

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

June 14, 2012

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: Suzanne Andrews
Robert Fair, Vice Chairperson
Pat Lagay, Chairperson
Catherine McCartin
Judith Sisko
Byron Sondergard
Daniel Spiegel
Brian Tobin, Alt. I
Jonathan Rabinowitz, Alt. II
Robert Renaud, Attorney
Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Kathy Elliott, Engineer
Jim Constantine, Planner

RESOLUTIONS

12-945 Robert Narus – (Bulk variance approval to expand the driveway and construct a front walkway – approved 5/10/2012)

119 University Avenue Block 51.02, Lots 18 & 19 R-2 Zoning District

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

09-8691 Suburban Square, LLC & Wine Chateau, LLC – (Amended site plan, use variance and bulk variance approval to increase office space, decrease warehouse space in the Wine Chateau building, additional parking at rear of the Wine Chateau building and temporary parking on the vacant lot – approved 5/10/2012)

85 Central Avenue Block 82, Lots 1.01, 2.01, 8, 16.01
B-4 Zoning District Block 83, Lots 1-8, 9.01, 9.02, 28, 29

Ms. Lagay noted a spelling error for “Morris” where it should have been “Norris.”

Mr. Renaud stated that he would make the corrections as necessary and coordinate with Mr. Cosenza.

Mr. Spiegel questioned the bonding issue.

Ms. Lagay noted that the resolution indicated that the Board did not have jurisdiction.

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

12-940 **Oliver Trevidic** – (Bulk variance approval to construct a rear addition – approved 5/10/2012)

84 Rector Street

Block 125.01, Lot 32

R-1 Zoning District

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

CORRESPONDENCE

Ms. Lagay noted that it was generally unusual for the Board to meet only for resolutions, but there was an application this evening that had to be withdrawn at the last minute. There was a problem with the application. Instead, there will be a short meeting to briefly discuss the draft of the Annual Report of the Zoning Board of Adjustment.

Ms. Sisko requested that her name be change in all reports from “Judy” to “Judith.”

Ms. Lagay stated that her Report had a table that showed the gradual decline in the number of applications. She asked for insight regarding this trend.

Mr. Spiegel stated that shrinking home equity may have played a role.

Ms. Lagay noted that the Planning Board has not been that busy as well.

Ms. Sisko asked if Mr. Cosenza had insight, particularly those cases that had or had not come to the Board.

Mr. Cosenza noted that he has been preparing department reports annually, in which there is a chart that shows the number of permits issued since 2007. It began with approximately 250 in 2007 to a low of around 140 in 2009. Last year, there were well over 200 and this year is going to be close to 300 permits. He noted that the number of applications applying for variances has not accompanied these trends; as expected, applicants would like to avoid from having to go to the Board. The economy is a factor as preparing for an application can become expensive and the additional time frame can become a problem for obtaining lines of credit and loans.

Board members noted that people are being smarter at where to spend their money and understanding the Ordinance better.

Mr. Cosenza concurred and that he spends a lot of time working with applicants. He stated that there have been certainly more additions lately than in the past few years; it just so happens that these additions do not require variances. Generally, corner lot properties commonly run into issues with the Ordinance. In fact, tonight’s (withdrawn) application was a corner lot.

Mr. Spiegel asked about subdivisions in general. If one had a 15,000 square foot lot and subdivided to two (2) 7,500 square foot lots, they were approved. If one had 13,000 square foot lot, they were denied. It seems that those are now being approved. He had wondered if there were any other policy decisions that had changed throughout the years that might explain why the Board or the Technical Review Committee (TRC) have not see as many applications of late.

Mr. Cosenza noted it was more likely to be less about policy issues than inconsistencies at the zoning officer position, referring to himself as well as previous zoning officers because of various inconsistencies within the Zoning Ordinance.

Ms. Lagay agreed that the Zoning Ordinance needed to be tightened up. This led to a discussion regarding the Zoning Ordinance Subcommittee that addressed these issues and is preparing a draft document of recommendations to Borough Council. The committee consisted of the Planning Board Chairperson, Eric Erickson, Mr. Cosenza, Mr. Renaud, Ms. Elliott, Mr. Constantine and herself. The committee worked with Mr. Cosenza's findings of inconsistencies in the Zoning Ordinance. She asked Mr. Cosenza to briefly describe the recommendations.

Mr. Cosenza stated that one of the issues was the Borough's handling of fences, driveways, sheds and pools. These should be moved back into a different section requiring variances (instead of exemptions). Accompanying this change, he has recommended changing the escrow fee schedule. The escrow fees should correspond with the amount of review that is generally expected to be paid to the Board professionals. For example, a single bulk variance has a minimum escrow fee of \$750 at this time. For something as simple as a driveway or a fence, the Board is more than capable of reviewing a simple application with the Zoning Officer and Board Attorney and without the Engineer and Planner; therefore, he has recommended lowering the escrow fee to \$250 (for accessory structures).

Ms. Sisko asked when driveways and fences were changed.

Mr. Cosenza and Mr. Renaud both stated that it appeared to be changed in 2003 when accompanied with the introduction of design standards for single-family dwellings.

Ms. Lagay asked if there were any other recommendations.

Mr. Cosenza stated that he has recommended that the "Change of Use" definition be further simplified to make it easier to open a business in town. Going to TRC for a rather simple application can be cost-prohibitive and reinforces the misconception that it is "difficult to open business in Metuchen." He has recommended that Minor Site Plan approval not be required for certain changes of uses. However, the Building Department will still require architectural plans and inspections for any and all changes of uses.

