

# METUCHEN ZONING BOARD OF ADJUSTMENT

## MINUTES

December 13, 2012

The meeting was called to order at 7:49 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

### ROLL CALL

Present:	Suzanne Andrews Pat Lagay, Chairperson Catherine McCartin Judith Sisko Daniel Spiegel	Jonathan Rabinowitz, Alt. II James Constantine, Planner Robert Renaud, Attorney Kathy Elliott, Engineer Chris S. Cosenza, Zoning Officer
Late:	(none)	
Absent:	Robert Fair, Vice Chairperson Byron Sondergard	Brian Tobin, Alt. I

Ms. Lagay announced that there would be a change in the order of business. She explained the procedures of the Zoning Board of Adjustment: the public will have an opportunity to ask questions after testimony is given and, at the end, the public may provide comments.

### OLD BUSINESS

**12-952**      Todd & Nora Pagel – Applicants are seeking bulk variance approval to construct an addition.

313 Midland Avenue                      Block 51.07, Lots 36 & 37      R-2 Zone

Ms. Lagay indicated that Applicants had verbally requested Mr. Cosenza for an extension.

Mr. Cosenza confirmed and had requested Applicants to provide such in writing, two (2) weeks ago, as well as consent of Applicants to the Board for an extension to act on the application. However, no such documentation was submitted to his office.

Mr. Renaud suggested the Board have a motion dismiss the application without prejudice. Applicants would have an opportunity to come back and renew their application. He expressed his concern for carrying it again.

A motion to dismiss the application without prejudice was made by Mr. Spiegel and seconded by Ms. Sisko. Roll call vote taken. Motion carried unanimously.

## NEW BUSINESS

**12-968**      **Green Street Decorators LLC** – Applicant is seeking an interpretation on the proposed use of the assembly of floral arrangements.

91 Liberty Street

Block 44, Lots 55, 56 & 57    L-I Zone

John Wiley, Jr., Applicant's Attorney, introduced himself to the Board. He indicated that Applicant seeks an interpretation of the Zoning Ordinance. He offered a brief history of the application, referring to the border wars between the residential and industrial districts. One of the devices that resulted from such was the restriction of warehouse or storage uses within 100 feet of residential areas. The owner of the property, Ravi Verma, who is in the wedding design business, apparently moved his business to the premises without approval. He received a zoning violation from the Zoning Official. Working with Mr. Cosenza, Mr. Wiley indicated Mr. Verma had another possible tenant, with the intention to lease the building to a business that would assemble floral designs. He requested Howard Kramer to come forward.

Mr. Spiegel requested clarification regarding what was being interpreted.

Mr. Wiley stated that the Board is being asked to interpret whether or not his client's use constitutes a light-assembly use, as opposed to a warehouse or storage use. He referred to the current business at the premises, which primarily deals with large wedding displays. The Zoning Official determined that such use was a warehouse use. Mr. Wiley presented an alternative use, to which Mr. Cosenza indicated it would be best if Applicant sought an interpretation from the Board, given the many issues at the premises.

Mr. Renaud asked if the prior (or current) use had any approval.

Mr. Wiley confirmed. The current use moved in, received many complaints and that is how it came to the Zoning Officer's attention.

After some discussion, Mr. Renaud framed the question to the Board as to whether Applicant's use constitutes an establishment that produces clothing and fabricated products by cutting and sewing purchased woven or textile fabrics and related materials, such as tanned leather, rubberized fabrics and plastics. (Section 110-83.B(5)(c))

Mr. Wiley indicated it could also be "m", an establishment in the assembly of jewelry, novelties and buttons. He believes the flowers are novelties.

Ms. Lagay asked if the flowers were real.

Mr. Wiley confirmed.

Mr. Constantine pointed out a series of other similar assembly uses.

Mr. Renaud stated that may be so, but asked which one of them is going to be being claimed that the real flowers are. He opined, perhaps, the Board should look at it more broadly, referring to Section 110-83.B.(4), "a plant of a type which have no nuisance problems and which carry on processes within completely enclosed buildings, including the assembly of articles of merchandise from the following previously prepared or refined materials: canvas, cellophane, cloth, cork film, felt, glass, tanned leather, paper, plastics, metals or sheet metals, textiles, wax,

wire, wood and yarns.” He noted that the proposed use does not appear to fit here either. Mr. Renaud opined that the issue at hand is not whether the use fits into these categories, but is the use really what it is going to be: light assembly, storage, a retail operation, etc.?

Mr. Spiegel requested a reintroduction of the application.

Mr. Wiley stated there would be no retail at the premises.

