METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

May 8, 2014

The meeting was called to order at 7:50 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

Present:	Suzanne Andrews Pat Lagay, Chairperson Catherine McCartin Judith Sisko Byron Sondergard Daniel Spiegel	Brian Tobin, Vice Chairperson Jonathan Rabinowitz, Alt. I Mike DiGeronimo, Planner Robert Renaud, Attorney Lisa DiFranza, Engineer Chris S. Cosenza, Zoning Officer
Late:	(none)	
Absent:	Eileen Millett, Alt. II	

Mr. Renaud announced that the application for New York Avenue is no longer on the agenda as the notice that was given was defective, in that it was not sent out on time. It will be relisted onto the June agenda. Applicant will have to re-notice.

NEW BUSINESS

14-1018 **Kumar Gas & Go Inc**. – Applicant is seeking a use variance to permit an electronic gas sign.

99 Middlesex Avenue Block 36, Lot 3 R-4 Zone

Mr. Spiegel recused himself from the hearing.

John Wiley, Jr., Applicant's attorney, explained that the property has been before the Board in 1987. The use, a gas station, has been there since the 1950s. It is located in the R-4 zone. If you make almost any change to the property, Applicant will have to come before the Zoning Board of Adjustment for a use variance. Tonight, Applicant is requesting approval for a digital sign which shows the price of gasoline. He indicated that he would have two (2) witnesses: Rajinder Kumar, the owner of Kumar Gas & Go, Inc. and John McGlynn, owner of the property would testify.

Mr. Renaud indicated that there had been considerable discussion among the professionals and Mr. Cosenza regarding this application and exactly why the Applicant is here. Just to summarize for the Board, this is an application that was originally granted by variance. The variance that was granted took into consideration that it was a long-standing non-conforming use. The variance was essentially to permit an addition to the property. Originally, there was a d variance. That is the reason why the application is here. Basically, if you have the property with a d variance that was granted, when there is something that brings the property before the Board, then it is going to come before this Board. They are proposing to replace an existing sign in the

same location with the same dimensions as the sign that it replaced. The difference in the sign is that this sign is an electronic sign that has digital gas prices. It does not meet any of the permitted descriptions of the Ordinance. It is a variance from section 110-191.N, which says, "all signs not specifically permitted under any provision in this article are hereby prohibited." The type of sign that is proposed was, in all probability, not in existence when the Ordinance was written. This could be a reason why the Board could consider granting the variance. Ultimately, all of the d variance testimony is not necessary as it was already taken care of in prior applications. The matter before the Board is whether or not to approve the sign. We do not need an enhanced vote, only a majority vote is necessary.

Mr. Wiley indicated that he did not disagree with any of Mr. Renaud's comments.

Mr. Kumar was sworn in by Mr. Renaud. He indicated that he is an officer of Kumar Gas & Go, which operates the fuel pumps at 99 Middlesex Avenue. The proposed sign, which is observable at this time, is a digital electronic sign. The gas station is a Citgo gas station. Any new technology that comes about most be adopted. The digital signs are easier to read and the placards do not need constant replacing. It is a new technology.

Mr. Wiley noted that the Engineer has questioned the pylons, to which Mr. Kumar indicated that the pylon signs of the East and West sides of the property have been removed. No other site improvements are being proposed.

Mr. Kumar indicated that the hours of operation of the station are 5:00 a.m. to 10:00 p.m. Monday through Friday and 7:00 a.m. to 10:00 p.m. Saturday and Sunday. The sign is turned off when the station is not in operation.

Mr. Rabinowitz asked if the sign would be considered to be a nuisance.

Mr. Kumar indicated that the red lettering is bright, but when compared to the old box, internally-lit sign, he opined that (what is proposed) is better.

Ms. Lagay asked about the surrounding properties.

Mr. Wiley pointed out that the railroad tracks are in the rear of the property, Metuchen Manor is to the East and that there is a law office and some residences across the street.

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

Mr. McGlynn was sworn in by Mr. Renaud. He indicated that he is the owner of the property at 99 Middlesex Avenue. He was involved in the 1987 application. He was present for all of the improvements.

Mr. Wiley indicated that the Engineer had questions about the foundation.

Mr. McGlynn indicated that it was inspected by the Borough when the concrete was poured.

Ms. Lagay asked if the sign was inspected, why is Applicant here before the Board.

