

# METUCHEN ZONING BOARD OF ADJUSTMENT

## MINUTES

July 12, 2012

The meeting was called to order at 7:48 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

Ms. Lagay noted that Mr. Cosenza had received a letter from the attorney that was representing the property at 91 Liberty Street, which read: "In reference to the above-captioned matter, please be advised that our office represents the Applicant and Owner. On their behalf, please accept this letter as a formal request to withdraw the current zoning application. We will be applying for zoning interpretation on this property next month. Thank you." She noted that the Applicant may be before the Board in August but that an interpretation does not necessarily require public notice.

Mr. Spiegel stated that members of the public (who were present for the 91 Liberty Street application) should be calling the Zoning Office each week for some time because they will not be noticed. A zoning interpretation does not require notice.

Ms. Lagay followed up and stated that the agenda needs to be done 10 days in advance of the next meeting. The next meeting is August 9<sup>th</sup>.

Various members of the public rose concerns about the current use of 91 Liberty Street, to which the Board did not have jurisdiction to address. Mr. Cosenza stated he would take enforcement action as necessary.

Mr. Renaud reiterated that the Board could not take any action. July 30<sup>th</sup> was the deadline to submit an application. He advised the public to contact the Zoning Office between the July 30<sup>th</sup> and August 9<sup>th</sup>. Any application (even one for an interpretation) requires to be deemed complete at least 10 days in advance of a meeting date.

### ROLL CALL

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

## **NEW BUSINESS**

**12-947**        **Barbara Cohen** – Applicant is seeking bulk variance approval to construct a deck.

199 Highland Avenue                      Block 124.04, Lot 9.05                      R-1 Zoning District

Barbara Cohen, Applicant, and Robert A. Hernandez, Applicant's Architect, were both sworn in by Mr. Renaud.

Ms. Cohen stated she has lived in Metuchen for 24 years in the same house. In regards to why she is before the Board, she had discovered a persistent leak in her roof. When she had a contractor come in to repair the roof, it had "snowballed" from a 7-day project to a 14-week project in which her entire roof and siding were replaced. During that time, it was found that the deck was attached to the siding and not to the house. The contractor wanted to address this by properly attaching it to the house framing. He had removed the deck and found the support beams for the deck were rotted and the footings were not up to code. The contractor went to Borough Hall to obtain permits and discovered that there had been no permits for the existing deck. She decided to go to the Board to obtain approval to essentially rebuild her deck.

Ms. Lagay stated that the reason Ms. Cohen is before the Board is because of coverage issues.

Ms. Cohen confirmed.

Mr. Hernandez began to speak in support of the application.

Mr. Renaud interjected and asked Mr. Hernandez to declare his qualifications to the Board.

Mr. Hernandez stated that he had been before the Board and is a licensed Architect in the State of New Jersey. He was licensed approximately two (2) years ago. He had previously worked for Thomas Baio Architect for 13 years and is now on his own.

The Board accepted Mr. Hernandez's qualifications.

Mr. Hernandez stated that 10,000 square feet is the required lot area in the R-1 zone. The subject lot has only 6,840 square feet, short some 3,200 square feet. If the lot had the required 10,000 square feet, the coverage requirements would have been met. The design of the deck is 24 feet wide and 12 feet deep, approximately 250 square feet in area. The stairs were placed at one of the corners. Ms. Cohen's hardship is the lot size.

Ms. Lagay asked what material the deck would be consisted of.

Mr. Hernandez stated it would consist of pressure-treated lumber. The Applicant has the option to upgrade. He clarified that the Applicant is before the Board because the Applicant is requesting a bulk variance for building coverage. He questioned why decks were included in the building coverage calculation as he believed that decks should not be considered.

Ms. Lagay asked Mr. Cosenza to speak about the Ordinance.

Mr. Cosenza stated that he calculated building coverage to include all built accessory structures in addition to the principal structure, such as porches, decks, sheds and so on.

Ms. Lagay asked if that was what the Borough's practice had been.

Mr. Cosenza confirmed.

Mr. Spiegel asked Mr. Hernandez if he would advocate for every residence to have a deck that would go from the foundation wall to the rear lot line and span from side lot line to side lot line and for such decks not to be considered building coverage.

