

The Meeting of the North Caldwell Board of Adjustment was held at Borough Hall, Gould Avenue on Wednesday, February 19, 2020 starting at 8:03pm.

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. Curcio, Mr. Floria-Callori, Mrs. Jenkins, Mr. Michelotti, Mr. Roth, Mr. Salan, Mr. Sceppaguercio, Mr. Rentzis, Chairman Wangner. Also present were Lisa Thompson, Esq., Board Attorney, and Tami Michelotti, Zoning Board Secretary.

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

#### **REORGANIZATION:**

Mr. Paul Sceppaguercio and Mr. Philip Rentzis were sworn in by Ms. Thompson as Alternate Members for two-year terms to expire on December 31, 2021.

#### **APPLICATIONS**

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

The use variance Application was adjourned to March 18, 2020 meeting at the request of the Applicant. Ms. Thompson stated that no further notice is required.

##### **Mr. Anthony Aulita – 3 Hillside Avenue, Block 15, Lot 2103**

Mr. Anthony Aulita, Applicant, was sworn in. Mr. Aulita stated his request for a lot coverage variance to expand his existing driveway. He explained that the current driveway accommodates his two vehicles, a personal car and a commercial van. He added that street parking is by permit only, making it difficult to have guests visit his home. Mr. Aulita explained his plans to lengthen the driveway from front to back to accommodate six vehicles as well as moving his own vehicles.

Mr. Wangner referred to the Municipal Engineer's report and asked Mr. Aulita to address the suggestions in the report. Mr. Aulita stated that he reviewed the report and noted that curbing is planned around the entire driveway even though it was not reflected in the plan. He stated his understanding to stake out the property to accurately pave the driveway. Mr. Wangner asked if a sealed survey was provided. Mrs. Michelotti confirmed that Mr. Aulita provided a sealed survey after submission of the Application. Mr. Floria-Callori asked if there is a utility pole on the lot line that is not shown on the survey. Mr. Aulita confirmed that there is a utility pole located on the property line. He referred to the survey to confirm where the existing driveway ends.

Mr. Floria-Callori asked for justification of the requested 71% impervious coverage where only 30% is permitted. Mr. Aulita stated that he needs the room for guest parking and noted that Hillside Avenue is a narrow street where on-street parking is not allowed without permits. Mr. Aulita stated that his neighbor has a driveway with a garage in the back with similar lot coverage. He added that most of the driveways are equivalent to two-car lengths. He stated that he has not requested an on-street parking permit from the Borough and added that he does not know how to obtain one. Mr. Curcio suggested the Applicant consult Borough Hall.

Mr. Floria-Callori asked if there were any stormwater mitigation plans considered in the Application. Mr. Aulita stated that there are no plans for stormwater mitigation and noted the high cost of the proposed project. Mr. Aulita confirmed that plans to park his vehicles side-by-side to alleviate moving one car in the street to get to the other. He noted that his neighbors do not oppose the plan and added that it is a benefit to them that he does not have to park a car in the street. Mr. Aulita was asked about street conditions during rain storms to which he stated that he knows of no flooding issues at his neighbors' homes. Mr. Floria-Callori asked if Mr. Aulita could accomplish his task without exceeding the impervious coverage by the amount he is trying to. Mr. Aulita stated that the property is already over on impervious coverage and he noted that he is not willing to make the driveway smaller as he added that it would not satisfy his needs.

Mr. Wangner asked for a description of the parking situation on the street. Mr. Aulita stated that parking has improved since a restaurant on Main Street closed but noted that the narrowness of the street makes it difficult to park on both sides. Mr. Aulita added that no one parks on the street when it snows and noted that the street is well-plowed.

Mr. Floria-Callori asked how the driveway would be utilized when he has no guests. Mr. Aulita stated that he would park his van and car in the back of the driveway. Mr. Salan asked what the current condition of the rear yard is and questioned if Mr. Aulita has ever parked in the rear in its current condition. Mr. Aulita stated that the rear yard has grass and a fruit tree. He stated that he has parked partially on the grass in the past and that he intends to remove the tree. Mr. Floria-Callori asked if there is anything that exists on the property that can be removed to lessen the impact of the impervious coverage. Mr. Aulita offered to remove the walkway around the opposite side of the home from the driveway. He stated that he did the calculations with some help but noted that he was unsure of the calculation of the right side walkway itself. Mr. Curcio asked if consideration was given to mitigate the large increase in the impervious coverage. Mr. Aulita explained that it would be difficult to only partially pave the desired length of the driveway and park on two strips of concrete. He noted that keeping grass in the middle or installing a gravel driveway would be difficult to maintain and plow.

