

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

September 8, 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
Kathy Elliott, Engineer
Mike DiGeronimo, Planner
Robert Renaud, Attorney
Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Suzanne Andrews
Judith Sisko

Ms. Lagay changed the order of the agenda so as to hear new business prior to old business.

NEW BUSINESS

11-928 Edward & Nicole Kenney – Applicant is seeking bulk variance approval for a shed.

61 Clive Street

Block 3, Lot 53

R-1 Zoning District

John Wiley Jr., Esq., the Applicant's attorney, introduced himself to the Zoning Board of Adjustment (Board) on behalf of the Applicants, Edward & Nicole Kenney.

Mr. Wiley stated that a metallic shed had existed on the property, possibly for 30 years, located at the same exact location as the new wooden shed. The Applicant will utilize the same concrete pad, however, the new shed will be larger than the prior shed which constitutes as a change to a non-conforming structure. The structure has to be set back five (5) feet from the property line. As the Board will see, the structure is not set back properly. Upon reviewing the application, Mr. Wiley determined that there were no alternatives other than to apply for a variance. The Applicants have already constructed the structure, but if it were to be moved, it may violate the warranty. The property is located at the corner of Clive Street and Cape Court.

Mr. Kenney, Ms. Elliott and Mr. DiGeronimo were sworn in by Mr. Renaud.

Mr. Spiegel questioned why the Application for Development did not include prior hearings, such as the variance(s) for the addition to the dwelling before the Board and the waiver for the fence before the Technical Review Committee (TRC).

Mr. Wiley stated he would rely on his clients' testimony as he has no personal knowledge of those applications.

Mr. Wiley asked Mr. Kenney to describe the nature of the previous hearings for the subject property.

Mr. Kenney stated that, in 2005, an addition was proposed to be added to the original ranch structure. In order to have a balanced look to the house by Thomas Baio Architect, it required a variance. The second application was heard by the TRC with respect to a fence, so that it could go beyond the sight lines of the property. In response to a question for clarification, he stated that the TRC application was heard in 2010 and that it was a request to construct a six (6) foot fence in the front yard area.

Mr. Wiley stated that the Applicants are present before the Board with respect to the shed.

Mr. Kenney stated that a metal shed has existed on the property since they bought it in 2001 but suspects it has existed for 20 years prior. The shed was about 10 feet wide, eight (8) feet deep and eight (8) feet in height and sat on a concrete pad. It was discovered that the metal shed had to be moved in order to properly construct the fence. Upon moving it, the shed began to fall apart. At that point, the shed came down and the fence went up. A new shed was gifted by a family member, with a cost of approximately \$3,000. The shed would match the farm shed-style look of the dwelling.

Mr. Wiley asked if there was a warranty and any provisions regarding circumstances where it would not be effective.

Mr. Kenney said that there was a warranty but was not sure if the warranty would be voided by moving the structure.

Ms. Kenney interjected and stated that, "yes, there is" (such a provision).

Mr. Renaud stated that Ms. Kenney could not testify and that Mr. Kenney had to finish first.

Mr. Wiley brought to the Board's attention a series of photographs, taken by Mr. Kenney over the past two (2) months, which are labeled and described as below:

Mark	Description
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- | | |
|-----|---|
| A-1 | View from 73 Clive Street, north side of the property showing the shed; the shed in question has a red roof which can be seen over the fence |
| A-2 | View from 11 Colonial Court, northwest side of the property showing the shed |
| A-3 | View from Cape Court, specifically Mr. Cash's property, showing the shed |
| A-4 | View of the rear yard area showing the shed; on one side the shed is situated against the trunk of the tree and a few inches from the fence on another side |
| A-5 | View of the rear of the dwelling showing the fence and rear yard patio |
| A-6 | View from Mr. Cash's property showing the fence |
| A-7 | View from Mr. Cash's property showing the fence |

- A-8 View of the fence and tree
- A-9 View of the fence and tree
- A-10 View of the front yard area, fence and associated gate
- A-11 (Not in set provided to the Board): View from Clive Street showing the fence
- A-12 View of the corner of the property
- A-13 View of the front of the dwelling
- A-14 View of the rear of the dwelling
- A-15 Copy of the warranty

Aside from the issue of the warranty, Mr. Wiley asked Mr. Kenney to testify to why no other locations for the new shed were suitable that would otherwise comply with the requirements of the Ordinance.

