

The Regular Meetings of the North Caldwell Zoning Board of Adjustment were held on Thursday, November 16, 2023 and started at 7:30pm. The meeting was held in-person and via tele/video-conference.

Chairman Benjamin Curcio called the meeting to order and announced that the meeting was held in accordance with the Open Public Meetings Act and that notice of the meeting was provided in accordance with the requirements of Chapter 231, P.L. 1975. She noted that tele/video-conference participation instructions were provided to the public in advance of the meeting.

Roll Call indicated the following Board Members present: Ms. Drago, Mr. Salan, Mr. Wangner, Mr. Paulo, Ms. Zurlo and Vice Chairman Curcio. Also present were Lisa Thompson, Esq., Board Attorney, and Tami Michelotti, Zoning Board Secretary.
Absent: Ms. Hawley-Tsay, Mr. Kumar, Mr. Spindler.

Ms. Zurlo led the Pledge of Allegiance.

APPLICATIONS

Seth Wartski, 17 Meadow Lane (Block 606, Lot 8)

Danielle Federico, attorney from Chiesa, Shahinian & Giantomasi, P.C., came forward on behalf of the applicant regarding an existing recreational wall at 17 Meadow Lane. She stated that her client built the wall after misunderstanding the Borough code. She referred to the five (5)-foot limit on fences and retaining walls stipulated in Chapter 107-32:A-1. Ms. Federico explained that her client did not believe the height limit applied to the recreational wall which he did not associate with being a fence or retaining wall. She noted that he was unaware that the ordinance applied to structures as well until he received a notice of violation. He stopped work on the project upon receipt of the notice and it remains incomplete.

Ms. Federico addressed neighbors' concerns regarding the incomplete status of the recreational wall. She offered to reduce the height of the wall from the current height of 12-feet down to 8-feet in response to a conversation with a neighbor to the rear, Christopher Rohde. Ms. Federico offered that the Applicant would add landscaping or a mural-type of treatment or faux-wood addition to the exterior of the recreational wall to help disguise the appearance for the rear-facing neighbors.

Ms. Federico stated that Mr. Wartski sought variance approval for the existing recreational wall which is part of a Fenway Park replica baseball field which the Applicant built in the yard for residential, recreational use by his young children who play baseball. She stated that the Applicant and a Planner were present to discuss the variance and address questions. She confirmed that she submitted the affidavit of publication to the Board Secretary.

Chairman Curcio asked Ms. Federico about the placement of the mural which she confirmed would be on the front (resident-facing) of the wall but offered that a treatment could be installed on the exterior of the wall to disguise the wall for the neighbors.

Chairman Curcio asked for the Zoning Officer's notice. Ms. Federico noted that the letter directed that a permit was needed for fences/retaining walls. She added that the Applicant did not realize the recreational wall structure would be considered to be a fence or retaining wall. She stated that the Zoning Officer's letter referenced 107-32:A-1 by which no fence, structure or wall should be more than five-feet in height in residential districts. She restated that the Applicant offered to reduce the height to eight-feet. Ms. Federico did not dispute or appeal the Zoning Officer's determination. She stated that she believed the recreational wall to be a structure and not a fence which is addressed in the code; therefore, a variance application was filed for an eight (8)-foot fence where five (5)-feet is permitted.

Chairman Curcio stated there is confusion of whether the recreational wall is a fence, for which a height variance would be required, or a structure, for which a setback variance may be required. Ms. Federico stated that the wall is a structure and not a fence. She referred to photos submitted with the application. Mr. Paulo stated that a 15-foot setback from the rear yard property line is required for structures. Ms. Federico added the rear-yard setback variance request to the Application. She stated that the public notice included language regarding the possible need for additional variances.

Mr. Paulo noted that the property currently exceeds the impervious coverage maximum and asked if an impervious coverage variance was also sought. Ms. Federico stated that the planner noticed the overage of which her client was unaware. She stated that the Applicant's parents own the home and he has lived there since 2019, but that Mr. Wartski was unaware of the overage and was not responsible for the addition of impervious coverage. She noted that the recreational wall only accounts for 170 square feet of the 791 square foot impervious coverage overage. Mr. Paulo noted that a variance would still be required.

