

**WEST CALDWELL BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES**

March 10, 2016

A Public Meeting of the Board of Adjustment of the Township of West Caldwell was held on March 10, 2016 at 7:30 P.M. in the Municipal Building, 30 Clinton Road, West Caldwell, New Jersey. Chairman Steven Backfisch opened the meeting and read the opening statement.

ROLL CALL

Members Present: Mr. Dolan, Adriaenssens, Mr. Schott, Chairman Backfisch, Mr. Malia, Mr. Shannon, Mr. McDonnell

Members Absent: Mr. Rankin

Advisors Present: Larry I. Wiener, Esq., Tamara Bross, James Massaro, Darlene Green, and Mr. Russo

MEMORIALIZATION OF RESOLUTIONS:

The Board of Adjustment unanimously approved by the memorialization of the Resolution for application Z15-28 David & Melissa Weisman, 105 Forest Avenue, Block 208, Lot 12, R-4 Zone District.

The Board of Adjustment unanimously approved the memorialization of the Resolution for application Z15-26 PSE&G, 19 Pine Tree Place, Block 3101, Lots 3 & 5 R-3 Zone – Caldwell Borough Wastewater Treatment Plant.

The Board of Adjustment unanimously approved the 2015 Annual Report.

HEARINGS

1. Z16-01, Stephen Law, 17 Brian Road, Block 2806 Lot 16, R-3 Zone District

Seeks N.J.S.A. 40:55D-70C variances to construct an addition. The applicant has proposed a front yard setback of 30'2", whereas a minimum of 40' is required. Section 20-5.4C2 schedule of district regulations.

Board Secretary acknowledged that service provided by the Applicant was acceptable.

- Larry Wiener, Esq. swore in applicants Danielle Law ("Witness 1"), and Stephen Law ("Witness 2") at 17 Brian Road and Julianne Cecere, 21 Taylor Drive ("Witness 3").
- Larry Wiener, Esq. explained the process to the Applicant. He stated that the applicant needs to explain to Board what work is being proposed, why that work will need a variance, why the variance should be granted and why if the variance is granted, it will not have an adverse or substantial impact on your neighbors
- Witness 1 stated that she is requesting more garage space.
- Witness 2 stated that they have a one car garage. His hobby is car repair so they would prefer additional space.
- The Board acknowledge and accept without objection Ms. Cecere as an expert.
- Ms. Cecere made a presentation with exhibits A-1 (front yard) and A-2 (floor plan).

- Ms. Cecere states that there is an existing, non-conforming front yard setback issue. Applicant would like to extend the garage into the existing front yard existing non-conforming set back area by four (4.0) feet by ten (10.0) feet. She testified it is very de minimus one story addition.
- The addition will not block light, area or view from street.
- Photograph from middle of the street presented showing houses are in alignment and sight lines will not be blocked.
- A single garage door will be installed on the new garage, although it will be somewhat larger.
- Detriment is that it is front yard setback area, but benefit is that the house will be more in proportion and the additional will bring the home up to the characteristic of neighborhood and improve value.
- Board confirmed that there is an expansion of a pre-existing, non-conforming set back and will extend about one (1.0) foot beyond front bay window. Ms. Cecere agreed.

Chairman Backfisch then asked for comments or questions from the public for the Applicants. No comments or questions were presented.

Chairman Backfisch then asked if any members of the public wish to offer testimony or make a statement for or against the Applicants. None was presented.

Chairman Backfisch then asked if there were any other members of the public who wished to offer any evidence in this case, present any statement or testimony in the case. None was offered.

Chairman Backfisch closed the hearing on motion by Mr. Schott, seconded by Mr. Shannon.

Board members then discussed the application.

Chairman Backfisch summarized the application. Motion was made by Mr. Schott and seconded by Mr. McDonnell to approve the application as presented and it was approved unanimously. The Board found that the variance is to be allowed and agreed to provide the requested relief to the front yard setback variances.

2. Z15-29 Giuseppe & Jacqueline Chirico, 36 Johnson Ave, Block 1803 Lot 6, R-4 Zone District

Seeks N.J.S.A. 40:55D-70C variance to install a prefabricated shed. The applicant has placed the shed with a rear yard setback of one(1) foot whereas a minimum of 5' is required. Section 20-5.4c3.

Board Secretary acknowledged that service provided by the Applicant was acceptable.

