

## METUCHEN ZONING BOARD OF ADJUSTMENT

### MINUTES

January 10, 2013

The meeting was called to order at 7:52 p.m. by Robert Renaud, Attorney, who chaired the meeting temporarily and read the statement in accordance with the Open Public Meetings Act.

Present:	Suzanne Andrews	Jonathan Rabinowitz, Alt. I
	Pat Lagay, Chairperson	Sheri-Rose Rubin, Alt. II
	Catherine McCartin	Robert Renaud, Attorney
	Judith Sisko	Katherine Elliott, Engineer
	Byron Sondergard	James Constantine, Planner
	Brian Tobin, Vice Chairperson	Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Dan Spiegel

### **ANNUAL REORGANIZATION OF THE BOARD**

#### **Chairperson: Pat Lagay**

A motion to nominate and name Ms. Lagay as Chairperson was made by Ms. Sisko and seconded by Ms. McCartin. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

Ms. Lagay relieved Mr. Renaud, thanked the Board and chaired the remainder of the meeting.

#### **Vice Chairperson: Brian Tobin**

A motion to nominate and name Mr. Tobin as Vice Chairperson was made by Ms. Sisko and seconded by Mr. Sondergard. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

#### **Board Attorney: Robert Renaud**

A motion to name Mr. Renaud as Board Attorney was made by Mr. Tobin and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

#### **Secretary: Sharon Hollis**

A motion to name Ms. Hollis as Board Secretary was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

**Recording Secretary: Chris S. Cosenza**

A motion to name Mr. Cosenza as Recording Secretary was made by Mr. Tobin and seconded by Ms. Sisko. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

**Board Planner: James Constantine, LRK, Inc.**

A motion to name James Constantine, LRK, Inc. as Board Planner was made by Ms. Sisko and seconded by Mr. Sondergard. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

**Board Engineer**

Ms. Lagay indicated that the appointment for Board Engineer would be deferred to the following meeting.

**Meeting Dates for 2013 at 7:45 p.m.**

January 10, 2013	August 8, 2013
February 14, 2013	September 12, 2013
March 14, 2013	October 10, 2013
April 11, 2013	November 14, 2013
May 9, 2013	December 12, 2013
June 13, 2013	January 9, 2014
July 11, 2013	

A motion to adopt the meeting schedule as presented was made by Mr. Sondergard and seconded by Ms. Sisko. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion carried unanimously.

Ms. Lagay recognized Bob Fair's long term and contributions on the Board. Ms. Sisko echoed her comments.

**TRC Appointments**

Ms. Lagay asked Board members if anyone was interested in the position. She indicated Mr. Spiegel has been doing the second TRC meeting of the month. There should be one member, but the position has been shared because of scheduling conflicts.

Mr. Constantine indicated it is an informal review process or pre-application consultation as it is called in other places. The meetings last anywhere between 20 to 40 minutes per application.

Mr. Rabinowitz volunteered to split the TRC Appointment with Mr. Spiegel.

A motion to name Mr. Rabinowitz and Mr. Spiegel to the TRC appointment was made by Ms. Sisko and seconded by Ms. Andrews. Voice vote taken. Motion carried unanimously.



that it be brought down to 35 feet.

Ms. McCartin asked Mr. Constantine the height of the buildings on Palmer Square in Princeton.

Mr. Constantine indicated that they are much taller. He noted that the maximum height permitted in the F-1 Franklin Development District is taller than what is being proposed by this building. He also noted design standards in the Ordinance which require taller pitches. He asked Mr. Marcille what the pitch was of the main roof.

Mr. Marcille indicated it was 12 over 12.

Mr. Rabinowitz asked what the minimum COAH requirement was for square footage of the three-bedroom unit.

Mr. Constantine stated that there are none.

Mr. Rabinowitz questioned the dimensions and square footage calculations as they did not appear to be correct.

Mr. Marcille stated that the demising walls shift. 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.

Ms. Elliott noted that the spirit of COAH was not to segregate the units. It is apparent that all of the non-one-bedroom units are COAH units and the square footages seemed to be rather small.

Mr. Constantine noted that Ms. Bishop had seen the plans and was satisfied.

Mr. Rabinowitz opined that the two- or three-bedroom units were being crammed into the building.

Ms. Lagay asked about the ADA requirements.

Mr. Marcille indicated that all of the units are accessible.

Ms. Lagay noted that they would not be able to get to the second or third floor.

Mr. Marcille indicated that an elevator was not required for a single-use building. If it had been a commercial or mixed-use building, it would require elevator.

Ms. Sisko requested clarification regarding accessibility.

Mr. Marcille indicated that the entrances to the building and the entrances to the units are required to be accessible. The kitchen and at least one (1) bathroom were required to be adaptable, that is, able to be easily converted to provide accessibility in the future.

Ms. Sisko noted that you could get a wheelchair through the front door, but not to the second floor.

Mr. Marcille confirmed.

Ms. Rubin requested clarification regarding the height, specifically the difference between what is being proposed and what a “commercial” appearance would be.

Mr. Marcille indicated it would essentially be a flat roof building and it would not be visually desirable. It would look like Eric Berger’s building on Durham Avenue.

Mr. Constantine noted that you effectively could not have a three-story building, with a pitched roof and still comply with the 35 foot height requirement. He discussed the height requirements of the F-1 Zone, to which Mr. Cosenza indicated the maximum permitted height is 55 feet.

Ms. Elliott asked Mr. Marcille to correct the plans.

Mr. Marcille indicated that 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. Renaud requested for the grounds for which the Board would consider granting a D(6) variance.

Mr. Wiley suggested a favorable visual environment as a special reason. The intent of the design was to reinforce the residential character of Central Avenue as well as be compatible with the commercial uses on the other lot.

Ms. Lagay and Mr. Renaud requested clarification regarding any changes to the building.