Mr. Kramer was sworn in by Mr. Renaud

Mr. Kramer indicated that he lives at 42 North Park Avenue, Shrewsbury, New Jersey. He is the owner of Green Street Decorators, LLC. The LLC is the owner of Anderson Flowers, which specializes in flower arrangement for weddings. There is a retail shop at 762 Green Street, Iselin, New Jersey and a wedding showroom at 26 Inman Avenue, Rahway, New Jersey. He seeks to become a tenant at the premises, where his business would assemble fresh flowers into floral arrangements and deliver it to weddings. The operation would be conducted by delivering flowers by vans to 91 Liberty Street, where there will be two (2) full-time designers and himself working at the premises. The vans would come back to 91 Liberty Street, be loaded and deliver floral arrangements to various wedding venues and services. The flowers will be stored in two (2) refrigerators, delivered Monday to Thursday. The flowers are cut, placed in various vases and delivered to weddings.

Ms. Lagay noted there were large box trucks at the site.

Mr. Kramer indicated he uses vans and he is not currently at the site. On rare occasions, he may utilize a box truck for very large events only, which may occur twice a season.

Ms. Lagay asked if there would be a showroom.

Mr. Kramer indicated there would never be any brides or clients at the site; there are other locations. The premises would strictly be used for the production of the flower arrangements.

Mr. Spiegel asked if he had a tele-floral business.

Mr. Kramer stated yes, but related designs, assemblies and deliveries come from the 762 Green Street address. Deliveries from the premises are for weekend wedding and special events and are generally done Fridays and Saturdays.

Mr. Renaud indicated that the question before the Board is a legal question. Applicant is not seeking a “d” variance. Applicant believes the use is a permitted use. Therefore, the Board is very constrained on what it can do. He has his own reservations about the building itself. The building itself was apparently approved specifically for the repair of livery vehicles. The pre-existing building had burned down and it was rebuilt specifically for that use because there was not to be any parking because all of the vehicles were to be worked on in the building. A “d” variance was granted for that use. Even as a permitted use, he is uncertain Applicant can just walk into the building. He has not made a determination one way or another. Putting that aside, the issue is whether Applicant’s use is permitted or not.

Ms. Lagay noted that it is at least a Change of Use.

Mr. Constantine opined it was not a warehouse, which is a principal use involving the storage of goods, materials, equipment, merchandise or wares.

Mr. Renaud agreed it was not a warehouse, but was it a light assembly use? Is it a use that meets the intent and purpose of the Light Industrial zoning district.

Mr. Spiegel raised his concerns about other peripheral issues related to the business; however, the Board is simply being asked if the use is permitted or not.

Mr. Cosenza offered to the Board that Ms. Lagay correctly indicated that it was a Change of Use. Even if the Board determines the use is permitted, such requires at least Minor Site Plan approval from the Planning Board.

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

Jan Van Heuson asked about the parking and if the existing business is moving out.

Mr. Wiley confirmed.

Mr. Van Heuson raised his concern about there being no parking on the street. He recalls the previous resolution indicated there is to be no parking on-site (that is, outside the building).

Mr. Renaud stated he fully understood his concerns. He also understood that it is probably difficult for the public to understand, but there is really only one (1) question for the Board to address and that is if the use described is considered to be a permitted use in the L-I zone. All of these questions are certainly valid questions but the Board cannot address them. There will be another meeting but he is not certain whether it will be Minor or Major Site Plan.

Mr. Cosenza offered that the Board is not specifically approving the business to be located here, but if the use would be permitted. There will be additional procedures for Applicant to follow.

There being no further questions from the public, Ms. Lagay closed the public portion. She then opened the hearing to the public for comments regarding the application.

Cathy Van Heuson asked if there would be storage of chemicals on-site.

Mr. Kramer stated that there would be no hazardous chemicals stored on the premises.

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

Ms. Lagay requested the Board to discuss the application. She believes this fits into an assembly type of use. It is certainly less intrusive than other types of assembly uses as described during the course of the discussion.

Ms. McCartin moved to have the flower arrangement be considered light assembly under the Ordinance and seconded Ms. Andrews. Roll call vote taken. Motion carried unanimously.

12-967

**Suburban Square, LLC** – Applicant is seeking to amend major site plan, use and bulk variance approval and request major subdivision approval and additional bulk variances to subdivide the property to create a new street.