Mr. Paulo noted that the recreational wall is visible from the front yard which contradicts the description in the application. He asked if additional screening, i.e. landscaping, could be added to the front yard. Ms. Federico stated that the Applicant will accommodate the neighbors' concerns.

Ms. Drago asked for the purpose of the structure. Ms. Federico stated that the wall is for recreational purposes for his children. Ms. Drago asked if the offer to reduce the wall height was in response to the Zoning Officer's request. Ms. Federico stated that the reduction was in response to a conversation with neighbor Christ Rohde who lives to the rear of the subject property, beyond the PSE&G right-of-way. Ms. Federico described Mr. Rohde's concern for the lack of vegetative cover in the winter months which would expose the appearance of the wall. She stated that the eight-foot height was agreed upon in response to Mr. Rohde's request. Ms. Federico stated that the vegetation is significant in the summer which disguises the wall. Ms. Drago asked about the material of the recreational wall. Ms. Federico stated that the wall is plywood and 2x4 wood pieces.

Ms. Federico called on the Applicant's planner. Mr. TJ Ricci, project manager at Stonefield Design in Rutherford was sworn in. He stated that he is a licensed Planner in New Jersey and has testified before over 65 boards. The Board members accepted Mr. Ricci as an expert witness. Mr. Paulo noted his prior business relationship with Mr. Ricci which is no longer active. Mr. Paulo stated that his former relationship would not impact his ability to be impartial regarding this Application.

Mr. Ricci presented an aerial exhibit dated November 16, 2023 of the property on which a single-family home sits in the R-1 zone. He noted the unique nature of the application for which setback relief was requested for the accessory structure. He noted that the recreational wall is 12-feet where 5-feet is permitted. Due to the planned reduction in height, Mr. Ricci stated that the variance sought would be for an 8-foot wall. He added that the 15-foot setback requirement would apply if the recreational wall is considered an accessory structure; therefore, setback variance approvals would also be sought. He noted that the wall currently sits 3.3 feet from the rear yard property line where 15-feet is required and 13.7 feet from the side yard property line where 15-feet is required. He added that the accessory structure is within ten feet of the principal structure and, therefore, non-compliant.

Mr. Ricci reviewed the intention to mitigate the existing wall height by reducing it to eight-feet and by adding screening to blend it with the surroundings. He acknowledged that the reduced wall height would still exceed the maximum height permitted by ordinance but stated that the wall abuts the PSE&G right-of-way and not another residential property. Mr. Ricci likened the height of the recreational wall to other recreational structures such as swing sets and sheds which are often up to 15-feet in height.

Mr. Ricci confirmed that the neighbor who suggested the wall reduction to eight-feet owned the property at 41 White Oak Drive. He confirmed for the Board that he has worked on applications for walls, fences and golf netting, of which 20% of the applications were residential in nature. Mr. Ricci confirmed for the Board that the existing recreational wall had been in place for approximately one year.

Chairman Curcio asked if reduction of the wall to five-feet would eliminate the need for a variance. Mr. Ricci noted that the setback requirements may still trigger the need for a variance if the recreation wall is determined to be a structure as opposed to a fence. He noted that "recreational wall" is not defined in the ordinance and is a hybrid of a fence and a structure. Ms. Federico referred to the Zoning Official's interpretation of the wall as a fence based on the reference to Borough Code 107-32:A-1.

Chairman Curcio referenced Board Engineer Paul Ferriero's memo dated October 17, 2023 in which the recreational use of the wall could allow the Board to consider the wall as a structure, for which setback requirements exist. Ms. Federico noted that the Applicant would seek any variances that the Board deemed appropriate, including impervious coverage.