Mr. Marcille stated that the massing of the building remains the same. The fourth floor has been eliminated as a usable space, but is an attic instead. There has always been a fourth floor “space.” Based on the plans received on December 28, 2012, dormers have been added to the roof line and some shutters, doorways and windows have been added to the elevations.

Given that no elevations had been provided for the rear or side elevations, Mr. Constantine requested clarification regarding those elevations, to which Mr. Marcille described them to some degree. Mr. Constantine requested an opportunity to further review the elevations.

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

There being none, Ms. Lagay closed the public portion.

Mr. Wiley requested Jeff Josell, managing member of Suburban Square, LLC, to testify.

Mr. Josell was sworn in by Mr. Renaud.

Mr. Josell stated that he is requesting the subdivision so as to divide the restaurant and liquor store building from the apartment building to help facilitate financing or conveying the apartment building site to someone else. With respect to the actual site plan, Mr. Josell indicated that the 12 spaces at the rear of the apartment building, which were originally proposed to be land-banked, would be fully developed as parking spaces. There would then be 41, as opposed to originally-proposed 29, parking spaces at the rear of the apartment building.

Mr. Wiley indicated that the valet parking, which was a condition of approval in the second approval, that is, the approval to permit the Wine Chateau conversion of warehouse space to office space, would be continued.

Mr. Josell confirmed.

Mr. Wiley indicated that, after discussion with Mr. Constantine, Applicant is proposing a cross-easement to permit employees of the restaurant to utilize the 41 parking spaces at the rear of the apartment building.

Mr. Renaud asked if a traffic engineer had testified regarding the parking.

Mr. Wiley indicated that it is the same plan, five (5) bedrooms are being added to comply with COAH and the 12 parking spaces at the rear will become developed.

Mr. Renaud stated that he understood; however, the issue before the Board is now a major subdivision.

In response to a question, Mr. Josell indicated that the large free-standing sign located on the vacant parcel is only for marketing purposes; the parcel is not for sale at this time.

Mr. Renaud noted that the site was originally approved as a mixed-use development with shared parking. The amount of parking that was provided was reduced from that which would have been required because of the shared parking. Testimony had been given by an engineer to the effect that there would be enough parking. Now when you subdivide a property, it is two (2) completely separate properties. He is not saying it could not be done, but is merely asking the question.

Mr. Wiley indicated that a broader cross-easement could be proposed to better manage parking.

Ms. Elliott asked what the parking requirement is for the apartment building as compared as to the proposed number parking spaces on that lot.

Mr. Cosenza indicated that the original approval had 33 one-bedroom units. At that time, Residential Site Improvement Standards (RSIS) were not utilized, but assuming they were, 33 one-bedroom units at 1.8 parking spaces per unit required 59.4 parking spaces. The plans presented at the prior hearing had a different bedroom mix than what is currently being proposed tonight and, as a result, he are not relevant for the hearing tonight. The proposed plans require 60.3 parking spaces, an increase of 0.9 parking spaces. Therefore, with the additional five (5) bedrooms, the apartment building requires an additional 0.9 parking spaces. At the suggestion of Ms. Elliott, Mr. Cosenza agreed that 61 parking spaces should be considered going forward. There are 41 parking spaces at the rear of the apartment building as well as 10 on-street parking spaces directly in front of the apartment building.

Ms. Elliott raised her concern regarding a cross-easement to permit parking from the commercial site onto the residential site, given that there already is a 20 parking space deficit. She raised her concern regarding the logistics and enforcement.

Mr. Wiley stated that, perhaps, a cross-easement could be broader to permit parking from the apartment building on the commercial lot.

Ms. Lagay recalled that there was a parking problem at the prior approval.

Mr. Wiley stated that Applicant had to come back because the parking demand had increased by way of converting the Wine Chateau's warehouse space to office space. Applicant was willing to utilize valet parking as a condition of approval and it has been effective.

Ms. McCartin questioned why Applicant would need to have employee parking to take up spaces in the residential lot.

Mr. Wiley indicated that the only reason Applicant has suggested that, after discussing with Mr. Constantine, is that there is a population that can be controlled and they could park in the far end of the residential lot. You would not necessarily be able to do that with patrons. With valet parking, it would not have to rely on the patron. He noted that the 0.9 parking space increase is less than the parking increase by converting the warehouse space to office space.

Mr. Constantine discussed the parking issues and changes since the original approval. The restaurant is very successful. 14 tandem parking spaces have been added at the rear of the Wine Chateau building. 12 parking spaces are being proposed to be developed at the rear of the apartment building. He opined that employee parking should be assigned to maximize the pool of available parking. When the valet parking is not used, the 14 tandem spaces do not necessarily get parked. He wanted to see active management, regardless of the lot lines. The fact that valet parking was added is a good thing.

There was a long discussion regarding the cross-easement, during which Mr. Renaud indicated that if Mr. Constantine's testimony on behalf of Applicant was okay with the Board, he would be fine with that. However, someone needs to say that.

Ms. Elliott stated that the major subdivision is a new aspect of the application and should be discussed. The site plan is now complicated more with the subdivision component and the possible right-of-way.

Mr. Wiley stated that it was Applicant's intention to maintain the driveway. The driveway has been developed as a public street in accordance with Borough specifications. At some juncture, this space evolves as the Master Plan suggests towards the Greenway and the Oakite Tract, it would become a public street. At this point, they will maintain it and its title until such time it would be dedicated to the Borough.

Ms. Elliott questioned if, in the future, future property owners wished to vacate the cross-easement, what mechanism would be in place to handle it.

Mr. Renaud indicated that both parties would have to agree to it, and suggested that the Borough should be as well because it is a condition of the granting of the approval to deal with the parking situation. Upon further consideration, he opined that the owners would have to come back to the Board.

There was a discussion regarding the cross-easement and parking demand for the restaurant, during which Mr. Josell indicated that there are no longer any parking issues since valet parking has been instituted. Mr. Josell preferred to not have a cross-easement if it was not necessary.

