

**MINUTES OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD
REGULAR MEETING HELD DECEMBER 11, 2017**

Chairman Brower called the meeting to order at 8:00 p.m., lead the salute of the flag and requested a roll call:

ROLL CALL

PRESENT: Chairman Brower, Mr. Campbell, Mr. Rees, Dr. Spinelli, Mr. Fishbone, Ms. Nathans

ABSENT: Mayor Alessi, Mr. Barba

Others present: Mr. Dusinberre, Esq., Attorney, Mr. Zichelli P.E., Borough Administrator and Engineer

ADEQUATE NOTICE of this meeting of the Borough of North Caldwell Planning Board was given as follows: Notice was sent to The Progress and the Star Ledger and Notice was filed with the office of the Borough Clerk.

APPROVAL OF MINUTES

A motion was made by Mr. Campbell to approve the minutes of the November 20, 2017 Regular Meeting of the North Caldwell Planning Board and a second made by Mr. Fishbone.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Mr. Rees, Dr. Spinelli, Mr. Fishbone

ABSTENTIONS: Ms. Nathans

APPLICATIONS

Chairman Brower introduced the continuation of the below application from the meeting of November 20, 2017. Mr. Brower reminded those in attendance of the procedures to be followed for the hearing of applications before the Planning Board.

APPLICATION FOR PRELIMINARY AND FINAL MAJOR SUBDIVISION

Mr. Vincent Lapone
77 Grandview Avenue
North Caldwell, NJ 07006
Block 1900, Lot 9

It was noted by Chairman Brower, for the record, that Board member Sandra Nathans listened to a recording of the November 20, 2017 Planning Board hearing of the Lapone application and signed a certification attesting to this fact.

Mr. Robert Gaccione, Esq. of the firm Gaccione Pomaco, Belleville, New Jersey entered an appearance as Counsel on behalf of the applicant, Mr. Vincent Lapone.

Mr. Gaccione briefly described the application as a Preliminary and Major subdivision with bulk variances and reminded the Board of the two witnesses who testified at the November 20, 2017 hearing, Mr. Vincent Lapone the applicant and property owner and Mr. Chuck Stewart, P.E,

P.P., P.L.S. Mr. Gaccione advised that Mr. Stewart has revised plans used for this application and would be called as a witness to describe these amendments. Mr. Peter Steck will be called as a new witness and will testify as a professional planner.

Mr. Chuck Stewart, P.E., P.P., P.L.S. of G.C. Stewart Associates, Inc. 204 Eagle Rock Avenue, Roseland, New Jersey was presented as the first witness of the evening to be heard as both a professional engineer and a professional land surveyor. Mr. Stewart was reminded that he remains under oath from the November 20, 2017 meeting.

Mr. Stewart displayed the following documents for his presentation:

Major Subdivision Plat, Block 1900 ~ Lot 9, No. 77 Grandview Avenue, Borough of North Caldwell, Essex County, New Jersey, prepared by Charles J. Stewart, P.E., P.L.S., dated September 25, 2017 and last revised November 28, 2017, 1 sheet.

Preliminary and Final Major Subdivision, Block 1900 ~ Lot 9, No. 77 Grandview Avenue, Borough of North Caldwell, Essex County, New Jersey, prepared by Charles J. Stewart, P.E., P.L.S., dated August 21, 2017 and last revised November 28, 2017, 1 sheet.

Mr. Stewart described each plan, noting that the significant changes from the previously submitted plan is the redesignation of the front of the existing dwelling from Grandview Avenue to Squire Hill Road and the resulting changes to the Zoning Requirements table on each plan. The revised Zoning Requirements table now indicates one variance is required for a 22.4' side yard setback vs. the required side yard setback of 25'.

Mr. Stewart distributed to the Board a table titled *Proposed Impervious Coverage Lot 9.01*. This was marked as exhibit A-1.

Mr. Stewart noted that the maximum impervious coverage permitted by North Caldwell is 30%, not 25% as indicated on the Zoning Requirements table. He then described the contents of exhibit A-1.

Chairman Brower invited members of the Board and staff to question the witness.

Mr. Fishbone asked why Mr. Stewart revised the yard designations. Mr. Stewart replied the changes are based on an analysis performed by the applicant's planner, Mr. Steck.

Mr. Gaccione stated that nothing in the Borough Code identifies what is a front yard.