Chairman Curcio noted the confusion between the Applicant's request for a height variance for the wall as a fence vs. a setback variance for the wall as a structure. Chairman Curcio added that, if the recreational wall was to be considered a fence, then the ordinance prohibiting more than 50% solid fencing must be considered. Mr. Paulo read Borough Code 107-32:A-4 regarding solid construction of fences and asked if there was a gap between the solid wall and the grade. Mr. Ricci stated that he believed there was no gap.

Mr. Wangner referred to Board Engineer Paul Ferriero's September 21, 2023 memo in which he questioned the field as an accessory structure and asked if there was a use variance application submitted for the field. Ms. Federico stated that the field should not be considered an accessory structure as its accessory use is incidental to the single family dwelling, although unique, and is used for recreation by the resident and his children. Ms. Thompson stated that the ordinance identifies pools and tennis courts as accessory structures as they have structures incorporated within such as filters and

impervious courts. She added that the Applicant's field is grass and sand and is not identified in the ordinance.

Mr. Wangner asked if there is lighting or sound provisions planned for the field. Ms. Federico stated that the Applicant has no intention to light the field as the children are young with early bedtimes. Mr. Salan asked about the functionality of the wall and if it was simply aesthetic or required for recreational use. Mr. Ricci stated that the wall was not required but was customary for baseball fields to have as a goal for home runs. Mr. Ricci stated that it would not meet hardship criteria. Ms. Drago asked if the Applicant's purpose for the wall was to keep balls in or to hit balls "over the fence". Ms. Federico offered that her client was available to answer the question.

Ms. Zurlo asked if the Applicant would engage a landscaper for the addition of buffers and requested a landscaping plan. Ms. Federico stated that Mr. Wartski has actively engaged a landscaper and has been researching solutions to disguise the wall. Mr. Paulo noted that the wall is visible from the front of the property. Ms. Federico ensured that proper landscaping would be added to hide the wall.

Chairman Curcio requested the benefits or detriments of the deviation. Mr. Ricci stated that the unique accessory in the single-family yard benefits the resident's recreation.

Ms. Federico requested that Mr. Ricci be permitted to return for additional testimony if needed.

Ms. Federico called on the Applicant, Seth Wartski. Mr. Seth Wartski of 17 Meadow Lane was sworn in. Mr. Wartski confirmed that his parents have owned the property at 17 Meadow Lane since 1999 and he moved back into the home in 2019. Prior to that, his sister lived in the home for five to seven years. He stated that the intent of the wall was to provide outdoor fun for the children taking a trip to Fenway Park. Mr. Wartski described researching a similar model at a home in another state on which he based the field dimensions. He stated that he worked with a landscaper to construct the grass and dirt field and plywood wall.

Mr. Wartski described his conversation with neighbor Chris Rohde who requested a reduction of the wall to eight-feet. He stated that he did not believe a variance was needed prior to receiving the violation notice as he thought the rules were not applicable to his construction. Mr. Wartski stated that he spoke with the Zoning Official on site who termed the wall as a "recreational wall". He confirmed that he ceased construction after the Notice of Violation was received. Mr. Wartski stated that he planned to add a mural to the inside of the wall to depict a Fenway Park-like scoreboard and a "North Caldwell Knights" championship banner.

Ms. Drago asked the purpose of the wall for Mr. Wartski's children. Mr. Wartski stated that the wall provides the visual for hitting home runs. He noted that the children are small, ages 10, 7 and 4, and he did not anticipate many balls going over the fence. He confirmed that any balls hit over the wall would be retrieved.

Ms. Zurlo asked if outdoor lighting was planned. Mr. Wartski confirmed that no lighting would be installed. Mr. Salan asked if a hardship would be incurred without a wall. Mr. Wartski stated that his younger children would be sad but that he would accommodate the Board's decision.

Chairman Curcio asked about the intention to add a mural to the fence. Mr. Wartski described the multi-color scoreboard design to mimic Fenway Park and the Knights banner. He estimated that the scoreboard would be approximately 30-feet wide and would incorporate five to six colors. He confirmed that the wall is currently visible from the front yard and street but that he planned to plant arborvitae to disguise it.

