

Zoning Board of Adjustment
Borough of Caldwell
24 Smull Avenue
Caldwell, New Jersey 07006

DR Project No.: 12240-001
October 16, 2024

**Re: JUSTIFICATIONS OF VARIANCES
PROPOSED EXPANSION OF NON-CONFORMING 2-FAMILY DWELLING
61 SMULL AVENUE (BLOCK 24, LOT 19)
BOROUGH OF CALDWELL, ESSEX COUNTY, NEW JERSEY**

An application has been filed for the above noted property with the Caldwell Zoning Board of Adjustment approval of a Preliminary and Final Site Plan for approval of a “d(2)” expansion of a non-conforming use variance and bulk “c” variances for minimum lot area, minimum lot width, minimum front yard setback, and maximum number of stories. The subject property is located in the RA Residential Zoning (“RA”) District.

PROPERTY DESCRIPTION

The subject property is an interior lot identified as Tax Lot 19 on Block 24 and is located on Smull Avenue, between Myrtle Avenue to the north and Ward Place to the south. The subject property has a total lot area of 8,102 square feet (0.186 acres), a lot width of 54.25 feet fronting Smull Avenue and is currently improved with a 2.5-story, 2-family residential dwelling.

PROJECT DESCRIPTION

The purpose of this application is to alter the existing floor plan and expand the attic to create a new master suite, as well as the addition of an exterior rear deck and new parking configuration. The existing first floor will be reconfigured to create a 2-bedroom/1-bath unit. The second floor and newly expanded attic will be reconfigured to create a 2-bedroom/2-bath unit. Overall, the proposed changes will increase the property from 3-bedrooms to 4-bedrooms. Exterior improvements include a new roof and roof line, new windows and siding, and removal of an existing shed and patio, and new driveway configuration with permeable paver parking area.

“D(2)” EXPANSION NON-CONFORMING USE

The Board has the power to grant ‘d(2)’ variances for the expansion of lawfully created non-conforming uses “in particular cases and for special reasons.” Special reasons for a ‘d(2)’ variance may be found by the Board if it determines that the grant of the variance would minimize the existing nonconformity and make the use more compatible with the surrounding area. In *Burbridge v. Mine Hill Tp.*, (568 A.2d 527 (N.J. 1990)) the Court

determined that aesthetic improvement alone could be a special reason that warrants a 'd(2)' variance. However, the Court also held that "mere beautification" would not be a sufficient to prove special reasons, but that the aesthetic improvement must relate to the overall visual compatibility of the use with the surrounding area and be shown to promote the general welfare of the community.

POSITIVE CRITERIA:

Minimize existing non-conformity – As part of the proposed project, the existing shed and patio will be removed and the driveway will be altered which will reduce the existing non-conforming lot coverage from 50.4% to a conforming 49.5%. The project will also alter the parking layout on the property to create four (4) parking spaces in conformance with §250-20.

Compatibility with surrounding area – The proposed project seeks to alter and expand the existing non-conforming 2-family dwelling. While there are various interior enhancements proposed which will create living spaces more suitable to modern lifestyles, the project will result in the net gain of only one (1) bedroom, for a total of 4 bedrooms within the existing dwelling. The number of bedrooms proposed is similar to a single-family home.

Aesthetically, the proposed project is consistent with the character of the surrounding residential neighborhood, which is comprised of a wide variety of architectural styles and roof lines. No two buildings in the neighborhood is exactly alike, with many structures likely altered and enlarged with additions over the years. While primarily the neighborhood is 2-story in character, there are several properties which appear to have occupiable third stories, including: 56 Smull Avenue, 54 Smull Avenue, 5 Myrtle Avenue and 114 Hatfield Street. Similar to the proposed project most of these third stories are characterized by dormers set within a pitched roof, which reduces the visual impact of the additional story and keeps the overall building height within the 35 feet permitted in the RA District.

Furthermore, the subject property is one of three existing 2-family homes along this block. The two other 2-family homes along Smull Avenue, 55 Smull Avenue and 57 Smull Avenue properties, each have two primary entrances from the street. The proposed project has been designed to appear as a single-family residence from Smull Avenue, with a single exterior entrance to both units from the front porch.

NEGATIVE CRITERIA:

Approval of the requested variance can be granted without substantial detriment to the public good. The proposed project seeks to expand an existing two-family dwelling, which has been occupied and functioning on the subject property. The proposed project will result in a net increase of one (1) additional bedroom, for a total of 4 bedrooms, which is consistent with the bedroom count for a typical single-family dwelling. The overall height

of the project will remain below the maximum permitted height for the RA District, with the proposed change to the roofline consistent with other single-family residential structures on the block.

Approval of the requested variance will not substantially impair the intent and purpose of the zoning plan and ordinance. The proposed project seeks to maintain the existing two-family residential use of the subject property in a residential district. The project maintains the existing setbacks of the structure, with the proposed new roofline to be below the maximum permitted height in the RA District. Exterior improvements will reduce the lot coverage bringing the subject property into greater conformance with the RA District standards.

