

October 17, 2018

The Meeting of the North Caldwell Board of Adjustment was held at Borough Hall, Gould Avenue on Wednesday, October 17, 2018 starting at 8:05 pm.

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. Wangner, Mr. Augustitus, Mr. Floria-Callori, Mrs. Jenkins, Mr. Ritter, Mr. Michelotti, Mr. Roth

Absent: Mr. Angelo, Mr. Salan

Also present were Lisa Thompson, Esq., Board Attorney and Tami Michelotti, Zoning Board Secretary.

Mr. Wangner asked Mrs. Jenkins to lead the Pledge of Allegiance.

APPLICATIONS

MATTER OF 21-25 Bloomfield Avenue, 21 Bloomfield Avenue – Block 100, Lot 3 Bulk Variances: Off-Street Parking, Location of Off-Street Parking, Location of Accessory Building, Lot Size/Coverage, Front and Rear Setbacks, Signage (continuation from September 26, 2018 hearing)

Mr. Wyciskala, Esq., from the Law Firm of Inglesino, Webster, Wyciskala, and Taylor, LLC., representing the Applicant stepped forward to present their summary of testimony.

Mr. George Johnson, Esq., representing the Curley family stepped forward to present his summary of testimony.

Mr. Johnson stated that Carol Creter and her sister were offered a low price for their property from the developer which they felt was unacceptable. He stated that Carol and her sister do not want to sell their property but are concerned about the negative impact the project will have on the value of their property considering it will be next to a commercial driveway. Mr. Johnson stated that he reviewed the plans and anticipated that the Application would be resolved by the sale of the Curley sister's property to the developer.

Mr. Johnson stated that he felt that the Application had two fatal flaws. He stated that one is the failure of the Applicant to prove hardship according to the Municipal land use law regarding C Variances. Mr. Johnson quoted, "Whereby reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographic conditions or physical features uniquely affected a specific piece of property or by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing there on the strict application of any regulation pursuant to Article 8 of this Act could result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the developer." He added that then and only then may variances be granted. Mr. Johnson stated that he felt the property is not narrow at 173 feet wide where the zoning ordinance requires 150 feet. He stated that he felt the property is not shallow at 100 feet deep and felt it is not an unusual shape even though it is not perfectly square. He added that there are no topographic issues and even though the lot size is slightly less than the required minimum lot size, he stated that he felt this size does not restrain proper development. Mr. Johnson noted that he felt this plan was designed to include many variances. He stated that an example of this is the proposed non-conforming parking spaces on both Bloomfield Avenue and Elm Road, which he noted that the Applicant's attorney has agreed to

remove them. He questioned why these non-conforming parking spaces were even proposed.

Mr. Johnson questioned where the exceptional and undue hardship are found to grant approval. He stated that he felt most of the variances were self created to maximize the Applicant's financial return. He noted that the Applicant's planner testified that the only reason for the front yard setback variance was to accommodate the size of the building. He added that the Applicant's civil engineer testified that if the building remained that same size as proposed and was set back an additional five feet, there would not be enough space to get to the rear driveway. Mr. Johnson explained that the Applicant's engineer stated that 15 feet is the prevailing setback. He further explained that this is untrue and stated that there is nothing in the municipal land use law that provides for any variance because of a prevailing setback.

Mr. Johnson stated that the most significant variance is the request for lot coverage. He explained that the ordinance requires that the maximum lot coverage be 35%. He added that the Applicant is proposing over 70% coverage which is more than twice the permitted coverage. Mr. Johnson stated that squeezing the proposed building, parking lot and driveways onto this lot ignores the purpose of zoning which states that adequate light, air, and open space be provided. He stated that he believes that the Applicant should redesign the plan to bring it into conformity with the ordinance or make a good faith attempt to acquire the adjoining property to avoid variance relief.

Mr. Johnson stated that the second flaw involves the required D Variance to construct four residential apartments in a zone in which such use is not permitted. He added that granting this Variance would clearly and substantially be an impairment of the zone plan and zoning ordinance. He explained that the planner did not adequately explain why this property was uniquely different from all other properties in this zone. He added that property can not be rezoned by variance. He further added that it is the responsibility of the Planning Board, not the Zoning Board to rezone this area to add residential uses.

Mr. Johnson stated that he understands how difficult it is to redevelop older, established areas of a town as he explained that they usually have old structures on small lots. He noted that there should be a study done to determine if an area needs redevelopment and a plan adopted if a need is established. Mr. Johnson explained that under certain circumstances, tax credits may be available to encourage redevelopment. He stated that both the municipal land use law and purpose K of the zoning ordinance encourage planned unit developments similar to the Four Seasons Development in North Caldwell. Mr. Johnson stated that he felt that the Borough of North Caldwell deserves and needs a better project than the one being proposed by the Applicant. He added that he respectfully urged the Board to deny the Application.

Mr. John Wyciskala, Esq., from the Law Firm of Inglesino, Webster, Wyciskala, and Taylor, LLC., attorney for the Applicant stepped forward. Mr. Wyciskala expressed his thanks to the Board for their time, suggestions and considerations over the course of the four public hearings and stated that he appreciated all the questions and comments from the public as well. He stated that with the change of new development, comes perceptions of uncertainty and fear, however, he noted that with respect to this Application, they feel that change is a great one. He stated that the property is blight and in need of redevelopment. He noted that a stone yard business operated by the Curley Family was on the property for many years. He described the previous building as unattractive with outdoor storage for pavers and building materials where activity included movement of these materials by

trucks, trailers, and loaders. He explained that this business generated significant traffic on both frontages from commercial as well as retail clients and the driveway was used as part of the Curley Stoneyard operation. He added that there were stockpiles of cinder blocks, stone, and aggregate with concrete storage bunkers all along the fence of the adjacent Curley residence as shown in the photos that were presented into evidence. Mr. Wyciskala stated that the previous stoneyard was a busy, noisy, dirty, and dusty landuse that was located adjacent to the existing commercial bank on the north as well as the existing residential homes.

Mr. Wyciskala stated that in its place, the Applicant is proposing an attractive mixed use building along North Caldwell's primary business zone corridor which is a mixed used area that includes banks, restaurants, a retail strip center, residential homes, and a gas station further up the street. He explained that the proposed building consists of 3100 square feet of first floor commercial space with four residential apartments above which would be an alternative housing type that doesn't currently exist in the Borough. He noted that the proposed building will consist of a mix of architectural treatments and materials that would include brickwork, split face block, cornices and glazing which he stated would compliment the surrounding properties. Mr. Wyciskala stated that they believe the proposed building would be a perfect transitional use between the purely commercial use of the bank and the residential homes. He noted that the site is in a commercial zone district and the residential homes that are present are pre-existing, non-conforming uses within that existing zone. He stated that the project does meet the Borough's code requirements relative to total parking requirements. He noted that two-story commercial development is permitted within this zone. He added that there will be a net decrease in impervious coverage from what is currently on the site and from what previously existed when all the structures still remained. Mr. Wyciskala stated that the Board heard significant testimony from their professionals and stated that he felt Mr. Johnson has mischaracterized some of the testimony made by the Applicant's professionals.

