

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

May 9, 2013

The meeting was called to order at 7:46 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present: Suzanne Andrews
Pat Lagay, Chairperson
Catherine McCartin
Judith Sisko
Byron Sondergard
Daniel Spiegel

Brian Tobin, Vice Chairperson
Jonathan Rabinowitz, Alt. I
Jim Constantine, Planner
Robert Renaud, Attorney
Lisa DiFranza, Engineer
Chris S. Cosenza, Zoning Officer

Late: Sheri-Rose Rubin, Alt. II (7:49 p.m.)

Absent: (none)

NEW BUSINESS

13-983 Michael & Lauren Cohn – Applicant is seeking bulk variance approval for open space to construct a one story addition

47 Hanson Avenue Block 196, Lots 24, 25, 26 R-2 Zone

Ms. Lagay announced that she would recuse herself from the application since she lives within 200 feet of Applicant. Mr. Tobin chaired during the course of the application.

Mr. Tobin requested Applicant to come forward to present their application.

Mr. Cohn was sworn in by Mr. Renaud.

Mr. Tobin noted that Ms. Rubin had arrived.

Mr. Cohn indicated that he has a nine-year daughter who is handicapped. She is wheelchair-bound and has difficulty going up and down stairs. She is continuing to grow up and in order to accommodate her, he proposes to enclose a portion of the existing porch, construct a handicap-accessible ramp, a one-story addition to the rear of the residence, and replace a portion of the existing wood deck and stairs with a new paver patio and stairs. The addition at the back of the house will expand the bedroom and the bath and make them more handicap-accessible.

Mr. Cohn further indicated that the house is on a corner lot, facing both Hanson Avenue and Sidney Place. The rear addition will not be visible from the street.

Mr. Tobin asked what variances were required.

Mr. Cohn indicated that the existing open space of a little over 60% will be reduced to approximately 57%. He reviewed the Engineer's memoranda, in which it indicated precisely 57.28%.

Mr. Tobin asked the Board if there were any other questions.

Mr. Spiegel asked if there was a rear yard, or if it was considered a side yard.

Mr. Cohn indicated that the side yard is where the screened-in porch is located; the addition is located in the rear yard.

Mr. Spiegel stated that he understood but wanted to know, in zoning terms, as there was only 12 and a half feet to the rear lot line and questioned why a rear yard setback variance was not required.

Mr. Renaud stated that was a topic of discussion he had had with Mr. Constantine. The Zoning Ordinance defines the rear yard on a corner lot to be side of the yard which is opposite of the shorter side. Therefore, the rear yard, according to the Ordinance, would be the lot line on the west side. The addition is actually located in the left side yard and 12 and a half feet is okay.

Mr. Cosenza confirmed.

Mr. Tobin stated that it appears the Board should only be concerned with the Open Space requirement.

Mr. Spiegel noted the 23.9 setback to the enclosed porch.

Mr. Cosenza confirmed; however, since the porch is enclosed, it is considered part of the existing house, not a permitted projection. Since the enclosed porch exists, a new variance request is not necessary. It is a pre-existing non-conforming front yard setback.

Mr. Tobin asked Mr. Cohn if he had an opportunity to review the Borough Engineer's memorandum.

Mr. Cohn confirmed; no other improvements had been made since the date of the provided survey. A circular driveway had been permitted for greater accessibility for his daughter to enter the home and because of the parking situation in front of their home given that Redfield Village is across the street. Mr. Cohn stated he would confirm to all other comments made by the Borough Engineer.

Mr. Constantine asked Mr. Cohn to testify to the existing landscaping and if any changes would be made.

Mr. Cohn indicated that there is dense landscaping around the house. The existing deck will be cut into by the proposed one-story addition. Therefore, there will be little changes to the landscaping on the side of the house.

Mr. Constantine asked if any mature trees would be removed.

Mr. Cohn indicated that there would be no trees removed.

Ms. DiFranza recommended that, for the benefit of everyone in the family, all site improvements are made ADA compliant. The slope appears to be relatively flat.

There being no further questions from the Board, Mr. Tobin opened the hearing to the public for questions regarding the application. There being none, he closed the public portion.

There being no further comments from the Board, Mr. Tobin opened the hearing to the public for comments regarding the application. There being none, he closed the public portion.

