METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

December 8, 2011

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

ROLL CALL

Present:	Robert Fair, Vice Chairperson Catherine McCartin Judith Sisko Byron Sondergard Daniel Spiegel	Brian Tobin, Alt. I Mike DiGeronimo, Planner Robert Renaud, Attorney Kathy Elliott, Engineer Chris S. Cosenza, Zoning Officer
Late:	Jonathan Rabinowitz, Alt. II (7:50 p.m.)	
Absent:	Suzanne Andrews Pat Lagay, Chairperson	

OLD BUSINESS

10-891 **Constantine Papanicolaou / Metuchen Inn** – Applicant is seeking to amend site plan and use variance approval to maintain a pre-fabricated garbage shed, to maintain existing light fixtures and to install additional light fixtures.

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

John Wiley Jr., Esq., the Applicant's Attorney, introduced himself to the Zoning Board of Adjustment (Board).

Mr. Renaud clarified that there were five (5) members available to hear the application and are eligible to vote.

Mr. Wiley brought to the Board's attention what he believed were the site plan elements being amended. The prefabricated garbage structure would be permitted so long as the rear window was sealed to contain the odors in the shed. There was a meeting at the site and he believes a site plan was prepared to reflect such meeting. At the last meeting, lighting and lighting fixtures were discussed but there was no concrete plan, but there is one now.

Mr. Spiegel called attention to the patio area redesign as depicted in the plans.

Mr. Wiley noted that his client's perception, not necessarily his own, of the patio area consistent of a different design than what was submitted in July. It is really a design of what is physically out there at this very moment. He would like to have his client make comments regarding the patio area.

Mr. Spiegel recalled that the Board thought that the Applicant needed more substance and design that had more buffering and was similar to the 2010 plan.

Mr. Wiley agreed. However, his client felt that it was highly impractical to do that at this point considering he had already installed the patio as is. He does not disagree with Mr. Spiegel "one iota" but understands his client wants to do whatever it is that he wants to do.

Mr. Renaud recalled that no votes were taken at the last meeting but that various members had expressed their tentative feelings at that point. He asked, generally, what it is that the Board is going to see. He understands that the issue of outdoor dining should be put aside, at this point, and there were four (4) conditions that the Applicant was seeking to modify: 1) lighting, 2) keep the garbage enclosure as is but to close off the window in the rear and 3) parking lot to not be paved.

Mr. Fair stated for the record that Mr. Rabinowitz had arrived.

Mr. Wiley stated that the new site plan has an overlay that is similar to the discussions made on site. The parking lot issue is resolved.

Mr. Renaud continued and noted that the fourth issue was landscaping. He believed that has been addressed in this plan. Before proceeding, he requested clarification as to what was meant by the parking lot issue being resolved.

Mr. Wiley clarified that the 2010 resolution called for the parking lot overlay to be subject to the review and approval of the Borough Engineer. His client has objected to that. Mr. Wiley gets the sense that the Board would lean towards the Borough Engineer. He believes the plan conforms to what the Borough Engineer has requested.

Ms. Elliott stated that she is fine with the proposal to resurface the parking lot and restriping.

Mr. Renaud stated that he was okay with the hearing to proceed.

Mr. Wiley asked his lighting engineer, Joseph F. Schaffer, P.E., to come forward.

Mr. Schaffer discussed three submissions, L-1, "Existing Photometric Survey Plan," last revised November 23, 2011, L-2, "Proposed Lighting Plan," last revised November 23, 2011, and "Cutsheets for Proposed Site Lighting" dated November 23, 2011. The proposed plan calls for two (2) three-head LED floodlights, one (1) to be installed on the accessory structure and the other to be installed on the existing sign pole. He stated that the current lighting is slightly below residential lighting standards. The proposed plan would provide 0.5 one-foot candles, and would meet residential standards.

Mr. Rabinowitz questioned the lighting at the property line.

Mr. Schaffer stated that the existing lighting at the rear is shielded and that he did not observe light coming back onto the neighboring property.

Ms. Elliott suggested that aluminum shields be installed and the shields be painted black.

Mr. Schaffer agreed if that was desired by the Board.

Board members questioned the history of the lighting issues.

