

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

June 29, 2016

A Special Public Meeting of the Board of Adjustment of the Township of West Caldwell was held on June 29, 2016 at 7:04 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 Schott, Chairman Backfisch, Mr. Malia, Mr. Shannon, Mr. McDonnell

Members Absent: Mr. Rankin

Advisors Present: Larry I. Wiener, Esq., Lynda Korfmann

MEMORIALIZATION OF RESOLUTIONS:

No resolutions were memorialized.

HEARINGS

1. ZB16-06 Rami Rizk, DMD & Aspen Realty Group, LLC, 627 Bloomfield Avenue, Block 803, Lot 19, B-1 Zone District

Applicant 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 with 2 residential apartments. 40:55D-70c bulk variances also are sought for the following requirements: parking within non-residential zones within 10 feet of the principal building and 10 feet of a property line; parking stall dimensions; parking aisle dimensions; lot area; lot depth; front yard setback; side yard setback; HVAC unit installation setback. Applicant also is seeking preliminary and final site plan approval.

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

Present was Michael Rubin, Esq., counsel for the Applicant; Rami Rizk, DMD, the Applicant; Chuck Stewart, Civil Engineer; Seth Leeb, Architect; and Paul Grygiel, Planner.

Mr. Rubin made a brief opening statement for the applicant mentioning the existing conditions on site, the variances sought and the proposed improvements. He reviewed the witnesses who were to testify.

The Board Secretary confirmed that property taxes had been brought current by the Applicant.

Witness #1 – Rami Rizk, DMD, 5 Raymond Boulevard, Parsippany, NJ

- The witness was sworn in.
- He explained he has a dental practice in Parsippany and Allendale. He would like to relocate his Parsippany practice to West Caldwell.
- He proposes to demolish the existing building and construct a new building since the existing building has a significant mold condition in the basement. The new building will

have his dental practice on the first floor and two (2) two-bedroom apartments on the second floor.

- The employees at the practice will be the witness, his wife (who is the office manager) and a dental assistant. He and his wife usually carpool to work so only 2 parking spaces should be needed for the employees.
- He intends to work Mondays (12-7) and Thursdays (8-5) in West Caldwell. He has no plans at this time to increase the number of employees or the hours of operation.

Board questions of the witness:

Mr. McDonnell inquired about the mold condition and discussed the flooding in the basement area.

Mr. Malia confirmed that the purpose for knocking down the building is to erect a new building. Mr. Rubin agreed and added that the current building is non-conforming and the new building will become conforming except for one parking space.

Mr. Adriaenssens inquired about whether the new foundation will prevent mold growth in the future.

Chairman Backfisch asked about the chemical used at the location and the Applicant confirmed local anesthetic, but no nitrous. The Applicant added that new digital x-rays do not produce radioactivity so no concerns in that area.

Mr. McDonnell confirmed that the property was purchase in 2013 through a foreclosure.

Mr. Schott inquired about the use of the building and was informed that the Applicant thought he could use it as is at first, but after working with his architect for several months realized that a new building was required.

Chairman Backfisch then asked for comments or questions from the public for Witness 1. No comments or questions were presented.

WITNESS #2 – Chuck Stewart, 320 Runnymede Road, Essex Fells, NJ

- Witness 2 was sworn in, presented his credentials, had no questions asked of him by the public and was accepted as an expert Civil Engineer.
- He testified about the site plan he prepared. He explained the lot area is 4,985 square feet in a B-1 zone. He discussed the topography of the property and the surrounding area. He described the proposed new building and parking configuration.
- He mentioned the existing sanitary sewer lines that exist in the area.
- He added that one wall mounted light, 14 feet high, on the building is to provide light in the parking area. The light intensity will be near zero at the property line.
- The parking spaces will be 9x18 and include double striping (hairpin striping) whereas the requirement is for 10x20 spaces.
- The aisle will be 22 feet wide whereas the requirement is 24 feet. He noted that the parking will be a little tight, but since there will be no retail use, in his opinion the parking area is a low impact area.
- He noted that the parking spaces will start about 4 ½ feet from the property line and run to be about 1 foot off the property line.
- He testified that if the parking lot was kept at the required set back distance, you only could create 3 parking spaces. He is proposing 9 spaces, one which will be a handicap space.