Mr. Kenney stated that placing the new shed against the house would block the windows of the dwelling. The shed could not be placed on the Cape Court side of the property because it would be located in the front yard area. Other than that, it would have to be placed in the middle of the yard, which was not an option. He determined that the best option was to place it in the same location as the old shed. It would be the most logical and aesthetically pleasing location.

Ms. Lagay asked Mr. Kenney to describe the other structures nearby the new shed.

Mr. Kenney stated that there are other sheds on other properties with similar placements and trees along the property line(s).

Mr. Spiegel asked Mr. Cosenza if the site plan for the variance application or photographs for the fence application were available. He did not recall a patio being present.

There was a discussion regarding when various improvements had been constructed. The survey appeared to be marked and updated, but still showed the house as a single-story dwelling.

Mr. Cosenza stated that he did not have the information readily available. He indicated that the survey presented to the Board had a revision date of September 15, 2010.

Mr. Renaud questioned who put the revision date on the survey.

Mr. Kenney stated that the surveyor did it but could not explain why the surveyor did not update the information regarding the dwelling itself as it is no longer a single-story structure.

Mr. Spiegel stated that he wanted to see the 2005 survey, or any survey, in order to see the setbacks of the old metal shed.

Mr. Renaud stated he had great difficulty regarding the September 15, 2010 survey. He had never seen anyone mark it in such a manner: it was not recertified or dated. He pointed out that the survey clearly shows that the intent of the survey was for the fence location during its construction. It does not purport to be a plan or survey as of September 15, 2010. The new shed is not part of this survey.

Mr. Kenney claimed that it was done for the benefit of the Borough.

Ms. Lagay clarified that it was for the fence only.

Mr. Cosenza clarified for Mr. Spiegel that it appeared that a new survey had not been filed for the house after the addition was constructed.

Ms. Elliott had concerns regarding the incomplete application. She indicated that the Applicants left the date and disposition of any previous Planning Board or Board of Adjustment applications blank. As a result, there was belief that there were no prior applications although it was certified by Ms. Kenney that the statements are true. This is primarily a concern for newer Board members and the public and that more research should have been done.

Mr. Kenney stated that his wife had filled it out with Mr. Cosenza. There was never a discussion that it had to be filled out.

Ms. Elliott questioned if the resolution for the variance to construct an addition to the dwelling had included any waivers for the pre-existing non-conforming shed.

Mr. Kenney stated that he believed that there was no reference to the shed in the resolution.

Mr. Spiegel stated that it is the responsibility of the applicant to make these statements on the application for development so that Mr. Cosenza would be directed to do the necessary research. It would have then been included in the package that is sent to the Board Members prior to the meeting.

Ms. Elliott questioned Mr. Kenney if there was any hardship from conforming to the rear yard setback requirement of five (5) feet and requested the dimensions of the new shed.

Mr. Kenney stated that there was no physical barrier to moving the shed farther from the rear lot line, but that tree roots and the patio were in the way. The new shed is 10 feet by 10 feet.

Mr. Renaud asked Mr. Wiley if he had another witness, to which Mr. Wiley stated yes.

Ms. Kenney was sworn in by Mr. Renaud.

