

October 1, 2020

MEMORANDUM TO: Mendham Borough Zoning Board of Adjustment

FROM: Jessica C. Caldwell, P.P., A.I.C.P., Zoning Board Planner

SUBJECT: James R. & Donna M. Chambers
Use & Bulk Variance Application
Block 2301, Lot 3.01
425 Cherry Lane
Mendham Borough, Morris County, New Jersey

Dear Board Members:

The Applicant is seeking use and bulk variance approval to renovate the second story of an existing accessory structure on the above-referenced property into an accessory apartment for the Applicant's daughter. The property is 6.447 acres and is located in the 5-Acre Residence Zone. The proposed accessory apartment requires a use variance pursuant to N.J.S.A. 40:55D-70d(1) for a use not permitted in the zone.

1. **Items Submitted:** The Applicant has submitted the following:

- A. Copy of application, checklist and supporting documents.
- B. Variance Plans for Lot 3.01, Block 2301, 425 Cherry Lane, situated in Mendham Borough, Morris County, four (4) sheets, prepared by Civil Engineering, Inc., and dated August 27, 2020.
- C. Property Survey for Lot 3.01, Block 2301, Borough of Mendham, Morris County, consisting of one (1) sheet, prepared by Civil Engineering, Inc., and dated August 9, 2013.

2. **Existing Site & Use:** The subject property is 6.447 acres and is currently developed with a single-family detached dwelling, accessory garage, pool and pool house, and an accessory one-and-a-half story structure.

3. **Proposed Development:** The Applicant proposes to renovate the second story of the existing accessory structure to create an 887± square foot studio apartment for their daughter. The accessory structure is located to the rear of the property and is setback 80.5 feet from the rear property line and 121.4 feet from the side property line. The structure has an existing gravel driveway access to Horseshoe Bend Road. The proposal is to expand the driveway to access and provide parking for the accessory apartment. A new septic is proposed for the unit. Existing electric and gas lines from the existing residence are proposed to remain. Water supply is proposed from a connection to the existing well on the property.

4. **Area & Bulk Requirements:** The subject site is located in the 5-Acre Residence Zone. Existing conditions meet bulk standards.

5-Acre Residence Zone Requirements

Item	Required	Existing/Proposed
Min. Lot Area	5-Acres	6.447-Acres
Min. Front Yard Setback Principal Structure	75 ft.	143.3 ft.
Min. Side Yard Setback Principal Structure	40 ft.	136.5 ft.
Min. Rear Setback Principal Structure	60 ft.	140± ft.
Max. Height Accessory Structure	2 stories	24.58 ft. 1.5 stories
Min. Front Yard Setback – Accessory Structure	75 ft.	418.3 ft.
Min. Side Yard Setback – Accessory Structure	40 ft.	121.4 ft.
Min. Rear Yard Setback – Accessory Structure	40 ft.	80.3 ft.
Max. Impervious Coverage	28,899 SF	28,649 SF
Max. Building Coverage	4%	2.35%

**=Preexisting Condition*

(V)=Variance Required

5. **Variances:**

- A. **Use:** According to Section 215-13A, one single-family dwelling per lot is permitted in the 5-Acre Residence Zone. A variance pursuant to N.J.S.A. 40:55D-70d(1) is required for a use not permitted in the zone.
- B. **Driveway:** Zoning Section 215 Attachment 2, footnote 3, driveways and parking areas are not permitted in the side yard setbacks within the 5-Acre Residence Zone. The Applicant is proposing a driveway within the side yard setback requiring a variance from this section of the ordinance.
6. **Criteria for Granting “d” Variances:** The Applicant is requesting a “d(1)” use variance to permit a second residential dwelling in an existing accessory building where the use is not permitted in the 5-Acre Residence Zone. Variances can be granted by the Board pursuant N.J.S.A. 40:55D-70.d(1).
- A. The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to

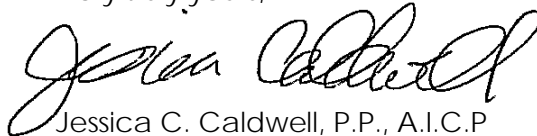
grant a "d(1)" variance in particular case and for special reasons. The courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the local master plan. This is the "positive" criteria of the statute.

- B. To address the "negative criteria," the applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good and that the granting of the variance will not substantially impair the intent and the purpose of the zone plan and zoning ordinance of the municipality.
 - C. Additionally, the Applicant for a use variance is obligated to address the Planning issues raised in the New Jersey Supreme Court case *Medici v. BPR, Co.*, 107NJ (1987). In accordance with the guidelines set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which "inherently serves the public good" or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of the requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.
7. **Granting "c" Variances:** The application requires a bulk variance for construction of a driveway in the side yard setback. Bulk variances can be granted by the Board of Adjustment, pursuant to N.J.S.A 40:55D-70c, where two provisions exist for the granting of bulk variances.
- A. The first provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures lawfully existing thereon.
 - B. The second provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(2) where the Board must find that the application relates to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting

the variance outweigh any detriments and that the variance will not substantially impair the zone plan or ordinance.

- C. In both cases, the negative criteria must be met, which includes a showing that the proposed variances will not cause a substantial detriment to the public good (the neighborhood) or substantial impairment of the master plan and zoning ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jessica Caldwell", is written over the typed name.

Jessica C. Caldwell, P.P., A.I.C.P

J. Caldwell & Associates, LLC

Mendham Borough Zoning Board Planner

cc: Via-Email Only

Lisa Smith, Land Use Coordinator

Tom Germinario, Esq., Board Attorney

Paul Ferriero, P.E., P.P., CME., Board Engineer