

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

February 14, 2013

The meeting was called to order at 7:47 p.m. by Brian Tobin, Vice Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present: Catherine McCartin
Judith Sisko
Byron Sondergard
Daniel Spiegel

Brian Tobin, Vice Chairperson
Sheri-Rose Rubin, Alt. II
Robert Renaud, Attorney
Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Suzanne Andrews
Pat Lagay, Chairperson
Jonathan Rabinowitz, Alt. I

Jim Constantine, Planner
Lisa DiFranza, Engineer

CONTINUATION OF THE ANNUAL REORGANIZATION OF THE BOARD

Board Engineer: Lisa DiFranza, Maser Consulting P.A.

Mr. Spiegel noted that Ms. DiFranza had been involved with the Borough of Metuchen in the past. Her resume was very good.

A motion to name Ms. DiFranza, Maser Consulting P.A. as Board Engineer was made by Ms. Sisko and seconded by Mr. Spiegel. Roll call vote taken. Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Spiegel, Mr. Tobin and Ms. Rubin voted yes. Motion carried unanimously.

RESOLUTIONS

12-967 Suburban Square, LLC - (Amend site plan, use and bulk variance approval to subdivide the property to create a new street, etc. – approved 1/10/2013)

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

Mr. Spiegel requested clarification regarding the testimony as it related to COAH.

Ms. Sisko noted that the COAH units could not be segregated and that the whole affair about the attic space had been resolved.

Mr. Spiegel asked about the three-bedroom units.

Ms. Sisko indicated that the Borough is obligated to ensure that such are provided.

Mr. Renaud indicated that Shirley Bishop, the affordable housing consultant, provided the Board with information. The COAH units are part of the 33 units.

A motion to approve the resolution as written was made by Ms. Sisko and seconded by Mr. Sondergard. Roll call vote taken. Ms. McCartin, Ms. Sisko and Mr. Sondergard voted yes. Mr. Spiegel, Mr. Tobin and Ms. Rubin abstained. Motion passed.

CORRESPONDENCE

Mr. Tobin noted he would rather see a full application come forward from this point on.

Ms. Rubin asked what the Borough could do to get better presentations from applicants.

Board members discussed concerns regarding testimony by recent applications presented to the Board. Generally, Board members opined that they had become a design review body whereas such review should have gone to the Technical Review Committee first.

Mr. Renaud stated that the Board does not have to accept the testimony that is given. He opined that, until the Board denies an application, they are going to continue to receive the same kinds of applications.

Ms. Rubin noted the same kinds of issues at the Planning Board where applicants would say "I will do whatever you want me to do."

Mr. Renaud confirmed and stated that the Boards are resistant from forcing applicant to come back, but the Board(s) can force the applicant to come back with final revised plans.

ADJOURNMENT

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

The meeting adjourned at 8:06 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

3METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT

RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR BOARD ENGINEER

WHEREAS, the Metuchen Borough has acquired the services of a Borough Engineer through a fair and open contract process pursuant to N.J.S.A. 19:44A-20.4;

WHEREAS, N.J.S.A. 40:55D-71(b) provides that the Zoning Board of Adjustment may appoint experts and contract for same.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of the Borough of Metuchen as follows:

1. Lisa DiFranza of the firm of Maser Consulting P.A., 331 Newman Springs Road, Suite 203, Red Bank, New Jersey 07701, be and is hereby appointed as the Board Engineer.

2. This contract is awarded without competitive bidding as a professional service in accordance with N.J.S.A. 40A:11-5(1)(a) and N.J.S.A. 19:44A-20.4 because the contract is a specific service performed by a person authorized by law to practice in a recognized regulated profession.

3. The Chairperson and Secretary be and are hereby authorized and directed to execute an agreement with Lisa DiFranza in accordance with the terms and conditions of this resolution.

4. A notice of this action shall be printed once in the Home News Tribune.

I HEREBY CERTIFY that the foregoing Resolution is a true copy of the Resolution adopted by the Metuchen Borough Zoning Board of Adjustment at its meeting of February 14, 2013.



