

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

October 13, 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: Robert Fair, Vice Chairperson
Pat Lagay, Chairperson
Catherine McCartin
Byron Sondergard
Daniel Spiegel
Brian Tobin, Alt. I
Jonathan Rabinowitz, Alt. II
Jim Constantine, Planner
Robert Renaud, Attorney
Kathy Elliott, Engineer
Chris S. Cosenza, Zoning Officer

Late: Suzanne Andrews (7:50 p.m.)

Absent: Judith Sisko

RESOLUTIONS

11-928 Edward & Nicole Kenney – (bulk variance for a shed – approved 9/8/2011)

61 Clive Street

Block 3, Lot 53

R-1 Zoning District

Ms. Lagay stated that she had requested the Board Secretary to retrieve the 2006 resolution for 61 Clive Street. She indicated that it did not mention the shed.

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

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

Ms. Lagay requested the record to show that Ms. Andrews had arrived.

John Wiley Jr., Esq., the Applicant's Attorney, introduced himself to the Zoning Board of Adjustment (Board). He stated that a lighting plan was requested to be submitted for the Board's

consideration. He presented Joseph F. Schaffer, P.E. and requested that he be sworn in.

Mr. Schaffer was sworn in by Mr. Renaud.

Mr. Wiley requested Mr. Schaffer to declare his qualifications to the Board.

Mr. Schaffer stated that he is a licensed Engineer and Planner. He has provided testimony before other boards in the State of New Jersey.

Mr. Wiley requested the Board to qualify him as an expert in engineering. Mr. Schaffer was accepted by the Board as an expert.

Mr. Schaffer described his involvement with the Applicant. He was retained by the Applicant to prepare a lighting plan that would answer questions raised by the Board, particularly regarding lighting levels at the site. He prepared an "Existing Photometric Survey Plan" and a "Proposed Lighting Plan," both dated September 29, 2011.

(continued) Mr. Schaffer stated that he had made field measurements at approximately 10:00 p.m. The existing lighting had an average of 0.37 foot candles, which corresponds to slightly below required residential standard for driveways and walkways. He proposed shielding the existing lights along the six (6) foot high vinyl fence so that light would not spill over onto the residential properties. He also proposed to change the existing lighting from incandescent lamps to compact fluorescent lamps, which would provide a slightly higher amount of light.

(continued) Mr. Schaffer reviewed the proposed lighting plan sheet L-2, which showed a proposed lighting scenario. In this scenario, there would be three (3) bollard lights along the parking lot. Along the St. Luke's property line, there would be a pole-mounted shoe-box light mounted at 12 feet above finished grade. The plan would retain the existing lights at the driveway to demark the entrance to the driveway. Horizontal illumination would be provided at 0.9 foot candles, which is the standard for a commercial site. He did not recommend this plan because he felt that the lighting would be obtrusive. There would be more glare and overflow.

Ms. Lagay asked why Mr. Schaffer was presenting a plan that he would not recommend. She asked if the Applicant was suggesting less lighting.

Mr. Schaffer stated that was the point he wanted to make. He would like to retain the existing light poles with more powerful bulbs and install a painted shield on the back of the two lamps at the western side of the parking lot. It would provide a greater amount of illumination of the parking lot without changing the fixtures and allowing overflow.

Ms. Lagay asked Mr. Schaffer if the parking lot would be properly illuminated for safety.

Mr. Schaffer stated that, if the proposed changes were approved, it would meet the residential standard; however, with respect to safety, he would propose to put one spotlight at the eastern side of the parking lot.

Ms. Lagay asked if bollard lighting had been considered.

Mr. Schaffer identified two (2) factors as to why they were not considered: 1) the cost and 2) it would present a less residential look. It would look more like a commercial parking lot.

Mr. Wiley discussed the option of an additional spotlight and stated that it was the Board's call to make considering there is valet parking and if the Board would want lighting that would meet the Ordinance but possibly be offensive to the neighbors or modify the lighting plan so it was more residential in nature. It is a judgment call that the Board needs to make.

Mr. Schaffer discussed the cutsheets which illustrated the shoebox lamps, bollard lamps and proposed light fixtures for the patio area. He stated that the existing lights had 40 to 60 watt incandescent bulbs while he proposed 100 watt compact fluorescent bulbs with the painted shields and LED down lights for the patio area if it was trellised. He discussed the various types of fixtures and compared their glare and overflow characteristics.

In response to a question raised by Mr. Constantine, Mr. Schaffer noted that the Applicant's desire was to have a lighting plan somewhere between the residential and commercial levels. He reviewed the lighting plan and discussed the proposed changes.

In response to a question raised by Ms. McCartin directed to Mr. Schaffer, Ms. Elliott noted, for the Board's benefit, that it appeared that the proposed lighting plan made by the Applicant was not what the Applicant was proposing. She stated that the plan shows the decorative lights to be decommissioned and the installation of bollards of 42 inches, which is lower than the fence. However, she indicated that the Applicant does not want those bollards. Instead, the Applicant wants to use the existing light poles and paint the back of the fixtures, which are mounted above the fence. Thus, there will be some spillover. None of this is indicated on the plans.