Mr. Salan asked how many cars would fit in the proposed driveway. Mr. Aulita stated that the proposed driveway will fit six cars when needed. Mr. Wangner referred to the Borough Engineer's letter with regard to the close proximity of the utility pole. Mr. Aulita stated that the utility pole is located on the property line and added that he feels there is no need to relocate it. Mr. Curcio referred to page 2, paragraph six of the Engineer's report about the need for a drywell to capture runoff. Mr. Aulita stated that if a drywell is required, he will have it done. Mr. Wangner stated that the Engineer's report states that the drywell should be designed to have the capacity for the entire increase in the impervious surface. He noted that stormwater management is an important issue in town and added that thought should be given to adding a drywell to mitigate it. Ms. Thompson stated that the Board can make this condition of the approval subject to Paul Ferriero's approval with regard to the size of the drywell.

Mr. Curcio suggested that Mr. Aulita obtain a parking permit from the Borough to mitigate the issue. Mr. Aulita noted that he will still be unable to park overnight on the street. He further explained that the parking permit is per vehicle and non-transferable to guests. Mr. Salan noted that a call can be placed for permission to park on the street overnight when needed. Mr. Aulita stated that he has called for permission to park on the street overnight frequently.

Mr. Floria-Callori asked for a description of the topography of the area. Mr. Aulita explained that when looking at the property, it slopes to the left. Mr. Floria-Callori expressed his concern with the Application because of the large increase in impervious coverage and the Applicant's reluctance to reduce it. He also noted that the removal of the walkway, tree removal and drywell are not reflected in the plan. Mr. Aulita stated that he is willing to satisfy the Board's conditions of approval but noted that it is too costly to fix only part of the problem. Mr. Floria-Callori estimated that the sidewalk eligible for removal would account for a 6% reduction in impervious coverage.

Mr. Curcio asked Mr. Aulita what type of business he is in. He stated that he is a County Sheriff's Officer and noted that he holds electrical, plumbing, HVAC, and real estate licenses. Mr. Aulita confirmed that one van will be parked in the driveway. Mrs. Jenkins asked if extending the driveway with two cement strips could help accommodate guests' vehicles. Mr. Aulita stated his need to moving his personal vehicles between jobs. Mr. Aulita explained that he does not feel that his request is unreasonable as he added that most of his neighbors are over their impervious coverage. Mr. Aulita noted that he would have to move if the property cannot accommodate his needs, especially once he has a family.

Mr. Wangner asked if there were any questions or comments from the Board. There were no comments or questions from the Board.

Mr. Wangner opened the hearing to the public for any questions or comments. No one from the public came forward.

Mr. Floria-Callori made a motion to approve the Application subject to the following conditions:

1. The sidewalk on the southern property line is removed.
2. A drywell is engineered and installed to capture any excess runoff and approved by the Borough Engineer.

The motion was seconded by Mr. Salan. The Application was approved with four affirmative votes by Mr. Salan, Mr. Michelotti, Mr. Roth, and Chairman Wangner. There were three nays by Mr. Floria-Callori, Mr. Curcio, and Mrs. Jenkins.

**La Serra Farms, LLC – 216 Mountain Avenue**  
Appeal of Notice of Violation, Use Interpretation

Ms. Thompson recused herself at 8:37pm stating a previous relationship with the Applicant. Mr. Curcio recused himself stating a current relationship with the Applicant's attorney.

Mr. Sal Valente of 15 Rickland Drive was sworn in. Mr. Angelo Bagnara, Attorney for the Applicant, stated that the Applicant seeks a letter of interpretation from the Zoning Board to confirm the presence and use of six stools and/or chairs at the location which he noted were historically used by the Applicant and previous owners, Matarazzo Farms. He added that their request is not intended to be disruptive or difficult in any manner but merely to confirm the historic and non-conforming use of the subject property.

Mr. Bagnara described the procedural history and facts which brought them to their request. He explained that La Serra Farms, LLC. purchased the subject property in 2013 from James Matarazzo which was operated as a farm, convenience/coffee shop, and a garden supply store. He explained that the use was non-conforming since 1920 as the property is located in an R2 zone. He stated that the Borough of North Caldwell had not issued a certificate of occupancy to the previous owner who maintained seating at the property. Mr. Bagnara stated that since the Applicant purchased the property, the use remained unchanged. He further stated that during the first four years of ownership from 2013 to 2018, La Serra Farms and the Borough had negotiated and litigated the farmland and tax status of the property. He referred to details regarding ownership of the property in Exhibit B of Section 12 of the Application.

Mr. Bagnara added that the Applicant seeks a letter of interpretation from the Board confirming the presence of stools/ chairs as a historic, non-conforming use under the land use law. He added that the Applicant has no intention of placing any additional chairs, stools, or tables. He noted that the Applicant does not encourage any type of dine-in experience at the store and added that 95% of the customers do not sit or stay on the site after purchase. He added that the remaining 5% are family, employees and suppliers. Mr. Bagnara stated that Mr. Valente has made it clear to Zoning Officer Paul Milani and the Borough that he has no intention on providing further seating beyond the six stools and offered a public promise to never exceed the six stools or chairs. Mr. Bagnara stated that the Applicant requests that the Board issue a Letter of Interpretation to document the historic, non-conforming use of the property including the presence of the six stools/chairs.