Ms. Kenney stated that she had been intimately involved in the application process for all three (3) applications. She assured the Board that the existing shed was never an issue in any of the previous applications. Regarding Ms. Elliott's concern regarding the application not being complete, she stated that she was not clear about how to fill it in but Mr. Cosenza assisted her with the application. She was not aware that the application was required to include prior applications. Regarding the warranty, she stated that they had paid to have the shed delivered and placed. If it had to be moved, she did not know how that could be done. She did not know if moving it would nullify the warranty and she did not have the finances to move it.

Ms. Lagay stated that she understood and asked Ms. Kenney how this became a Board matter.

Ms. Kenney stated that someone must have called the Borough about the shed during its construction.

Ms. Lagay stated that Ms. Kenney is very familiar with the application process and the requirements of the Borough. She knows people are not aware about requirements for sheds, but it has to be in the proper location.

Mr. Renaud stated he had reviewed the warranty, to be marked as Exhibit A-15, and that he did not see anything where it would be voided should the shed be moved. The shed had to be constructed in accordance to assembly instructions.

Mr. Wiley opined that should the Applicants deconstruct the shed, they would not be able to reconstruct it in accordance to assembly instructions.

Ms. Lagay asked Ms. Kenney what the shed sits on.

Ms. Kenney stated that the shed sits on the existing concrete pad but a portion of the shed extends beyond the concrete pad.

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

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

Mr. Spiegel stated he had sat on the Board and TRC regarding the previous applications. The construction of the dwelling and landscaping was appropriate. Regarding the fence, he recalls requesting Ms. Elliott to review the matter onsite and with neighboring property owner(s). However, he feels that the landscaping in front of the fence is lacking. He opined that trellis-work and/or additional landscaping be considered for the new shed.

Mr. Fair opined that the shed blends in well with the house.

Mr. Sondergard agreed; despite breaking the rules, he does not believe any malice was intended.

Ms. Lagay was not aware if there were coverage issues but was in favor of the application as well with consideration that it would be a hardship to move the structure.

A motion was made to approve the application as presented to the Board by Mr. Fair, seconded by Mr. Sondergard. Roll call vote taken. Yes: Mr. Fair, Ms. Lagay, Ms. McCartin, Mr. Sondergard, Mr. Tobin, Mr. Rabinowitz. No: Mr. Spiegel. The application was approved.

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

The Board recessed at 8:38 p.m. and reconvened at 8:44 p.m.

John Wiley Jr., Esq., the Applicant's attorney, stated that Mr. Papanicolaou had previously been sworn in. He wanted to announce that two (2) innovations had been made since the last meeting to which his client will testify to. 1) A change in his solid waste operations to which he will now be using smaller dumpsters. After signing a contract with Waste Management, he will be separating the foodstuff from the other garbage. 2) The lights do work and the Applicant

would like to keep them operational. He believes the Applicant has properly shielded the lights.

Mr. Papanicolaou stated the food waste will now be recycled. The staff will be trained to separate foodstuff into smaller, 3-yard containers. Cardboard and bottles will be separated into 2-yard containers. He agreed to close the window in the shed so that odors will not be emitted. Previously, the garbage was pulled out and left. Now, they will be left inside the shed.

Mr. Renaud questioned how this affects the application.

Mr. Wiley stated that there was testimony regarding the garbage waste enclosure. There were issues regarding facilitating of pick-up and complaints regarding odors. With the new duplex system and smaller containers, the structure itself is now sufficient.

Mr. Papanicolaou believed that is the case as well as an effort to be more environmentally-friendly.

Mr. Renaud summarized and asked Mr. Papanicolaou that with the new system, the materials formerly called garbage are now be completely contained within the trash enclosure.

Mr. Papanicolaou stated yes, with the exception of the oil container, which is now located between the shed and the property line for the church.

Ms. McCartin stated that she had listened to the tapes and recalled that the garbage company would not go into the structure to remove the containers.

Mr. Papanicolaou stated that the containers are smaller, more residential in nature. The garbage company will open the structure and pull out the containers as needed, still picked up three (3) times a week.