Mr. Renaud stated that L-1, which shows the existing conditions of the site, is essentially what the Applicant is proposing to maintain.

Mr. Constantine noted that the Applicant intended to change the bulbs.

Mr. Renaud reiterated that it appeared that Mr. Schaffer was proposing to replace the 40 to 60 watt bulbs with 100 watt bulbs and install painted shields on the two (2) lamps on the left side of the parking lot. Essentially, what is being proposed (on L-1) is to leave the lamps where they are, change the bulbs and not add additional lighting. L-2 shows the proposed commercial lighting plan which Mr. Schaffer was not recommending.

Mr. Schaffer stated that the statements made by Mr. Renaud were correct.

Mr. Rabinowitz noted, from earlier testimony, that a spotlight was also proposed.

Mr. Schaffer clarified that it was discussed should the Board require it in order to provide additional illumination in the parking lot area. He also noted that the existing light from St. Luke's appears to provide quite a bit of illumination.

In response to a question raised by Ms. Elliott, Mr. Schaffer stated that the down-lit lights may be proposed if required by the Board for the patio area.

Ms. Lagay stated that the Board was not a lighting expert, Mr. Schaffer is. It is necessary to have a plan that is safe and reasonable. It was expressed to the Applicant that Mr. Schaffer should present a plan that he intends to propose, particularly for the patio area.

Mr. Schaffer stated that he would propose a plan that offers the middle-ground between residential and commercial lighting standards. There would be some ground-level lighting and

path lighting along the patio area. In response to a question raised by Mr. Spiegel, Mr. Schaffer stated that, should the Board deny outdoor dining, there would not be a need to provide lighting in that particular area.

Mr. Renaud stated that he believed what the Board was looking for was what could be done on the east side of the property line that will not create problems but create safety. Possibilities were discussed, but it was unclear why they were not being recommended.

Mr. Schaffer clarified that he was recommending bollard lighting along the west side of the property, below the top of the vinyl fence.

There was a long discussion regarding how much and which type of lighting would be appropriate, particularly along the St. Luke's property line as well as what was specifically shown on the lighting plans. During this discussion, Mr. Renaud asked again why bollard lighting would not be used along the St. Luke's property line, to which Mr. Schaffer stated that bollard lighting does not throw as much light forward as a shoe-box light. An overhead light was necessary to light up the parking lot appropriately.

Ms. Lagay and Ms. Andrews asked if decorative lights, similar to the existing decorative lights, could be utilized.

Mr. Schaffer stated that it could be possible.

Ms. McCartin stated that it was unclear what it was that the Board was approving.

Ms. Elliott stated that there are merits to the plans: bollard lighting along the west side of the property are appropriate; the shoe-box light, if it spills over onto St. Luke's, offered more light into their parking lot. She does not recommend a concentrated spotlight. The plans provide some lighting and reduce some of the public concerns. As per Ms. McCartin, it was evident that it was unclear what it was that the Applicant was proposing. However, what was proposed is close to meeting the intent of the design standards.

Mr. Constantine noted that the design standards apply to commercial properties in business zones. Transition locations, such as this location, are more sensitive to lighting issues.

Mr. Schaffer noted that if bollard lighting would be used, parked cars would block out the lighting as well.

Mr. Spiegel expressed his concerns regarding the proposed plan. He stated that the Board should rely on the expert and the expert's proposed plan.

Mr. Wiley summarized the issues at hand: as part of the present application, the Applicant requested to keep the lights and light them, concerns had been raised, the Board determined that a lighting plan would be required and Mr. Schaffer provided testimony regarding lighting.

Ms. Lagay expressed that, in terms of lighting, it was unclear how to proceed. She indicated that she would like lighting not as intensive as commercial lighting and more attuned to the charm of the Metuchen Inn.

Mr. Constantine noted that it was difficult to propose a specific plan unless a physical mock-up was made on site to study. Much of these proposed scenarios could be field-tested.

Ms. Andrews reiterated that it was still unclear what exactly was being proposed by the Applicant.

Mr. Schaffer stated that they would keep the existing lighting, install stronger bulbs, temporarily paint to shield the decorative lights and eventually install metal shields on the back of the two (2) decorative lights. A spotlight would be mounted and shine into the parking lot which would be field-tested to minimize glare into adjacent properties.

Mr. Renaud stated that it appears that, in the original resolution on paragraph 19 on page 9, the plans show removal of light poles in the parking lot in order to remove the possibility that the lights could be restored. He asked if there was a plan showing what lighting would replace the lighting that was going to be removed. He understands that the Applicant does not want to do what he said he was going to do, which was to remove the light poles. The Applicant originally came before the Board and requested to keep the poles intact, but not to light them. Now, the Applicant was requesting permission to not only leave the poles intact, but to light them as well. His concern was that if the Board referred to the original approval, it was unclear where it would leave the current application regarding lighting, if any.

Mr. Wiley stated that lighting was not an issue at the time. Only patio lighting was requested and there would be valet parking.

