

Ms. Lagay asked Mr. Barcan if his client was comfortable with 18 months.

Mr. Barcan indicated that the requested date, July 1, 2016, is sufficient.

Mr. Constantine agreed; he and Applicant have worked with the prospective tenant; when they come in for approvals, the roadway would have to be extended then.

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

Mr. Renaud indicated that there was no special vote necessary. Despite the d variance approval of the original application, a simply majority vote would be sufficient.

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

14-1025 **Chongyoul & Byongnam Kim** – Applicant is seeking bulk variance approval to widen the driveway entrance.

48 Voorhees Place

Block 186, Lots 66-68

R-2 Zone

Mr. Sondergard recused himself from the hearing.

John Wiley, Applicant's attorney, indicated that the subject property was recently redeveloped. When the property was redeveloped with a new house, there was the requirement that there be a nine (9) foot driveway width at the apron. His clients bought the property from a local developer and have had difficulty with the driveway. Although the new ordinance permits a width at the driveway apron to be 12 feet, his clients are seeking approval for an 18 feet wide driveway at the apron which would then flare out to approximately 23 feet overall.

Chongyoul Kim was sworn in by Mr. Renaud.

Mr. Kim indicated that he purchased the property in 2010 but did not move in until 2012. The house has a two-car garage. He indicated that the entrance is only nine (9) feet and when you turn into the driveway, it is very difficult. Most of the time, they just park in the street. There is now less space on the street. By expanding the entrance of the driveway, his vehicles could park in his driveway and, therefore, more cars would be available on the street. There have been minor accidents. He asked what is the purpose of a two car garage if the driveway is so narrow that you could not park easy. They were excited about the house. They used to live in Highland Park. Their friends encouraged them to move to Metuchen. And then this happens. It really bothers them only to have such a small driveway. It is almost impossible to use the driveway or garage at this point.

Mr. Wiley noted that by widening the driveway, one (1) tree would be removed. Applicant proposes to remove the existing 6.5 inch oak tree and contribute \$550 to the tree replacement fund. With respect to the Engineer's memorandum, the only change to the survey map is that there have been fences installed in the rear yard. The plans show all of the necessary details and additional landscaping. Low level plants will be installed on both sides of the driveway.

Ms. Lagay noted that the Borough recently changed driveway regulations. The Ordinance now permits 12 feet at the driveway apron. However, there does not appear to be many double-wide driveways on this side of the street.

Mr. Wiley confirmed, but there are some on the other side of the street.

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

Joanne Deibert, 7 Whitman Avenue, asked why the Board limits residential homes to a narrow driveway.

Mr. Spiegel noted the question was directed to why the Board limits driveways; he clarified that the Board does not make the rules. Borough Council does. Applicant is here before the Board of Adjustment because they propose something contrary to the Ordinance.

Ms. Deibert asked again why the Ordinances made something more restrictive.

Mr. Renaud indicated that this Board does not make up Ordinances. This is the Board someone comes to when they propose something that deviates from the Ordinance. The Board is bound by certain rules about what it can and can not grant variances. The Borough Council recently widened the permissible width from nine (9) feet to 12 feet. He asked Mr. Constantine to expand.

Mr. Constantine indicated that the original provisions came about approximately a decade ago in reaction to infill housing in the Borough. There were neighborhoods concerned about infill housing out of character of the neighborhood. The Master Plan recognizes the different patterns and characteristics of various neighborhoods. One of the more noticeable issues on these houses were driveways becoming a dominant feature of lot. There are certain neighborhoods where double-wide driveways are common. There are a lot of neighborhoods where the dominant condition was the single-lane driveway. There was an attempt to limit the visual impact of change. The homes today are larger. Other standards included recessing the garage massing, no more three-car garages facing the street and limit interruptions to the sidewalk condition. The Borough recently adopted Complete Streets policy as well. The ordinances have been in place for about a decade. There were a lot of homes built under these conditions. There was a backlash that nine (9) feet was too tight and we recently opened it up. The majority of all new infill housing and subdivisions before the Planning Board have the narrower driveway. It was not really done with respect to on-street parking; there was a policy shift for pedestrian safety and providing street trees, for which the Borough is known. The trade-off would be an inconvenience to motorists.

Gerald Yaros, 67 Voorhees Place, indicated that his house was built in 1967. He had a two-car garage and the regulations went from allowing a two-car driveway down to nine (9) feet and then up to 12 feet. He finds it ridiculous.

Byongnam Kim, 48 Voorhees Place, one of the Applicants, indicated that a two-car garage was approved and they were paying taxes for a two-car garage. She asked why such narrow driveways were required,

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

Mr. Wiley stated that there are no sidewalks on the Applicants' side of Voorhees.

Mr. Spiegel asked if photographs were submitted. He asked if the driveway was being added onto or if the driveway was going to be completely replaced and expanded.

Mr. Wiley indicated that the Applicant would replace the entire driveway if required to do so.

There was a discussion regarding the parking movements.

Ms. Lagay indicated that she was not comfortable with 18 feet. She does not see any justification.

Mr. Wiley indicated that neighbors have a concern; approving it would not have a negative impact.

Mr. Spiegel indicated that he understood the issue. The plan shows a lot of open space. The particular balance is that there will still be a lot of open space and landscaping to mitigate the additional driveway width.

Ms. DiFranza asked about the impervious surface calculation.

Mr. Wiley indicated that approximately 1% is being added.

Mr. Renaud asked about the 23 foot driveway width; he indicated the Ordinance only permits 20 feet.

Mr. Wiley indicated that only the one (1) variance is being proposed.

Mr. Renaud noted that photographs were passed around; he requested that they be marked as exhibit B-1.

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

John Altman, 49 Voorhees Place, was sworn in by Mr. Renaud. He attested to the difficulty that Applicant is having in maneuvering their cars into their driveway because of the shortness of the driveway. The wider driveway will actually enhance the neighborhood.

Laraine Altman, 49 Voorhees Place, was sworn in by Mr. Renaud. She agreed with her husband's comments. She indicated that when she sees Applicant back out, she opines they will hit the tree, not intentionally. When the tree was installed, it was placed before the new house was built. The tree and the driveway do not make sense. The driveway is not wide enough. She feels the property owners should be able to pull into and pull out of their driveways.

Ovidiu Toderic, 52 Voorhees Place, was sworn in by Mr. Renaud. He indicated that he lives next door to the Applicant. He opined that given the size of the house, the width of the driveway is inadequate. Applicant has a two-car garage, having a two-car driveway makes sense.

Mr. Yaros was sworn in by Mr. Renaud. He opined that if Applicant has a two-car garage, they should have a two-car driveway. It is ridiculous to go from nine (9) feet to 12 feet.

Laurie Hart, 25 Voorhees Place, was sworn in by Mr. Renaud. She indicated that one of her main concerns is the removal of the street tree. They, just like the most of the town, are losing street trees; it would be a shame to take down the tree when it was just starting to mature. She

also indicated that there is a storm drain right next to the driveway. It is possible that the tree was located there for that reason.

Ms. Deibert was sworn in by Mr. Renaud. She opined that the driveway is very difficult to maneuver. She referred to her experience with her driveway, easement and street trees. She opines that trees that get in the way sometimes have to be removed.

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

Ms. Lagay asked Ms. DiFranza if the driveway was widened to 12 feet, if it would work better.