Mr. Wiley indicated that Applicant had a sign, which was approved many years ago. Today, it is now a digital electronic sign. It is a different sign. Signs of this type are not generally permitted in this zone. They are not deviating from any of the site plan elements.

Mr. Renaud clarified that the Sign Ordinance has several sections that talk about what kind of signs you can have. This is not one of them. There is a specific provision that says that if the sign that you want to put up is not one of these, then it is not permitted. That is why they are here. A sign of this type is not specifically permitted.

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. Sisko opined that perhaps the language (of the Ordinance) should be reconsidered to permit these types of signs to keep up with modern technology.

Mr. Cosenza noted that there are placard signs at the pumps. He asked if there was a plan to install LED signs at the pumps themselves.

Mr. Wiley indicated that it was not proposed to be change.

Mr. Cosenza stated that he understood but opined that this was the opportunity to ask for them, should it be desired. He did not believe Applicant would want to come back to the Board just for these types of signs. LED signs are only permitted inside the windows of principal buildings.

Mr. Wiley indicated that Applicant does not anticipate that at this time.

Ms. Lagay asked about the landscaping.

Mr. Wiley indicated that he and Applicant would have to look at the prior approval and see what landscaping was deficient and go from there.

Mr. Rabinowitz asked, to Mr. Cosenza's point, why not ask for it.

Mr. Renaud opined that these types of signs should be brought up at the end of the year. It will be difficult for the Board to approve a sign that has not been applied for or does the Board have plans for. He indicated that he Board was voting on a c variance for the LED sign. The sign itself is in the same location and has the same dimensions as the previously-approved sign.

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

Mr. Spiegel returned to the dais.

Mr. Renaud requested that the Board recess for a few minutes.

The Board recessed at 8:13 p.m. and reconvened at 8:19 p.m.

14-1015 **Life St. Francis** – Applicant is seeking an interpretation regarding the use and review of a concept plan for an Adult Day Care Center.

325 High Street Block 152, Lot 25.02 L-I Zone

Mr. Renaud indicated that, unfortunately, there is a legal issue with the application. He was not aware until he arrived that no notice was neither required nor given with respect to this application. He does not fault the Applicant's attorney and, in fact, he makes an argument that he understands. There is a statute about notice for four (4) kinds of things that can come before the Board of Adjustment: a for appeal, b for interpretation, c variance and d variance. Under the Municipal Land Use Law (MLUL), notice is required for an Application for Development, an application for a variance. The definition does not include one for an appeal or an interpretation. However, in a case Stafford vs. Stafford Zoning Board of Adjustment, the Supreme Court determined that where there is a determination about a non-conforming use, that it was a serious application. Even though the statute did not literally require notice, notice was required and therefore invalidated an approval that was given without notice. There are no Supreme Court rulings for interpretations. He has always understood, at least from the Stafford case, that notice is required for all applications. Mr. Wiley disagrees. Mr. Renaud indicated that the Ordinance does not list interpretations as requiring notice. Having said that, he would essentially leave it to the Board as to whether or not the Board can hear the application without notice.

Mr. Wiley indicated that he was asking the Board only for an interpretation, whether an L-I zone would permit a use his client is proposing. Later, his client will apply for site plan approval as necessary. This is, in his mind, a policy issue. He understands that it may ultimately lead to a use variance anyway. Assuming the Board would hear the case without notice, he would proceed to describe the use so the Board can make a determination based on his client's presentation. He would defer to the Board as to whether or not to hear the case.

Mr. Renaud raised his concern that, if Mr. Wiley is correct, the problem is that for site plan approval, the public is noticed. The public will come to the hearing and they will ask if the use is a permitted use. The Board would say it was already decided it was a permitted use. The public would then ask if they were noticed for that.

Ms. Andrews indicated that was her concern as well. She was not comfortable with the application to go forward when the Board could potentially take action without notice. She does not understand why notice was not given.

Mr. Spiegel indicated that, over the past 27 years, he has heard about 15 interpretations. He does not recall notice ever being given. He asked when the Stafford case was heard.

Mr. Renaud indicated it was heard in 1998.

Board members discussed the merits of providing notice, in order to be mindful of the residents in the neighborhood. Board members opined that notice should be provided.

A motion to require notice for an interpretation was made by Ms. Andrews and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Andrews, Ms. Lagay, Ms. McCartin, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Rabinowitz voted yes. Motion passed unanimously.

Ms. Lagay indicated that it is unfortunate as the clients are available. Board members were looking forward to seeing the presentation.