Mr. Spiegel agreed and recalled previous testimony that, given valet parking, lighting the rest of the parking lot was no longer a matter of safety. That was how the Board got to removal of the light poles in the original application in 2010.

Mr. Renaud stated that the Board had to decide whether or not to change or maintain the condition regarding lighting. Later, he questioned why the decorative lights, which everyone seemed to like, were originally proposed to be removed.

Ms. Elliott and Mr. Constantine both stated that they were inoperable.

There was a long discussion regarding lighting and how it changed during the course of the application. Mr. Spiegel and Ms. McCartin both stated that, until the Board decided on the expansion of the use onto the patio area, the Board should reserve its decision regarding lighting.

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

Joie Garfinkle, 8 Linden Avenue, asked Mr. Schaffer if he observed the two (2) decorative light posts. Regarding the shielding of the lights, she asked whether it would effectively prevent light from spilling onto her property.

Mr. Schaffer stated that he had observed the lights and explained that, despite the increase in wattage, the shields would be placed on one side, directing light away from the residential area.

Mr. Papanicolaou began to ask a question, but was asked by Ms. Lagay and Mr. Renaud to defer to his attorney.

There being no further questions from the public, Ms. Lagay closed the public portion.

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

Trevor Dale, 8 Linden Avenue, stated that he had submitted photographs at the prior hearing. He presented additional photographs for the Board to consider.

Mr. Renaud requested that he review the photographs first, mark them and ask Mr. Dale to describe them. The Exhibits were labeled O-7 through O-18.

Mr. Dale described the set of the photographs, taken by a neighborhood resident within the past month, which showed the accessory structure as remaining in poor condition.

Mr. Renaud asked Mr. Dale if the photographs accurately represented the condition of the property at the time of the hearing.

Mr. Dale stated that they did.

After the photographs were reviewed by Mr. Wiley, Mr. Dale stated that he has been to the Metuchen Inn several times. He likes the Metuchen Inn but he believes that the use should be contained inside. He stated that expanding the use to provide outdoor dining would change the residential feel of the neighborhood.

There being no further comments from the public, Ms. Lagay closed the public portion.

Mr. Wiley offered his summation: He has lived in the Borough for a long time and is very familiar with this particular portion of Metuchen. Although the property is located in the R-1 zone, it has many uses that are commercial in nature. These uses are existing conditions and have been present for many, many years.

(continued) The Applicant, after the fire, elected to make some modifications. Mr. Wiley discussed the 2010 resolution, which added only 318 square feet to the overall building. Aside from withdrawing the original outdoor dining proposal, the Applicant limited his seating to 123 seats despite the fact the Fire Subcode would have allowed significantly more seating. Furthermore, the Applicant agreed to make the following improvements: install the swale, replace the sidewalks, install additional landscaping around the building and upgrade the trash enclosure.

(continued) Mr. Wiley acknowledged the differences of the neighbors' opinions: those on one side of Middlesex Avenue were in favor of the application and those on the other side of Middlesex Avenue had a different view. He believed the difference of opinion was also due to how long they had lived around the restaurant: those who were around for 30 years were familiar with Mr. Dorf, describing his operation of the restaurant as if it were a speakeasy. Certainly that use did not have a great impact on its neighbors because it did not have very many customers. While that may have been to the advantage of the neighbors, the building, however, was collapsing because no maintenance was made on the property. Between Mr. Dorf and Mr. Papanicolaou, an operator ran the restaurant in poor taste.

(continued) Mr. Papanicolaou came in and upgraded the Metuchen Inn when he took over and that he built up its business. He stated that how patrons behave was beyond the jurisdiction of the Board. However, what the Board could control was the appearance of the property, to which there were basically no objections. With respect to the patio area, it exists now, but there is no dining. Employees and patrons can congregate in any capacity, smoke and be as loud as they

want to be. However, the Applicant proposes having outdoor dining for 16 seats with reasonable controls imposed. Mr. Wiley recalled Mr. Carr's testimony in 2010, describing the special reasons for granting of this variance, including the historic nature of the building and the fact that outdoor dining would add to the ambience of the building. He discussed the possibility of noise, which he believed was a subjective matter.

(continued) Mr. Wiley indicated that there are other elements of the application. With respect to the trash enclosure, the kitchen grease is now contained inside the enclosure itself. The enclosure itself, while different than the originally approved wooden structure, is now plastic. The parking lot, while it is not new, is not dangerous at this point. The Applicant is asking for the Board's consent not to pave the entire parking lot. The Board has now reviewed the lighting plan. Mr. Wiley indicated that it was originally proposed in 2010 to remove the existing light poles. In this application, it was then proposed to leave them, but to decommission them. Now, it is proposed to leave the light poles and also utilize them for lighting.

There being no further evidence, Ms. Lagay closed the hearing and requested the Board to discuss the application.

Mr. Tobin asked if the application should be addressed as a whole.

