the situation and offered that they can also park in the driveway. Mr. Curcio asked if there is opposite side of the street parking on Clarence Avenue in Little Falls. Mr. Staigar stated that parking on Clarence Avenue is restricted on the left side and anticipated up to three (3) cars parked there during peak hours. He suggested that patrons would also park on Cherry Street and Mozart Avenue. He noted that the study anticipated parking spaces through mid-block on Cherry Street and Mozart Avenue which is within a 500-foot distance from the site. Mr. Curcio asked for confirmation that Cherry Street and Mozart Avenue allow for only one-side street parking. Mr. Staigar confirmed this and clarified that parking is permitted on the south side of Cherry Street and the north side of Mozart Avenue. He referred to the report and confirmed the following availability of street parking during peak hours: three (3) parking spaces on Park Place, three (3) spaces on Clarence Avenue, two (2) spaces on Cherry Street and two (2) spaces on Mozart Avenue. Mrs. Jenkins asked if parking is allowed on Main Street. Mr. Gaccione stated that the parking restriction had changed and parking is no longer permitted on Main Street.

Mr. Floria-Callori asked if there were responses from the fire and police departments in response to the Application. Mr. Gaccione stated that the fire and police departments did not indicate any problems with the Application. Ms. Michelotti confirmed that a response was received from the police department and no response was received from the fire department.

Mr. Salan referred to the traffic report and asked Mr. Staigar if patrons would be likely to park on Mozart Avenue and walk to the pizzeria. Mr. Staigar assumed that customers would park and walk to the restaurant as there is no other legal place to park. Mr. Salan asked if Main Street is a well-lit area for pedestrian crossing. Mr. Staigar stated that he believes it is a well-lit area as it was in the past. Ms. Jenkins asked where Mozart Lane is located. Ms. Michelotti referred to the map exhibited for the meeting participants.

Chairman Wangner asked if there were any other questions or comments from the Board. Hearing none, Chairman Wangner opened the meeting to the public for any questions or comments.

Ms. April Hill, resident of 39 Cherry Street (on the corner of Clarence Avenue) in Little Falls, came forward. Ms. Hill expressed concern regarding the lack of available parking spots on her street and noted that the traffic study was executed before the COVID-19 pandemic closed schools. She explained that college students rent a home across the street from her property who occupy parking spots on both Clarence Avenue and most of Cherry Street. She noted that her household has difficulty parking near

the home now before the restaurant being open for business. She also expressed concern for pedestrian safety crossing Main Street. She described a recent vehicular accident at the intersection. Mr. Staigar verified the dates of the surveys taken as May and December of 2019. He stated that it may be difficult at times to find a parking space in front of one's own property but noted the long length of Clarence Avenue. Ms. Hill recommended that the prospective restaurant tenant be notified of the limited parking that is available..

Ms. Maria Caroulus, 32-year resident of Hillside Avenue in North Caldwell, came forward. She stated that she experienced several businesses operate on the site in question when parking was permitted on Main Street. She added that the 10-minute parking zone extends very close to the corner of Hillside and Main Street, making for limited sight distance when pulling into Hillside Avenue. She noted that the only way to make a K-turn is to utilize residents' driveways. She also expressed her concern about unsafe pedestrian conditions when crossing Main Street due to speeding vehicles travelling down Grandview Avenue.

Ms. Jody Lazarski, resident of 4 Hillside Avenue in North Caldwell, came forward. Ms. Lazarski asked if the parking spots designated for the pizzeria would block the building tenants' parking spots. She also stated that children play basketball in that driveway. Mr. Abramowitz referred to the plan and stated that parking spots #2 and #3 are for the tenants and spot # 1 is for the restaurant. Ms. Lazarski expressed her concern as she feels the restaurant vehicles would block the residential tenants. She stated concern for the need for additional parking to accommodate dining patrons meeting others in separate vehicles at the restaurant. She noted that patrons may bring alcohol to the restaurant and cause increased noise around the neighborhood. Mr. Gaccione stated that he had no comment as alcohol would not be served. Ms. Lazarski stated that takeout customers' vehicles could block in a delivery person's vehicle. Mr. Staigar stated that take-out customers would not use the driveway. He added that four (4) cars could be parked in the 10-minute spaces on Hillside Avenue as it has 80 feet of curbing.