Mr. Renaud recommended that the only condition be that Applicant complies with the Borough Engineer's memorandum.

A motion to approve the application as presented was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Spiegel, Mr. Tobin and Mr. Rabinowitz voted yes. Motion passed.

Mr. Tobin deferred to Ms. Lagay to chair the remainder of the hearing.

13-974 **173 East Chestnut LLC** – Applicant is seeking bulk variance approval to construct a new single family dwelling on a corner lot.

173 East Chestnut Avenue Block 93.01, Lot 2

R-1 Zone

Mr. Spiegel noted that there was a "Bob Murphy" sign on the property and asked Applicant if Mr. Murphy was a member of the business.

Richard Mongelli, Esq., Applicant's Attorney indicated that Mr. Murphy was not.

Mr. Mongelli presented his application on behalf of Applicant. Applicant is seeking to construct a new single-family dwelling on a corner lot. There are several bulk variances and exceptions. They had appeared before the Technical Review Committee (TRC) in April, during which very good recommendations were made. The first concern was that the house seemed big. It was a 3,300 square foot house and has since been reduced to 2,600 square feet. The other concern was the side that fronts on Ross Avenue, which is a front yard because of its corner lot condition, had a long façade, approximately 60 feet long. It was McMansion-like. It has been reduced by 20%. More windows have been added; the fireplace has been relocated. They will be happy to discuss other design and landscaping issues.

Mr. Mongelli further indicated that there are pre-existing variances that will be discussed. There are variances created by this application, which are front yard setback, side yard setback and building coverage. He had an opportunity to review the LRK memorandum dated May 7, 2013 and indicated that experts are present to testify to them. In advance of their testimony, Mr. Mongelli indicated that Applicant will be happy to comply with comments 12 through 15 that deal with shade tree and landscaping issues.

Mr. Mongelli further stated that the property is the subject of an enforcement matter to which he and Mr. Cosenza have addressed. Several trees, which were dead, have been removed.

Ms. Lagay stated that there did not appear to be a landscaping plan (in the Board's packet).

Mr. Mongelli indicated that it would be presented as an exhibit.

Mr. Spiegel raised his concern regarding tree(s) located on the property and issues with preserving them during construction. He asked Mr. Constantine for his opinion.

Mr. Constantine stated that Applicant has not stated their position on the existing trees yet.

Mr. Mongelli indicated that he had received a violation notice and any dead trees on the property were removed. He had asked Mr. Cosenza if Applicant had complied.

Mr. Cosenza stated that Applicant has addressed the matter; however, he opined that Mr. Spiegel was referring to the existing tree still standing at the corner of East Chestnut and Ross Avenues.

Mr. Mongelli indicated he had reviewed the Maser report and that Applicant had no objection with comments three (3) through nine (9). He introduced Joseph Schaeffer, Applicant's Planner, and Robert Hernandez, Applicant's Architect.

Mr. Schaeffer and Mr. Hernandez were sworn in by Mr. Renaud.

Mr. Hernandez provided his education and experience; he was qualified and accepted by the Board.

Mr. Hernandez described the neighborhood stock for the Board. The majority of the homes in the neighborhood are post-war homes. There are other homes which are significantly larger as well. Homes are mostly two-story colonial with porches. The average home varies between 28 to 30 feet in height. The neighborhood is progressing towards larger homes. The average home on East Chestnut Avenue varies from 1,600 to 2,500 square feet. In his experience, new homes rarely are designed to be that small. He presented exhibit A-1, a two-page exhibit of existing homes in the neighborhood. He also presented exhibit A-2, a photograph of 78 Lake Avenue, a house he recently designed and has since been constructed and sold. The (design of the) proposed house at 173 East Chestnut Avenue is very similar to the house on 78 Lake Avenue.

Ms. Lagay noted that the proposed house is 2,555 square feet. The garage is an additional 284 square feet. Altogether, the house and garage is 2,839 square feet.

Mr. Hernandez indicated that Applicant is seeking bulk variances to construct a new single-family two-story dwelling. The bulk variances are necessitated based upon the existing lot size. The proposed house was 31 feet wide; it was reduced by one (1) foot (from 32 feet) based on comments made at the TRC meeting. Additional comments were incorporated: the garage used to be at the rear of the house and is now in the front; the overall size of the house has been reduced from 3,200 square feet to 2,600 square feet.