Mr. Renaud stated that there are several options. He noted that there are seven (7) members of the Board present and have heard and reviewed the entire application. The Board is presented with a D(2) variance and it would require, if it were to be passed, five (5) votes in favor. As such, he suggested that, if the Board wanted to proceed with one aspect of the application at a time, the Board begin with outdoor dining.

Mr. Spiegel stated that he originally was leaning toward being in favor of outdoor dining. He now feels that the objectors have given reasons such that the application does not meet the negative criteria. The objectors made a superb argument.

Mr. Rabinowitz stated that he was concerned that enforcing conditions on outdoor dining would be difficult or impossible.

Ms. McCartin recalled her experience with living near an outdoor dining area in Princeton and liked the idea of outdoor dining. She understood the objectors' concerns regarding noise from the outdoor dining but was not certain it was enough from making it happen. However, this application is different than the original 2010 application as the 2010 application had better screening and walls and was more separate and divided from the residential uses. The current application seems stark and less well-thought out. As a result, she has great concerns.

Ms. Lagay summarized her thoughts on the hearings. When the application first became before the Board, things got out of hand on the first night. The Board did not even have a chance to comment on outdoor dining. She recalled possible conditions that could be imposed on the outdoor dining area. In the recent hearings, very good issues had been raised. As long as she has been on the Board, the Board has always tried to preserve the character of Route 27 in Metuchen. There have been applications before this Board regarding similar requests, such as the Elks Club which requested outdoor dining. Neighbors, who were on a hill separated by the railroad, complained about possible noise. The Board found that they would not allow outdoor activities there. In an effort to be consistent, even though each application is looked at on its own merit, she stated it would be difficult for her to approve the application.

Ms. Andrews stated that she is cognizant of the objections of the neighbors. However, she believed that they should be balanced with the interests of the Metuchen Inn and what the Metuchen Inn means to Metuchen. She stated that she is in favor of the outdoor dining, with certain conditions.

Mr. Sondergard stated that he was sympathetic with the objectors as well as the importance of outdoor dining and how important it will be to this particular facility. He stated that he would not vote "no" simply because the Board could not manage the application as that would be the Borough's responsibility to manage the facility in the way that the Board prescribes how it should be done.

Mr. Fair stated that he was disappointed that the request for outdoor dining was withdrawn in the original plan in 2010. Unfortunately, the application has deteriorated since that time. The 2010 plan was superior to the plan the Applicant was now presenting to the Board. He would be in favor of the application if the Board could put some controls on how it was done.

Mr. Tobin stated that he had asked the question "what exactly are we voting on?" several times throughout the course of the hearings. Currently, he would not vote in favor of the plan being proposed. He would have voted in favor of the 2010 plan.

Mr. Renaud described the various scenarios of the voting process. There were two (2) aspects of the application: 1) grant a D(2) variance to permit the expansion of the non-conforming use related to outdoor dining and 2) modify the conditions of the site plan approval.

Ms. Andrews asked Board members currently not in favor of the application if there were certain conditions that could be imposed such that it would change their vote.

Mr. Spiegel stated that the 2010 plan, with respect to the use variance, was sufficient. If the Applicant presented a plan substantially similar to the 2010 plan, he would be more comfortable. However, he was not certain if that was desired by the Applicant.

Mr. Wiley requested an opportunity to discuss the matter with Mr. Papanicolaou.

The Board recessed at 9:40 p.m. and reconvened at 9:51 p.m.

Mr. Wiley stated that Mr. Papanicolaou had no objection to the 2010 plan. However, after speaking with Mr. Renaud, since a) some members of the Board never saw the 2010 plan, b) some modifications need to be made to the 2010 plan anyway and c) the public has the right to review the new plan, the Board would not be able to act at this time.

With respect to the parking lot, Mr. Wiley and the Board discussed time limits as to when the work should be done, particularly given that Mr. Papanicolaou is currently in violation.

Mr. Renaud stated that the answer to when the Applicant should have paved the parking lot was "a long time ago."

Mr. Tobin raised his concerns regarding the delay to vote on the application. The paving season is almost over and the next time to pave would not be until May, 2012. The Applicant has basically been allowed to not do any work for another six (6) months, in order to get a quality product.

With respect to lighting, while Mr. Schaffer presented a proposed lighting plan, he did not recommend that the plan be approved. Rather, he recommended that the existing lighting be allowed. Board members opined that more lighting was needed, although it was necessary to prevent spillover onto the adjacent residential properties.

Mr. Renaud stated that the application would be carried to the following hearing date, November 10th, 2011 at 7:45 P.M. There would be no further notice.

The Board recessed at 10:10 p.m. and reconvened at 10:14 p.m.

NEW BUSINESS

11-928 **Robert & Nicole Contursi** – Applicant is seeking bulk variance approval to construct an addition.

122 Hollywood Avenue

Block 224, Lot 57

R-2 Zoning District

Ms. Lagay requested the Applicants to come before the Board.

Robert and Nicole Contursi were sworn in by Mr. Renaud.

Mr. Renaud asked the Applicants to describe their proposal and why they were before the Board.