RESOLUTIONS

06-727 **Metuchen I, LLC** – *Applicant is seeking a modification of a condition in the resolution – approved April 10, 2014*

215 Durham Avenue Block 71, Lot 37.02 L-I Zone

A motion to approve the resolution as written was made by Mr. Spiegel and seconded by Mr. Sondergard. Roll call vote taken. 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 – approved April 10, 2014*

48 Voorhees Place Block 186, Lots 66-68 R-2 Zone

A motion to approve the resolution as written was made by Mr. Spiegel and seconded by Mr. Tobin. 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 – approved April 10, 2014*

206 Amboy Avenue Block 184, Lot 51 R-2 Zone

A motion to approve the resolution as written was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Roll call vote taken. Ms. Lagay, Ms. McCartin, Mr. Sondergard, Mr. Spiegel, Mr. Tobin and Mr. Rabinowitz voted yes. Motion passed 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 8:35 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

BOARD OF ADJUSTMENT
BOROUGH OF METUCHEN

RESOLUTION OF MEMORIALIZATION GRANTING
REQUEST FOR MODIFICATION OF CONDITION OF APPROVAL
TO
METUCHEN I, LLC
215 DURHAM AVENUE
BLOCK 71, LOT 37.02
APPLICATION NO.: 06-727

WHEREAS, Metuchen I, LLC, hereinafter referred to as "the Applicant," is the owner of premises located at Block 71, Lot 37.02 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 215 Durham Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

WHEREAS, the Applicant has previously applied for and has been granted conditional use variance, bulk variances, preliminary and final site plan and design waiver approval; and

WHEREAS, on April 21, 2009, the Zoning Board of Adjustment of the Borough of Metuchen adopted a resolution memorializing its action taken on February 24, 2009, granting such approvals, which Resolution contained numerous conditions of approval; and

WHEREAS, Condition C of said approval provided:

> The Applicant shall establish the location of the proposed public roadway connecting Middlesex Avenue and Durham Avenue and shall construct same per Borough specification within eighteen (18) months of the date of this approval. If the Applicant is unable to achieve commercial zoning and site plan approval for its adjacent lands located between this site and Middlesex Avenue, it shall apply for an extension of this condition. Such request shall be filed sixty (60) days prior to the expiration of the 18 months.

WHEREAS, Applicant has filed an application on March 27, 2014, with the Board of Adjustment requesting modification of Condition C to extend the time for extension of a public

road across Applicant's adjacent lot 37.01 to Middlesex Avenue from the 18 month period set forth in the Resolution to July 1, 2016; and

WHEREAS, the Board of Adjustment of the Borough of Metuchen held a public hearing on said application on April 10, 2014, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, at said hearing the Zoning Board considered the following documents:

1. Application for development dated March 28, 2014;

2. Proof of payments of taxes and assessments;

3. Application and escrow fees;

4. Board of Adjustment Resolution on Application No.:06-727, adopted April 21, 2009;

5. Letter dated February 19, 2014 from Stephen E. Barcan, Esq., explaining the basis of the extension request;

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, P.P., Borough Planner, dated April 8, 2014; and

WHEREAS, the Applicant was represented by Stephen E. Barcan, Esq.; and

WHEREAS, the Board heard the presentation by Mr. Barcan as follows:

1. Mr. Barcan explained, as stated in his February 19, 2014 letter, that while Metuchen I, LLC, has had a number of prospective tenants, none have committed to coming to the site, specifically, Lot 37.01, which is where the new development will take place and where the road is to be constructed. He indicated that only Skylands Bank has committed to being located on the property, which is adjacent to the Sportsplex. The proposed road is to run from Durham Avenue to Middlesex Avenue.

2. Mr. Barcan further requested that the Applicant be given time to finalize the plans of a new occupant of the property. He affirmed that the Applicant is still responsible to complete the road, but indicated that the exact location of the road will depend upon the occupants of the property. He requested that the time for the Applicant to construct the road be extended to July 1, 2016.

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

WHEREAS, the Board of Adjustment of the Borough of Metuchen, after hearing the presentation in support of the application, and the comments and the recommendations of 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 71, Lots 37.02, as shown on the official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 215 Durham Avenue. The proposed road will traverse Applicant's adjacent property, Lot 37.01.

