

November 18, 2015

The Meeting of the North Caldwell Board of Adjustment was held at Borough Hall, Gould Avenue on Wednesday, November 18, 2015 starting at 8:01pm.

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. Ritter, Mrs. Jenkins, Mr. Augustitus, Mr. Wangner, Mr. Lisa and Mr. Salan

Absent: Mr. Schwartz, Ms. Tanelli and Mr. Shah

Also present were Lisa Thompson, Attorney, and Teresa King, Administrative Assistant

## **APPLICATIONS**

### **MATTER OF JONATHAN SENIOR CARE, INC., 132 WEST GREENBROOK ROAD, BLOCK 1701, LOT 2**

Susan Rubright of Brach Eichler LLC spoke on behalf of her client, Gwendolyn Monangai. Mrs. Monangai is the President and CEO of Jonathan Senior Care. Ms. Rubright stated the application was filed with the intent of renovating the office building and accessory building on West Greenbrook Avenue. The proposal was to renovate the existing building into a group home for Alzheimer and dementia patients.

Under the law at the time the Application was submitted, these residences were regulated by The Department of Community Affairs. Under the Municipal Land Use Law, this application would not require a variance or site plan approval because these facilities were considered community residences/group homes.

On November 9, 2015, a new law was signed that completely changed how dementia care and Alzheimer facilities are regulated. They are now being considered similar to a nursing home/residential health care facility and being regulated by the Department of Health. Because of this, the Application that was filed in good faith is now no longer applicable.

Board Attorney, Lisa Thompson, explained that because the Application is pending, the Board needs to determine if the Application would be subject to a favorable interpretation under the new law.

No one came before the Board with any questions or comments.

Mr. Augustitus motioned to grant the application for interpretation as submitted by the Applicant, seconded by Mr. Lisa. A vote was taken with all Board members voting no. Accordingly, the Application was denied.

## **MEMORIALIZATIONS**

### **MATTER OF NAVEEN BALLEM**

**Decided: October 21, 2015**

**Memorialized: November 18, 2015**

**WHEREAS**, Naveen Ballem (hereinafter referred to as the "Applicant") has 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 70 Roosevelt Boulevard, also known as Lot 3 in Block 504 in order to construct a new swimming pool, patio

and retaining walls in the rear yard of the existing home. The subject property is located in R1 residential zone; and

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

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

**WHEREAS**, a public hearing was held by this Board on September 17, 2015 and concluded on October 21, 2015; and

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

1. The Applicant was represented by Peter Pena, Esq. Naveen Ballem, Landscape Architect Rick Zimmer and Professional Engineer Mark Walker presented testimony in support of the Application at the hearing held on September 17, 2015. Mr. Zimmer and Mr. Walker presented their credentials and were accepted by the Board as expert witnesses. Professional Engineer Kevin Robine presented testimony at the October 21, 2015 hearing. Mr. Robine presented his credentials and was accepted as an expert witness.
2. The Application, as filed, seeks variance relief from Section 107-21.D (9) for proposed impervious coverage of 40.7% where a maximum impervious coverage of 30% is permitted.
3. Mr. Walker described the lay-out of the proposed pool, stating that the design of the pool and patio is the appropriate size for the lot, was designed to be as efficient as possible to in limit the patio and walkway area. Mr. Walker noted that the pool was designed to include the spa feature within the pool. Mr. Walker described and presented a colorized version of the site plan (Exhibit A-1).
4. The Applicant testified that the existing lot is similar to other lots in the neighborhood, many of which have swimming pools. The rear of the lot is adjacent to dedicated Green Acres land. Mr. Ballem further testified that he has been a resident of North Caldwell all of his life, purchasing the subject property at the end of last summer and updating same. Mr. Ballem noted that his parents and sister are also residents of North Caldwell.
5. Mr. Walker testified that the proposed plan advances the purposes of zoning in that it enhances the aesthetics of the subject property and that any run-off will be

addressed through storm water recharge units to be constructed below grade. Mr. Walker further testified that storm water run-off is currently directed toward swales on either side of the property and to the municipal storm water drainage system.