Hearing no other questions from the Board, Chairman Curcio opened the hearing to questions from the public.

Barbara Barth, 37 White Oak Drive – Ms. Barth asked how the additional landscaping would be added as the wall is currently only two to three feet from the property line. Mr. Wartski confirmed that he would work with the landscaper to find landscaping that would fit.

Glenn Fallivene, 43 White Oak Drive – Mr. Fallivene asked why the Applicant's disregarded the need to obtain permits. He asked how the 12-foot wall would be disguised. Mr. Wartski stated that he would work with the landscaper to find an appropriate solution.

Ken Barth, 37 White Oak Drive – Mr. Barth stated that the Applicant is making a broad request from the Board that lacks a plan. He disagreed with allowing the wall to remain, even at eight-feet. He stated that the wall is visible from the street. Mr. Barth confirmed that he has arborvitae around his pool except for the 150-foot rear property line which abuts the PSE&B right-of-way.

Barbara Barth, 37 White Oak Drive – Ms. Barth stated that the wall is visible year round from the rear of her yard and from the street. She stated that the wall would be visible even if it was five-feet in height. She stated that the wall was not necessary for the Applicant’s children to have fun outdoors and suggested it be replaced with netting that would not impact the neighbors’ view.

Alisa Teodoro, 15 Meadow Lane – Ms. Teodoro stated that the recreational wall is an eyesore and stated that it disrupts the beauty of Meadow Lane. She added that she does not want the ballfield next door and that she does not see Mr. Wartski’s children playing on the field. She stated that all residents should abide by the ordinances.

Ms. Federico requested an adjournment to the December meeting. Ms. Thompson confirmed the next meeting would be held on December 13, 2023 for which renote was not required.

RESOLUTIONS

Boyle, 13 Hamilton Drive East (Block 1400, Lot 7)

MATTER OF NEIL AND JENNIFER BOYLE

Decided: August 16, 2023

Memorialized: November 16, 2023

WHEREAS, Neil and Jennifer Boyle (hereinafter referred to as the “Applicant”) have 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 13 Hamilton Drive East, also known as Lot 7 in Block 1400 in order to construct an addition and deck to the rear 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 August 16, 2023; and

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

1. Jennifer Boyle, property owner and Applicant, and Julie Anne Cecere, licensed architect, were sworn in. Ms. Cecere was accepted by the Board as a qualified expert.
2. Ms. Cecere described the Application, stating that the Applicant seeks a variance for impervious coverage where 30.8% is proposed and a maximum of 30% is permitted pursuant to Section 107-21(D)(9) of the Borough Code.
3. Ms. Cecere testified that the Applicant’s proposal meets both the C1 and C2 criteria of the Municipal Land Use Law. Regarding the C1 criteria, Ms. Cecere stated that the lot is substandard in size as noted on Sheet A1 of the Applicant’s plans. Ms. Cecere added that a drywell is proposed based upon the 760 square foot addition.
4. Ms. Cecere addressed the rear elevation of the proposed addition, stating that the addition will be set on piers with lattice between the piers. Crushed stone would be added under the deck. She confirmed that no slab would be added under the deck or addition.
5. Ms. Cecere reviewed the Borough Engineer’s letter of July 20, 2023 and acknowledged the Board Engineer’s that a signature line will be added to the plans as requested.
6. Ms. Cecere stated that the existing lot is undersized (21,513 square feet where 21,875 square feet is required). She added that structure has a pre-existing, non-conforming side yard setback (8.2 feet on the right side where a 25-foot setback is required). She confirmed that the proposed improvements will not encroach any further into the existing setback.
7. Ms. Cecere described the existing home as having a living area with a raised home office on the first floor. She noted that the lot slopes down from the street to the rear yard which creates a partial walkout basement with windows. She described the existing difficulty in accessing the rear yard from the first floor. She reviewed how the proposed addition would improve access to the yard and deck from the living room and proposed family room.
8. Ms. Cecere noted that a lift would be added to the deck to provide access for the Applicant’s special-needs child to the yard, thereby improving his quality of life. Ms. Cecere described the cumbersome access from the garage to the basement. She added that the existing covered deck in the rear is dilapidated and dangerous. She presented a rendering of the proposed addition and deck.

