

Borough of Caldwell
Zoning Board of Adjustment
Meeting Minutes
May 1, 2024

ROLL CALL: Ms. Sules, Ms. Corliss, Mr. San George, Mr. Porcello, Mr. Kurus and Mr. Irwin. Mr. Cosgrove, Ms. Reiter, and Mike Kobylarz from Alaimo Group (acting as Board Engineer for this application) were also present.

ABSENT: Ms. Giermanski.

STATEMENT OF COMPLIANCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

The minutes from the April 3, 2024 meeting were approved by the Board.

APPROVAL OF INVOICE:

T and M Associates invoice #SAB460324 dated 3/26/2024 for review of **Application Z23-002 183 Roseland Avenue** in the amount of \$5,229.75 was approved by the Board.

NEW BUSINESS:

Z23-002 183 Roseland Avenue, Gonnella Property Group, LLC

Block 55, Lot 2

Preliminary and Final Site Plan Approval

Carried from the April 3, 2024 Meeting

Mr. Donat, the Applicant's Attorney, stated that they would like to recall the architect for the project, Mr. Troia to provide additional testimony.

Mr. Cosgrove announced that tonight's proceedings were a continuation of the Board's hearing on the property located at 183 Roseland Avenue. The architect will be providing additional testimony. He was sworn in at the previous meeting and he still remains under Oath.

Mr. Troia stated that there was some discussion at the last meeting regarding what code requirements should be enforced for the design of this building. He reported that the proposal is considered an R-2 Use under Building Code, which designates it as a structure with more than 2 residential units. It would

be classified as a 5A or 5B Construction Type, depending on the Fire-Rating the client chooses for the building. He noted that all three units would meet the minimum separation for fire between each unit.

Residential properties that consist of no more than 3 units are exempted from ADA Compliance, including for walkways and parking stalls.

Mr. Troia stated that the project would fall under the IBC (or International Building Code) which is more stringent for fire separation with three-family structures.

Mr. Troia reported that according to Building Code, the structure is an existing 2 ½ story building. With the proposed addition, three stories are visible from the rear of the building, but by Building Code Standards, it would be classified as a 2 ½ story building because the basement is not considered above grade. The attic space is considered a ½ story. There is no intention to create habitable rooms in the attic area.

OPEN TO PUBLIC: (Questions for Mr. Troia's Testimony)

1. **Jill Neal, 187 Roseland Avenue, Essex Fells** stated that she had been researching the Borough's Codes and Zoning Ordinances. She stated that the zone that this property is located in does not allow basement apartments.

Mr. Troia responded that the applicant's planner would be able to address her question.

Caroline Reiter asked Mr. Troia to clarify his testimony regarding the height of the building. The Building Code does not consider the apartment in the basement a story?

Mr. Troia responded that it is really a "walk out basement", which is not completely under grade. There are guidelines under the IBC Code in which two points need to be met in order for a sub-grade level to meet the criteria to be designated as a story.

Ms. Reiter asked if any testimony would be provided with regard to lighting and refuse disposal?

Mr. Troia responded that testimony was provided in the previous meeting in which the applicant had agreed to add motion lights by the driveway. He stated that the Building Code does not trigger requirements for any additional lighting for parking. Additionally, he stated that he did not believe that the RSIS Standards required additional lighting either for this project.

The refuse area was determined to be located in the back left corner of the property. The applicant would offer to provide screening to the area by planting vegetation or installing a fence. He clarified that the area would allow enough space for both trash and recycling receptacles to be provided for the tenants. The applicant would make arrangements for the receptacles to be brought to the curb for the appropriate collection dates.

Ms. Reiter inquired about the location of the condensers for the Air Conditioning System.

Mr. Troia testified that there would be 3 condensing units, situated side-by-side. They would be placed near the basement apartment, left of the entrance door. They would be compliant with the Borough's setback requirements and would be properly landscaped for screening. The location for their proposed placement is currently a grassy area. Each unit would be approximately 9 sq. ft. for a total area of 27 sq. ft. for the condensing units area.

Mike Kobylarz, the Board's Engineer for this project, reported that the plans do not indicate any lighting in the rear of the property. He suggested that the applicant consider installing motion lights in that area as well. Tenants will need to be able to see clearly to transport their trash/recycling receptacles and to avoid any cars that may be trying to enter or exit the rear parking area.

Mr. Troia replied that the applicant would be agreeable to provide lighting in that area by installing a light pole with a cap to diffuse lighting to neighboring properties.

2. **George Neal, 187 Roseland Avenue, Essex Fells** asked for clarification on the refuse area. Each of the 3 units would have 2 receptacles, one for garbage and one for recycling and asked how large each of the receptacles would be?

Mr. Troia confirmed that it would be safe to say that each unit would have 2 receptacles of standard size, approximately 2 ft. x 2 ft. .

