

# METUCHEN ZONING BOARD OF ADJUSTMENT

## MINUTES

October 10, 2013

The meeting was called to order at 7:45 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

### ROLL CALL

Present:	Pat Lagay, Chairperson Catherine McCartin Byron Sondergard Daniel Spiegel Jonathan Rabinowitz, Alt. I	Eileen Millett, Alt. II Jim Constantine, Planner Robert Renaud, Attorney Lisa DiFranza, Engineer Chris S. Cosenza, Zoning Officer
Late:	Suzanne Andrews (7:53 p.m.)	
Absent:	Judith Sisko	Brian Tobin, Vice Chairperson

Ms. Lagay introduced Ms. Millett to the Board.

### OLD BUSINESS

#### Annual Report for 2012

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

### NEW BUSINESS

**13-992**      **Amboy Holdings LLC** – Applicant is seeking minor subdivision, use variance and bulk variance approval to subdivide the parcel into two lots with the existing two-family house to remain and to construct a new single-family house on the subdivided lot.

292 Central Avenue

Block 51.04, Lot 20.01

R-2 Zone

Mr. Wiley, Applicant's Attorney, indicated there is a back-story not typical on other applications and would describe why Applicant is before the Board. Applicants constructed a 12-unit townhouse project on Amboy Avenue. At the time, it was asserted, as part of the approval process, that Applicant would comply with COAH. Those units would be off-site. As part of the Developer's Agreement, Applicant committed to provide one (1) low income and one (1) moderate income rental units. The property in question is a two-family unit. It was, probably,

historically a non-conforming use. It did apply for a Use Variance as a two-family in 1989. There were a number of conditions asserted at the time; it is safe to assert that the conditions have been breached. This included construction of railings, trimming of hedges and providing a gravel turnaround on the driveway.

Ms. Lagay announced that Ms. Andrews had arrived.

Mr. Wiley indicated that since the property is subject to the existing approval, a change of those conditions, that is, making the lot smaller as a result of the proposed subdivision necessitates a Use Variance as well. Tonight, in addition to a number of bulk variances, Applicant requests a Use Variance. Because there is an obligation to have a two-family use on the property, Applicant seeks to continue the two-family use, but also renovate it. The proposal would improve the neighborhood's harmony, is a better zoning alternative and visually enhance the local neighborhood.

Mr. Wiley explained that Applicant is missing one (1) of its witnesses, Nick Netta, who was the architect on the project. He had been called to a family emergency out-of-state. Given the schedule of the Board, he asked the Board hear a part of the application tonight and have it carried into next month so as to have Mr. Netta's testimony to complete the application. He would provide testimony regarding the existing conditions and proposed renovations to the existing two-family dwelling. At this point, he asked Bill Salmon, Applicant's Engineer, to come forward.

Mr. Salmon was sworn in by Mr. Renaud.

Mr. Salmon provided his education and experience; he was qualified and accepted by the Board as an expert in engineering.

Mr. Salmon introduced Exhibit A-1, an existing conditions rendering. He described the property in general terms. It is located at the intersection of Central and Midland Avenue. The lot consists of approximately 9,400 square feet with an existing two-family dwelling on it. It is a rental property. The setbacks are pretty tight to the road. There is a circular driveway. As Mr. Wiley indicated, the property is not very well maintained. There is a shed in the back as well as a brick patio with a fire pit. He indicated the existing front yard setbacks, which is important for determining the average setback.

Mr. Salmon further introduced Exhibit A-2, a proposed subdivision site plan rendering. Applicant is proposing a two-lot subdivision, which will be Lot 20.01, the proposed lot which will contain the existing two-family residence, and Lot 20.03, which will contain the proposed two-story single family dwelling. Lot 20.01 will be approximately 4,900 square feet and Lot 20.03 will be approximately 4,500 square feet. These lot sizes are similar to the homes in the Radio Section.

Even though the zoning requires 7,500 square feet, most of the neighborhood is right around 4,000 square feet. Applicant proposes enhancing the landscaping throughout, sidewalks, a driveway and 2-stall parking lot. The parking will basically be in the front yard. Mr. Salmon discussed the requirements where three (3) parking spaces are required but they are only proposing two (2) parking spaces with consideration of the impervious coverage and with parking available on the street. Furthermore, the Residential Site Improvements Standards (RSIS) of the State of New Jersey allows the Borough latitude to accept alternative means of parking. As a result, it may require a de minimis exception from the RSIS or could conform to RSIS. With respect to proposed Lot 20.03, there will be a one car driveway. Applicant requests

a 12 foot driveway, which requires an exception because the previous version of the Ordinance (for which the application was filed under) permits a maximum driveway width of nine (9) feet. The current Ordinance permits 12 feet. Finally, there will be an open front porch on the house, foundation plantings, ornamental trees and shade trees on the lawn.