Mr. Mongelli requested Mr. Hernandez to describe other reasons why the garage was relocated.

Mr. Hernandez indicated that the original plans were reviewed by many potential buyers; the moms had concerns about the garage toward the rear and (thus) having obstructed views to the rear yard. Applicant changed the plans, which resulted in a reduction of the habitable space. This removed one potential variance. It is a four-bedroom home, including a master suite. There

will be 2 ½ baths, which is typical in a new home. Room sizes are rather moderate. The height of the house has also been reduced. The existing home is considerably smaller. The home next to the subject property is approximately 30 feet in height. He presented a colored rendering; the home will have cedar shake siding and cultured stone water table. There will be extensive foundation plantings. The two (2) existing trees will remain.

Ms. Lagay asked if the existing trees were healthy.

Mr. Hernandez stated that he did not know but did notice the roots are continuing to grow and expand into the sidewalk. The sidewalk is pushed up.

Mr. Spiegel recalled his previous experience where the common goal is to save trees. However, when the foundation is being dug and if you are not at least 35 feet away, those trees are gone. As beautiful as those trees are, the problem is that when the Board protects them, they die. He recalled a subdivision on Christol Street where a number of trees along Grove Avenue have all died. These trees were approximately 20 feet away from the house.

Mr. Hernandez indicated that he had no objection to removing the tree and replant as necessary.

Mr. Rabinowitz asked about the windows on the side(s) of the house.

Mr. Hernandez discussed the location of windows and the floor plan.

Mr. Constantine suggested transom windows in the kitchen.

Mr. Hernandez indicated that he would prefer a full window and shift the kitchen cabinets.

Mr. Constantine also suggested that if there are privacy issues and a concern regarding the number of windows, windows should be added to the side of the garage. He also suggested that Applicant should not just focus on looking at the windows from the inside but also from the outside. What happens is that you are addressing the blank wall, but one should also look at how it impacts the neighboring home. Applicant is asking for a variance for the side yard, therefore the side wall should be addressed. He recalled specific guidelines in other communities and associations where the highest level of review is the side wall to side wall relationship. Windows should not line up with each other to minimize privacy issues.

Ms. McCartin opined that the issue is an important one to address. She understands one of the initiatives in Metuchen is to bring back the front porches to encourage interaction. She believes windows do the same thing. While you do want privacy, it would be nice to be able to talk to your neighbors from the window.

There was a discussion regarding the roof lines, finished attic spaces and how the height of the proposed house compares to the other homes along East Chestnut Avenue. The attic of proposed house will not be finished at this time.

Mr. Spiegel asked how many properties on East Chestnut Avenue have front yard-facing garage.

Mr. Hernandez stated that most homes have detached garages.

Ms. Lagay requested a review of the right side wall, facing Ross Avenue. She expressed her concern regarding the location of the fireplace and why it could not be relocated to the rear of the home in the family room with windows on either side.

Mr. Hernandez indicated that he had no opinion of the fireplace and he would rather do what Ms. Lagay had indicated. Applicant is proposing to do extensive landscaping.

Mr. Spiegel raised his concern regarding the long run of the side wall. He referred to Ms. Andrews' home, where her architect was able to address it.

Mr. Hernandez stated that the issue is the narrow lot. Also, by putting the garage in the front, he lost 12 feet of frontage. The width of the house has already been reduced compared to the original plans submitted to TRC.

Mr. Spiegel stated that he understood but opportunities exist to address it to a greater extent.

Mr. Mongelli indicated that landscaping would be provided.

Mr. Constantine interjected and opined that if a cut line at the master bedroom (on the second floor) and the family room below could be made, there is the ability to push (this massing) back a foot or two (2) and allow the rooms to expand to the rear a foot or two (2) to maintain the requested volume. He is suggesting to reshape the volume at the rear of the building slightly. This would also address the roofline and height issue.

There was discussion regarding alternatives addressing the long wall. At one point, Board members raised the issue about the design standard where a wall shall not extend greater than 50% of the lot width, to which Mr. Constantine indicated that when the standard was written (and adopted), he admitted that it did not appropriately address corner lots. Applicant can do whatever they want on that wall; however, Applicant is trying to respond to that very issue.