Mr. Griffin introduced himself and stated that he is sitting in to represent the Board for Ms. Thompson who had a conflict of interest. He stated that he noticed that the Application requests falls beyond a Letter of Interpretation and includes an appeal. He noted that the Application also includes a request for a D variance. He explained that if the Board decides not to issue a Letter of Interpretation that meets the Applicant's needs, the Board could consider an appeal. If the Applicant finds that his request is not yet met, a D variance could be considered. Mr. Bagnara confirmed that his client is not withdrawing the request for an appeal of the Zoning Officer's notice of violation nor the client's request for a D variance.

Mr. Griffin asked the Applicant for clarification of the issue and the Applicant's request of the Board. Mr. Bagnara asked for recognition of the pre-existing non-conforming use under which the property was operating since the 1920s. Mr. Griffin stated that the burden of proof for the existence of a non-conforming use rests with the Applicant. He asked the Applicant to present proof of the use that existed at the time Zoning Ordinance was adopted that, today, forbids that use. Mr. Griffin asked when the area was declared a residential zone, prohibiting commercial uses. Mr. Griffin gave the Applicant the option to gather any evidence and reappear before the Board at a later date. Mr. Griffin explained that the use that was in place when the property was purchased does not carry through to today. He added that the operative date is when the Zoning Ordinance forbids the commercial use that is now being used by the property.

Mr. Paul Milani, Borough Zoning Officer, was sworn in. Mr. Griffin asked Mr. Milani when the residential zoning district became effective for the property rendering commercial use not permitted. Mr. Milani referred to the

Borough Code Book and confirmed that the operative date affecting the zone residential zone was 1973. Mr. Griffin offered the Applicant an adjournment if they chose to gather evidence. Mr. Bagnara confirmed that they would like to proceed with the hearing tonight.

Mr. Valente stated that the store was built in 1955 and became a produce store with a similar mix of merchandise as today. He stated that he has lived in town since around 1970 and noted that he visited the store about five or six times a year. He explained that the store's operation is unchanged for the past 70 to 80 years. Mr. Floria-Callori asked for clarification on what products were sold in the store prior to 1973. Mr. Valente stated that the store sold produce, coffee, homemade cakes, and apple cider. He added that 90% the merchandise sold today was sold by the store previously. He noted that he currently sells less produce as it is costly, and he cannot maintain competitive pricing. He added that he has moved his emphasis to sale of other products. Mr. Valente stated that he offers the same product mix with the exception of home furnishings. He stated that the garden center portion of the business does 8 to 10 times the business than the store but added that the store was opened as a "filler" to keep up with expenses.

Mr. Valente recalled a conversation with Frank Zichelli, former Borough Engineer and Borough Administrator, when he opened the store to inform him of his plans. Mr. Valente stated that Mr. Zichelli did not have a problem with the plans as long as the store did not turn into a Starbucks or Jola. Mr. Valente noted that he received an informal, verbal approval to proceed from Mr. Zichelli but added that he later was informed otherwise. He explained that after six months from the opening of the current coffee shop, Mr. Milani notified him told to remove the stools. Mr. Valente stated that he opened the coffee shop in April 2019 and was never told of an issue until September 2019.

Mr. Floria-Callori reiterated the need for Mr. Valente to establish and provide evidence of the uses that existed in 1973 and prove that said uses continue today. Mr. Griffin explained the burden of proof required for this case. Mr. Bagnara stated that the store has a Certificate of Occupancy to sell products but prohibits dine-in service. Mr. Wangner asked if a Certificate of Occupancy was issued to the previous owner. Mr. Bagnara stated that no Certificate of Occupancy was found to be issued to the previous owner. Mr. Valente explained that a "prep table" is located in the store around which the stools are placed. He noted that the table has been in place since the store opened in April which he purchased with new chairs. He stated that the stools existed in the store as far back as he could remember, recalling that he sat in the chairs while talking with the former owner. Mr. Griffin asked if Mr. Valente had any documentary evidence of the seating in the store prior to his ownership, aside from personal recollection. Mr. Valente confirmed he had no evidence that the six stools existed in the store prior to his ownership.

Ms. Jenkins asked if the store sold coffee under the previous ownership. Mr. Valente stated that the coffee was given to visitors and that private meetings were held in the greenhouse. Mr. Valente stated that he moved to North Caldwell in 1975, two years after the zoning ordinance became effective. Mr. Valente explained the tax appeal litigation and settlement in 2018 regarding the farm status of the property. Mr. Valente stated that the property is not a working farm but is well-maintained, manicured, and clean. He explained that there is a house and a pond on the property where he allows people to fish. He described the store, parking lot, greenhouse and gazebo.