Board members expressed their frustration regarding inconsistency in the testimony as it was not clear as to whether a cross-easement was being proposed or not.

Mr. Renaud stated that, given that the lots will be subdivided, the number of parking spaces required for the apartment building would be determined by reference to RSIS. The plan provides for a total of 51 parking spaces, consisting of 41 on-site and 10 on-street parking spaces. 61 parking spaces are required by RSIS and, as a result, Applicant would require a de minimus exception under RSIS.

There was a further discussion and it was determined that the number of parking spaces required for the other lot (Block 83) would be determined by reference to the Ordinance. The plan is providing for a total of 75 spaces, consisting of 67 on-site (including 14 tandem) and eight (8) on-street. 97 parking spaces are required by the Ordinance and, as a result, Applicant would require an exception from the requirements of §110-154 of the Zoning Ordinance.

Mr. Constantine opined that parking is generally adequate. In total, there are 126 parking spaces being provided.

Mr. Renaud disagreed with the concept of parking being adequate; it may have been so for the original plan, but given the subdivision, it may not be now. Perhaps cross-easements are the best way to go.

Ms. Lagay raised her concern regarding the parking and requested Mr. Constantine's input.

Mr. Constantine again opined that parking is generally adequate. He felt that it was more of a management issue.

Ms. Elliott recalled that Applicant previously had a professional planner testify to that.

Ms. McCartin raised her concern as well. She understood that the parking, as a whole, may have been or be adequate, but was more concerned about each lot having adequate parking.

Mr. Constantine opined that the 41 spaces were more than adequate for the apartment building. He recommends having the cross-access. It simply adds flexibility for Applicant without hamstringing future owners and tenants.

Mr. Rabinowitz questioned the intent of the subdivision.

Mr. Josell stated that he needs to get a loan in order to construct the apartment building, and that the subdivision will make it easier to obtain financing to construct such building. The reason why he stated he may not construct the building at the prior application was because rates were very high. Rates have since been cut in half. He prefers separate financing specifically for the apartment building.

There was a very long discussion regarding whether or not cross-easements should be required or not and, if required, the type of easements. Ultimately, Mr. Wiley indicated Applicant agreed to provide broad cross-easements between the two properties.

Mr. Renaud stated that, in the future, they would be considered separate lots. By having a cross-easement does not link each other should one (1) lot require amended approval(s).

Ms. Andrews and Ms. Sisko raised their concerns about parking for the apartment building.

Mr. Constantine offered that could be up to Applicant to be able to designate up to one (1) parking space per unit in the parking lot behind the apartment building. The flexibility should be given to Applicant to manage the parking, if necessary, to which Applicant agreed.

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

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

Board members requested a summary of the variances, waivers and exceptions required by Applicant.

Mr. Wiley indicated that they would be:

- Providing for 15% Affordable Housing set-aside rather than the 20% set forth in the Zoning Ordinance, with a cash payment to be made for the fractional unit;
- D(6) height variance for the apartment building;
- de minimus exception from RSIS parking standards for the apartment building;
- Exception from Zoning Ordinance parking standards for the mixed-use buildings;
- Minimum lot width at street (Block 82, Lot 1); required 100 ft., proposed 95 ft.;
- Minimum lot width at setback (Block 82, Lot 1); required 100 ft., proposed 95 ft.;
- Minimum front yard setback (Block 82, Lot 1); required 30 ft., proposed 17 ft. (new street);
- Minimum front yard setback (Block 82, Lot 1); required 30 ft., proposed 20 ft. (Central);
- Minimum front yard setback (Block 83, Lot 1); required 30 ft., proposed 8.12 ft. (new street);
- Minimum front yard setback (Block 83, Lot 1); required 30 ft., proposed 19.69 ft. (Central);
- Minimum width of dedicated public streets; required 50 ft., proposed 44 ft.

Ms. Elliott referred to her memorandum and questioned if Applicant would be able to dedicate an additional six (6) feet to the right-of-way from Block 83, Lot 1, so as to have the new right-of-way be a proper 50 feet wide rather than 44 feet. She noted that it would exacerbate the 8.12 foot front yard setback to 2.12 feet.

Mr. Constantine referred to §110-140 of the Zoning Ordinance, in which it states “all public streets shall be located in a public right-of-way dedicated to the Borough having a minimum width of 50 feet, unless another width is specifically recommended in an adopted element of the Master Plan or on the adopted Official Map or Tax Map of the Borough.” He indicated that there is an escape clause, of sorts, for that.

Mr. Renaud indicated he would put in a condition that it would conform to municipal requirements.

Mr. Constantine referred to the street next to Sportsplex, to which Mr. Cosenza confirmed it is 25 feet. Ms. Elliott confirmed that the sidewalk is located outside the right-of-way.

Ms. Elliott stated that she had no objection to the granting of an exception, but simply indicated that Applicant requires one.

Mr. Constantine referred to the language in §110-140 again, to which Mr. Renaud stated that since the Master Plan does not specify a width for the street, nor is it shown on the adopted Official Map or Tax Map, they do not apply. Therefore, Applicant requires an exception.

Mr. Wiley noted that the driveway was otherwise constructed to code; it is 36 feet in width.

Ms. Elliott confirmed that the physical improvements of the driveway are acceptable and the actual asphalt was built to a roadway spec, not a driveway spec. She had no objections.

After some further discussion, Applicant and the Board opined that the additional six (6) foot dedication would require more deviation from the Ordinance, and possibly the Construction Code, and that the proposed 44 foot width, as originally proposed, would be acceptable. Mr. Renaud noted that it is ultimately up to Mayor and Council to accept it.

Mr. Wiley indicated that a condition to provide public access easement for the sidewalk area adjacent to the restaurant would be agreeable.

Mr. Renaud reiterated the condition that Applicant would have the option to designate up to one (1) parking space per unit for the apartment's use.

Mr. Wiley agreed.