Mr. Constantine opined that if the break line was made at the point he previously indicated, the house would look markedly smaller.

Mr. Spiegel suggested if a trellis could be added.

Mr. Constantine opined that it would be like putting a band-aid on an elephant.

Mr. Spiegel asked that if an elephant comes before the Board, what other methods can appropriately address these issues.

Mr. Constantine suggested that, what you find in older homes; if one were to study American residential design, (one would find that most homes consist of) a main body and additions off to the side. He suggested that you handle this large house in the same vocabulary as the older neighborhoods developed.

Ms. McCartin expressed her concerns about the long side wall.

Mr. Spiegel indicated that this issue is one of the main issues he has with the Ordinance. However, what Applicant and Mr. Constantine have suggested, so far, helps.

There was a long discussion regarding other ways to address the side wall facing Ross Avenue and corresponding overall volume and roof lines.

Mr. Constantine requested clarification regarding the trees on the property.

Mr. Hernandez indicated several dead trees were removed; what exists today are the two (2) trees remaining on the property.

Mr. Constantine opined that the tree is further back (towards the proposed house). If the tree is to remain, there would be two (2) issues: 1) could the house move back and 2) could the porch be on piers instead of slab to reduce the level of excavation. He opined that Mr. Spiegel's concerns regarding saving trees were valid.

Mr. Spiegel stated that if the attempt is to save the tree, it would be a failure. It is better to get new trees.

Mr. Constantine stated that there are a whole lot of variables that affect trees: location of dumpster, stockpile of soil, contractors, etc.

There was a long discussion regarding the trees.

Ms. Andrews and Mr. Constantine suggested pushing the house back a couple feet. There is nothing better than a tall mature tree with a new house. The house would be worth more. There is no greater gift to the neighborhood than to save an existing mature tree.

Mr. Hernandez raised his concern if a variance was required for the averaging of the front yard setback.

Mr. Cosenza clarified that the averaging provision only "resets" the minimum setback. Setting the house back further would not necessarily require a variance but it was up to the Board.

Mr. Constantine agreed. An effort should be made to save the tree.

Mr. Hernandez and Mr. Mongelli agreed to try to push the house back, but Mr. Mongelli stated he wanted to make sure that the tree was indeed healthy.

Ms. Lagay asked where the A/C condenser units would be located.

Mr. Hernandez stated that given the five (5) foot setback requirement, they would be located at the rear of the home, with landscaping in front of it. They would be approximately 18 feet from the Ross Avenue right-of-way.

Mr. Cosenza confirmed that it would comply. The provision in the ordinance requires that the accessory structures not be located in the front yard, not the front yard setback area. Given that the units are behind the front wall of the house facing Ross Avenue, they will comply.

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

Jason Chen, 169 East Chestnut Avenue, asked about the side yard setback and height.

Mr. Spiegel noted that the existing side yard setback is being reduced from 9.3 feet to 5.5 feet.

Mr. Chen raised his concern regarding privacy and loss of morning light given the taller house and more windows.

Mr. Constantine indicated that moving the house back may address these issues.

Ms. Lagay asked Mr. Chen if he would like more light.

Mr. Chen confirmed. He also raised his concern regarding the existing tree on the property line.

Mr. Hernandez stated Applicant would have no objection to remove the tree.

Ms. McCartin stated that she believed Mr. Chen was concerned about the tree specifically during construction.

Mr. Chen confirmed. He asked about the construction timeline because he has a young child.

There was a discussion regarding construction.

Brian Glassberg, 11 Ross Avenue, asked about the border of the property. He asked if there would be landscaping along the rear lot line.

Mr. Hernandez stated that was a good question; the detached garage will be removed and it was not planned to put in landscaping but it could be done.

Mr. Spiegel interjected and wanted to make sure Mr. Glassberg was clear that there is a difference between new trees and arborvitae. One gives off leaves, the other does not.

Mr. Glassberg stated that there are currently hedges and would prefer filling in of any gaps of the existing hedges.

Mr. Hernandez indicated that could be done and double-up and add another row of hedges. The existing driveway apron and depressed curb would be removed and a new curb would be put back in. Grass would be put back in.

Mr. Glassberg asked if hedges would be provided along the front of the property.

Mr. Hernandez indicated that he was not sure; landscaping would be provided along the foundation walls, at minimum. Additional landscaping could be provided.

