

# METUCHEN ZONING BOARD OF ADJUSTMENT

## MINUTES

September 13, 2012

The meeting was called to order at 7:52 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

### ROLL CALL

Present: Pat Lagay, Chairperson  
Catherine McCartin  
Judith Sisko  
Byron Sondergard  
Jonathan Rabinowitz, Alt. II

Jim Constantine, Planner  
Robert Renaud, Attorney  
Kathy Elliott, Engineer  
Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Suzanne Andrews  
Robert Fair, Vice Chairperson

Daniel Spiegel  
Brian Tobin, Alt. I

### RESOLUTIONS

**12-947**      **Barbara Cohen** – (bulk variance to construct a deck – approved 7/12/2012)

199 Highland Avenue      Block 124.04, Lot 9.05      R-2 Zoning District

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.

### NEW BUSINESS

**12-951**      **Karen Army** – Applicant is seeking bulk variance and use variance approval to construct an apartment above an existing garage for disabled parents.

10 Sidney Place      Block 195, Lot 33      R-4 Zoning District

John Army, Applicant's husband, and Karen Army were sworn in by Mr. Renaud.

Mr. Renaud requested Ms. Lagay an opportunity to address the Applicant.

Ms. Lagay agreed.

Mr. Renaud stated that the Applicant's application is an application for a D variance, which is an application that requires two (2) things: 1) proof of special reasons that relate to the property and not personal situation and 2) in addition to the positive criteria, they have to address the

negative criteria. Essentially, (they have to prove) that the granting of the variance will not impair the intent and purpose of the zone plan or the zoning ordinance and will not be a detriment to the public good. People frequently have attorneys and experts to give that testimony but the Applicants have the right to proceed if they so choose without an attorney. Having said that, he explained that up until today, the Board anticipated on having seven (7) voting members, there are only five (5) voting members at this time. In order to get a D variance, the Applicant requires five (5) affirmative votes. That means the Applicant requires five (5) of the five (5) votes in order to obtain approval. Having said that, he recommended the Board give the Applicant an option to defer the application to the next meeting, if that is what the Applicant wanted to do.

Ms. Arny asked what would happen if the application was not approved tonight.

Mr. Renaud stated that if the application was denied, the Applicant could not come back with the same application. By denial, it means obtaining less than five (5) votes. If they received four (4) in favor, it is still considered denied.

Mr. Arny clarified that they only had one (1) chance, even if they came back represented by an attorney.

Mr. Renaud confirmed. It is called *res judicata*. Once you present an application and it is denied, an applicant cannot come back with the same application again.

Ms. Arny asked if there were going to be enough Board members at the next meeting.

Mr. Renaud stated that the Board cannot guarantee anything but there are usually seven (7) members of the Board present.

Ms. Lagay added that there are also two (2) alternates.

The Applicants privately discussed whether or not to proceed.

Ms. Lagay stated that the next meeting was October 11th, 2012 at 7:45 p.m. She asked if the Board would take jurisdiction.

Mr. Renaud stated that the Board would take jurisdiction; the Applicants would not have to re-notice and he would make an announcement as soon as the Applicants determined what it was that they wanted to do.

Mr. Constantine stated that he had a scheduling conflict for October 11th for both himself and Mike DiGeronimo. He did not believe there was anything on the October 11th agenda.

Mr. Arny asked, if they were to make the application tonight, if the Board would make their decision tonight.

Ms. Lagay confirmed unless there was something that came up during the meeting that required additional information, the application could be carried to the next meeting.

Mr. Arny stated that he was comfortable with the application but was concerned with the number of voters. He raised his concern regarding Mr. Constantine's absence as well.

Ms. Lagay clarified that Mr. Constantine is the Planner, he advises the Board.

Mr. Constantine stated he had taken the liberty to not prepare a memo. He indicated that he may prepare one for the next meeting since he would probably not be present.

Ms. Arny stated that she was not really comfortable without having Mr. Constantine present.

Ms. Lagay noted future meeting dates as November 8th and December 13th. She questioned if the Board would have to grant an extension.

Mr. Renaud stated that he believed it was 120 days for a D variance. He stated that, if the Applicant agrees to the date, the Board would ask the Applicant to consent to the extension, if necessary. He was not aware of the completion date of the application.

Mr. Cosenza noted that the application was deemed complete on August 14th, 2012.

There was a discussion regarding the number of voting members who may be present for future meeting dates.

Mr. Constantine discussed his schedule. He indicated that he would find out shortly if he was available October 11th. He recommended having the application carried to October and, if necessary, carried again to November or December.

The Applicants agreed to shoot for October and hope for the best.

Mr. Renaud stated that the application would be carried to the following hearing date, October 11th, 2012 at 7:45 P.M. There would be no further notice.

Ms. Arny asked if she would be notified.

Mr. Renaud stated that the Board would notify her as soon as possible and deal with carrying the hearing at that time. To play it safe, in the event that the Board runs afoul with any time periods for a decision, he asked if the Applicant will consent to an extension.

The Applicants agreed.

## **CORRESPONDENCE**

Ms. Lagay expressed her appreciation to Mr. Cosenza for sitting down and getting the minutes done. She questioned the rules for providing minutes.

Mr. Cosenza stated that, coincidentally, the Board had actually addressed this issue in one of the minutes before the Board to consider. At that time, it was explained that the minutes had to be somewhat substantial and had to offer a summary as to what occurred at the meeting. It did not have to be this detailed but he opined that it is useful for the purposes of establishing a complete record.

Ms. Lagay asked if the minutes could be voted on all at once or separately.

Mr. Renaud recommended that, given that not all Board members were present at all hearings, the should Board vote on the minutes one at a time, but there was no reason why the Board could not do a voice vote instead of a roll call vote.

**Minutes from October 13, 2011**

A motion to approve the minutes as written was made by Mr. Sondergard and seconded by Ms. McCartin. Voice vote taken. Motion carried unanimously.

**Minutes from November 10, 2011**

A motion to approve the minutes as written was made by Ms. Sisko and seconded by Mr. Rabinowitz. Voice vote taken. Motion carried unanimously.

**Minutes from December 8, 2011**

A motion to approve the minutes as written was made by Ms. McCartin and seconded by Ms. Sisko. Voice vote taken. Motion carried unanimously.

**Minutes from January 12, 2012**

A motion to approve the minutes as written was made by Ms. Sisko and seconded by Mr. Sondergard. Voice vote taken. Motion carried unanimously.

**Minutes from March 8, 2012**

A motion to approve the minutes as written was made by Mr. Sondergard and seconded by Ms. Sisko. Voice vote taken. Motion carried unanimously.

**Minutes from April 12, 2012**

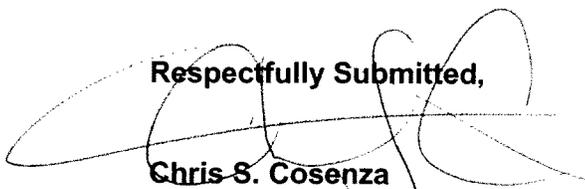
A motion to approve the minutes as written was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Voice vote taken. Motion carried unanimously.

**ADJOURNMENT**

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

The meeting adjourned at 8:11 p.m.

**Respectfully Submitted,**



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