Ms. McCartin raised her concern regarding future development given that the lots would now be separated.

Mr. Wiley indicated that the lots would be fully built out. If anyone wants to make a chance, they would have to come back in for a Use Variance.

Mr. Tobin raised his concerns about the separation of the lots.

Mr. Wiley indicated that the site looks exactly the same.

Mr. Constantine requested that he have the opportunity to review the final architectural and landscape design. He would like to see one of the lights moved from the front to the back.

Ms. Elliott requested a full set of revised site plans.

Mr. Renaud summarized the variances, waivers, exceptions and conditions as discussed. He suggested to vote on the whole application given that a Use variance is involved.

A motion to approve the application with conditions as noted above was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Rabinowitz voted yes. Mr. Tobin voted no. Motion passed.

## RESOLUTIONS

**12-960**      **Metuchen Investors, LLC & Main Street Metuchen, Ltd.** – (Use variance for a three-story residential apartment building with a total of 19 apartments. Three apartments will be located on the first floor (application was bifurcated) – approved 12/13/12).

23-27 Hillside Avenue

Block 118, Lots 19-21, 18.04

R-1 Zone

Mr. Renaud noted two (2) typos to correct, the first being on page three (3), paragraph five (5), third line, the word "parking" should read "variance" instead and the second being on page nine (9), paragraph six (6), third line, the "D-1" zone should read "B-1" zone instead.

A motion to approve the resolution with corrections as noted was made by Ms. Sisko and seconded by Ms. Andrews. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko and Mr. Rabinowitz voted yes. Mr. Sondergard and Mr. Tobin abstained. Motion carried.

**12-968**      **Green Street Decorators LLC** – (Interpretation of the proposed use of the assembly of floral arrangements as a permitted assembly use in the L-I zone – approved 12/13/12).

91 Liberty Street

Block 44, Lots 55, 56, 57

L-I Zone

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

## **CORRESPONDENCE**

Ms. Lagay noted that in 2012, the Board heard 14 applications as compared to eight (8) in 2011. There has been an increase in the number of applications. Two (2) meetings were cancelled. She noted that some applications do not seem to be put together very well.

## **ADJOURNMENT**

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

The meeting adjourned at 10:30 p.m.

**Respectfully Submitted,**

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

**METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT**  
**RESOLUTION ELECTING A CHAIRPERSON OF THE**  
**ZONING BOARD OF ADJUSTMENT**  
**OF THE BOROUGH OF METUCHEN**

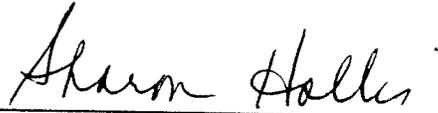
**WHEREAS**, N.J.S.A. 40:55D-69 provides that the Zoning Board of Adjustment shall elect a Chairperson of the Zoning Board from its Class IV members; and

**WHEREAS**, **Patricia Lagay** is a member of the Zoning Board of Adjustment, who has been duly nominated to be Chairperson of the Zoning Board of Adjustment, and said nomination has been duly seconded.

**NOW, THEREFORE, BE IT RESOLVED**, by the Zoning Board of Adjustment of the Borough of Metuchen that **Patricia Lagay** be and hereby is appointed Chairperson of the Zoning Board of Adjustment of the Borough of Metuchen for the year ending December 31, 2013.

**BE IT FURTHER RESOLVED**, that a copy of this Resolution, certified to be a true copy be forwarded to the Borough Council, Borough Clerk, Borough Administrator, Borough Engineer, Borough Planner and Zoning Board Chairperson.

I **HEREBY CERTIFY** the within Resolution to be a true copy of the Resolution adopted by the Metuchen Zoning Board of Adjustment at its meeting of January 10, 2013.



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Sharon Hollis, Secretary

METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT

RESOLUTION ELECTING A VICE-CHAIRPERSON OF THE  
ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF METUCHEN

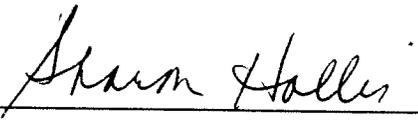
WHEREAS, N.J.S.A. 40:55D-69 provides that the Zoning Board of Adjustment shall elect a Vice-Chairperson of the Zoning Board from its members; and

WHEREAS, Brian Tobin is a member of the Zoning Board of Adjustment, who has been duly nominated to be Vice-Chairperson of the Zoning Board of Adjustment, and said nomination has been duly seconded.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Metuchen that Brian Tobin be and hereby is appointed Vice-Chairperson of the Zoning Board of Adjustment of the Borough of Metuchen for the year ending December 31, 2013.

BE IT FURTHER RESOLVED, that a copy of this Resolution, certified to be a true copy be forwarded to the Borough Council, Borough Clerk, Borough Administrator, Borough Engineer, Borough Planner and Zoning Board Vice-Chairperson.

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 January 10, 2013.

  
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Sharon Hollis, Secretary

**METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT**

**RESOLUTION AUTHORIZING THE AWARD OF NON-FAIR AND  
OPEN CONTRACT FOR A ZONING BOARD ATTORNEY**

**WHEREAS**, the Zoning Board of the Borough of Metuchen has a need to acquire the services of an attorney pursuant to N.J.S.A. 40:55D-71(b) as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.4 or 20.5; and

**WHEREAS**, the purchasing agent has determined and certified in writing that the value of the acquisition will exceed \$6,000.00; and

**WHEREAS**, the anticipated term of this contract is January 1, 2013 to December 31, 2013; and

**WHEREAS**, Robert F. Renaud, Esq. of Palumbo & Renaud, has submitted a proposal indicating he will provide the services as the Board Attorney; and

**WHEREAS**, Robert F. Renaud, Esq., of Palumbo & Renaud, will complete and submit a Business Entity Disclosure Certification which certifies that Robert F. Renaud, Esq., of Palumbo & Renaud, has not made any reportable contributions to a political candidate committee in Metuchen Borough in the previous one year, and that the contract will prohibit Robert F. Renaud, Esq., of Palumbo & Renaud, from making any reportable contributions through the term of the contract; and

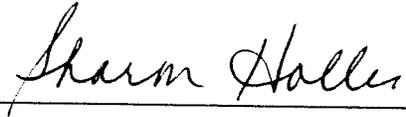
**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Metuchen, County of Middlesex and State of New Jersey, authorizes the Chairman of the Planning

Board to enter into a contract with Robert F. Renaud, Esq., of Palumbo & Renaud, as described herein.