Mr. Glassberg asked if solar panels would be added.

Mr. Hernandez stated that, at the moment, he had not provided them; however, if they were added, it would not take away from the look of the house.

James DeGeorge, 161 East Chestnut Avenue, stated that the design is good; he raised his concern regarding the porch being in front of the all of the other homes on the street. He recalled earlier testimony in which Mr. Hernandez stated that most of the homes have porches; they do not. The two (2) houses that do are set back further. He opined that the proposed porch will stick out.

Mr. Hernandez stated that the porch is set back 24 feet and everything they are doing with the front yard setback is compliant. The Ordinance states that the front porch can encroach up to eight (8) feet into the front setback area.

Mr. DeGeorge stated that he thought it could be up to eight (8) feet but could not be different than the other homes around you. He asked if there was something about the sight lines.

Mr. Cosenza stated that the averaging of the setback refers only to the foremost portion of the dwelling. An open porch is not considered to be part of the dwelling and may project up to eight (8) feet into the "averaged" front yard setback area.

Mr. DeGeorge requested the Borough Planner explain it.

Mr. Constantine stated that he wanted to look at it in a different way. He agreed that the porch can project but since variances are required, he suggested that the whole house be looked at as a total package deal. He opined that the trees are probably closer to the house than what is shown on the plans; both trees are in jeopardy. If the house is pushed back, it compromises the tree in the rear, which is probably too close to the house as it is.

There was a discussion regarding the porch during which Mr. Constantine determined that the front face of the porch is forward 10 more feet (towards East Chestnut Avenue) than the existing home.

Ms. Lagay stated that on new construction, the Borough encourages porches to project.

Ms. Andrews asked Mr. DeGeorge exactly what he was objecting to regarding the porch.

Mr. DeGeorge stated that he had an objection to the sight lines. It is being disrupted. The porch comes out six (6) to eight (8) feet further than all of the other houses on the block. He further questioned how the humongous house on Hollywood (Avenue) was built.

Ms. Andrews stated that the Board did not approve it and a new conforming house, albeit very large, was constructed.

Mr. Spiegel agreed and stated that that application had come in with numerous variances; what happened is what happens when you push an applicant around too much. Ultimately, the builder can do whatever they want so long as it is conforming.

Mr. Constantine observed that some of the homes on East Chestnut Avenue are set back further; as one goes towards Ross Avenue, they kick in forward slightly. It is the home next door that is setting the new setback requirement for the proposed house.

Ms. Andrews asked if the house was pushed back further, what would happen.

Mr. Constantine stated that it would still stick out in front of the other homes.

Ms. Lagay asked Mr. Constantine if he was referring to the porch.

Mr. Constantine confirmed.

Mr. Chen asked if there was a plan regarding the line between his and the subject's properties.

Mr. Hernandez stated that they could add more landscaping.

Mr. Chen asked if there was a fence.

Mr. Hernandez stated that there is no fence at this time.

Ms. Lagay opined that it was difficult to address these issues without a landscaping plan.

Mr. Spiegel agreed and that the Board would need a new side elevation as well.

There being no further questions for Mr. Hernandez, Ms. Lagay closed the public portion.

Mr. Schaeffer provided his education and experience; he was qualified and accepted by the Board.

Mr. Mongelli requested Mr. Schaeffer to discuss the variances being requested.

Mr. Schaeffer indicated that the first variance applies to the front yard setback along Ross Avenue with the second being the side yard setback. He opined that the granting of variances would advance a number of purposes of the Master Plan and discussed such at length. Generally, the project replaces an older outdated structure with a new modern home. This project is appropriate to its neighborhood. The proposed house, 2,600 square feet, is considered average by today's standards. The design the home is designed to make it easier to talk to neighbors. The granting of the variances could be granted without detriment. The benefits outweigh any detriments that exist. It would not substantially impair the intent of the Master Plan and Zone Plan. Given the lot's exceptional narrowness, a conforming house would only be 12 feet house. This house would be undesirable and negatively impact the neighborhood.

Mr. Renaud stated that the isolated lot situation needed to be addressed. He asked if Applicant could add onto the lot, meaning, is there any land available that would make this lot conforming.