Mr. Salmon then discussed the variances. As Mr. Wiley indicated, a use variance is required. With respect to the bulk variances, minimum lot area is 7,500 square feet. The lots will be approximately 4,900 and 4,500 square feet. Minimum lot width is 62.5 feet. Lot 20.03 will be 52.56 feet. Minimum lot depth is 100 feet. Lot 20.03 will be 89 feet and lot 20.01 will be 77.9 feet. There are two (2) existing non-conformities for front yard setback, which are not being affected by this application. A variance for open space is required. Minimum open space is 60%. 54% is being proposed.

Mr. Salmon began to address the Board Engineer's review letter of October 9, 2013.

Mr. Wiley interjected and indicated to the Board that Applicant intends to remove the existing hedge along Central Avenue as it blocks the sight triangle.

Ms. Lagay noted that it had appeared to be worked on as she recently inspected the property.

Mr. Salmon addressed comment #3; the structural components shall comply with IBC.

Mr. Renaud asked why it would need to comply as it is an existing two-family structure.

Mr. Wiley indicated that there may be some changes to the building itself on the interior, the building department may require it be brought up to code.

Mr. Salmon addressed comment #5; with respect to RSIS, an exception may be required. He reiterated that two (2) parking stalls are being provided.

Mr. Rabinowitz asked what the width of the combined spaces.

Mr. Salmon indicated 18 feet, two (2) at nine (9) each.

Mr. Wiley noted that three (3) spaces may be provided.

Mr. Salmon agreed, noting that it would require an increase in impervious coverage; he does not feel is necessary but such can be accommodated.

Mr. Salmon addressed comment #7; the new dwelling will have a basement and he will comply and provide test pit data to determine any seasonal high water table issues.

Ms. DiFranza indicated that all her comments have been addressed.

Mr. Salmon began to address the Board Planner's review letter of October 9, 2013. He discussed the eight (8) foot setback to the porch; it requires a waiver and Applicant requests same. In fact, under the present Ordinance, the porch setback complies with the Ordinance.

Ms. Lagay asked for clarification.

Mr. Wiley indicated under the new Ordinance, the porch can now be counted as part of the setback requirement. The application was filed when the old Ordinance was still in effect.

Mr. Salmon addressed comment #10; Applicant requests a waiver with the building offset of 8' being that the foremost portion of the building is greater than 50% of the lot width. With respect to comment #12; he clarified that the open space calculation is correct. With comments from the Technical Review Committee, the A/C condenser pads were added to the plans. With respect to comment #11, Applicant will comply.

Mr. Salmon clarified that if he does not address any particular comment, it is assumed Applicant will comment, but will welcome questions or comments should any arise.

Mr. Salmon addressed comment #15; there are a number of trees in various stages of condition. If trees need to come down, they will come down. For example, when the driveway goes in, they will inspect the tree and make a determination from there.

Ms. Lagay asked who would make that determination.

Ms. DiFranza indicated that she has an expert on her staff with respect to the tree's health.

Ms. Lagay discussed the issue of the Board attempting to saving trees and finding that years later, the trees are gone.

Mr. Salmon believed some of the street trees can be saved, but some of the existing trees do not look good.

Ms. DiFranza asked about the condition of the sidewalk. She requested that should the trees come down, the sidewalks should be addressed since some of the sidewalks are not even four (4) feet wide.

Mr. Salmon agreed.

Mr. Constantine requested clarification on the last sentence regarding additional shade trees on Central Avenue.

Mr. Salmon was reluctant given the wires, sight triangles and jurisdictional issues.

Mr. Constantine clarified the trees could be contributed.

Mr. Salmon agreed.

Mr. Renaud asked for clarification regarding contribution.

Mr. Constantine indicated that is what the Borough has been doing; if trees cannot be accommodated, they are contributed to the Shade Tree Commission.

Mr. Renaud asked if there was a fixed amount.

Mr. Cosenza clarified that it was \$275 per tree. Applicant has the option to plant on site or contributed to the Borough.

Mr. Renaud asked who makes the option.

Mr. Constantine said he can make that determination. He noted that the Shade Tree Commission planted a number of trees on Central Avenue.