85 Central Avenue

Block 82, Lots 1.01, 2.01, 8, 16.01 B-4 Zone  
Block 83, Lots 1-8, 9.01, 9.02, 28, 29

John Wiley, Jr., Applicant's Attorney, introduced himself to the Board. He briefly described the application, indicating that the Board is seeing the same exact site plan. They are considering constructing the apartment building shortly, which would be facilitated by subdividing the property to separate the units already constructed and the new project. During review of drawings, it was apparent no one, including himself, had recognized that proposed building exceeded the maximum building height. Even though it is the same size building, Applicant is seeking a D(6) variance in order to permit the apartment building to be constructed at a height of 42 feet 6 inches. Originally, the building had 33 one-bedroom units, but there will be a modification in that because Applicant has to comply with COAH, which requires two and three bedroom units. As a result of that, there will be a slightly different floor layout and bedroom mix, but the same number of units as originally proposed. Applicant is also finalizing elevations with Mr. Constantine.

Mr. Renaud advised the Board of the variances required by Applicant. He discussed the D(6) variance in that it exceeds the maximum permitted height of the zone by more than 10%. Applicant requires five (5) affirmative votes. The standards are not as strict as the Medici criteria.

Mr. Spiegel requested all aspects of the site plan be discussed, as it relates to any changes whatsoever to prior approvals, particularly the parking. He also questioned, given the request for subdivision, what are the procedures/standards of the Board's review.

Mr. Wiley indicated that for the purpose of the application, it will be treated as one (1) property, but legally there would be different ownership. A cross-easement will be proposed (during the course of the hearing). Applicant will build out the land-banked spaces (at the extreme rear of the parking lot).

Mark Marcille, Applicant's Architect, was sworn in by Mr. Renaud, qualified and accepted by the Board.

Mr. Marcille indicated that there have been changes to the floor layout and slight changes to the height of the building. He presented one (1) floor plan because each of the three (3) floors are the same. There are two (2) key changes: (1) the elevator has been removed and (2) the basement will be utilized for the meter room. This made several units a little larger. The elevation has not changed too much and he has been working with Mr. Constantine, as per the condition of a prior approval. In the original long elevation, the intention was to articulate the building and to jog in and out to create a village-feel, with a mixture of brick and siding. In the original plans, it was not intended to use the fourth floor attic space so the roof lines jumped up and down a bit more. These features are not shown on the revised plans. The plans have been value-engineered a bit but still retain the original character.

Mr. Marcille described the first floor plan being similar to the previous plan. The apartments have been made somewhat larger, each one being about 860 square feet. The second and third floors would be essentially the same as the first floor. The third floor now includes three-

bedroom units which would also utilize the attic area for additional bedrooms.

Mr. Marcille indicated that a lot of the architectural elements had been taken out to make it more affordable to construct. As of now, the roof lines do not jump as they used to. The dormer styles have been changed, adding in gables. The building would be clad with vinyl siding rather than brick, with a mix of colors.

Mr. Spiegel questioned the elimination of elevator.

Mr. Marcille stated that no elevators are required by the Construction Code because the building is entirely apartments (a single-use building).

Ms. Lagay asked if people would have to walk upstairs to the third floor and if they would be marketable.

Mr. Marcille indicated that Applicant would testify to that.

There was a long discussion regarding the floor plans. The bedroom mix would be: 27 one-bedroom units, four (4) two-bedroom units and two (2) three-bedroom units, which was the bedroom mix required by COAH regulations, of which seven (7) would be COAH units.

Mr. Renaud asked if the Borough of Metuchen still had a housing consultant.

Mr. Wiley and Mr. Constantine confirmed that Shirley Bishop was the consultant.

Mr. Renaud asked if anyone consulted with Ms. Bishop.

Mr. Wiley indicated that the Engineering Department did.

Board members questioned the number of bedrooms. It was discussed that the original proposal had 33 bedrooms, with the current proposal having 41 bedrooms, 25 percent more bedrooms. There would be about 5,000 square feet additional being utilized for apartments. The original proposal utilized 33,000 square feet, whereas the current proposal now having a build-out of approximately 38,000 square feet.

Ms. Elliott questioned the height of the building, possibly being construed as a fourth story.

Mr. Constantine said there was no fourth story.

Board members questioned what it was then.

Mr. Constantine indicated that it was a loft. He asked Mr. Cosenza for clarification.

Mr. Cosenza opined that it would be considered a ½ story; however, Applicant is requesting a variance for height anyway.

Ms. McCartin questioned the loft concept.

Mr. Constantine asked Mr. Marcille to describe what the fourth floor consisted of.

Mr. Marcille indicated that the fourth floor consisted of an enclosed bedroom.

Mr. Spiegel opined that a loft typically is defined as a space open to below.

Mr. Renaud interjected that the distinction between the definitions were minor since Applicant is already seeking a D(6) variance because of the number of feet. Board needs to hear the same proofs for special reasons to grant the variance, so it does not matter. He referred to the Ordinance's definitions of "story" and "story, half."

