

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

August 11, 2011

The meeting was called to order at 7:45 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present: Pat Lagay, Chairperson
Judy Sisko
Byron Sondergard
Daniel Spiegel
Brian Tobin, Alt. I

Kathy Elliott, Engineer
Mike DiGeronimo, Planner
Catherine DeAppolonio, Attorney
Chris S. Cosenza, Zoning Officer

Late: Suzanne Andrews (7:47 p.m.)

Absent: Robert Fair, Vice Chairperson
Catherine McCartin
Jonathan Rabinowitz, Alt. II

NEW BUSINESS

11-922 **MetroPCS New York, LLC** – Applicant is seeking site plan and use variance approval to add additional antennas at a height of 168' on an existing PSE&G 182.5' tower. The equipment cabinet will be located beneath the tower.

Middlesex Avenue

Block 36, Lot 42

R-4 Zoning District

Ms. Lagay asked the applicant to come forward and present the case.

Simone Calli, Esq., Applicant's attorney, introduced herself to the Board. She stated she is from the law firm of Price, Meese, Shulman & D'Arminio and is representing MetroPCS. The Applicant is proposing to place six (6) wireless antennas at 168 feet on an existing PSE&G tower that is 176 feet in height. There are existing T-Mobile facilities, at a height of 182.5 feet, already on said tower.

Ms. Calli stated that site is located in the R-4 zone. She had submitted a request for zoning determination to the Zoning Officer back in January, who found that a D(2) variance was required for expansion of a non-conforming use. That is the relief requested this evening along with site plan approval and a request for a bulk variance for height, if required.

Ms. Calli stated that she had a number of witnesses but does not usually have them all present their testimony unless requested by the Board. Unless there were any questions, she indicated she would like to introduce her first witness, the Applicant's engineer.

Ms. Lagay stated for the record that Ms. Andrews had arrived.

Joanne W. Slaman, RA, was sworn in by Ms. DeAppolonio.

Ms. Lagay asked Ms. Slaman to declare her qualifications to the Board.

Ms. Slaman stated she is a licensed architect in the State of New Jersey with a Bachelor of Architecture from New Jersey Institute of Technology, employed by Dewberry-Goodkind for the past year but has 10 years of experience in telecommunications.

Ms. Calli apologized to the Board and clarified that Ms. Slaman is the project architect, not the engineer. She requested the Board to qualify her as an expert. Ms. Slaman was accepted by the Board as an expert.

Ms. Slaman stated that there exists a PSE&G tower along Middlesex Avenue, approximately 176 feet in height. There are existing facilities on the ground as well as six (6) wireless antennas already on top of the tower; the top of the antennas extends the overall height to 182.5 feet. MetroPCS is proposing to place an additional six (6) wireless MetroPCS antennas at a height of 168 feet on the existing tower. She stated that the four equipment cabinets would be placed within a 16x26 compound at the base of the tower. The compound would be enclosed by a seven (7) foot high wood composite fence, similar to existing. There will be a work light for the use by the technician, which will be placed on a timer and sensor. The site would be manned approximately once a month. The facility does not require parking, water or sewer service. There would be no odor and the tower is structurally sound.

Ms. Lagay asked Ms. Slaman what the antennas will look like.

Ms. Slaman stated that the proposed antennas are known as "panel antennas" and approximately 4.5 feet tall, 10 to 12 inches wide and 16 inches deep. They would be mounted on talons attached directly onto the tower.

Ms. Elliott asked if Ms. Slaman prepared the architectural details and questioned the height of the cable-breaker, which was shown to be mounted 11 feet above grade.

Ms. Slaman clarified that yes, she prepared the drawings, and the cable will have a minimum clear distance of eight (8) feet.

Ms. Lagay opened the hearing to the public for questions for Ms. Slaman.

There being none, Ms. Lagay closed the public portion.

Ms. Calli called for her next witness, the Applicant's radio frequency engineer.

Clevonne St. Hillaire was sworn in by Ms. DeAppolonio.