Mr. Wyciskala stated that he would like to touch on the testimony of their traffic engineer, Ms. Elizabeth Dolan. He stated that she testified in length about the traffic impacts of this mixed use project and noted that Ms. Dolan confirmed from her perspective as a traffic engineer that this project will have an extremely low impact from a traffic generation and safety perspective. Mr. Wyciskala stated that to summarize Ms. Dolan's findings, which are based on the ITE, this project will generate a total of eleven trips in the morning peak hour. He explained that she found that the commercial component of the proposed building would generate a total of five cars entering and four cars exiting in the peak morning hour. He added that she found that the residential component of the proposed building would be significantly less at two cars exiting during the morning peak hour and no vehicles coming into the site. He explained that in total this would equal one car every five and a half minutes in the morning peak hour. Mr. Wyciskala stated that during the evening peak hour, the site is expected to generate a total of sixteen trips which would include seven cars in and seven cars out for the commercial component during the evening peak hour and the second floor apartments are expected to generate two cars into the site and zero car out. He explained that in total this would equate to one car every four minutes either entering or leaving the site. He added that the second floor residential component would produce less traffic than the commercial component although he stated that neither are significant generators when compared to the overall road situation.

Mr. Wyciskala stated that all in all they feel this is a great project that will have no substantial detrimental impact to the public good and the benefits of granting the necessary variances outweigh any detriments. He stated that

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the variance relief sought can be granted without impairing the purpose of the North Caldwell Zone Plan and Zoning Ordinance.

Mr. Wyciskala stated and reminded the Board that the Applicant would comply with the following conditions of approval that were discussed:

1. The Applicant will comply with all the requirements that were set forth in the Fire Department review letter from the Borough which would include a Fire Zone along the rear of the proposed building.
2. The Applicant agreed to satisfy the comments made by the stormwater management consultant.
3. The Applicant proposed to install 6 foot board on board or vinyl fencing along the side and rear of the Curley residence and the adjacent residence to allow for drainage onto the 21-25 property into the proposed inlets.

Mr. Wyciskala stated that the noise from the rooftop mechanicals will not exceed the Borough's noise ordinance or the State model noise ordinance relative to limitations at the surrounding property lines. He noted that the units will be high efficiency, quiet units that will not propose an noise issue. He added that in the post construction condition, they have agreed to perform noise studies at the property boundaries and if the units exceed the noise code requirements, sound attenuators would be installed around the units.

Mr. Wyciskala stated that his clients are good people looking to make a significant investment in the community. He stated that they acquired the property and had the buildings removed as a benefit to the community. He noted that they have been sensitive to the comments and concerns of the neighbors by agreeing to install a fence along with the proposed evergreen landscape buffer inside of the fence. Mr. Wyciskala stated that the Applicant will be the developer of this site and will own, operate, manage, and maintain the property. He noted that they will be good neighbors to not only the commercial businesses in the area but to the residents as well.

Mr. Wyciskala stated that they respectfully request that the Board grant approval for the Application as proposed.

Mr. Wangner asked that Board if anyone had a final comment. There were no comments from the Board.

Mr. Wangner stated that for the most part, the Board handles C variances. He stated that he would like to quote from the New Jersey Planning Officials Guide to Planning Boards and Zoning Boards of Adjustments concerning the D portion of the Application. He stated that the first quote he would like to read is, "Consider on the basis of the evidence that is presented that the public interest as distinguished from the purely private interest of an applicant would be best served permitting the proposed use." meaning is there more on the public interest's side or the Applicant's side. He stated that the next quote he would like to read is "Consider that the granting of the variance will not create an undue burden on owners or surrounding properties." Mr. Wangner added that he would like the Board members to also consider the potential new residents that would be moving in. He further added that they should consider that there will not be a substantial detriment to the public good nor will there be a substantial impairment to the intent of the zoning plan or the zoning ordinance by granting this. Mr. Wangner stated that he would like to quote from the Planning Officials Policy, "You should not feel any reason whatsoever to feel compelled to grant a use variance."

Mr. Augustitus made a motion to accept the Application as proposed along with all of the stipulations that were discussed and addressed in the prior

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meetings. He added that the Curley family would prefer a vinyl fence instead of the mentioned board on board fence. Mr. Johnson added that they would like two parking spaces in the front taken out. Mr. Augustitus stated that he does not recall that stipulation. Mr. Michelotti seconded the motion. A vote was taken and the application was denied with affirmative votes by Mr. Augustitus, Mr. Michelotti, and Mrs. Jenkins and four negative votes by Mr. Floria-Callori, Mr. Ritter, Mr. Roth, and Mr. Wangner.

Mr. Augustitus left the meeting at 8:38pm.

MATTER OF Mr. Joseph Farnese, 85 Veranda Avenue – Block 2107, Lot 3 - Front, Rear, and Right Side Yard Setback

Ms. Rosemary Watkins, attorney for Joseph Farnese, stepped forward. She stated that the Applicant is seeking a C variance for 85 Veranda Avenue, Block 2017, Lot 3 for a side, front, and rear yard setback. She explained that they are seeking the variance because there is an existing two-story home on the property where the second floor is an attic. She further explained that the Applicant would like to demolish the attic and add bedrooms onto the second floor of the home. Ms. Watkins stated that they would not be changing the footprint but there is a need for a variance because the current structure is non-conforming. She presented Exhibit A-1 which are pictures of the existing home and surrounding neighborhood. She noted that the variance would not cause any detriment but in contrast would be a benefit to the neighborhood since the existing structure is in disrepair. She stated that the Board has the survey, impervious coverage, and the footprint which would all remain the same. Mr. Wangner asked who did the impervious surface coverage calculations. Ms. Watkins stated that the surveyor did the impervious coverage calculations with no proposed changes to what currently exists.

Mr. Floria-Callori asked if the intention is to leave the structure as is except for going up on the existing footprint.

Mr. Joseph Farnese was sworn in. Mr. Farnese stated that there will be a structure addition on the main house only, which will keep the existing footprint. Ms. Watkins confirmed that the garage will also stay as is.

Mr. Floria-Callori asked to describe that character of homes in the area. Mr. Farnese stated that most of the homes in the area are two-story. He stated that his home is currently a small ranch with a two-story home across the street and multiple two-story homes on the street. Ms. Watkins stated that the proposed structure would fit the character of the area and be an improvement to the neighborhood.

Mrs. Jenkins asked Mr. Farnese if this will be his permanent residence. Mr. Farnese explained that the house will be for his newly married daughter.

Mr. Farnese stated that the proposed second level would include three bedrooms and one bathroom. He explained that the current first floor bedroom would become a dining room and the other bedroom in the front would become a living room and a staircase. He added that the exterior would be vinyl siding with a shingled roof. Mr. Wangner asked how far the current structure is to the neighbor's structure. Mr. Farnese stated that to the right, when looking at the structure, there is a house about 100 feet away and another house to the left about 35 to 40 feet away. He added that both houses are two-story structures. He stated that their backyard connects with the backyard of the house behind them. Mr. Farnese confirmed that there would not be any problems with views, air circulation,

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or noise with the proposed second story. Ms. Watkins stated that the proposed addition would be below the height requirements.

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

Mr. Ritter made a motion to accept the Application as proposed, seconded by Mr. Floria-Callori. A vote was taken and the Application was approved with six affirmative votes by Mr. Ritter, Mr. Floria-Callori, Mrs. Jenkins, Mr. Michelotti, Mr. Roth, and Mr. Wangner.

