

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

June 9, 2016

A Public Meeting of the Board of Adjustment of the Township of West Caldwell was held on June 9, 2016 at 7:33 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, Mr. Adriaenssens, Mr. Rankin, Chairman Backfisch, Mr. Malia, Mr. Shannon, Mr. McDonnell

Members Absent: Mr. Schott

Advisors Present: Larry I. Wiener, Esq., Lynda Korfmann, Darlene Green – Planner from Maser Consulting, LLC, Kevin Boyer – Engineer from Maser Consulting, LLC

APPROVAL OF MINUTES:

The minutes of the May 5, 2016 meeting were approved unanimously by those members who were permitted to vote for the minutes.

The minutes of the March 10, 2016 meeting were approved unanimously by those members who were permitted to vote for the minutes.

The minutes of the April 7, 2016 meeting were approved unanimously by those members who were permitted to vote for the minutes.

The minutes of the February 4, 2016 meeting were approved unanimously by those members who were permitted to vote for the minutes.

MEMORIALIZATION OF RESOLUTIONS:

The Board of Adjustment unanimously approved the memorialization of the Resolution for application Z16-02 Goldberg Realty, 1048 Bloomfield Avenue, Block 1805, Lot 7, B-1 Zone District.

The Board of Adjustment unanimously approved the memorialization of the Resolution for the application Z16-04, Geremino & Julia Hathaway-Maioriello, 6 DeCamp Court, Block 2500 Lot 39, R-4 Zone District.

The Board of Adjustment unanimously approved a Resolution recognizing the efforts of the prior Board of Adjustment Secretary Tamara Bross.

HEARINGS

1.Z15-17 Patrick Carr and Teresa Carr, 13 Marshall Street, Block 301, Lot 8, R-4 Zone District

Seeks N.J.S.A. 40:55D-70C variances to construct two story addition and new deck. The Applicant proposes (a) a side yard setback for the addition of 8.2 feet, whereas a minimum of 10.0 feet is required (Section 20-5.4); (b) a rear yard setback for the new deck of 41'-11", whereas a minimum of 50.0 feet is required (Section 20-5.4); (c) a lot coverage of 50.58%, whereas the maximum permitted is 30.0% (Section 20-5.4).

The Board Secretary acknowledged that service provided by the Applicant was acceptable and the Chairman agreed that the Board had jurisdiction to hear the matter.

Present were applicants Patrick Carr ("Witness 1") and Teresa Carr ("Witness 2") and their architect, John Stern ("Witness 3"). Mr. Wiener swore them in.

Mr. Stern provided a brief overview of his credentials. He stated he has been a practicing architect for forty years and has appeared before land use boards in Bergen and Essex County. The Board had no questions for him regarding his credentials and accepted him as an expert (architect).

Witness #1 made a brief, general statement about the application noting that there were three variances desired in to construct the addition they want. Witness #3 continued the presentation and mentioned the three variances being sought. He referred to his letter of intent and to the "Carter" resolution pertaining to water runoff. He added that the applicant now would prefer to install a patio rather than a deck. The drawing shows that it may be either, but since the grade rises towards the rear of the property, the applicant would like a small deck component for a grill and then steps down to a patio. Witness #3 then discussed the discrepancy between his calculations and that of the Township Planner. He stated that the applicant is willing to accept the calculations presented by the Township Planner in his June 3, 2016 report noted as Exhibit B-3.

Chairman Backfisch suggested to Witness #3 that he should consider placing evidence on the record in support of the C1 variance to which Witness #3 responded that the driveway and sidewalk already account for 20% of the lot coverage leaving 10% for the house without considering the garage and deck. He noted that the applicant is attempting to preserve an existing tree in the rear yard. Due to a change in elevations and the location of the driveway, it lead him to design a 579 sq.ft. addition. House currently is about 800 sq.ft. with a small galley kitchen. The applicant would like to expand this area seeking nothing out of the norm. He added that the neighbors' setbacks and coverages offer similar challenges to meet the 30% lot coverage requirement.