Sharon Hollis, Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING
C AND D VARIANCES, PRELIMINARY AND
FINAL MAJOR SUBDIVISION APPROVAL AND AMENDED PRELIMINARY
AND FINAL MAJOR SITE PLAN APPROVAL TO
SUBURBAN SQUARE, LLC
85 CENTRAL AVENUE
BLOCK 82, LOTS 1.01, 2.01, 8 & 16.01
BLOCK 83, LOTS 1-8, 9.01, 9.02, 28 & 29
APPLICATION NO. 12-967

WHEREAS, Suburban Square, LLC, hereinafter referred to as “the Applicant,” is the owner of Block 82, Lots 1.01, 2.01, 8 and 16.01, and Block 83, Lots 1-8, 9.01, 9.02, 28 and 29, as shown on the official Tax Map of the Borough of Metuchen, said property being located on 85 Central Avenue, Borough of Metuchen, County of Middlesex, State of New Jersey; and

WHEREAS, the Applicant had previously applied for use variance approval, bulk variances, waivers, preliminary and final major site plan approval, and amended site plan approval with respect to the subject premises; and

WHEREAS, on May 24, 2010, the Metuchen Board of Adjustment adopted a resolution memorializing its action taken on March 11, 2010, granting preliminary and final site plan approval with use and bulk variances and waivers; and

WHEREAS, on June 14, 2012, the Metuchen Board of Adjustment adopted a resolution memorializing its action taken on May 10, 2012, granting amended preliminary and final major site plan approval; and

WHEREAS, Applicant has now applied for amended preliminary and final major site plan approval and for subdivision approval to subdivide the property located in Block 82 from the property located in Block 83, for C variances for minimum lot width at street line and setback

line, minimum front yard setback on both lots, and from the required number of affordable housing units, for a D(6) variance for maximum building height on proposed Block 82, Lot 1¹, and for waivers/exceptions, the purpose of the subdivision being to permit financing and/or sale of the property in Block 82 separate from that in Block 83, with the purpose of the D(6) variance to permit the construction of a previously approved apartment building on proposed Block 82, Lot 1 for which a height variance had not been previously applied; and

WHEREAS, the Metuchen Zoning Board held a public hearing on said application on December 13, 2012 and January 10, 2013, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, at said hearing the Zoning Board considered the following documents:

1. Application for development, revised December 31, 2012;
2. Proof of payments of taxes and assessments;
3. Application and escrow fees;
4. Memorandum of Looney Ricks Kiss, by Jim Constantine, PP, Borough Planner, dated January 9, 2013;
5. Memorandum of Birdsall Services Group by Katherine L. Elliott, P.E., P.P., C.M.E., Zoning Board Engineer, dated December 11, 2012;
6. Architectural plans of the proposed apartment building consisting of two sheets dated October 5, 2012, as prepared by Mark P. Marcille, Architect, AIA.
7. Plans entitled "Suburban Square, Preliminary and Final Major Subdivision, Amended Preliminary and Final Major Site Plan, Block 82, Lots 1.01, 2.01, 8, 16.01, Block 83, Lots 1-8, 9.01, 9.02, 28 & 29, Borough of Metuchen, Middlesex

¹ References in this resolution to Block 82, Lot 1 and to Block 83, Lot 1 refer to the lots as proposed in Applicant's subdivision plan. These are not necessarily the lot numbers which will be assigned by the Tax Assessor.

County, New Jersey,” consisting of two sheets, dated September 21, 2012, last revised October 25, 2012, as prepared by Menlo Engineering Associates, Inc.

8. Geometry Plan entitled Suburban Square, Borough of Metuchen, Middlesex County, New Jersey, prepared by Menlo Engineering Associates, dated November 17, 2009, last revised March 28, 2012.