Mr. Wangner asked Mr. Bagnara if he was able to find evidence in the town records to establish a history to coincide with Mr. Valente's timeline. Mr. Griffin noted that the certificate of occupancy prohibits dine-in service that Mr. Valente should have established the dine-in use with chairs present was a pre-existing, non-conforming use. Mr. Bagnara stated that upon receipt of the Certificate of Occupancy, Mr. Valente questioned the prohibition of dine-in activities. Mr. Griffin explained that producing a Certificate of Occupancy does not necessarily mean that the Zoning Officer went back to 1973 and established the things that were in play at that time. Mr. Wangner noted that evidence of the non-conforming use prior to Mr. Valente's ownership would be helpful. Mr. Bagnara referred to Attachment 2, a letter from the Borough on May 14, 2019 which did not reference the stools.

Mr. Roth asked Mr. Valente if he made any revisions to the store to be compliant for the issuance of the Certificate of Occupancy. Mr. Valente stated the Borough wanted his money and that the Borough used a change in the tax law to inspect his property for new private roads and neighbors' drainage problems. Mr.

Valente added that Mr. Milani did not permit the stove which was not vented, did not permit an illuminated sign, and required that the sink be inspected by the Plumbing inspector. Mr. Valente stated that the issues were resolved upon which time Mr. Milani issued the Certificate of Occupancy which stated "no in-house dining". Mr. Valente explained that it was the first time he saw the dining issue addressed. Mr. Griffin referred to the third paragraph on Attachment 8, a letter dated August 20, 2019 in which Mr. Valente states, "We do not have any tables or encourage on-site dining like a Starbucks or Jola".

Mr. Roth referred back to the May 14, 2019 letter in which Mr. Milani required a use variance approval from the Zoning Board of Adjustment in order to continue with the Farmhouse Coffee business. Mr. Roth asked if a use variance was requested or granted. Mr. Milani stated that a use variance was not applied for or granted. He added that Mr. Valente was issued a Health Department food license in past years for the sale of pre-packaged foods and produce. He stated that the latest Health Department permit required that a proper sink be installed, after which the Certificate of Occupancy was issued. He noted that Mr. Valente complied with the requirement that a permit be obtained for the sink installation.

Mr. Wangner asked if it is typical practice that a business operates without a Certificate of Occupancy. Mr. Milani stated that the storefront had been operating for years and had no knowledge of certificates granted to the previous owner. Mr. Milani added that Certificates of Occupancy are difficult to find for older properties. Mr. Valente stated that LaSerra Farms has obtained food licenses from the Borough. Mr. Wangner asked Mr. Valente to confirm if he bought the property and/or the business from Mr. Matarazzo. Mr. Valente confirmed that he purchased the property only.

Mr. Floria-Callori asked Mr. Milani for his interpretation of the six stools, both historically and as they exist today. Mr. Milani stated that his interpretation of the store was and is a mercantile business, also referred to as a pay-and-go retail establishment, similar to a 7-11 type of store, without seating. He stated that the Certificate of Occupancy confirms the permitted mercantile use. Mr. Milani was asked about his initial visit to the store. He stated that he first visited the property about ten (10) years ago but did not recall if the chairs existed.

Mr. Valente stated that the two sinks existed in the store as did a stove. He added that Mr. Milani informed him that the stove was not properly vented and that it was removed. Mr. Valente stated that he would like to install a new stove so that he could cook for his employees who spend long hours at the business.

Mr. Griffin asked the Applicant if there was any other evidence to present regarding the pre-existing non-conforming use of the business. Mr. Bagnara confirmed that they had no other evidence of that sort to present. Mr. Griffin asked Mr. Milani if there was any documentation of any kind regarding the mercantile use of the business. Mr. Milani stated that the Borough does not have anything additional. Mr. Wangner stated that the Board needs to establish permitted use for which historical documentation would be helpful. Mr. Griffin asked if the Borough had any issue with the mercantile use sale of food. Mr. Milani stated that he was not aware of any past issues and noted that the Borough issued licenses to Mr. Valente to operate and sell produce and pre-packaged foods. Mr. Wangner noted that the Board is left testimony as the only history. Mr. Floria-Callori stated that the Board was asked to confirm a pre-existing non-conforming use and establish that the use predated the residential (non-commercial) Zoning Ordinance. He added that while the testimony is valuable and would be used in their decision making, he noted that any documentation that existed before 1973 would have been valuable.