Ms. Danielle Mazzo, resident of 3 Clarence Avenue in Little Falls, came forward and stated that there is a No Parking sign on the building because cars were getting hit on Main Street.

Ms. Lazarski asked if children playing and riding bikes were evaluated in the traffic surveys and noted they should be considered. Mr. Staigar stated that there were no children observed between 6pm and 9pm on the Friday and Saturday during the study. Ms. Lazarski added that there are not enough parking spots for the tenants at 1 Hillside Avenue whose six (6) cars overflow onto Clarence Avenue in Little Falls. She also noted the lack of parking when snow is present on the streets. Chairman Wangner asked Ms. Lazarski if the residents must move their cars before the street can be plowed by the Borough DPW. Ms. Lazarski stated that residents try not to park on the street when it snows noting that the plows will bypass the street if cars are parked. She add that residents must park on the street when they are anticipating visitors to allow visitors to use their driveways and adhere to permit parking regulations. Mr. Staigar explained his methodology for conducting the survey. He stated that an available parking space was counted if a distance large enough for a car was vacant. He added that he counted cars versus vacant spaces on the survey days and times. Mr. Staigar stated that 20 vacant parking spaces were counted during the week before Christmas when home parties were common. Ms. Lazarski asked if a crosswalk would be added on the Little Falls side. Mr. Staigar suggested the County be contacted to request a crosswalk.

Ms. Danielle Mazzo, resident of 3 Clarence Avenue in Little Falls, came forward. She stated that her household has five (5) vehicles and added that the house next door to her was vacant when the surveys were conducted. She explained that her street has no vacant parking spaces and noted that her daughter resorts to park on her lawn. She further explained that the college students use several of the open spaces. She added that there is no available parking near her home for her handicapped husband and visiting family and other guests. She asked if the residents could have their own survey executed. Chairman Wangner stated that he believes another survey may be unnecessary and noted that the Board takes the public comments into account when reviewing the Application.

Ms. Wendy Rossiter, resident of 8 Hillside Avenue in North Caldwell, came forward. She stated her concern with the increase in traffic due to the takeout business and noted that K-turns could only be executed by proceeding to the end of Hillside Avenue and turning into her property. She asked about the anticipated increase in traffic on Hillside Avenue as compared with Sofia's restaurant. Mr. Staigar stated that the trip generation for a 20 seat, sit-down, turnover restaurant is eight (8) trips on weekday evenings and 11 trips on Saturdays during peak hours. He noted that there would not be customers utilizing Hillside Avenue for parking other than for take-out.

Mr. Keith Reiner, resident of 8 Hillside Avenue in North Caldwell, came forward. Mr. Reiner stated his concern about the residents' driveways being used for K-turns. He asked Mr. Staigar how he turned around when surveying the neighborhood. He asked where take-out customers would park when it snows as he explained that snow is piled along both sides of the street. Mr. Staigar stated that they will have to find another place to park. Mr. Reiner noted that residents could park on Hillside Avenue every night and added that he does not want restaurant traffic turning around in his driveway.

Chairman Wangner asked if there were any other questions from the public. No one else from the public came forward.

Chairman Wangner stated that the meeting had exceeded the 10:00pm time limit for new testimony and requested that the next Applicant, Mr. Leitao, appear at next month's meeting. Ms. Thompson stated that the Board would adjourn Mr. Leitao's Application to the next meeting on November 18<sup>th</sup>. Mr. Leitao expressed his disappointment in the one-month delay but stated that he would be available for the November meeting. The Board agreed to adjourn Mr. Leitao's Application to the next meeting. Ms. Thompson stated that no further notice is required.