3. **Jill Neal, 187 Roseland Avenue, Essex Fells** asked if the refuse receptacles and the condensing unit areas were included when calculating the impervious coverage?

Mr. Troia noted that he would leave it to the Borough to decide if these areas should be included in their impervious coverage, however, in his experience, most towns do not include them.

He clarified that the condensing units would each have a removable plastic base underneath them.

Ms. Sules asked for clarification on the attic area. The minutes from the April 3, 2024 Zoning Board Meeting indicated that the ceiling height of the third floor is 6 ½ ft with a pull-down staircase.

Mr. Troia replied that there is attic space in the existing building that can be accessed by an existing staircase. They are proposing to add handrails to the existing stairwell. The ceiling height in the attic is 6 ½ ft. Building Code requires the ceiling height to be at least 7 ft. in order to be habitable space. They are not proposing any habitable space and plan to offer to the tenants as extra office/exercise space. There is a third floor attic space proposed in the rear addition, which will remain separate from the existing attic space. For the attic area in the addition, they are proposing pull-down stairs as the access point.

Mr. Irwin asked for clarification on the total amount of parking spaces to be provided. In addition, he asked Mr. Troia if there would be enough room for trash/recycling receptacles with parking spots provided in the front of the property and a sidewalk? (Mr. Troia offered to answer the question as the architect for the project, in the absence of the applicant's Engineer, who had provided testimony at the April 3, 2024 Zoning Board Meeting)

Mr. Troia clarified that two parking spots would be provided in front of the building and four additional parking spaces would be provided behind the structure in the rear parking lot, allowing for six parking spaces in total (two for each unit).

*Referring to **Engineering Plan S 1.0** Mr. Troia illustrated that even with a sidewalk and two front parking spaces, there is a 3 ft. – 4 ft. section of grass, before the sidewalk, that would allow ample room for trash/recycling receptacles. In addition, Mr. Troia illustrated the area in the rear left-hand section of the property where refuse would be collected and stored in between collection dates.*

4. **George Neal, 187 Roseland Avenue, Essex Fells** asked a follow-up question regarding the area in front of the property. Is shrubbery being proposed in the same area where the trash/recycling receptacles will be collected?

Mr. Troia replied that the shrubs being proposed are well-within the property line. Even with the shrubbery, there is still a 3 ft. area of grass by the sidewalk that provides room for the receptacles.

5. **Nancy Ellis, 179 Roseland Avenue, Caldwell** asked if garbage trucks would be backing down the driveway to collect refuse?

Mr. Troia stated that there would be no trucks backing down the driveway to collect trash and recyclables.

Gabe Bailer, the Professional Planner for the Project, was sworn in by Mr. Cosgrove. His credentials were accepted by the Board.

Mr. Bailer offered the following testimony:

*(Referred to **Exhibit I, Aerial Imagery of 183 Roseland Avenue**)*

- Proposal is for 3 residential units (Units A, B and C); Units A and B will consist of three bedrooms and Unit C will consist of two bedrooms.
- Block 55, Lot 2 in the RD-OP Zone.
- Site is 7,518 sq. ft.
- The site is situated by the municipal border with the Borough of Essex Fells and serves as the gateway into the Borough of Caldwell.
- Multi-family Properties are a conditional use in the RD/OP Zone. Due to the context in terms of the definition of a multi-family, a D-1 Variance is requested. The Borough requires multi-family properties to have the same entrance. In this proposal, Unit C has a separate entrance and would require approval for a D-1 Variance.
- A D-1 Variance can be granted for special reasons if the project inherently serves the public good and/or promotes the general welfare of the community by being particularly suited for the area. Mr. Bailer testified that a three-family residence is particularly suited for this site as it neighbors other multi-family properties in Caldwell and provides a transitional area leading to Caldwell's commercial district. In addition, the property fits in with the zoning and character of other properties in the area.
- Mr. Bailer noted that the proposal meets all of the conditions for a multi-family in the RD/OP Zone except for the one stipulation in the definition of a multi-family requiring one entrance. The proposal meets the gross density allowed, meets the required lot area, and provides the required amount of parking spaces.
- The proposal meets the definition of a "multi-family dwelling" as defined in Chapter 250-7 of the Borough Code, which classifies a multi-family dwelling as "a building used or designed as a residence for three or more families living independently of each other, not including a motel".
- The proposal provides an aesthetic improvement, as the property has been vacant for some time.
- The proposal supports multiple elements listed in the 1999 Housing Plan, the 1998 Master Plan, and the 2017 Re-Examination of the Master Plan of the Borough of Caldwell.
- Mr. Bailer outlined the Variances requested for the project:
 1. Minimum lot area.
 2. Minimum front yard setback.