Mr. Valente stated that Matarazzo Farms was an institution in town where people bought produce. He stated that there may be documents that exist pertaining to the building of the store in 1955. Mr. Griffin stated that the burden of proof rests upon Mr. Valente. Mr. Griffin offered that Mr. Valente could seek a use variance. Mr. Valente stated that he would not seek permission through a use variance and was present because he was instructed by the Municipal Court judge to appear before the Board. Mr. Roth stated that Mr. Griffin's lack of history with the town and the farm was beneficial as he was able to be unbiased. Mr. Floria-Callori noted the historical significance of the store.

Mr. Griffin referred to Exhibit C of the Application and noted Mr. Valente's statement that the relief sought meets all the positive criteria for a use variance. Mr. Valente stated that the Application does not defend the negatives of the property. Mr. Griffin asked if Mr. Valente is withdrawing the Application for a D Variance and

explained the options to the Applicant. Mr. Bagnara asked that a D Variance application be an alternative to the Letter of Interpretation that they are seeking. Mr. Wangner stated that the Board was not presented with any evidence from the Applicant or any records from the town. Mr. Bagnara stated that the Board has Mr. Valente's testimony as well as the history of the store. Mrs. Jenkins stated that it would have been helpful to have testimony from others in lieu of documentation. Mr. Bagnara offered that the Board members could recollect their own experiences from the store.

Mr. Griffin stated that an inherently beneficial use includes places such as hospitals, schools, churches, or other non-profit corporations that help the community. He asked why this commercial store with stools would be an inherently beneficial use to the community. Mr. Valente stated that he has been approached by restaurants that wanted to use the property but that he would continue to operate the store as he felt it is best for the community. Mr. Floria-Callori noted that any restaurant would have to apply for a use variance and come before the Board for approval. Mr. Bagnara noted that the store has historical significance and brings a positive sense of community to the town.

Mr. Wangner asked Mr. Milani for his knowledge of the history of the storefront. Mr. Milani stated that it was a farm stand that sold produce and garden supplies. Mr. Milani stated that it is his opinion that the business has since strayed from the original farm stand business. Mr. Milani stated that the limitation in the Certificate of Occupancy allowing mercantile business only was based on information from the Borough Attorney, Borough Administrator, and Borough Clerk who had knowledge of the permitted use of the property. Mr. Milani introduced the emails to the Board which were marked into evidence. Mr. Griffin presented A1, an email from the Borough Clerk on January 18, 2019 which explained that the request to open a coffee shop would likely require a use variance. Mr. Griffin then presented A2, an email from the Borough Clerk to Mr. Dusinberre dated January 28, 2019 which asked for a list of approved uses of the property. Mr. Griffin referred to Mr. Dusinberre's response on September 19, 2019 which stated his concern with the new proposed use and whether or not it conformed to the historic use. Mr. Dusinberre's response stated that operation of the business which exceeded the historic use would be considered an expansion of the non-conforming use and, therefore, require a use variance application to the Zoning Board. Mr. Griffin read an email from Mr. Zichelli which documented a meeting with Mr. Valente. Mr. Zichelli described two proposed uses for the property which were presented by Mr. Valente: (1) a garden center for plants, supplies and Christmas trees and (2) a coffee takeout shop with prepared foods. The email noted that there would be no-on-site preparation or consumption of food items. The email noted that the garden center proposed use appeared consistent with the existing use of the property but that the coffee shop was contrary to the zoning rules and historic use of the property.

Mr. Griffin asked Mr. Valente to address the negative criteria pertaining to the D variance. Mr. Valente referred to his handwritten note that documented his meeting with Mr. Zichelli. Mr. Griffin marked the handwritten notes as Exhibit A-3 and he read a part of Executive Session minutes from a Mayor and Council meeting which were marked as Exhibit A-4.

Mr. Roth asked for confirmation of the zone for the property in question. Mr. Griffin stated that the property is in both R1 and R2 zones.

Mr. Bagnara consulted with his client and stated that they chose to withdraw the D variance application.

Mr. Floria-Callori referred to Mr. Milani's letter from May 14<sup>th</sup>, 2020 and Mr. Zichelli's letter from September 19<sup>th</sup>, 2020 which state that the historic use of this property has been operation of a farm stand selling fruits, vegetables, plants, garden supplies and Christmas trees. He added that Mr. Milani's letter stated that, "the recent farmhouse coffee business located at 216 Mountain Avenue falls beyond the scope of the historic preapproved non-conforming use as a farm stand selling fruits, vegetable, plants, garden supplies and Christmas trees." Mr. Floria-Callori stated these two documents conform and asked the Board for consensus of the definition of the pre-existing non-conforming use of the property. Mr. Wangner offered that this definition is reflected in the Certificate of Occupancy which was confirmed by Mr. Milani.