Mr. Contursi stated that they wished to improve their property and put plans together for an addition to the house. He indicated that they initially had tried to avoid a variance. However, a couple items snuck in and the proposal now required variances.

Ms. Lagay noted the variances required by the Applicants.

Mrs. Contursi stated that they own the property but do not currently live in it. The footprint of the current house would be expanded by going up and out to the rear yard area. The house currently has a garage but they do not intend to keep their cars in the garage. The proposed garage is too small for a vehicle, so the garage would be used for storage only.

Mr. Contursi added that the proposal was similar to other developments in the neighborhood. The desire to set back the garage was secondary. He questioned who actually kept their cars in a garage.

Ms. Lagay stated that the Borough likes to keep vehicles off the street.

Mr. Contursi stated that he understood but that the space would be better used for general storage to help the living space instead of storing a car.

Mr. Spiegel noted that the Applicants were so close to meeting the standards of the Ordinance. He asked what it was that was preventing the Applicants from complying.

Jacob Trpisovsky, a designer from the Area Design Group, began to describe the plans.

Mr. Renaud interjected and asked Mr. Trpisovsky to qualify himself before the Board.

Mr. Trpisovsky stated that he works for Roy Quackenbush, who is the licensed Architect that oversaw the plans provided for the Applicants. He stated that he was currently taking his exams in order to become licensed in the State of New Jersey. He has been heard before Boards in several other local municipalities.

Mr. Renaud stated that he was not certain Mr. Trpisovsky could testify as an Architect.

Mr. Trpisovsky stated he had not intended to testify as an Architect but, rather, as a designer who worked with the Applicants in preparing the plans. He has also spoken before this Board.

Board members noted that he had not spoken as an expert and asked if he had worked on the house at the corner.

Mr. Trpisovsky stated that, yes, he had worked on the house at the corner and that he was aware of the issues related to the application and understands the impacts. He stated that Mrs. Contursi works at home and telecommutes. Mr. Contursi periodically works at home and telecommutes as well. The two (2) front rooms are really for them to work, leaving the rest of the plan for the family. He passed around copies of the existing first floor plan to describe how small the dwelling is, given the fact that the Applicants also have three (3) children.

Mr. Renaud noted that it appeared that the Applicants had bought the house with the purpose to put something else there.

Mr. Trpisovsky stated that the Applicants have owned the property for several years and actually live next door (at 118 Hollywood Avenue).

Mr. Renaud asked the Applicants if they had bought the house with the intention of living in the house the way it exists.

Mr. Contursi stated that the size of the lot is larger than the lot they live on now. That was one of the reasons why they chose that property. Also, they took pains to draw something that would not require a variance.

Ms. Lagay asked for clarification.

Mr. Trpisovsky stated that it appeared there had been a change in the interpretation for setbacks for existing structures. He indicated that Mr. Cosenza, the Zoning Officer, had determined that since the existing home does not comply with the single and combined side yard setbacks, the application would require a variance. As a result, the house was squared off and the only issue now is the front porch (with respect to Building Coverage and Open Space). However, the porch, as designed, is what gives the house its place and its beauty.

Mr. Spiegel reiterated his initial question, asking if there was any attempt to comply with the Ordinance.

Mr. Trpisovsky stated that he did but there were minimum program requirements that he had to comply with as well. The rear wall was actually pulled in to lessen the impacts. Furthermore, there are aspects of the proposal that make the dwelling more compliant. The third floor will be nothing but an attic. There will be a basement under the addition but it will only have six (6) foot ceilings to match the existing basement in order to avoid flooding. Because of the height and the dampness in the area, the basement will not be usable for storage.

Ms. Lagay questioned the flooding basement and asked how it would be remedied.

Mr. Trpisovsky stated that basements on the entire street get water. There would be a French drain around the foundation and sump pumps. He described the floor plan to some detail, describing the master suite as conservative with respect to its floor area.

Mr. Spiegel questioned to what homes the proposal was being compared to.

Mr. Trpisovsky stated that the dwelling was conservative to other homes he was currently designing.

Ms. Lagay asked for the overall size of the dwelling.

Mr. Trpisovsky stated that the proposed home will be approximately 3,615 square feet. No deck is proposed, but there will be a landing leading to the double doors. There is a proposed concrete or paver patio of approximately 300 square feet. He believed that the patio does not count towards coverage calculations. The Applicants are not proposing to take down any of the trees on the property.

Ms. McCartin questioned if the porch was considered as part of the coverage calculations.

Mr. Constantine stated that it was part of building coverage.

Mr. Trpisovsky clarified that it was the rear yard patio that was not part of the coverage calculations.

Ms. Andrews asked if photographs of the neighborhood were being provided to the Board.

Mrs. Contursi stated that none had been provided. She noted that the proposal would be similar to the addition constructed at 115 Hollywood Avenue. Much of the neighborhood has gone up and out.

Ms. Lagay noted that the house to the left (126 Hollywood Avenue) was going to be fairly small between the two (2) huge homes. She understood that there is a transition in the neighborhood.