**BE IT FURTHER RESOLVED** that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this Resolution.

**BE IT FURTHER RESOLVED** that the Secretary of the Metuchen Borough Planning Board publish a notice of this Resolution in an official newspaper of the Borough of Metuchen.

Dated: January 10, 2013



Sharon Hollis, Secretary

METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT

RESOLUTION APPOINTING A SECRETARY OF THE  
ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF METUCHEN

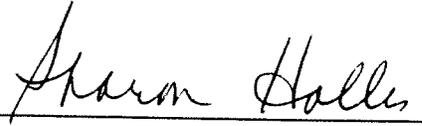
WHEREAS, the Zoning Board of Adjustment of the Borough of Metuchen recognizes that there is a need for the services of a Secretary to perform such services as may be required for the day to day business of the Zoning Board of Adjustment; and

WHEREAS, N.J.S.A. 40:55D-24 provides that the Zoning Board of Adjustment may appoint certain necessary staff.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Metuchen that SHARON HOLLIS be and hereby is appointed Secretary of the Zoning Board of Adjustment of the Borough of Metuchen for the year ending December 31, 2013.

BE IT FURTHER RESOLVED, that a copy of this Resolution, certified to be a true copy be forwarded to the Borough Clerk, Borough Finance Officer, Borough Attorney, and Zoning Board of Adjustment Secretary.

I HEREBY CERTIFY the within Resolution to be a true copy of the Resolution adopted by the Metuchen Zoning Board of Adjustment at its meeting of January 10, 2013.



Sharon Hollis

Sharon Hollis, Secretary

METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT

RESOLUTION APPOINTING A RECORDING SECRETARY  
FOR THE METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT

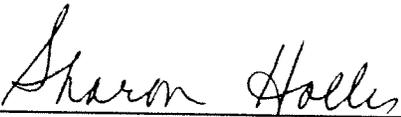
WHEREAS, the Zoning Board of Adjustment of the Borough of Metuchen recognizes that there is a need for the services of a Recording Secretary to record the minutes of the regular and special meetings as well as to perform such services as may be required for the day to day business of the Zoning Board of Adjustment; and

WHEREAS, N.J.S.A. 40:55D-71 provides that the Zoning Board of Adjustment may appoint certain necessary staff.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Metuchen that **CHRISTOPHER COSENZA** be and hereby is appointed Recording Secretary to the Zoning Board of Adjustment of the Borough of Metuchen for a one year term ending December 31, 2013.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified to be a true copy, be forwarded by the Secretary of the Zoning Board of Adjustment to the Zoning Board of Adjustment Recording Secretary.

I HEREBY CERTIFY the within Resolution to be a true copy of the Resolution adopted by the Metuchen Zoning Board of Adjustment at its meeting of January 10, 2013.

  
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Sharon Hollis, Secretary

**METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT**

**RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT FOR BOARD  
PLANNER**

**WHEREAS,** the Metuchen Borough has acquired the services of a Borough Planner 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; and

**WHEREAS,** James Constantine, from LRK Inc., 182 Nassau Street, Suite 302, Princeton, New Jersey, has been appointed by the Borough as the Borough Planner.

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

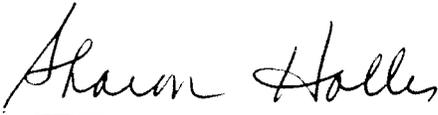
1. James Constantine, from LRK Inc., 182 Nassau Street, Suite 302, Princeton, New Jersey be and is hereby appointed as the Board Planner for the year 2013.

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 James Constantine, from LRK Inc., 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 January 10, 2013.

  
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Sharon Hollis, Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING  
D VARIANCE TO  
METUCHEN INVESTORS, LLC  
23-27 HILLSIDE AVENUE  
BLOCK 118, LOTS 18.04, 19, 20 & 21  
APPLICATION NO. 12-960

**WHEREAS**, Metuchen Investors and Main Street Metuchen, Ltd., and Metuchen Investors, LLC, hereinafter referred to as “the Applicant,” are the owners of Block 118 Lots 18.04, 19, 20 and 21, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 23-27 Hillside Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, the Applicant requested that its application be considered in bifurcated fashion as permitted by N.J.S.A. 40:55D-76(b), subject to and conditioned upon approval of a subsequent application for site plan approval and any required C variances and/or waivers/exceptions; and

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

**WHEREAS**, at said hearing, the Board of Adjustment considered the following documents:

1. Application for Development August 20, 2012.
2. Site plan entitled Mixed Use Development, Hillside Avenue, dated October 17, 2008, prepared by CMX, consisting of 10 sheets.

3. Architectural plans entitled Metuchen Investors, LLC, proposed three-story residential building, prepared by Robert W. Adler & Associates, P.A., dated July 30, 2012, consisting of five sheets.