- He acknowledged that there is a mistake on the plans which note 11 parking spaces are needed. In fact, only 10 parking spaces are needed and 9 are proposed.
- He added that the building coverage has increased from approximately 35% to 40%. The impervious coverage has increased from approximately 50% to 92%. He noted that the storm water management proposed addresses the increase in coverage.
- He had a general discussion about square footage calculations, but he deferred to the architect.
- He reviewed the Maser Consulting letter dated 6/28/16 in detail – addressing most of the numbered items. Comments on page 3 – he reversed the lot depth and width and corrected same. Buffer areas were discussed. He proposed screen on Gray Street side of parking of evergreens and arborvitae plantings. A 10 foot buffer area is in the discretion of the Board between residential and commercial properties. If required here, 5 parking spaces will be lost. He noted signs for resident parking in the garage area. Item 6 – accessible path reviewed. Item 7 – 8 foot space for handicap van included. Item 8 – depressed curb addressed and sidewalk added. Item 9 – add a light along the sidewalk area in the accessible path with a motion sensor and shield to avoid spillage. Item 10 – same comments. Item 11 – evergreen plantings that are shaped as a narrow column, but since it is tight at the end, a 4 foot to 6 foot solid fence is agreeable to the Applicant to better shield headlight spillage. Item 12 – glare, same as prior response. Item 13 – trash area – wall along the property line to screen and spot grades will be added since there are a couple steps in the area. Item 14 and Item 15 - utilities to be located prior to construction. Item 16 and Item 17 – eliminate original type of storm drain system. Item 18 – seepage pit proposed and 100 year calculation on increase in impervious will be provided. Item 19 – storm water – testing of permeability will be completed prior to installation. Item 20 – survey – provided. Item 21 – snow removal will be off site. Item 23 – handicap van accessible. Item 24 – Soil conversation Application will be filed. Item 25 – location of downspouts will be shown. Item 26 – any other agencies will be notified (Essex County Planning Board already notified).

The Board asked questions of Witness 2:

Mr. McDonnell confirmed that the property is not located in a flood zone.

Mr. Adriaenssens inquired about the proposed sump pump.

Chairman Backfisch then asked for comments or questions from the public for Witness 2. No comments or questions were presented.

Witness #3 – Seth Leeb, Architect, 1719 Rt 46 East, Parsippany, NJ

- Witness 3 was sworn in, presented his credentials, had no questions asked of him by the public and was accepted as an expert Architect.
- He evaluated the existing conditions. He noted there is no standing water in the basement, but the basement and entire first and second floor walls are constructed of cinder block. There is mold in the basement and there are structural issues. The first floor was damaged from the second floor leaking pip. The kitchen on the first floor was removed. The current structure cannot be made energy efficient. All of these factors let him to conclude the building should be demolished.
- He referred to exhibits V-1 and V-2 dated 3/29/16 and discussed the views depicted.
- New exhibit A-13 was introduced which was a color rendering of the proposed project.
- He discussed the deck on the second level and the set back design to accommodate the two air conditioning compressors for the second floor.
- He explained that only authorized personnel will be able to access the deck area or the attic area.
- The ground HVAC units will service the commercial space and the common area space.

The Board asked questions of Witness 3:

Mr. Malia inquired about certain apartment dimensions (bathroom 9'x5') and closet for stackable washer.

Mr. McDonnell discussed sprinkling of the entire building. He also asked about visibility of the deck units from the adjacent house. Witness 3 responded and provided estimated calculations that the second floor of the adjacent house would be lower than the deck and the AC units would not be visible.

Mr. McDonnell asked about the water table and Witness 3 responded he was unaware of the information, but stated he worked with other properties to eliminate water infiltration.

Mr. Malia discussed the sump pump.

Mr. McDonnell inquired about the analysis performed by the Applicant prior to purchase.

Mr. Dolan confirmed figures with Witness 3.

Ms. Green, the Township Planner, noted that there was a closed "study" in one apartment that could be converted to a bedroom. Witness 3 agreed that the Applicant would not object to removing the wall and doorway into the room and rename it a "study area".