Ms. Calli requested Mr. St. Hillaire to declare his qualifications to the Board.

Mr. St. Hillaire stated that he has a Bachelor of Science from the University of Hartford. This is his first appearance before a Board. Mr. St. Hillaire was accepted by the Board as an expert.

Mr. St. Hillaire stated that MetroPCS, as a wireless telephone provider, must comply with FCC

regulations and, as a result, must close coverage gaps in order to alleviate unreliable service. He introduced Exhibit A-1, a large base map depicting the current coverage areas which clearly illustrated the coverage gap. A plastic overlay to Exhibit A-1 depicts the additional coverage, by way of the proposed antennas, which effectively filled in the coverage gap, as required.

Mr. St. Hillaire stated that it is the objective of MetroPCS to utilize existing towers rather than construct new towers. Two (2) other towers were considered; however there were already too many carriers or it would be too costly to collocate on said towers. This makes the subject site an ideal location to install additional antennas.

Ms. Lagay requested clarification regarding what MetroPCS offers to the general public.

Mr. St. Hillaire explained that MetroPCS provides cellular telephone service including text messages, email, and web service like other carriers such as Verizon and AT&T.

Ms. Lagay opened the hearing to the public for questions for Mr. St. Hillaire.

There being none, Ms. Lagay closed the public portion.

Ms. Calli stated that Mr. Collins, who prepared the Pinnacle Telecom Group report, is present and able to testify, but asked the Board to accept the report as submitted as part of the application.

Ms. Lagay agreed that the report, while very technical, indicates that the levels are well below FCC guidelines. Board members concurred.

Ms. Calli stated that Mr. Collins would be available answer questions, as necessary, throughout the rest of the hearing. Otherwise, she called for her last witness, the Applicant's planner.

Tsvia R. Adar, AICP, PP was sworn in by Ms. DeAppolonio.

Ms. Calli requested Ms. Adar to declare her qualifications to the Board.

Ms. Adar stated that she is a senior planner at Dewberry-Goodkind. She is a licensed planner in the State of New Jersey and has AICP certification. She has a degree in Architecture and Urban Planning, has over 25 years of professional experience and has testified before many Boards. She was accepted by the Board as an expert.

Ms. Adar stated that she reviewed the engineering drawings, ordinances, the Master Plan and has visited the site itself and surrounding area. She has prepared exhibits and renderings showing the proposed changes to the tower.

Ms. Calli stated that the Applicant is requesting a D(2) variance and asked Ms. Adar to explain to the Board her analysis of how the Applicant's proposal satisfies the various criteria as required to obtain such variance.

Ms. Adar stated that the Applicant is seeking an expansion of a non-conforming use. Adding antennas and equipment is considered a change or expansion to the use. As with a D(1) variance, one has to observe both the positive and negative criteria. The positive criteria include special reasons and suitability. With regard to special reasons, the fact that the Applicant is an FCC licensee, it should satisfy the special reasons since it is mandated by FCC regulations to

provide communication services and emergency services. She stated that the site is particularly suitable in that it will serve to close the existing coverage gap. The height of the tower is adequate and the proposed antennas would be placed lower than the top of the tower; it would blend in and would provide the necessary coverage.

Ms. Adar discussed and explained the color photographs of the site and surrounding areas. The photographs simulated how the site would look with the proposed antennas, which showed virtually no change in appearance since the proposed change(s) are so far away from nearby residences.

Ms. Adar began to discuss the negative criteria. With respect to visual impact, as discussed before, there is none. The site is unmanned; there will be no glare, heat, noise or traffic. The maintenance on the property will be completed by one person once a month. There is no environmental impact since the Applicant will be utilizing an area that is already disturbed. There is really no negative impact that will result from the proposed changes.

Ms. Adar continued and explained that the application does not impair the intent or purpose of the Zoning Ordinance. The Ordinance actually encourages collocation; however, the property is in a residential zone, but the property itself is not residential in nature. It is of her professional opinion that the application should be approved as presented.