Mr. Schaeffer stated that he did not believe so; it would involve acquiring land from his neighbors or condemnation of a public right-of-way, all of which are impractical and not in the best interest of the Borough.

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

Mr. Chen requested clarification regarding the isolated lot issue.

Mr. Schaeffer indicated that there is no way to expand the lot.

There being no further questions for Mr. Schaeffer, Ms. Lagay closed the public portion.

Ms. Lagay asked Mr. Hernandez if a deck or patio were proposed.

Mr. Hernandez indicated that no deck is being proposed. The doors lead to a landing and pad.

Ms. Lagay asked if there was enough room for such.

Mr. Hernandez indicated that there was some room for a deck in the rear yard area. The new homeowner could do one without variances.

Ms. Lagay asked Board members to discuss the application.

Mr. Constantine indicated that most of the comments in his memorandum were addressed.

Ms. Lagay asked if a driveway waiver was still required.

Mr. Constantine confirmed that all of the waivers identified in his review were necessary. There is still a question mark regarding the landscaping. It was not clear if the two (2) trees will remain.

Mr. Spiegel asked Mr. Constantine "how do you tell a developer to be sensitive to the life of the trees?"

Mr. Constantine indicated there are tree protection standards. You can have Applicant submit a Vegetation Protection Plan prior to the issuance of a building permit. While it is in the Ordinance, it is rarely required. Because of issues raised, it is worth making it a requirement.

Mr. Mongelli indicated Applicant would have no objection to that condition.

Ms. Lagay asked who enforces that Ordinance.

Mr. Cosenza stated that whenever it is required, he would be responsible for it.

Ms. Lagay asked if the tree dies within five (5) years, if the tree should be replaced.

Mr. Cosenza stated that by the time the house is constructed and sold, the builder is long gone and the homeowner is stuck with the problem. This is a concern of the Shade Tree Commission and his office. He discussed that a Maintenance Bond could possibly address this but did not believe such could be imposed on Applicant in this case.

Mr. Constantine indicated that the tree may be in the public right-of-way. This may fall in the jurisdiction of the Shade Tree Commission.

Ms. Rubin indicated it could be on the registry.

Mr. Mongelli indicated Applicant would be happy to comply with whatever was requested.

Mr. Constantine indicated, in his review, that shade and flower trees are provided in the both front yards. If you fill in the gaps, there are probably another two (2) or three (3) trees to be provided. He would rather over-tree the lot because of the types of variances being sought.

Mr. Mongelli indicated that he was truly concerned with Mr. Spiegel's earlier comment that revised plans be provided. He indicated Applicant had no objections to anything being raised. However, he did not really want to come back to the Board.

Ms. Lagay indicated that it would be preferred to see what it was that the Board was approving.

Mr. Renaud stated that it really depends on if the Board was satisfied with having Mr. Constantine review and approve the revised plans as a condition of approval. He opined that

the location of the foundation of the house has not been agreed upon. If the Board wants to see the elevations, Applicant has to come back. It is up to the Board.

Ms. Lagay requested the Board to discuss the house to discuss the house being moved back two (2) feet. Board members agreed.

Mr. Constantine asked Mr. Hernandez to discuss the porch to come down on posts as opposed to the slab foundation.

Mr. Hernandez raised his concern regarding the lifespan of the porch. The porch on posts means that it would be constructed of wood, which is less durable than a concrete porch. He prefers a concrete porch.

Mr. Constantine opined that concrete porches are not as common as wood porches and did not understand the resistance other than personal preference. He is only pushing it because of tree preservation.

There was a discussion regarding the porch construction.

Mr. Spiegel suggested that, if the tree is healthy, Applicant construct the porch with wood posts. He did not want Mr. Hernandez to construct a porch that he did not want to construct if the tree turns out to be dead. There is a lot riding on the health of the tree.

Mr. Mongelli agreed.

Ms. Lagay opined that someone needs to determine the status of the tree and then come back with the plan.

Mr. Schaeffer interjected that, what typically happens is that, the professionals evaluate these matters and the porch could be constructed as previously indicated. He opined that the Board did not necessarily have to see the technical details.

Ms. DiFranza indicated that someone from her office could evaluate the tree.

Ms. Lagay asked if someone from the Shade Tree Commission could evaluate the tree.