Mr. Trpisovsky noted that the proposed dwelling has a narrower front façade by setting the garage back, as noted in both Mr. Constantine and Ms. Elliott's reports with respect to the percentage of the foremost portion of the dwelling by the lot width. Where 50% is permissible, the current house is 73.8% and the proposed house is 59.5%. The lot is 65 feet wide.

Ms. McCartin asked how much the rear wall of the house would have to be pulled in, in order for the house to be compliant with the open space requirements.

Mrs. Contursi stated that she would not be looking at pulling in the back wall at all, but rather reducing the size of the porch.

Ms. McCartin reframed her question and asked how much smaller the porch would have to be reduced, in order for the house to be compliant.

Mr. Trpisovsky estimated that the porch would have to be cut in half.

Mr. Constantine offered that the issue came down to the porch. If removed, it would come down to the side yard variance. He believed that this would help frame the issue for the Board in terms of balancing it with aesthetics.

Mr. Trpisovsky noted that the lot area is noncompliant by approximately 1,000 square feet as it relates to the percentages. Had the lot been 7,500 square feet, the house would probably be 100% conforming.

Ms. Andrews asked if a side yard variance would still be required.

Mr. Trpisovsky stated that it would be since it is related to the existing house. The house was being extended on the sides in order to put the second floor on. The foundation and some of the walls would remain. The house would be 35 feet in height.

There was a discussion regarding the attic as it relates to how large the finished portion can be. According to Mr. Trpisovsky, the building code limits this area to one third (1/3) of the floor area below.

Ms. Lagay asked if there were other homes in the neighborhood that are 35 feet in height.

Mr. Trpisovsky stated yes, such as the house on the corner and the house across the street at 115 Hollywood Avenue.

Board members noted that both properties had come before the Board and that 115 Hollywood Avenue had to come back with revised plans.

Ms. Elliott stated that she was concerned with the drainage on the lot and requested a requirement that the Applicants submit a grading plan which could include some stone trenches and drains installed to bring the water to the front of the property. There will be an addition to the amount of impervious surfaces on the lot. She noted that she and Mr. Cosenza had met several times regarding properties in the area related to drainage.

Mrs. Contursi asked what the area was between the homes on Hollywood and Hazelwood Avenues.

Ms. Elliott stated that, from what she recalls, the Borough tax maps do not show a drainage easement.

Mrs. Contursi raised her concern regarding properties on Hazelwood Avenue as they drain water onto properties on Hollywood Avenue.

Ms. Elliott stated that, according to the lay of the land, water has always drained in that particular direction. She noted that Mr. Romond had installed a perforated pipe to assist in remedying the situation in that particular area.

Mrs. Contursi asked for further clarification as she claimed that the previous Zoning Officer had indicated there was an easement and that it had to remain free and clear.

Ms. Elliott stated that additional research had to be done in order to determine if any easement had been dedicated to the Borough through land surveys and title searches.

Mrs. Contursi stated that she had spoken to Mr. Romond about tying into the pipe, but noted that there is a house in between the two (2) properties.

Ms. Elliott stated that (tying to Mr. Romond's drainage system) would be a reasonable solution.

Ms. Lagay questioned the side yard setbacks.

Mr. Trpisovsky stated that the left side yard is 6.9 feet, the right side yard is 8.2 feet and the combined side yard is approximately 15 feet combined.

Ms. Lagay asked Mr. Constantine if he had any comments.

Mr. Constantine stated that it was in his opinion that a front setback variance for the porch was not required, because open porches are permitted to project up to eight (8) feet into the required front setback. The Applicants had addressed several aspects of his report. He opined that it was possible to basically to do the same expansion plan that the Applicants were proposing in a matter that was conforming. First, remove the porch from the front for coverage reasons and secondly, offset the rear addition by one (1) foot off the side to be compliant with the side yard setback. There is also a non-conforming flexibility provision in the Ordinance that allows a second story to be added to a non-conforming side yard setback if one only goes up one (1) level. There might still be design waivers necessary, but it would not have been heard here before the Board.

(continued) Mr. Constantine stated that the big design waiver was the same one required by the 115 Hollywood Avenue application, where one is only allowed to have the house fill 50% of the permitted lot width at the setback line. In this particularly case, the proposed dwelling is approximately 60% of the lot width at setback but it was being reduced from what it exists today. The landscaping plan is adequate as it has two (2) shade trees in the front yard area and the Applicants will not be removing vegetation.

Mrs. Contursi stated that she had not decided on the particular color of the façade but noted that there was a range of colors present in the neighborhood.

Mr. Constantine asked what material was going to be used for the façade.

Mr. Trpisovsky stated that the house would be vinyl sided, clapboard fashion. There will be shutters and trim around the windows as shown on the plans.

There was a discussion regarding whether or not the Applicants required a parking waiver.

Ms. Elliott stated that she would support granting a waiver from installing sidewalks as there are no sidewalks on that side of the street. She believed that the driveway required a waiver as it is not set back three (3) feet from property line whereas it is proposed to be on the property line.

Ms. Lagay asked if the driveway could be shifted over and still fit two (2) cars.