Mr. Spiegel stated that while we should make it easier, it seems that the reason people do not go to Zoning for approval is because they just do it anyway.

Ms. Lagay agreed and that a lot of people are not aware of driveway and fence standards; it seems like the Borough has a lot of non-conforming and illegal driveways and fences. Ms. Lagay noted the "Open Space" issue.

Mr. Cosenza confirmed and stated that it is in his opinion that the definition only applies to major developments requiring land set aside for open or recreation space. The interpretation applied to single-family homeowners has been inconsistent over the years. He has recommended

“Open Space” to be replaced with “Impervious Coverage” or “Lot Coverage” and allow a maximum of 50% coverage which will include patios, walkways, etc. Through research, he stated that he has found that the maximum 50% coverage regulation to be very common throughout the State of New Jersey for residential properties.

Ms. McCartin asked about flagstones and other pavers with some spacing in between.

Mr. Cosenza understood and stated that he believed the Ordinance should not have to regulate spacing; instead, he would interpret that to still be an impervious surface. If flagstones were installed like stepping stones, then he would not count them (as an impervious surface).

Ms. McCartin noted that there still appeared to be some wiggle room.

Board members agreed.

Ms. Lagay asked Mr. Renaud to discuss his findings for the past year and a half.

Mr. Renaud stated that the issues discussed by Mr. Cosenza were the emergency issues. There are a lot of other things that need to be addressed over time, particularly definitions. There are many terms used throughout the Ordinance that are simply not defined. That will probably be the next project.

Mr. Cosenza noted that he and Mr. Constantine’s office are researching ways how to address “barges,” new homes with long expansive side walls.

Mr. Fair noted that the applicants’ professionals in the past year have been substandard.

Mr. Spiegel raised his concerns regarding credibility issues and contractors who do work without permits. He opined that there should be some sort of mechanism that prevents a permit to be issued until previous enforcement issues are rectified.

Mr. Tobin asked Mr. Cosenza to whom the permit is granted to.

Mr. Cosenza stated that the permit is granted to the Applicant, which could be the contractor or the homeowner. For the past year, whenever he approves a permit, he explains the conditions he would require prior to the permit being dropped off or he calls to explain the conditions of approval after the permit is issued. He does not approve a Certificate of Occupancy until all work is complete, including landscaping. There had been instances where the homeowner is surprised, saying “Oh, my contractor did not tell me that.”

Ms. McCartin asked if there is a file kept for issues that come up regarding a contractor who does or does not complete work.

Mr. Cosenza stated that there is no such file. All he is concerned with is whether work is complete or not. The issue between the homeowner and contractor stays between the homeowner and contractor. It is a civil matter.

Ms. Lagay agreed and the Borough can not get involved with those types of disputes.

Mr. Spiegel stated that if a contractor does work that does not comply with the conditions, they should not be able to get another permit until the first one is rectified.

Mr. Tobin stated that that is an issue between the applicants and their contractor. There should be a contract. That seems to be the problem: the applicants or homeowners just sign paperwork and work commences.

Mr. Cosenza stated that he understood the issue; generally the only way to confirm is with a new survey. He did not believe requiring a survey for every type of improvement would be a good idea as surveys can be quite expensive.

Mr. Renaud stated that the Board has made a lot of assumptions about the driveway issue (raised at the previous hearing). If there are open permits, Mr. Cosenza makes the inspection. If there are issues, they have to be rectified. If they are not, he can choose to have them fined, but those are common enforcement issues. If he was the Borough Attorney and he was asked to prepare an Ordinance that would preclude contractors from doing work, he did not believe he could do that. The State licenses these contractors. On the issue of credibility, the Board should not be relying that much on what people are telling them. Approvals run with the land. Everything that an applicant testifies to is not a condition unless it is (requested by the Board to be) made into a condition. The conditions should be related to the approval that is being sought. People who testify will tell them what they want to tell them and they do not tell them what they do not want to tell them. As an example, an applicant may state that all their employees walk to work. The next business that operates in that location may have no employees that walk to work at all, they will drive to work. The Board should not base their decision on what people tell them, it should be based on what the application and plans show.

Board members had a long discussion regarding credibility issues. Ms. Andrews stated that if the Board finds a problem with the testimony, the Board can deny the application.

Mr. Cosenza opined that, generally, the Board can set additional conditions as desired.

Mr. Renaud agreed. For example, if an applicant comes in and states that their business will be in operation from 9:00 a.m. to 5 p.m., they will not be in violation if they work to 7:00 p.m. However, if that information was important to the Board to consider, the Board may set a condition to limit their hours of operation. The Board has to notify him of any conditions they are requesting during the course of the hearing.

Mr. Cosenza stated that he can not enforce findings of fact, only conditions of approval.

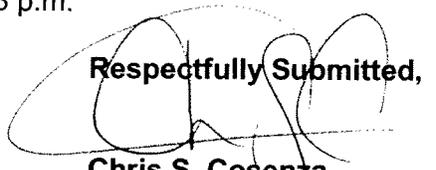
Mr. Renaud agreed, unless it is part of an application and made into a condition.

ADJOURNMENT

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

The meeting adjourned at 8:33 p.m.

Respectfully Submitted,



Chris S. Cosenza
Recording Secretary