3. For the reasons proposed by the Applicant, the Board agrees that the extension of time to construct the road, as required by Condition C of the April 21, 2009 Resolution be granted. The Board finds that the requested delay of the construction of the road until tenants or occupants of Lot 37 have been secured, and granting the extension to July 1, 2016 is a reasonable request and that no substantial detriment to the public good will result from the delay in the construction of the road.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application of Metuchen I, LLC for modification of Condition C of the Board of Adjustment Resolution of April 21, 2009 to extend the time for extension of the public road across Lot 37.01 to Middlesex Avenue to July 1, 2016, be and is hereby granted subject to and conditioned upon the following:

A. Publication by the Application 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, taxes, escrows or assessments for local improvements are due or delinquent on the property in question. No permits, if any, shall be issued until all fees, taxes and escrows are paid in full.

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

D. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all of the applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey, as well as its previous resolution of approval. No further deviations from the zoning ordinance or site plan regulations or prior approvals shall be permitted without the approval of the Planning Board.

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 if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

BE IT FURTHER RESOLVED that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of April 10, 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: May 8, 2014

BOARD OF ADJUSTMENT
BOROUGH OF METUCHEN

RESOLUTION OF MEMORIALIZATION GRANTING
C VARIANCE TO
CHONGYOUL AND BYONGNAM KIM
48 VOORHEES PLACE
BLOCK 186, LOTS 66, 67 AND 68
APPLICATION NO.: 14-1025

WHEREAS, Chongyoul and Byongnam Kim, hereinafter referred to as "the Applicant," are the owners of Block 186, Lots 66, 67 and 68 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 48 Voorhees Place, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

WHEREAS, the Applicants have applied to the Board of Adjustment for the Borough of Metuchen for approval of C variance; and

WHEREAS, the Board of Adjustment of the Borough of Metuchen held a public hearing on said application on April 10, 2014 after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, the Board of Adjustment considered the following documents:

1. Zoning permit.

2. Board of Adjustment Application for Development dated March 20, 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., CME, dated April 7, 2014.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, PP, Borough Planner, dated April 8, 2014.

7. Plan entitled "Preliminary and Final Site Plan, Kim Residence Driveway, 48 Voorhees Place, Block 18, Lots 66,67 & 68, Borough of Metuchen, Middlesex County, New Jersey," prepared by JFS Engineering, PC, dated February 2, 2014 and consisting of two (2) sheets.

8. Plan entitled "Record Plan for Lots 66, 67 & 68, Block 18, Situate in Borough of Metuchen, Middlesex County, New Jersey," prepared by Fox & Foxx Surveying, LLC, dated September 9, 2010.

9. Project narrative- 48 Voorhees Place.

WHEREAS, the Applicant was represented by John Wiley, Jr., Esq., who appeared and presented that testimony of the Applicant, Chongyoul Kim.

WHEREAS, the subject property is situated in the R-2 Residential Zone District and contain 7,500 sq. ft. (0.172 acres). The property has 75 feet of frontage along the east side of Voorhees Place. The site currently contains a 2-story, single family residence with a two car attached garage, walkways and paved driveway; and

WHEREAS, the Applicant proposes to widen the existing 9 foot wide driveway to 18 feet wide at the apron; and

WHEREAS, the applicant requires the following C variance:

§110-112.3C, driveway width – maximum width of 20 ft., with maximum width at 12 ft. at the driveway apron required; 19 foot width with 9 foot width at the apron existing; 19 foot width with 18 foot width at apron proposed; and

WHEREAS, the Board of Adjustment of the Borough of Metuchen, after hearing the testimony in support of the application, and after considering the recommendations of the Board

Engineer and 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 186, Lots 66, 67 and 68 shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 48 Voorhees Place.

3. The property is located in the R-2 Residential Zone District.

4. Mr. Wiley gave an opening statement in which he indicated that the subject property is located on a dead end street and that the Lot has been redeveloped with a new house. It has a 9 foot driveway width at the apron, which is too narrow to maneuver. Although the new ordinance permits a width at the driveway apron to 12 feet, Applicant requests an 18 feet wide driveway at the apron.

5. Mr. Chongyoul Kim was sworn in and gave testimony. He said that he and his wife cannot maneuver their cars into the driveway. They must park in the street. He asked what is the purpose of a two car garage if the driveway is so narrow that it is impossible to use. There was a discussion of the fact that a street tree will have to be removed if the driveway is widened. Applicant proposes to remove an existing 6.5 inch oak tree. Mr. Wiley indicated that the Applicant will be required to pay $550 to the tree replacement fund to remove the tree.