Mr. Spiegel raised his concern regarding the number of bedrooms.

Mr. Renaud agreed that the expansion of the building, even though the number of units remains the same, is an expansion of the Use variance. He opined a D(1) variance is necessary.

Mr. Wiley stated that difficulty was that the same resolution required Applicant to comply with COAH. This is in contradiction to limiting Applicant to 33 bedrooms.

Mr. Spiegel understood but offered there were two (2) solutions: (1) shrink the number of units so that there are 33 bedrooms still or (2) expand the number bedrooms to maintain 33 units. Applicant has clearly opted for the latter option.

Mr. Wiley requested recess.

The Board recessed at 9:05 p.m. and reconvened at 9:10 p.m.

Mr. Wiley requested that the application be carried to next month bring in the planner, complete diagnostics related to COAH and continue the hearing from there.

Mr. Spiegel indicated he would not be present.

Ms. Lagay indicated the application would be carried to the January 10, 2013 meeting. Revised plans have to be submitted at least 10 days in advance of the hearing.

**12-960**      **Metuchen Investors, LLC & Main Street Metuchen, Ltd.** – Applicant is seeking use variance approval for a three (3) story residential apartment building with a total of 19 apartments. Three (3) apartments will be located on the ground floor. Application is being bifurcated.

23-27 Hillside Avenue      Block 118, Lots 19-21, 18.04      B-1 Zone

Mr. Renaud offered that parking should be considered when voting to grant or not grant the variance, but the Board cannot vote on a parking waiver until the site plan is presented.

David Frizell, Esq., stated that he is a principal in Main Street Metuchen, Ltd., and Metuchen Investors, LLC. He will have two (2) witnesses as well as himself.

Mr. Spiegel asked if this application went to TRC.

Mr. Frizell stated no. The site plan had been before TRC several times as well as the Planning Board a few years ago.

Mr. Frizell, Robert W. Adler, Applicant's architect, and Paul Grygiel, Applicant's planner were sworn in by Mr. Renaud. They were qualified and accepted by the Board.

Mr. Frizell summarized the history of the property. He has owned them since the 1980s, starting to acquiring portions of such in 1981. The site currently consists of three (3) two-family homes, one (1) of which is currently boarded up. He introduced Exhibit A-1, a depiction of the existing buildings at the site. He proposes to raze the three (3) buildings and construct a building, which would have either 19 residential units or, if they could not do that, they would go back to the original plan, which was 16 residential units and commercial on the first floor. Applicant had originally applied to the Planning Board for approval of a mixed-use building, consisting of commercial units on the first floor and 16 residential units on two floors above. He felt that the site was not a good site for commercial use even though it is permitted. The 4,000 square feet of commercial space has been eliminated and substituted with three (3) apartments and that is why they are before this Board.

Mr. Frizell continued and indicated that residential units are not permitted on the ground floor in the B-1 zone, as apartments. However, they are permitted in the B-1 zone, on the ground floor, if part of a two-family dwelling because a two-family dwelling is a conditional use in the B-1 zone. They are technically permitted uses. What is interesting is that the residential uses on the ground floor are permitted on Hillside Avenue. He suggested that there is recognition in the Ordinance which permits the proposed use.

Mr. Frizell continued and indicated that he would prefer to build what is being proposed. However, a Use variance is required. He could argue that 4,000 square feet of commercial space is more valuable, in some ways, than three (3) apartments. However, he believes that the residential apartments are better use. People sometimes do not like living directly above a commercial space and given the parking and traffic situation, adding commercial space would make it worse. Anecdotally, Main Street has struggled to keep its stores filled; there is no need to add 4,000 square feet of commercial space at this "orphaned" site to compete with Main Street.

Mr. Frizell continued and indicated that there will be some bulk variances required but they are not asking for them tonight. These include setbacks and a height variance, but not a (d) variance, but a (c) variance instead. Inn Place runs downhill and the building drops down with it. Portions of the building exceed 35 feet, but not more than 10% above. As per recommendations from the TRC in the past, the building was dropped down to two (2) stories at Hillside Avenue to better scale with neighboring uses.