9. Ms. Cecere stated that the majority of the proposed addition is located behind the existing home and would not be seen from the front of the property with the exception of new dormers over the existing garage.
10. Ms. Cecere noted that the existing structure is a ranch-style home with a raised floor to the family room. She added that the roof is not raised, causing limited height of the family room. Ms. Cecere stated that the proposed plan would allow for the family room to have full height, natural lighting, and greater functionality while improving the curb appeal of the home.
11. Ms. Cecere described other homes in the neighborhood as varying in size, with some similar to the Applicant's home with respect to gable-facing roof lines. She added that the proposed plan is appropriate in character with the neighborhood and would not be overbuilt. She summarized that the benefits of the proposed plans outweighed any detriments with no ill effects on the neighbors.
12. Ms. Cecere stated that access to the deck would be possible from both the family room and the dining room under the proposed plan. She noted that the proposal would bring the home up to current day standards of living with the family room on the main level with access to the deck. She added access to the outdoor deck would also provide an opportunity for healthy outdoor living.
13. In response to questions from the Board, Ms. Cecere described the current porch and deck, stating that a small door from the dilapidated porch leads down to the yard. From there, stairs lead down to the garage or to the basement or to a door leading outside.
14. In response to questions from the Board, Ms. Cecere stated that the addition provides that resident with special needs compliant use of the yard and provides another egress from the home in case of an emergency. Ms. Boyle noted that currently the only exit is through the front door or by carrying her child down the rear stairs. Ms. Cecere confirmed that the proposed plans provide an additional ADA-compliant exit with flush thresholds in the doorways for wheelchair access.
15. In response to questions from the Board, Ms. Cecere confirmed that the setback for the wheelchair lift will be 23-feet but that the lift is within the existing non-conformity.
16. In response to questions from the Board as to any adjustments that could be made to the proposed plan or the existing conditions to decrease the lot coverage to the maximum allowed, Ms. Cecere stated that the circular driveway has a ramp to the front door, preventing any decrease in the driveway coverage. In order to comply with the Borough ordinance, Ms. Cecere stated that the deck would need to be decreased by half which would limit the maneuverability of the resident's wheelchair. She added that a table and chairs and hot tub could also not be accommodated with the decreased deck size. She conveyed the Applicant's desire to positively impact their son's quality of life without overbuilding.
17. The meeting was opened 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 addition and deck proposed by the Applicant to reflect a total impervious coverage of 30.8%, presenting a limited increase in impervious coverage, and that any potential negative impact to drainage in the area shall be addressed by the installation of a dry well.

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, Mr. Salan made a motion to accept the Application as presented, seconded by Ms. Hawley-Tsay, the Board unanimously voted to grant the Application of Neil and Jennifer Boyle to reflect a total maximum impervious coverage of 30.8%, A vote was taken and the motion was approved with four (4) affirmative votes from Mr. Salan, Ms. Hawley-Tsay, Mr. Paulo and Ms. Drago.

Mr. Salan made a motion to approve the resolution, seconded by Ms. Drago. Mr. Wangner, Ms. Zurlo and Chairman Curcio abstained. Said motion passed with three (3) affirmative votes and three (3) abstentions.

Approval of Minutes

Ms. Drago made a motion to approve the August 16, 2023 meeting minutes, seconded by Mr. Paulo. Mr. Wangner, Ms. Zurlo and Chairman Curcio abstained. Said motion passed with three (3) affirmative votes and three (3) abstentions.

There being no further matters to come before the Board, Mr. Salan made a motion to adjourn the meeting, seconded by the Board. Said motion passed unanimously. The meeting was adjourned at 8:54p.m.

Respectfully Submitted,


Tami Michelotti
Zoning Board Secretary