Ms. Lagay asked how large the new dwelling will be.

Mr. Salmon indicated that the dwelling will be approximately 2,500 square feet.

Mr. Wiley indicated that the materials, colors and details will be subject to the buyer.

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

Julie Montany, 428 Midland Avenue, asked about the intent of the subdivision. Will it be a low-income home?

Mr. Wiley indicated that the home will be market-rate.

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

Mr. Wiley introduced Mark Bess, Project Architect.

Mr. Bess was sworn in by Mr. Renaud and proceeded to provide his qualifications. He is a licensed architect and is the Vice President of Netta Architects. He was accepted by the Board.

Mr. Bess introduced Exhibit A-3, a board consisting of six (6) photographs, taken by Netta Architects, depicting the existing conditions. The two-family dwelling is vinyl-sided, wood-framed with a stairway at the rear of the building leading to the second floor. The site is overgrown and has not been maintained. The intention is to reside the entire building and add stone detailing. A stone watertable will be provided. There will be shutters around all of the windows. Repairs will be made as necessary.

Mr. Renaud asked if the Board members had the elevations.

Ms. Lagay confirmed that they did not.

Mr. Bess introduced Exhibit A-4, a board consisting of the proposed elevations of the existing two-family dwelling. His sense of the condition of exterior of the dwelling is that there will likely be repairs necessary to the interior of the dwelling. Applicant will make the building safe and code-compliant.

Ms. Lagay asked how tall the dwelling is.

Mr. Bess indicated that the building is approximately 30 feet tall.

Mr. Constantine asked if the roof will be changed.

Mr. Bess indicated that there are no plans as the roof appeared to be recently re-roofed. However, Applicant will repair any leaks as necessary.

Ms. Lagay asked if Applicant is under contract or owns the property.

Mr. Wiley indicated that one of the principals of Applicant now owns the property. They just bought it a couple months ago. One of the units is currently occupied.

Mr. Bess introduced Exhibit A-5, a board consisting of elevations of the proposed single-family dwelling. There will be approximately 2,500 square feet, about 1,200 square feet on both floors. Stone will wrap around the entire dwelling. He indicated the colors and finishes may change but will be contextual with the neighborhood.

Mr. Renaud asked if the buyer does not want stone, will it still have stone? Basically, is what is being presented what the house will look like or what the house might look like?

Mr. Wiley indicated the colors and materials may change.

Mr. Bess indicated that he is inclined to use stone, and to accommodate the buyer, he would suggest other stones. It would be similar to what is being presented.

Mr. Sondergard noted that the design is more or less the way it is being presented.

Mr. Spiegel asked which property has the low-mod units.

Mr. Wiley indicated that the existing dwelling will have the units.

Mr. Constantine clarified that it will have two (2) affordable units, in the structure that currently exists, facing Central Avenue.

There was a discussion regarding who is and who may live in the existing dwelling. The dwelling was previously approved as a two-family use [in 1989].

Mr. Bess further discussed the exterior elevations of the proposed single-family dwelling. He introduced Exhibit A-6, a board consisting of the floor plans for the proposed single-family dwelling. The porch projects about six (6) to seven (7) feet. The front door is set back another two (2) feet [to get to the required eight (8) foot setback]. He described the layout of the dwelling in detail. The dwelling contains a single-car garage. It is a compact, modest dwelling.

Ms. Lagay noted that the dining room was far away from the kitchen and asked if that was unusual.

Mr. Bess opined that the most current layouts tend to reflect buyers' desires for a large area (for the kitchen and eat-in area) and a more formal dining area elsewhere.

Ms. McCartin asked what the ceiling height was in the basement.

Mr. Bess indicated that it is approximately eight (8) feet.

Ms. McCartin noted that there seems to be an underground stream and wondered how that it would affect the basement.

Mr. Bess indicated that unless it was significant, it would not be an issue. The basement would just have to be waterproofed. He does not believe the house have to be brought up.

Ms. DiFranza confirmed; the dwelling can be waterproofing. It is a general engineering and construction practice. She had wanted to bring that to the Board's attention that some houses are raised, if the basements are not waterproofed.

Mr. Constantine discussed the porch projection as presented. He noted that there appeared to be an error in the drawings, showing different roof conditions and requested that they be cleaned up.

Mr. Bess agreed.

There was further discussion regarding the layout of the dwelling. There appeared to be enough room for a small shed in the rear yard area, with respect to the coverage calculations.