Chairman Backfisch then asked for comments or questions from the public for Witness 3. No comments or questions were presented.

The Board paused the meeting at 9:04 pm and resumed the meeting at 9:15 pm.

Witness 4: Paul Grygiel, 33-41 Newark Street, Hoboken, NJ.

- He was sworn in, presented his credentials, had no questions asked of him by the public and was accepted as an expert Planner.
- He provided his planning analysis of the property. He reviewed the property conditions and the surrounding properties.
- He discussed the proposed development. He noted that the existing structure has non-conforming conditions: use, property line set backs, parking.
- Modest office proposed on first floor; upper floor apartments; rear parking which is shielded by the new building.
- The Applicant has attempted to reduce the non-conformity with only remaining non-conformity being parking.
- Witness 4 referred to Coventry Square case and discussed positive and negative criteria for the "d" variance. He noted that the proposed use of the property can fit on the property despite one parking space. He noted on street parking is available. He stated that the parking demands have been met and reasonable accommodations made. He noted no negative criteria. He opined that the proposed work is reinvestment in the property and the community.
- Witness 4 then discussed the "c" variances. He asserted that the variances requested qualify as "c1" and "c2" variances. C1 is hardship – size, shape, topography of the property. C2 benefits outweigh the detriments and the development promotes the intent of the land use laws. presented his credentials, had no questions asked of him by the public and was accepted as an expert.
- He indicated that he believes that it is better to have close to adequate parking than more buffer area. The fence helps with the buffer. Also the existing residential building is approximately 13'-0" feet off the property line.

- He sees no negative criteria – no substantial detriment to the public good. The design of the building mitigates any concerns.
- The AC variance was discussed in detail and he stated that Section 20-21.11 is the applicable section and that although this section disallows AC in the front ½ of a property’s side yard, the proposed AC is not in the side yard as it is set back from the edge of the building in an alcove. Definitions of yard limit line and side yard reviewed.
- Coverage definition also reviewed. The Township ordinance requires coverage to be based upon the ground floor area (see footnote 7 of Bulk Table). Definition of floor area reviewed too (see 18.a.5). A garage or in this case, private garage, is excluded for the calculation of floor area. Thus, the Applicant’s calculation of 28.8% is accurate.

The Board asked questions of Witness 4:

Ms. Green was satisfied with the testimony from Witness 4.

Mr. Dolan inquired about neighboring properties and their parking configurations.

Witness 4 agreed that there would be private garbage pick up.

Chairman Backfisch then asked for comments or questions from the public for Witness 4. No comments or questions were presented.

Chairman Backfisch then asked if there were any members of the public who wished to offer any evidence in this case, present any statement or testimony in the case. Ms. Elizabeth Ellmo came forward, was sworn in and testified that she is the adjacent neighbor at 6 Gray Street. She fully supports the application and stated that she feels that it will be a great improvement.

No one else appeared.

Ms. Green then mentioned that since the development proposed is commercial in nature, the Township ordinances require the Applicant to pay a development fee. She offered that in the alternative, the Applicant could consider designating one of the apartments as affordable housing in a deed restriction. Mr. Rubin indicated he would discuss it with his professionals and client. Mr. Wiener noted that the decision needs to be made prior to the memorialization of any resolution should the matter be approved. Mr. Rubin suggested possibly a Developer’s Agreement may be considered.

No further comments were made so Chairman Backfisch closed the hearing on motion by Mr. Adriaenssens, seconded by Mr. Malia.

Board members then discussed the application.

Each Board member reviewed the application and provided comments. Chairman Backfisch summarized application and stated he felt that the Applicant made their case and provided the testimony to meet the “d” variance and “c” variance criteria.

Motion was made by Mr. Malia to approve application as presented subject to the conditions articulated by Mr. Wiener and seconded by Mr. Shannon. The motion was approved by a vote of 7-0.

INVITATION FOR PUBLIC DISCUSSION

There was no public discussion.

ADJOURNMENT

The meeting adjourned at 10:29 p.m. on motion of Mr. Dolan, seconded by Mr. Adriaenssens.

Respectfully submitted,

Lynda Korfmann
Secretary to the Board of Adjustment