WHEREAS, the Applicant was represented by John Wiley, Jr., Esq., who presented the application, including the testimony of Mark P. Marcille, AIA, and Jeff Josell; and

WHEREAS, the Applicant proposes to amend the previously approved site plan in the following manner:

1. Applicant seeks approval to subdivide its property in Block 82 from its property in Block 83, so as to create a new Block 82, Lot 1 and new Block 83, Lot 1.
2. The subdivision, if granted, will create the need for several variances. Since Block 82, Lot 1, would now be a separate lot, it does not meet the minimum lot width requirements for the zone.
3. Additionally, the dedication of the street between Block 82 and Block 83, depicted on the previously approved site plan as a driveway, creates a situation in which the previously approved buildings no longer meet the setback requirements from the street.
4. Inasmuch as the affordable housing will be rental units located in a rental building, Applicant seeks to reduce the percentage from 20% to 15%, which complies with COAH requirements, but which deviates from the Metuchen ordinance, which ordinance was not amended to comply with COAH regulations.

5. The previously approved apartment building on Block 82 was shown on its plans at a height of 42 feet, 6 inches, but Applicant did not apply for a D(6) variance to permit construction at that height and now seeks such D(6) variance relief.

6. Applicant also proposes to change the parking to construct the previously land banked spaces on Block 82, to eliminate the temporary parking on Block 82, and to make certain other changes in the parking plan; and

WHEREAS, the Board heard the presentation and evidence as follows:

1. At the hearing of December 13, 2012, Mr. Wiley made an opening statement. He briefly described the application. He indicated that it was essentially the same site plan, but there would be a subdivision to create two separate lots, which subdivision would create the need for additional C variances. Additionally, the Applicant requires a D(6) variance in order to permit the apartment building to be constructed at a height of 42 feet 6 inches. The apartment building would have a different floor layout and a different bedroom mix, but the same number of units as originally proposed, 33. Applicant will build out the entire land banked parking area.

2. Mark Marcille, Architect, was sworn in, qualified by the Board and gave testimony. He indicated that with respect to the apartment building on Block 82, Lot 1, the lot would have essentially the same layout, with the same height as shown on the original plans, and the same massing. There would be a revised floor plan from that which was originally shown. The elevator is to be removed. The elevation has not changed much. In the original long (south) elevation, the intention was to articulate the building and to jog in and out. That feature is not shown on the revised plans.

3. Mr. Marcille described the first floor plan. Again, the elevator has been removed. The mechanical room has been removed. The apartments have been made somewhat larger,

each one being about 860 square feet. The floor plan on the second and third floors would be essentially the same as the first.

4. Mr. Marcille indicated that there were now three bedroom units which would occupy the third floor and which would utilize the attic area for additional bedrooms.

5. Mr. Marcille indicated that due to value engineering, a lot of the architectural elements had been taken out. The roof lines would be more flat. Gables have been added. There would be a mix of colors. The building would be clad with vinyl siding rather than brick.

6. Mr. Marcille stated that no elevators are required by the Construction Code. The bedroom mix would be: 4 two-bedroom units, 2 three-bedroom units and the rest (27) being one-bedroom units. According to Mr. Marcille, this is the bedroom mix which would be required by COAH regulations. There would be seven COAH units.

7. The original proposal was for 33 one-bedroom units on Block 82, Lot 1.

8. On a question from a Board member, the comment was that there would be 25 percent more bedrooms than originally proposed, with about 5,000 square feet additional being utilized for apartments. The build-out was approximately 33,000 square feet in the original proposal, whereas the new proposal would have a build-out of approximately 38,000 square feet. The new proposal had only bedroom space on the fourth/attic floor.

9. There was extensive discussion between the architect and the Board regarding the differences shown on the plans between the original apartment building proposal and the revised proposal. As a result of this discussion, the hearing was carried to the Board's January 10, 2013 meeting.