Mr. DiGeronimo asked Ms. Adar if there would be any additional landscaping proposed other than the proposed seven (7) foot fence.

Ms. Adar stated that PSE&G does not permit landscaping.

Ms. Lagay noted that PSE&G is, in fact, removing landscaping as necessary.

Ms. Lagay opened the hearing to the public for questions for Ms. Adar.

There being none, Ms. Lagay closed the public portion.

Ms. Calli respectfully requested the Board to grant the D(2) variance as called out by the Zoning Officer and a bulk variance for height.

Ms. Andrews questioned the environmental/health impacts by the collocation.

After a brief discussion, Ms. Calli requested Dave Collins to present his report to the Board.

Mr. Collins was sworn in by Ms. DeAppolonio.

Mr. Collins stated that he has a Bachelor of Science in Industrial Technology from the City College of New York. For the past 10 years, he has been the manager of Pinnacle Telecom Group, which is an independent telecommunications consultant specializing in radio frequency services and FCC compliance issues. He has testified before hundreds of Board throughout the Northeast. He was accepted by the Board as an expert.

Mr. Collins submitted a report detailing the assessment of radiofrequency levels and related FCC compliance for the proposed wireless antennas to be installed on the site. The federal government permits maximum emittable energy levels at various heights, which is based on a mathematical formula. All of the cell towers are intentionally low-powered, not like those of

television or radio transmitters. The cell tower normally emits the same level of power of a flood light, in terms of wattage. The standard itself is extremely conservative.

Mr. Collins stated that the maximum calculated level of the combined effect of the existing and proposed antennas is 0.2517% of the maximum permitted levels, which is more than 390 times lower than what is required. The State of New Jersey has their own regulations, but they are five (5) times less stringent than that of the federal government; thus, the combined effect of the existing and proposed antennas is 1950 times lower than what is required for the State of New Jersey.

Mr. Collins summarized his discussion by explaining that all electronic devices emit radio energy. In comparison, a refrigerator emits energy that is 7% of the maximum permitted levels, which is far more than that of the maximum combined effect of the proposed antennas. The proposed antennas will be well below both Federal and State levels. The plan is safe.

Ms. Lagay opened the hearing to the public for questions.

There being none, Ms. Lagay closed the public portion and requested the Board to comment.

Ms. DeAppolonio stated that it was of her legal opinion that a height variance is not necessary.

Ms. Lagay opened the hearing to the public for comments.

There being none, Ms. Lagay closed the public portion.

Mr. Spiegel expressed his appreciation to hear an application that was prepared, thorough and its testimony succinct; he will be voting favorably of the variance.

A motion was made to approve the application as presented to the Board by Mr. Spiegel, seconded by Ms. Sisko. Roll call vote taken. Motion carried unanimously.

The Board recessed at 8:30 p.m. and reconvened at 8:34 p.m.

OLD BUSINESS

10-891 **Constantine Papanicolaou / Metuchen Inn** – Applicant is seeking to amend site plan and use variance approval to include outdoor dining on an existing patio, to maintain a pre-fabricated garbage shed, maintain existing light fixtures and to maintain the existing parking lot in lieu of repaving it.

424 Middlesex Avenue Block 104, Lots 24 & 23.03 R-1 Zoning District

John Wiley Jr., Esq., the Applicant's new attorney, introduced himself to the Board.

Mr. Wiley reiterated the main points of the application, starting with the 2010 approval where the Applicant withdrew his request for outdoor seating. The Applicant would like to request outdoor dining and is willing to have imposed a series of conditions, such as: 1) limited to 16 seats and 2) no service of food or alcohol after 10:00 p.m.

Mr. Wiley stated that in addition to the expansion of a non-conforming use, there are several

provisions from the existing resolution that the Applicant would like to have modified. He advised the Board that the applicant is operating under a Temporary Certificate of Occupancy and there is a Performance Bond in place, which will not be released until the Applicant completes all work. Among the conditions of the existing resolution are the painting of the accessory structure, the problem with the structure's window panes and cracks in the concrete apron, all of which he stated that the Applicant would remedy.