Mr. Griffin referred to a statement from August 20<sup>th</sup>, 2020 from Mr. Matthew Kiernan of Kiernan Consulting in which he stated that "no tables or on-site dining is encouraged". Mr. Griffin asked for the reason that the tables are present. Mr. Valente stated that they are prep tables with stools next to them and offered that he would

tell customers that the town does not allow sitting and eating there. Mr. Wangner asked if Mr. Valente would remove the stools. Mr. Valente stated that the seating is for himself and his vendors to sit and have a cup of coffee in the store. Mr. Floria-Callori asked if Mr. Valente planned to lease the store. Mr. Valente stated that he had low activity and volume.

Mr. Griffin instructed the Board to interpret whether the six chairs/stools are consistent with the pre-existing, non-conforming use. Mr. Floria-Callori explained to Mr. Valente that the Code Enforcement Official has determined that what is currently in place is not in compliance. He further explained that the Board needs to make a decision on if the Zoning Official's determination is wrong or not.

Mr. Griffin asked Mr. Milani if there was anything else he would like to add. Mr. Milani did not have anything else to add. Mr. Floria-Callori asked if there was any desire by the Applicant to support the case with additional evidence. Mr. Valente stated that looking for more evidence it is not practical.

Mr. Floria-Callori made a motion to allow the six chair/stools as a pre-existing, non-conforming permitted use on the subject premises. Mr. Roth seconded the motion. Said motion passed with seven affirmative votes.

Ms. Thompson returned to the meeting at 10:28pm at which time Mr. Griffin departed.

## **MEMORIALIZATIONS**

**MATTER OF PHILIP and BOBBI ANN HOBSON  
26 HAMILTON DRIVE WEST – BLOCK 1902, LOT 7  
Decided: January 15, 2020  
Memorialized: February 19, 2020**

**WHEREAS**, Philip and Bobbi Ann Hobson (hereinafter referred to as the "Applicant") filed an application for a variance 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 26 Hamilton Drive West, also known as Lot 7 in Block 1902 in order to construct an addition with a rear yard setback of 33 feet where a minimum of 50 foot is required. The subject property is located in the 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 January 15, 2020; and

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

1. The Application was presented by Calvin Trevenen, Esq. of the firm of Ashenfelter, Tremulak, McDonough & Trevenen, LLP.
2. Mr. Floria-Callori stated for the record that he has a professional relationship with the Applicant's attorney's firm but noted that it will not impact his ability to remain neutral and unbiased.
3. Mr. Trevenen stated that the Applicant is seeking a rear yard setback variance for a rear yard setback, noting that the Applicant's proposal is to extend the roof of the home over the existing outdoor kitchen area.
4. Ms. Bobbi Ann Hobson, Applicant and Owner, was sworn in. Ms. Hobson testified that she and her husband, along with their 2 children have lived in the house for 6 years, noting her family loves the town, but would like to enhance their property. Ms. Hobson further testified that there is a hill in the backyard which makes it unusable.
5. Ms. Hobson explained that they seek to improve the backyard with a pool area including a modern patio and outdoor kitchen for entertaining purposes. Ms. Hobson stated that the plans also include installation of arborvitaes and other tall landscaping elements to provide a buffer for privacy from the side and rear yards. Ms. Hobson confirmed that approximately 28 arborvitaes are planned along the rear of the property.
6. Ms. Hobson testified that she has reviewed the proposed plans with her rear neighbor who did not have any objections.