Mr. Dusinberre asked Mr. Stewart if his opinion of what is the front yard of proposed lot 9.01 has changed (Mr. Stewart testified at the November 20, 2017 hearing that in his opinion, the front of proposed lot 9.01 is on Grandview Avenue). Mr. Stewart responded no.

The meeting was opened to the public to question Mr. Stewart on his testimony.

Mr. Ronald Weiss of 6 Squire Hill Road stood to be heard. Mr. Weiss asked if Mr. Stewart was aware of the zoning requirements for the property in question. Mr. Stewart responded he was.

Mr. Peter G. Steck, P.P., 80 Maplewood Avenue, Maplewood, New Jersey was presented as the next witness to be heard as a professional planner. Mr. Steck stated his credentials to the Board and was accepted as a professional witness.

Mr. Steck testified that he examined submittals for the application as well as the Borough zoning requirements and also discussed the application with the applicant's engineer.

Mr. Steck described the subject property as not a perfect rectangle with frontage on Grandview Avenue and Squire Hill Road. The existing dwelling architecturally faces Grandview Avenue. The existing house is located more to the east side of the property and the lot has a gentle slope. The existing house is of brick construction and substantial in nature. The applicant wishes to subdivide the property into two lots and retain the existing house on the property. If the existing house were to be torn down, a conforming two lot subdivision is possible; the applicant is therefore entitled to two conforming lots.

Mr. Steck noted that there is an existing nonconforming setback to the existing house on the Squire Hill Road side and the setback from the Grandview Avenue side is conforming. A nonconforming side yard setback of 22.4' is created by the proposed subdivision.

Mr. Steck testified that he reviewed zoning ordinances of several Essex County municipalities and only West Orange actually defines the front of a house. He further testified that lot shape usually dictates what is considered the front of a house. That is, the shorter dimension of a lot is considered the front. In the instance of this application, the existing structure therefore fronts on Squire Hill Road.

Mr. Steck stated that the location of a front door is not a factor in determining the front of a house, but rather the zoning code and the Borough Code does not define front. The Borough Code only requires corner lots have two front yards. Applying the most common approach for determining the front of the house makes the front the south or the Squire Hill Road side.

The proposed westerly side yard of 22.4' is 2.6' short of the required 25' side yard setback and this deficiency is for only a short section of the existing structure. The proposed subdivision is otherwise 100% conforming to North Caldwell standards.

The requested variance can be justified in two ways. Either as a C(1) or a C(2) variance.

The standard for a C(1) variance is a hardship or practicable difficulty and a preexisting situation can be the basis for a hardship or practicable difficulty. In Mr. Steck's opinion, because the building is preexisting, is a substantial building in good shape, fits well into the neighborhood and has historically been located in and is a part of the neighborhood character and the variance is interior to the subdivision; there is both hardship and practicable difficulties. The variance can therefore be granted with no significant detriment to the public or zoning standards.

An argument can also be made for a C(2) variance, that the public benefits out way the detriments. The public benefit if the house is retained is fewer disturbances by not demolishing the structure.

Mr. Steck stated there are several purposes of the Municipal Land Use Law to allow the house to stay. Mr. Steck cited under [N.J.S.A.] 40:55D-2, purposes e,i,m and n. Mr. Steck then attempted to argue how each purpose applies to the application.

Mr. Steck stated if the Board accepts his definitions of what is the front yard; the only variance is for a 22.4' side yard setback that could be cured by removing a portion of the existing dwelling.

Mr. Steck testified that because there are no proposed changes to the existing structure and the setback variance is interior to the subdivision, the only impact will be on the purchaser of the new lot (9.02).

Mr. Steck stated that he is confident that the public benefits of granting the variance substantially outweigh the detriments.

Chairman Brower invited members of the Board and staff to question the witness.

Mr. Rees asked for clarification on depth vs. width for determining the front of a corner lot. Mr. Steck responded that the most common method to determine the front of a corner property is to use the shorter dimension. Mr. Rees asked if the front of the existing lot is therefore Grandview Avenue. Mr. Steck confirmed it is.

Mr. Fishbone remarked that much of the argument made by Mr. Steck requires demolition of the existing structure. Mr. Steck responded that the applicant has an absolute right to demolish the house but the applicant would rather not do that. The issue before the Board is if they want one new house or two new houses.