Ms. DiFranza opined that it would. The problem in this case is the distance between the street and the garage door, which is short.

Ms. Lagay agreed. Other homes may have longer driveway.

Mr. Spiegel opines that the Ordinance is an effective ordinance for property that is 50 feet wide. When a developer comes in, with certain side yards, and puts in these two-car garages and if, in fact, you put in a 12-18 foot driveway on these 50 foot lots, he believes the front yard is drowning in pavement. That is why it is in the Ordinance. The reason why the Zoning Board listens to applications like this is because if there are mitigating factors, the Board can balance the request of the Applicant with the Ordinance. This particular property is unique in that it is 75 feet in width with 25 feet of side yard. He feels the tree needs to be relocated and that the Applicant has taken steps to mitigate whatever effect the driveway will have. He is in favor of the application. He believes the right result here is an 18 foot apron.

There was a discussion regarding the tree removal. Ms. Andrews indicated she was okay with the concept of the removal of the tree; however, it has aged. She believes it should be replaced accordingly to its age and size. It is now coming into its own. That is not helping.

Mr. Wiley indicated that removing the tree and relocating/replanting it may not survive.

There was a discussion regarding the tree removal ordinance given that the tree is located within the right-of-way and is, therefore, a Borough tree.

Mr. Constantine indicated that the Ordinance is silent with respect to ownership, but it does apply here. It refers to any tree, not just trees on private property. Furthermore, you could not take down Borough trees without the Borough's permission. He discussed the merits of the application and the unique circumstances to grant a c variance: lot width, dead-end street, no sidewalk and easement. By noting the specific circumstances, precedent is not being set.

Ms. DiFranza agreed. There is a 15-foot wide easement.

Ms. Lagay asked if the tree could be moved to the left of the driveway.

Ms. DiFranza indicated that there are two (2) other street trees.

Mr. Spiegel noted that Applicant is proposing to contribute to the tree fund.

Mr. Constantine also noted that there are existing and proposed shrubbery as well as the fact that brick walkway in the front yard makes the front yard look attractive.

Ms. McCartin indicated that she is okay with the application but does not want to set a precedent. She lives across from the Radio Section and these types of applications could not happen there.

Ms. Lagay agreed; she is very uncomfortable and the unique circumstances noted need to be in the resolution.

Ms. Andrews asked if the application could be conditioned with replacing the tree with a similarly-aged tree planted somewhere else on the property.

Mr. Constantine indicated that he believed the Shade Tree Commission preferred smaller nursery-grade trees. Larger trees need more care to ensure that they are re-established. Applicant is proposing to contribute \$550 to the tree replacement fund.

A motion to approve the application, noting the unique circumstances, buffering and contribution to the tree fund, was made by Mr. Spiegel and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Mr. Spiegel, Mr. Tobin and Mr. Rabinowitz voted yes. Motion passed unanimously.

14-1022 **Fox & Foxx Development, LLC**– Applicant is seeking bulk variance approval to construct a new single-family dwelling on a corner lot.

206 Amboy Avenue

Block 184, Lot 51

R-2 Zone

Ms. Lagay announced that Mr. Sondergard has returned to the dais.

Ms. Andrews recused herself from the hearing

Anthony Marra, Applicant's attorney, indicated that Applicant owns the property. Applicant seeks to build a two-story single-family dwelling. The dwelling complies with all of the municipal requirements other than front yard setback and lot width. The building will improve the overall aesthetics of the neighborhood. The existing building will be demolished. He introduced Jeffrey Kraeft, Applicant's engineer and planner.

Mr. Renaud indicated that he had a discussion with Mr. Constantine regarding the application. The application seeks approval for a front yard setback variance. The application would not need a lot width variance had there not been a front yard setback variance. He referred to section 110-107 of the Ordinance in which it states that if you construct a single-family dwelling and you can put it on the lot without variances, it would not need a variance for lot width.

Mr. Kraeft was sworn in by Mr. Renaud. He qualified himself and was accepted by the Board.

Mr. Kraeft indicated that the property is located at the northeast corner of Amboy Avenue and Home Street. The lot is occupied by a 2 ½ story single-family dwelling that fronts on Amboy Avenue. There is a driveway on the side of the house which is accessed off of Home Street. The property is located in the R-2 zone. Applicant seeks to demolish the existing dwelling and construct a new 2-story single-family dwelling. Applicant is here before this Board in need of

relief of two (2) requirements of the R-2 zone. The first is with regard to lot width where 62.5 feet is required and the existing lot is 60 feet wide. The second is with regard to front yard setbacks. There are two (2) front yards on this particular property, one on Amboy Avenue and one on Home Street. The variance is with regard to the prevailing front yard requirement. He indicated that the setback from Amboy Avenue meets the requirements; however, the front yard setback from Home Street does not meet the prevailing setback standard of 32.5 feet. The existing home does not meet either the minimum *25 foot or prevailing front yard setback. The existing dwelling is also in violation of the minimum side yard requirement where eight (8) feet is required and 6.5 feet exists. The proposed dwelling will eliminate multiple non-conforming conditions. The dwelling will conform to all other bulk requirements.

Mr. Kraeft further noted that the lot meets all requirements of the zoning requirements except for lot width. The adjacent lots are fully developed and occupied. Setting the house back will provide for better visibility and will also allow Applicant to re-grade the lot so as to enable it to remove the retaining walls. Driveway access will remain off of Home Street and will not be relocated so as to not conflict with the two (2) existing utility poles. With respect to the front yard setback off of Home Street, while it does comply with the minimum 25 feet front yard setback, it does not comply with the prevailing front yard setback of 32.5 feet. If Applicant was forced to conform to the prevailing setback, the house could then only be 19.5 feet wide, to which he opined was impractical and would be out of character. For decades, the existing house, which is 1.2 feet closer to Home Street than the proposed dwelling, has existed without any apparent detriment. Additional justification for granting the front yard variance can be obtained by studying other corner lots on Amboy Avenue, from Carlton Road to Voorhees Place. The side-front yard setbacks vary from as little as 3.5 feet to as much as 25.5 feet. Out of nine (9) properties that were studied, only two (2) properties were set back at least 25 feet.

Mr. Kraeft indicated that, in order to establish positive criteria, should the application be approved, it would remove a dwelling that has become an eye-sore, is outdated, no longer economically viable as it would be impractical to modernize and too small for the current housing market. The proposed dwelling will be more in conformity of the patterns in the area. Two (2) deficiencies would be removed. There is a mixture of housing styles and types. This diversification is evident in the photographs submitted as part of the application. With respect to the negative criteria, there are two (2) prongs to consider. First, whether there would be any substantial impairment to the zone plan; the property, with its existing deviations, has existed in this condition with no apparent impact to the zone plan or ordinance. Second, whether there would be no substantial detriment to the public good; Applicant will be eliminating two (2) existing non-conformities and will also improve the light, air and open space. Finally, it will certainly not negatively impact property values.

Mr. Marra asked Mr. Kraeft if the property has any unique characteristics.

Mr. Kraeft indicated that there were. It is a corner lot with two (2) front yard setbacks. The homes on the side of Home Street upon which the property is located are set back more than the norm. Both of these conditions have an impact on the application.

Mr. Marra asked, if granted, if the benefits of the application would substantially outweigh the detriments and advance (the purposes of) the Municipal Land Use Law.