7. The hearing was opened to the public for any questions or comments for Ms. Hobson. No one from the public came forward.
8. Gerry Anthony Bruno, Jr., Licensed Architect for the Applicant, was sworn in. Mr. Bruno presented his educational background and professional qualifications and was accepted by the Board as an expert witness.
9. Mr. Bruno confirmed that he prepared the architectural plans for the Application. He submitted Exhibit A1 (colored version of the elevations that were previously submitted to the Board). Mr. Bruno stated that the Applicant's proposal includes removing the existing sunroom from the rear of the home and replacing it with a new enclosed sunroom. He further stated that the proposal also includes a pool pavilion structure with three open sides. New landscaping for privacy is also proposed.
10. Mr. Bruno referred to Exhibit A2 (photo of the existing home). Mr. Bruno testified that the current home is a Tudor/stucco style built in the 1980s. Mr. Bruno explained that the rear of the home has drab wood shingles and added that the existing sunroom has a shed roof with a prefabricated aluminum window system with an outdoor terrace directly behind it.
11. Mr. Bruno explained that the proposal is to replace the existing sunroom off the family room with a new sunroom of the same size and to add a pool pavilion. He noted that the proposal improvements do not exceed the lot coverage requirements and added that the plan a drywell. Mr. Bruno further explained that the open pool pavilion structure will extend 18 feet with two support columns to cover an outdoor kitchen, fireplace and pizza oven. The pavilion will be connected to a pool and spa.
12. Mr. Bruno stated that the proposed sunroom and pool pavilion exterior will be in a traditional Tudor style, similar to the existing home with stucco and timbering and decorative pegging. He noted that the windows will be set back to the edge of the sunroom and added that there will be a front gable over the columns. Mr. Bruno explained that the structure will have a single-story vaulted ceiling and noted that the new roof will be aligned with the existing family room roof. He stated that the style of the back of the house will mimic the front of the home.
13. Mr. Bruno confirmed that a civil engineer calculated the proposed lot coverage at 28.82 percent which he noted is under the permitted 30 percent, and also confirmed that the setback variance is required for the proposed roof over the outdoor kitchen.
14. In response to questions from the Board, Mr. Bruno described the existing and proposed topography of the rear yard. Mr. Bruno stated that the existing topography slopes down from the back of the property towards the house. He referred to the plan submitted with the Application and stated that there is no dramatic change in the topography with the new proposal.
15. In response to questions from the Board, Mr. Bruno stated that the Applicant's pool company has the landscape plan and noted that it can be submitted to the Board. Mr. Bruno stated that a single tree is being removed in the area of the pool for cleaning purposes.
16. In response to a question from the Board, Mr. Bruno confirmed receipt of a memo from the Borough Engineer indicating that changes to the on-site seepage pits are required as there appears to be an issue with the calculations on how much water the seepage pits could accept. In response, the Chairman indicated that it would be a condition of any approval that the Applicant satisfy the Borough Engineer with regard to the seepage pit calculations. In response to questioning from the Board, Mr. Bruno testified that there are two seepage pits on the plan.
17. In concluding his testimony, Mr. Bruno noted that a small area of the driveway will be removed keep the impervious coverage under the Borough requirement.
18. The hearing was opened to the public without comment.
19. In response to questioning from the Board, Ms. Hobson stated that the pool permit was received in November 2019.
20. In response to questioning from the Board, it was noted that the pool fence, landscaping, and seepage pit calculations would be conditions of approval.

The Board, in reviewing the above facts and the materials presented at the hearing, finds that the Applicant has met her burden under the Municipal Land Use Law and that the variance requested may be granted without detriment to the zoning ordinance or the master plan as the rear yard mostly unusable, and the proposed addition will be constructed over the existing patio with minimal additional encroachment into the rear yard setback; and further that the proposed addition will enhance the home.

**NOW, THEREFORE, BE IT RESOLVED** that based on the facts as found above, the Board finds that the rear yard setback variance relief requested 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 the burden of proof that a hardship exists to permit granting the relief requested and that the benefits of granting the relief requested substantially outweigh the detriments with regard to the rear yard setback variance request. Mr. Floria-Callori made a motion to approve the Application subject to the following conditions: (1) the Borough Engineer shall approve the seepage pits; (2) a landscape plan shall be submitted for review and approval showing a buffer with approximately 28 trees; and (3) the proposed pool fence shall comply with the requirements of the Borough Code. The motion was seconded by Mr. Salan. A vote was taken and the Application was approved with affirmative votes by Mr. Floria-Callori, Mr. Salan, Mrs. Jenkins, Mr. Michelotti, Mr. Roth, and Mr. Wangner. Mr. Curcio abstained.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 19th day of February 2020, by a majority of the members of the Board present at such meeting and who voted for the action taken on January 15, 2020.

**MATTER OF MICHAEL CORBO, JR. AND SUZANNE CORBO  
8 BROOKSIDE TERRACE – BLOCK 505 – LOT 5**

**Decided:** January 15, 2020

**Memorialized:** February 19, 2020

**WHEREAS**, Michael Corbo, Jr. and Suzanne Corbo (hereinafter referred to as the “Applicants”) have filed an application for bulk 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 8 Brookside Terrace, also known as Lot 5 in Block 505, in order to construct a second floor addition above an existing single family ranch style residential dwelling. The subject property is located in the R-1 Residential zone; and,

**WHEREAS**, all owners on the municipally furnished list of properties located within 200 feet of the subject premises were properly notified according to law; and,

**WHEREAS**, newspaper publication of the notice of hearing was given in The Progress, and an Affidavit of Publication has been provided in accordance with 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 January 15, 2020.