Ms. Lagay stated that another concern was regarding odors emitting from the shed. She questioned the opening at the rear of the trash enclosure.

Mr. Papanicolaou stated that he would close it.

Ms. Lagay questioned the lighting.

Mr. Papanicolaou stated that two (2) lights were turned on but asked (his staff) to have them turned off.

Ms. Lagay recalled that the lights were inoperable and that they would be removed. She questioned why it remains standing and operable.

Mr. Papanicolaou clarified that the lights did not have bulbs in them. He recalls from a previous meeting of a desire to provide some lighting to the parking lot. The lights were turned on but then he understood that the lights needed to be shielded from the neighbors to prevent spillover into the residential areas. One light is sealed, but if it is not enough, he will take it down immediately. He stated he had an incident with one of the neighbors taking photographs of his property. As a result, he installed a camera and requests the Board to have the lights remain standing and operable.

Mr. Renaud asked again how this affects the application. It was his understanding that there were two (2) light fixtures which were shown on the original plan as being removed. They were not removed. There is an application to permit those two (2) light fixtures to remain and that they would be decorative because they were inoperable. What the Applicant is suggesting is another variation or change to the application.

Mr. Papanicolaou stated that if the Board felt it was another application, he would remove it immediately. He would like the lights for his safety.

Mr. Wiley interjected and clarified for the Board that there are two (2) aspects to the application: 1) outdoor dining and 2) ask for relief from prior conditions of resolution with respect to some issues: 1) the Applicant would like to keep the light fixtures and 2) light fixtures be operable to light the parking lot.

Mr. Renaud wanted to make it clear that, as he understands, it was not so much that it was a condition of the original approval that the lights would be removed, but that the plan showed that they were going to be removed. If the Applicant does not do what is on the approved plan, then the Applicant has to ask for relief from the approved plan, which he believes is what the Applicant wants. He recalls that the testimony from the previous meeting that the lights were not operative but the Applicant wanted to retain them for decorative purposes.

Mr. Papanicolaou apologized to the Board for causing confusion.

Mr. Renaud stated that if the Applicant wanted to have lighting, then there must be a lighting plan. He was uncertain as to the implication of adding lighting to the application without having a lighting plan with foot candle calculations and information regarding the light fixtures.

Ms. Lagay agreed with Mr. Renaud and stated that the Board needs a lighting plan.

There was a discussion regarding the condition of approval related to lighting and the need for a lighting plan.

Mr. Renaud stated that he has a concern in terms of procedure. One of the issues that the public has is lighting and potential for spillover. In some cases, where issues may be minor, they can be resolved by meeting with the Engineer and Planner.

Ms. Lagay expressed her concern with the application. The Board cannot design the application for the Applicant.

Mr. Wiley explained the process by which lighting is calculated and presented to the Board for the Applicant and Board's benefit. However, no such information is shown on the plans and the Board cannot review lighting without them.

Ms. McCartin recalled the Applicant testifying that he had turned the lights on not for the parking lot but to keep neighbors from coming onto his property.

Ms. Elliott suggested that the Applicant consult with a lighting engineer where a new survey is prepared, showing foot candle calculations. Low-level and low-height lighting can be proposed. She noted that there is some spillover lighting from the church parking lot. Nevertheless, she believes that the parking lot does require some lighting for pedestrian safety.

Ms. Lagay requested to review other matters.

There was a discussion as to whether or not the Applicant had agreed to resurface the parking lot.

With respect to the outbuilding (accessory building), Mr. Papanicolaou indicated that three (3) coats of paint had been applied to the outbuilding. He stated that it has been scraped and painted and the windows repaired. The building is used for storage only.

Mr. Tobin stated that it would be best to find out what it is that the Applicant is requesting.

Mr. Wiley agreed to summarize the issues: outdoor seating, the use of the existing lights as opposed to removing them, maintaining the trash enclosure, relief from having to replace the driveway apron and repaving the parking lot. The Applicant feels that the necessary repairs to the outbuilding are complete he would like to keep the oil container in its current location, to the east side of the shed.