Mr. Wiley reiterated that, in the original resolution, the decorative light fixtures were thought to be inoperable and the original request was to have them removed. The Applicant came in July saying that they still want the lights but they would not turn them on. In September or August, the lights were turned on and we ran into the issue of lighting. The Applicant is trying to get out of this issue, hopefully, with this lighting plan.

Mr. Fair asked Ms. Elliott if she was satisfied with the plans.

Ms. Elliott stated that she was okay with the proposed lighting plan. She had been out to the site at night and that was how she knew the lights were just painted. She feels that there would be no perceptible glare or lights spilling over (after installation of the aluminum shields).

Mr. Schaffer stated that the decorative lights would be set to manual use.

Ms. Elliott noted that the LED lights are adjustable and future lighting issues can be addressed.

There being no further questions from the Board, Mr. Fair opened the hearing to the public for questions for Mr. Schaffer.

Joie Garfunkle, 8 Linden Avenue, asked questions regarding the location of the light fixture to be installed on the accessory structure.

Mr. Schaffer stated that the light projected from the fixture to be installed on the accessory structure would not wrap around the structure and overflow on her property.

There being no further questions from the public, Mr. Fair closed the public portion.

Mr. Wiley stated that the Applicant was withdrawing his request for outdoor dining, again. Accordingly, the application no longer includes a proposal for outdoor dining. He further clarified that, as per the 2010 resolution, all restaurant and bar activity would occur inside the restaurant. The patio would be used for the entry and exit to the restaurant and as well as those waiting for service.

Mr. Spiegel asked if there would be any service on the patio.

Mr. Wiley reiterated that there would be no commercial activity.

Mr. Renaud stated that, with the withdrawing of the outdoor dining, it was no longer a part of the application.

Mr. Tobin asked if Borough Council could approve the ability to serve alcohol outside.

Mr. Wiley clarified that the problem was if it was not permitted via zoning variance, the Applicant could not apply for a place-to-place transfer.

Mr. Renaud agreed.

Mr. Wiley noted that it would have also been possible for the Board to grant outdoor dining, but Borough Council could vote no (to the service of alcohol outside).

There was a long discussion regarding the proposal with respect to the four (4) main issues.

Mr. Renaud noted that the Applicant has agreed with the request to pave the parking lot. The Engineer is satisfied with the Applicant's plan. He asked Mr. DiGeronimo if he had received and approved a landscaping plan.

Mr. DiGeronimo stated they had agreed in concept over the summer. There was an on-site meeting a couple weeks ago. The charge at the time was to review landscaping of the patio area. However, since that was now off the table, there was nothing to look at; there was a focus on screening of the mechanical equipment and A/C condenser units.

Mr. Renaud asked if the screening had been shown on the plans and is satisfactory.

Mr. DiGeronimo stated that, yes, they were acceptable.

Mr. Renaud stated that all the Board had to vote on was whether or not to permit the original approval to be amended to permit the trash enclosure to remain and to modify it with respect to the proposed lighting plan.

Mr. Spiegel noted that the existing patio as referenced in the plans submitted to the Board was built without reference to the original approval (which had landscaping). The patio area, as it is now, just kind of showed up.

Mr. Wiley clarified that the dining aspect of the patio was withdrawn, not the patio area itself.

Mr. Cosenza conferred and noted that the resolution stated that the patio, as is, could not be utilized for commercial purposes.

Mr. Fair opened the hearing to the public for comments concerning the application.

Trevor Dale, 8 Linden Avenue, stated that he wished the Board to impose a condition that the lights go off at night. The current lights do not go off at night.

There being no further comments from the public, Mr. Fair closed the public portion.

Mr. Fair requested the Board to discuss the application.

Mr. Wiley requested a minute to discuss the lighting issue with his client.

In the meantime, Ms. Garfunkle requested clarification if the existing accessory structure had complied.

Mr. Cosenza stated it was an enforcement matter but noted that the Applicant is not requesting any modification of the original approval with respect to the accessory structure.

There was a very long discussion between the Board, Mr. Wiley and Mr. Schaffer regarding lighting. In the end, Mr. Wiley stated that his client was requesting to keep the two (2) lights on the building on for security reasons. The Applicant would turn the ones on the fence off, but would install motion sensors on the spotlights.