Mr. Fishbone asked if the subdivision line would be drawn the same way if the house was demolished. Mr. Steck responded the line is fine the way it is but it could potentially be shifted.

Mr. Fishbone questioned whether the proposed western side of proposed lot 9.01 is a side or rear lot line. Mr. Steck responded in his opinion, it is a side yard.

Mr. Fishbone asked if the North Caldwell zoning ordinance has any bearing on what is the front or side of a lot. Mr. Steck responded it does not.

Mr. Campbell sought clarification concerning walls, lot width and side yards. Mr. Zichelli provided clarification.

Mr. Fishbone asked if a variance is self-created, is it a hardship. Mr. Steck responded it depends on the circumstances; the current structure is preexisting and therefore constitutes a hardship.

Mr. Fishbone asked if the application is good planning. Mr. Steck responded that good planning is an abstract thing and is dependent on local zoning ordinances.

Mr. Fishbone questioned whether the hardship is a result of the placement of the proposed subdivision line and not the existing dwelling. Mr. Steck stated in his opinion the preexistence of a dwelling is often accepted as a practicable difficulty.

Mr. Dusenberre asked Mr. Steck if he listened to a recording of the November 20, 2017 hearing. Mr. Steck responded he had not.

Mr. Dusenberre asked if the basis of Mr. Steck's testimony is therefore based on a review of the revised plans and conversations with the engineer and applicant. Mr. Steck replied yes.

Mr. Dusenberre asked Mr. Steck if he is aware that the applicant testified the existing house has a Grandview Avenue address and faces Grandview Avenue. Mr. Steck responded he was not aware of the testimony but is aware of those facts.

Mr. Dusenberre asked if the Borough ordinance requires two front yards for a corner lot with a front yard and a facing yard. Mr. Steck acknowledged the distinction. Mr. Dusenberre asked the purpose for the distinction. Mr. Steck did not know.

Mr. Dusinberre asked Mr. Steck if he read other sections of the Borough ordinance relating to front yards. Mr. Steck said yes and the ordinances do not provide a definition for front yard.

Mr. Dusinberre asked for confirmation from Mr. Steck that he does not use location of a front door as the determining factor for identifying the front yard. Mr. Steck confirmed this.

Mr. Dusinberre referred to the Borough ordinance making reference to a principle building's orientation and asked which way the existing dwelling is facing. Mr. Steck said, architecturally the property faces Grandview Avenue. He then stated again that the applicant could tear down the house and be entitled to two lots.

Mr. Dusinberre asked Mr. Steck why he does not recognize the reality of what is there and request variance relief based on the existing dwelling fronting on Grandview Avenue. Mr. Steck responded if the applicant is entitled to two new lots, is it not better to keep the existing dwelling? The only impact of the proposed variance is to the interior of the development.

Mr. Dusinberre asked if it was then not just a question of degrees. Mr. Steck responded yes.

Mr. Dusinberre asked if the western line were a rear lot line rather than side line, would a lot depth variance be required. Mr. Steck responded not necessarily.

Mr. Dusinberre said the North Caldwell ordinance states that frontage is a function of the orientation of the principle building and is not the existing dwelling oriented towards Grandview Avenue? Mr. Steck responded the orientation could be changed by gaining building permits.

Mr. Steck again stated the choice before the Board is whether they want one or two new houses.

Mr. Dusinberre asked if the proposed subdivision line is angled to maximize the side yard setback while maintaining lot square footage. Mr. Steck responded the lot line is the result of the location of the existing dwelling.

Mr. Brower asked if it is known if any portion of lot 19 was given for the construction of Squire Hill Road. If it was, then there are issues with using Squire Hill Road as the front of the house. One issue is the house was constructed with the Squire Hill Road side as a side yard with no intention of it ever being a front yard. Only the construction of Squire Hill Road creates the potential for a second front yard.

Mr. Steck responded that he does not know the history of how Squire Hill Road was constructed.

Mr. Brower stated that the builder of the house placed it where it is and the hardship was created by this placement. Mr. Steck argued that this is not a self-created hardship.

Mr. Brower advised Mr. Steck that although he testified that only proposed lot 9.02 would be affected by the granting of a side yard variance, outdoor living activities on the existing patio by future owners of proposed lot 9.01 would be very close to the property line thus affecting residents of lot 9.01 as well.