Mr. Renaud asked the Board if the lighting could be approved subject to the Engineer's review on-site or would a lighting plan be required to be submitted to the Board so that the Board could continue to consider the application.

Ms. Elliott stated that it would be to the Board and public's benefit to have an opportunity to review the lighting plan and proposed fixtures. Several Board members agreed.

There was a long discussion as to how to proceed with the application with respect to lighting. In the end, Mr. Renaud stated the Board can determine that a lighting plan is necessary since the Applicant is seeking amended site plan with respect to lighting.

Mr. Wiley and Mr. Papanicolaou clarified that there are two (2) operable lights along Route 27 at the entrance and it is proposed to maintain the two (2) decorative lights along the rear of the parking lot. The patio area would be lit by candles on the four (4) tables. That is the lighting plan that is being presented to the Board and the Board has the right to set conditions.

Mr. Papanicolaou requested a set of parameters within which he could agree to certain conditions. He opined that he did not know which way to think because he is receiving mixed signals.

Mr. Tobin stated that is so because there was nothing presented to the Board to consider. He expressed disappointment that, while he appreciates the efforts made by the Applicant to be concerned of what the Board members are looking for, they cannot be asked to design the application for the Applicant. The Board does not know what the Applicant wants.

Mr. Papanicolaou expressed frustration, stating that he had hired various professionals and, perhaps, they have failed. He stated that has spent \$20,000 on his professionals just to come before the Board and find out there is something else that the Board requires.

Mr. Renaud interjected and recalled that the Applicant has an approval and previously had an application to have outdoor dining, which the Board was entertaining. For some reason, during the course of the application, he had apparently pulled that off the table, so he did not give the Board an opportunity to vote on outdoor dining. If the he wants that again, that is one reason why he is before the Board; it is not because the Board did anything. It is because he decided

not to proceed with that part of the application.

(continued) Secondly, the Board considered the application that he had, granting approval basically what the Applicant had submitted. It had a particular trash enclosure that the Board looked at and liked. For some reason, he decided that he did not want that and gave reasons. He was willing to live with the conditions that the Engineer would look at the parking lot. The Engineer decided it needed to be reconstructed and the Applicant did not agree with it.

(continued) The problem regarding the cost of the application is not because of something the Board did, but is caused by the fact that the Applicant decided there were certain things he did not want to do. There were certain conditions that the Board required, which the Applicant did not object to then, but objects to now. Finally, the current application has changed.

Mr. Papanicolaou opined that his application has not changed in the past three (3) meetings, the only thing that has changed are the lights.

Mr. Spiegel stated that the Applicant's staff needed to review the Ordinance. A proposal was put together, the Engineer reviewed the proposal, it took two (2) or three (3) meetings before the Board could get to an opportunity where the Engineer could make a comment on the proposal, the Engineer determined that the lighting plan did not meet the standards of the Ordinance.

Mr. Renaud added that it is not infrequent that the Board, during the course of the hearing, requests additional information. While certain information may have been sufficient to have the application deemed complete, it was found that the information is not sufficiently detailed to satisfy what it is that the Board needs. There is nothing unusual about this particular application. Each of the four (4) or five (5) requests by the Applicant needs to be voted on separately. The expansion of the restaurant (outdoor dining) requires a minimum of five (5) votes whereas the site plan elements requires majority vote of those present.

Mr. Renaud summarized the different aspects of the application, related to the non-conforming use in the residential area and various site plan elements for the Board and public's benefit.

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

Martin Indik, 427 Middlesex Avenue, stated that he is in favor of the application. He feels that the Applicant has been a good neighbor. He does not feel that the restaurant is detrimental to the neighborhood. He likes the idea of outdoor dining.

