

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2013

The meeting was called to order at 7:47 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 Robert Renaud, Attorney Chris S. Cosenza, Zoning Officer
----------	---	---

Late: (none)

Absent:	Eileen Millett, Alt. II Jim Constantine, Planner	Lisa DiFranza, Engineer
---------	---	-------------------------

Ms. Lagay stated that Sheri-Rose Rubin resigned because she has taken a position that would take her in conflict with the Board's meeting schedule. At the last Council meeting, a new member was appointed and that person is Ms. Millett. She was previously on the Parking Authority. She had all intentions of coming; however, her husband is coming home from a heart procedure, so she has been excused.

RESOLUTIONS

13-994 **Craig Morano** – (Applicant is seeking bulk variance approval to construct a rear deck – approved 7/11/2013)

98 Spring Street Block 142, Lot 1.08 R-2 Zone

A motion to approve the resolution as written 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. Spiegel and Mr. Rabinowitz voted yes. Motion passed.

CORRESPONDENCE

Ms. Lagay noted that the Board is in receipt of 40 pages of the amendments made to the Land Development Code. It has taken some time, but with the help of Mr. Cosenza, Mr. Renaud and the Borough Attorney, they are now in effect.

Mr. Spiegel stated that a number of people have approached him because his name was in the newspaper with respect to the Technical Review Committee (TRC); he asked if Mayor and Council have adopted the revisions.

Mr. Cosenza confirmed. They were in effect as of September 6, 2013.

Mr. Spiegel asked if there the structure of the Technical Review Committee had been changed.

Mr. Cosenza stated no. The previous version of the Ordinance indicated that an applicant had the option to go to TRC. The only change that had been made was give that option only to the Zoning Official. He offered several examples of applications that should have been reviewed for technical assistance and design review prior to being heard by the Board.

Mr. Spiegel stated that he understood; it seemed like there was Q & A regarding the TRC, outside of all of the other Ordinance changes.

Ms. Lagay stated that Council raised concerns about the TRC meeting in the back room along with other issues.

Mr. Cosenza confirmed; there will likely be another round of amendments within the next few months to deal with issues raised by the Q & A session. In essence, the goal is to make the TRC meetings more transparent, to which he agreed should be done.

Mr. Spiegel stated that the article had made TRC out to be some sort of secret club. He expressed his disappointment with how it was being perceived. He recalled his long time on TRC in which it would address technical issues; Jack Belowich would come in with a list of 25 questions, the Fire Official was engaged to give his opinion on site plan issues, etc.

Mr. Renaud stated that there are two (2) different things that the TRC does: 1) act as the Planning Board's sub-committee for Minor Site Plans; in those cases, TRC actually takes a vote, makes a recommendation and then the Planning Board votes on the recommendation; almost all have eventually been adopted; several have been sent back to TRC for further review; and 2) review and site plans and subdivisions either in connection with variance applications or not. Votes are not necessary in the second scenario because only technical assistance is provided. The purpose is to avoid situations where the Board has often told the applicant "according to the Ordinance, you require a buffer" and the response from the applicant has been "what would you like us to have." With the revision to the Ordinance, everything except for one- and two-family dwellings and D variances are automatically sent to the TRC unless it is waived by the Zoning Officer.

Mr. Spiegel noted the complaints about fees; when applicants go to TRC, it is reviewed by the Planner and Engineer (which has a cost). He asked if that was part of the dialogue.

Mr. Cosenza stated that it was not entirely understood. He explained to Council that in certain cases, obtaining input from TRC was better than wasting a Board hearing and have it continued to the following month (or requiring extensive professional review as a condition of approval).

Mr. Spiegel agreed; the Planner and Engineer would be sitting for hours during the Board hearing before being able to provide input, which would have been better served if provided by TRC.

Mr. Renaud stated that other towns do different things. In some towns, there is an attorney or a Construction Code Official at these meetings.

Mr. Spiegel requested what other changes were adopted by Council.

Mr. Cosenza and Mr. Renaud briefly summarized the changes: Open Space was replaced with Impervious Coverage in which everything will count, including rear yard patios; some definitions were clarified, Lot Width at Street Line and Lot Width at Setback Line were consolidated into Lot Width, regulations regarding accessory structures, driveways, fences and pools were relocated to another part of the Ordinance where any deviation now requires a variance, corner lot regulations have been provided to provide flexibility to homeowners, etc. Residential zones were given an "extra" 10% for impervious coverage to account for patio areas, etc.