MATTER OF Ms. Jennifer Trauman – 26 Cypress Avenue – Block 902, Lot 29 - Rear Yard Setback, Lot Coverage

Ms. Jennifer Trauman, Applicant and Mr. Michael Spillane, Pool Builder were sworn in.

Mr. Spillane confirmed that he has built pools in North Caldwell before and was accepted by the Board as an expert witness.

Ms. Trauman stated that she has lived in North Caldwell for ten years. She stated that her intent was to put in a pool when she purchased the home even though the yard is not very large. She explained that she began seeking contractors to build a pool in August 2017 and stated that she signed with a pool company in March without knowing about the impervious surface coverage concerns which were not discussed with the builder. Ms. Trauman stated that the construction was supposed to begin in May but the company did not obtain the necessary permits in time so she was able to cancel the contract. She explained that she met with five different contractors and chose to work with Mr. Spillane. She further explained that she worked together with Mr. Spillane to understand what impervious coverage existed and what would be necessary to install a reasonable sized pool with a safe patio space surrounding it while preserving enough of the yard for the children to play. Ms. Trauman stated that they have come before the Board for approval on the impervious surface coverage which they have tried to keep to a minimum and to request a five foot setback on the twenty foot variance on the rear side of the yard. She explained that the house behind her property is far away and she felt that five feet would not be a burden to them. Mr. Wangner asked how far the neighbor's house is. Mr. Spillane stated that he had aerial pictures and distributed them as Exhibit A-1. Mr. Floria-Callori asked why the pool is proposed to be located so far from the home which would require the setback variance. Ms. Trauman explained that the proposed plan would create two areas in the yard which would include a space for the pool, which would only be used for a few months a year and an area for the children to play sports and gather all year round. She added that there was an error with the location of the retaining wall on the large plans submitted. She stated that the engineer was able to redraw the plans to show the area in the yard that she is trying to preserve. Ms. Trauman presented Exhibit A-2 and A-3 and added that the swing set and garden would be removed and the retaining wall would be touching the pool deck.

Mr. Floria-Callori asked if the plans are to be built in accordance with the new information that was provided. Mr. Spillane confirmed that the new information would be used to build the pool and stated that the low wall is a field change that does not require additional engineering or variances. Mr. Floria-Callori asked if the walkway is staying. Ms. Trauman confirmed that the walkway from the deck to the pool would stay to prevent the children from getting grass onto their feet and into her home. She explained that the children would be able to play across the walkway as it is not raised and level with the grass. She added that the wall would be touching the pool patio with a few steps up to a gate for a enclosed, safe space that would be

separate from the rest of the yard. Mr. Ritter asked if the wall would be pushed right to the deck around the pool. Ms. Trauman confirmed this.

Mr. Floria-Callori asked Mr. Spillane if he came up with a new plan or was the existing plan from the previous contractor used. Mr. Spillane stated that the existing plan was used but the impervious coverage was reduced.

Mrs. Jenkins asked if the swing set and playhouse would be eliminated. Ms. Trauman stated that the swing set would most likely be eliminated but may be moved. She further stated that the playhouse in the far left corner would stay and is included in the impervious coverage calculation. Mr. Spillane stated that it would be 68 square feet.

Mr. Floria-Callori asked what is making the impervious coverage exceed an extra three percent over the thirty percent which is the Code. Mr. Spillane explained that every one percent equals 150 square feet and without the extra three percent, he stated that he would not be able to put a pool in. He noted that the proposed pool is small at 14 feet by 32 feet which is 450 square feet where the average pool he installs is 18.5 feet by 38 feet which is 700 square feet.

Mr. Roth asked if he could recommend that the Applicant revisit the plan to make it easier on the board to approve the variance. Ms. Thompson noted that the original plan was at 35% impervious coverage and the plan that was submitted that evening was reduced to 33.46%. Mr. Roth stated that it is almost 5 feet of the rear setback. Mr. Wangner asked if there will be a diving board on the one side of the pool. Ms. Trauman confirmed that there will not be a diving board or slide as that will be the shallow end of the pool. Mr. Wangner asked if it would be possible to grab some extra space from that. Mr. Spillane stated that the three sides of the patio would be sufficient for a walkway located in front of the area for chase loungers. He explained that if the area was made smaller it would only allow for a regular chair. He further explained that the proposed area is 10 feet, which is the absolute minimum for a chase lounge with a walkway in front. He added that 12 feet would be the optimal measurement.

Ms. Trauman stated that because there would be a twenty foot setback on that side, she noted that they will try to fill this with aesthetically pleasing, price conscious landscape, being that the other three sides are for a walkway and not a patio for chairs. Mr. Floria-Callori expressed his confusion on why it is necessary to build the pool so close to the rear of the property and questioned why it can't be built five feet closer to the house to avoid the rear setback. Ms. Trauman explained that the area of the yard between the wall and the deck would be the main activity space for the children and would be too small if the pool was built five feet closer to the house. Mrs. Jenkins stated that there is ample space on the left of the property near the play house. Ms. Trauman stated that the area is uneven and rocky which is not ideal for an activity space. Mrs. Jenkins asked if Ms. Trauman previously came before the Board for her deck. Ms. Trauman confirmed that her contractor previously came before the Board for her deck and noted that she would have minimized the size of the deck if she knew that it would have impacted the current project and impervious coverage. Mr. Wangner asked if the deck is wooden or composite and if there is anything located underneath the deck. Ms. Trauman stated that the deck is composite and there are some pavers from a previous patio still located underneath which is considered impervious coverage.

Mr. Floria-Callori asked what the existing landscape is along the rear property line. Ms. Trauman stated that there are currently trees in that area and noted that the plan is to enclose the yard with trees to block the view

from the neighbors. Mr. Spillane added that a uniform hedge would be constructed for privacy.

Mr. Wangner stated that if they cannot find anything to alleviate the impervious issue, he asked if they could speak to the retention that is present on the plan. Mr. Spillane stated that Mid State Engineering came up with the plan which meets all the Borough regulations for capturing the runoff based on the amount of impervious coverage that has been added. He stated that the volume calculations recommend that 3.5 chambers be installed, where they are installing 4 chambers underground for discharge which exceeds the Borough regulations. Mr. Spillane noted that the property will be graded toward the three yard drains that they would add to capture the water runoff from the impervious. He added that based on the new drainage the plan shows a significant improvement in surface drainage. Mr. Wangner asked how the existing runoff is now. Ms. Trauman stated that there are currently no issues with water runoff toward her house or the neighbors' homes. Mr. Floria-Callori stated that based on the topography shown, the property will slightly grade toward the Applicant's house. Mr. Spillane stated that the runoff will go into the drains and discharge through the chambers. Mr. Floria-Callori asked if the property will grade toward the neighbor on the northerly line making the water drain closer to them. Mr. Spillane explained that according to the plan, the proposed surface drainage arrows show an improvement because the runoff would come from the rear neighbor towards Ms. Trauman's yard where the grading will allow the water to drain into the yard drains. He added that there is a retaining wall on the neighbor's yard that would prevent a lot of the runoff. Mr. Floria-Callori expressed his concern for the change in drainage toward the northerly neighbors. Ms. Trauman stated that the neighbors have a retaining wall with a large driveway before their house and the water drains next to the wall. Mr. Floria-Callori stated his concern for surface drainage because the Applicant's property would be higher than the existing wall on Lot 30. Mr. Spillane stated that according to the plan the proposed surface drainage would improve significantly based on what currently exists.