Mr. Frizell continued and indicated that there are 22 spaces for 19 units. He proposes that that is enough. He recalled from years ago, the Borough of Metuchen waived parking for spaces within 250 feet of public parking. That is no longer in the code, probably for good reason. The Board should address it on a case-by-case basis, as opposed to a blanket waiver. So much of the downtown is dedicated to surface parking and what that does is choke off downtown development. He proposes this type of housing where people will have one (1) car or, if they have two (2) cars, they could purchase parking permits from the Parking Authority. The train station is Metuchen's waterfront, so there needs to be appropriate densities near the train station. The most value real estate in town is within 500 or 1,000 feet from the train station. Therefore, he does not want to construct too much parking on-site to compete with the Parking Authority, which provides parking for all of the downtown area's needs. He believes the best real estate in town is owned by the Parking Authority, which is being sacrificed for the benefit of commuters who park for the day and leave, as opposed to having more residents in the

downtown area, who would peruse the downtown businesses. It would be better use of the parking. There would be better customers. The ridership would remain high. He admitted that he had been thinking about this issue for a long time.

Mr. Spiegel asked Mr. Frizell if he had a COAH obligation.

Mr. Frizell indicated he absolutely does and would comply, as required by the Ordinance. He briefly discussed the status of COAH to which he indicated it is the law of the land, it is a constitutional requirement.

Mr. Renaud confirmed and indicated that Metuchen has its own affordable housing ordinance, which is the law regardless whether the State enforces one or not. He related to the prior application this evening where even if a resolution required compliance with COAH, if the plan changes, Applicant has to come back to the Board and have it approved.

Mr. Rabinowitz asked what the difference of parking requirements were between the original proposal which had 4,000 square feet of commercial space and the current proposal consisting of three (3) apartments.

Mr. Frizell stated that 16 parking spaces were required for the commercial space. That has been reduced to six (6), which is 10 less.

Mr. Renaud stated that, from a conceptual point of view, the Board needs to think of the application in terms of commercial use being a permitted use and apartments on the first floor not being permitted a permitted use and Applicant is going to present testimony that will address the reasons why the Board may grant a variance to permit the apartments on the first floor. It is a bit of a hybrid because even though it is a D(1) variance, it is not technically a variance for a use that is not permitted in the zone. The use is permitted, in different forms (or building types).

Mr. Frizell agreed; he will be coming back to the Board with the actual site plan where the Board would have the opportunity to review it in great detail.

Mr. Renaud summarized the issues before the Board: it is a bifurcated application, which means the Board is going to vote on the D variance only. If it is granted, then Applicant has to come back at some time in the future with an actual site plan. With respect to parking, he believed that the Residential Site Improvement Standards (RSIS) apply, not the parking requirements as listed in the Ordinance. The number of spaces required for this number of units, for this bedroom mix, is to be 36 parking spaces. This is broken down to 10 one-bedrooms at 1.8 parking spaces each, which requires 18 parking spaces and 9 two-bedroom bedrooms at 2.0 parking spaces each, which requires 18 parking spaces, totaling 36 parking spaces. The provisions in the RSIS include alternative parking standards "shall be accepted if the applicant demonstrates these standards better reflect local conditions, Factors affecting minimum number of parking spaces include household characteristics, availability of mass transit, urban versus suburban location, and available off-site parking resources." (N.J.A.C. 5:21-4.14(c)) There is a provision for "when, in the judgment of the local approving authority, on-street parking is available, then only that proportion of the parking requirements which is not available on the street shall be provided in off-street parking facilities. A length of 23 feet per on-street parking space shall be used in calculating the number of available on-street parking spaces." (N.J.A.C. 5:21-4.14(f))

Mr. Spiegel asked if the Board approved the concept of the residential use on the first floor, if the Board was bound by the number of units on the first floor.

Mr. Renaud indicated that it is purely the concept of the use. He referred to a statute where “a developer may elect to submit a separate application ... the separate approval of the variance shall be conditioned upon the grant of subsequent approvals of the Board of Adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance.” All Applicant can ask for approval for is the concept of the residential use.

Mr. Frizell confirmed but offered to the Board he did want to give a flavor of what was being proposed and offered Mr. Adler’s testimony for the Board to consider.

Mr. Adler stated that the proposed project is a 19-unit residential structure, where there are presently three (3) two-family dwellings, located at the intersection of Inn Place and Hillside Avenue. The nature of the design is a mixture of two-story duplexes and flats. There will be a mix of one (1) and two (2) bedrooms as well. The duplexes are like townhouses. There are cellars under five (5) of the units and three (3) flats on the ground floor (facing Hillside Avenue), which are the flats in question. He further described the floor plans for the Board.

There was a discussion regarding the nature of the duplex. There are duplexes, two-story units with an internal stair within each unit, on top of flats. The living areas of the duplex are on the second floor with the bedrooms on the third floor. There are no units that enter on the third floor.