(continued) The Applicant is requesting the following modifications: Applicant proposes not to remove two existing light poles. He indicated that the Applicant wants the light poles to stay, but will remain inoperable, as they will lend to the character of the property. Primarily due to the weather, the Applicant installed a different trash enclosure than that was originally proposed to the Board. The Applicant is of the opinion that the prefabricated plastic shed functions better and can be more easily cleaned than the originally proposed wooden structure. As a result, the Applicant is requesting to maintain the existing plastic structure rather than construct the wooden structure.

(continued) The Applicant is requesting to have the oil recycling container not be enclosed in the trash enclosure. He is reluctant to enclose it because of possible flammability issues. With respect to the parking lot repaving, the Applicant is requesting to repair and re-stripe the parking lot instead of reconstructing it in its entirety as requested by the Borough Engineer.

Mr. Spiegel requested additional testimony regarding the laundry bin.

Mr. Wiley stated that he believes that said structure was placed inside the accessory structure but will defer to the Applicant. He asked Mr. Baio to come forward and testify.

Mr. Baio discussed the plan he proposed for the outdoor dining patio including a landscape plan and a site line drawing from the neighboring property's perspective. The landscape plan shows the improvements made to date, including the swale and existing vegetation. The patio area would include a four (4) foot tall stone wall with a six (6) foot high trellis fence with planters on top. The trellis would fill in with ivy and/or greenery to present the patio area as a garden setting. The 10 foot wall would continue in front of the patio area, which would also include an entry feature. This plan is significantly different than the previous plan as the previous plan included arborvitaes. The laundry bin is approximately 48 inches long and 24 inches wide by 36 inches high and is serviced by a vendor, Cintas. The bin would be placed inside the accessory structure. By placing the bin into the structure, it cleans up the site.

Mr. Wiley presented the sight-line section, which Mr. Baio explained that it illustrated the view of the patio area from the second floor of the neighboring property.

Ms. Lagay questioned the logistics of food service and where people enter the patio and restaurant area.

Mr. Baio explained that people enter the patio from the parking lot and go through the door behind the bar area; he indicated that outdoor dining would be seasonal, subject to the weather.

Mr. Tobin asked for clarification regarding the intent to reconstruct the apron and parking lot.

Mr. Baio agreed that the driveway apron needs to be repaved. He reiterated that the Applicant seeks to repair and re-stripe the parking lot, rather than reconstruct and repave it the entirety. He had discussed pavers at the entry of the parking lot with Mr. Constantine but opined that it

would be a problem for people to walk on it and represent an icing hazard.

Mr. Spiegel asked what the resolution stated about the parking lot.

Mr. Wiley noted that parking lot repair was subject to the review and approval of the Board Engineer.

Mr. Tobin encouraged the Applicant to coordinate with Ms. Elliott as opposed to Mr. Constantine since she is the Board Engineer, not Mr. Constantine.

Ms. Elliot reiterated that it was of her professional opinion that the entire parking lot should be resurfaced and re-stripped rather than patched in order to provide a safe walking surface for pedestrians, particularly at night.

Board members expressed disappointment that there are now three (3) different containers.

Ms. Elliott clarified that it was the intent of the original approval that there would be no outdoor dumpsters or bins visible to the public; all of these items should be in the shed.

Mr. Wiley discussed the issue regarding the oil container and believes that the Applicant is being progressive in that he is aware that the oil should not be discharged into the sanitary sewer, nor could it be located inside a structure because of its flammability. He continued and discussed the process of enforcement of the resolution and performance bond issues for the Board's benefit. He explained that the Engineer and the Zoning Officer go out and go over the entire site to see if it complies with the approved site plan. If there are outstanding items, the Applicant has to either comply or go back to the Board to request further relief.

Board members raised concerns regarding the intent of proposal.

Ms. Lagay opened the hearing to the public for questions for Mr. Baio.

Trevor Dale, 8 Linden Avenue, questioned the sight-line section, describing it as inaccurate with respect to the dimensions and angle represented.