10. The hearing resumed on January 10, 2013. In the interim, Applicant submitted a revised application. The application was designated "revised 12/31/12" and stamped received on

that date by the Borough. Additionally, revised architectural plans were submitted. They were stamped "received" December 28, 2012 by the Borough, although the plans did not note a revision date. Additionally, in the interim, the Board and the Applicant received a memorandum dated December 21, 2012 from Shirley M. Bishop, P.P., the Borough's affordable housing consultant, with respect to affordable housing requirements. In essence, Ms. Bishop's memorandum indicated that COAH has previously accepted 15 percent as the set-aside for an inclusionary rental development. A 15 percent set-aside would result in 5.4 units, based on a total number of units of 36, 33 on Block 82, Lot 1, and 3 on Block 83, Lot 1. Applicant would have the option to provide for five affordable units on site and to make a payment in lieu for the 0.4 units. The payment in lieu would be \$58,361.20 for 0.4 units.

11. Mark Marcille, having been previously sworn in, was recalled. He stated that the floor layout for the apartment building as set forth in the plans presented at the December 13, 2012 hearing was based on Metuchen's Affordable Housing ordinance, which required a 20 percent set-aside, a maximum 20 percent one-bedroom affordable units, with a minimum of 30 percent two-bedroom units and 20 percent three-bedroom units. He noted that Ms. Bishop's memorandum recited that COAH regulations require only a 15 percent set-aside with rental units, giving rise to a formula of 36 units total (3 on Block 83 and 33 on Block 82) x 15 percent or 5.4 units. Mr. Marcille indicated that the Applicant proposed a variance from the Affordable Housing requirements, complying with COAH regulations, to permit 5.4 units, five of which would be included in the apartment building and .4 of which would be satisfied by a cash contribution to the Affordable Housing Fund in accordance with the formula set forth in Ms. Bishop's memorandum, described above.

12. Mr. Marcille next described the floor plans as set forth on the revised plans received by the Board on December 28, 2012. The apartment building would be a three-story building with a footprint and build-out of approximately 11,400 square feet on each floor. The first floor would have 9 one-bedroom market apartment units, 1 one-bedroom affordable unit and 1 two-bedroom affordable unit. The second floor would consist of 9 one-bedroom market units, 1 two-bedroom affordable unit and 1 three-bedroom affordable unit. The third-floor would consist of 10 one-bedroom market units and 1 two-bedroom affordable unit. There would be a total of 38 bedrooms, an increase of five bedrooms over the plans shown in the apartment building originally approved, but a reduction from those reviewed at the December 13, 2012 hearing. The total is 29 one-bedroom units, 3 two-bedroom units and one three-bedroom unit on Block 82, Lot 1.

13. Mr. Marcille next addressed the D(6) height variance. The revised proposal no longer has any living space in the attic, all of the living space being on the proposed three floors. There are several changes in the elevations from that proposed at the December 13, 2012 hearing. The revised proposal now has bay windows. Dormers are shown, but they are purely decorative. Mr. Marcille indicated that the building could be constructed at a height which would not require a D(6) variance, but that the building would have to have a relatively flat roof and the aesthetics would be less desirable. It was at this point in the hearing that discussion was had of the plan date and the fact that no revision dates were noted in the architectural plans, but that they had been stamped "received" on December 28, 2012. Mr. Marcille was instructed to submit a revised plan showing the revision date.

14. Mr. Marcille indicated that the building was only 35 feet to the lower roof line. He indicated that the building would not have a nice appearance if it was required that it be brought down to 35 feet.

15. In response to a question, Mr. Marcille indicated that the interior dimensions of the units may change, but the number of units and the number of bedrooms will be as shown on the floor plan. He noted that all of the two and three bedroom units are affordable units. He also testified that the entrances to the building and the entrances to the units are required to be accessible, but that no elevator is required.