Mr. Kraeft confirmed; it would advance the Municipal Land Use Law, Master Plan and Ordinance.

Mr. Marra and Mr. Kraeft reviewed the engineer's memorandum dated April 8, 2014. Mr. Kraeft indicated that the proposed house will have a basement. Fox & Foxx homes, as a standard, do install sump pumps in the basement. It should be noted that, in the case that groundwater is encountered, they take waterproofing steps to safeguard the foundation. Mr. Kraeft indicated that he is not seeking a greater permissible slope, from 3:1 to 2:1, in order to be able to remove the retaining wall along Amboy Avenue. This would be in conformance with the adjoining properties, which have a steeper grade with a set of stairs. Applicant would like to match that. Applicant received an exemption from Middlesex County Planning Board, All other comments will be complied with.

Mr. Marra and Mr. Kraeft reviewed the planner's memorandum dated April 8, 2014. Mr. Kraeft indicated that the 13 inch tree shown on the plans to be removed has no replacement value. The Ordinance allows for 10% of the trees within the development area to be removed without having to replace their value.

Mr. Kraeft indicated that failure to grant the requested variance would impose undue hardship upon the Applicant because no land is available. Refusal to grant the variances requested would zone the land into inutility. The new residence would be a benefit to the community and would outweigh any detriment.

Ms. Lagay asked about the layout of the house and what it would look like.

Mr. Kraeft described the proposed residence. It will be a four-bedroom, two and half bath house, approximately 2,600 square feet with an attached garage. It will be oriented towards Amboy Avenue. There will be an open front porch and entry on the Home Street side.

Ms. Lagay asked about the third floor.

Mr. Kraeft indicated that the attic could be finished if the purchaser so desired.

Ms. Lagay asked about the A/C condenser units.

Mr. Kraeft referred to the plot and grading plan, two (2) small squares just to the right of the dwelling indicate the units. There will be no landscaping necessary (in this location) because the units are behind the house. There is a stockade fence on the property line.

Ms. Lagay thought that the units had to be landscaped.

Mr. Kraeft indicated that they would be if they were visible. He indicated that if the Board was adamant about another two (2) to three (3) bushes around the units, Applicant can provide it. The adjacent house is away from where the units are.

Ms. Lagay asked about the ownership of the fence.

Mr. Kraeft indicated that it is debatable. He believes it is the adjacent property owner's fence. The fence meanders along the property line. The fence does not appear to have been installed correctly. It will remain.

Ms. Lagay asked about the height of the dwelling.

Mr. Kraeft indicated that the dwelling will be approximately 33 to 34 feet. It will conform.

Mr. Sondergard asked if the house will be consistent with the houses next door.

Mr. Kraeft indicated that the house will be about a foot, maybe a foot and half lower. There will be a stairway coming up to the house from the front, to match the other houses along Amboy Avenue. This property is the only property with the retaining wall and it is proposed to be removed. The slope will be about 2 or 2 1/2 to 1.

Ms. DiFranza indicated that she was OK with the 2 to 1 ratio.

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

Ms. Lagay asked if the architectural design was unique.

Mr. Kraeft indicated that, yes, the design was specific to this site. Fox & Foxx has not built this house yet.

Ms. Lagay asked about the materials and colors.

Mr. Kraeft indicated it will be siding on both street fronts. The treatments and dormers may change. The colors are up to the customer.

Ms. McCartin appreciated the attempt to acknowledge the two (2) front yards. It is much nicer than some of the other corner lots.

Mr. Constantine asked about the maneuverability of the 12 foot driveway.

Mr. Kraeft indicated that 12 feet is workable. The driveway flares out to 20 feet overall to provide additional off-street parking spaces, given the doctor's office use across the street.

Mr. Renaud asked if Mr. Constantine was in agreement of the tree replacement calculation.

Mr. Constantine indicated that he did seek clarification from Applicant.

Mr. Kraeft explained his interpretation of the tree removal and replacement ordinance. He indicated that the Ordinance allows ten percent (10%) of the trees to be removed without replacement. With only one (1) tree permitted under the Ordinance has been removed, the one (1) tree being removed is, therefore, permitted to be removed without replacement.

Ms. Lagay asked about the access to the rear yard area.

Mr. Kraeft indicated that it would be through the mudroom and garage area.

Ms. Millet asked if there was a basement.

Mr. Kraeft indicated that the existing and proposed basements have basements. The basement can be finished but is not counted as living area.

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

RESOLUTIONS

12-960 **Metuchen Investors, LLC** – *Applicant is seeking major site plan with bulk variance approval to construct a three-story, 19-unit apartment building. Application was bifurcated, use variance approval was granted in December 2012 – approved March 13, 2014*

23-27 Hillside Avenue Block 118, Lots 18.04, 19-21 B-1 Zone

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

14-1017 **Janice Chase** – *Applicant is seeking a Certificate of Non-Conformity related to a two-family dwelling at the subject property – approved March 13, 2014*

60 Jonesdale Avenue Block 172, Lots 39-42 R-2 Zone

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

CORRESPONDENCE

Minutes from September 12, 2013

A motion to approve the minutes as written was made by Mr. Spiegel and seconded by Ms. McCartin. Voice vote taken. All eligible members voted yes. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 9:40 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING
C VARIANCES, WAIVERS/EXCEPTIONS AND
PRELIMINARY AND FINAL SITE PLAN APPROVAL
TO

METUCHEN INVESTORS, LLC and MAIN STREET METUCHEN, LTD.
23-27 HILLSIDE AVENUE and INN PLACE
BLOCK: 118, LOTS:18.04, 19, 20 & 21
APPLICATION NO.: 12-960

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

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

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

WHEREAS, on January 10, 2013, the Board of Adjustment adopted a Resolution on the bifurcated application granting a D variance to Applicant to permit residential apartments on the first floor of a proposed three-story residential building, which first floor residential use was prohibited by §110-75A(7) of the Land Development ordinance of the Borough of Metuchen; and

WHEREAS, in accordance with N.J.S.A. 40:55D-76(b), Applicant now returns to the Board of Adjustment on its application for C variances, waivers/exceptions and preliminary and final site plan approval; and

WHEREAS, the Metuchen Board of Adjustment held public hearings on said application on December 12, 2013 and March 13, 2014. The Board of Adjustment considered the following documents:

1. Zoning permit.
2. Board of Adjustment Application for Development dated November 19, 2013.
3. Proof of payment of taxes and assessments.
4. Application and escrow fees.
5. Review letter of Maser Consulting, P.A., by Lisa R. Di Franza, P.E., C.M.E., dated December 11, 2013.
6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, P.P., Borough Planner, dated December 9, 2013.
7. Plans entitled "Preliminary and Final Site Plan for 25 Hillside Avenue, Block 118-Lots 19, 20, 21 & 18.04, Borough of Metuchen, Middlesex County, New Jersey," prepared by Omland Engineering Associates, Inc., dated August 22, 2013, last revised November 15, 2013 and consisting of ten (10) sheets.
8. Plans entitled "Metuchen Investors, L.L.C. Proposed Three-Story Residential Building, Hillside Avenue and Inn Place, Metuchen, NJ", prepared by Robert W. Adler & Associates, P.A., dated July 30, 2013, last revised October 21, 2013 and consisting of five (5) sheets.