Mr. Gaccione stated that testimony was completed but asked to redirect questions to Mr. Staigar based on the public comments. He asked Mr. Staigar to review the procedures and results of the traffic study. Mr. Staigar stated that he executed the surveys and took all parking restrictions into account. He stated that cars parked on the street were noted and that the survey measured availability. He explained that the survey also accounts for available on-site parking. Mr. Staigar testified that less than 10 spaces within a 500 foot distance are needed where 20 spaces are available. He added that snow may put pressure on the available parking but noted that customers will go elsewhere if parking is not available. He noted that the 10-minute parking on Hillside Avenue, previously available for the dog groomer, allows for a designated take-out operation. He anticipated a parking frequency that would not differ much than in the past.

Chairman Wangner asked if there were any more questions or comments from the Board. Mr. Curcio asked if approval was required from the Little Falls Police Department. Mr. Gaccione stated that a letter was sent to the North Caldwell Police and Fire Departments but added that notification was not sent to Little Falls Police and Fire Departments as the Application resides in North Caldwell. Mr. Curcio stated concern for the Fire Department access on Hillside Avenue. Mr. Gaccione stated that a response was not received from the Fire Department so he presumed no anticipated problems. Mr. Curcio requested a response from the North Caldwell Fire Department and the Little Falls Police Department given the residents' concerns. Mr. Gaccione suggested that the Application be adjourned to seek a response from the North Caldwell Fire Department and Little Falls Police and Fire Departments regarding safety and parking. Mr. Gaccione offered that the response be made a condition of the Board's approval but noted that he can't force a response from them. Ms. Thompson stated that making the notification a condition assumes the entities would not have any issues with the proposed plan. She added the hearing would have to be re-opened to address any issues raised.

Mrs. Jenkins asked for clarification of permit parking on Hillside Avenue. Mr. Staigar stated that permits are required for parking on Hillside Avenue with the exception of the 10-minute parking spaces which extend 80 feet up from the corner.

Mr. Gaccione stated that testimony was complete subject to correspondence with the Little Falls Police and Fire Departments and the North Caldwell Fire Department. Ms. Thompson confirmed that testimony was considered complete assuming there is not additional testimony required for issues that may be raised by said departments. Chairman Wangner suggested the adjournment of the Application pending the responses from the municipal entities. Mr. Gaccione stated that he would make the best effort to obtain those responses. Ms. Thompson stated that the meeting will be adjourned to the November 18<sup>th</sup> meeting and no further notice is required.

**Mr. and Mrs. John Leitao – 2 Fairview Drive**

Impervious Lot Coverage

The Application was adjourned to November 18, 2020 due to the late running meeting.

**MEMORIALIZATIONS**

**Mr. and Mrs. David Arluna – 9 Colony Drive**

Side and Rear Yard Setbacks, Impervious Lot Coverage

**MATTER OF DAVID ARLUNA**

Decided: September 16, 2020

Memorialized: October 21, 2020

**WHEREAS**, David Arluna (hereinafter referred to as the “Applicant”) has filed an application for variance relief pursuant to N.J.S.A. 40:55D-70c before the Borough of North Caldwell Zoning Board of Adjustment (the “Board”) with regard to property located at 9 Colony Drive, also known as Lot 23 in Block 1403 (the “Property”) in order to construct a shed requiring variance relief for rear and side yard setbacks, and a lot coverage variance for exceeding maximum impervious coverage requirements. The subject property is located in R2 residential zone; and

**WHEREAS**, all owners of property located within 200 feet of the subject premises were properly notified according to law; and