16. In response to a question from the Board on the height issue as to what the difference in the building would be if the height were maintained at the level required by the ordinance, Mr. Marcille indicated that it would have to be a flat roofed building, and again indicated that it would not be visually desirable. He indicated that as proposed, there would be a scuttle in each third-floor apartment which would give access to the attic, but that the attic would not be used for living space. Mr. Marcille suggested a desirable visual environment as a special reason supporting the granting of the D(6) variance. He had noted that a three-story building is permitted. The amount of usable space in the building would not be increased by the granting of the height variance. Amplifying the differences to the elevations, Mr. Marcille indicated that the plans received on December 28, 2012 added dormers to the roof line, added some shutters and doorways and added bay windows.

17. Jeff Josell, managing member of Suburban Square, LLC, was sworn in and gave testimony. He explained that he is requesting the subdivision so as to divide the restaurant and liquor store building from the apartment building for the purpose of either financing or conveying the apartment building site to a different owner.

18. Under the originally approved site plan, 12 spaces at the rear (southwest) portion of the Block 82 property were proposed to be land banked. Under the current proposal, dated September 21, 2012, by Menlo Engineering Associates (the major subdivision plan), the previously land banked spaces would be built-out, so that the parking lot to the rear of the apartment building would contain 41 built-out spaces rather than the 29 built-out spaces previously approved. Mr. Josell indicated that Applicant would continue valet parking as per the approval granted June 14, 2012.

19. Applicant proposed, in connection with the subdivision, to grant an easement over the Block 82 property to permit employees of the restaurant on Block 83 to use the 41 spaces on Block 82 at the rear of the residential building for employee parking. In response to a question, Applicant indicated that the apartment building calculated a parking requirement as 60.9 spaces, or 61 spaces rounded up.

20. Jim Constantine, Board Planner, indicated that Applicant could manage the parking by having the restaurant employees park in the apartment lot.

21. With respect to the proposed street now shown on the plans and application as a dedicated street, subdividing the properties (formerly shown as an access driveway on the June 14, 2012 approval), Applicant developed the street as a public street in accordance with Borough specifications, but agreed that it would maintain the right-of-way, plowing snow and providing all other services, until and unless the street is used by others than those utilizing the subject premises, that is, if the street is extended through the property to the rear in Block 83.01, Lot 33.

22. Turning to the number of required parking spaces, it was determined that the plan provided for a total of 51 spaces for the apartment building, 41 spaces in the parking lot and 10

on-street spaces as shown on the September 21, 2012 plan. Sixty-one spaces would be required by the Residential Site Improvement Standards (RSIS). If the proposed number of parking spaces is to be approved, this would require a *de minimus* exception under RSIS.

23. With respect to the development on Block 83, the number of spaces required would be determined by reference to the Land Development Code. Ninety-seven spaces would be required by the ordinance. Applicant proposed a total of 75 spaces, 67 on-site (including the 14 tandem employee parking spaces) and 8 on-street spaces as shown on the September 21, 2012 major subdivision plan. This would require the granting of an exception from the requirements of §110-154 of the Land Development Code.

24. Mr. Constantine offered opinions that the parking is generally adequate and that he thought that the 41 spaces were more than adequate overall for the apartment building.

25. Mr. Josell testified that the Applicant needs to get a loan in order to construct the apartment building, and that the subdivision will permit Applicant to apply for a loan to construct that building.

26. There was an extended discussion as to whether or not cross-easements should be required or not and, if required, the type of easements. Ultimately, Applicant agreed to provide broad cross-easements between the two properties, permitting parking on either lot, but providing that Applicant may designate up to one parking space per apartment on Block 82, Lot 1 to be utilized by the occupants of such unit.

27. The variances and waivers/exceptions which would be required by the application were discussed by the Board and the Applicant. They included:

A. The 15% Affordable Housing set-aside rather than the 20% set forth in the ordinance, with a cash payment to be made for the fractional unit. It is noted that the cash payment is \$58,361.20 as per Ms. Bishop's memorandum of December 21, 2012.