There was a discussion regarding the changes to the Ordinance.

Mr. Constantine and Mr. Cosenza clarified that the porch can count towards the required garage setback.

Ms. Lagay asked if there was no porch, does the garage door need to be set back eight (8) feet.

Mr. Cosenza confirmed yes. The Ordinance is consistent (with how the Boards approved waivers).

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

Mr. Wiley introduced John McDonough.

Mr. McDonough was sworn in by Mr. Renaud and proceeded to provide his qualifications. He is a professional planner and, while he did not do the landscape drawings, he is also a licensed landscape architect. He had previously provided testimony before this Board in the application for Amboy Holdings on Amboy Avenue. He was accepted by the Board as an expert.

Mr. McDonough introduced Exhibit A-7, a three-page 11x17 handout consisting of an overview of the neighborhood and photographs of the neighborhood on Midland, Rutgers, and University Avenues. It gives the sense of the mass and scale of the neighborhood pattern. It was clearly evident that most lots are predominantly 4,000 square feet, 40 feet in width and 100 feet in depth. Interestingly, the subject dwelling was the first dwelling to pop up and the neighborhood grew up around it. There is a very stable pattern that exists. On the second page are photographs of the subject property. There is a mix of residential and non-residential uses along Central Avenue. The two-family use has previously been approved by this Board. The third page contains photographs of the neighborhood context. There is a mix of one- and two-story dwellings. There are a number of rooftop penetrations as well as enclosed porches. The proposed dwelling will mimic these characteristics and also provide an open porch.

Mr. McDonough then introduced Exhibit A-8, a single sheet, lot comparison table. 16 dwellings were studied. As he had previously indicated, the predominate lot size in the neighborhood is 40 feet by 100 feet, for a total of 4,000 square feet, with the average lot size being 4,337.50 square feet. The current lot is over 9,000 square feet and could accommodate a very large dwelling that would be very much out of character of the neighborhood. Based on this, he believes that the subdivision into two (2) smaller lots is a better zoning alternative.

Mr. Spiegel asked for clarification.

Mr. McDonough clarified that it was the lot size he was generally referring to, with the dwelling being a permitted percentage of the lot.

Mr. Spiegel raised his concern regarding the statement of two (2) smaller lots/houses whereas he opined that the existing home is not necessarily small.

Mr. Sondergard indicated he believed the comparison was being made to the possible large home that could be built (on the subject lot if not subdivided).

Mr. McDonough did not disagree that the dwelling on Central is not small. He further elaborated the lot comparison table, on Midland Avenue in particular. He opined that the 40 foot lot width is important because that is what is most perceivable to the public.

Ms. McCartin noted that the immediate adjacent lots are slightly larger.

Mr. McDonough indicated that the study was looking at properties within 200 feet.

Ms. Andrews interjected that the lot comparison table analyzes Midland Avenue, and that she thinks that Central Avenue requires its own analysis.

Ms. McCartin asked if the houses along Central Avenue should be considered. The new lot will be much smaller.

Mr. Constantine indicated that relates to the heightened test that is required from the Master Plan. That is Metuchen's unique test.

Mr. McDonough indicated that the pattern of development indicates a lot depth of 100 square feet. The proposed lots will be 79 feet and 89 feet but those are not as important from a planning standpoint because it is lot width and coverage requirements that control the massing. The proposed lot also backs up to an extensive open space, a public park.

Mr. Constantine opined that the park does not back to it directly; rather, it is partially adjacent to the proposed rear lot line.

There was a discussion regarding side and rear setbacks of adjacent structures as it relates to the availability of light and air.

Mr. Constantine asked, if there was no subdivision, how close a large house be to the rear lot line could be.

Mr. McDonough indicated that it would (fall back into a side yard setback requirement because of the lot's orientation and) be eight (8) feet (as opposed to the proposed 25 feet).

Mr. Constantine and Mr. Cosenza agreed.

Mr. McDonough further reviewed the lot comparison table, during which he indicated that the front yard setback of the proposed dwelling will mimic the established pattern along Midland Avenue.

Mr. Renaud asked if the existing two-family dwelling was being considered as a benchmark in the averaging provisions.

Mr. McDonough confirmed.

There was a discussion regarding the existing and proposed front yard setbacks. Ms. Lagay asked Mr. Cosenza to weigh in.

Mr. Cosenza indicated that, from a practical matter, he agreed with Mr. Renaud that the short front yard setback (of seven (7) feet to the existing two-family dwelling) is really the side of the structure; however, it is a front yard setback. The property contains two (2) front yard setbacks in both the existing and proposed subdivided condition.