**WHEREAS**, the jurisdiction and powers of this Board have been properly invoked and exercised pursuant to Statute; and

**WHEREAS**, a public hearing was held by this Board on September 16, 2020; and

**WHEREAS**, the Board makes the following finding and determination based upon the following facts:

1. David Arluna was sworn in and presented his request for a rear and side yard variance and a lot coverage variance for the installation of a shed.
2. Mr. Arluna described the proposed shed as a standard 8 foot by 10 foot structure with a front-facing door which would be used for storage of yard equipment and toys.
3. Mr. Arluna testified that complying with the setback requirements for the installation of the proposed shed would place the shed toward the middle of his backyard. Mr. Arluna explained that he would like the shed closer to the side of the lot to leave the center portion of the backyard available for his children to play. He described his property as approximately 11,000 square feet, 80 feet wide and 150 feet in depth.
4. Mr. Arluna further testified that due to the small lot size he does not have much space for his children. He added that trees along the side yard would obstruct view of the proposed shed by the neighbors. In response to questions from the Board, Mr. Arluna confirmed that hemlocks are located along the rear property line and along both sides of the property.
5. Mr. Arluna stated that the items to be stored in the proposed shed are currently stored under a tarp in the yard, and in the garage. Mr. Arluna stated that storing the items in the proposed shed would be an aesthetic improvement and that the neighbors would be happy not seeing the tarp over the equipment.
6. In response to questions from the Board, Mr. Arluna stated that the pavers and fence were in place when he moved in 6 years ago. Mr. Arluna noted that the neighbor on the left has a fence on their side of the property as well.



7. Mr. Arluna testified that he did not have any options other than the shed in its proposed location and further testified that he would not be able to reduce the lot coverage.
8. The meeting was opened to the public without comment.
9. Mr. Sceppaguercio stated that he drove by the property and noted that the trees along the back and side of the property provide good coverage. He added that placing the shed near the side-yard was logical due to the lot size.
10. Municipal Engineer Paul Ferriero explained that the Application is for a *relatively de minimis* increase of impervious coverage of .01% but noted the issue of the pre-existing conditions that accumulate to nearly 10% over the permitted coverage.

**NOW, THEREFORE, BE IT RESOLVED** that based on the facts as found above, the Board finds that the front facing garage variance can be granted without substantial negative impact to the intent and purposes of the Zone Plan and Zoning Ordinances of the Borough of North Caldwell and furthermore, the Applicant has sustained his burden of proof that a hardship exists due to the existing conditions on the lot that the benefits of granting the relief requested substantially outweigh the detriments. Mr. Sceppaguercio made a motion to approve the Application as submitted, with the clarification the approval of this variance request encompasses the preexisting impervious coverage. Mr. Salan seconded the motion. A vote was taken and the motion was approved with six affirmative votes by Mr. Sceppaguercio, Mr. Salan, Mr. Floria-Callori, Mrs. Jenkins, Mr. Rentzis, and Chairman Wangner. Mr. Roth voted No.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 21st day of October 2020, by a majority of the members of the Board present at such meeting and who voted for the action taken on September 16, 2020.

**ALL THOSE IN FAVOR:** Mr. Floria-Callori, Mr. Sceppaguercio, Mr. Salan, Mrs. Jenkins, Chairman Wangner

**ALL THOSE OPPOSED:** --

**ABSTAIN:** Mr. Curcio, Mr. Michelotti

**ABSENT:** Mr. Rentzis, Mr. Roth

**Mr. and Mrs. Adam Winters – 207 Smull Avenue**  
Solid Fence Facing Street

**MATTER OF ADAM WINTERS**  
Decided: September 16, 2020  
Memorialized: October 21, 2020

**WHEREAS**, Adam Winters (hereinafter referred to as the “Applicant”) has filed an application for variance relief pursuant to N.J.S.A. 40:55D-70c before the Borough of North Caldwell Zoning Board of Adjustment (the “Board”) with regard to property located at 207 Smull Avenue, also known as Lot 7 in Block 906 (the “Property”) in order to construct a five (5) foot solid fence on a corner lot requiring variance relief. The subject property is located in R1 residential zone; and