B. The D(6) height variance.

C. The de minimus parking waiver from RSIS standards for the apartment building.

D. The waiver/exception from the number of parking spaces required under the Land Development Code.

28. The Board, its professionals, and the Applicant next reviewed the C variances which were now required by the dedication of the street. It was noted that the plan did not change with respect to the locations of the buildings, but that the change from a driveway to a street created the need for several variances. They included:

A. §110-64 – Minimum lot width at street (Block 82, Lot 1); required 100 ft., proposed 95 ft.

B. §110-64 – Minimum lot width at setback (Block 82, Lot 1); required 100 ft., proposed 95 ft.

C. §110-64 – Minimum front yard setback (Block 82, Lot 1); required 30 ft., proposed 17 ft. (new street), 20 ft. (Central Avenue).

D. §110-64 – Minimum front yard setback (Block 83, Lot 1); required 30 ft. (Central Avenue), proposed 8.12 ft. (new street); 19.69 ft.

E. §110-40 – Minimum width of dedicated public streets; required 50 ft., proposed 44 ft.

29. The Board discussed whether to require that Applicant dedicate an additional six feet to the right-of-way from Block 83, Lot 1, so as to have the street be 50 feet wide rather than 44 feet. Ultimately, after discussion between the Board and the Applicant, the Board appeared to be of the opinion that the additional six foot dedication would require more deviation from the Land Development ordinance requirements with respect to setbacks and that inasmuch as the street would conform with all municipal requirements except for width, the proposed 44 foot width would be acceptable.

30. The meeting was opened to the public. No member of the public spoke for or against the application.

31. There being no further evidence, and no further comment from the public, the hearing was closed to the public; and

WHEREAS, the Board of Adjustment of the Borough of Metuchen, after hearing the testimony in support of the application and the recommendations of the Board Engineer and the Board Planner, has made the following findings of fact and has drawn the following conclusions of law:

1. The Board of Adjustment of the Borough of Metuchen has proper jurisdiction to hear the within matter.

2. The property is designated as Block 82, Lots 1.01, 2.01, 8 & 16.01 and Block 83, Lots 1-8, 9.01, 9.02, 28 and 29, as shown on the official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 85 Central Avenue. Applicant proposes to subdivide the premises so that the property on Block 82 would be designated as Block 82, Lot 1 and the property on Block 83 would be designated as Block 83, Lot 1.

3. The property is located in the B-4 zone. The property consists of approximately 125,781 sq. ft. of land area.

4. The issues before the Board relate primarily to Applicant's request to permit the property to be subdivided to facilitate the possible financing or sale of the Block 82, Lot 1, apartment building separate from the Block 83, Lot 1 mixed-use development, consisting of the Wine Chateau and Lola's Restaurant businesses, and the three apartments. The issues also relate to the now-applied for D(6) height variance on the 33-unit apartment building.

5. Applicant presented substantial testimony on the height variance. The Board found that the granting of the variance to permit the apartment building to be constructed at the permitted three stories, but at the height of 42 feet 6 inches, would permit the construction of a more desirable roof line than would be projected by a flat roof, and that the granting of the variance would promote a more desirable visual environment than construction with a flat roof.

6. With respect to the affordable housing requirements, the Board accepted the recommendations of the Borough's affordable housing consultant and agreed that a 15 percent set-aside for the proposed residential rental units would comply with COAH regulations and would meet the intent of the Borough Affordable Housing Ordinance provisions.

7. With respect to parking, the Board accepted the opinion of its planner to the effect that the overall parking on the subject premises would be adequate, and the Board was of the opinion that cross-easements permitting parking on these lots to be used as a unit would best take advantage of a shared parking concept presented by this mixed-use development and would permit the reduction from RSIS and ordinance requirements with respect to the number of required parking spaces. Cross-easements shall be prepared by Applicant and reviewed and approved by the Board's professionals.