Mr. Constantine and Mr. Cosenza both stated that it had to be someone that was professionally licensed and qualified to do so.

Mr. Mongelli stated that he would be happy to have the Borough Engineer evaluate the tree.

Mr. Constantine asked Mr. Cosenza if the tree being removed would end up kicking off the tree replacement requirement.

Mr. Cosenza stated that he generally did not require replacement of dead trees. The contractors seemed to be overzealous with the removal of the trees on the property, but generally abated the violation. He opined that the street and shade trees referred in Mr. Constantine's memorandum will be sufficient.

Mr. Spiegel raised his concern about delegating out the façade issues. He would prefer seeing the revised plans. He understood the concern about having to come back to the Board and did

not want to take away from the great project. We have neighbors who are interested in seeing something different.

There was a discussion regarding whether if Applicant should be present the following month to present.

Ms. Lagay asked other Board members to discuss.

Ms. Andrews stated that she would like to see the new setback, size and how it would look on the street with the other houses. A landscape plan should also be provided.

Ms. Lagay summarized that the Board wants to see the new elevations, landscaping plan and a report from the tree expert.

Ms. Andrews asked if it would be possible to review the plans and if it was determined that the Board had to meet, they would meet.

Mr. Tobin stated that such a meeting would have to be open to the public.

Ms. Lagay agreed, but opined that the meeting would not be long.

Mr. Renaud stated that it would not be elaborate. He asked what the Board wanted to know regarding the two (2) existing trees. After discussion with the Board, he indicated that both trees had to be located with respect to the plot plan. He summarized again what the Board wanted to see.

Ms. Lagay further asked to show the front elevations with the homes next door.

Mr. Constantine stated that it appeared that a streetscape elevation was being requested.

Ms. Andrews agreed.

Mr. Renaud stated that, based on a conversation with Mr. Cosenza, he did not believe the hearing had been opened to the public for comments regarding this application. But that is okay because it would occur next month.

Mr. Spiegel stated that he would not be opposed to receiving comments from the public.

Mr. Renaud stated that was fine but there would need to be a public portion at some point.

There being no further comments from the Board, Ms. Lagay opened the hearing to the public for comments regarding the application.

Mr. Glassberg stated that the property has been in disrepair for many years. He raised his concern regarding branches on the roof of the garage and the sidewalk.

Mr. Chen stated that he appreciated the process and the time devoted to the project. He appreciated considerations be made of the neighbors' concerns, as well as his own. He reiterated his concern regarding sunlight and privacy issues.

There being no further comments from the public, Ms. Lagay closed the public portion.

Mr. Renaud asked what happened of the fireplace.

Mr. Hernandez indicated he would remove the fireplace from the exterior.

Mr. Mongelli indicated he would confer with his client and determine if there was interest in revising the plans and moving forward. His raised his concern that by solving some issues, others have been created. The ability to solve all of the problems is almost impossible.

Mr. Renaud announced that the meeting would be continued on June 13, 2013 in this room at 7:45 p.m. or soon thereafter. If Applicant needs further adjournment, then another announcement would be made at that time.

RESOLUTIONS

13-977 **Kenneth Kacani** – (bulk variance to construct a second story addition at the rear of the house and a dormer above the garage at the front of the house – approved 4/11/2013)

155 Maple Avenue

Block 99, Lot 29.02

R-1 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, Mr. Sondergard, Mr. Spiegel and Mr. Tobin voted yes. Motion passed.

CORRESPONDENCE

Minutes from October 11, 2012

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

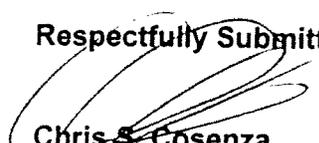
Mr. Renaud indicated that he is teaching a class on June 13, which ends at 7 p.m. He anticipates that he will be present but may be late.

ADJOURNMENT

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

The meeting adjourned at 10:19 p.m.