The Board then asked questions of the applicant and their expert.

Mr. Dolan noted that neighbors appear to have 50 x 150 size lots and wondered how far back neighbors' properties (structures) go to side and rear yard. Witness #3 responded that some have garages pushed back farther so they have more driveway. He added that he did not document rear yards, but did look at front and side yards and referred to a page in his report which provides dimensions from foundations to side yards. He stated that rear yard is more of a hardship for the applicant in order for him to design to satisfy his clients' needs.

Mr. Dolan asked if he compared the completed development with the neighbors – the deck/patio, grade level – does not seem out of elements with the others. The hardship seems no different than the property around it. Witness #3 stated that neighbors have encroachments into side yard set back area and that the applicant wants an encroachment in the rear yard.

Chairman Backfisch stated that with a C1 variance, the applicant needs to show a hardship with the property. Witness #3 responded that some neighbors do not have garages, some have shorter driveways and that there are greater elevation issues with the applicant's property, more so than with other properties. Witness #2 added that they have a narrower, deeper lot; that many neighbors have built additions and currently, then have one bathroom in the home on the second floor and they wish to add a bathroom to the first floor. The current home is about 825 sq.ft. and with the second floor about 1,350 sq.ft.

Mr. Malia noted that homes #7 Marshall through #21 Marshall appear to be 50 x 150 lots, similar size, but with different placement of the home. Witness #2 agreed that their home is unusually small, perhaps 1,350 sq.ft. and with the additional maybe 1,900 sq.ft.

Mr. Wiener asked for a clarification if the proposed addition is to accommodate a multi generational living arrangement and the applicant agreed.

Mr. Rankin inquired if the first floor bathroom will be handicapped accessible. Witness #3 responded that is planned.

Mr. Adriaenssens asked if once the addition is constructed, will a neighbor be able to look into the addition from his home – will windows line up. Witness #2 stated no.

Witness #3 added that it is unfair that other have achieved circumstances because of flatter properties or less driveway since the net cumulative effect helps them whereas the applicant cannot due to trees and elevation. He stated that the building is 583 sq.ft and that the deck if it is not agreeable to the Board, perhaps a permeable patio with tree wells and planter boxes will reduce coverage. The applicant will give up the deck and patio if they must.

Mr. McDonnell asked how long the applicant had resided in the property and Witness #1 responded 18 years. He also asked what the lot coverage percentage will be with the completed building. Response from Witness #3 was 1,907 sq.ft. of improvement applied for in the application and for two floors with a total of 2,200 sq.ft. and the lot size is 7,500 sq.ft. Mr. McDonnell also said that with those figures, the lot coverage seems to be 54%-55% impervious coverage and Witness #3 agreed. It was added that currently there is about 40% lot coverage and Witness #3 agreed. A further question of the applicant was what will they do with the additional runoff water – where will it go. Witness #3 said that the applicant is amenable to neutralizing it.

Mr. McDonnell stated that the ADA bathroom shown on the preliminary drawings may need to take some space from another room and Witness #3 agreed, if necessary.

Mr. Shannon inquired about the deck and patio configuration. Witness #3 stated that the applicant wants a patio. The deck will be no more than 80 sq.ft. with steps onto the patio. He asked for 468 sq.ft. of total deck patio area and now only 80 sq.ft. of deck will be needed.

Mr. Dolan asked if the applicant was certain of what they wanted and Witness #3 responded in the affirmative. The only item not settled is whether there will be a second floor. Witness #2 stated that they want the addition, but are willing to give up on the patio and deck.

Mr. Malia noted that the deck now is to be 80 sq.ft. The patio is designed as 26' x 18' and the applicant agrees that they do want to have this space that is not occupied by deck, used for a patio.

Chairman Backfisch referred to drawing identified as SK-Survey and discussed the blue portion of that drawing.