Mr. Adler continued and indicated that the massing of the building at Hillside Avenue had been reduced from three (3) stories to two (2) stories, as suggested by the TRC in the past. The general image of the building is that of “adaptive re-use,” that is, the building will be made to look like it has historic character. It is a masonry exterior finish with a stone veneer at the first level and brick above. The trim would be gray or tan, and not stark white so that it would have some sort of fatigue to the building. He described the “stepping” of the building back from Hillside Avenue. He indicated that although there are four (4) levels depicted on the plan, it is actually a three-story building because of the topography. If you measure at any given point, the tallest point is at 38 feet, 6 inches, which is (exactly) 10% (higher than) the maximum permitted height. Applicant is not seeking a substantial height variance. He further described the elevations for the Board.

Mr. Adler continued and indicated there would be a driveway leading into a parking lot behind the building, consisting of nine (9) parking spaces. Along Inn Place, there is a series of nose-in parking, directly off of Inn Place, consisting of 13 spaces. In total, there would be 21 parking spaces and a handicap parking space.

Mr. Rabinowitz questioned the reference to a four (4) story building.

Mr. Adler stated that the first floor is at Hillside Avenue and there are three (3) additional floors within the framework of the entire building. However, given the topography, the building does not appear to be more than three (3) stories at any given point.

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

Garrison Tyrrell, 31 Hillside Avenue, asked if Applicant would have to mill and pave Inn Place.

Applicant indicated Inn Place would have to be improved. Mr. Adler described the parking layout.

Roland Staal, 72 Hillside Avenue, questioned the regulation of traffic in that area and if there was any contingency to address it.

Applicant indicated that other than the stop sign and providing a number of improvements to Inn Place, 21 cars would not create too much of an impact to the surrounding area.

David Aitken, 24 Highland Avenue, asked whether anything would be done to curtail traffic cutting through Inn Place.

Sean Massey, 93 Highland Avenue, asked if car sharing or bike use would be a part of the project. He opined that the municipality should seek to decrease parking and to provide for bike parking and bike storage on the premises.

Ms. Lagay raised her concern that testimony appeared to be given and that only questions could be asked.

Applicant stated that, during site plan review, bike parking and storage could possibly be provided. Mr. Frizell did not like the idea of assigning spaces. He briefly described the advantages and disadvantages of assigned parking based on his experience. He indicated that there are three (3) extra spaces on the plans (when considering one (1) per unit).

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

Mr. Spiegel raised his concerns regarding traffic at the intersection of Station Place and Hillside Avenue, describing the condition of cars stacking on Hillside because the car at the front has to make the left onto Main Street.

Mr. Frizell asked Mr. Grygiel to give his opinion as to the granting of the requested variance, as well as his opinion on whether a variance, exception or waiver could be granted with respect to the parking.

Mr. Grygiel stated that, yes, a variance could be granted as well as the RSIS waiver. He deferred to prior testimony regarding the site plan but wanted to focus on two (2) key issues. The site is unique in the B-1 zoning district in that it is on the fringe of the B-1 district and is in an area essentially surrounded by non-business type uses. He introduced Exhibit A-2, Existing Land Uses and Zoning, which depicted same within the surrounding area. The proposed use would be a very good transition between the B-1 and the R-1 district to the east. He noted the vacant storefront at the intersection of Station Place and Hillside Avenue, which may speak to the unpopularity of commercial uses in this area.

Mr. Grygiel continued and stated that B-1 zoning district permits residential uses on the second floor. The prohibition is for ground floor residential uses. The B-1 zone permits two-family dwellings as a permitted conditional use, so residential use is permitted at the site, although not in the form of apartments as proposed. He stated that the relief being sought by his client is only for the three (3) residential units along the ground floor of the structure. He indicated that if it was interpreted that if the units that face on Inn Place also require relief, Applicant is seeking relief of such as well.

Mr. Grygiel explained that the positive criteria under the Municipal Land Use Law requires that special reasons be demonstrated. He referred to the master plan, which recommends residential uses within walking distance of transit. However, zoning and master planning does not account for site-specific conditions. Hillside Avenue is clearly predominately residential. His opinion was that commercial use was not an appropriate use for the site despite the master plan and zoning ordinance promoting commercial uses. The Planning Board had also raised its concern regarding ground-floor commercial uses in this area.

Mr. Grygiel continued on the theme of site suitability and suggested the proposal promotes purposes (a) and (e) of N.J.S.A. 40:55D-2, encouraging municipal action to guide the appropriate use or development of lands and promoting the establishment of appropriate population densities and concentrations.