Ms. Elliott stated that it would be tight; a typical parking space is nine (9) feet wide and the proposed driveway is just shy of 19 feet. The driveway has a single-car entry and flares out to a double-car width.

Mr. Constantine noted that the driveway is 29 feet in depth and given the flare to 19 feet, the driveway could accommodate three (3) cars.

Ms. Elliott stated that since there are no sidewalks, cars would not be blocking pedestrian traffic.

Mr. Renaud stated that a parking waiver was still required.

Ms. McCartin asked if the driveway apron could be shifted over.

Mr. Trpisovsky stated that there is a very large tree that would then have to be removed.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions concerning the application.

Audrey Miller, 127 Hazelwood Avenue, questioned the need for variances.

Mr. Trpisovsky stated that there are several aspects of the property that require variances because of various non-conforming pre-existing conditions. If there were not, the Applicant could simply obtain building permits and proceed with construction with no variances, like the house on the corner.

Mallory Whiting, 139 Hazelwood Avenue, questioned the calculations and asked why the attic would be so high.

Mr. Trpisovsky stated that the calculations were revised and verified by the Zoning Official and that the Applicants needed the attic for storage space. Unlike the Romond's house, where the house sits approximately four (4) feet off the ground, the Applicant's house does not. The house sits closer to the ground, creating a larger roof and attic space. The roof was designed to be more dramatic, so one could see it from the street. With a shallower roof, the house would look squashed. He noted that the height of the house conforms to the Ordinance.

Joan Whiting, 139 Hazelwood Avenue, asked if the Applicants were planning on having cameras on the roof.

Mrs. Contursi stated that she had only planned to have a chimney on the roof.

Ms. Whiting asked if there would be cameras on the eave, like the Romond's house.

After a brief discussion, it was clarified that there would be no cameras.

There being no further questions from the public, Ms. Lagay closed the public portion.

Mr. Sondergard raised his concerns regarding drainage: with building coverage increasing and open space decreasing, he asked if these factors would further exacerbate the drainage issues in the neighborhood.

Ms. Elliott stated that it was in her opinion that the drainage on the subject premises could be improved. A larger roof collects more water and with the water brought out to the street, there would be less water draining on the actual property. Landscaping can also mitigate some issues. Part of the problem is due to the properties on Hazelwood Avenue.

Ms. Lagay asked Mr. Constantine if the porch could be reduced.

Mr. Constantine stated that it would be better if the porch was left at eight (8) feet as opposed to reducing it to six (6) feet, for aesthetic reasons, especially for a house this substantial. He asked the Applicant how the porch would be utilized.

Mrs. Contursi stated that there would be furniture on the porch and that it would be used often. It would essentially be an extension of the living space.

Mr. Constantine stated that section 110-136.1.B.(2) states that the foremost portion of the dwelling shall not exceed greater than 50% of the permitted lot width. The porch portion is approximately 60% of the lot width. There are offsets in the design and while the porch is technically not considered an offset, in spirit, the porch is attempting to address the offset issue. Similar issues came up on the Romond's residence. He offered scenarios where the house could become more conforming.

Ms. Lagay stated that it was difficult to understand because the Applicants were proposing a huge house.

Mr. Spiegel stated it seems to have become a policy issue. The neighborhood is changing. The Ordinances are no longer relevant for modern buildings. Lots are undersized, the side setbacks cannot be met, there is an opportunity for the third floor to be used, there is a large roofline, the house creates a boxy sensation and while there are many design issues, this is obviously what people want. This is not the first, second, or third instance. Better guidance from (Borough) Council is needed.

Mr. Constantine stated that the design standards of section 110-136.1.B deals with these issues. These issues were applied to 115 Hollywood Avenue and are being noted for the current application. The standards adopted (in 2003) represent the policy of the Borough. An additional zoning district, R-1A, was created.

Mr. Renaud suggested that the hearing be finished before the Board comments on the merits of the application, as the hearing had to be opened to the public so comments can be made.

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

Ms. Miller stated that she has lived in her home for over 40 years. She felt that the proposed building would adversely affect the people with houses behind it. She is up on Hazelwood Avenue and they are down on Hollywood Avenue. A three-story home will impact privacy. She stated that there is a place for bigger houses and, certainly, people are entitled to them. However, there is also a place for smaller houses. Had she seen the proposed house back when she bought her current home, she would probably not buy the home. In her opinion, the house would be too large for the lot. She also commented about the drainage swale to the rear and whether or not there was an easement; it was never really explained to her except that it could not be filled in.

Howard Whiting, 139 Hazelwood Avenue, stated that the proposed dwelling would be changing the whole complexion of the neighborhood. The dynamics are starting to change. He understands that people are entitled to them, but only to a point.

Mr. Spiegel recalled the Romond's application where the house had a beautiful architectural design, but exploited every possible bulk regulation. The question was asked, "Could anything be done to mitigate some of the variances?" The response was "Well, I don't need to come before the Board, I can just do this other design" and we got what we got. The problem with this application was that there was an alternative to the design presented to the Board. Based on what Mr. Constantine has said, he believed that the Board can get a little bit more architecture with this design presented to the Board. The problem was that the Ordinance does not govern cubic volume. If the Board chooses to impose certain standards, the risk is that the Applicant can drop the application and build an otherwise compliant but boxy house with no features. It is very frustrating.