8. After considering the C variances required by the subdivision and dedication of the street, the Board considered that the plan has not changed significantly and that the C variances applied for can be granted under the statutory criteria. Because of the additional and more pronounced variances which would be required by the widening of the proposed street from 44 to 50 feet, the Board determined that a 44 foot width would be adequate, subject to the Borough Council's acceptance of the street at 44 feet. Additionally, as represented by Applicant, Applicant shall maintain the proposed street in all respects until and unless the street becomes connected at some point in the future with a street to be dedicated on Block 83.01, Lot 33.

9. The Board further found that the granting of the application should be conditioned upon the conditions testified to and agreed upon by the Applicant and set forth in the conditions to this resolution which are hereinafter set forth.

10. The Board finds that there are special reasons to support the granting of a D(6) variance in that a three-story building is permitted in the zone and that the proposed construction at 42 feet 6 inches would permit a peaked rather than flat roof which would to promote a desirable visual environment, one of the purposes of the Municipal Land Use Law and the Land Development Code of the Borough of Metuchen.

11. The Board further finds that the C variances should be granted under the C(2) criteria inasmuch as the Applicant has demonstrated that the purposes of the Municipal Land Use Law would be advanced by the requested deviations from the zoning ordinance requirements, would result in an appropriate use and development of the subject property, would promote the establishment of appropriate population densities and concentrations which would contribute to the well-being of persons, neighborhoods, communities and regions, and would preserve the environment, would provide sufficient space in an appropriate location for a variety of uses,

would promote a desirable visual environment through creative development techniques and good civic design and arrangement, and would coordinate public and private procedures and activities, by permitting access to other lands of the Borough.

12. The Board further finds that the benefit from the granting of the C variances, as set forth above, outweighs any detriment, which the Board finds would be minimal, which would result from the granting of said variances.

13. The Board further finds that the variances requested may be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the zone plan and zoning ordinances, because the Board finds no detrimental effects which would result from the granting of these variances.

14. The Board further finds that the exceptions from the Land Development Code applied for may be granted as same are reasonable and within the general purpose and intent of the site plan provisions of the Land Development Code, and that the literal enforcement of such provisions would be impractical or would exact undue hardship.

15. The Board further finds that the exceptions from the Residential Site Improvement Standards applied for may be granted as same are reasonable and within the general purpose and intent of the RSIS provisions, and that the literal enforcement of such provisions would be impractical or would exact undue hardship.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application of Suburban Square, LLC for amended preliminary and final site plan approval, for preliminary and final major subdivision approval, for a D(6) variance, for C variances and for waivers/exceptions be and are hereby granted, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Board of Adjustment.

B. The Applicant furnishing proof to the Secretary of the Board of Adjustment that no fees, taxes, escrows or assessments for local improvements are due or delinquent on the property in question. No permits, if any, shall be issued until all fees, taxes and escrows are paid in full.

C. The application is subject to the following outside agency approvals or letters of no jurisdiction:

1. County of Middlesex Planning Board;
2. Freehold Soil Conservation District;
3. Borough of Metuchen Fire Department;
4. Metuchen County Utilities Authority;
5. Middlesex Water Company.

D. The Applicant shall reimburse the Metuchen Board of Adjustment and/or the Borough of Metuchen for professional fees associated with this application.

E. This approval is subject to execution and performance pursuant to a Developer Agreement with the Borough of Metuchen, to be prepared by the Borough Attorney, or a letter stating that no Developer Agreement is required.

F. The Applicant shall comply with the Borough Affordable Housing ordinance, except to the extent of the variance granted herein, and shall pay any fees, if applicable.

G. The granting of the application is expressly made subject to and dependent upon

the Applicant's compliance with all of the applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey, as well as its previous resolutions of approval, including Resolution dated May 24, 2010, memorializing action taken on March 11, 2010, Resolution dated May 24, 2010, memorializing action taken on April 8, 2010, and Resolution dated June 14, 2012, memorializing action taken May 10, 2012, except to the extent modified herein. No further deviations from the zoning ordinance or site plan regulations or subdivision regulations or prior approvals shall be permitted without the approval of the Board of Adjustment.