Mr. Roth asked if the two trees near the hammock would be removed on Exhibit A-2. He questioned if that area could be graded from the end of the swing set to the property line for a play area and then move the pool closer to the house. Mr. Spillane stated that the wall would need to be extended to the back of the rear of the property in order to achieve a level play area. He explained that they were not planning on bringing in soil to grade the back of the yard near the play house. He added that the proposed grade is almost identical to the existing in the play house area. Mr. Roth suggested to bring in dirt to regrade the area. Mr. Spillane stated that in order to regrade that area, about 2 to 2.5 feet of soil would need to be taken out in order to build a retaining wall which would be expensive. Mr. Wangner asked if the soil being removed for the pool would be used for regrading. Mr. Spillane stated that very little soil would be used for regrading because he stated that it is pretty much at 100% leave. He further explained that the property's topography requires the wall with drainage but there will be little elevation change from 98 to 97 where the elevation planned will be one foot higher.

Mr. Floria-Callori stated his concern with the drainage near the rear setback and the arrows on the plan which point toward Lot 30. Mr. Spillane explained that the arrows represent the existing drainage and the black arrows represent the planned runoff into the yard drains. He noted that they will not be adding to the surface drainage going toward Lot 30.

Mr. Wangner asked if there were any more questions or comments from the Board.

Mrs. Jenkins asked if the Applicant would consider pushing the pool back. Mr. Spillane stated that the area between the deck and the wall is very narrow and it is the most level area to play. He added that five feet is not lot but makes a significant difference in a play area.

Mr. Wangner noted the photo with the car behind the fence. He stated that the driveway sits lower and questioned if there was existing drainage near the wall. Mr. Spillane stated that if the wall was built correctly, it should include gravel and pvc pipe for drainage into the street. Mr. Floria-Callori asked if there were chambers located on the Lot 30 side. Mr. Spillane explained that the chambers are centrally located and the property would be graded toward the chambers with yard drains. He added that the volume calculations require 3.5 chambers but they will be putting in 4 chambers. Mr. Floria-Callori asked if the neighbors have had any water issues. Ms. Trauman confirmed that the neighbors do not have any water issues or concerns about the proposed pool.

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

Mr. Ritter asked how difficult it would be to remove the old patio underneath the deck. Mr. Spillane confirmed that the old patio will be removed. He noted that the deck is composite and has space between the boards for drainage. Mr. Wangner stated that removing the patio under the deck would reduce the impervious coverage and bring it close to the 30 percent. He noted that they should calculate the square footage of the patio. Mr. Ritter added that 150 square feet is equal to 1 percent and the deck is approximately 550 square feet. Ms. Trauman expressed her concern and stated that the patio underneath is most likely stamped concrete and not pavers making it difficult to remove without a jackhammer. Mr. Ritter asked how high the deck was off of the ground. Mr. Spillane stated that the deck is approximately 30 inches off the ground making it difficult to get underneath to remove the existing concrete patio. Mr. Ritter asked how big the remaining area of concrete is underneath the deck. Mr. Floria-Callori asked how close the boulder wall would be to the surrounding pool area. Ms. Trauman stated that there will be 10 feet of grass and 10 feet of patio and then the pool. After looking at the photos and performing some calculations, Mr. Spillane stated that there was approximately 240 square feet of patio removed, making almost half of the 500 foot deck impervious. Mr. Roth asked if the Applicant would be open to additional landscaping along the rear and north side of the property. Ms. Trauman confirmed she would be open for additional landscaping but asked for clarification. Mr. Roth clarified and noted to plant additional trees in the rear for privacy and additional landscaping along the northern lot line to alleviate some of the drainage concerns.

Mr. Floria-Callori made a motion to accept the plan with two changes:

1. Incorporate evergreen landscaping for privacy and drainage help on the North and East
2. The Borough Engineer retains jurisdiction regarding any drainage issues.

Mr. Floria-Callori stated that he is most concerned about the drainage issue and not the impervious coverage.

Mr. Michelotti seconded the motion. A vote was taken and the application was approved with six affirmative votes by Mr. Floria-Callori, Mr. Michelotti, Mrs. Jenkins, Mr. Ritter, Mr. Roth, and Mr. Wangner.

MATTER OF Mr./Mrs. J. Michael Petry – 8 Hamilton Drive West – Block 1902, Lot 2 - Left and Right Side Yard Setbacks

Mr. and Mrs. J. Michael Petry were both sworn in. Mr. Petry explained that when the Application was submitted, they were purchasers under contract and two and a half weeks ago, they took ownership of the property. Mr. Petry stated that he will present the project not only as the owner, but also as the architect, engineer and planner. He stated that he is licensed in NJ and has testified before many Boards including the Board in this Borough. The Board accepted Mr. Petry as an expert witness.

Mr. Petry stated that the existing property is zoned R1 and includes a total of 37,161 square feet. He stated that the property has 120.93 feet of frontage along Hamilton Drive West with a lot width of 188.2 feet measured at the required setback according to the Borough Ordinance. He added that the lot extends back about 350 square feet on average and is irregularly shaped where the two side property lines converge in towards the rear making the rear lot line is 104.33 feet in length. He noted that the property houses an existing ranch style home constructed approximately in 1960 with a prairie style roof line which is very long and low. Mr. Petry stated that the property has had one owner until two and a half weeks ago when they took ownership of the property. He stated that the existing home is set back 68.6 square feet from the street but only 9.06 feet and 8.24 feet on the left and right property lines. He further stated that the front setback is in compliance with the 50 foot limitation but the side setbacks are far short of the 25 foot requirement. He added that the existing lot coverage is only 13.45 percent where 30 percent is permitted.

Mr. Petry stated that their hope is to renovate this home for their own use. He stated that they have proposed an addition to the rear of the home as seen on Exhibit A-1 of the submitted plans, that would measure 50 feet 11 inches by 12 feet 6 inches. He stated that the proposed addition is meant to allow them a more sizable kitchen and family room with nine foot ceilings on the first floor and a vaulted ceiling in the bedroom area which he added is all common in newer construction. Mr. Petry added that the proposal includes an addition of a second story in the center portion of the home which would be completely in compliance with the setback requirements. He noted that their goal was to respect the Ordinance as much as possible while attempting to create a home that was current with today's standards. Mr. Petry stated they previously lived in a townhome and his goal was to one day design a home for his family and noted that they have been looking for a long time for a 1960 ranch style home such as this. He further stated that living in the townhome has helped them decide what they really need in a home. He stated that the zoning officer explained that despite the fact that they will not be coming closer to the property lines, raising the ceilings and roofline would require a variance because it constituted an expansion by volume of the area that is encroaching into the setback. Mr. Petry added that the plans also include a 12 foot by 12 foot sunroom and in order to keep it square, it would slightly encroach into the setback. He noted that they were able to speak to their neighbor on that side who encouraged them to build over the garage to make it bigger for a better resale value.

Mr. Petry referred the submitted plans and stated that the house is square but the setback lines are skewed. He stated that the second floor is fully in compliance with the setback and the variance needed would be for the front elevation which will be a seven on twelve pitched roof. He explained that he located that closest point of the house on either side and established a roofline of those homes. He further explained that the roof line of the house to the left is 460.39 and their proposed roof line closest to that house is 435.15 and their highest roof line is proposed at 446.65. He noted that they are asking for a setback variance for the roof line at 435.15 which is about

three feet above the neighbor's first floor level. Mr. Petry stated that the closest portion of the house on the right side is the garage where the roof elevation there is 438.88 and their proposed peak roof level is 435.15 which is lower and will be gabled so that the peak of the roof is furthest away from the property line.