Geralyn Hearne, 427 Middlesex Avenue, stated that she has a full view of the restaurant. The parking lot is in great shape. She is looking forward to dining on the patio. She wanted to thank the Applicant for doing a great job on rebuilding the building.

Ben Yashinski, 431 Middlesex Avenue, stated that he believes the Metuchen Inn adds to the charm of the neighborhood. He has been in the neighborhood since 1979. Although he enjoyed the charm of the old Inn, the Applicant has done a good job of restoring the building. The building is now an asset in the neighborhood. He is looking forward to using the outdoor dining. He is satisfied with the parking lot.

Debra DeSantis, 48 Oak Avenue, stated that she wanted to apologize on behalf of her and her neighbors for being emotional in prior meetings and that she will stick to the facts. She was saddened when there was a fire, but not shocked nor surprised. She complained about prior

violations on the property relating to Health, Fire and Zoning: staff parks on Linden Avenue, improper disposal of foodstuff, repeatedly not shutting off the kitchen ventilation at 10:00 p.m., the paint job on the outbuilding was not done properly and that the trim and doors are still in disrepair. She feels that outdoor dining will negatively impact the residential neighbors. Finally, it is unclear what it is that the Applicant is requesting, as made clear during the meeting: the testimony has been disjointed, unprofessional and sometimes contradictory.

Tom Rockefeller, 36 Linden Avenue, stated that previous testimony by Mr. Papanicolaou had indicated that he had no violations, but that is not true. It is because of these issues, Mr. Rockefeller is nervous about outdoor seating. He produced evidence of various past violations of municipal ordinances, marked as Exhibit O-1.

Mr. Renaud asked how that information was obtained.

Mr. Rockefeller stated he had requested records from the Borough.

Mr. Renaud asked that the evidence be given to Mr. Wiley to review. Mr. Renaud requested Mr. Rockefeller to remove any unrelated materials so that the Board can accept them.

There was a discussion regarding the evidence, specifically regarding violations since the granting of the first approval. It was clarified that the Board was well aware of several zoning and fire violations when the Applicant came before the Board in 2010 in order to rebuild the building. However, health violations should be set aside in a separate category.

Mr. Rockefeller stated that his intent was to establish a pattern of what the public has had to deal with. He indicated that the Applicant put decorative lighting in the front within the last couple days without any apparent approval. He does not believe anyone necessarily has a problem with them, but it is apparent that the Applicant takes matters within his own hands without regard to his neighbors. In response to a question raised by Mr. Spiegel, Mr. Rockefeller opined that he believes that once the use is expanded outdoors, there is no way to properly contain it and that it would be a detriment to the neighborhood.

Jayne Grandes, 32 Linden Avenue, stated that she wanted to talk about the outbuilding adjoining her property line. She stated that the Applicant had painted the two (2) sides of the outbuilding facing the restaurant, but not the two (2) sides that face the residences. She was promised that the outbuilding would be painted, but it was not. She submitted a photograph, marked as Exhibit O-2, showing the rotting wood of the outbuilding. She testified that the photograph accurately depicts the outbuilding as of the morning of September 8, 2011.

Joie Garfinkle, 8 Linden Avenue, stated that she understands the Board's frustration. She purchased her home in May of this year. She indicated that she has concerns regarding three (3) aspects of the proposal: 1) outdoor dining, 2) trash enclosure and 3) lighting. She introduced a photograph, marked as Exhibit O-3, taken last night from her second-floor bedroom window, showing the patio area. When the Applicant approached her in July, he told her that he was considering eight (8) seats, which was changed to 32 and then 16. She introduced another photograph, marked as Exhibit O-4, taken approximately a month-and-a-half ago, showing the window in the back of the trash enclosure. She described the garbage situation and the need to close the window. Finally, she also had concerns regarding the lighting proposal. She introduced two (2) more photographs, marked as Exhibits O-5 and O-6, showing the lights on the property that spill over into her property.

Ms. Lagay questioned one of the photographs regarding lighting.