BULK VARIANCES

Lot Area and Lot Width – The subject property has existing non-conforming lot area of 8,102.16 square feet where a minimum of 10,500 square feet is required and existing non-conforming lot width of 55.82 feet where a minimum of 100 feet is required. The strict application of the minimum requirements would be a hardship as the property owner does not own any adjoining property, all adjacent parcels are occupied by existing single-family homes, and any attempt to acquire additional land to bring the subject property into compliance would render adjacent parcels into non-compliance. The proposed project maintains the building footprint of the existing dwelling and is able to reorganize the parking area to provide sufficient number of parking spaces for each dwelling unit.

Front Yard Setback – The existing structure has a non-conforming front yard setback of 23.4 feet where a minimum of 35 feet is required. The proposed addition would increase the square footage of the building on the third floor within the required front yard setback area, which triggers the need for additional variance relief. No portion of the proposed project would be closer to the street than the existing building façade. The aesthetic benefit of permitting the third story to be in line with the existing façade outweighs the detriment of the reduced setback.

Side Yard Setback and Combined Side Yard Setback – The existing structure has a non-conforming side yard setback of approximately 3 feet at the northwest corner of the existing structure, where a minimum of 10 feet is required. The proposed addition would increase the square footage of the building on the third floor within the required side yard setback area, which triggers the need for additional relief. The existing structure is not parallel to the northern side lot line, which leads to a setback which varies from just over 3 feet to 11 feet at the northeast corner of the building. The proposed addition is at the front of the building where the side yard setback is at its greatest. No portion of the proposed project would be closer to the side lot line than the existing building façade. The

aesthetic benefit of permitting the third story to be in line with the existing building façade outweighs the detriment of the reduced setback.

Number of Stories – The project proposes to expand the existing attic to create an additional bedroom. The proposed addition results in the need for a variance for the number of stories, where 3 stories are proposed and 2.5 stories are the maximum permitted. The Borough of Caldwell’s zoning ordinance does not define a “story” or a “half-story”. In the absence of a definition for a half-story, a variance for an additional story is sought.

For comparison, the International Building Code (IBC) defines a half-story as having a intersection of the roof and an exterior wall no more than three feet above the floor level and a total floor area of less than 50% of the floor area of the story below.

The project proposes approximately 240 square feet of occupiable space in the addition, which is approximately 26% of the existing second floor area. By the IBC definition the proposed addition would qualify as a half story, and be permitted under a maximum of 2.5 story requirement.

The design of the proposed addition also reduces the visual impact of the additional story. The project proposes to replace the entire roof. The new pitched roof line will be parallel to the street, with a dormer providing space for the proposed en-suite bathroom. The bulk of the new bedroom space will be set back from the front façade of the building and hidden within the gabled roof line. At the rear of the property, a new pitched roofline perpendicular to the street will cover the rest of the second floor with a peak that is well below the maximum permitted in the RA District.

The benefit of the additional half story of the building height outweighs the negligible detriment, as the overall building height is within the maximum height permitted by the RA District.

Furthermore, the proposed project advances the purposes of the Municipal Land Use Law (MLUL):

- Granting the requested variances will guide the appropriate use and development of the property in a manner that will promote the general welfare consistent with N.J.S.A. 40:55D-2.a. by allowing an appropriate expansion of an existing 2-family dwelling to create layouts consistent with modern living.
- The proposed project will provide adequate light, air, and open space; consistent with N.J.S.A. 40:55D-2.c by providing appropriate setbacks in line with the existing building facades.
- The project is proposing a use that is consistent with other 2-family dwellings located in the surrounding neighborhood, and therefore is promoting the establishment of appropriate population densities and

concentrations that will contribute to the well-being of persons, neighborhoods, communities; consistent with N.J.S.A. 40:55D-2.e.

- The proposed project will promote a more desirable visual environment through creative development techniques consistent with N.J.S.A. 40:55D-2.i. by developing a two-family dwelling which is aesthetically consistent with single-family dwellings in the neighborhood.

NEGATIVE CRITERIA

Granting the variances will not result in a substantial detriment to the general welfare. The project proposes expand an existing 2-family dwelling to create living spaces more suitable to modern lifestyles, and will result in the net gain of only one (1) bedroom, for a total of 4 bedrooms on the subject property. Overall, the proposed design is consistent with the predominate single-family character of the neighborhood, with a single entrance from the street and a roof line which diminishes the additional building height proposed.

Granting the variances will likewise not result in a substantial impairment to the intent and purpose of the zone plan or zoning ordinance. The proposed project will bring the subject property into greater conformance with the RA District requirements by providing 4 off-street parking spaces and reducing the impervious coverage. Furthermore, the proposed building height is well within the maximum height permitted and is consistent with the design and character of other single-family structures in the neighborhood.

The proposed project is consistent with the Borough's 2017 Master Plan Reexamination Report which recognized the benefits of multifamily developments while looking to balance new development with maintaining the suburban character of single-family homes.

"This Reexamination seeks to balance these two ideas so that any future development in the Borough does not adversely impact its historic character, smalltown scale and suburban charm."

(PDF pg. 12)

CONCLUSION

The requested variances are justified and meet the positive and negative proof standards and therefore can be granted. The applicant reserves the right to supplement the foregoing reasons with expert testimony at the Zoning Board of Adjustment Hearing.