6. Mr. Wiley confirmed that the Applicant will comply with all of the recommendations and requirements contained in the Maser Consulting, P.A. review letter dated April 7, 2014.

7. There was some discussion wherein Board members expressed being troubled by granting a variance from the recently adopted ordinance expanding driveway width at the apron requirements from a maximum of 9 feet to a maximum of 12 feet. It was noted that the side of the street on which the Kim residence is located does not have many double driveways.

8. The hearing was opened to the public for questions. Joanne Deibert of 7 Whitman Avenue asked why the Board restricted the width of driveways. The Board Attorney and members of the Board indicated that the Borough Council adopts zoning ordinances, not the Board of Adjustment. Jim Constantine, Board Planner, explained the reasons for the restrictions, to reduce impervious surfaces and to allow for on-street parking.

9. Gerald Yaros of 67 Voorhees Place stated that he does not know why the width went from allowing a two car driveway down to 9 feet and then up to 12 feet. He indicated that many people on Voorhees had two car driveways.

10. Byongnam Kim of 48 Voorhees Place, one of the Applicants, stated that they are paying taxes for a two car driveway. The street does not have any sidewalks.

11. There being no further questions, the hearing was closed for questions.

12. Mr. Wiley stated that they are no sidewalks on the Applicants' side of Voorhees. He indicated that the Applicant would replace the entire driveway if required to do so.

13. Exhibit B-1, photographs of the property were introduced in evidence without objection.

14. The hearing was opened to the public for comments. Lorraine Altman of 49 Voorhees Place attested to the difficulty that the Applicant is having in maneuvering their cars into their driveway. She feels that the narrowness of the driveway at the apron is ridiculous. The

prior home was a smaller Cape Cod. Mrs. Altman feels that the property owners should be able to pull into and pull out of their driveways.

15. Mr. Toderic of 52 Voorhees Place stated that he lives next door to the Applicant. The width of the driveway is inadequate. They have a two car garage. Having a two car driveway makes sense.

16. Gerald Yaros stated that a two car garage should have a two car driveway. He feels that 12 ft. is ridiculous.

17. Laurie Hart of 25 Voorhees Place stated that her main concern is the removal of the street tree. She stated that it seems a shame to take down the tree when it was just starting to mature. She indicated that there is a storm drain at the southern end of the property and that is the reason for the location of the tree.

18. Joanne Deibert stated that she thinks the driveway is very difficult to maneuver and thinks that trees that get in the way sometimes have to be removed.

19. There being no further comments, the hearing was closed to the public.

20. The Board Engineer indicated that if the driveway were to be widened to 12 ft., it was her opinion that the new driveway width would work. The distance from the garage to the street is relatively short, which is currently causing the problem.

21. Mr. Speigel feels that the driveway width restrictions are effective where lots are 50 ft. wide, but that this residence has a lot width of 75 ft. and that they have 25 ft. of side yard. In his opinion, the property is unique in that regard. He feels the tree needs to be relocated and that the Applicant will mitigate the loss of the tree by contributing to the tree replacement fund.

22. There was then a discussion among Board members of the tree. Ms. Andrews felt that if the tree was to be removed, it should be replaced by one of the same age and size.

23. The Board Planner explained that smaller trees have more of a chance of survivability and that planting new, larger trees is problematic because smaller trees are susceptible to replanting.

24. After much discussion among the members of the Board and its professionals, the Board determined that the situation presented by the subject application is unique, for the reasons hereinafter stated, and that the variance should be granted.

25. The Board finds that the relief requested may be granted because the Applicant has demonstrated that by reason of the extraordinary and exceptional situation uniquely affecting the subject premises and the structures lawfully existing thereon, the strict application of the driveway width requirements would result in peculiar and exceptional and practical difficulties to and exceptional and undue hardship upon the Applicant. Among the extraordinary and exceptional features of this Application are included the 75 foot width of the property, the low traffic volume on Voorhees Place, the 15 foot wide drainage easement existing on the property, and the 23 foot unobstructed side yard on the side where the driveway is located, so that even the wider driveway would not be close to any adjacent property.

26. 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 property far exceeds the minimum lot requirements, there is a substantial side yard between the proposed expanded driveway and any adjacent property. The size of the yard militates against the increase in impervious surface.

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application for a C variance of Chongyoul and Byongnam Kim 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 Board of Adjustment of the Borough of Metuchen and/or the Borough of Metuchen for professional fees associated with this application.