Mr. Renaud agreed and is not disputing it but questions what is being considered to be prevailing. The whole point of the prevailing setback, in concept, is to average the fronts of the houses, whereas, here, the "side" of the existing two-family dwelling, while it happens to front on a street, is to be considered a front according to the Ordinance.

Mr. McDonough indicated that the averaged front yard setback requirement is approximately 15 feet whereas 21 feet is being provided

Ms. Lagay asked if that had clarified the issue.

Mr. Renaud indicated that he understood that it complies with the Ordinance but does not find it practical to consider the side the house.

Ms. McCartin asked by doing the subdivision, if the front yard was being changed from one side to the other.

Mr. Cosenza stated that they are both front yards.

Mr. Constantine stated that the rear yard is switching sides.

Mr. Renaud indicated that the comments are really for the Ordinance, not the application.

There was further discussion regarding the Ordinance.

Mr. McDonough continued his observations of the neighborhood pattern and characteristics. He proceeded to address all of the variances. With respect to the d(2) variance for the reduction of lot area for the existing two-family dwelling, he indicated that Applicant was required to comply with the Razberry 's test because Applicant is seeking to subdivide a lot containing a use which does not conform to the zoning ordinance. He noted that the use is not-conforming, it was actually specifically approved (in 1989) previously by this Board.

With respect to the bulk variances, there are lot area, lot width (for the new lot only), lot depth, open space variance (for the existing, downsized lot) and a couple design waivers with respect to recessed garage, driveway width and parking spaces.

Going back to the d(2) variance, Mr. McDonough asserted that there are special reasons for the granting of the requested variances deriving from the purposes of zoning as detailed in N.J.S.A. 40:55D-2: (a) encouraging municipal action to guide the appropriate use and development of land in a manner which will promote the public health, safety, morals and general welfare, (i)

promoting a desirable visual environment through creative development techniques and good civic design and arrangement, (m) encouraging the efficient use of land, and (g) providing space and appropriate locations for a variety of uses.

With respect to the negative criteria, Mr. McDonough indicated that there would be no negative impact caused by the granting of the requested variances. There is nothing inherently dangerous about the application. Coverage controls are being met to deal with light and air. Mr. McDonough opined that the proposed application would meet the infill standards as promulgated by the Metuchen Master Plan.

Mr. McDonough opined that he had hit on all the proofs and believes the application is a good application. The reasons to support of the variances outweigh any detriment, which he found to be non-existent.

Mr. Spiegel stated that he anticipated that the provision of affordable housing would be high on the planning testimony, but none were given.

Mr. Wiley indicated that, quite frankly, Applicant was obligated to produce affordable units somewhere in the community. That has to be done anyway.

Mr. McDonough agreed and discussed reasons to support the application for those reasons.

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

There was a discussion regarding proposed architecture and landscaping; all of which would be subject to the review and approval of the Borough Planner. More foundation plantings would be provided.

Mr. Constantine noted that one of the on-street parking spaces being provided is being facilitated by the closure of one of the driveways.

Mr. Salmon confirmed.

Mr. Wiley indicated that Nick Netta would be present at the following hearing to further testify to the proposed architecture and other programming issues.

Mr. Constantine asked if the testimony regarding the lot sizes and uses on Central Avenue had satisfied the Board.

Mr. Spiegel indicated that additional testimony should be provided at the following hearing, having the study include other two-family and multi-family uses on Central Avenue, perhaps from Durham Avenue to Plainfield Avenue.

Board members agreed.

Mr. Constantine suggested that the lens be switched to also look deeper into the Radio Section.

Mr. McDonough indicated that such study would further support the application as lots are consistently smaller.

Mr. Spiegel noted that these will touch up on the younger housing stock as there seems to be a great deal of re-building in the Radio Section. This neighborhood may be the most expensive real estate (per square foot) in Metuchen.

Ms. Lagay noted that the Borough needs to be important to protect the smaller housing stock.

Mr. Constantine indicated that the 40 foot lots see more renovations and small additions; the subdivisions appear to be for the larger 50 foot lots.

Mr. Renaud announced that the application would be carried to November 14, 2013. There would be no further notice.

### **CORRESPONDENCE**

Mr. Spiegel noted that he would not be present in November.

### **ADJOURNMENT**

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

The meeting adjourned at 9:59 p.m.

**Respectfully Submitted,**

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