Mr. Grygiel explained that the negative criteria under the Municipal Land Use Law must also be met, that is, that the proposed use would not impair the intent and purpose of the zone plan and zoning ordinance and would not result in substantial detriment to the public good. The property can accommodate residential uses. Residential uses are permitted on the ground floor as a conditional use and residential apartments are already permitted on the upper floors. The proposed building would be an aesthetic improvement to the area. In terms of traffic and parking demand, the parking that is required is actually less than would be required from permitted conditional uses.

Mr. Grygiel acknowledged that he is not a traffic engineer, but indicated that from a planning point of view, that the targeted market would be persons who would take advantage of the proximity of mass transit or may not even have a vehicle. Adding more residents to the downtown area actually would be beneficial for downtown businesses and commerce as a whole. He does not believe there would be not be a substantial detriment to the zone plan and master plan. It is a better alternative than commercial uses on the ground floor.

Mr. Frizell requested Mr. Grygiel to speak to the RSIS exception.

Mr. Grygiel indicated that 36 parking spaces are required and 22 parking spaces are proposed. He indicated that it would be impractical to provide all of the required parking given the proximity of the site to mass transit, on-street parking and alternative parking available.

Mr. Renaud asked Mr. Grygiel if the application would qualify for de minimus exception so that it would not have to go to the State board for a waiver.

Mr. Grygiel opined that the deviation of the parking from the RSIS could be granted during the site plan review process with a de minimus exception, and that a waiver application would not be required.

Mr. Rabinowitz asked if that was based on studies on similarly-sized projects in similarly-sized towns.

Mr. Grygiel stated, yes, that there are studies and has experience in other urban centers, including Rahway, where they are pushing for the standard to be one (1) parking space per unit in the area around the train station. Given the market conditions and good planning, he believed that one (1) to 1.25 spaces per unit is most appropriate.

Mr. Rabinowitz stated he understood, but asked about the reality of the parking demand.

Mr. Grygiel stated that he would not be able to definitively answer that question, but his experience indicates those numbers were appropriate.

Mr. Spiegel stated he agreed with the RSIS testimony, but questioned what comes first: the number of units or number of parking spaces in order to arrive at how this building, as designed, was particularly suitable for this site. He expected a somewhat different building.

Mr. Grygiel stated that was a fair question and would address such during the site plan review process. He offered that the Ordinance permits buildings to be 35 feet in the B-1 zone.

There was a long discussion regarding the massing of the building and how it relates to the surrounding area, during which Mr. Spiegel stated that he had no issues with the concept of ground-floor residential units and RSIS exception, but raised his concern regarding the number of units, number of parking spaces being waived, the massing of the building and its transition from Main Street to a very defined residential street.

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

Mr. Staal asked what Applicant would do if the application was denied.

Mr. Frizell stated that he wanted to build a building that everyone would be proud of, but it would also have to be economically-feasible. He had not given thought to other proposals. He believed the two-family homes needed to be demolished.

Mr. Massey asked what kinds of measures are being proposed to keep passersby from peering into the windows.

Mr. Adler indicated that the windows would be put as high as possible, but still provide egress as required by the Construction Code.

Mr. Massey asked what was being done to activate the public realm.

Mr. Adler stated that the design includes aspects of the downtown style. The building is being brought closer to the street but still maintain 15 feet of setback from the curb. It will be similar to the buildings across the street.

Mr. Tyrell asked about the transition from Main Street to the site, asking how the height of the subject proposal would compare to Main Street.

Mr. Adler indicated that the building would not be higher than Main Street or considerably higher than the nearby residences.

Mr. Staal stated that he understood that the heights are similar but asked about the building's relationship to sea level given a portion of the building is situated on grade level much higher than Main Street.

Mr. Adler indicated that buildings are measured from grade level, not from sea level.

Mr. Frizell stated that the building is otherwise compliant to the zone. To visualize it, he compared the proposed building height to that of the Global Indemnity building.

Mr. Adler clarified that the height variance is only required at a certain portion of the building, because of the grade, although if more dirt was added, the variance could be eliminated altogether.

There being no further questions from the public, Ms. Lagay closed the public portion. She then opened the hearing to the public for comments regarding the application.

Mr. Tyrell stated that he thought that the application serves the neighborhood better than commercial uses. However, he raised his concern regarding the parking. He believes the application needs either more parking or fewer units. He believes that fewer units should be considered. He described the issues of traffic congestion in this area. More cars may not be the best thing for the site. In the end, he does like where the application is going as compared to its previous iteration. He is grateful for the changes.

Mr. Massey commended Applicant for the proposal. He indicated that he was not crazy about the idea of ground floor residential use but understands the financial issues (for providing commercial uses instead). When proceeding with site plan, he believes that Applicant should unbundle parking cost from rent, maximize parking from the Parking Authority, car-sharing, and ensure adequate bike parking and storage. Given the proximity to the train station and its impact on the downtown economy, he believes that the site should be developed at higher density.