**WHEREAS**, all owners of property located within 200 feet of the subject premises were properly notified according to law; and

**WHEREAS**, the jurisdiction and powers of this Board have been properly invoked and exercised pursuant to Statute; and

**WHEREAS**, a public hearing was held by this Board on September 16, 2020; and

**WHEREAS**, the Board makes the following finding and determination based upon the following facts:

1. Mr. and Mrs. Winters were sworn in. Mr. Winters explained the proposal to install a five (5) foot solid privacy fence in their backyard. The property is on the corner of Smull Avenue and Winding Way. One side of the proposed fence would face Winding Way. He stated that the Borough Zoning Ordinance prohibits the installation of the fence closer to the road (facing Winding Way) than the nearest corner of their house.

2. Mr. Winters referred to the graphics submitted to the Board which depicts a conforming fence and the proposed solid fence. He added that a conforming location for the fence cuts the yard in half if parallel to Winding Way at the proper setback.
3. Mr. Winters testified that the shape of the yard is odd and not favorable to a permitted fence. Locating the proposed fence in accordance with the ordinance requirements would result in the loss of lot of the yard that they intended to capture within the fence. Mr. Winters explained that they would like the fence for privacy and safety, to keep the animals out, and to maximize enjoyment of their yard.
4. In response to questions from the Board, Mr. Winters stated that they purchased the home a year ago and added that they would like to use the yard with their young daughter and enjoy privacy outdoors. Mrs. Winters stated that the property is exposed on all sides and added that the fence would provide safety for their daughter and any future children. She further added that they love the property but would like to enjoy a backyard instead of the two front yards on the corner lot.
5. Mr. Winters described the landscaping on the property, stating that there are trees on the south and west property lines that would hide the fence from the neighbors but currently there is no landscaping on the Winding Way side.
6. In response to questions from the Board, Mr. Winters stated that the proposed fence would not be any closer to the road than the right of way which is about 12 feet. He noted that there will be a 12-foot section of landscaped grass in between the road and the fence along Winding Way. The blue spruce depicted on the plans would be inside of the fence to the right at the tree.
7. In response to comments by the Board, Municipal Engineer Paul Ferriero stated that the curb is generally about 10 feet from the right of way line. Mr. Winters noted that their home is 4 feet away from the property line.
8. In response to questions from the Board concerning the rear property along the westerly line of the property, Mr. Winters stated that the area is covered by brush and some trees. There are no retaining walls in that area.
9. In response to comments by the Board concerning the installation of a fence across a drainage easement, Mr. Ferriero stated that there are two areas of concern relative to the fence in the rear yard. First, if the Board were to approve the Application, the Governing Body is the ultimate authority to authorize a fence in the easement and suggested that approval by the Governing Body be a condition of approval should the Board grant the Application. Second, Mr. Ferriero further suggested that gates or an opening in the fence be considered so the Borough could access the easement for maintenance which should be addressed as part of the final design of the fence. Mr. Ferriero explained that the municipality should not have the additional burden of removing the fence or any other obstruction for access to the easement.
10. In response to Mr. Ferriero's comments, Mrs. Winters stated that they planned to install a gate in the back on the Winding Way side.
11. In response to questions from the Board, Mr. Winters stated that the easement is not noticeable as it is a grassy area with trees on the south side of the property. Mrs. Winters added that without the survey, the area is unrecognizable.
12. Mr. Ferriero further stated that the sight obstruction is also a concern, explaining that the fence must not obstruct the line of sight at the intersection. He suggested that, if approved, he would meet with the Applicants in the field to determine where the fence should be placed to prevent sight obstruction.
13. Mr. Winters referred to the proposed plan and stated that the fence is depicted 65 feet away from the corner while the Borough Code prohibits a fence within 25 feet from a corner. He added that the fence is set back from Smull Avenue and is farther away from the corner than Smull Avenue is from the house. He further explained that Winding Way slopes downhill from Smull Avenue to the back of their lot so it would be easy to see over the fence.
14. In response to questions from the Board, Mr. Winters stated that Figure 4 of the Application is a similar corner lot within view of their own home. Mrs. Winters stated that the other photos are of front yard facing fences.
15. Referring to the letter of denial, indicating that the requirement that the fence must be 50% open, Mr. Winters stated that they prefer a solid fence. He added a mandatory 45-foot setback for a solid fence would result in the loss of half of what they consider their backyard. He stated this as a hardship and noted that an open fence would not deter deer.
16. The hearing was opened to the public without comment.