Mr. Tobin asked at what time the lights on the fence would be turned off.

Mr. Wiley stated he could not answer the question and that he would have to defer to his client. He was agreeable to the lights being turned off when the last employee leaves.

Mr. Sondergard raised his concerns regarding "when the last employee leaves" as it does not describe a specific time.

Mr. Rabinowitz stated that there should be a set time.

Mr. Wiley reiterated that his client could answer those questions.

Mr. Spiegel questioned the hours of operation.

Mr. Renaud stated that, as per the original approval, paragraph 22 states that "the normal business hours of the Metuchen Inn were 5:00 p.m. to 10:00 p.m. for dinners, 11:30 a.m. to 3:00 p.m. for lunches. The bar operated during all of those times until 2:00 a.m. The Metuchen Inn also provided dinners and lunches..." The question was if there was a time; it was apparently presented to the Board (in 2010) that the bar operated until 2:00 a.m.

There was further discussion of possible conditions. Mr. Renaud suggested 2:30 a.m., which was agreeable to the Applicant.

Mr. Spiegel asked what the status was regarding the accessory structure. He noted that there was no proposed relief from bringing the accessory structure to a state of repair.

Mr. Wiley opined that the position of his client was that he had performed and was not asking for any relief. Obviously, the neighbors have a different position. Unfortunately, the Zoning Officer is going to have to make a judgment about that. He makes the judgment and notifies the Applicant. Then, presumably, the Municipal Court Judge is going to have to deliberate on Mr. Cosenza's potential position or the Applicant's position.

Mr. Renaud summarized the issues. If the trash enclosure was approved, there was an understanding that all of the items in that area, including the kitchen grease, recycling, refuse and laundry, would all be enclosed and the doors would be closed at all times and the windows or vents would be closed and sealed.

Ms. Elliott noted that L-2 had an incorrect notation near the "existing garbage structure" in the easterly corner which states, "existing laundry bin to remain." Sheet S-1, the site plan, last revised November 23, 2011, eliminates the outdoor dining and correctly deletes the notation regarding the laundry bin. The laundry bin is to be located inside the garbage structure. L-2 will need to be corrected as S-1 is correct.

Mr. Renaud stated that he had intended to cite that, in the resolution, the Borough Engineer and Board Planner had received and approved of the landscape plan. He would make clear of the modifications made between the original approval and the new resolution. He would note the various modifications that were withdrawn or changed during the course of the hearing. He expects it would be a rather lengthy resolution. The resolution would have the whole history of the application. He opined that the plans had to be corrected and filed within 60 days.
A motion to approve the application as presented to the Board with the modifications to the original resolution as previously noted by Mr. Renaud, acceptance of the Engineer's recommendations with respect to paving, adoption of the landscape plan, acceptance of the trash enclosure provided the windows are sealed and various containers move inside the shed

and acceptance of the withdrawal of the request for outdoor dining was made by Mr. Spiegel and seconded by Ms. McCartin. Roll call vote taken. Motion carried unanimously.

The Board recessed at 8:41 p.m. and reconvened at 8:44 p.m.

RESOLUTIONS

11-928 **Robert & Nicole Contursi** – (bulk variance for addition – approved 11/10/2011)

122 Hollywood Avenue Block 224, Lot 57 R-2 Zoning District

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

11-935 **Madhusudhan Sonee** – (bulk variance for addition – approved 11/10/2011)

317 Midland Avenue Block 51.7, Lot 38-39 R-2 Zoning District

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

CORRESPONDENCE

Mr. Spiegel stated that he observed several people at the new construction on Amboy Avenue and asked if there was an issue with construction at the site.

Ms. Elliott stated that her office has been actively inspecting the site work but with respect to the building, she deferred to Mr. Cosenza. Her understanding, from Nick Netta, was that he was obligated or committed to close on a unit by the end of December, which means they would need a TCO (for the site). So, what you see (on the site) has to be all buttoned up: paved, sided, roofed, etc. The site supervisor is his cousin. It has been a headache.

Mr. Cosenza agreed that it has been a headache for the Building Department. There have been a lot of cancelled inspections; the issues are being rectified because they have to be in order for the units to be occupied. It has taken longer than expected to construct the project.

ADJOURNMENT

The meeting adjourned at 8:49 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary