

# METUCHEN ZONING BOARD OF ADJUSTMENT

## MINUTES

March 13, 2014

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.

Present: Pat Lagay, Chairperson  
Judith Sisko  
Byron Sondergard  
Daniel Spiegel  
Brian Tobin, Vice Chairperson  
Jonathan Rabinowitz, Alt. I  
Eileen Millett, Alt. II  
James Constantine, Planner  
Robert Renaud, Attorney  
Lisa DiFranza, Engineer  
Chris S. Cosenza, Zoning Officer

Late: Suzanne Andrews (8:05 p.m.)

Absent: Catherine McCartin

Ms. Lagay indicated that she would change the order of the agenda.

### NEW BUSINESS

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

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

Mr. Wiley indicated Applicant requests a Certificate of Non-Conformity. He indicated property has existed since at least 1956 as a two-family use. He provided exhibits: A-1, a deed dated January 31, 1978; A-2, a letter from PSE&G dated January 31, 1958; and A-3, a multiple listing card from 1977 indicating the property being taxed as a two-family use.

Mr. Spiegel asked what the tax records indicated.

Mr. Wiley and Mr. Cosenza confirmed tax records indicated a two-family use.

Mr. Renaud indicated that the application is not a variance application; it is an application for a Certificate of Non-Conformity. When a Ordinance changes the permitted uses of property, the property owner may go to the administrative officer within one (1) year after the Ordinance changes and obtain a certificate. Within that one-year period, according to statute, the prospective purchaser/mortgagee, or any other person interested in any land upon which a non-conforming use or structure exists, may apply for the issuance for a certificate, certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure non-conforming. Applicant shall have the burden of proof. If they do not apply within a year, Applicant shall apply to the Zoning Board of Adjustment (if they desire a certificate). The Board will have to decide whether or not to issue the certificate.

Joseph Bovee, 27 Ramasa Point Road, Ocean, New Jersey, was sworn in by Mr. Renaud.

Mr. Bovee indicated he had lived in the house with his parents. His family had lived in Manhattan and had several relatives in Metuchen. They moved to Metuchen and bought the house between 1956 and 1958. The house was in bad shape; it was a haunted house of sorts. Over the course of two (2) years, his father would work on the house and drive back to New York. It was a two-family before and during construction. The first floor was one unit with the second floor being the other unit. His parents sold the property in 1978 to Evelyn Whitehead. All throughout the time between 1956 and 1978, it was used as a two-family dwelling.

Mr. Renaud asked what use the house was prior to being occupied in 1956.

Mr. Bovee indicated that, in 1932, the structure looked rather pristine.

Mr. Renaud asked if he had any recollection of the house itself.

Mr. Bovee indicated that he did. It was being used as a two-family dwelling.

Ms. Lagay requested the layout of the structure be described.

Mr. Bovee he described the layout of the house. There were three (3) bedrooms on first floor with an enclosed porch, living room, dining room, kitchen and bathroom. There was a separate stairway with locked door at top of second floor which had a kitchen, bathroom, two (2) bedrooms and a living room.

Mr. Renaud asked if someone had come out on the second floor, would they have the run of the first floor.

Mr. Bovee indicated that they did not; the door to the second floor does not lead to the first floor unit. The entrances to the units are locked.

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

Janice W. Chase was sworn in by Mr. Renaud.

Ms. Chase indicated that she lives at 60 Jonesdale Avenue. Evelyn Whitehead was her mother who bought the house in 1978. She indicated it had been used as a two-family at the point she purchased it and since she had been within the home. There have been no renovations to the structure, A tenant lives in the second floor unit.

Mr. Wiley provided exhibit A-4, current property tax card.

Ms. Lagay asked why they were before the Board. She noted that the house is for sale.

Mr. Wiley indicated Applicant wishes to sell the home as a two-family; they desire a certificate; it is understood the Zoning Officer is not legally able to determine it administratively. He recalled a previous case he had before the Board at 205 Maple Avenue several years ago. Applicant was fortunate to have found Mr. Bovee.

Ms. Chase indicated that the meters were set in 1958.

Mr. Constantine asked if Applicant was aware of what the zoning was in 1958.

Mr. Wiley indicated that the only document he was able to find was the 1958 Master Plan.

Mr. Renaud indicated that Mr. Cosenza did the research. The Board has this information. He asked if building department records had been found.

Mr. Wiley indicated only blueprints were found, which were not stamped.

Mr. Constantine indicated it appeared to be a single-family. He opined that understanding the zoning of 1958 was important. To his knowledge, the earliest Ordinance in Metuchen was dated 1923 in which there were three (3) districts: (A) residence, (B) business and (C) industrial. In the residence district, any type of residence was permitted. The real question was if there were any successive changes. He recalls changes in the 1960's in which the R-2 was created.

Mr. Renaud indicated that we have those answers; first, the Board should allow Applicant to finish their testimony, then the Board can discuss.

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

Mr. Renaud stated that, according to the information Mr. Cosenza found, on June 16, 1952, the Ordinance was revised to establish zoning districts named R-1, R-2, etc. Strictly based on the testimony, there is no evidence showing that it was constructed as a two-family---there are no building permits. Because we cannot show that a two-family use was a permitted use in 1956 or 1958, the Board, if it were so inclined, could 'fill in the blanks.' There is a big gap in the proofs.

Mr. Spiegel indicated that there were or are two-family homes in the neighborhood, as well in the surrounding streets.

Mr. Renaud indicated that up to 1952, they were permitted.

There was a long discussion regarding whether permits were filed in the 1950's or converted prior to 1952. The dwelling has been used as a two-family use for over 50 years.

Mr. Spiegel noted that it is on the tax records as a two-family use; no one is making an issue of it.

Mr. Wiley indicated that the issue is to obtain the certificate; it is known that any changes or expansion to the structure or use requires approval from this Board.

Mr. Renaud that the Board can make certain assumptions in this case.

There was a long discussion regarding the proofs, during which Mr. Renaud indicated that one of the issues of the MLUL is that most ordinances are from the 1920s. When applications were made in the 1950s, it was easier to find witnesses. Now we are approaching 100 years, so it is very difficult to find witnesses, so the Boards may have to make certain assumptions.

Board members discussed the evidence.

Mr. Spiegel indicated that the Board has to have a certain rationale.

Ms. Lagay noted that Ms. Andrews had arrived.

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

Mr. Bovee indicated that there was major renovation at the time, over the course of two (2) years; he would be surprised if the Borough was not aware of it.

Joseph Schaeffer, 24 Henry Street, was sworn in by Mr. Renaud. He indicated that he is a professional engineer and planner. He had talked to his wife and they did not realize it was a two-family dwelling, but opined that it was not an inappropriate use. It is leftover from a previous time. He would like it to be considered a two-family use for the benefit of allowing the house to be sold.

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

A motion to approve the application for a Certificate of Non-Conforming Use was made by Ms. Sisko and seconded by Mr. Tobin. Roll call vote taken. Ms. Lagay, Ms. Sisko, Mr. Sondergard, Mr. Spiegel, Mr. Tobin, Mr. Rabinowitz and Ms. Millett voted yes. Motion passed unanimously.

Ms. Chase thanked the Board.

## **OLD BUSINESS**

**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. Application was carried from January 9, 2014.

23-27 Hillside Avenue

Block 118, Lots 18.04, 19-21

B-1 Zone

Mr. Renaud announced that Mr. Sondergard certified that he had listened to the tape; however, Ms. Millett did not listen to the tape, therefore, she may participate but may not vote this evening.

Paul Grygiel, Applicant's professional planner, was sworn in by Mr. Renaud. He was qualified and accepted by the Board as an expert.

Mr. Grygiel discussed his planning report. With respect to parking, the question is whether a deviation is required from Residential Site Improvement Standards (RSIS). RSIS allows a credit for on-street spaces. Three (3) on-street parking spaces are in front, including one (1) new one that is being added. There are also alternatives related to proximity to uses and transit. For a project like this, the tenants may be self-selected. Some tenants may not even have a car.

Mr. Grygiel offered an example regarding parking requirements. In the Maplewood Transit-Oriented Development (TOD), what was required was 1.0/unit with a maximum 1.5/unit. The governing body put a cap for uses right next to the train station. Immediately adjacent to the station, the parking is 1.2/unit. Fewer parking spaces are permitted and required. There is a need to balance having parking for residents and providing too much parking. He further

discussed household characteristics, availability of transit, urban vs suburban location. Multi-family units typically have smaller households. It is expected to have 35 residents in all in this type of development. There is transit immediately available.

Ms. Lagay asked about how Maplewood TOD is doing.

Mr. Grygiel discussed a project was recently completed, containing 50 units with 60 parking spaces; however, he has no further information.

Mr. Rabinowitz asked if parking was bundled and if there was a walkable supermarket.

Mr. Grygiel indicated parking was bundled and a King's, rather small, is within walking distance.

Mr. Frizell requested Mr. Grygiel to discuss the use variance.

Mr. Grygiel indicated that the use variance is for the ground-floor apartments. Apartments are permitted in the B-1 zone, but not on the ground floor. All but three (3) units are permitted; so there is a minor deviation. Applicant has attempted a different type of development but was not well-received by the Planning Board and residents; it had included commercial space. The site is at the edge of the downtown area; it is a unique situation and it is why variances exist. With respect to the Borough's Master Plan and Ordinance, it has been a concern of the Planning Board and Governing Body to encourage compact center, bring more vitality to downtown and provide housing. The Master Plan and Ordinance encourage this type of deviation.

He further discussed the three (3) c variances: front yard setback where 10' is required and 3.5 feet on Hillside Avenue, 4.7 feet on Inn Place are proposed. There are also variances related to height and intersection sight triangle. The proposed front yard setbacks are actually consistent with pedestrian environment, measured 15 feet from curb, which is the approximate average of the downtown. The topography is steep; therefore, the building will be broken up into different segments. A small portion of the building will exceed the permitted building height; however, a d variance is not required. The architecture was designed to break up building into different massing elements. With respect to the sight triangle, Inn Place is more like a driveway.

Mr. Grygiel indicated that certain purposes of the MLUL are being met, to which he described in some detail; the application is textbook example of Smart Growth. He discussed certain design waivers that are being requested: maximum wall height in front yard. There is a portion of the parking area along Inn Place within the front yard area; however, again, Inn Place is a unique ROW. Some parking spaces are less than 18 feet.

Ms. Lagay asked if tandem spaces were still being proposed; it was discussed at length at the previous hearing.

Mr. Grygiel indicated that it is common to provide tandem space, assigned to units with more than one (1) car---it is like a driveway on a single-family home. It is commonly accepted.

Mr. Tobin and Mr. Rabinowitz asked if tandem parking was ideal.

Mr. Grygiel indicated that you want to have enough parking spaces; it is appropriate here.

Mr. Frizell indicated it was not ideal, but it works.

Ms. Andrews asked if other developments were considered with respect with number of apartments and parking spaces.

Mr. Frizell and Mr. Grygiel referred to the Pearl Street and Renaissance projects.

Ms. Lagay indicated prior concerns that had been raised were related to number of units and parking spaces for this specific project.

Mr. Spiegel raised his concerns regarding prior uses with respect to previous site plans and subdivisions.

Mr. Frizell indicated that he would like the opportunity to address the extraneous issues. He indicated he has his architect and engineer available if there are any further questions.

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

Roland Staal, 72 Hillside Avenue, asked about what is reasonable walking distance to a grocery store;

Mr. Grygiel indicated that 1/4 to 1/2 mile is generally acceptable.

Mr. Staal questioned the parking.

Mr. Grygiel indicated that 1.7/unit was being provided. In his experience, there will be some tenants without parking. He acknowledged that tenants will still use their vehicle from time to time.

Evelyn Grant, 36 Highland Avenue, raised questions regarding counting metered parking and residential parking on Hillside Avenue.

Mr. Grygiel indicated that RSIS does not distinguish between metered and non-metered parking. It allows credit towards off-street parking.

Ms. Grant asked if residents of this building would be eligible for resident-only parking stickers.

Mr. Renaud believed that could only be addressed by the Police Department.

Mr. Frizell indicated that he had spoken to the Borough Administrator about this.

Ms. Grant asked if there would be a sidewalk on Inn Place.

Mr. Frizell indicated that would be addressed by his engineer.

Sean Massey, 93 Highland Avenue, raised questions regarding minimum and maximum parking requirements.

Mr. Grygiel addressed his concerns; ultimately, he opined that you did not want to go much more than 1.5 parking spaces per dwelling unit for a development such as this.

Mr. Massey asked Mr. Grygiel to speak to bundled parking.

Mr. Grygiel briefly explained the concept of bundling and un-bundling parking and opined it would be a good idea.

Mr. Massey asked if parking could be shared with other entities.

Mr. Grygiel indicated that it could work.

Mr. Schaeffer asked Mr. Grygiel to speak to the banking of parking.

Mr. Grygiel briefly explained the concept of banked parking; ultimately, it is up to the Board to permit it and/or require Applicant to come back should banked spaces be fully paved/utilized.

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

There was a long discussion regarding the front yard setbacks and comparisons made relative to the setback from curb with all other buildings in the B-1 Zone. Mr. Cosenza indicated that the proposed building is set back further than what is required. By Ordinance, the building should be closer to Hillside Avenue. Mr. Constantine indicated that the setback is a technical issue; no one really knows where the property lines are. The measurement from the curb is a form-based concept and is more accurate method to use, in an effort to maintain the pedestrian zone. Ms. Andrews asked about the setbacks of the houses down Hillside Avenue, to which Mr. Frizell indicated were further back; however, they are across Inn Place.

Robert Adler, Applicant's architect, was sworn in by Mr. Renaud.

Mr. Adler was qualified and accepted by the Board as an expert.

Mr. Frizell asked if Mr. Adler has been directed to put in a certain number of residential units.

Mr. Adler indicated he was not; all factors of site consideration were made.

Ms. Lagay asked about the size of the units.

Mr. Adler indicated that the units are smaller, ranging from 440 square feet for one-bedroom units to 700 to 800 square feet for two-bedroom units. There is a 3-bedroom unit, 1,259 square feet, which was added with consideration of comments made in previous hearing.

Mr. Frizell indicated that this three-bedroom unit will be discussed further, with respect to affordable requirement.

Mr. Adler indicated that the entrances to all of the units, aside from the three (3) units on the ground floor, are from courtyard. The project was designed deliberately to avoid users to park on Hillside Avenue. It will be easier to park on the site as opposed to off the site.

Ms. Andrews asked about the size of the parking spaces.

Mr. Frizell indicated that the smallest is 16 feet. It would be marketed as compact parking.

Ms. Andrews asked what the average one- or two-bedroom units are in Metuchen.

Mr. Adler indicated he did not know.

Ms. Lagay asked about the ground floor units.

Mr. Adler described the entrances to the units from Hillside Avenue. There is a landscaping area in front of each of the three (3) units.

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

Ms. Massey asked if there was any outdoor space.

Mr. Adler confirmed. There will be a space next to the courtyard parking area where there will be a fire pit.

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

Michael McKenna, Applicant's engineer, was sworn in by Mr. Renaud.

Mr. McKenna was qualified and accepted by the Board as a professional engineer.

Mr. McKenna indicated that a comparison regarding traffic generation was made between the proposed 19-unit building and the existing three (3) two-family dwellings; he opined that there will be de minimis change between the two (2) types. He indicated that the project will greatly improve the streetscape, providing for additional trees and a metered parking space.

Ms. Andrews asked how Mr. McKenna arrived at that analysis. She noted that two (2) of the six (6) existing units are vacant.

Mr. Renaud clarified that they used a statistical analysis, not a traffic study. It is a commonly-accepted model.

Ms. Andrews asked if a traffic study was done.

Mr. McKenna indicated that no study was done. The situation does not warrant one.

There was a discussion regarding the traffic.

Mr. Spiegel indicated that traffic on this site is fairly inert. He was comfortable with the analysis.

Ms. Lagay noted that there is a gate at the end of Inn Place; she asked if motorists can go through the end of Inn Place.

Mr. Frizell indicated that they could but should not. In response to a question raised by Mr. Spiegel, Mr. Frizell indicated that at the end of the street is another property, owned by Global Indemnity.

There was a discussion regarding the parking spaces on Inn Place.

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

Mr. Frizell announced that he had reviewed the Ordinance with respect to residential parking. The Borough Code only allows resident parking stickers to be issued in the zone where the parking is prohibited. In other words, you have to live on Hillside Avenue, east of Inn Place. If you live elsewhere, you cannot get a resident parking sticker somewhere else.

Mr. Renaud indicated that he had not heard of resident parking done any other way.

Ms. Lagay noted that someone in the public had wanted to address the testimony Mr. Frizell had given.

Mr. Renaud indicated that the hearing was not open to the public for comments or the application at the time, but deferred to Ms. Lagay.

Ms. Lagay indicated that she would allow comments.

Ms. Grant was sworn in by Mr. Renaud.

Ms. Grant indicated that the Police Department has discretion to vary the terms of the Ordinance; apparently, residents over the former Danford's building, at the corner of Main Street and Route 27, are given resident parking stickers to park on Highland Avenue.

Mr. Frizell understood the concerns and would not want to have his tenants parking on Hillside Avenue. He offered to have a condition to not permit tenants from applying for stickers.

Mr. Spiegel raised his concern regarding prior approvals at various lots owner by Mr. Frizell. He questioned whether or not the lot upon which the Inn Place parking is situation was dedicated for any particular use. It appeared to be the subject of at least one (1) resolution. He also questioned the retaining wall, stairway and walkway.

There was a long discussion regarding prior approvals. Ultimately, Mr. Renaud indicated that after review of all of the plans and resolutions, there did not appear anything indicating that the spaces on Inn Place were dedicated to the development that took place on Main Street. There did not appear be anything that would burden the Inn Place property with any obligation to provide parking in connection to any prior approvals. Mr. Cosenza opined that it had appeared that Applicant sought to provide additional parking, for no particular use. Mr. Constantine indicated that one of the findings of the prior approval indicated that Applicant agreed to resurface the parking area and retaining wall; it was improved for pedestrian connections.

There was further discussion regarding the Metuchen Board of Education and subdivision applications. Mr. Spiegel raised his concern that the parking lot was made into its own (tax) lot.

Mr. Spiegel noted that there appeared to be difficulty maneuvering out of the tandem parking spaces.

Mr. McKenna noted that the parking area will be improved and expanded into the wooded area. He illustrated the various improvements that would be made. The shorter tandem parking spaces would be designated compact parking.

Mr. Frizell indicated that he would prefer to construct the parking spaces since the site can accommodate it. If there was a parking off-site requirement, he would support it.

Ms. Sisko indicated that she is only concerned about the tandem parking spaces.

Mr. Spiegel opined that, after some thought, not as much parking is needed for the application. He is more concerned about movements within Inn Place and the retaining wall.

Mr. Frizell indicated that the application technically complies with RSIS.

Ms. Lagay asked Mr. Constantine to assist the Board.

Mr. Constantine discussed the Franklin Square development which is 1.75/unit and is also proposed by Applicant. Franklin Square is further away from the train station and has much larger units. If Franklin Square can park at 1.75, this site can park less. He is comfortable with the testimony that was given. It was discussed at the multiple subcommittee meetings. He is sympathetic to Applicant as Applicant has heard the Board wants parking on the site.

There was a discussion regarding downtown parking, future development in the downtown area and the concept of PILOP regulations.

Mr. Frizell he would not be opposed to complying with 1.5 parking spaces, losing a few of the shorter tandem spaces. There would still be 29 parking spaces.

Ms. Millet indicated that she lives in Franklin Square and opined that when there is on-street parking available, it would be taken in lieu of the tandem spaces.

Ms. Andrews asked if there was going to be additional testimony regarding the units and why they were so small.

Mr. Frizell indicated that they matched the demographic. It is difficult to raise a child in a one-bedroom apartment.

Ms. Andrews asked what the mix of bedrooms was.

Mr. Adler indicated that there are 10 one-bedroom units, eight (8) two-bedroom units and one (1) three-bedroom unit.

Ms. Andrews asked about the affordable housing element.

Mr. Frizell indicated that he supports affordable housing and seeks to comply. The problem is that the project is so small, the percentages do not work. The percentages were modeled after the growth share from the State, which was adopted into the Ordinance. That dictates maximum 20% one-bedroom units, minimum 30% two-bedroom units and minimum 20% three-bedroom units. 15% of the project should be affordable housing. 15% of 19 units is 2.85. It is a great financial burden to comply. Each unit has a value of \$150,000. Three (3) units is \$450,000. Since there is a fractional unit, he proposes to change the bedroom mix, effectively removing the three-bedroom unit. You have to balance the town's needs to making sure that the project does not get sucked in by the burden. He proposes to provide three (3) units: a moderate one-bedroom unit, a moderate two-bedroom unit and a low two-bedroom unit. The town would get the extra fraction. While there are supposed to be 50/50 low/mod. He proposes two (2) moderates and one (1) low. Since the project does not propose three-bedroom units, he opines it would be unfair to be required to put one in. Ultimately, it is up to the Board.

Mr. Frizell further described the COAH requirements for other developments over the years. He believed Franklin Square, Central Square, Homestead Village were at 10%. The variance on

Amboy Avenue was 15% to 20%. Overall, projects have been less than 15% affordable. He is proposing to comply with the Ordinance.

Board members opined that it was reasonable.

Mr. Spiegel asked about the percentages for Suburban Square.

Mr. Constantine indicated it was 15%. The last set of code rules differentiates between for-sale and for-rent housing, with 20% for for-sale housing and 15% for for-rent housing. In May, we may get further direction with respect to new COAH regulations.

Mr. Frizell indicated that on Monday of this week, the Appellate Division directed COAH to come up with new regulations. Current regulations are not in effect. Metuchen (and all towns) are on their own. However, Metuchen does have an ordinance in place.

Mr. Renaud asked Mr. Frizell what he was proposing.

Mr. Frizell indicated he desired to provide three (3) units, but not construct a three-bedroom unit.

Mr. Renaud indicated that Shirley Bishop's memorandum indicated that, based on the regulations that existed, (which are, in effect, are void at this time and may change), Applicant could not have one bedroom affordable units because no more than 20% of the units can be one-bedroom units: 20% of three is 0.6. She says that at least 30% of all low and moderate units have to be two-bedroom units which means that two (2) have to be two-bedroom units and at least 20% of all low and moderate units have to be three-bedroom units; in this case, 0.6 is required to be provided. In other words, two (2) two-bedroom units and a three-bedroom unit should be provided.

There was a long discussion regarding the affordable housing requirement, despite the recommendation effectively based on regulations that are void. Mr. Constantine indicated that the main obligation to the Borough is to provide affordable units. Mr. Frizell indicated that he is willing to provide more than the required number of units. The three-bedroom unit can be substituted with a one-bedroom unit.

Ms. Andrews asked about the weight of Ms. Bishop's recommendation.

Mr. Renaud indicated that the Borough pays for her advice; the Board also has Mr. Constantine's recommendations. It is ultimately up to the Board.

Board members discussed the affordable housing mix. Ultimately, the substitution of the three-bedroom unit with a one-bedroom unit was determined to be acceptable.

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

Ms. Grant indicated that the Chief of Police has the authority to vary the resident parking requirements.

Mr. Schaeffer was sworn in by Mr. Renaud. He opined that we need more projects like this. There are issues in the downtown: some people want more parking but we really need more bodies to support the downtown. He opines that there should be no tandem space, as it would be better for snow removal.

Mr. Massey was sworn in by Mr. Renaud. He indicated that he echoes Mr. Schaeffer's comments. He commended Applicant's presentation and professionals. It is a good project that is needed downtown. Parking is the issue. As he is on the Metuchen Parking Authority, we are working on a parking management plan. There appears to be an over-supply of parking. There is a capacity to handle overflow parking. There are resources available. He believes 1.5 parking spaces per unit is still too high. It should be more like 1.2.

Mr. Staal was sworn in by Mr. Renaud. He opined that it is a good project but the reality is that there are issues with respect to rush-hour traffic and around the train station, notwithstanding traffic studies. Again, it is a very nice project, but raised his concerns regarding the size of apartments. Everything seems to be a little bit too small.

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

Mr. Frizell offered a summation: with the Township of Edison surrounding us like a donut, tens of thousands of cars pass through us. Adopted into the Master Plan in 1995, it was desirable to add high-density development in the downtown area to build a critical mass. In the 40 years on Main Street, he sees that businesses are struggling. Cumulatively, downtown projects will help develop a critical mass. The Ordinance is antiquated and discourages development; the parking requirements are severe. This will be the finest building in Metuchen, all brick, stone surfaces and will be first quality construction. 19 units was the number of units that made the most sense. The concept of tandem parking is prevalent and it works. He has not heard a good case against tandem parking. He would prefer to build the tandem parking spaces. He prefers giving a tenant the option to having a tandem space. He indicated that he appreciates the attention and courtesy given to him and his witnesses.

Mr. Rabinowitz recalled testimony regarding the size of the units. He expressed confusion as he believed they were actually larger.

Mr. Adler clarified the square footages for the units; the one-bedroom units are as small as 607 square feet and the two-bedroom units can be as large as 1,300 to 1,400 square feet.

Mr. Renaud indicated that he made a list of items for the Board to rectify. The Board would address the c variances; there appeared to be sufficient testimony from Applicant's planner. There is the issue of tandem parking spaces, whether to remove the four (4) shortest parking spaces or to provide for all parking spaces as shown on the site plan. There is also the issue of affordable housing; a total of three (3) units are proposed.

Mr. Renaud further described the possible conditions. Applicant shall contract with the administrative agent regarding the affordable units, Applicant shall provide leases that indicate that tenants may not apply for resident parking permits, the tax lots are to be consolidated, Applicant has agreed to comply with the tree replacement requirements as well as the planner's and engineer's memorandum including the repair of Inn Place. Metuchen street lamps will be provided on Hillside Avenue, Applicant has requested a waiver of the street tree requirements on Inn Place.

Mr. Rabinowitz indicated that he would defer to Applicant; allow the tandem spaces to be constructed and stipulations be provided in the lease to restrict resident parking permits.

Mr. Sondergard agreed.

Mr. Renaud indicated that, after conferring with Mr. Cosenza, Applicant shall not only install the street lamps, but also provide for the electricity and maintenance of the lamps.

Mr. Frizell indicated that he did not believe that was possible.

Mr. Cosenza indicated that there would have to be a meter inside the building. It is common for sites not on Main Street in the downtown area.

Mr. Constantine noted that the sidewalk on Hillside Avenue would have to be compliant with the downtown standard.

Mr. Spiegel asked if there could be anything that could break up the massing of the building further, and the roofing on the lower parts of the building.

Mr. Frizell and Mr. Constantine indicated that they would work together on the small touches of the building.

Ms. Andrews raised her concern regarding the variance with respect to the front yard setback on Hillside Avenue.

Mr. Cosenza reiterated that the variance was being requested because it is less than 10 feet from the property; however, by Ordinance, for new buildings and subdivisions, the front yard setback shall be the average of buildings on adjacent lots. There are no lots on the right side and the liquor store on the left side is set back only two (2) feet. The proposed building is set back further than what is required.

Mr. Renaud clarified that the building is 15 feet from the curb.

Mr. Constantine agreed; it is consistent with other similar conditions throughout the downtown.

Mr. Tobin indicated that he had no problems with the setback. It is an urban development.

Mr. Spiegel noted that this application is the toughest for him. He appreciates the efforts made to address his concerns. He opines that the building should be smaller; there should be fewer units. He no longer has an issue with the parking. He wishes that the municipality would address parking requirements as it is a burden for developers. He still has an issue with parking on Inn Place; he wonders where some of the cars will go. He will ultimately support the project.

Mr. Sondergard opined that the project is well-designed and referenced prior experience on an application with the bank at the corner of Main Street and Route 27. It is not so big anymore.

Ms. Sisko indicated that the same concerns were raised regarding Franklin Square.

Ms. Lagay appreciates that the parking issues appear to be settled. She opined that removal of some spaces to allow for snow removal would be a good idea.

Mr. Spiegel indicated that he is convinced that the project could support less parking. He gets it now.

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

## RESOLUTIONS

**13-991**      **Mongelli LLC** – *Applicant is seeking site plan, use variance for height and bulk variance approval to construct a third floor addition – approved 1-9-2014*

439-443 Main Street                      Block 114, Lot 17.05                      B-1 Zone

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

**13-1006**      **Matt & Maria Fulham** – *Applicant is seeking bulk variance approval to construct an addition and new garage – approved 1-9-2014*

116 Main Street                              Block 215, Lots 1 & 1.01                      R-2 Zone

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

## CORRESPONDENCE

### **Minutes from May 9, 2013**

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

### **Minutes from July 11, 2013**

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

## **ADJOURNMENT**

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

The meeting adjourned at 11:15 p.m.

**Respectfully Submitted,**

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

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION GRANTING  
D VARIANCE, C VARIANCES, WAIVER/EXCEPTION AND  
PRELIMINARY AND FINAL SITE PLAN APPROVAL

TO

MONGELLI, LLC  
439-443 MAIN STREET  
BLOCK: 114, LOT:17.5  
APPLICATION NO.: 13-991

**WHEREAS**, Mongelli, LLC, hereinafter referred to as “the Applicant,” is the owner of Block 114, Lot 17.5 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 439-443 Main 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 D variance, C variances, waiver/exception and preliminary and final site approval; and

**WHEREAS**, the Metuchen Board of Adjustment held a public hearing on said application on November 14, 2013 and January 9, 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 July 25, 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., CME, dated November 8, 2013.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, PP, Borough Planner, dated November 11, 2013.

7. Building Plans entitled "Third Floor Alterations, 439-443 Main Street, Block 114 & Lot 17.5, Metuchen, New Jersey," prepared by Michael Burns, Architects, dated July 22, 2013, last revised December 3, 2013, consisting of nine sheets.

8. Survey entitled "Plan of Survey made for Mongelli, LLC situate in Metuchen – Middlesex Co., N.J.," prepared by Ken Hoffman & Associates, dated August 25, 2003 and consisting of one sheet.

**WHEREAS**, the Applicant was represented by Richard Mongelli, Esq. who appeared and gave testimony and who presented the testimony of Michael Burns, Architect and Planner; and

**WHEREAS**, the Applicant proposes to construct a third floor addition over the existing 2.5-story portion of an existing building for the expansion of additional office space; and

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

**WHEREAS**, the Applicant requires the following D variance:

§110-64, maximum building height – 35 ft./ 3-stories permitted, 35.3 ft./2.5-stories existing, 43.5 ft./3-stories proposed.

**WHEREAS**, the Applicant requires the following C variances:

§110-64, minimum front yard setback – 10 ft. required, 3.48 ft. existing, 3.48 ft. existing non-conformity proposed;

§110-64, minimum lot coverage open space – 10% required, 0% existing, 0% existing non-conformity proposed;

**WHEREAS**, the Applicant requires the following waiver/exception:

§110-154B, required parking.

**WHEREAS**, the Metuchen Board of Adjustment, after hearing the testimony in support of the application, and no member of the public having spoken for or against the application, and after considering the recommendations of the Board Engineer and the Board Planner, 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 114, Lot 17.5 shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 439-443 Main Street.
3. The property is located in the B-1 Central Business District. Applicant's proposed uses are permitted uses in the B-1 Zone.
4. The property is situated in the B-1 Central Business District, contains 8,114 sq. ft. (0.186 acres) and has 68.67 feet of frontage along the west side of Main Street (County Route #531). The property currently contains a split 1- and 2.5- story commercial/office building, exterior steps, paved driveway and associated parking facilities.
5. Applicant proposes to construct a third floor addition over the existing 2.5-story portion of the existing building for the expansion of additional office space, which is actually for the offices of Mr. Mongelli and other attorneys in the office.

6. Richard Mongelli, Esq., was sworn in and gave testimony. The subject premise is titled in Mongelli, LLC. The principals are Mr. Mongelli's wife and partner. He indicated that Applicant is seeking preliminary and final major site plan approval and variances.

7. The building is a mixed use building. There is retail on the first floor and law offices on the second floor. Applicant wishes to make usable space on the third floor for law offices. He indicated that after the Technical Review Committee review, the Applicant agreed to comply with all of the T.R.C recommendations and those recommendations have been included in the plan revisions. Mr. Mongelli also indicated that Applicant agrees to comply with all of the requirements and recommendations contained in the memoranda dated November 8, 2013 and November 11, 2013 from the Board Engineer and the Board Planner, respectively.

8. Michael Burns, licensed architect and licensed planner was sworn in, qualified and gave testimony. At the November 14, 2013 hearing, Mr. Burns testified regarding the plans which were originally submitted to the Board, which consisted of seven sheets.

9. Mr. Burns described the plans. The lot consists of approximately 8,114 sq. feet. There is an existing part 1-story and part 2.5-story existing masonry building with 10 parking spaces.

10. The existing zoning meets all of the zoning requirements except for front setback and lot coverage which are existing non-conformities.

11. Mr. Burns stated that there are three retail spaces on the first floor. These will not be changed. The plans show the existing second and third floor plans and the proposed second and third floor plans and the proposed elevations of the building.

12. Mr. Burns testified that the proposal, basically, is to remove the existing roof in the 2.5-story section and to put in a new roof and a "light monitor." Mr. Burns described the

proposed light monitor as a glass enclosed addition. He showed simulations of what the proposed light monitor would look like on the existing building.

13. Mr. Burns indicated that the Applicant will abandon the existing driveway and curb cut to Main Street and will improve the north side of the property with a landscape wall, plantings and walkway as shown on the simulations which was marked as Exhibit A-1.

14. Mr. Burns further testified regarding the simulations, which were contained in A-1, and described the expected appearance of the building both during the day and at night. He indicated that the Applicant expects to have the neighbor to the North cooperate and would have the proposed landscaping on the Applicant's side of the proposed walkway and lighting on the opposite side. Mr. Burns agreed that Applicant would work with the Board Planner with respect to possible benches or café tables in this walkway area.

15. Mr. Burns next addressed the building height issue. The land development ordinance limits building height to 35 feet in the B-1 Zone. The existing building height is 35.4 feet. With the light monitor, the proposed height of the building will be 43.5 feet, which exceeds the permitted height requirement by more than 10%, thereby triggering the D-6 variance. Mr. Burns offered the opinion that the variance can be granted under many of the purposes set forth in N.J.S.A. 40:55D-2, including purposes a,b,c,d,e,g,i,j and k. Mr. Burns explained how each of these purposes would be advanced by the granting of the requested variances.

16. Mr. Burns also testified that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. He indicated the Board could view the light monitor as an architectural feature, like a belfry or a cupola, both of which are exempt from height restrictions. He also indicated that the difference in height would be minimally visible.

He further testified, with respect to the C variances, that the benefits for the granting of the variances would outweigh any detriment.

17. Mr. Burns also addressed parking. He indicated that a parking waiver is requested. He stated that the additional space would require 8 additional parking spaces. He indicated that the Applicant will actually gain a parking space by the elimination of the driveway and curb cut. Mr. Burns stated that the subject premises are adjacent to a municipal parking lot and that it would appear that parking would be adequate, considering that condition. He also indicated that the proposal to remove the existing curb cut and driveway would have a positive impact on open space, and that the existing setback could not be changed. He indicated that the C variances could be granted under the C-1 hardship standard because Applicant is restricted to the existing lot.

18. Mr. Burns addressed the Boards Engineer's November 8, 2013 memorandum. With respect to the general comments, Mr. Burns indicated that the survey accurately reflected the existing improvements and Mr. Mongelli added that the number of employees, hours of operation, expected traffic, etc., would not be significantly changed by the inclusion of additional office space for the use of the attorneys.

19. With respect to the Board Engineer's site considerations comments in her November 8, 2013 memorandum, Mr. Mongelli had the following comments:

- (1) Applicant will comply.
- (2) Applicant will comply.
- (3) The site improvements will be as testified to by Mr. Burns and Mr.

Mongelli. Applicant agrees that it will work with the Board Planner with regard to paving materials, landscaping, lighting and finishes.

(4) Mr. Mongelli indicated that the tandem parking works in the building and that there will not be a significant increase in parking requirements. Mr. Mongelli and Mr. Burns agreed that a parking schedule will be provided.

(5) There will be a fenced in collection area for refuse.

(6) Applicant will comply.

(7) Applicant will comply.

20. In response to a question, Mr. Burns stated that no elevator is required by the Uniform Construction Code.

21. The Board Planner's memorandum of November 11, 2013 was addressed by the Applicant:

(1) Addressed in previous testimony.

(2) Addressed in previous testimony

(3) Addressed in previous testimony

(4) Addressed in previous testimony

(5) Addressed in previous testimony.

(6) Applicant agreed to work with the Planner and will comply with the recommendations contained in this comment.

(7) The Planner's comments are noted.

(8) Addressed in previous testimony.

(9) Addressed in previous testimony.

(10) Applicant will comply.

(11) Applicant will work with the Board Planner with respect to materials and colors.

22. Discussion next ensued between the Board and primarily Mr. Burns. Members of the Board expressed some concern with whether the proposed the light monitor is incongruous with the historical nature of the existing structure and whether the light monitor integrates well into the existing building. There was a discussion of whether the light monitor could be pushed back so that it would be less visible from the street. Applicant offered to move the overhang of the light monitor back so that it (the light monitor) would meet the 10 foot front setback requirement so that no variance would be needed for the light monitor itself. In response to questions from the Board, Mr. Burns indicated that a structure like the light monitor is a historical structure and has been used in a number of places, including in Montgomery Township, New Jersey.

23. Mr. Burns and Applicant agreed that Applicant would provide screening to shield the air conditioning units from view at the rear of the building, so as to comply with §110-136G of the Land Development ordinance which requires that HVAC systems be shielded from view.

24. With respect to the light monitor, the Board Planner suggested that the overhang in the light monitor in the front be set back at at least 10 feet, which Applicant indicated that it would consider and would provide plans. The Board indicated that the Board would have to see these plans.

25. At this point, the hearing was opened to the public. Andrew H. Zagoren indicated that he is the principal of the corporate owner of property at 430-438 Main Street, across the street from the subject premises. He asked whether there had been a light or wind study done. He indicated that wind blows through the alleyway. He is concerned about light refracting and what the effect of the sun on the proposed glass in the light monitor would be. He also wondered

whether the Fire Department has a ladder high enough to fight fires on this proposed building. He commented about the building being non-conforming.

26. There being no further comments, the hearing was closed to the public at this point.

27. After some discussion, Applicant was directed to return to the Board and to submit revised plans, including a parking analysis, and showing the overhang and the light monitor moved back to the 10 foot setback, and to include screening of the mechanicals on the roof at the rear of the building and an analysis of the reflection from the light monitor. The hearing was scheduled to resume on January 9, 2014 and an announcement to that effect was made.

28. Applicant returned on January 9, 2014. Revised plans were submitted. These plans included Sheets 5A and 5B, which included a revised parking plan with parking analysis on Sheet 5A and an analysis of the sun's reflection off of the light monitor on Sheet 5B, as well as the relocation of the light monitor. Applicant also introduced an exhibit, which was again marked Exhibit A-1, which showed the same features as had been in Exhibit A-1 that was introduced at the prior hearing, but which also included the sun reflection analysis and also included photographs of existing buildings which contained light monitors in various locations, including those in Europe, and also one in Georgetown.

29. Mr. Burns again testified. He discussed Exhibit A-1 which had been marked at this hearing. He indicated that this Exhibit reflected the overhang of the light monitor which had been moved back in line with the 10 foot front required setback. He also indicated that the light monitor, based on his study, would not reflect on the property at 430-438 Main Street. He discussed light monitors in various classical buildings as shown in A-1. He included in A-1 and

discussed the Secretary of the Interior Guidelines for Historic Buildings and indicated that the light monitor would conform with those guidelines. He described the photo merge of the building from Main Street. He also indicated that the renovations to the building will include reinstating the circular windows which had been covered over in the building and which are shown on the front façade of the photo merge as shown in A-1. These windows will be glazed.

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

31. The Board finds that the height variance may be granted because, Applicant has demonstrated special reasons for the granting of same, consistent with the testimony of Mr. Burns, that is, that the granting of the height variance will advance several of the purposes of the Municipal Land Use Law, including purposes a,b,c,d,e,g,i,j and k.

32. The Board further finds that the front yard setback, lot coverage and open space variances may be granted under the hardship criteria because by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully thereon, the strict application of the front yard setback requirement and the minimum lot coverage and open space requirement would result in particular and exceptional practical difficulties and exceptional undue hardship upon the Applicant, because the conditions are existing. Changing those conditions would be impractical.

33. The Board finds that the waiver/exception for parking may be granted in this case because the literal enforcement of the parking requirements would be impractical or would exact undue hardship because of the peculiar conditions pertaining to the land in question, namely, the lack of room for providing parking on-site.

34. 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. The front setback is an existing condition which will not be affected by the construction at this property. The lot coverage is also an existing condition which will not be affected by the construction at this property. The height variance will not adversely impact other properties in the neighbor and may also be granted under the reasoning suggested by Mr. Burns, that is, that the light monitor is more of an architectural feature, like a belfry or a cupola, than it would be like a complete third floor at the stated height.

35. The Board further finds that the application for preliminary and final site plan approval with D variance, C variances and waiver/exception for parking 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 Mongelli, LLC for D variance, C variances, waiver/exception and preliminary and final site plan approval be and is hereby granted in accordance with the application and plans filed herein, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Board of Adjustment.

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

C. Applicant shall, as agreed, work with the Board Planner with respect to the walkway on the North side of the building and with respect to colors, surfaces, plantings, walkways, sidewalk design and the like. If required by the Board Planner, the Applicant shall submit, for the Planner's approval, revised plans reflecting such features. Applicant shall screen the mechanicals on the roof of the building as set forth in the revised plans.

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 memorandum dated November 11, 2013 and November 8, 2013, respectively.

E. The application shall be subject to the approval of the following outside agencies or a letter of no jurisdiction: Borough of Metuchen Fire Department, Freehold Soil Conservation District, Middlesex County Planning Board, Middlesex County Utilities Authority, Middlesex Water Company, New Jersey Department of Transportation for access and drainage, and any and all other agencies that may have jurisdiction.

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.

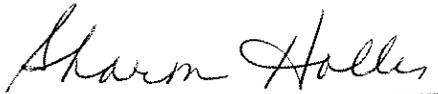
**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval 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 meeting of January 9, 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, Secretary

Dated: March 13, 2014

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION  
GRANTING C VARIANCES TO  
MATTHEW AND MARIA FULHAM  
116 MAIN STREET  
BLOCK: 215, LOTS:1 & 1.01  
APPLICATION NO.: 13-1006

**WHEREAS**, Matthew and Maria Fulham, hereinafter referred to as “the Applicant,” are the owners of Block 215, Lots 1 and 1.01 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 116 Main 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 C variances; and

**WHEREAS**, the Metuchen Board of Adjustment held a public hearing on said application on January 9, 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 August 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., CME, dated December 10, 2013.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, PP, Borough Planner, dated December 9, 2013.

7. Building Plans entitled “Addition for Fulham Residence, 116 Main Street, Metuchen, New Jersey 08840,” prepared by Mark P. Marcille Architect, dated June 11, 2013, consisting of four sheets.

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

**WHEREAS**, the Applicant seeks C variances to construct an addition and screened porch at the rear of an existing dwelling, a new front porch and a new 1 ½ story two car, detached garage at the rear of the subject premises, located at 116 Main Street; and

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

**WHEREAS**, the Applicant requires the following C variances:

§110-64, minimum lot area – 7,500 sq. ft. required, 6,492 sq. ft. existing non-conformity;

§110-64, minimum lot width – 50 ft. required, 37.50 ft. existing non-conformity;

§110-64, minimum lot width at setback – 62.5 ft. required, 39.8 ft. existing non-conformity;

§110-64, minimum front yard setback – 25 ft. required, 0.9 ft. existing (Main St.)/14.9 feet existing (Myrtle Ave.), 6.75 feet proposed (Main St.)/10.8 feet proposed (Myrtle Ave.);

§110-64, minimum side yard – 8 feet required, 4.4 feet existing non-conformity, 5 feet proposed;

§110-64, minimum building coverage – 30% permitted, 16.2% existing, 35.1% proposed;

§110-101.C., sight triangle – 25 feet x 25 feet triangle area required, proposed as set forth in plans.

**WHEREAS**, the Metuchen Board of Adjustment, after hearing the testimony in support

of the application, and no member of the public having spoken for or against the application, and after considering the recommendations of the Board Engineer and the Board Planner, 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 215, Lots 1 and 1.01 shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 116 Main Street.

3. The property is located in the R-2 Zone District. The site currently contains a two story, single-family residence, wood deck, detached garage, paved driveway, walkways and lawn areas. The Applicant proposes to construct an addition and screened porch at the rear of the dwelling, a new front porch and a new 1 ½ story two car, detached garage at the rear of the lot.

4. The lot has existing non-conformities for lot area, minimum lot width at street and minimum lot width at setback. The home has existing non-conformities for minimum front yard setback and minimum side yard, as well as minimum sight triangle. The existing non-conformities are not being proposed to be expanded. The proposed addition will be within the non-conformities which already exist for the existing residence, that is, for example, the minimum side yard violation will not be increased. The only new variance will be for maximum building coverage, where 30% is permitted, 16.2% is existing, and 35.1% is proposed. The Board Planner's memorandum dated December 9, 2013 pointed out, however, that if this application had been filed under the current ordinance, which was recently enacted, the ordinance replaces minimum "open space" with maximum "impervious coverage," and the application would conform to the maximum 50% impervious coverage standard.

5. Matthew Fulham was sworn in and gave testimony. He and his wife are the owners of the subject premises. They are presently renting in Sayreville, New Jersey but they would like to construct the proposed addition and will live at the subject property. They wish to make the house more livable. Because the lot is so narrow, Mr. Fulham feels the rooms are not usable.

6. Mr. Fulham discussed several Exhibits; A-1, a color rendering by the Architect Mark P. Marcille; A-2, a site plan; and A-3, a landscaping plan.

7. Mr. Fulham described the plans for the residence. He discussed the existing improvements as shown on the survey of the property. He also discussed the first and second level floor plans, and the elevations of the buildings. He also discussed the garage plan. The garage will be 1 ½ stories with dormers. Applicant proposes to use the half story for storage. The Board discussed whether any additional restrictions other than those already contained in the land development ordinance should be placed on the garage and ultimately decided that the Applicant would be restricted only by the land development ordinance.

8. John Wiley, Jr., Esq., Applicant's attorney, went through the Board Engineer's and the Board Planner's memorandum regarding the subject proposal. With respect to the Board Engineer's December 10, 2013 memorandum, under site considerations, Mr. Fulham responded:

- (1) The half story above the garage will be used for storage.
- (2) Applicant will comply with the request for grading and elevation information.
- (3) No additional walkways are proposed.
- (4) The existing walkway will be removed and will not be replaced. The existing garage will be removed.

- (5) Applicant will comply.
- (6) Applicant will comply and provide appropriate revised plans.
- (7) Applicant will comply and provide appropriate revised plans.
- (8) Applicant will comply.
- (9) Applicant will comply.
- (10) Applicant will comply.
- (11) Applicant will comply.
- (12) Applicant will comply.

9. Mr. Fulham also addressed the Board Planner's December 9, 2013 memorandum:

- (1) Applicant will revise the plan to show the correct front setback distance.

The Planner's comments and the Applicant's testimony showed that the setback variance from Main Street is actually less than applied for, since the setback is to the house, rather than the open porch. It appears that 14.52 feet is the correct Main Street setback applied for rather than the 6.75 feet proposed as shown on the architectural plans. The setback variance and sight triangle variance applied for, therefore, would be an improvement of the existing condition.

Applicant agreed to provide revised plans showing the correct setback.

- (2) Applicant testified with respect to the existing lot. The proposed garage is bigger (2 car versus 1 car) than the existing detached garage.

- (3) Applicant agreed that the improvements on the property would meet the impervious coverage standards of the new land development ordinance revisions.

- (4) Applicant indicated that they are contemplating blue vinyl siding or a beige look on the property.

(5) Applicant provided a proposed landscape plan. There was a discussion of shade trees. Based upon the number and size of the trees removed, the zoning officer indicated that Applicant would be required to contribute thirteen trees under the Borough's tree replacement ordinance. It was explained to the Applicant and Applicant understood and agreed that to the extent that a deficiency in the number of trees placed on the subject premises existed, that the balance be in the form of a monetary contribution to the Shade Tree Commission for the planting of additional trees elsewhere. For example, if Applicant placed eight trees on the subject premises, there would be a deficiency of five to be contributed to the Shade Tree Commission. A preliminary review of the landscape plan by the Planner indicated that perhaps all of the thirteen trees were accommodated on the plan for the subject premises. In any event, Applicant agreed that he will comply with the ordinance with respect to replacement trees. With respect to the issue of driveways, the property currently has two driveway openings. The proposed driveway would have less impervious coverage, thereby creating a better condition. The Board discussed the width of the proposed driveway. Applicant proposes a driveway width of approximately 18 feet from curb to garage. The Board was of the opinion that Applicant should comply with the new driveway standard, which would require a driveway width at the apron of no more than 12 feet and which would permit the driveway to flare to no more than 20 feet at the garage. Applicant agreed to comply with this standard.

(6) Applicant confirmed that the proposed ½ story above the garage is for storage and no additional living area is proposed.

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

11. The Board finds that the relief requested may be granted because the Applicant

has demonstrated that due to the extraordinary and exceptional situation uniquely affecting Applicant's property and the structures lawfully existing thereon, that is, the existing narrowness and lot area, as well as the existing residence, the strict application of §110-64 with respect to lot area, minimum lot width at street, minimum lot area at setback, minimum front yard setback, minimum side yard and sight triangle setback would result in peculiar and exceptional practical difficulties and exceptional and undue hardship to the Applicant because Applicant is severely restricted by the narrowness of the existing lot.

12. The Board further finds that the relief with respect to maximum building coverage may be granted because the benefit of granting that variance outweighs any detriment, due to the fact that the ordinance has been revised and that the application meets the new ordinance restrictions with respect to impervious coverage.

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 because the existing residence already does not conform to the dimensional requirements and the addition will cause no further deviation.

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

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Metuchen that the application for C variances of Matthew and Maria Fulham be and is hereby granted in accordance with the application and plans filed herein, subject to and conditioned upon the following:

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

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

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

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

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

E. Applicant shall comply with the following additional conditions:

1. The variances granted are limited to the variances requested. No other variances have been requested or have been granted.

2. Applicant shall comply with the recommendations and requirements contained in the Board Engineer's memorandum dated December 10, 2013.

3. The zoning chart shall be revised to correctly reflect the variances required, including, but not limited to, front setback to Main Street.

4. Landscaping to be provided shall be subject to the review and approval of the Board Planner.

5. The proposed driveway shall be limited to a width of 12 feet at the apron, flaring to no more than 20 feet at the garage.

6. Applicant shall comply with the Borough tree replacement ordinance.

F. Approval of the variance 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.

G. Applicant shall have prepared and shall submit revised plans, reflecting the conditions of this approval and reflecting the recommendations and requirements contained in the Board Engineer's memorandum within 60 days of the date of this resolution. Such revised plans shall be subject to the review and approval of the Board Engineer and the Board Planner.

**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 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 January 9, 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.

  
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Sharon Hollis, Secretary

Dated: March 13, 2014