- Larry Wiener, Esq. swore in applicants Jacqueline Chirico (“Witness 1”) and Giuseppe Chirico (“Witness 2”) at 36 Johnson Avenue.
- Larry Wiener, Esq. explained the process to the Applicant. He stated that the applicant needs to explain to Board what work is being proposed, why that work will need a variance, why the variance should be granted and why if the variance is granted, it will not have an adverse or substantial impact on your neighbors
- Witness 1 stated that she has 15 photographs in total marked as Exhibit A-1.
- Witness 1 provided a statement. The home was bought in 2009 with a single car attached garage. Equipment for home maintenance was stored there no car fit. Primary entrance and exit from home is through the garage. With a young child, they decided it was safer to move the equipment into a shed. They shopped for a visually pleasing shed, purchased it and had it installed. It is not

on a concrete slab. They did not obtain a permit because they did not know if was required. It was placed one (1.0) foot from the property line to maximize the small yard.

- Witness 1 added that it is visually pleasing – same color as home, shutters, etc. Also it does not encroach on light, air or visual space of neighbors.
- The Witness 1 asks that the board allow shed to remain in its present location.
- The Board asked if the shed is flush against the fence, but Witness 1 said it is set off the fence. The fence is their fence.
- The Board asked if there is any other location for the shed. Witness 1 responded that there are several large trees and a patio which prevent placement in other areas.
- Witness 1 also stated that flooding issue in their yard was addressed by having grading performed and trees planted.
- Witness 1 stated that they landed before the BOA because a neighbor called the Township to ask if a permit was issued, which had not been issued.
- The Board asked how far off the property line is the shed. Witness 1 did not know. Also, there is no fence permit on file (per Board Secretary), but Witness 1 stated that Gateway installed the fence and agreed to address any installation issues.
- The Board summarized that the home is in the Gardens section and there, the lots are small and by moving the shed more toward the middle will chop up the already small yard.
- The Board asked if gutters could be installed to prevent runoff onto the neighboring property.

Chairman Backfisch then asked for comments or questions from the public for the Applicants.

Peter Stricker, 34 Johnson Avenue. Neighbor to the left of the applicant. He stated that he did make the original complaint. The shed is up and there is a fence around the property and he wants to make sure that in the future nothing else will go up on the property since the properties are already non-conforming. The Board stated that the Board has not authority to ban future development. Mr. Stricker said he is not opposed to the shed.

Chairman Backfisch then asked if any members of the public wish to offer testimony or make a statement for or against the Applicants.

Chairman Backfisch then asked if there were any other members of the public who wished to offer any evidence in this case, present any statement or testimony in the case. None was offered.

Chairman Backfisch closed the hearing on motion by Mr. McDonnell, seconded by Mr. Shannon.

Board members then discussed the application.

Mr. Wiener asked if gutters could be installed so that the roof runoff is directly onto their property so that it does not run onto your rear neighbor's property and since there was no permit for the fence, perhaps address that now as a potential negative impact in the future on the sale of the property. Clear up the fence issue outside of this application. A current survey will confirm placement of the fence as well since there is testimony from the applicant that the fence is on their property

James Massaro commented that the photograph he has in his possession shows the shed is adjacent to the fence, but perhaps require a condition that the fence is on their property and that the shed is one foot off of the property line.

Chairman Backfisch summarized application. Motion was made by Mr. Malia and seconded by Mr. McDonnell to approve application as presented and it was approved. The Board found that the variance is

to be allowed and agreed to provide the requested relief to the rear yard setback variance, subject to certain conditions.

3. Z16-03 Chester & Coleen Barrasso, 23 Fairfield Ave, Block 1002, Lot 7, R-3 Zone District

Seeks N.J.S.A. 40:55D-70C variance to install an inground pool. The applicant has proposed a plan with lot coverage of 37.8% is proposed including patio, equipment and pool water surface, whereas 30% is maximum, (Section 20-5.4.)

Board Secretary acknowledged that service provided by the Applicant was acceptable.

- Larry Wiener, Esq. swore in applicants Colleen Barrasso (“Witness 1”) of 23 Fairfield Avenue and Keith Vetter, contractor, (“Witness 2”) 775 Middle Conference Turnpike, Pompton Plains.
- Larry Wiener, Esq. explained the process to the Applicant. He stated that the applicant needs to explain to Board what work is being proposed, why that work will need a variance, why the variance should be granted and why if the variance is granted, it will not have an adverse or substantial impact on your neighbors
- Witness 1 stated that she has a long, narrow property and would like to install a pool and patio. They have 5 year old twins.
- Witness 2 presented the proposed work and indicated that there will be a terraced property with a complete drainage system. Sketches and pictures were referenced. Tanks proposed to hold water. Two (2) 1,000 gallon, 6 foot around, 6 foot deep to collect runoff. A channel will be installed on the property with a drain to take the runoff into the tanks. Witness 2 testified he installs systems like this in Short Hills because soil there is clay.
- Mr. Wiener interjected that Witness 2 is not an engineer; therefore, any approval will need to be reviewed and approved by the Township engineer as to the efficacy of the design. The Board Secretary noted that she has signed and sealed drawings from an engineer.
- Witness 2 could not state if the calculation of runoff includes any stream run off. The Board agreed that is likely did not and should not.
- 7,633 sq ft total lot coverage increased to 9457 sq ft lot coverage. Existing coverage of 35% up to 37.8%.
- The Board asked about the catch basins. Witness 1 stated that currently the property is sloped down in the back so it naturally runs off the property.
- Witness 2 stated that the retaining walls along the side of the pool will direct the water toward the rear of the property.