Mr. Baio described the drawing as conceptual and created a new drawing for Mr. Dale.

Mr. Dale questioned the lattice fencing.

Mr. Baio stated it would have one (1) inch by one (1) inch openings and even without ivy, it would significantly screen the view of the patio.

Jayne Grandes, 32 Linden Avenue, stated that her property is adjacent to the Metuchen Inn. She had numerous problems with the proposal such as the oil container and the plastic garbage structure. The structure is not typically sold as a garbage enclosure but rather as a shed. She requested that if it is to remain, the vents or windows be required to be closed up.

Elaine Pizzi, 423 Middlesex Avenue, stated that her property faces the Metuchen Inn. At this time, she can see the tables and umbrellas from across the street. She does not want to see any part of the patio area whatsoever. She also asked if having the patio area utilized for dining would increase the number of diners.

Mr. Baio clarified that there would be significant landscaping installed. With respect to the number of diners, there would be no expansion in that if outdoor seating were to be utilized, the number of diners inside the restaurant would be reduced.

Liz Murray, 48 Oak Avenue, questioned the number of people who would be permitted to dine.

After a brief discussion, Mr. Wiley and Mr. Baio clarified that while the Applicant is to 123 seats based on the layout of the building and the parking area. The actual building capacity, or the maximum allowable occupancy, considers all persons, including diners who are seated, diners who are waiting to be seated, servers and restaurant staff. As a result, the building occupancy is higher, approximately 200. With respect to outdoor dining, the Applicant is limited to 123 seats indoors or outdoors. If seating was full indoors and someone wanted to sit outdoors, they would have to wait until a seat became available.

Ms. Murray asked if a noise study was done, to which Mr. Wiley said no.

Debra DeSantis, 48 Oak Avenue, questioned the cost of the originally proposed garbage enclosure as opposed to the cost of the prefabricated shed.

Mr. Baio stated he did not do a cost estimate of the original garbage enclosure.

There was a discussion regarding the decision to install a prefabricated shed over the original garbage enclosure and restaurants within residential areas.

Ms. Lagay closed the public portion of the hearing.

Mr. Wiley asked Mr. Papanicolaou to come forward.

Mr. Papanicolaou, 92 Colfax Road, Skillman, New Jersey, was sworn in by Ms. DeAppolonio.

Mr. Papanicolaou stated that the outdoor seating would be restricted to 16 seats. He agreed that the maximum combined seating would be 123, indoors and outdoors.

There was a discussion regarding various structures and their present locations prior to the start of the hearing. A blue container was removed from the shed in the morning in order for the garbage collection company to service the containers.

Mr. Papanicolaou discussed Exhibit A-1, which consisted of a series of photos of the premises. He indicated that the black container was the oil container, currently located near the shed.

Ms. Lagay requested additional testimony regarding the oil container.

Mr. Papanicolaou described that per code, he is required to have a grease trap, in order to avoid oil from being drained into the sanitary sewer, which would solidify and cause backups for neighboring properties. The oil is drained into a container and stored outdoors. He explained that his insurance company would not permit the oil container to be stored inside a structure. He agreed that he would move it away from the property line at least five (5) feet and empty the oil container once per week.

Ms. Lagay asked how often the garbage was collected.

Mr. Papanicolaou stated that garbage is picked up two (2) to three (3) times per week, usually on Tuesdays, Fridays and Saturdays. At this time, he feels that it is sufficient in order to prevent overflow.

Mr. Spiegel raised his concern regarding the choices made by Mr. Papanicolaou to add additional containers and their respective locations, particularly given that they were placed further away from the restaurant and close to neighboring properties.

Ms. Andrews asked that if the containers remained in their location, if they could be shielded with shrubbery.

Mr. Papanicolaou stated he was concerned with the loss of a parking space.

There was a discussion regarding the garbage and various structures on the premises. In the end, Ms. Lagay summarized that the best option may be that the laundry bin be placed into the accessory structure and the oil container be placed on the side of the garbage shed.