E. Applicant shall comply with the following additional conditions:

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

2. Applicant shall comply with the recommendations contained in the Board Engineer's memorandum dated April 7, 2014.

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 comply with the Borough tree removal and replacement ordinances. Applicant shall replace one flowering tree on the property and shall contribute the sum of $550 to the Borough tree replacement fund.

BE IT FURTHER RESOLVED that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

BE IT FURTHER RESOLVED that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

BE IT FURTHER RESOLVED that this resolution shall serve as one of

memorialization of the action taken by this Board at its meeting of April 10, 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: May 8, 2014

BOARD OF ADJUSTMENT
BOROUGH OF METUCHEN

RESOLUTION OF MEMORIALIZATION
GRANTING C VARIANCES
TO
FOX & FOXX DEVELOPMENT, LLC
206 AMBOY AVENUE
BLOCK: 184, LOT: 51
APPLICATION NO.:14-1022

WHEREAS, Fox & Foxx Development, LLC, hereinafter referred to as "the Applicant," is the owner of Block 184, Lot 51 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 206 Amboy Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

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

WHEREAS, the Board of Adjustment of the Borough of Metuchen held a public hearing on said application on April 10, 2014, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, the Board of Adjustment considered the following documents:

1. Zoning permit.
2. Board of Adjustment Application for Development dated March 6, 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 April 8, 2014.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, P.P., Borough Planner, dated April 8, 2014.

7. Plans entitled "Plot and Grading Plan Prepared for 206 Amboy Avenue, Lot 51 in Block 184, Borough of Metuchen, Middlesex County, New Jersey," prepared by Fletcher Engineering, Inc., dated September 19, 2013, last revised March 3, 2014 and consisting of one (1) sheet.

8. Plans and photos entitled "Photograph Location Plan", prepared by Fox & Foxx Development, LLC, Variance Application: 206 Amboy Avenue, dated February, 2014 and consisting of three (3) sheets.

9. Survey entitled "Plan of Survey", prepared by John P. Fricovsky, P.L.S., dated September 19, 2013 and consisting of one (1) sheet.

10. Statement in support of variance application.

11. Building Plans, including a front elevation, first floor plan, second floor plan and left side elevation.

WHEREAS, the Applicant was represented by Anthony J. Marra, Jr., Esq., who presented the testimony of Jeffrey W. Kraeft, P.L.S., and P.P.; and

WHEREAS, the Applicant proposes to demolish an existing 2 ½-story, single family residence, walkways, and paved driveway and to construct a new 2-story single-family dwelling with a one car garage, front porch, walkways and paved driveway ; and

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

WHEREAS, the Applicant requires the following C variances:

§110-64, minimum lot width at setback line – 62.5 ft. required, 60 ft. existing non-conformity;

§110-64, minimum front yard setback – 25 ft. required, 32.5 ft. prevailing required, 23.8 ft. existing, 25 ft. proposed (Home Street);

WHEREAS, the Board of Adjustment of the Borough of Metuchen, after hearing the testimony in support of 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 184, Lot 51 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 206 Amboy Avenue.

3. The Applicant is the owner of the property. Jeffrey W. Kraeft, P.L.S. and P.P. was sworn in, qualified and testified in support of the application. Mr. Kraeft stated that the property is located at the northeast corner of Amboy Avenue and Home Street. There is currently a 2 ½ story single family dwelling on the property. The zone is R-2. The lot width is 60 ft., with 62.5 ft. required. The lot adjacent to the subject property is fully developed and is also undersized. Applicant seeks a variance for lot width requirements. Mr. Kraeft indicated that the setback from Amboy Avenue meets zoning requirements, but that the front yard setback from Home Street does not meet the prevailing setback standard of 32.5 ft. The proposal is for a 25 foot setback. The existing home, which has a setback from Home Street of 23.8 ft., does not currently meet the setback requirement.

4. Mr. Kraeft testified that the lot meets all requirements of the zoning requirements except for lot width. As indicated, the adjoining lot is fully developed and is also deficient, so

additional lot width cannot be obtained from that lot. Mr. Kraeft indicated that the Applicant intends to re-grade the lot so as to enable it to remove the retaining walls.

5. Mr. Kraeft indicated that Applicant cannot meet the setback requirement from Home Street. Conforming with the prevailing setback of 32.5 ft. would mean that the house could be only 19.5 ft. wide, which would be impractical. The existing house is closer to Home Street by 1.2 ft. than the proposed new residence.

6. Mr. Kraeft indicated that he studied other corners on Amboy Avenue going down to Voorhees. This lot would have less deviation than the others. He stated that the front yard setback from Amboy Avenue will be conforming. Presently no other lot in the study area conforms.

7. Mr. Kraeft testified that it was his opinion that there would be no substantial detriment to the zone plan or zoning ordinance, or to the public good if the proposed variances were to be granted. He indicated that the existing home presently violates the same requirements and that there has been no detriment as the result of the presence of the existing home. From a positive point of view, he indicated that the public good would benefit by improving the existing deviation from the setback requirement from Home Street. He indicated that the situation affecting this lot is unique with respect to both the lot width and the fact that it is a corner lot. He stated that other houses on Home Street are set further back than the norm and further back than the minimum required setback of 25 ft.

8. Mr. Kraeft reviewed the April 8, 2014 review memorandum of Maser Consulting, P.A. He indicated that Applicant would comply with all of the requirements and recommendations, except that Mr. Kraeft indicated that he is a seeking a greater permissible slope, to which the Board Engineer agreed. The reason for the greater slope is that the Applicant

wishes to remove the retaining wall. The ground level of the proposed residence will be somewhat lower than the existing residence, some soil will be removed.

9. Mr. Kraeft next reviewed the Looney Ricks Kiss, Inc. memorandum dated April 8, 2014. Mr. Kraeft indicated that it was his opinion that Applicant is not required to replace trees because only one applicable tree was removed.

10. In support of the C-1 criteria, Mr. Kraeft offered the opinion 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. In support of the C-2 criteria, Mr. Kraeft indicated that the benefit of replacing the deteriorated existing home with a new residence is a benefit to the community and would outweigh any detriment, which detriment he found to be non-existent. Additionally, the proposed application improves the side yard setback from Home Street.

11. Mr. Kraeft described the proposed residence. It will be a four-bedroom, two and ½ bath house, approximately 2,600 sq. ft. 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. In response to a question, he indicated that the attic could be finished if the purchaser so desired. He indicated that the air conditioning compressor will be located behind the building. He indicated that a landscape plan was provided by Applicant.

12. Mr. Kraeft indicated that there will be a stairway coming up to the house from the front. The retaining wall will be eliminated. The slope will be about 2 or 2 ½ to 1, if possible. The Board Engineer requested that the Applicant try to come closer to 3 to 1 on the Home Street side.

13. Mr. Kraeft explained his interpretation of the tree removal and replacement ordinance. He indicated that the ordinance allows ten percent of the trees to be removed without replacement. He indicated that only one tree which qualifies under the ordinance has been removed, so no replacement is required. In response to a question, he indicated that the house will have a full basement and that the existing home has a full basement.

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

15. The Board finds that the relief requested may be granted because Applicant has demonstrated that due to the extraordinary and exceptional situation uniquely affecting the Applicant's property and the structures lawfully existing thereon, the strict application of §101-64 with respect to lot width and with respect to the front yard setback from Home Street would result in peculiar and exceptional practical difficulties and exceptional and undue hardship to the Applicant, because the property would be zoned into inutility, with respect to lot width and because construction of a residence would be impractical with respect to the Home Street setback.

16. Additionally, the Board finds that the purposes of the Municipal Land Use Law would be advanced by granting the requested variances and that no substantial detriment would result from same, because the replacement of the deteriorated existing dwelling with the proposed new dwelling would be a benefit to the community and because the existing zoning deficiency with respect to the setback from Home Street would be improved.

17. 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 previously stated, that is, the

existing non-conforming setback condition from Home Street will be improved and the existing setback deficiency from Amboy Avenue will be eliminated.

18. 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 of Fox & Foxx Development, LLC., for approval of C variances be and is hereby granted in accordance with the application and plans filed herein, 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 April 8, 2014.

E. The dwelling to be constructed shall have a substantially similar exterior appearance to the front and side elevations submitted to and considered by the Board in connection with this application.

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

G. Applicant shall comply with all of the recommendations and requirements contained in the Maser Consulting. P.A. letter dated April 8, 2014, except that Applicant will be permitted to vary, to the extent necessary, from the slope requirements of item 7, subject to the approval of the Board Engineer.

H. 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.

I. 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.

J. 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.

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 April 10, 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: May 8, 2014