Chairman Backfisch then asked for comments or questions from the public for the Applicants. No comments or questions were presented.

Chairman Backfisch then asked if any members of the public wish to offer testimony or make a statement for or against the Applicants. None was presented.

Chairman Backfisch then asked if there were any other members of the public who wished to offer any evidence in this case, present any statement or testimony in the case. None was offered.

Chairman Backfisch closed the hearing on motion by Mr. Schott, seconded by Mr. Shannon. Board members then discussed the application. James Massaro, Zoning Officer, commented that the application needs to be reviewed by Township engineer to confirm the design and confirm no grading permit or other variances are required.

Chairman Backfisch summarized application. Motion was made by Mr. Adriaenssens and seconded by Mr. Malia to approve application with conditions as presented and it was approved unanimously. The Board found that the variance is to be allowed and agreed to provide the requested relief to the lot coverage variance.

4. Z14-18, Joseph Santangelo, 108 Ravine Avenue, Block 802, Lot 3 R-4 Zone

Seeks N.J.S.A. 40:55D-70 c variances for hot tub be placed 0' feet from dwelling where 10' is required, a site plan approval, side yard setback for driveway whereas minimum 5' is required, 1 foot is proposed. (Section 20-23.g), side yard setback for easterly side of dwelling whereas 9.9' exists where 10' is required (20-5.4), front yard setback for front steps whereas maximum of 4' is allowed (section 20-5.4c2), and 6' exists and patio installed exceeds maximum coverage of 30% (section 20-5.4). Continuation from December 3, 2015.

Board Secretary acknowledged that experts for the Township at the hearing – Mr. Massaro, Ms. Green and Mr. Russo. She noted that Mr. Dolan will abstain from voting on the lot coverage issue as he missed that hearing.

- Larry Wiener, Esq. explained the process to the Applicant. He stated that the applicant needs to explain to Board what work is being proposed, why that proposed work will need a variance, why the variance should be granted and why if the variance is granted, it will not have an adverse or substantial impact on your neighbors
- Variances required were reviewed by Mr. Santangelo.
- The Board agreed that the variances required are steps, hot tub and driveway.
- March 8, 2016 memo (paragraph 6) from Mr. Russo is referenced. Mr. Stewart in attendance to testify for the applicant.
- Mr. Russo notes that an additional feature (patio) off the rear of the garage was observed on the most recent drawings submitted to the Board.
- Mr. Wiener reminded Mr. Charles Stewart about his being sworn in previously.
- Mr. Stewart original drawing dated 8/28/14 and latest revision 1/14/16 which is when the proposed pad behind garage. On 12/15 lot coverage calculation s added. Actually site measurements show 10.2 at side yard not 9.2 feet so that eliminated the variance.
- Exhibit A, Exhibit B and Exhibit C referenced and discussed showing paver patio and driveway.
- Riparian zone and reference in a report about NJ DEP approvals – a question was directed to Larry. The retaining wall in the rear of the property is within the riparian zone. Mr. Stewart stated that a “Permit by rule” which is a letter from NJ DEP which allows wall since this wall is in an already disturbed area. Nothing requested yet from NJ DEP.
- Clarification is that the retaining wall is more of a curb. But, Mr. Stewart clarifies that regardless of the height, it is NJ DEP regulated.
- Any approvals issued tonight will have to be conditional approvals – subject to NJ DEP action. Driveway and rear patio (pad behind driveway) not completed yet.
- Applicant has approval to build the driveway within five (5) feet of the property line.
- Mr. Stewart testified that the pad is 5 feet from the back and 5 feet from the side so it will not require a variance for setback.
- Fronts steps, location of hot tub and driveway being up to property line until it enters garage.
- It is asked if an existing non-conforming driveway can be extended. The Board notes that the applicant did not intend to abandon the non-conforming structure. Mr. Massaro commented on the applications. The applicant’s representative clarified that over the many meetings and hearings and four other zoning officers, the driveway was kept in place during construction with

the intention to replace it at the end. Now the applicant wishes to extend the driveway to the property line.