9. Memorandum of Shirley M. Bishop, P.P., Borough Affordable Housing Consultant, dated December 12, 2013.

10. Letter dated December 31, 2013 from Palumbo & Renaud, Esqs., Robert F. Renaud, Esq., Board Attorney.

11. Traffic generation comparison report by Omland Engineering Associates, Inc., dated February 4, 2014.

WHEREAS, the Applicant was represented by David J. Frizell, Esq., one of the principals of the Applicant, who appeared and gave testimony, and who also presented the testimony of various professionals; and

WHEREAS, the Applicant proposes to demolish three existing dwellings on Lots 19, 20 and 21, fronting on Hillside Place, and to construct a three-story, nineteen-unit apartment building, with associated parking facilities, lighting, and landscaping improvements on Lots 19, 20 and 21, with additional parking to be located on Lot 18.04; and

WHEREAS, the subject property is located in the B-1 Central Business District; and

WHEREAS, the Applicant has previously received a D variance, as indicated above, to permit residential apartments on the ground floor in the B-1 Zone District; and

WHEREAS, the Applicant requires the following C variances:

§110-64, minimum front yard setback – 10 ft. required, 3.5 ft. proposed (Hillside Avenue);

§110-64, minimum front yard setback – 10 ft. required, 4.7 feet proposed (Inn Place);

§110-64, maximum building height – 35 ft./3 stories permitted, 38 ft./3 stories proposed.

§110-101.C., sight triangle required – 25 ft. by 25 ft. triangle area required, proposed as laid out on plans with a portion of the proposed building and wall located within the required sight triangle area; and

WHEREAS, the Applicant requires the following waivers/exceptions:

§110-183.A., wall height – 1.5 ft. permitted in front yard, 3 to 5 ft. height proposed in front yard along Inn Place;

§110-153.A., front yard parking – front yard parking prohibited, parking spaces proposed within front yard areas along Inn Place; and

WHEREAS, the Metuchen Board of Adjustment, heard the following presentations and evidence as follows:

1. David J. Frizell, Esq., was sworn in and gave testimony. Mr. Frizell indicated that he was both the attorney for the Applicant and a principal in the Applicant.

2. Mr. Frizell indicated that property in question is designated as Block 118, Lots 18.04, 19, 20 & 21 as shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 23-27 Hillside Avenue, with part of the property also fronting on Inn Place. He indicated that he is the owner of a building which was previously constructed at 450 Main Street.

3. Mr. Frizell introduced Exhibit A-1, a historical picture of the “Hillside Inn” which was located on the subject premises in the past.

4. Mr. Frizell discussed the architectural plans with respect to the location and design of the units. On the lowest floor, depicted as the “cellar” in the plans, there are three residential units, two one-bedroom flats and one two-bedroom flats. These flats all front on Hillside Avenue. Additionally, on the cellar floor are five cellars of the units above, which front

on Inn Place. Mr. Frizell indicated that the cellar designated as cellar #5 will not be part of the unit above. That basement will have access from the outside and will be for use of the owner of the building.

5. The first floor of the building will consist of six one-bedroom flats and two two-bedroom flats.

6. The second floor will consist of two one-bedroom flats, one two-bedroom flat, one three-bedroom duplex, three two-bedroom duplexes and one one-bedroom duplex. The third floor, which is stepped back from the front portion of the building, will consist of a balcony and the second floor bedrooms for the duplexes mentioned on the second floor.

7. Mr. Frizell discussed the C variances requested. Because the property is located at the corner of Hillside Avenue and Inn Place, both the Hillside Avenue and the Inn Place sides are considered front yards. No side yard setback is required in the B-1 Zone. There is a 10 foot front yard setback requirement which applies to Hillside Avenue and Inn Place. The proposed setbacks from the property line are 3.5 feet on Hillside Avenue and 3.7 feet on Inn Place. The building height is proposed at 38 feet, in any event less than 38.5 feet. Applicant does not request a D-6 variance for height, which would be required if the building were 38.5 ft. or higher. With respect to the sight triangle variance requested, Mr. Frizell asked that it be granted based on the low traffic volume on Inn Place.

8. Mr. Frizell discussed the parking waiver requested. The Board attorney explained for the Board its options under the Residential Site Improvement Standards, specifically N.J.A.C. 5:21-4.14. As indicated in the plans and application, based strictly upon the number of units and bedrooms, 36 parking spaces would be required. N.J.A.C. 5:21-4.14(c), provides, however, that "Alternative parking standards to those shown...shall be accepted if the Applicant demonstrates

the standards better reflect local conditions. Factors affecting minimum number of parking spaces include household characteristics, availability of mass transit, urban versus suburban location, and available off-site parking resources.” Additionally, subsection (f) provides, “When, in the judgment of the local approving authority, on-street parking is available, than only that proportion of the parking requirement which is not available on the street shall be provided in off-street parking facilities.” Accordingly, the Board attorney explained that the Board, in considering the parking issue, could determine that allowing a number less than 36 parking spaces could be considered a *de minimus* exception to the Residential Site Improvement Standards (RSIS) or, the Board could consider that an alternate number of parking spaces are adequate in accordance with N.J.A.C. 5:21-4.14(c)(f). Additionally, the Board could grant a *de minimus* exception to permit the tandem parking shown on the plan. Mr. Frizell indicated that the tandem parking spaces shown would be assigned to individual units, that is, where one space is shown on the plans behind another space, both of those spaces would be assigned to one unit.

9. Mr. Frizell indicated that what is shown on the plans is high quality architecture, with a 360 degree brick and stone façade. He stated that the building has been designed to look like it has always been there. It is designed to look like an old converted building, a loft-type building.

10. Mr. Frizell discussed the units, that is, the flats versus duplex design, the sizes of the units and the number of bedrooms. He again indicated that some are two-story units.

11. Mr. Spiegel asked what would fit on the site without any variances. Mr. Frizell indicated that he gave the architect some instructions that the building should be set back 15 feet from the curb on Hillside Avenue and 10 feet from the paved surface on Inn Place. Mr.

Constantine indicated that the Applicant came to the TRC several times and that numerous issues were addressed in the plans through input from TRC.

12. At this point, the hearing was opened to the public. John Araneo of 426 Main Street asked who would answer questions about the site plan. He was told that the site engineer will appear at a later date and answer these questions.

13. David Aitken of 24 Highland Avenue asked about parking spaces that faced his property. He was told that those questions would be answered by the engineer. After asking about the number of stories, Mr. Aiken was told that there would be three stories on Inn Place. Mr. Frizell stated, in response to a question, that the pavers shown on the plan will be within the cart way of Inn Place.

14. Sean Massey of 93 Highland Avenue asked whether the Applicant would consider unbundling the parking from the rental of the units. He feels that the number of the spaces could be reduced by the transit village nature of the application. Mr. Frizell was also asked if he could reduce the number of units, he indicated that he cannot. There being no further public questions, the public portion of the hearing was closed.

15. Geoffrey Lanza, P.E., of Omland Engineering Associates, Inc., was sworn in, qualified and testified. He is a partner in Omland Engineering, the firm which prepared the site plans. At Mr. Frizell's request, Mr. Lanza reviewed the site plan with the Board. He discussed the layout and the topography. He indicated that the portion of Inn Place adjacent to the subject premises will be resurfaced in its entirety, the entire paved cart way.