3. Minimum side yard setback.
 4. Minimum combined side yard setback.
 5. Maximum lot coverage (impervious coverage)
 6. Maximum building height (3 stories permitted; 3 ½ proposed)
 7. Off-street parking area between the main building and street line.
 8. Minimum off-street parking area building setback.
 9. Screening for off-street parking areas.
 10. Minimum drive aisle width for two-way traffic.
 11. Minimum aisle width providing direct access to parking spaces.
 12. Off-street parking location in residential zone.
 13. Lighting for an off-street parking area.
 14. D-1 Variance for proposing a second entrance for Unit C (basement apartment).
- Mr. Bailer reported that the second entrance, triggering the need for a D-1 Variance, was unavoidable due to the physical elevations and sloping of the grade in the rear of the property which would make it difficult to have a common entrance for the building. The second entrance does not pose a substantial detriment to the community since it provides an opportunity for residential apartments in Caldwell, which are needed, and allows for residential living in walking distance to the Caldwell downtown area.
 - There is no negative criteria. A modern building is proposed to replace an older building. The proposal poses no substantial detriment to the neighborhood and allows for an improvement of conditions on the site. The proposal fits the trend of multi-family living structures.

Mr. San George asked if the sidewalk continues all the way to the downtown area of Caldwell?

Mr. Bailer confirmed that the sidewalk does continue from the property to the downtown area and that there is a shopping mini-mall on the same block.

Mr. San George noted that Roseland Avenue is a heavily trafficked roadway and that the driveway for the property is small. Would there be an impact to the area with regard to traffic?

Mr. Bailer replied that the applicant was only proposing 3 units, which should not have a substantial impact on traffic in the area.

Mr. Irwin agreed that the property does need upgrading and that it does serve as the gateway to the downtown area of Caldwell. Referring to **Exhibit I**, Mr. Irwin noted several items: the property extends far enough back to allow for a rear addition and the driveway width is an existing condition that is a site constraint for any type of proposal for this property. Since there is already a parking area in the rear of the property for 4 vehicles, it would seem that the lot is more ideally suited for 2 residential units. Creating 3 residential units on the property may prove to be too much.

Ms. Corliss expressed her concern that with the creation of 2 parking spaces in the front of the structure, the entire front lawn will become asphalt. One of the parking spaces proposed in the front may require a tenant to open their door into the shrubbery in order to enter or exit their vehicle.

Mr. Bailer reported that no variance was being sought by the applicant for the size of the front parking spaces.

Mr. Kurus asked if the proposal were for 2 residential units, would the need for all the same variances still exist?

Mr. Bailer replied that some of the variance requests would still remain.

Mr. Kurus asked what parking standards were used in calculating how many parking spaces were needed?

Mr. Bailer replied that the RSIS Standards were used in making their calculations.

Mr. Kurus asked for clarification on the number of bedrooms in each proposed unit and inquired if the units were all one or two-bedroom units, would that effect the number of parking spaces required?

Mr. Bailer responded that the plans call for three bedrooms in Units A and B and two bedrooms in Unit C. By RSIS Standards, two bedroom units require 1.8 parking spots and three bedroom units require 2.1 parking spaces. He confirmed that reducing the bedroom count would impact the parking requirements.

Mr. San George inquired if there is a paved parking area currently in the rear of the property?

Mr. Bailer notified the Board that the rear of the property is currently covered with grass.

OPEN TO PUBLIC: (Questions for Mr. Bailer's Testimony)

- 6. George Neal, 187 Roseland Avenue, Essex Fells** stated that the property in question is an existing non-conforming lot that is 1/3 the minimum lot size for the RD/OP Zone. Mr. Neal quoted a section in the Borough's Ordinances under Chapter 250-9 Section F, which states "If any non-conforming use of a building or land ceases for any reason for 12 consecutive months or for 18 months during any three-year period, such structure and premises in combination shall be considered abandoned and shall not thereafter be used except in conformance with the regulations of the district in which it is located." Mr. Neal reported that the property has been abandoned for more than five years. Wouldn't the property now have to comply with all the bulk requirements for the zone based on the Borough's Ordinance?

Mr. Bailer responded that any proposal for this property would require an applicant to seek Board approval due to the fact that it is an under-sized lot.

Mr. Neal inquired if a variance for the lot size was included in the list of variances that the applicant was requesting?

Mr. Cosgrove reported that all the variances required by the applicant for this project were included in their list of requests for approval.

Mr. Donat reiterated that the applicant had applied for all the variances that were required by the Borough's Professionals.