Mr. Papanicolaou stated that he considered various options presented by the professionals but wished to repair the parking lot in certain areas as opposed to repaving it.

Ms. Lagay expressed her concerns that while the Applicant now has a nice building, it would be advantageous to complete the parking lot and bring it up to code.

Mr. Papanicolaou opined that his parking lot was not terrible. He has not seen any accidents in his parking lot. Eventually he may reconstruct the parking lot, but not at this time.

Mr. Spiegel noted that the previous resolution required buffering around the patio. He opined that the current plans are not sufficient.

Mr. Wiley stated that he had no further questions for the Applicant.

Mr. Tobin asked Ms. Elliott to discuss her professional opinion regarding the parking lot.

Ms. Elliott indicated that there are truck movements near the garbage shed and the wall. There is evidence of cracking, potholes, water collects and there are drainage issues and ponding.

Mr. Tobin asked Ms. Elliott how much of the parking lot was showing evidence of failure.

Ms. Elliott estimated that approximately 50% of the parking lot shows evidence of failure, indicating instability of the ground underneath. She reiterated that she recommends repaving the entire parking lot and reconstructing where necessary.

Ms. Lagay opened the hearing to the public for questions for Mr. Papanicolaou.

Ms. Murray questioned the outdoor dining in general, the number of diners and occupancy load.

In response to a comment regarding alcoholic beverages, Mr. Wiley explained that should the Board approve the application, the Applicant would have to apply for a place-to-place transfer from the Mayor and Council as the ABC issuing authority.

Ms. DeAppolonio agreed with Mr. Wiley and stated that the Zoning Board of Adjustment does

not have jurisdiction regarding alcoholic beverage licenses.

Ms. Lagay asked Mr. Wiley if the Applicant considered a planner to discuss inns in residential areas.

Mr. Wiley stated that Board heard testimony in 2010.

Ms. Lagay stated that this was a new application.

Mr. Wiley stated that there was testimony presented late in the 2010 meeting, but he could bring the planner back to restate the same testimony should it be desired by the Board.

Ms. Murray asked if there would be people sitting or standing in the outdoor patio area.

Mr. Wiley stated that people can stand outside at the present time. The application is to allow outdoor dining, limited up to 16 seats.

Ms. Murray began to make various comments and concerns regarding the application but was asked by the Board to rephrase them into a question specifically for Mr. Papanicolaou. She asked a number of questions regarding the appropriate height of a wall to shield those who stand in the patio, permits regarding the parking lot and if repairs were made to the accessory structure. She contends that the accessory structure was not properly painted.

Ms. Pizzi began to make statements and opinions regarding the application.

Ms. Lagay asked that Ms. Pizzi only ask questions for Mr. Papanicolaou.

Ms. Pizzi questioned the delivery trucks and if they use the driveway. The resolution, on page 21, Condition I, states that "no delivery trucks shall be parked between the ramp area and the property line. All delivery trucks shall park in the parking lot and deliveries shall be made manually by hand-truck or individuals." She contends that delivery trucks sometimes park on Middlesex Avenue, in front of her home, across the street, and that should not be allowed.

Both Ms. Lagay and Mr. Wiley objected, contending that Ms. Pizzi was presenting an opinion or statement, as opposed to asking questions for Mr. Papanicolaou.

Tom Rockefeller, 36 Linden Avenue, questioned a satellite dish on the premises, which he felt was an eyesore, as well as employee parking on Linden Avenue.

Mr. Spiegel recalled previous testimony from the Applicant that employees would not park on Linden Avenue.

Mr. Rockefeller questioned various zoning violations that were formerly or presently before the Municipal Court regarding the premises.

Mr. Cosenza stated that he has issued a summons for the Applicant to appear in Municipal Court for failure to abide by all conditions of the resolution. He stated that the case has been adjourned by the Court several times in order for the Applicant to have an opportunity to have the amended application heard by the Zoning Board of Adjustment.

There was a discussion regarding the process of the meeting and possible conditions of

approval that may be imposed by the Board.