17. Mr. Adam Weinstein from Best Gate and Fence, Fairfield, New Jersey was sworn in. Mr. Weinstein described the fence, indicating that the length of the fence is 170 feet from the front-facing corner at Winding Way to the end of the fence line near the drainage easement. The proposed fence would be 88 feet long along the easement and 103 feet long along the south side to the driveway retaining wall. He confirmed that the proposed fence is a five-foot solid fence around the perimeter of the property.
18. In response to questions from the Board, Mr. Weinstein stated that the gate size would be dependent upon the end of the fence line and noted that the easement is 15-feet wide.
19. Mr. Ferriero acknowledged that the corner of the fence would fall in the easement. He stated that the required width of an opening is ten feet and that two gates could be installed together for a width of ten feet.
20. In response to comments from the Board, Mr. Weinstein stated that generally there is a significant deterrence of deer based on his customers' testimony after fences have been installed.
21. In response to questions from the Board, Mr. Winters stated that they considered using trees instead of a fence, noting that trees are not sufficient in keeping out the animals. Mrs. Winters added that they would install landscaping outside of the fence, if requested.

**NOW, THEREFORE, BE IT RESOLVED** that based on the facts as found above, the Board finds that the front facing fence variance can be granted without substantial negative impact to the intent and purposes of the Zone Plan and Zoning Ordinances of the Borough of North Caldwell and furthermore, the Applicant has sustained his burden of proof that a hardship exists due to the existing conditions on the lot that the benefits of granting the relief requested substantially outweigh the detriments. Mr. Floria-Callori made a motion to approve the Application with the following conditions (1) a landscape buffer be provided outside the fence along Winding Way; (2) the fence location shall conform to the Municipal Engineer's determination of a safe sight line along the corner of Smull Avenue and Winding Way; and (3) the fence shall terminate before it enters the drainage easement area. Mr. Roth seconded the motion. A vote was taken and the motion was approved with five affirmative votes by Mr. Floria-Callori, Mr. Roth, Mrs. Jenkins, Mr. Sceppaguercio, and Mr. Rentzis. Mr. Salan and Chairman Wangner voted no.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 21st day of October 2020, by a majority of the members of the Board present at such meeting and who voted for the action taken on September 16, 2020.

**ALL THOSE IN FAVOR:** Mr. Floria-Callori, Mr. Sceppaguercio, Mrs. Jenkins

**ALL THOSE OPPOSED:** --

**ABSTAIN:** Mr. Salan, Mr. Curcio, Mr. Michelotti, Mr. Wangner

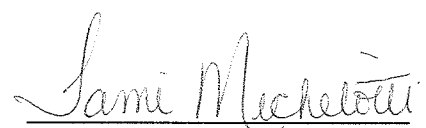
**ABSENT:** Mr. Rentzis, Mr. Roth

**APPROVAL OF MINUTES**

Mrs. Jenkins made a motion to accept the minutes of the Board Meeting of September 16, 2020. The motion was seconded by Mr. Salan. Said motion passed with five affirmative votes.

There being no further matters to come before the Board, Mr. Curcio made a motion to adjourn the meeting, seconded by the Board. Said motion passed unanimously. The meeting was adjourned at 10:37p.m.

Respectfully Submitted,



Tami Michelotti  
Zoning Board Secretary