Mr. Donat informed the Board that he would like to recall the Applicant's Architect, **Frank Troia**, for additional testimony. Mr. Troia provided the following testimony:

- There was discussion earlier regarding the amount of stories for the building. The Borough's Ordinance does not define the heights of structures in terms of measurement of stories. As a professional, he can only refer to Building Code for a definition.
- Testimony was provided earlier regarding the A/C Condensing Units and impervious coverage. The Borough Ordinance defines impervious coverage as the percentage of the property that is covered by the principal building and any accessory buildings. The air conditioning system is not considered either of the former categories. The stormwater systems proposed are more than adequate even if this area is added to the impervious coverage totals.

- With regard to the Board's comments on proposing a basement apartment, all means of egress have been met and the door and all windows will be above-grade.
- The Board has discussed proposing only 2 residential units for the building, however, the mass of the building would still be the same. The applicant would just increase the bedroom counts in both of the units. Decreasing the plan to 2 residential units would only eliminate the need for the parking spots in front of the building. The current proposal will improve the conditions on the site and will allow for cars to have turn-around space in the parking area. Cars will not have to back out onto Roseland Avenue.

Ms. Reiter clarified that the Borough of Caldwell's Attachment 1, Schedule A outlining Bulk Requirements includes all pavement as part of impervious coverage.

Mr. Kobylarz informed the Board that the Stormwater Management System proposed for the property more than adequately addresses the additional impervious coverage, if counted.

Mr. Reiter provided a summary for the Board providing a list of the variances requested by the applicant (outlined previously in the minutes). If the IBC Code set the requirements for the property, then a lighting plan would be submitted and reviewed by the Board Engineer.

OPEN TO PUBLIC: (Public Comments or Questions)

- 7. George Neal, 187 Roseland Avenue, Essex Fells** was sworn in by Mr. Cosgrove. Mr. Neal stated that many of the points made by the applicant's professionals make sense aesthetically. He argued that the proposal is to add onto an already undersized lot. He referenced Chapter 250-9 Section F which speaks to the abandonment of properties with non-conforming issues. The applicant is seeking 13 variances, some of which relate to these non-conforming issues. He expressed his opinion that Caldwell does not need any additional residential apartments.
- 8. Jill Neal, 187 Roseland Avenue, Essex Fells** was sworn in by Mr. Cosgrove. Ms. Neal reported that there are 8 proposed bedrooms and only 6 proposed parking spots. There is a realistic projection of possibly 16 people living on the premises and only 6 parking spaces. Where will all the extra cars be parked? A 20 x 20 x 10 ft. drywell is proposed on the site. Is a stormwater system so substantial appropriate for the neighborhood? The massive underground structure will need to be maintained, soil tested, and checked regularly. Who will be responsible for maintaining the system and ensuring that it is working properly?

Mr. Donat provided a summation for the Board:

- The owner has worked diligently to develop a number of concepts for the property over the past several years. The proposal before the Board is to create 3 residential units on the lot.
- The applicant's professionals have provided testimony detailing how this concept plan would contribute positive improvements to the property.

Mr. Cosgrove provided a summation for the Board:

- Not a bifurcated application.
- 13 bulk variances requested. One D-1 Variance requested. Criteria for bulk variances must be that the applicant has proven either a hardship (C-1) or special reasons (C-2) as to why he should be granted the variances. The D-1 Variance requires enhanced quality of proof. Board members should ask themselves, can the variances be granted without substantial detriment to the public good?

Mr. Donat asked the Board if Michael Gonnella, the applicant, could address the Board?

Michael Gonnella, 21 Cypress Avenue, North Caldwell was sworn in by Mr. Cosgrove and offered the following testimony:

- Grew up in Caldwell and owns other properties in town, which he does his best to maintain properly.
- The property taxes, water and sewer bills have been paid for the property at 183 Roseland Avenue. Landscapers maintain the grounds every two weeks. Snow is removed after storm events.
- He originally appeared before the Board in 2020 to propose 6 residential units on the property but withdrew his proposal. He felt from the Zoning Board Member’s comments at that time that 6 units was too dense for the property.
- The expenses to renovate properties have increased dramatically since COVID. Proposing 3 residential units is more cost-effective and will allow for him to offset some of the costs of the renovations.
- He is always selective with the tenants for his properties.

Mr. Kurus stated for the record that the Zoning Board is not able to advise an applicant on how to design his/her property.

The Board Members deliberated.

Mr. Porcello made a motion to approve **Application Z23-002 183 Roseland Avenue**, seconded by Mr. San George.

Upon roll call, the votes were as follows:

Ms. Sules	yes	
Ms. Corliss	no	
Mr. San George	yes	
Mr. Porcello	yes	
Mr. Kurus	yes	
Mr. Irwin	abstain	(4 - 1 - 1) Not approved.

***Due to the request for a D-1 Variance, at least 5 affirmative votes were needed for approval.

Mr. Porcello made a motion to adjourn the meeting, seconded by Mr. San George.

The meeting adjourned at 9:16PM.

Respectfully Submitted,

Kim Conlon

Board Secretary