Mr. Spiegel noted that it was now going back to the old days.

Mr. Renaud agreed and opined that is how it should be.

Mr. Spiegel asked about the height and parking issues downtown.

Mr. Rabinowitz stated that the issue is on the back-burner at the present time.

NEW BUSINESS

Discussion on the Annual Report for 2012

Ms. Lagay stated that she had sat down with Mr. Cosenza and discussed several issues, some of which have been incorporated into recommendations from the Zoning Board of Adjustment.

There was a discussion regarding the use of the Borough web site to educate the public on zoning matters, including a list of frequently-asked questions (FAQ).

Ms. McCartin opined it was a great idea; she asked how it should be discussed by the Board.

Mr. Renaud stated that Board members would not be able to discuss via e-mail as it would be a violation of the Open Public Meetings Act. Perhaps a sub-committee of three (3) members could be formed and report back to the Board.

Mr. Spiegel questioned if there should be language to explain what the Board expects to see.

Mr. Renaud stated that it was up to the Board to make specific recommendations in its annual report. With respect to the corner lot issue, if the Board finds something impractical, it needs to make a finding and offer ways to address them to Mayor and Council.

Mr. Cosenza stated that there are many ways to address the corner lot issue; for example, in some ordinances, the front yard setback may be 25 feet, whereas there is a secondary front yard setback of 15 feet, or the secondary front yard setback is a % of the primary front yard setback.

Mr. Renaud asked anecdotally how many of all of the corner lots in Metuchen are conforming. Is it 10-15%, 50%, 75%? If it was 10-15%, then one could argue the Ordinance is impractical; if it is 75% and the Board receives applications only once or twice a year, maybe there is not anything wrong with it. He opined an analysis should be made.

Mr. Spiegel agreed.

Ms. McCartin indicated that it will probably be an issue in the Radio Section because many of the homes are starting to deteriorate.

Mr. Cosenza opined that of all of the corner lot applications before this Board during his time, most have come from the Radio Section.

Ms. McCartin opined that the Radio Section is really different that it was even a few years ago.

There was a long discussion regarding the size of homes and number of bedrooms. In the end, it was agreed by Board members that the Radio Section should be studied and if it needed its own zoning district since many of its lots are undersized.

Mr. Spiegel raised his concern regarding the trend in the Radio Section, including subdivisions. It used to be that, out of 14 homes, one (1) was out of size; now four (4) of them are.

Mr. Renaud stated that general rule of the subdivisions that the Planning Board has granted is that there have been Lot Width variances, but that's been it. The policy is that variances would be granted to applicants to make the lot less wide than what was required; however, applicants would have to fit the house on the lot being created. The homes the Board is referring to conform to all other bulk regulations.

Mr. Cosenza recalled a subdivision application on Sylvan Avenue where the applicant requested side yard setback variances. The Planning Board made the applicant come back with revised plans to conform (to the side yard setback requirements).

Addressing other recommendations in the Annual Report, Ms. McCartin noted that there is a provision requiring structural depth in the house on the fronts; she opined that there should be a similar provision on the side wall, especially on corner lots.

Mr. Cosenza stated that was a good idea; the intent of the eight (8) foot setback requirement applies only to the front façade at this time.

Ms. Lagay noted the concern about the averaging of the front yard provision.

Mr. Cosenza stated that the way it is now is good because it is only a small footnote in the Zoning Schedule; however, in subdivisions involving vacant or corner lots, the provision does not appropriately address what the setbacks should be. He discussed the issue regarding the subdivision at 204 East Chestnut Avenue.

Mr. Cosenza further stated that he would like to address the issue of applicants not presenting reasons to justify what they are seeking. He opined that a one (1) or two (2) page pamphlet should be provided to applicants as part of the application process. He has already provided an extensive introduction as part of the application packet, but more information may be added.

Mr. Tobin suggested questions like “are you prepared to answer the following questions:” with one (1) of them being “what justification does applicant have to support the variance being requested.”

Mr. Cosenza indicated that was a good idea; he would incorporate it in the pamphlet.

Mr. Spiegel recalled going to classes for Board members; he asked if the State prepared a document for municipalities to give to its residents regarding what they need to know about going before the Board, what “burden of proof” is, etc.

Mr. Renaud stated no. He recommended providing disclaimers if assistance was to be offered.

Mr. Spiegel raised his concern regarding mother-daughter situations.

