



**J Caldwell  
& Associates, LLC**  
Community Planning Consultants

July 31, 2020

**MEMORANDUM TO:** Mendham Borough Zoning Board of Adjustment

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

**SUBJECT:** Thomas Cumella, Christopher and Alexandra Martinez  
Use Variance Relief  
Block 705, Lot 13  
20 Halstead Road  
Mendham Borough, Morris County, New Jersey

Dear Board Members:

The Applicant is seeking approval for interior modifications to the existing single-family dwelling on the above-referenced property to add a kitchen in an office area over the three (3) car-garage. The application for a zoning permit was denied by the Zoning Officer interpreting the proposal as a mother/daughter unit. The issue at hand is whether the Applicant is actually creating a second dwelling unit. The architectural plans show a half-bath and an open room along with the kitchen. It does not appear to create an actual complete second unit. It is my opinion that without an additional full bath and living space, the renovation doesn't constitute a second dwelling unit necessitating a d(1) use variance. The residence continues to operate a one dwelling unit, in which the residents share living quarters. I believe the Board needs to make an interpretation of the use to determine if it is a second unit requiring a d(1) use variance. If the Board does require a d(1) use variance for a second dwelling unit then the remainder of this review applies. The subject property is in the 1-Acre Residence Zone.

1. **Items Submitted:** The Applicant has submitted the following:
  - A. Copy of application, checklist and supporting documents.
2. **Existing Site & Use:** The subject property is 2.1 acres and is currently developed with a single-family detached dwelling and a three (3) car-garage.
3. **Proposed Development:** The Applicant proposes interior modifications to the existing three (3) car-garage to create a second kitchen area including a stove, sink, dishwasher and refrigerator. The area includes a small room/office area and a half bath. No alterations to the exterior house are proposed.

4. **Area & Bulk Requirements:** The subject site is located in the 1-Acre Zone. No exterior changes to the property are proposed so no bulk standards are impacted.

5. **Review:**

- A. ***Use:*** According to Section 215-13A, one single-family dwelling per lot is permitted in the 1-Acre Residence Zone. If the Board finds that the Applicant's proposal to add a second kitchen constitutes a mother-daughter suite then a D(1) use variance is required.

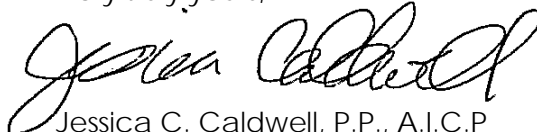
**Criteria for Granting "D" Variances:** The Applicant is requesting a "d(1)" use variance to permit a second residential dwelling above the existing three (3) car garage on the subject property, where the use is not permitted in the 1-AC 1-Acre Residence Zone. Variance can be granted by the Board pursuant N.J.S.A. 40:55D-70.d(1).

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.

To address the "negative criteria," the applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good, nor will the granting of the variance substantially impair the intent and the purpose of the zone plan and zoning ordinance of the municipality.

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 requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

Very truly yours,



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