4. Memorandum of Looney Ricks Kiss, by Jim Constantine, PP, Borough Planner, dated December 10, 2012;

5. Memorandum of Birdsall Services Group by Katherine L. Elliott, P.E., P.P., C.M.E., Zoning Board Engineer, dated November 26, 2012;

**WHEREAS**, the Applicant was represented by David Frizell, Esq., one of the principals of the Applicant; and

**WHEREAS**, the Applicant requests a D variance to permit residential apartments on the first floor of a proposed three-story residential building, which first floor residential use is prohibited by §110-75A(7) of the Land Development Ordinance of the Borough of Metuchen; and

**WHEREAS**, the testimony and evidence submitted on the application was as follows:

1. David Frizell, Esq., presented the application. He indicated that he is a principal in Main Street Metuchen, Ltd., and Metuchen Investors, LLC. He summarized the application as one to permit apartments on the ground floor of a proposed three-story apartment building, consisting of 19 apartments. Mr. Frizell indicated that he would present the testimony of Robert W. Adler, an architect and Paul Grygiel, a planner.

2. Mr. Frizell was sworn in and gave testimony. He indicated that he started acquiring portions of the subject premises in 1981. He indicated that presently on Hillside Avenue at the subject premises are three two-family homes, one of which is boarded up. He introduced Exhibit A-1, a depiction of the existing buildings.

3. Mr. Frizell testified that Applicant proposes to construct a new three-story residential building, consisting of 19 residential units. 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. The application was, however, withdrawn. Mr. Frizell indicated that he felt the subject premises was not a good site for commercial use. Accordingly, the present application proposes to remove the 4000 square feet of residential use on the ground floor and to replace it with three apartments.

4. Mr. Frizell further testified that the two-family residences on the premises are permitted conditional uses. Residential uses are not permitted on other streets in the B-1 zone but are permitted on Hillside Avenue. Mr. Frizell stated that the area is very busy and commercial space on Hillside Avenue would compete with commercial space on Main Street.

5. Mr. Frizell indicated that some bulk variances will be required when the Applicant proceeds with its further application if the bifurcated D variance is granted. These may include setbacks and a height variance, but not a (d) variance for height. He indicated that the proposed parking on the site is sufficient. He indicates that he would anticipate that people who would reside in these apartments would have no more than one car, but that if they had two cars, they could purchase parking permits from the Parking Authority. He indicated that the intention of the master plan is not to have a large amount of surface parking. At this point, Mr. Frizell was asked about the affordable housing requirements, to which Mr. Frizell indicated that the Applicant will comply with the Borough Affordable Housing ordinance.

6. Robert W. Adler was sworn in, qualified and gave testimony. He is the project architect. He stated that the proposed project is a 19-unit residential structure located at the intersection of Inn Place and Hillside Avenue. It is a mix of flats and duplexes, meaning two-

story apartments. There will be cellars under five of the units and three flats on the ground floor. He described the layout of the units as set forth in the plans which he prepared, consisting of five sheets.

7. Mr. Adler indicated that the exterior design is “adaptive re-use,” that is, the building will be made to look historic. He indicated that the trim would be gray or tan and would convey the sense of historic character. He described the “stepping” of the building back from Hillside Avenue. He indicated that although there are four levels depicted on the plan, it is actually a three-story building because of the topography. According to Mr. Adler, the highest point on the building would be at a height of 38 feet, 6 inches, so the building would not require a D(6) variance.

8. Mr. Adler stated that the parking would be at the rear of the building. There would be nose-in parking, 13 spaces, from Inn Place. There would be 9 parking spaces at the rear of the building, a total of 22 parking spaces would be provided.

9. The hearing was opened to the public for questions. Garrison Tyrell of 31 Hillside Avenue asked if Applicant would have to mill and pave Inn Place. Applicant indicated that it would have to improve Inn Place. Roland Staal of 72 Hillside Avenue asked rhetorically who would regulate traffic in and out of the premises.

10. David Aitkin of 24 Highland Avenue asked whether anything would be done to curtail traffic cutting through Inn Place.

11. Sean Massey of 93 Highland Avenue asked if car sharing would be part of the project. He explained that he thought that the municipality should seek to decrease parking and to provide for bike parking and bike storage on the premises. It was indicated that during the site plan review process bike parking and storage could possibly be included in the site plan. In

response to a question, Mr. Frizell indicated that they may or may not put names on the parking spaces, that there are advantages and disadvantages to doing that. He indicated that using the criteria of one space per apartment, there are three extra spaces on the plans.

12. Paul Grygiel was sworn in, qualified and gave testimony. He is a professional planner. He was asked 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.

13. Mr. Grygiel gave his opinion to the effect that the site is unique in the B-1 zoning district in that it is on the fringe of the B-1 district and is surrounded by non-business uses. He introduced Exhibit A-2, which was a depiction of existing land uses and zoning in the vicinity of the subject premises. He described the zoning and existing land uses as depicted on A-2. He indicated that the proposed use would be a good transition between the B-1 and the R-1 district to the east of the subject. He also indicated that the commercial use on the corner of Hillside Avenue and Station Place is currently vacant.

14. Mr. Grygiel testified that the existing two-family residences on the subject premises on Hillside Avenue are a permitted conditional use, so residential use is permitted at the site, although not in the form of apartments as proposed in this application. Mr. Grygiel explained that ground floor residential apartments need a D variance and he testified as to his proposed reasons for the granting of the requested bifurcated D variance.

15. Mr. Grygiel explained that the positive criteria under the Municipal Land Use Law requires that special reasons be demonstrated. The premises must be particularly suited to the proposed use. He gave reasons why the property is particularly suited. The train station is nearby. Additionally, there are site specific conditions suggesting special reasons in that Hillside Avenue is predominantly residential. His opinion was that commercial use was not an

appropriate use for the site because the master plan and zoning ordinance propose to promote commercial uses on Main Street. Mr. Grygiel also suggested that 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, suggest that the proximity of the train station to the subject premises make residential apartment use an appropriate use at this location.

16. 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. Mr. Grygiel indicated that in his opinion the application met the negative criteria in that the residential use on the ground floor is presently permitted as a conditional use and residential apartments are already permitted on the upper floors. The proposed use would improve the area and provide an attractive building. Further, the anticipated traffic and parking demand would be less from the three proposed residential apartments than would be anticipated from the permitted conditional uses.