16. Mr. Lanza described the proposed parking. There are 25 parking spaces shown on Inn Place, with 24 of them being tandem spaces. There are 9 spaces in the "L" shaped part of

the lot, which is behind the building, with an entrance to the parking lot from Inn Place. Mr. Lanza agreed that the lots should be consolidated.

17. Mr. Lanza indicated that all of the tandem spaces, that is, sets of two, will be assigned to one unit. After discussing the site plan, sheet three of ten, he discussed the grading and drainage plan, sheet four. Drainage and the handling of storm water is depicted on the plan. Sheet five is the landscaping plan. It shows the trees being removed, and the proposed landscaping. About thirty-five trees in total are to be removed. Applicant has agreed to comply with the tree removal and replacement ordinances. Mr. Lanza indicated that trees cannot be planted on Inn Place, so Applicant will put the trees someplace in town.

18. Exhibit A-2 was introduced, a sheet showing Inn Place in cross-sections. There will be a four foot width of pavers to be installed in Inn Place adjacent to the subject premises. The Inn Place right of way is 25 feet wide with 18 feet of it paved. A Board member commented that the shorter tandem spaces would be unworkable and should not be counted as parking spaces.

19. Mr. Lanza indicated that garbage will be managed by management. Twelve garbage cans are shown on the plan, rather than a dumpster. A fence is proposed to screen the garbage cans.

20. With respect to drainage, Mr. Lanza offered the opinion that there should be no effect on surrounding properties.

21. Mr. Lanza discussed the lighting plan. Some lighting is proposed in the courtyard and in the parking area on Inn Place. Mr. Frizell interjected that the entrance to each unit will have light. Metuchen street lamps are proposed on Hillside Avenue only, not on Inn Place, due to the topography.

22. Mr. Frizell agreed on behalf of the Applicant to comply with all of the recommendations and requirements contained in the Board Engineer's review letter dated December 11, 2013.

23. The hearing was opened to the public for questions and comments. Len Roseman of 40 Miller Drive indicated that it was his opinion that if the Board wanted to reconfigure the parking, he would suggest reducing the number of parking spaces by four. There was a discussion of distances, the testimony from Mr. Frizell being that it is less than 500 feet to the Pearl Street lot and about 150 feet more or less to the Station Place parking lot.

24. John Araneo asked if the driveway to the west of the subject premises is affected. Mr. Frizell indicated that there would be a retaining wall between the subject property and the driveway so there would be no effect on the driveway.

25. Roland Staal of 72 Hillside Avenue asked if Inn Place would still be a two-way street. He was told that it would be. Mr. Staal said that he drives a Mini-Cooper.

26. Craig Thornton of 33 Hillside Avenue asked about parking on Inn Place and who parks there now. He was informed by Mr. Frizell that the parking there is not a condition of any prior approval.

27. David Aitken, stated that Inn Place is in bad condition. Mr. McKenna said that the Applicant will repair the street. Mr. Aitken asked whether the garbage cans would make it hard to travel on Inn Place. The engineer indicated that they would not. When asked about backing up, the engineer indicated that the cars parked on Inn Place would have about 22 feet to back-up.

28. Joseph Schaffer of 24 Henry Street, indicated that he is a professional engineer and professional planner. He indicated that if all tandem spaces were eliminated, it would save about

twenty trees, and that there would not have to be as much filling in if the tandem spaces were eliminated. He indicated that for snow removal, snow would have to be carted out.

29. Evelyn Grant of 36 Highland Avenue asked about Inn Place. She was told that 18 parking spaces now exist on Inn Place where the tandem spaces will be created. She asked about whether the spaces were required for another property. She said she has a deed with an easement. She thought that this lot was subdivided from 450 Main Street in 2005 and that the parking that is proposed here was part of another approval. Mr. Frizell indicated that this was not part of another approval. He indicated that the deed of easement was done as a convenience and that it can simply be undone and could be undone as part of an approval.

30. At this point, the hearing was carried to February 13, 2014. It is noted that a snow storm on February 13, 2014 forced the cancellation of the hearing, so that the hearing resumed on March 13, 2014. In the interim the Board attorney had sent a letter to the Board, dated December 31, 2013, indicating that after reviewing the resolutions and plans on file pertaining to related entities, there was nothing in the plans, resolutions or approvals which would burden the Inn Place property with any obligation to provide parking in connection with any prior approval. The Board attorney also agreed that since the easement was between the Co-Applicants, the Co-Applicants can extinguish the easement and that such extinguishment should be a condition of any approval granted.

31. When the hearing resumed on March 13, 2014, Paul Grygiel, P.P., was sworn in, qualified and gave testimony. Mr. Grygiel is a licensed professional planner. He first addressed the parking issues. He affirmed that 36 spaces are required by the number of units and the bedroom mix. He indicated that 34 are proposed. He suggested that in accordance with RSIS, the required number should be adjusted because of the proximity to mass transit. He expressed

that the number of spaces is a balance between having enough parking and not having too much parking. He thinks that tenants will self-select and that 1.75 spaces per unit is more than sufficient. He indicated that he had participated in projects near mass transit. In Maplewood, a project was next to the train station. The regulation provided a minimum of 1.0 spaces per unit and a maximum of 1.5 spaces per unit. A project he worked on in Rahway required 1.25 spaces per unit. He stated that in Hoboken, no parking spaces are required for the first five units, then 1.0 spaces per unit. He reiterated the adjustments called for under RSIS, including household characteristics, available mass transit, suburban versus urban development, and availability of alternative parking facilities. He indicated that all of these militated in favor of a reduced number. He indicated that although Metuchen is a suburban municipality, the particular area, a business district development near mass transit, makes this particular development more urban.

32. Mr. Grygiel gave his opinion on the negative criteria, that is, that the requested variances could be granted without substantially impairing the zone plan and zoning ordinance, and without substantial detriment to the public good. With respect to the D variance, which was already granted, he indicated that it was a minor variation in that only three units are proposed on the ground floor. He stated that the master plan and zoning ordinance attempt to effect a compact downtown. With respect to the C variances, although the variances are requested from the property lines, he indicated that the distance from the curb line and/or from the paved portion of the roadway were substantial and generally conformed to other developments in the downtown on Main Street. With respect to the sight triangle easement, he stated that Inn Place has a low traffic volume and that the sight triangle easement could be granted for that reason. He stated the front setback variances are consistent with the pedestrian character of the neighborhood and that the height variances are required by the topography of the site, which

rises from front to back. He indicated that Inn Place is more like a driveway than a street and that the front yard setback on that side would not be detrimental. He indicated that granting of the variances would advance purposes (a) and (e) of Section 2 of the Municipal Land Use Law. With respect to purpose (a), the proposed development would encourage municipal action to guide the appropriate use or development of this land in a manner which will promote the public health, safety, morals and general welfare. With regard to purpose (e), the proposed development will promote the establishment of appropriate population densities, and concentrations that will contribute to the well being of persons, neighborhoods, communities and regions and the preservation of the environment; this is an appropriate smart growth project in an established downtown area. Mr. Grygiel was of the opinion that all of the requested variances could be granted under the C-2 criteria, in that the benefit of granting these variances would outweigh any detriment, which detriment Mr. Grygiel felt to be non-existent. With respect to the design waivers/exceptions, as to the wall, the proposed wall at 3 to 5 feet on Inn Place will not actually be that height above the grade. The wall height is necessary because of the topography. He indicated that the granting of this waiver/exception will not violate the intent, which is to prohibit high walls.