Ms. Murray asked when the Applicant made the application to amend the resolution, before or after the tax-payers took Mr. Papanicolaou to Court.

Ms. DeAppolonio clarified that the complainant, as was already testified, is the Zoning Officer, not the tax-payers.

Ms. Murray asked if the Zoning Officer could answer questions.

Ms. DeAppolonio stated that it was up to the Board.

Ms. Lagay stated she did not understand the intent of the question.

Ms. Murray stated that if the Applicant was not going to comply, how the Board could hear the Applicant's request to amend its application.

Ms. Lagay stated it was not unusual for an Applicant to come back before the Board to request modifications.

After a long discussion, Mr. Cosenza reiterated that the complaint was specifically for the Applicant not completing all conditions of the resolution. Some of said conditions were being asked to be modified by the Board.

Ms. DeSantis reiterated her concerns from the previous meeting that she thought the Applicant should not be able to come back before the Board without first complying with all of the conditions of the original resolution.

Ms. DeAppolonio offered her legal opinion that she did not believe the Board could prohibit Applicants from seeking amended approval or approval of a new application. That is her interpretation of the Municipal Land Use Law.

Ms. DeSantis questioned the Board regarding the language of automatic revocation and similar language in all other approvals granted by Board.

Mr. Spiegel clarified that, ultimately, there were conditions that were set by the Board. When the Applicant did not complete them, the Zoning Officer took the Applicant to Municipal Court. The Applicant elected to file a new application which stayed the Court's decision.

Joie Garfinkle, 8 Linden Avenue, asked Mr. Papanicolaou if he would seal the window opening in the garbage shed in order to seal off odor.

Mr. Wiley stated that the window can be sealed.

Mr. Dale asked questions about the garbage pickup.

Mr. Papanicolaou stated that garbage is removed from the shed and brought outside and picked up by the garbage collection company.

Mr. Spiegel stated that this is a new fact. It was believed that the garbage collection company

goes into the shed, wheel out the containers and dumps the garbage. Now, the Board is being presented with new testimony that the containers are left outside the shed.

Mr. Dale asked if it could be required to stop seating customers at 9:00 p.m., rather than at 10:00 p.m.

Mr. Wiley stated that yes, it could be possible.

There was a long discussion regarding service, clearing of customers and service experience expected beyond 9:00 p.m.

Mr. Rockefeller noted that the bar does not have to close until 2:00 a.m. and thought that it should be required to close no later than 12:30 a.m., and that there should be no alcohol served outside. He asked Mr. Papanicolaou if his employees would go outside to eat and/or drink after closing hours. How would that be policed?

Ms. DeAppolonio opined that hypothetical questions were being raised; she reiterated again that the issue of the liquor license outside is not before this Board. The Board does not have jurisdiction. If and when the Applicant goes before Borough Council, that issue would be raised. As of this time, the Applicant is not permitted to serve alcohol outdoors. The Board cannot change that.

There being no further questions for Mr. Papanicolaou, Ms. Lagay closed the public portion.

Ms. DeAppolonio stated that the application will be carried to the following hearing date, September 8th at 7:45 P.M. There will be no further notice.

RESOLUTIONS

11-923 **Paul & Karen Sherbine** – (bulk variance to enlarge an existing deck in the rear of the property – approved 7-14-2011)

23 Tulsa Avenue

Block 208, Lots 116

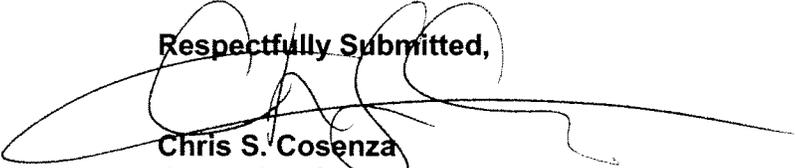
R-2 Zoning District

A motion was made to approve the resolution as written by Ms. Sisko, seconded by Mr. Sondergard. Roll call vote taken. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 11:05 p.m.

Respectfully Submitted,


Chris S. Cosenza
Recording Secretary