17. With respect to parking, Mr. Grygiel acknowledged that he is not a traffic engineer, but indicated that from a planning point of view, the targeted market for apartments of this sort would be persons who would take advantage of the proximity of mass transit. He also indicated that adding residents would enhance the downtown. Mr. Grygiel offered the opinion that the proposed ground floor use for residential apartments would be a better zoning alternative due to the specific circumstances related to this specific property, particularly its proximity to the downtown, and to the R-1 zoning district, and to the train station.

18. Mr. Grygiel indicated that the nearby mass transit and services enhance the area for residential use and that alternative parking is available should it be required. He offered his opinion that the deviation of the parking from the residential site improvement standards could be granted during the site plan process with a de minimus exception, and that a waiver application would not be required. He indicated that the proximity of the development to the train station would permit a deviation under the terms of the residential site improvement standards.

19. The hearing was opened for public questions. Roland Staal of 72 Hillside Avenue asked what the Applicant would do if the application was denied. Applicant indicated that he had not given thought to other proposals. He indicated that it is necessary to make an economic balance. Sean Massey of 93 Highland Avenue asked what would keep passersby from peering into the windows. Mr. Adler indicated that the windows would be put as high as possible. Garrison Tyrell asked about the transition from Main Street to the subject, 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 asked about the relationship to sea level. Mr. Adler indicated that buildings are measured from grade level, not from sea level.

20. The hearing was then opened for public comments. Garrison Tyrell stated that he thought that the application serves the neighborhood better than commercial uses. He believes the application needs more parking or fewer units. He believes that the Applicant should consider fewer units. He said that the area is congested, but he does prefer the first floor residential use to commercial use or to the existing structures. Sean Massey indicated that he was not crazy about ground floor residential use. He believes that the Applicant should unbundle

parking from rent, that is, parking spaces should not necessarily go with apartments. He recommends car sharing and bike parking. He believes that the premises should be developed at higher density. David Aitken stated that he was in favor of change from commercial to residential use. He is concerned about traffic on Inn Place. He is concerned about the scale of the building and parking.

21. Stanley Lease stated that in his opinion the proposal is a “great project.” He feels that it has eye appeal and would make a great transition between Main Street and the residential use. He feels that it would not compete with the downtown.

22. Roland Staal indicated that he is generally pleased with the project, but that he is concerned about the height and traffic, but is in favor of residential use on the first floor.

**WHEREAS**, the Board of Adjustment, after hearing the testimony and evidence on the application, 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 118, Lots 18.04, 19, 20 and 21 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 23-27 Hillside Avenue. The property is located in the B1 Zone.

3. The applicants are the owners of the subject premises.

4. The Board members discussed various considerations and concerns in connection with the application. Among those expressed by various Board members were issues concerning height and density and issues concerning the number of parking spaces provided.

5. Having expressed those issues, Board members indicated that issues of height, density and parking would be considered in the subsequent site plan application. On the whole, however, the Board was of the opinion, particularly for the reasons expressed by the planner, Mr. Grygiel, that the requested D variance for the first floor use of the subject premises for residential apartments should be granted as being preferable to the use of the ground floor for commercial use. The Board made clear in its discussion that in reaching this conclusion, it was not approving of any particular number of apartments, nor was it necessarily approving of the building or parking as shown on the site plan.

6. The Board finds that the relief requested in the application may be granted, as the Applicant has shown special reasons for the granting of the variance pursuant to N.J.S.A. 40:55D-70(d)(1) because the granting of the requested variance will result in the appropriate use or development of the land in question in a manner which will promote the public health, safety and general welfare, and because the application will promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservations of the environment, principally because of the location of the subject premises on the fringe of the B-1 district and adjacent to the R-1 district, and because of the proximity of the subject premises to the Metuchen Train Station.

7. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and the zoning ordinance because residential use is already permitted in the zone on the upper floors and residential use is already permitted as a conditional use on the

ground floor, albeit in two-family residences, and because the subject borders the R-1 zone where residential use is a permitted principal use.

8. The Board further finds that the granting of the variance applied for shall be made subject to the conditions which are hereinafter set forth.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Metuchen that the application of Metuchen Investors and Main Street Metuchen, Ltd., and Metuchen Investors, LLC, for a D variance from the provisions of §110-75A(7) of the Metuchen Code to permit residential apartments on the ground floor be and is hereby granted, subject to and conditioned upon the following:

A. The approval granted herein is expressly conditioned upon the granting of all required subsequent approvals by the Metuchen Board of Adjustment. Applicant shall submit an application for major site plan approval and for any C variances and/or waivers/exceptions which may be required. No subsequent approval shall be granted by the Board unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

B. 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.

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

D. The application shall be subject to any other outside agency approvals as may be

necessary, including, but not limited to, Middlesex County Board of Adjustment, Borough of Metuchen Fire Department, Middlesex County Utilities Authority, Middlesex Water Company, Metuchen Shade Tree Commission, and Freehold Soil Conservation District.

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

**BE IT FURTHER RESOLVED** that, in accordance with §110-41 of the Code of the Borough of Metuchen, approval of the variance granted herein shall expire one year from the date of approval of this resolution. The Board, however, may extend the time period for such approval for an additional period of one year. If a subsequent application for site plan approval is submitted and approved, the rights conferred on the Applicant by the approval of the site plan application shall govern this variance approval.

**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.

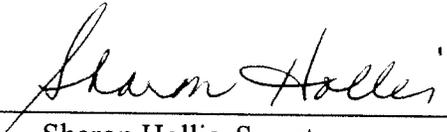
**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of December 13, 2012 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.

Dated: January 10, 2013

  
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Sharon Hollis, Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING  
A ZONING INTERPRETATION TO  
GREEN STREET DECORATORS LLC  
91 LIBERTY STREET  
BLOCK 44, LOTS 55, 56 & 57.01  
APPLICATION NO.