Mr. Cosenza stated that the Ordinance does not specifically address mother-daughters or second kitchens. As an example, when he receives an application for an alteration including a second kitchen, he requests that it be removed, save for a bar top, small sink and a mini-fridge. Applicants would have to appeal his decision if they wanted a full second kitchen. Furthermore, he has found several illegal rooming houses and has had them removed.

Ms. Lagay discussed the issue regarding apartments over garages and family members living in them, which appeared to be difficult to enforce.

Mr. Renaud clarified that whether it was a family member or not was not the issue, it has to do with the structure of the apartment itself, which is illegal. The apartment is a single house-keeping unit and in the R-1 or R-2 zone, you can only have one (1) house-keeping unit. It does not matter if the persons are related to each other or not. Conversely, if unrelated persons all rent out a house, all eat their meals together and do not chop the house up into locked rooms, it is still considered a single house-keeping unit.

Ms. Lagay indicated she would revise the Annual Report and the Board would vote on it at the next meeting.

ADJOURNMENT

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

The meeting adjourned at 8:46 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING A
C VARIANCE TO
CRAIG MORANO
98 SPRING STREET
BLOCK 142, LOT 1.08
APPLICATION NO. 13-994

WHEREAS, CRAIG MORANO, hereinafter referred to as “the Applicant,” is the owner of Block 142, Lot 1.08, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 98 Spring Street 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 a C variance; and

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on July 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 June 12, 2013.
2. Photographs of the subject premises.
3. Memoranda of Maser Consulting P.A., by Lisa R. Di Franza, P.E., CME, dated July 2, 2013
4. Memorandum of Looney Ricks Kiss by Jim Constantine, PP, and Mike DiGeronimo, AICP, PP, dated July 10, 2013.

5. Sketches of the residence and proposed deck.
6. Plan of survey dated December 26, 2009, prepared by Control Layouts, Inc., Land Surveyors; and

WHEREAS, the Applicant Craig Morano appeared pro se and gave testimony; and

WHEREAS, the Applicant proposes to construct a 14' x 16' wood deck at the rear of the dwelling; and

WHEREAS, the subject property is located in the R-2 Zone District; and

WHEREAS, the Applicant requires the following C variances:

§110-64, rear setback – required 25 ft., existing 28.14 ft., proposed 16 ft. 1 in.

WHEREAS, the Metuchen Board of Adjustment, after hearing the testimony on behalf of the application, and no one having appeared in opposition thereto, 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 142, Lot1.08 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 98 Spring Street. The property is located in the R-2 Zone District.
3. The Applicant is the owner of the property. Applicant Craig Morano testified in support of the application. Applicant wishes to have a deck on the property. The proposed deck will be 14 feet x 16 feet at the rear of the premises, adjacent to the existing patio. The deck will have a rear setback of 16 feet 1 inch. Twenty-five feet is required by the ordinance. The deck will be located as shown on the survey submitted with the application. There is a fence at the rear of the property which screens it from the property to the rear. The deck will be about two

feet high and 14 feet x 16 feet. Egress to the deck will be by sliding doors which will be installed where the windows are shown in the middle of the home on the photographs given to the Board. Applicant bases the application on hardship, due to the configuration of the lot and the location of the existing residence on the lot. Only a 25 foot front setback is required, but the house is set back 38 feet, 6 inches, so there is a smaller rear yard than would ordinarily exist.

4. In response to questions from the Board based on the professionals' memoranda, Applicant stated that no walkway is proposed. The existing white fence has replaced the then-existing fence shown on the survey.

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

6. The Board finds that the relief requested may be granted because the Applicant has demonstrated hardship pursuant to the Municipal Land Use Law because of the extraordinary and exceptional situation uniquely affecting the subject premises because of the location of the home existing on the lot. Strict application of the zoning ordinance rear setback requirement would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant. Accordingly, because the home is set back farther than the ordinance requires with respect to the front yard setback, the Board finds that the rear yard setback variance should be granted.

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.

8. The Board finds that the granting of the application for a bulk variance 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 of Craig Morano for a C variance 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, 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, 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. The variance granted herein is limited to the deck in question. No other physical improvements are authorized by this resolution.

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.

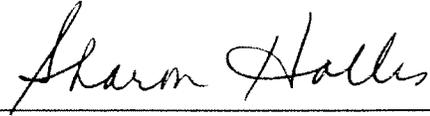
BE IT FURTHER RESOLVED that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set 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 July 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: September 12, 2013