6. Mr. Walker testified that the lot already exceeds the permitted maximum impervious coverage (34.3% existing where a maximum of 30% is permitted).
7. The Board questioned the extent of the lot coverage proposed and questioned the need to increase the lot coverage from 34.3% to 40.7%.
8. Upon review, the Applicant revised the proposal to reduce the maximum impervious coverage. Thereafter, the hearing was adjourned to allow the Applicant to submit a revised site plan.
9. At the continuation of the public hearing on October 21, 2015, the Applicant and Mr. Robine presented the revised plan to the Board, dated as of October 7, 2015. Mr. Robine described the revised plan, stating that the Applicant now proposed that the impervious coverage shall remain at 34.3% to allow the impervious coverage calculation to remain at the existing 34.3% by reducing the size of the patio and existing driveway.
10. The hearing was open to the public without comment.

The Board, in reviewing the above facts and the materials presented at the hearing, finds that the Applicant has met its 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 proposed swimming pool, patio and walkway plan, as revised by the Applicant to reflect a total impervious coverage of 34.3%, presents no increase in impervious coverage, and that any potential negative impact to drainage in the area shall be addressed by the Municipal Engineer.

**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 its 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. Therefore, on a motion by Mr. Augustitus, seconded by Mr. Lisa, the Board unanimously voted to grant the Application of Naveen Ballem, as amended, to reflect a total maximum impervious coverage of 34.3%. The Board's approval shall be subject to the review of the Municipal Engineer, with the Applicant to comply with any requirements for

November 18, 2015

storm water detention facilities that may be deemed necessary by the Municipal Engineer. Mr. Augustitus, Mr. Lisa, Ms. Jenkins, Mr. Wangner, and Mr. Schwartz voted in favor of the Application. Accordingly, the Application was approved, as revised.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 18th day of November 2015, by a majority of the members of the Board present at such meeting and who voted for the action taken on October 21, 2015.

Mr. Augustitus moved to accept the resolution as drafted, seconded by Mr. Lisa with all other members approving, except Mr. Salan and Mr. Ritter who abstained.

**MATTER OF JULES AND DEBORAH GEFTIC**  
**Decided: October 21, 2015**  
**Memorialized: November 18, 2015**

**WHEREAS**, Jules Geftic and Deborah Geftic (hereinafter collectively referred to as the “Applicant”) have 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 21 Glenview Road, also known as Lot 6 in Block 202 to construct an addition to the rear of the existing dwelling. The subject property is located in R2 residential zone; and

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

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

**WHEREAS**, a public hearing was held by this Board on October 21, 2015; and

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

1. The Applicant and their Contractor Cliff Charpentier were sworn in and presented testimony before the Board.
2. The Applicant seeks variance relief from the requirements of the Borough Code for right side yard setback (10 feet where a minimum of 20 feet is required) and left side yard setback (15 feet 6 inches where a minimum of 20 feet is required).
3. The Applicant testified that they have owned the subject property since 1985. They seek to expand the rear of their home to add a bathroom and deck. The proposed addition will not be any closer to the side lot lines than the existing dwelling.

November 18, 2015

4. The Applicant testified that the proposed addition is for a six foot by fifteen foot bathroom on the first floor. Adding a bathroom on the first floor will allow the Applicant to avoid stairs as the only other bathroom in the home is on the second floor.
5. The Applicant further testified that they tried to expand the existing dwelling without requiring variance approval, however the configuration of the existing dwelling would not allow for expansion without encroachment into the side yard setbacks.
6. The Applicant testified that the existing lot is very long and narrow and there is no location where the proposed addition could be constructed to avoid the variance relief requested.
7. The hearing was open to the public without comment.
8. Upon deliberation, Mr. Augustitus observed that the Applicant's proposal is within the impervious coverage requirements and is not any closer to the side lot lines than the existing dwelling.