**WHEREAS**, Green Street Decorators LLC hereinafter referred to as “the Applicant,” submits this application with the consent of SK Verma Realty, LLC, the owner of Block 44, Lots 55, 56 and 57, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 91 Liberty Street in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, the Applicant has applied to the Metuchen Board of Adjustment for an interpretation of the zoning ordinance pursuant to N.J.S.A. 40:55D-70(b); and

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

**WHEREAS**, at said hearing, the Board of Adjustment considered the following documents:

1. Application for development dated November 7, 2012.
2. Proof of payment of taxes and assessments.
3. Application and escrow fees.
4. Site Plan, entitled “Green Street Decorators, LLC,” Lots 55, 56 & 57.01, Block 44, 91 Liberty Street, Borough of Metuchen, Middlesex County, New Jersey, prepared by Kastrud Engineering, LLC, last revised August 24, 2012, consisting of two sheets.

5. Resolution of Memorialization Granting a Use Variance and Site Plan Approval with Bulk Variances to Adon Enterprises, Inc., Block 44, Lots 55, 56 & 57.01, memorializing actions taken on October 9, 1997, by the Board of Adjustment of the Borough of Metuchen.

**WHEREAS**, the Applicant was represented by John Wiley, Jr., Esq.; and

**WHEREAS**, the Applicant seeks an interpretation pursuant to N.J.S.A. 40:55D-70(b) of Chapter 110, Land Development, Part III, Zoning, and specifically §110-83, LI, Light-Industrial District, to the effect that Applicant's proposed use, that is, the assembly of floral arrangements, is a permitted use in the LI Zone District; and

**WHEREAS**, the Metuchen Board of Adjustment heard the presentation and evidence as follows:

1. The subject premises is commonly known 91 Liberty Street, designated as Block 44, Lots 55, 56 and 57.01 on the Tax Map of the Borough of Metuchen. The premises are owned by SK Verma Realty, LLC, which entity has consented to this application.

2. John Wiley Jr., Esq., applicant's attorney, stated that Applicant seeks an interpretation of the Zoning Ordinance to the effect that the assembly of floral arrangements is a permitted use in the LI light industrial zoning district under the provisions of §110-83 of the Metuchen Code.

3. Harold Kramer was sworn in and gave testimony. He resides at 42 North Park Avenue, Shrewsbury, New Jersey. He is the owner of Green Street Decorators, LLC, the Applicant in this application. Green Street Decorators, LLC is the owner of Anderson Flowers, which has a retail location at 762 Green Street, Iselin, New Jersey, and also has a location at 26 Inman Avenue, Rahway, New Jersey.

4. Green Street Decorators, LLC, seeks to become a tenant at the subject premises. If permitted to do so, it would assemble floral arrangements only at the 91 Liberty Street location. The operation would be conducted by delivering flowers by vans to 91 Liberty Street where the floral arrangements would be assembled. The floral arrangements would then be delivered from 91 Liberty Street directly to wedding locations and other locations.

5. Mr. Kramer testified that brides or other clients will never be seen at 91 Liberty Street. Green Street Decorators, LLC/Anderson Flowers has a telefloral business. All retail sales come out of the 762 Green Street, Iselin location. Mr. Kramer testified that the subject premises would be used exclusively for weddings, usually only on Friday and Saturday.

6. The anticipated hours of operation would be from 8:00 a.m. to 4:00 p.m.

7. The hearing was opened to the public. J. VanHeuson and Cathy VanHeuson had questions, asking about the storage of chemicals. Mr. Kramer testified that no hazardous chemicals would be stored on the premises. There being no further comments or questions, the hearing was closed to the public.

**WHEREAS**, the Board of Adjustment, Borough of Metuchen, after hearing the testimony in support of the application, and after considering the public comments/questions, and the arguments in favor of the application, 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 application, pursuant to N.J.S.A. 40:55D-70(b) is properly before the Board of Adjustment.

3. The property is designated as Block 44, Lots 55, 56 & 57.01, 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 91 Liberty Street. The property is located in the LI (Light Industrial) Zone.

4. The Applicant is the proposed tenant of the property. The owner of the property has consented to the application.

5. The Board finds that the proposed use of the premises for the assembly of floral arrangements is a permitted use in the LI (Light Industrial) District under §110-83B.

5. The Board based its finding and conclusion on the testimony to the effect that the work to be done at the subject premises is the assembly of floral arrangements, a use that is substantially similar to other specifically enumerated permitted industrial uses under §110-83B(5) (a), (b), (d), (i), (j), (k), (l) and (m), all of which are assembly uses. Additionally, the proposed use meets the criteria set forth in §110-83B(4), in that the use as described would have no nuisance problems, would be carried on completely in an enclosed building and would involve the assembly of articles of merchandise.

6. Further, the Board relied on and specifically limited its findings and conclusions as set forth above based upon Applicant's testimony and representation that there would be no retail use of the premises and that retail customers would never come to the subject premises.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Metuchen that the application of Green Street Decorators, LLC, for a zoning interpretation pursuant to N.J.S.A. 40:55D-70(b) to the effect that the assembly of floral arrangements at the subject premises is a permitted use under §110-83B of the Metuchen Code be and is 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, escrows or assessments for local improvements are due or delinquent on the property in question. No permits, if any, nor deeds of subdivision for minor subdivision maps, shall be executed for filing until all fees and escrows are paid in full.

C. The application shall be subject to any other outside agency approvals as may be necessary, including, but not limited to, County of Middlesex Board of Adjustment, Borough of Metuchen Fire Department, Middlesex County Utilities Authority, Middlesex Water Company, Metuchen Shade Tree Commission, and Freehold Soil Conservation District.

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

**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.

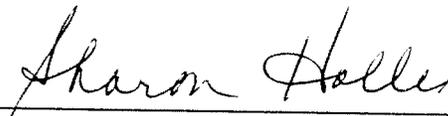
**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered 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 December 13, 2012 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, Secretary

Dated: January 10, 2013