33. Mr. Grygiel indicated that tandem parking is permitted with residential uses. He indicated that it is a common practice with driveways. Where assignment of the tandem spaces is controlled by having them go to one residential unit, the tandem parking will be satisfactory. He indicated that some smart growth projects are common in train station areas and that tandem parking exists elsewhere and is workable.

34. The Chairperson asked what factors go into consideration in determining how many units a lot will support. She indicated that residents are concerned with parking and density. Mr. Grygiel indicated that no density variance was required for the number of units.

35. The hearing was opened to the public for questions of Mr. Grygiel. Roland Staal of 72 Hillside Avenue asked what a reasonable walking distance to a supermarket is. Mr. Grygiel stated that he did not say that residents will never drive, they may drive to a grocery store.

36. Evelyn Grant asked about the on street spaces. Mr. Grygiel indicated that on street spaces can be considered under RSIS, but that the on street spaces in front of this development and the three on Hillside Avenue, were not counted in the number of parking spaces indicated to be provided. Mr. Grygiel was asked if the residents of this development would be eligible for resident parking permits. There was a discussion of this issue. Mr. Frizell indicated that they were not eligible because permits were only issued to residents of the streets where permit parking is regulated. Ms. Grant produced a copy of the ordinance and indicated the Police Chief had discretion to grant permits to the residents.

37. Sean Massey, asked if additional parking is desirable. Mr. Grygiel indicated it was not. He indicated that the 24 tandem spaces plus one, together with the 9 spaces in the lot are adequate. Mr. Massey thought it would be better to bank the tandem spaces. He reiterated that he thinks that parking can be unbundled from the residences.

38. Joseph Schaeffer of 24 Henry Street asked Mr. Grygiel to explain what banking spaces means. Mr. Grygiel explained that the spaces would not be built at the time, whether or not there would have to be a return to the Board would depend upon the resolution. At this point, the hearing was closed to the public.

39. Mr. Constantine was asked by a Board member about the Inn Place setback. Mr. Constantine feels that ten feet is not necessary because of Inn Places's low traffic volume. He indicated that on Hillside Avenue, the building is setback fifteen feet from the curb. The liquor store to the west is closer to the street. Mr. Constantine indicated that the measurement from the curb is more important than the measurement from the property line. Mr. Constantine asked Mr. Grygiel about the properties across the street. Mr. Grygiel indicated, after looking at the plans, that the properties on the other side of Hillside Avenue are closer to the curb than the subject application. He also indicated that the properties on Station Place have less setback from the curb than the proposal.

40. Robert W. Adler was sworn in, qualified and gave testimony. He is a licensed architect. He designed the building in question. He testified that no one dictated to him the minimum number of units. He was asked why the units appear to be small. He stated that smaller units are more of a market trend. With respect to the height of the building, he indicated that nowhere is the building more than three stories high. He initially testified that the smallest unit was a 440 sq. ft., one-bedroom unit, but this was later corrected. The smallest unit is actually larger than 600 sq. ft. Mr. Adler indicated that there was one three-bedroom unit, which was proposed to be an affordable unit; that unit is approximately 1,259 sq. ft.

41. Mr. Adler indicated that the entrances to all of the units except for the three ground floor units which front on Hillside Avenue will be from the courtyard.

42. Mr. Adler indicated that the tandem parking spaces are 9 feet wide and most of the tandem parking spaces are approximately 16 to 18 feet long.

43. Mr. Adler was asked about a comparison of the size of these units to other apartment developments in Metuchen. He indicated that he has not been inside any other apartment complex units and cannot compare these units to the size of others.

44. The hearing was opened to the public for questions of Mr. Adler. Sean Massey asked about the outdoor shared place. Mr. Adler indicated that a gathering place could be created for the residents. This portion of the hearing was closed to the public.

45. R. Michael McKenna, P.E., was sworn in, qualified, and gave testimony. He is a principal in Omland Engineering Associates, Inc. He prepared the site plan that was submitted. At the request of the Applicant, his firm did a traffic generation comparison. He indicated that this analysis showed that additional trip generation for this project would be *de minimus* and negligible. In response to a question, he indicated that the figures came from design books relied upon by engineers. This was not a traffic study, but rather a statistical analysis. They compared the increase in trip generation from the existing three two-family residences (6 total units) to the proposed 19 unit apartment complex.

46. The hearing was opened to the public for questions of Mr. McKenna. Roland Staal asked whether there was a way to take into consideration real traffic. Mr. McKenna indicated that the *de minimus* nature of the increase in this project would not warrant a traffic study.

47. Evelyn Grant stated that she reviewed the resident permit parking ordinance and that the ordinance allows the Chief of Police to give resident parking permits in his discretion. Mr. Frizell stated that if it made a difference in the Board's determination, he would put provisions in each lease to the effect that residents of the project would be prohibited from obtaining resident parking permits.

48. In response to a question, Mr. McKenna testified that the tandem parking is adequate. Several Board members questioned whether all of the parking shown is necessary and whether perhaps the tandem parking should be eliminated or reduced. Mr. Frizell indicated that although he feels that there may be excess parking, he would like to have all the tandem spaces as proposed.

49. The Board Chair asked Mr. Constantine for advice on the parking issue. Mr. Constantine thought that the proposed development would park less than Franklin Square, for example. Mr. Constantine thought that 29 or 30 parking spaces would be more than adequate. Ms. Millet indicated that her experience is that people will not park in the tandem spaces. Ms. Andrews asked about the size of the units and felt that they were small. Mr. Frizell indicated that they were designed for the demographic projected to occupy the units.

50. There was a discussion about the bedroom mix and the affordable housing component. The Board reviewed the Memorandum from the Borough's Affordable Housing Consultant dated December 12, 2013. Mr. Frizell indicated that presently, the development was proposed at 10 one-bedroom units, 8 two-bedroom units and 1 three-bedroom unit. He indicated that the three-bedroom unit and one of the one-bedroom units were created from an original design of two two-bedroom units. He proposes to provide, instead of what is shown, two two-bedroom affordable units, one low income and one moderate income unit, and one one-bedroom moderate income unit. This would change the bedroom mix to 9 one-bedroom units and 10 two-bedroom units. Mr. Constantine indicated that it was his opinion that granting this request, given the uncertainty of the third round COAH regulations, would be adequate.

51. The meeting opened to the public for comments or questions. Evelyn Grant stated that she has a copy of the ordinance regarding resident permit parking and that the Chief of

Police has discretion to grant permits. Joseph Schaeffer stated that he likes the project and asked the Board to take into consideration his comments regarding parking. Sean Massey indicated that he likes the project and recommends that the Board approve it. Roland Staal stated he likes the appearance of the project. He believes that the units are too small.

52. Mr. Frizell reviewed the sizes of the units with Mr. Adler and determined that the smallest unit, a one-bedroom unit, was 607 sq. ft.

53. With respect to landscaping features, Mr. Frizell indicated that the Applicant would accept a condition that the Applicant will work with the Planner with respect to the design of landscape features, including things such as window boxes and plantings on balconies and terraces.