Ms. Garfinkle indicated that the exposure on one of the photographs depicting the lighting was lengthened, since the photograph was taken at night.

Mr. Spiegel asked if there was anything that could be done to mitigate the impact on Ms. Garfinkle's property.

Ms. Garfinkle stated that she only has lived at the property for four (4) months and may not have the same interest as Mr. Papanicolaou or the other neighbors, but has great concerns regarding containing the use, should it be approved.

Marisha Wignaraja, 34 Linden Avenue, stated that her neighbors had spoken eloquently to all of the issues. She asked the Board to respect the neighbors' wishes and deny the application for outdoor seating.

Frank Capron, 61 Library Place, stated that he agrees with the people who live across the street from the Metuchen Inn that the appearance of the property is good: the Applicant has done a good job and the plans are very nice. However, while he likes the idea of outdoor dining, it is not appropriate for this particular property. It is on top of his neighbors.

Trevor Dale, 8 Linden Avenue, stated that he is opposed to outdoor dining as it is located 20 feet from his patio. He feels that that the proposal is not consistent with the Master Plan. He spoke of various elements of the Master Plan, in particular: protecting the character of existing neighborhoods and the preservation of residential character and neighborhoods. He believes that this application infringes on the goals of the Master Plan.

Ms. Garfinkle asked the Board if she could introduce a letter submitted by one of the neighbors on vacation.

Ms. Lagay stated that the Board could not accept the letter as the Board cannot ask questions of the author of said letter. They can attend the next meeting.

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

Mr. Wiley suggested perhaps bifurcating the use variance application. The Board could address the use variance separate from the site plan elements.

In response to a question raised by Ms. Lagay, Mr. Renaud clarified that the Applicant could request to bifurcate the application. The Board could vote on the outdoor dining, there was no point to prolonging the matter. On the other hand, if the Board would approve the application is dependent upon what the Applicant proposes to mitigate any negative affects there would be, then the Board has to consider the whole application.

Board members discussed the application and outstanding issues.

Mr. Renaud discussed several motions that could be made by the Board, such as: 1) move to have the Applicant submit a lighting plan and carry the application or 2) the Applicant be satisfied with the application as presented and request the Board vote or deny the application on the (use) variance only.

Mr. Spiegel questioned what would become of the patio area should outdoor dining be denied.

Mr. Renaud stated that there are tables and chairs on the existing patio; the Applicant would be prohibited from serving patrons outdoors. With respect to people smoking, people could do so now. Serving people outdoors would be in violation of the resolution and the Ordinance.

Mr. Cosenza referred the Board to page seven (7) of the resolution.

Ms. Lagay read from the resolution, stating that no commercialization of the patio area could be utilized; no outdoor dining or drinking is permitted.

Board members indicated that they wanted to wait for the lighting plan.

Ms. Elliott requested that the Applicant show an existing and proposed lighting plan.

Mr. Renaud stated that the application will be carried to the following hearing date, October 13th at 7:45 P.M. There will be no further notice.

RESOLUTIONS

11-922 **MetroPCS New York, LLC** – (site plan and use variance to add additional antennas on an existing 182.5' tower – approved 8/11/2011)

Middlesex Avenue

Block 36, Lot 42

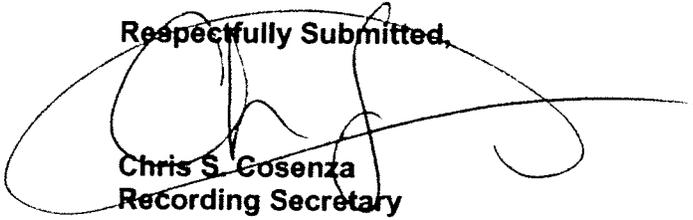
R-4 Zoning District

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

ADJOURNMENT

The meeting adjourned at 10:55 p.m.

Respectfully Submitted,


Chris S. Cosenza
Recording Secretary