Mr. Petry stated that in his opinion the proposed variances for side yard could be considered under either the C1 or C2 criteria in both instances the home as it exists is non conforming with regard to setback and a reasonable renovation would include raising the ceilings to current standards as well as realigning roof lines to make it look more current. He stated that under the C1 criteria, he felt that the roof and the location of the existing structure constitutes a hardship. He explained that it is within the setback, it cannot be changed and to create a roofline in the center of the house that mimicks the remainder of the neighborhood and leave the prairie style roof on the two ends would look, in his opinion, unappealing. He stated that for the sunroom, he would rely on the shape of the property with the converging sidelines as being the hardship. He further stated that the encroachment is minor in nature, no more than 14 inches at its largest dimension and 7 and ½ square feet in total. Mr. Petry stated that under the C2 criteria, he would offer that the replacement of the existing roofs on the two ends of the home to conform with the proposed roofline in the center of the home is in keeping with the general character of the neighborhood. He noted that he believed that this is well shown on the photos that were submitted with the Application. He added that the homes that have been renovated in this area have steeply pitched roofs between seven on twelve and twelve on twelve. He stated that he believes that the proposed roof follows this theme and keeps up with the neighborhood. He further stated that his proposal provides a desirable visual environment which is Item I under the Municipal Land Use Law. He added that the proposal provides adequate light, air and open space and the project is seeking slightly more than half of the coverage that is allowed by code and a roof design that is sensitive to the neighbors as it relates to the homes that exist there. He further added that he felt that any perceived detriment associated with the variances would be very minor in nature and the rooflines on both ends of the house have been lower especially on the right side pitched away from the neighbor so that the peak portion is well outside of the setback that is required. Mr. Petry stated that with regards to the negative criteria, he offered that there is little to be considered a potential detriment to the public good by granting the requested variances. He stated that the existing corner of the sunroom is well outside of the setback and is only an encroachment where it meet the existing building and he stated that the room cannot be made smaller and still fit furniture. He further stated that this setback encroachment cannot be seen from the street and the adjacent neighbor does not have an issue with it. He added that the roofs are barely noticeable from the street and the proposal is only a portion of what will be raised, therefore he felt that there is little impact to the public. He further added that in his opinion, there is not substantial detriment associated with the granting of these variances. Mr. Petry stated that the intent of the Zoning Ordinance is to protect against over development and this proposal complies with the majority of the requirements of the Ordinance and respects the neighbor's property and privacy and therefore he stated that the proposal keeps with the intent of the Ordinance even if it deviates from the requirements.

Mr. Wangner asked if the Board had any questions or comments.

Mr. Roth asked if there were any concerns with the existing structure tying into the addition on the roof line or anything for the Fire Department to address. Mr. Ritter stated that he did not see any problems and felt that it was a nice design and appreciated that they were not knocking down the structure to build something larger. Mr. Petry stated that the neighbors'

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homes are much larger than what they are proposing and this proposal fits their needs.

Mr. Wangner asked if the retaining walls located on the garage side were his. Mr. Petry stated that the survey shows that the walls are over the property line and the neighbor on the left has planted grass onto 40 feet of his property. He stated that the neighbor's wall is on his property and a sliver of his driveway is on the neighbor's property which he intends on fixing. He further stated that the walls are leaning and he does not think he can fix the wall problem. He added that he has not spoken to Mr. Milani yet and does not want to create an issue with his neighbor. He noted that he will try and work with his neighbor to find a solution. He explained that his neighbor, Mr. Rudman had offered to buy the property in the back but the previous owners of his home were not inclined to sell it to him. He further explained that he is still interested in buying the property because he needs impervious coverage for a pool.

Mr. Wangner asked how close the proposed sunroom is to the wall. Mr. Petry stated that a sliver of the proposed sunroom is fourteen inches into the setback. Mr. Wangner asked if there would be a potential problem with the wall and the proposed construction. Ms. Thompson stated that the Board needs to consider the encroachment and the potential problem with the wall should not impact the Board's decision. Mr. Floria-Callori agreed with Ms. Thompson.

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

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

MEMORIALIZATIONS

MATTER OF ANKIM SHAH / FALCON CUSTOM HOMES

Decided: July 18, 2018

Memorialized: October 17, 2018

WHEREAS, Ankim Shah / Falcon Custom Homes. (hereinafter referred to as the "Applicant") has filed an application for a sign 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 2 Falcon Point Drive also known as Lot 9.05 in Block 801 in order to add a development identification sign and logo to an existing retaining wall. The subject property is located in R-5 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 July 18, 2018; and

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

1. The Applicant was represented by Sidney Donica, Esq. of the law firm Brach Eichler LLC.
2. Anthony Fascino, P.E., P.P. of Bowman Consulting Group was sworn in and presented his credentials in professional planning, engineering, and land surveying. The Board accepted Mr. Fascino as an expert witness.
3. Mr. Fascino described the Application as a request to install sign lettering and a logo on an existing retaining wall at the intersection of Mountain Avenue and Falcon Point Drive. Mr. Fascino stated that the Falcon Point development is a five-lot subdivision on Mountain Avenue that was approved by the Planning Board in 2008. The existing retaining wall along Mountain Avenue was as part of the approved subdivision plan.
4. In response to a question from the Board, Mr. Donica explained that the Planning Board approval included the retaining wall and this Application is to add signage to the existing wall.
5. Mr. Fascino presented a rendering of the sign prepared by EM Signs as Exhibit A1. Mr. Fascino explained that the site has topographic variations which require large retaining walls, varying in size from five to fifteen feet tall, at the intersection of Falcon Point Drive and along Mountain Avenue. He further explained that there is a 12-foot-high rock wall directly across from the site.
6. Mr. Fascino stated that the proposed sign would contain lettering that would measure 8.3 feet long and 1.83 feet high, which totals approximately 16 square feet with 9-inch lettering. Mr. Fascino further stated that the Applicant proposes to include a falcon logo on the sign that would measure 3.6 feet wide by 2.9 feet high, totaling 10.5 square feet. The entire sign would total approximately 27 square feet, where only 9 square feet is permitted pursuant to Ordinance 107.31d(2).
7. Mr. Fascino added that Ordinance 107.31d(1) sets forth the requirement that there should be a 10-foot separation from a sign to a property line. The Applicant requests a variance to allow the sign to have a zero-foot separation.
8. Mr. Fascino stated that the Applicant does not propose to illuminate the sign.