WHEREAS, the Metuchen Board of Adjustment, after hearing the testimony in support of the application, and the comments of the public, and after considering the recommendations of the Board Engineer and the Board Planner, as well as the Borough Affordable Housing Consultant, has made the following findings of fact and has drawn the following conclusions of law:

1. The Board of Adjustment of the Borough of Metuchen has proper jurisdiction to hear the within matter.
2. The property is designated as Block 118, Lots 18.04, 19, 20 & 21 as shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 23-27 Hillside Avenue, and Inn Place.
3. The property is located in the B-1 Central Business District. Applicant was previously granted a D variance to permit residences on the ground floor of the proposed building in a bifurcated application.

4. The lot area of the property is approximately 23,117 sq. ft. It has 100 feet of frontage along Hillside Avenue. It is irregular in shape, with a frontage along Inn Place of approximately 294 feet. The property currently contains three two-family residences, one of which is vacant, fronting on Hillside Avenue, with parking being the principal use along Inn Place.

5. Applicant proposes to demolish the three existing residences and all other existing features, and to construct a three-story, nineteen unit apartment building with associated parking facilities and lighting and landscaping improvements.

6. The lighting and landscaping improvements are more fully set forth on the site plan and architectural plans submitted.

7. After hearing the testimony on the application, and the testimony and questions of the public, the Board finds, with respect to N.J.S.A. 40:55D-76(b) that this subsequent approval (after the bifurcated D variance approval), can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The Board makes more specific findings as hereinafter set forth with respect to the C variances and the waivers/exceptions.

8. With respect to the front setback requirements on both Hillside Avenue and Inn Place, the maximum building height variance and the sight triangle variance, the Board finds that these variances can be granted under the C-2 criteria as testified to by Applicant's Planner, Mr. Grygiel. The Board finds that the benefits of the granting of the requested variances based upon purposes (a) and (e) in N.J.S.A. 40:55D-2 outweigh any detriment caused by the granting of these variances, which the Board finds to be negligible to non-existent. The setback from Hillside Avenue will be sufficient for a pedestrian-oriented development and is at least as great

as the setbacks of other developments in the area. The setback from Inn Place is justified by the minimal vehicular traffic on Inn Place. The building height variance is justified by the topography in the area. The Board finds that the variation in height will not be noticeable over that which is permitted. The sight triangle variance is justified by the minimal traffic on Inn Place. On balance, any detriment caused by the granting of these variances is outweighed by the benefits resulting from its granting of the variances.

9. With respect to the wall height waiver/exception, although the proposed wall located within the front along Inn Place will range from 3 to 5 feet high, it will not be that high above the ground. The necessity for the wall height is dictated by the sloping nature of the topography. With respect to the waiver from front yard parking, the Inn Place parking area will again be located on a street with minimal traffic and although the parking is technically front yard parking, the effect of this parking is actually in the side-yard of the building.

10. With respect to the RSIS parking requirements, the Board finds that in accordance with N.J.A.C. 5:21-4.14(c), an alternative parking standard to the 36 spaces which would be required based solely upon the number of units and the bedroom mix should be accepted by the Board as reflecting local conditions, considering the proposed household characteristics, the availability of mass transit in the immediate area of development, the urban-type of location of the subject premises, and the availability of off-street parking resources, including the Station Place and Pearl Street lots. Additionally, in accordance with N.J.A.C. 5:21-4.14(f), regarding the on street parking spaces in front of the subject premises, the Board determines that the number and configuration of parking spaces proposed, that is, 34 on-site spaces, of which 12 are tandem, and 3 on street meet the alternative parking standard which the Board determines to be adequate. Accordingly, the Board grants a *de minimus* exception from RSIS parking standards.

11. With respect to the affordable housing component of the project, the Board accepts Applicant's revised proposal to provide three units, two of which shall be two-bedroom units, one low income and one moderate income, and one one-bedroom moderate income unit. Accordingly, there shall now be 9 one-bedroom units and 10 two-bedroom units. The adjacent 3-bedroom and 1-bedroom units shall be reconfigured as two 2-bedroom units.

12. The Board further finds that the waivers/exceptions requested, as set forth above, may be granted in this case because the literal enforcement of the wall height and front yard parking restrictions would be impractical or would exact undue hardship because of the peculiar nature affecting the land in question, due primarily to the topography of the site.

13. 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, for the reasons hereinbefore set forth.

14. The Board further finds that the application for preliminary and final site plan approval with C variances and waivers/exceptions as set forth above may be granted as being in general conformance with the intent and purpose of the site plan regulations. Accordingly, the Board finds that if the Applicant constructs this project in accordance with the submissions herein and the representations and agreements made during the hearing, the general purpose and intent of the provisions of the site plan regulations and the zone plan and zoning ordinance will be complied with.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application of Metuchen Investors, LLC and Main Street Metuchen, Ltd., for C variances, waivers/exceptions and preliminary and final site plan approval be and is hereby granted in accordance with the application and plans filed herein, as amended

by the affordable housing component as set forth above as 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. Applicant shall, as agreed, work with the Board Planner which respect to the design of landscape features, including but not limited to, balconies and terraces.

D. Applicant shall comply, as agreed to at the hearing, with all of the requirements and recommendations of the Board Planner and Board Engineer as set forth in their memoranda dated December 9, 2013 and December 11, 2013, respectively.

E. The application shall comply with the following additional conditions of approval:

(1) Applicant shall contract with Metuchen's administrative agent for the advertising and affirmative marketing of the affordable residential units. The affirmative marketing shall begin four months prior to expected occupancy. Additionally, Applicant shall comply with items 4, 5 and 6 of the December 12, 2013 Memorandum of Shirley M. Bishop, P.P., the Borough's Affordable Housing Consultant.

(2) Applicant shall consolidate all of the lots comprising part of this Application, Lots 18.04, 19, 20 and 21, by Deed. This Resolution shall be attached to and incorporated on such

Deed and recorded as an Exhibit to the Deed. Applicant shall obtain the new lot number from the Borough Tax Assessor and shall refer to such new lot number in the Deed. The Deed of consolidation shall be subject to the review and approval of the Board Engineer and the Board Attorney prior to recording.

(3) Applicant shall comply with Metuchen's tree removal and replacement ordinances. Where trees cannot be placed on-site, they will be located elsewhere in the municipality. Applicant shall work with the Planner and with the Shade Tree Commission with respect to the location of replacement trees.

(4) Applicant shall repair and resurface the entire width of Inn Place adjacent to the Applicant's property.

(5) All leases for all apartments in the subject premises shall contain a provision barring residents of the subject premises from applying for resident parking permits under § 185-16 of the Metuchen ordinances, or under any other provision relating to resident permit parking. The owner of the subject premises shall enforce this provision as a condition of continued occupancy of the premises. Failure to include a provision in any lease and failure to enforce such provision, shall be deemed a violation of this site plan approval.

(6) Applicant shall record a Deed or other document extinguishing the easement referred to during the hearing between Main Street Metuchen, Ltd. and Metuchen Investors, LLC which affects Lot 18.04. This document shall be recorded with the Middlesex County Clerk and shall be subject to prior approval by the Board Engineer and Board Attorney.

(7) Applicant will install Metuchen style street lamps on Hillside Avenue and will connect the street lamps to the common electric for the building and will pay all electric charges for the street lamps. Street lamps shall not be required on Inn Place.

(8) Applicant shall prepare and submit for the approval of the Board Engineer and Board Planner, within 60 days of the date of this resolution, revised plans reflecting all of the conditions of this approval, including all the requirements and recommendations contained in the Board Engineer's and Board Planner's review letters of December 11, 2013 and December 9, 2013, respectively.