H. Applicant shall comply with the following additional conditions:

1. Applicant shall dedicate the proposed street between Block 83 and Block 82 as a public street, subject to all specifications of the Borough of Metuchen for public streets, except for the width of the right-of-way, for which a variance has been granted herein. The naming of the street shall be subject to the approval of the governing body. The right-of-way shall be dedicated to the Borough of Metuchen, subject to the governing body's acceptance of said street at the right-of-way width permitted herein. Notwithstanding this dedication, Applicant has agreed to and shall maintain the right-of-way until and unless the right-of-way is actually utilized as a public right-of-way by others than those utilizing the development approved in this resolution, specifically by connecting the proposed street to a public right-of-way, should one be dedicated and constructed, over Block 83.01, Lot 33. In the event that the governing body shall not accept the dedication of the public right-of-way, then the right-of-way shall be deemed a private access driveway for the subject premises, subject to the cross-access easements required by this resolution.

2. Applicant shall prepare and record cross-access easements permitting the utilization of the parking areas on both lots by customers, employees and residents on both lots, provided, however, that Applicant may designate up to one parking space per unit for parking by occupants of the apartments, thirty-three on Block 82 and three on Block 83, approved herein.

I. A copy of this resolution, certified by the Secretary of the Board of Adjustment to be a true copy, shall be filed by the Applicant in the Office of the Middlesex County Clerk in the same manner in which Deeds are filed. Proof of the filing shall be returned to the Secretary of the Zoning Board of Adjustment.

J. Developer shall pay inspection fees for all site improvements as provided by statute. Developer shall post performance guarantees for all public improvements and for all utility installations, and for such additional on-site improvements as may be determined by the Borough Engineer and Borough Attorney. If the Borough Engineer determines that site improvements subject to performance guarantees will be completed in sequence, a phasing schedule may be approved by the Borough Engineer. The amount and timing of performance guarantees shall be determined by the Board Engineer and set forth in the developer agreement with the Borough, if required by the Borough Attorney

K. The subdivision approval granted herein shall be memorialized by the filing of a subdivision plat, in accordance with the Map Filing Law. The approval, signing and filing of the subdivision plat shall not take place until and unless all of the conditions precedent set forth in this resolution shall have been satisfied, including, but not limited to posting of performance guarantees, payment to the affordable housing fund, preparation and filing of the cross-easements, submission and approval of revised plans and execution of a developers agreement with the Borough or receipt of a letter from the Borough Attorney stating that a developers

agreement is not required. Prior to the signing and return of the final major subdivision plat, the Applicant shall submit three copies of the approved plat to the Secretary; Applicant shall also submit a translucent copy of the drawing suitable for making prints.

L. Applicant shall obtain new lot numbers from the Tax Assessor and shall include them on the revised subdivision plat.

M. The Applicant shall meet with the Board Planner and the Board Engineer to review Applicant's architectural plans on the apartment building, Applicant's lighting plan, and Applicant's landscaping plan, including fencing. This approval is conditioned upon the approval of the Board Planner and Board Engineer of Applicant's architectural, lighting and landscaping plans. It is specifically understood that the apartment building shall maintain a "village appearance."

N. Applicant shall submit a separate site plan, reflecting the approved site plan for the overall development, for each separate tract, that is, one for Block 82, Lot 1, and one for Block 83, Lot 1. Said site plans shall be subject to the review and approval of the Board Planner and Board Engineer.

O. Revised plans, reflecting all of the conditions of this approval, shall be submitted to and subject to the review and approval of the Board Planner and Board Engineer within 60 days of the date of this resolution; and

BE IT FURTHER RESOLVED that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in

revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

BE IT FURTHER RESOLVED that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

BE IT FURTHER RESOLVED that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of January 10, 2013, and effective as of that date.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Board of Adjustment to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Borough Planner, Borough Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

BE IT FURTHER RESOLVED that the Chairman and Secretary be and are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

Sharon Hollis

Sharon Hollis, Secretary

Dated: February 14, 2013