Respectfully Submitted,



Chris S. Cosenza
Recording Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING
C VARIANCES TO
KENNETH KACANI AND GWEN KACANI
155 MAPLE AVENUE
BLOCK 99, LOT 29.02
APPLICATION NO. 13-977

WHEREAS, KENNETH KACANI and GWEN KACANI, hereinafter referred to as “the Applicant,” are the owners of Block 99, Lot 29.02, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 155 Maple Avenue in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

WHEREAS, the Applicant has applied to the Metuchen Zoning Board of Adjustment for approval of C variances; and

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on April 11, 2013 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. Board of Adjustment Application for Development dated March 22, 2013.
2. Architectural drawings dated February 26, 2013, prepared by Mark P. Marcille Architect, entitled “Kacani Residence, 155 Maple Avenue, Metuchen, New Jersey 08840, Block 99, Lot 29.02,” consisting of three sheets.
3. Survey prepared by AEBT Surveying.

4. Four photographs of the subject premises.

5. Letter from Maser Consulting P.A., by Lisa R. Di Franza, P.E., C.M.E., Board Engineer, dated April 10, 2013.

WHEREAS, the Applicant Kenneth Kacani appeared and gave testimony in support of the application; and

WHEREAS, the Applicant is proposing to construct a second story addition above the rear of an existing residence above the garage, to construct a dormer above the garage, and a proposed covered open porch at the front entrance of an existing single-family residence; and

WHEREAS, the subject property is located in the R-1 Zone District; and

WHEREAS, the Applicant requires the following C variances:

§110-64, minimum lot width at setback line – 70 ft. required, 65 ft. existing, 65 ft. proposed.

§110-64, minimum side yard setback (left) – 10 ft. required, 7.3 ft. existing, 8.3 ft. proposed addition.

§110-64, minimum side yard setback (right) – 10 ft. required, 8.5 ft. existing, 8.5 ft. proposed, 10 ft. proposed addition.

§110-64, minimum side yard setback (combined) – 20 ft. required, 15.8 ft. existing, 15.8 ft. proposed, 18.3 ft. proposed addition.

§110-106B, enlarging non-conforming structure prohibited.

WHEREAS, the Metuchen Board of Adjustment, after hearing the testimony on behalf 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 property is designated as Block 99, Lot 29.02 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 155 Maple Avenue. The property is located in the R-1 Zone District.

3. The Applicants are the owners of the property. Kenneth Kacani testified in support of the application. He indicated that he and his wife have three children and they need more space. They do not wish to move. He described the proposed addition. They propose to construct a second story addition above the rear of the residence, as well as above the garage. A dormer is proposed for the area above the garage. They also seek approval for a proposed covered open porch at the front entrance of the house.

4. The addition will add two bedrooms and two bathrooms. The second story addition will be set 8.3 feet off the right side line and 10.0 feet off the left side line, for a total combined setback for the addition of 18.3 feet.

5. Mr. Kacani testified that it is necessary to construct a dormer to make the space above the garage usable. The dormer will be centered over the garage.

6. With respect to the HVAC unit, Applicant plans to put the second AC unit on the side of the property near the existing AC unit.

7. After the construction, the home will have four bedrooms, 3 ½ bathrooms and two offices.

8. Mr. Kacani indicated that he had reviewed the memorandum of the Board Engineer dated April 10, 2013. He agreed to comply with all of the comments and recommendations contained in the Board Engineer's memorandum.

9. The hearing was opened to the public. No member of the public spoke for or against the application.

10. The Board finds that the relief requested may be granted because the Applicants have demonstrated that due to the extraordinary and exceptional situation uniquely affecting Applicants' property and the structures lawfully existing thereon, the strict application of the ordinance provisions with respect to the second floor addition would result in peculiar and exceptional practical difficulties and exceptional and undue hardship to the Applicants, because the ordinance would preclude the proposed addition which is the subject of this application, and because the existing setback deficiencies and lot size would remain unchanged.

11. 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 the proposed addition will not exacerbate the existing setback situation.

12. The Board finds that the granting of the application for C variances should be conditioned on the Applicant's agreement to comply with the conditions contained in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application for C variances of Kenneth Kacani and Gwen Kacani be and is hereby granted in accordance with the application and plans filed herein, 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, 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, Middlesex County Planning Board, 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.

E. Applicant shall comply with all of the comments and recommendations contained in the Board Engineer's memorandum dated April 10, 2013.

F. Approval of the variances applied for shall expire one year from the date of this resolution if construction has not commenced within that time period, provided, however, that the Board may extend the time period of such approval for one period of one year in accordance with §110-41 of the Land Development Chapter.

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 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 April 11, 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, Secretary

Dated: May 9, 2013