Mr. Whiting stated that the front of the Romond's house is nice, but the side and back is basically a box. The proposed house has the same problems.

Mr. Trpisovsky clarified that there are offsets.

Mr. Whiting stated that there is still a 40 foot wall.

Mr. Spiegel stated that the Board can approve the application with a little bit of architecture, but if we don't, what we end up with may be a worse alternative. This has happened before. The Board is in a tough position.

Ms. McCartin stated that she understood but this was an argument that should be taken up to Council. The rules are there, we don't make them. We sympathize, but we can't help.

Mr. Whiting agreed and stated that no matter what decisions that were going to be made, the neighbors will be hurt.

Mrs. Whiting stated that Metuchen is wonderful, it is like none other. The construction of larger homes is ruining the town and taking away privacy. She feels like she lives in a fishbowl. She runs around pulling shades and blinds. There are cameras on every eave. There is an invasion of privacy. Her tree fell down because the wall that was put up did not let water through. The property next door is flooding. She suggested that the house could be less massive as it has too many rooms. There are water problems that she has never had before.

Nancy Hulett, 107 Hazelwood Avenue, stated that she has lived in Metuchen for 21 years. What she liked about Metuchen was that it was quiet, quaint and the houses in the neighborhood were in proportion to each other. The flavor of the neighborhood was being changed by people building big houses, for the worse. The house on the corner is gorgeous, but it should be on two (2) acres of land. She understands that nothing can be done, but it does not seem right.

Mary Jones, 115 Hazelwood Avenue, stated that she has seen an increase of seepage into her house. She was concerned with homes being enlarged and asked where the water will go.

Thomas Romond, 127 Hollywood Avenue, opined that the Whitings have a problem with his son's house. Everything is legal and everything has passed inspections. It is a wonderful neighborhood. All but two houses in the neighborhood have had additions. He does not think that the proposed addition will change the neighborhood.

There being no further comments from the public, Ms. Lagay closed the public portion.

Mr. Spiegel stated that the design is great but he is not happy with the height of the proposed addition.

Mrs. Contursi stated that she understands and based on what she has heard, there is a lot of anger based on what is happened in the neighborhood. The height is compliant with code. She asked if removing the porch would help mitigate the issues.

Mr. Spiegel stated that it was not about the porch, it was a lot of other things. They can be addressed by landscaping or by reducing the cubic volume, among other things. In this case, to his taste, he would try to eliminate part of the third floor and make more interesting rooflines. He does not have a problem with the porch. Without the porch, the design loses a lot of its beauty.

Mrs. Contursi stated that they did try to keep it smaller, but she drove Mr. Trpisovsky through a lot of iterations. The rooflines should be taller; otherwise the house would look squat.

Ms. Andrews opined that the roofline was too high and agreed with Mr. Spiegel's comments. The third floor throws it off, particularly with respect to the neighborhood. If the third floor was made smaller and the peak was lowered, she would feel more comfortable. It would fit more with the neighborhood and the Applicants would not have so much animosity from neighbors.

Mr. Contursi stated that there are other homes in the area that are similar and some that are larger. He asked how many does it take for this to be okay.

Ms. Andrews stated that there were not many and without pictures or proofs, it has not been proven. Many other applications have provided reasons and, in this case, it is not been done. The neighbors have made comments to the effect that the proposed house is too large.

Mr. Contursi began to provide more information, but Mr. Renaud interjected, offering to the Board that the Applicant had already provided testimony. It was time for the Board to discuss the application instead of having back and forth.

Mr. Renaud further noted that, aside from the design standards for a moment, the first question was whether or not the Board was going to grant variances. There was no testimony given, he believes, to grant a C(1) variance, which is a hardship variance. So the question is then whether the Board should grant a C(2) variance, which is that the granting of the variance is going to satisfy some purpose of the Municipal Land Use Law and that the benefit of the deviation outweighs any detriment related to the deviation.

There was a brief discussion regarding the variances.

Mrs. Contursi noted that if the porch was removed and the (left) side wall was brought in by a foot, there would be no variances.

Ms. Lagay requested clarification.

Mr. Trpisovsky stated that they actually had previously stepped it back by a foot.

Mr. Cosenza clarified that an additional 1.71 feet would be required because by stepping the addition back by only one (1) foot, the addition still does not comply with the combined side yard setback.

There was a long discussion between the Applicants and the Board, after which Applicants agreed to consider revising their plans and requested that the hearing be carried to the next hearing date. The plans would have to be submitted by October 31st.

Mr. Renaud stated that the application would be carried to the following hearing date, November 10th, 2011 at 7:45 P.M. There would be no further notice.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Sondergard and seconded by Mr. Fair. Voice vote was taken. Motion carried unanimously.

The meeting adjourned at 12:17 a.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