- Township planner referenced her letter of the same day as the hearing. Discussion about c1 hardship variance requirements and c2 flexible variance requirements.
- Mr. Massaro requested an updated survey from

Chairman Backfisch then asked for comments or questions/testimony from the public for the Applicants.

Driveway:

Thomas Kelleher, 110 Ravine and reminded that he is under oath from the prior hearing. Applicant seeks to obtain a variance to build a driveway up to the property line. Mr. Kelleher questions why it should be up to the property line, rather than keeping it off the property line as required by the town (which is 5 feet). The prior survey shows that prior driveway along the property line, but at the rear of the house it veers off the property line significantly. Mr. Mataloni does not dispute this prior layout. Mr. Kelleher responded that prior to the construction by the applicant, water from the applicant's property stayed on the applicant's property because of an existing curb. Now water runs onto Mr. Kelleher's property. Mr. Kelleher added that the old garage floor was much lower than it is. Now he estimates that it is about 18 inches to 24 inches higher.

The applicant clarified that curbing is to be installed adjacent to the driveway to keep water from draining onto Mr. Kelleher's property. Discussion continued about pitch of the driveway, planned grading and trench drain in front of the garage that drain to rear stream. Also, no gutters or leaders installed at the site since construction has stopped. Curbing will be continuous, with no breaks, along the common line with Mr. Kelleher's property. Mr. Massaro pointed out that it is not noted on the plan. The Board inquired if the applicant has any county approval to dump water into the stream.

Mr. Kelleher asked why the requirement is not 6 inches off the property line for the driveway. He said that the hardship was created by the applicant. The Board responded that the applicant's lot is a non-conforming lot.

Gordon Wickam, 106 Ravine Avenue, and is reminded that he is under oath from the prior hearing. Mr. Stewart previously suggested a drywell. He asked about capacity. He stated that he used to clean out the pipe on the applicant's property and when he stopped, he displayed photographs of significant water flooding onto his property. Photographs are shared with the applicant's counsel, Mr. Mataloni. He stated that in the past when the stream overflows, it used to flow over all of the properties to the street and now it does not. Photographs marked with the evening's date on them.

Chairman Backfisch then asked if there were any other members of the public who wished to offer any evidence in this case, present any statement or testimony in the case. None was offered.

Chairman Backfisch discussed application and the concern by the public of water runoff. Mr. Massaro suggested that Mr. Stewart could prepare a site plan with details showing the curbing and grading plan to alleviate any problems that the neighbors have raised and retaining wall details. Any permission requirements for the riparian zone will need to be addressed as well. Discussion whether a functional driveway may be installed without the need for variances. If the existing non-conforming driveway may be retained (re-installed with previous curbing 2/3 way on the one side), and extend it to the garage, then no variance needed. Mr. Stewart indicated that he can pitch the driveway toward the trench drain to alleviate concerns of neighbors. Mr. Wiener stated that he does not believe that the applicant abandoned or intended to abandon the driveway. Prior driveway about .3 front feet from the property line at the

street and then it runs to approximately 2.9 feet from the property line at the back of house and from there back cutting over 5.0 feet. The driveway will be pitched toward the trench drain. A new application for installing a driveway will be submitted by the applicant.

STEPS.

The steps were addressed at prior meeting. The steps encroached in the front yard due to the foundation height. It is 6 feet, instead of 4 feet. Raising the grade is not a viable option. Mr. Stewart pointed out the steps are farther back than the steps on the adjacent neighbor's homes.

The Board opened it to public comment or testimony. None was presented.

HOT TUB:

This issue was reviewed. The item is an accessory structure so it needs to be 10 feet from the principal structure. The Applicant needs a variance. The applicant stated that the outside panels will be replaced.

The Board opened it to public comment or testimony or evidence. None was presented.

The hearing was closed on motion of the Board and discussion ensued.

Chairman Backfisch summarized application. Motion was made by Mr. Malia and seconded by Mr. McDonnell to approve application as presented and it was approved by six members and disapproved by one member. The Board found that the two variances are to be allowed and agreed to provide the requested relief for the front steps and the hot tub.

INVITATION FOR PUBLIC DISCUSSION

Nothing presented for public discussion.

ADJOURNMENT

The meeting adjourned at 10:23 p.m.

Respectfully submitted,

Lynda Korfmann
Secretary to the Board of Adjustment