Mr. Wiener confirmed that the Exhibits listed on the Evidence Markings were accepted into evidence – specifically Exhibits A-1 through A-13 and B-1 through B-3.

Chairman Backfisch then opened the meeting to public questions for the applicant or their expert. Debra Sloan, 16 Harding, rear yard neighbor was sworn in and asked about the location of the new air conditioning compressor. Witness #3 testified that it will remain in relatively the same location as it is now and will not be moved to the rear of the property close to her home. She also stated that she did not object to the addition, but believes that it is important to keep the integrity of all properties and allowing significant encroachments hurts everyone.

Township Professionals then were afforded an opportunity to speak and question the applicant and their expert. Ms. Green noted that there were many different numbers discussed and that it will be hard for preparing a resolution. Mr. Dolan asked about the square footage of other homes on the street and how they compare to this property – will the applicant’s property be the largest home on the street. Witness #3 stated that based upon his visual estimates, most other homes are 25% to 50% more than what the current home has.

Mr. Shannon inquired about side yard variance. It was noted by the Chairman that there is a pre-existing side yard set back condition of 2.4 feet.

Chairman Backfisch then opened up the hearing for public comments or evidence. None was offered.

On motion of Mr. Malia and second by Mr. McDonnell the hearing was closed and all evidence was submitted. All of the Board Members discussed their thoughts and opinions regarding the application. Mr. Backfisch called for a motion to approve the applicant. Mr. Shannon made the motion and Mr. McDonnell seconded it. Mr. Wiener interjected that any approval needed to be clarified on specifics. Discussion involved that the architect testified that there will be 2,107 sq. ft. just with the first floor addition and with the addition of a second floor addition, perhaps a cap of 2,500 sq.ft. total. Witness #3 was not certain of the calculations and could not agree at the time.

The Board decided to take a short recess.

When the Board came back on the record, Witness #3 agreed that any approval which limited the total square footage of the home at 2,200 sq.ft. would be acceptable. This figure would include first and second floor space. Any second floor space would be constructed over the existing first floor footprint with no overhangs. The first floor space was agreed at 1,407sq.ft. Ms. Green added that any approval should contain conditions that require the submission of drawings showing the second floor containing no more than 800 sq.ft. Also, the deck is to be no larger than 80 sq.ft. The total deck/patio area to be 268 sq.ft.

Motion to approve on these conditions was made and passed 6-1.

2. Z16-02, Rami Rizk, DMD & Aspen Realty Group, LLC, Block 803, Lot 19, B-1 Zone District

Seeks N.J.S.A. 40:55D-70d use variance for mixed occupancy as a conditional use in the B-1 zone to use as a dental office and 2 residential apartments. 40:55D-70c variances are also required for parking in non-residence zones, 90 degree stalls are required to be 10 feet wide by 20 feet deep, aisles for parking must

be minimum of 20 feet wide; lot area, lot depth and front yard setback and side yard setback; HVAC unit installation setback. Applicant is seeking preliminary and final site plan approval.

The applicant's attorney Michael Rubin, Esq. discussed the scheduling of a special meeting to hear this case. The Board and the Applicant agreed to schedule Wednesday, June 27, 2016 as the special hearing date with the hearing to commence at 7:00 pm. Mr. Rubin noted that notice of the meeting must be run in 2 newspapers a minimum of 48 hours in advance of the special hearing date (per the Open Public Meeting Act). Chairman Backfisch acknowledged that notice was effective and Mr. Wiener noted that no new notice needed to be given and that the matter will be carried to July 7, 2016 as well if June 29, 2016 does not work. The Board and the Applicant's attorney agreed that the Applicant's experts will speak directly to the Board's professionals (Ms. Darlene Green, Planner and Mr. Kevin Boyer, Engineer) to resolve and address any concerns.

Motion was made to end the meeting which was seconded and approved.

INVITATION FOR PUBLIC DISCUSSION

No public discussion was presented.

ADJOURNMENT

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Lynda Korfmann
Secretary to the Board of Adjustment