9. Mr. Fascino stated that approval from the Essex County Planning Board was received as the location of the sign is along a County road.
10. Mr. Fascino testified that the Applicant satisfies the (C)1 criteria of the statute because the exceptional topography presents as a hardship to his client as to the location of the sign; and the (C)2 criteria as the benefits would outweigh the detriments. Mr. Fascino explained that in order to comply with the 10-foot setback requirement, the sign would have to be mounted on top of the retaining wall which would be too high for motorists to see it and identify the site.
11. In response to questions from the Board, Mr. Donica stated that Robert and Robyn Projansky own the subject property. He explained that the property is a personal residence, but Falcon Custom Homes has an easement to install and maintain the existing wall and the area around it. It was noted that the property owner consented to Application.
12. In response to questions from the Board, Mr. Fascino confirmed that the wall falls within a sight triangle easement and that the County approved the retaining wall in that location.
13. In response to questions from the Board as to why the Applicant feels it is a necessity to exceed the permitted size of the sign, Mr. Fascino stated that the size of the sign would give the site identity and would allow first responders to identify the property quicker. He explained that it would be easier for residents, motorists, and delivery trucks to find the development because Mountain Avenue is a high traffic road with a speed limit of 30 mph, making it difficult to identify the area without the larger sign. Mr. Fascino further stated that the sign would have a unique look and be aesthetically pleasing and would complement the existing topography and retaining wall.
14. In response to questions from the Board, Mr. Fascino confirmed that Falcon Point is a residential site and the sign is proposed only to identify the neighborhood.
15. In response from questions from the Board, Mr. Fascino stated that a benefit of the sign would be public safety of motorists. Mr. Fascino further explained the hardship is related to the existing topography.
16. In response to questions from the Board, Mr. Donica explained that as part of consideration in the transfer of title, there is an easement in the deed to allow for

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maintenance of the sign and area around it. Mr. Donica confirmed that the maintenance of the property would be in the easement area only.

17. It was noted by the Board that the sign would not be visible from both directions and therefore would not enhance safety for all motorists. It was further noted that there are no other streets along the Mountain Avenue that currently have development signs.
18. In response to questions from the Board, Mr. Fascino stated that the Applicant would consider removing the falcon logo if the Board finds their Application favorable.
19. Mr. Fascino stated that the intention of the sign would not be for advertisement purposes. Mr. Fascino further stated that he did not know of any similar signs in North Caldwell.
20. A concern was noted by the Board that promoting future signage for identifying subdivisions would lead to segmenting them from the community. Mr. Donica stated that the Ordinance allows for signage, explaining that the question before the Board is the size and placement of the sign.
21. It was noted by the Board that the Borough Code provides that no sign may be displayed by a resident for a fee or to advertise commercial purposes unrelated to current on-site activity. It was further noted that since the company's name is similar to the Falcon Point Estate sign and the fact that the property where the sign will be displayed and maintained is owned by a resident, further clarification is needed.
22. Mr. Donica stated that the all of the lots of the subdivision are sold, but all have not been closed. Mr. Donica further explained that there is no direct fee paid to the property owners, it is an easement by the developer of the property, who also owns and lives in one of the homes in the development. He stated that there is no *quid pro quo* to the property owners for the sign. Mr. Donica explained that the developer will maintain the property around the wall with or without the sign.
23. The Board questioned the hardship to the neighborhood if there was no sign. Mr. Donica stated that there would be a hardship if they had to place the sign on top of the hill, 10 feet back from the right of way. Mr. Fascino presented Exhibit A-2, dated 5-30-07 prepared by Dykstra Walker Design Group. He stated that the lot encompasses the whole southern side of Falcon Point where the retaining wall

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connects to the existing retaining wall along Mountain Avenue. He explained that there is significant topographic variation in grades on the property, so there would not be a visual benefit in placing the sign on top of the wall.

24. In response to questions from the Board, Mr. Donica stated that the Applicant would not remove the sign if the next owner requested because there is an easement on the property which allows for maintenance of the area. Mr. Wangner stated that the sign would be an advertisement.
25. Mr. Donica summarized the Application, indicating that the sign would be for identification purposes and not for advertisement. He stated that the sign should be permissible under the current Code.
26. The matter was opened to the public. Mr. William Zaros, owner of 605 Mountain Avenue, 12 Birch Avenue, and 44 Green Place in North Caldwell, was sworn in. Mr. Zaros stated that he is a forty-year resident of North Caldwell and lives directly across the street from the proposed location. He stated that he will have to look at the sign every day. Mr. Zaros further stated that he feels that the sign is an unnecessary advertisement.
27. The Board, in reviewing the above facts and the materials presented at the hearing, finds that the Applicant did not present sufficient basis to grant the Application under the (c)1 or (c)2 criteria set forth in N.J.S.A 40:55D-70.

NOW, THEREFORE, BE IT RESOLVED that based on the facts and reasons as found above, the Board finds that the relief requested cannot be granted pursuant to the requirements of the Zoning Ordinances of the Borough of North Caldwell and the current statutory requirements. Therefore, on a motion by Mr. Augustitus, seconded by Mr. Angelo, the Board voted to deny the Application with one affirmative vote by Mr. Angelo and six negative votes by Mr. Augustitus, Mr. Floria-Callori, Mrs. Jenkins, Mr. Michelotti, Mr. Roth, and Mr. Wangner.

IT IS HEREBY CERTIFIED that this is a true and correct copy of the resolution adopted this 26th day of September, 2018, by a majority of the members of the Board present at such meeting and who voted for the action taken on July 18, 2018.

ALL THOSE IN FAVOR: Mr. Floria-Callori, Mrs. Jenkins, Mr. Michelotti, Mr. Roth, Mr. Wangner

ALL THOSE OPPOSED: --

ABSTAIN: Mr. Ritter

ABSENT: Mr. Augustitus, Mr. Angelo, Mr. Salan

MATTER OF JONATHAN RANDALL
Decided: September 26, 2018
Memorialized: October 17, 2018

WHEREAS, Jonathan Randall (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 14 Arbor Road, also known as Lot 43 in Block 300 in order construct a two-story addition to provide additional habitable living space for his family. The subject property is located in the R-30 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, public hearings on this application were held on May 16, 2018, July 18, 2018 and September 26, 2018; and

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

1. At the May 16, 2018, Jonathan Randall was sworn in. The Applicant stated that he seeks to construct an addition on the right side of this home requiring a side yard setback variance. The Applicant further stated that when his home was built, there was a roofing issue that required the roof be cut from 35 feet to 31 feet in order to obtain the certificate of occupancy. This resulted in the roofline having a barnlike appearance on the right side.
2. The Applicant presented Exhibit A1, which he described as a photo of 14 Arbor Road, comparing the roofline of a similar home in the neighborhood. Exhibit A2 was then presented and described as a photo of 8 Arbor Road, showing a conservatory addition on the side of the house which is more characteristic of the other properties on the street. The Applicant stated that most of the properties on the street were built with a conservatory on the side of the house. The Applicant added that he purchased his home from the developer when it was 80% complete after it had fallen out of contract with the previous buyer, preventing him from making structural changes to the house at that time.
3. The Applicant described the property, stating that the property line narrows approximately 1-2 feet from the back to the front and, therefore, the variance required in the front of the home differs from the rear. That Applicant stated that he seeks a five-foot reduction in the

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setback from the required 35 feet to 30 feet. He stated that the proposed five-foot decorative bay windows are more characteristic of the other properties on the street.