**NOW, THEREFORE**, the Board makes findings and determinations based upon the following facts:

1. The Applicant was not represented by counsel and the application was presented by the Applicants and their professional, Ms. Kiersten Osterkorn of Omland & Osterkorn, Inc., who qualified as both a Professional Engineer and a Professional Planner. The Applicants introduced Jonathan Stouffer, their builder, who described the process of constructing the second floor on the existing home using modular pre-constructed components.
2. Ms. Osterkorn was sworn in and presented her credentials and experience to the Board. The Board accepted Ms. Osterkorn as an expert witness qualified as both a licensed professional engineer and a professional planner.
3. Ms. Osterkorn testified that the Applicants were proposing to build a second story on the existing one family home. The existing building footprint would not be changed. The property borders homes on Brookside Terrace with lots of similar size and buildings of similar size or larger.
4. Ms. Osterkorn presented, marked for identification and described exhibits as follows:
  - A. Exhibit A-1 was a photo board showing pictures of the dwelling and the surrounding neighborhood. The photos demonstrated (a) relationship to the neighbors on the westerly side of the dwelling, (b) existing landscaping and trees that will not be removed, (c) existing set-back non-conformities, and (d) the visual appearance of other homes on the street.
  - B. Exhibit A-2 was an aerial photo of the subject property and the surrounding Brookside Terrace, White Oak Drive, Hemlock Drive and White Oak Drive neighborhood.
  - C. Exhibit A-3 was a drawing of the front elevation of the proposed dwelling with emphasis on demonstrating that the height of the dwelling once constructed would not exceed the height limits of the Zoning Ordinance.
5. The proposed dwelling was designed to have an aesthetically pleasing façade and is not simply a large box. The proposed construction will not result in the dwelling encroaching any closer to the front and side yard set-back lines than as presently exist.
6. Ms. Osterkorn testified that there are existing non-conforming set-backs, as follows:

- A. The easterly end of the front of the dwelling foundation is 48.72' from the street where 50' is required, subject to the soffit overhang across much of the front of the dwelling of approximately 18" being closer to the street.
- B. The covered front stoop in the center of the front of the dwelling is part of the building as defined in the Borough's Ordinance, and only as to the approximate 6' width as shown on the Plot Plan submitted by the Applicants, is 46.14' from the bottom of the steps to the street where 50' is the required front yard set-back.
- C. The westerly side of the dwelling is 19.23' from the side yard where 25' is required, which was the subject of a prior resolution permitting it to exist.
7. Ms. Osterkorn further testified that the foregoing existing non-conformities will not be increased, but will be intensified with the raising of the height of the dwelling.
8. The dwelling on the westerly side of the subject property is separated from the common sideline by its own driveway and side entry garage, mitigating the impact of the intensification of the variance on the property to the west.
9. Ms. Osterkorn testified that in her professional opinion as a planner, the application was consistent with the zoning ordinance and did not impair the intent and purposes of the zone plan.
10. The hearing was open to the public as to the testimony of each witness and there were no questions.
11. The matter was opened to the general public for comments and statements at the conclusion of the Applicant's presentation. There were no comments or statements from members of the public.
12. The Board members deliberated, noting that (a) the proposed dwelling is consistent with the predominant R-1 zone requirements; (b) the construction of the second story will improve the aesthetic appeal of the property; and, (c) the existing foundation cannot be relocated without great difficulty to make the set-backs conforming which presents a hardship to the Applicants.

**NOW, THEREFORE, BE IT RESOLVED** that based on the foregoing findings of fact and conclusions of law, the Board finds that the variance relief requested to permit the construction of a second floor on the existing dwelling on the property intensifying existing non-conformities can be granted without detriment to the public good and without substantial negative impact to the intent and purposes of the Zone Plan and Zoning Ordinances of the Borough of North Caldwell, and that to the extent necessary those non-conforming existing set-backs identified herein are hereby ratified and approved; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Applicants have sustained their burden of proof to permit the granting of the relief requested, hardship has been established and the benefits of granting the relief requested substantially outweigh the detriments. Such findings support the granting of the variances under both N.J.S.A. 40:55D-70c(1) and N.J.S.A. 40:55D-70c(2);

Therefore, Mr. Floria-Callori made a motion to accept and approve the Application as submitted. Mr. Curcio seconded the motion. A vote was taken, and the Application was approved with seven affirmative votes by Mr. Wangner, Mr. Salan, Mrs. Jenkins, Mr. Floria-Callori, Mr. Michelotti, Mr. Roth, and Mr. Curcio.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 19th day of February, 2020, by a majority of the members of the Board present at such meeting and who voted in this matter at the meeting held on January 15, 2020.

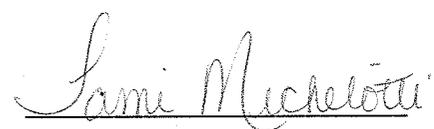
#### **APPROVAL OF MINUTES**

Mrs. Jenkins made a motion to accept the minutes of the Board Meeting of January 15, 2020. The motion was seconded by Mr. Curcio. Said motion was passed with seven affirmative votes by Mrs. Jenkins, Mr. Curcio, Mr. Floria-Callori, Mr. Michelotti, Mr. Roth, Mr. Salan, and Chairman Wangner.

Mr. Wangner stated that the Board Attorney RFQ results would be discussed and the next meeting.

There being no further matters to come before the Board, Mr. Floria-Callori made a motion to adjourn the meeting, seconded by the Board. Said motion passed unanimously. The meeting was adjourned at 10:33pm.

Respectfully Submitted,



Tami Michelotti  
Zoning Board Secretary