F. This approval is subject to compliance with the Borough Affordable Housing Ordinance, including payment of any fees required.

G. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all other applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey. No further deviations from the zoning ordinance or site plan regulation shall be permitted without the approval of the Board of Adjustment of the Borough of Metuchen.

H. The Applicant shall furnish a performance guaranty, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the cost of the site improvements approved by this resolution as estimated by the Board Engineer in a form satisfactory to the Borough Attorney.

I The Applicant shall also post an inspection fee equal to 5% of any public improvements or changes to public improvements.

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

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

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 within the time required 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 meetings of December 12, 2013 and March 13, 2014 and effective as of those dates.

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

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

Sharon Hollis

Sharon Hollis, Secretary

Dated: April 10,, 2014

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING
APPLICATION OF JANICE CHASE
FOR A CERTIFICATE OF NON-CONFORMITY
60 JONESDALE AVENUE
BLOCK 172, LOTS 39-42
APPLICATION NO.: 14-1017

WHEREAS, Janice Chase, hereinafter referred to as “the Applicant,” is one of the owners of Block 172, Lots 39-42 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 60 Jonesdale 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 a Certificate of Non-Conformity; and

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on March 13, 2014 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. Zoning permit.
2. Board of Adjustment Application for Development dated January 22, 2014.
3. Proof of payment of taxes and assessments.
4. Application and escrow fees.
5. Review letter of Maser Consulting, P.A., by Lisa R. Di Franza, P.E., C.M.E., dated February 12, 2014.
6. Review letter from Palumbo & Renaud, Esqs., dated February 10, 2014.

7. Plan entitled "Sketch of Property Survey for: Evelyn Whitehead, married Situated in Boro. of Metuchen, Middlesex Co., N.J.," prepared by Goodman, Allgair & Scott, dated January 17, 1978 and consisting of one (1) sheet.

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

WHEREAS, the Applicant seeks the issuance of a Certificate of Non-Conformity pursuant to N.J.S.A. 40:55D-68 to the effect that the subject premises is a lawful non-conforming two-family residence; and

WHEREAS, the Metuchen Board of Adjustment heard evidence and reviewed documents as follows:

1. Mr. Wiley indicated in an opening statement that the property, which had formerly been a single family residence, was converted to two-family use beginning in 1956, with construction finishing in 1958.

2. Mr. Wiley offered for the Board's consideration the following items of documentary evidence:

(1) A-1, a Deed dated January 31, 1978 which indicated that the property was conveyed at that time from Mr. and Mrs. Bove, who took title in 1956.

(2) A-2, a letter from Public Service, confirming that two electric meters were installed at the premises in 1958.

(3) A-3, a listing card from the local multiple listing service which indicated that in 1977 the property had been listed for sale as a two-family residence.

3. Joseph Bove, 27 Wanamassa Point Road, Ocean, New Jersey, was sworn in and gave testimony. He is the son of Mr. and Mrs. Bove, the couple who purchased the property in 1956 and converted it to a two-family residence from 1956 through 1958.

4. Mr. Bove indicated that he was about ten years old when the house was purchased and that for the next two years, the family commuted from New York to Metuchen, on weekends, to work on the house and that it had been like a “haunted house.”

5. He thought when the house was purchased it was an existing one-family residence.

6. After the house was purchased, the Fortunato family lived upstairs. The two families were related. The Fortunatos remained tenants up to the time the house was sold in 1978.

7. The hearing was opened to the public for questions of Mr. Bove. No member of the public had a question.

8. Janice Chase, 60 Jonesdale Avenue, Metuchen, New Jersey, was sworn in and gave testimony. She is the Applicant and the daughter of Evelyn Whitehead, who purchased the property from The Boves. The house was a single family residence when her mother purchased it. They did not make any changes to the upstairs. It presently exists in similar condition to when it was purchased.

9. Applicant introduced Exhibit A-4, the Tax Assessor’s property report card which showed the property is listed as a two-family home in the Tax Assessor’s records and has been so listed for many years.

10. The Board attorney reviewed for the Board the findings of the Zoning Officer with respect to the adoption of applicable ordinances. It appears that the first zoning ordinance in Metuchen established a residential (A) District in which residential uses, including one and two-family dwellings were permitted. The subject property is located in this (A) District. The Zoning ordinance was amended by ordinance adopted June 16, 1952, which established several

new districts including R-1 and R-2. The subject premises is located in the R-2 District established in 1952. The R-2 District adopted at that time permitted one-family residences but not two-family residences.

11. The hearing was opened to the public. Joseph Schaeffer, 24 Henry Street, Metuchen, New Jersey, indicated that he lives near the subject premises. He never realized that the property was not a one-family residence. He indicated that there is another two-family residence across the street. He has no objection to continuing the property as a two-family residence. No other member of the public spoke for or against the application. The hearing was then closed to the public.

WHEREAS, the Metuchen Board of Adjustment, after hearing all of the evidence presented on the application, and having reviewed the records of the municipality and the other records concerning the subject premises, and having considered the comments of the public, and the arguments in support of the application, has made the following findings of fact and has drawn the following conclusions of law:

1. The Metuchen Board of Adjustment has proper jurisdiction to hear the within matter.
2. This application, pursuant to N.J.S.A. 40:55D-68, is properly submitted to the Board of Adjustment under that statute.
3. The Property is designated as Block 172, Lots 39-42, 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 60 Jonesdale Avenue, Metuchen, New Jersey. The Property is located in an R-2 residential zoning district which does not permit two-family residences.
4. The Applicant is the owner of the property.

5. The Board finds that in view of the undisputed long-standing use of the residence for over 55 years, the fact that the property was listed and sold in 1977-1978 as a two-family residence without objection, that the electric company installed two meters, presumably with permits at the subject premises in 1958, and the lack of records of the Borough with respect to the subject premises going back to 1956, the Board finds that notwithstanding the inability of the Applicant to produce proof as to approvals at the time the property was converted, the Board draws an inference that approvals were obtained at the time the home was converted.

6. The Board further finds that it would be inequitable to deny the Applicant's request where the property was marketed in 1977-78 through a multiple listing service and purchased by the Applicant's mother on the belief that the property was a lawful non-conforming residence, particularly where the statute, N.J.S.A. 40:55D-68, which permits an interested party to apply for and obtain a Certificate of Non-Conformity was not amended to so provide until 1985, and where the Borough of Metuchen did not require a certificate of continued occupancy for the sale or transfer of a one or two-family residence in 1978, when the property was purchased by the Applicant's mother.

7. Having so found, the Board concludes that the Applicant should be issued a Certificate of Non-Conformity to the effect that the two-family use of the subject premise is a lawful pre-existing non-conforming use.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen, that the application of Susan Chase for a Certificate of Non-Conformity be and hereby is granted, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper

of the Borough of Metuchen and return of proof of said publication to the Secretary of the Board of Adjustment.

B. The Applicant furnishing proof to the Secretary of the Board of Adjustment that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits, if any, 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.

BE IT FURTHER RESOLVED that this Resolution shall serve as one of memorialization of the action taken by this Board at its meeting of March 13, 2014 and effective as of that date.

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

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

Sharon Hollis

Sharon Hollis, Secretary

Dated: April 10, 2014