**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 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. Lisa, the Board unanimously voted to grant the Application of Jules and Deborah Geflic, as submitted, with affirmative votes by Mr. Augustitus, Mr. Lisa, Ms. Jenkins, Mr. Wangner, and Mr. Schwartz. Accordingly, the Application was approved as submitted.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 18th day of November, 2015, by a majority of the members of the Board present at such meeting and who voted in this matter at the meeting held on October 21, 2015.

Mr. Augustitus moved to accept the resolution as drafted, seconded by Mr. Lisa with all other members approving, except Mr. Salan and Mr. Ritter who abstained.

**MATTER OF VREELAND FIVE LLC**  
**Decided: October 21, 2015**  
**Memorialized: November 18, 2015**

**WHEREAS**, Vreeland Five LLC (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 511 Mountain Avenue, also known as Lot 7 in Block 1404 to demolish and reconstruct a single family home on the remaining foundation. The subject property is located in R1 residential zone; and

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

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

**WHEREAS**, a public hearing was held by this Board on October 21, 2015; and

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

9. Sean O’Brien, principal of Vreeland Five LLC was sworn in and presented testimony before the Board. The Applicant is the purchaser under contract. The Application was filed with the approval of the property owner. The Applicant’s Engineer/Builder, Ronald Castillo, was also sworn in and presented testimony in support of the application.
10. The Applicant seeks variance approval from the requirements of the Borough Code (107-21(D) (4) (a) for front yard setback (40.7 feet where a minimum of 50 feet is required).
11. The Applicant testified that the existing setback is going to be maintained for the new dwelling. The proposed addition to the building footprint for the new dwelling will be constructed over a crawl space.
12. The Applicant testified that demolishing the entire dwelling including the existing foundation to comply with the front yard setback requirement is not practical as it will require removing and filling the existing foundation and then digging a new foundation, thus disrupting the neighborhood drainage patterns.

November 18, 2015

13. The Applicant testified that other homes in the neighborhood maintain similar front yard setbacks and that the proposed dwelling is in keeping with the neighborhood.
14. The Applicant further testified that the driveway will be relocated to Pine Place to provide a safer access than from busier Mountain Avenue.
15. Mr. Castillo testified that while the proposed dwelling is larger, the roof drains will be directed into seepage pits.
16. The hearing was opened to the public. Sylvia Itzhaki and John Itzhaki, 15 Birch Avenue testified, expressing concerns over drainage and the existing stream located along the rear property line of the subject property.
17. Glen Flanagan, 549 Mountain Avenue, questioned the Applicant about run-off from the site and the location of the driveway. Mr. O'Brien states that seepage pits are planned for the site to address drainage concerns. Mr. O'Brien further testified that once the driveway is relocated, the existing driveway will be removed and the lawn will be restored. Mr. Flanagan stated that he did not see a problem with the proposed improvement to the subject property.
18. The Board members questioned potential impact of the proposed construction on the adjacent neighbors. In response, the Applicant agreed to install seepage pits, the design of which shall be reviewed and approved by the Municipal Engineer.
19. Upon deliberation, Mr. Augustitus observed that the Applicant's proposal is an improvement on the existing structure and that leaving the existing foundation presents a better chance of lessening impact on drainage in the neighborhood.

**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 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. Lisa, the Board unanimously voted to grant the Application of Vreeland Five LLC, as submitted, with the stipulation that storm water run-off management shall be installed as required by Municipal and Building Codes, and shall further be subject to the review and approval of the Municipal Engineer. Affirmative votes were cast by Mr. Augustitus, Mr. Lisa, Ms. Jenkins, Mr. Wangner, and Mr. Schwartz. Accordingly, the Application was approved as submitted.

November 18, 2015

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of the resolution adopted this 18th day of November, 2015, by a majority of the members of the Board present at such meeting and who voted in this matter at the meeting held on October 21, 2015.

Mr. Augustitus moved to accept the resolution as drafted, seconded by Mr. Lisa with all other members approving, except Mr. Salan and Mr. Ritter who abstained.

There being no further matters to come before the Board, the meeting was adjourned at 8:21pm.

Respectfully Submitted:

  
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Teresa King, Administrative Assistant