Mr. Brower asked if the proposed subdivision could be adjusted to bring the subdivision into conformity. Mr. Steck stated the subdivision line was created to accommodate both lot size requirements and the existing house.

The meeting was opened to the public to question Mr. Steck on his testimony.

Mr. Ronald Weiss of 6 Squire Hill Road stood to be heard. Mr. Weiss asked if Mr. Steck was aware that air conditioning units are not permitted in a front yard. Mr. Steck responded such ordinances are typically recent and that air conditioning placement may not have been regulated when they were installed.

Mr. Weiss asked if the proposed interior lot (9.02) should have relief because of the requested side yard setback on lot 9.01. Mr. Steck responded that proposed lot 9.02 would be fully conforming and that he never suggested this lot should be entitled to any relief.

There were no further questions from the public.

Mr. Gaccione advised the Board that he had no further witnesses.

Chairman Brower opened the meeting for public statements.

Mr. Rees inquired if the existing stone wall, patio and BBQ might require setback variances. Mr. Zichelli responded that the patio and wall do not, but the BBQ could be considered a structure and therefore be treated as an accessory structure.

Mr. Ronald Weiss of 6 Squire Hill Road stood to be heard and was sworn in. Mr. Weiss stated that one does not need to be a planner or architect to know the front of the existing structure is on Grandview Avenue and the current common lot line between 77 Grandview Avenue and his property is the rear line for 77 Grandview Avenue.

Mr. Evan Carpenter of 5 Squire Hill Road stood to be heard and was sworn in. Mr. Carpenter thanked the Board for their efforts. He stated that the front of the subject property can be determined by looking at it. Development will make the neighborhood denser and he and his neighbors prefer open spaces and bigger lots.

Mr. Gaccione offered to have the BBQ removed if it is an issue.

Mr. Brower questioned whether the Board could grant an approval if the air conditioning units are in violation of existing Borough Code. Mr. Gaccione offered to move the units if they are an issue.

Mr. Gaccione gave a summary of the application. He advised that two conforming lots could be created if the existing structure were to be removed. The relief sought is for 2.6' so that the existing structure can remain. The proposed subdivision is in conformance except for the 2.6' of setback and the variance only affects the proposed interior lot. The existing setback to Squire Hill Road is a preexisting nonconforming condition. He then restated the C(1) and C(2) variance arguments for granting relief.

Dr. Spinelli stated that the entire argument made by Mr. Steck is predicated on the front of the existing house facing Squire Hill Road. If the Board does not agree that the house fronts Squire Hill Road, then other variances are required.

Mr. Rees stated that the concrete patio and BBQ are now in the rear of the existing property.

Mr. Fishbone stated that it cannot be ignored that the North Caldwell ordinance does address the principle structure in its definitions of yards.

Mr. Campbell believes the front of the house faces Grandview Avenue.

Dr. Spinelli made a motion to deny the application for the following reasons:

1. Mr. Steck testified that the property currently fronts on Grandview Avenue, but he has not overcome the burden of proof for proving frontage on Squire Hill Road and therefore did not prove that a side yard variance is required rather than a rear yard variance.
2. The applicant therefore, did not overcome the burden of proof for a lot depth variance for the 119.62' dimension on proposed lot 9.01.
3. The applicant's engineer testified the property can be subdivided into two conforming lots if the existing structure were to be removed.
4. The application is not in conformance with the Borough's master plan.
5. The application is not in keeping with good planning.
6. Denying the application will not prevent the owner from using the property as it is presently zoned.
7. Denying the application will not present a hardship to the property, the property owner or the surrounding properties.

A second was made by Mr. Fishbone.

Upon roll call:

AYES: Chairman Brower, Mr. Campbell, Mr. Rees, Dr. Spinelli, Mr. Fishbone, Ms. Nathans

ABENT: Mayor Alessi, Mr. Barba

CITIZENS TO BE HEARD

Chairman Brower opened the meeting for citizens to be heard. There were no comments from the public.

ADJOURMENT

Chairman Brower requested a motion to adjourn at 9:50 pm. A motion was made by Dr. Spinelli and seconded by Ms. Nathans. All members voted in the affirmative.

The next meeting is scheduled for January 2, 2017.

Frank Zichelli
Acting Planning Board Secretary