Mr. Hernandez noted his point was that patios do not count at all. He had observed regulations (in other municipalities) that permit decks to occupy a certain percentage of the lot.

Mr. Renaud requested clarification for the size of the deck.

Mr. Hernandez stated it is 254 square feet.

Ms. Lagay asked if the Applicant had an opportunity to review the Borough Engineer's review letter.

Mr. Hernandez stated that he did not recall.

Ms. Lagay asked what the view of the deck from the neighbors would be. She questioned if there were going to be trees or a fence.

Mr. Hernandez referred to photographs that were submitted as part of the application.

Ms. Cohen stated that one of her neighbors has a fence, so they would see nothing. The other neighbor has a set of swings.

Mr. Renaud noted that in order for the Board to address the actual variance, which is going 1.59% over the building coverage limit, he asked why the Applicant could not comply with the Ordinance.

Mr. Hernandez stated that there had been an existing deck and is only 1.59% over the limit.

Mr. Renaud asked what would be disadvantageous about making the deck the size it would need to be to comply with the Ordinance.

Mr. Hernandez asked about the intent of the question before being interjected by Mr. Renaud who stated that he was simply trying to assist the Applicant in declaring what the actual hardship was so that the Board could legally take action.

Ms. Lagay asked if the deck would be too small for furniture.

Ms. Cohen stated that she had a large table.

Mr. Spiegel stated that Mr. Renaud is simply asking for the Applicant to satisfy the standards.

Mr. Renaud reiterated his question in a different way and asked what the size of the deck would be if the deck complied.

Mr. Cosenza stated that the Engineer's review letter indicated that the Applicant's proposal was 109 square feet over the limit.

Mr. Renaud stated that the deck would be almost half the size and that would be a problem because...

Mr. Hernandez continued and stated that the deck would be smaller and furniture would not be accommodated. The deck would be virtually unusable. It would be the size of a landing.

Mr. Spiegel agreed and stated that the design is mitigated because the bulk of the deck is in the center of the property, which keeps the activity away from the side yard.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions concerning the application. There being none, Ms. Lagay closed the public portion.

Ms. Lagay opened the hearing to the public for comments regarding the application. There being none, Ms. Lagay closed the public portion.

Ms. Lagay requested Board members to discuss the application.

Mr. Sondergard opined that the application was reasonable and there is no need to cut down the size of the deck.

Board members agreed.

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

## **CORRESPONDENCE**

Mr. Fair asked Mr. Cosenza about when a project becomes just a repair (as opposed to a new application).

Mr. Cosenza stated that anything more than 50% destroyed or removed constitutes it being removed (therefore, a replacement structure would be new, not a repair). Specifically regarding a deck, it would likely be to the point of the footings, girders and joists.

Mr. Renaud recalled that, in the case of the Cohen application, the deck was completely removed several months ago.

Mr. Cosenza confirmed. When the contractor came to see him to obtain permits, Mr. Cosenza looked at the proposal and said it was too big even though it was replacing the existing one. The Applicant elected to go through the process to obtain a bulk variance.

Mr. Spiegel noted that (the construction of the original deck) was another instance of a contractor doing work without permits and raised his concerns.

Mr. Spiegel asked why an interpretation does not require public notice. He asked who would know about it.

Mr. Renaud stated that the Ordinance could be changed. At this point, the Ordinance does not require public notice for an interpretation. The Municipal Land Use Law has a class of which applications require notice and others, like interpretations, do not. He stated that the Ordinance could be changed to require public notice.

Mr. Cosenza noted that Appeals of the Zoning Officer's decision also did not require public notice.

Board members discussed the lack of landscaping and pavement work at the Metuchen Inn. Mr. Cosenza noted that it was still pending enforcement action and that the Borough Engineer and Planner still had to do their final inspections.

### **Annual Report**

Ms. Lagay requested the Board to review and discuss the Annual Report for 2011.

A motion to approve the Annual Report for 2011 as written was made by Ms. Sisko and seconded by Mr. Fair. Roll call vote taken. Motion carried unanimously.

### **Minutes from September 8, 2011**

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

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Sondergard and seconded by Ms. Sisko. Voice vote taken. Motion passed unanimously.

The meeting adjourned at 8:20 p.m.

**Respectfully Submitted,**

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