4. The Applicant confirmed that the house currently conforms to all the setback requirements and referred to the Sheet T1 of the plans submitted with the application. He explained that the plans show the proposed bay window cutouts on the right which extend beyond the building envelope.
5. In response to questions from the Board, the Applicant stated that the right side of the house is 48 feet from the property line as shown on the survey. The Applicant stated that there the existing covered patio, described as a pavilion, which was constructed to the rear of the home within the building envelope. The pavilion is attached to the main structure but is not enclosed. The Applicant stated that he added the pavilion and the paver section approximately four years ago.
6. The Applicant testified that he tried to work within the setback requirement but that the addition would not be worth the investment without the extra five feet. He stated that without the variance, there would not be enough room on the second floor for the proposed bedrooms.
7. In response to questioning from the Board, the Applicant stated that are other homes in the neighborhood with conservatory additions, but most have one story of living space with a peaked roof. He stated his proposed plans would add living space and address the roof line to change the barn-shape view from the street.
8. It was noted by the Board that the developer was not obligated to leave space to accommodate additional structures or additions and that homes were constructed within the proper setbacks at the time. The Applicant stated that 80% of the homes on the street have a similar addition and if he had the choice from the beginning, he would have moved the house 5 feet to accommodate the addition he now seeks. The Applicant testified that when he bought the house it was too far along in the process and he could not make any changes.
9. The Applicant stated that the house is 4,300 square feet and the proposed addition is a total of 1,400 square feet on two floors. The Applicant stated that the extra space adds value and conforms to the majority of houses on the block. The Applicant stated that the addition is needed for bedrooms for his children. The proposed addition will also include a room on the first floor for parents, so they would not have to use the stairs when they visit.

10. In response to questions from the Board, the Applicant stated that he is unaware of any changes to the wetlands and that he is not proposing any improvements to that side of the property.
11. In response to questions from the Board, the Applicant stated that the shape of property, topography, and lot lines impose hardships on the Applicant.
12. The Applicant testified that the hardships related to the land include that the entire property slopes from the rear of the property to the front. In addition, there is wetland area and slopes in the rear of the property which prevents expanding the home to the left without creating retaining walls. This condition does not exist on the right side of the property which is flat.
13. In response to questions from the Board, the Applicant testified that he considered locating the addition to the rear of the home where it would not require a variance, but would require removing the existing pavilion and backyard patio.
14. The Applicant stated that his architect considered other options for the addition, but that the different options did not justify building on the second floor at all. The Applicant explained that if the second floor were scaled back, the size of the bedroom would not be significantly bigger than the existing bedrooms in the home.
15. The matter was opened to the public.
16. Mr. Karl Strom, 12 Arbor Road, was sworn in. Mr. Strom stated he is the Applicant's direct neighbor to the right, and that he also owns 24 Arbor Road. He stated that he chose to live on Arbor Road because of the large properties and privacy.
17. Mr. Strom stated that according to builder's plot plans, there were only certain size homes that were allowed on specific size properties. He added that he paid \$200,000 extra for larger property to accommodate a conservatory. He further explained that the Applicant's home was actually sold twice prior to the Applicant and that the previous owners were denied the conservatory by the Planning Board.
18. Mr. Strom testified that all conservatories in the neighborhood are one story. He added that he is concerned about his resale value of his home as his driveway will be very close to the proposed addition.
19. Mr. Strom added that the Applicant's swing set is approximately two feet off the property line. He stated that he spent an additional \$20,000 to plant 20-foot evergreens for a privacy buffer. He stated that there is no landscaping buffer around the pavilion. Mr. Strom stated his concern that the proposed addition encroaches five feet into the setback.

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- Mr. Strom stated that he does not see any issue with the slope as he feels that the Applicant has one of the flattest lots on the block. Mr. Strom added that he is concerned because he paid a premium and he does not want to lose the space between properties.
20. Mr. Strom further stated his opinion that a 13-foot by 15-foot bedroom is sufficient and probably larger than most of the existing bedrooms in the homes in the neighborhood.
 21. Mr. Strom requested that the Applicant maintain the landscaping buffer.
 22. No other members of the public presented testimony.
 23. The Board deliberated, noting that the bedrooms would still be a decent size without the five feet extension into the setback and that there are options to make the home look aesthetically pleasing.
 24. The matter was adjourned to allow the Applicant time to review the plans with his architect.
 25. At the July 18, 2018 hearing, Peter Cooper, licensed architect and landscape architect was sworn in and accepted as an expert witness.
 26. Mr. Cooper described the project as a two-story addition to an existing house for the purpose of providing added living space. He stated that the proposal includes a guest suite with a full bathroom and closet and an enlarged library on the first floor. He stated that the second floor would include two enlarged bedrooms with bathrooms and closets in each and an added laundry room. He added that the existing front bedroom will be converted to an open study.
 27. Mr. Cooper explained that a single variance is requested for the right-side yard setback where 35 feet is required, and 30 feet is proposed for a 5-foot encroachment. He explained that the deficiencies in the existing home include small secondary bedrooms with insufficient closet space, small bathroom, and the absence of a laundry room on the second floor. Mr. Cooper added that the current first floor does not include a bedroom suite for visiting elder relatives and the proposed addition of a study is important for his client's needs. He stated that the proposed design would overcome these deficiencies with particular attention to the second-floor improvements. The provided design is complementary to the house and neighborhood.
 28. Mr. Cooper stated that the front elevation would include a hip roof from the side, a reverse gable, and a turreted study which would adjoin the covered porch to add visual interest to the proposed addition. He stated that the proposed turrets are an effort to make the addition aesthetically desirable. Mr. Cooper explained that there is an aesthetic aspect

of the application, as well as the fulfillment of his client's needs. He explained that while the house is large, it lacks certain elements that are important to his client's needs which include the care of his parents and ample space for his children.

29. Mr. Cooper further testified that the existing home does not align with the property line because the lot is a parallelogram. He stated that the property line narrows as it approaches the front yard, therefore the encroachment is less in the rear of the home. He explained that part of the reason for the variance is caused by the lot configuration. Mr. Cooper added that other options were considered although they were not viable given that the left corner of the property has wetlands and significantly slopes from left to right. He added that the reality is that the right side would be the best opportunity for his client to enlarge the home to fit his needs. He explained there would be a relatively low impact to the neighbor as the proposed addition would be adjacent to the neighbor's garage where the property line is currently buffered by evergreens and deciduous trees. Mr. Cooper stated that proposed addition will be aesthetically pleasing, proportionate to the existing home and would complement the neighborhood. He explained that function would be lost if the rooms were decreased in size and removal of the turrets would change the angled roof which will be aesthetically pleasing to the neighborhood.

30. In response to questions from the Board, the Applicant testified that the only change was his submission of the C2 variance verbiage. He further stated that he brought back his architect for clarification and to answer any questions regarding the decisions that were made for the proposed addition.

31. Mr. Cooper noted that the site complies with the maximum building and impervious coverage requirements.

32. The Applicant stated that he had his architect add the circular driveway to the existing plans to make sure it met the impervious coverage with the proposed addition. He stated that they would make a decision about the installation of the circular driveway at a later date.

33. Mr. Cooper stated that the bedrooms measure 18 feet by 13 feet and 18 feet by 12 feet. He stated that in order to conform to the setback requirement, the Applicant would have to remove the proposed turrets. Eliminating the turrets removes the setback variance, but it would create an aesthetic problem.