Mr. Aitken stated that he was in favor of change from commercial to residential use. He raised his concern regarding traffic that may occur on Inn Place and parking. Given the 25 foot width (of Inn Place), what would satisfy him if there was an active pedestrian walkway within Inn Place. He further commented on the scale of the building.

Stanley Lease, 28 Franklyn Place, indicated he has lived in Metuchen for over 30 years and has served on the Planning Board. He congratulated Applicant for coming forward. We all know that there is traffic in this area and we know a nice building will be built. He opined that it was a great, great project. It would be a great ratable for Metuchen. It will be better than several two-family homes. When people come to Metuchen, they will have something to look at. It is going to be a beautiful building. It is a great transition from business to residential. He could not think of anything better than what is being proposed. He feels that it would not compete with the downtown. He was impressed with the Board's questions and commended their dedication to the Borough.

Mr. Staal indicated that he is generally pleased with the project, but that he is curious and concerned about the height and traffic. He liked the idea of residential use on the first floor.

There being no further comments from the public, Ms. Lagay closed the public portion. She asked the Board to discuss the application.

Mr. Constantine indicated that three (3) or four (4) duplexes could be built at the site, having a total of six (6) or eight (8) dwelling units. Applicant has addressed all aspects of his memorandum, particularly the transitional issues. Parking will be address next time. The site is about a three (3) minute walk from the train station. This would support one (1) car per unit (in the downtown) and there are examples of people in town who have no cars at all. This is a much more transit-friendly location than some other locations. He discussed the issue of the front yard setback from Hillside Avenue. He encouraged Applicant to consider a slightly greater setback to ensure privacy. That was part of the public discourse regarding the Borough's consideration for ground-floor residential use.

Ms. Elliott indicated that she had no further comments.

Mr. Spiegel requested that the finding of fact be that the Board found that Mr. Grygiel's testimony to be compelling regarding the ground-floor residential use. He raised his concern regarding the density.

Ms. Andrews agreed.

Mr. Rabinowitz raised his concern regarding setting a precedence. Council brought forward an Ordinance last summer that was subsequently squashed, in which ground-floor residential use throughout the downtown was considered.

Mr. Spiegel asked if he was concerned about the use at this particular site or in general.

Mr. Rabinowitz stated, if done properly, he is for it. As far as for this site, he indicated he was in favor. He raised his concerns about the massing and its impact on the streetscape as well as the parking. He commended Applicant for presenting a high-quality proposal. He asked Applicant to reconsider the parking. He raised his concern about car creep on Hillside Avenue and side streets.

Ms. McCartin stated that when she and her husband first moved into Metuchen, they had one (1) car. Her husband worked in New York and she drove to Trenton. If they did not have two (2) cars, they could not be further away from the train station, which was why they specifically chose to live along Hillside Avenue because they only had one (1) car. She opined that Hillside Avenue is fundamentally different than other streets. It seems to transition so much more quickly from Main Street into the residential area.

Ms. Sisko stated she was very much in favor of having residential on the first floor. With respect to parking, she has been parking in the Station Place lot for about 15 years. She is very familiar with having to work with the Parking Authority to arrange for spaces as needed. It is a small town, very compact, but it is not to say arrangements could not be made.

Ms. Lagay stated the use is better as residential for this particular site.

There was a discussion regarding the number of units and parking spaces.

Mr. Renaud indicated Applicant wanted to mitigate the parking issues despite it not being possible given that the Board cannot address the parking issue at this time. Waivers and exceptions are for site plan and subdivisions only. He indicated that he would articulate (in the resolution) that the Board did not make any decisions regarding the parking or accepted any testimony.

A motion to approve the D(6) variance to permit the concept of ground-floor residential was made by Ms. Sisko and seconded by Ms. McCartin. Roll call vote taken. Motion passed unanimously with Ms. Andrews and Mr. Spiegel noting that they are expecting lower density.

## RESOLUTIONS

**12-964**      **Stephen & Gail Toth** – (bulk variance to construct an addition – approved 11/8/2012)

41 Buchanan Road

Block 4.2, Lot 22

R-1 Zone

A motion to approve the resolution as written was made by Ms. Sisko and seconded by Ms. Andrews. Roll call vote taken. Motion passed unanimously.

## CORRESPONDENCE

Mr. Spiegel noted that he would not be present in January.

## ADJOURNMENT

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

The meeting adjourned at 11:29 p.m.

**Respectfully Submitted,**

**Chris S. Cosenza**  
**Recording Secretary**