34. Mr Cooper explained that he can reduce the encroachment to about half or he can eliminate it entirely but that would cause significant loss in the favorable aesthetics of the neighborhood.
35. In response to questions from the Board, the Applicant stated that he was not aware that the Board expected him to rework the plans. He explained that he thought there were questions from the Board regarding the size of the bathroom that would have been better answered by his architect.
36. The hearing was opened to the public.
37. Mr. Karl Strom came forward and was still under oath from the previous meeting. Mr. Strom stated that he is struggling to see the hardship. He confirmed his understanding of the benefit of having a room on the first floor for the Applicant's in-laws. He stated that he felt that having a laundry room upstairs is a convenience rather than a true hardship. Mr. Strom stated that he paid a premium for his lot to have the convenience of a laundry room on the second floor. He explained that the Planning Board designed the neighborhood with homes to have sizes specific to certain lots. He further stated that the existing landscape buffer includes evergreens that are original to the development. Mr. Strom explained that he has added evergreens to extend the buffer in the back of the property to ensure privacy. He stated he felt that the elevation in the back of the property was not significant due to the fact that the existing pavilion which extends approximately 30 feet does not currently have a retaining wall. He added that he spoke to his own architect who had several different ideas on how to achieve what is needed while staying within the original Planning Board lot plan for the home.
38. Mr. Strom stated that his house was built eight to nine years ago which was around the same time the Applicant's home was built. Mr. Strom confirmed that his garage and master bedroom are on the side closest to the Applicant's proposed addition. He added that his deck is in close proximity to the proposed addition as well.
39. Mr. Cooper stated that his opinion that the neighbor's explanation about lot sizes was designed for certain size homes was not relevant to this Application. He explained that the Application was in reference to the setback which was not the size of the house but rather the ability to build towards the right as opposed to some other direction. He further explained that the opportunities are limited due to the wetlands in the rear of the property and the location of the two-story family which eliminates any building in that area. Mr.

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Cooper stated that he felt that the suggestion of reinventing the layout of the home is unreasonable.

40. Mr. Strom stated that he felt that a hardship does not exist and there are no two-story conservatories in the neighborhood.
41. Mr. Cooper described the Applicant's need for additional space while at the same time making the proposed addition aesthetically pleasing. Mr. Cooper explained that the property is tapered along the right side which would pose limitations and create a setback issue at the front of the property. He further explained that he felt that positive and negative criteria should be considered when granting a variance. He stated that he felt that the hardship and positive criteria would be compelling, but now felt that it would not be enough for a five-foot variance based on the Board's position and neighbor's complaints.
42. In light of the Board's comments, the Applicant requested that the hearing be adjourned for further review of the plans.
43. The hearing was continued at the Board's September 26, 2018 meeting.
44. Mr. Cooper explained the project which involved the previous request for a five-foot variance. The Applicant revisited the plan and removed three feet from the side yard setback. Mr. Cooper clarified that he changed from a PDF survey to a more accurate digital survey which left another six inches that needed to be accounted for, resulting in a 2 ½ foot non-conforming setback. He added that the setback variance request has been reduced by half.
45. Mr. Cooper stated that the deficiency presented involves a C1 and C2 variance. He explained that the lot is a parallelogram and more restrictive toward the front of the house and the proposed design reflects this. He added that the left corner of the property is wetlands with a slope from left to right making a drop in the property greater than five feet.
46. Mr. Cooper stated that the positive criteria for the C2 variance are the attractive appearance and low impact to the neighborhood. He presented Exhibit A1, an aerial view photograph of the neighboring property, and explained that the photograph illustrates an established, evergreen landscape buffer between the proposed addition and the right-side neighbor. He further explained that the photograph shows that the right-side neighbor has a garage, no windows on the first floor and limited view of the proposed addition. He added that there still would be a 32.5-foot setback from the property line and substantial distance between the addition and the neighbor's garage. Mr. Cooper stated that by

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improving the house, this proposed project will be more in keeping with his client's needs and modern living standards for a house of this size, most importantly accommodating visiting relatives on the first floor in a guest suite and different gender children can have their own private suites. He stated that there is more merit and very little negative detriment to the neighboring properties.

47. The hearing was opened to the public for any questions or comments.

48. Mr. Karl Strom came forward and was still under oath from the previous meeting. Mr. Strom stated that not only is his garage on that side but also his master bedroom with windows that will look over the proposed addition. He explained that he planted the trees which create a buffer in the back. Mr. Strom expressed his concern about how this will affect the drainage in the area. He questioned the impervious coverage of the lot with the existing outdoor kitchen. Mr. Strom asked if there will be additional landscape buffers installed. He stated his concern about the proposed addition being two-stories and feels that a one-story addition is sufficient. He added that a hardship is not defined by aesthetics and would like to see the bay window taken out in order to reduce the addition by 2 ½ feet.

49. In response to the neighbor's comments, the Applicant agreed to provide additional plantings along the side of the property.

50. The Applicant stated that the builder put in additional drainage to address any runoff issues toward the back of the property. It was noted that there has been a change in the topography behind Arbor Road so they want to make sure the drainage will be adequate.

51. In response to questions from the Board, Mr. Cooper confirmed that the rooms were reduced by 3 feet. Mr. Augustitus questioned if the laundry room and bathroom on the second floor were removed. Mr. Cooper stated that the laundry room on the second floor is being moved to the back of the house.

52. In response to questions from the Board and neighbor, the Applicant agreed to install a landscape buffer. Mr. Cooper stated that as a landscape architect he advised that his client should consider plantings closer to 10 feet. Mr. Strom expressed satisfaction with the reduced setback encroachment and the addition of a landscape buffer.

NOW, THEREFORE, BE IT RESOLVED that based on the facts as found above, the Board finds that the 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 his burden of proof that a hardship exists

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to permit granting the relief requested and that the benefits of granting the relief requested substantially outweigh the detriments. Therefore, on a motion by Mr. Augustitus, seconded by Mr. Michelotti, the Board voted to grant the Application of Jonathan Randall, based upon the revised plans dated May 18, 2018, along with the stipulation that the Applicant shall install a buffer along the property boundary adjacent to the addition. The buffer shall include 10-foot-high deer resistant plantings. The Applicant shall submit a landscaping plan to the Municipal Engineer for review and approval. Mr. Augustitus, Mr. Angelo, Mrs. Jenkins, Mr. Michelotti, and Mr. Wangner cast affirmative votes. Mr. Floria-Callori and Mr. Roth cast negative votes. Mr. Ritter abstained. Accordingly, the Application, was approved.

IT IS HEREBY CERTIFIED that this is a true and correct copy of the resolution adopted this 17th day of October 2018, by a majority of the members of the Board present at such meeting and who voted for the action taken on September 26, 2018.

ALL THOSE IN FAVOR: Mr. Floria-Callori, Mr. Michelotti, Mrs. Jenkins, Mr. Roth, Mr. Wangner

ALL THOSE OPPOSED: --

ABSTAIN: Mr. Ritter

ABSENT: Mr. Augustitus, Mr. Angelo, Mr. Salan

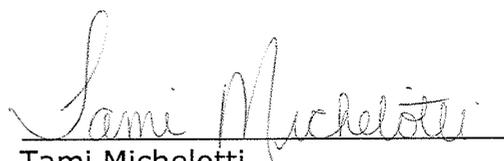
APPROVAL OF MINUTES

Mr. Floria-Callori moved to accept the minutes of Board Meeting of July 18, 2018. The motion was seconded by Mr. Roth. Said motion was passed with five votes.

Mr. Floria-Callori moved to accept the minutes of Board Meeting of August 15, 2018. The motion was seconded by Mr. Michelotti. Said motion was passed with five votes.

There being no further matters to come before the Board, Mr. Augustitus made a motion to adjourn the meeting, seconded by the Board. The meeting was adjourned at 9:59 p.m.

Respectfully Submitted,


Tami Michelotti
Zoning Board Secretary