

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

August 13, 2015

The meeting was called to order at 7:48 p.m. by Daniel Topping, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

Present: Catherine McCartin Jonathan Rabinowitz, Alt. I
Angela Sielski Tyler Kandel, Alt. II
Judith Sisko Jim Constantine, Planner
Byron Sondergard Bill White, Engineer
Brian Tobin, Vice Chairperson Robert Renaud, Attorney
Daniel Topping, Chairperson Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Suzanne Andrews

RESOLUTIONS

15-1069 **Thomas Mullins** – *Applicant is seeking bulk variance approval for an addition on the side and rear of a single family dwelling on a corner lot – approved July 9, 2013.*

67 Oak Avenue Block 103 Lot 1 R-1A Zone

A motion to approve the resolution as written was made by Mr. Tobin and seconded by Mr. Sondergard. Roll call vote taken. Ms. McCartin and Ms. Sisko were not eligible to vote. Ms. Sielski, Mr. Sondergard, Mr. Tobin, Mr. Rabinowitz, Mr. Kandel and Mr. Topping voted yes. Motion carried.

15-1066 **Diana Lee-Cary & Troy Cary** – *Applicant is seeking bulk variance approval for an addition, driveway and fence to a single family dwelling on a corner lot – approved July 9, 2013.*

200 Midland Avenue Block 51.10 Lots 14 & 15 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. McCartin and Ms. Sisko were not eligible to vote. Ms. Sielski, Mr. Sondergard, Mr. Tobin, Mr. Rabinowitz, Mr. Kandel and Mr. Topping voted yes. Motion carried.

NEW BUSINESS

12-957 **Pearl Street Associates** – Applicant is seeking preliminary and final major site plan approval with a D-6 variance for height, bulk variance and exceptions to construct a four-story building with 22 units and no parking on site.

22 Center Street Block 113 Lots 37.01 D-1 Zone

Mr. Topping indicated that Applicant has requested that application be carried. He noted that there was no specific meeting date provided.

Mr. Renaud indicated that the next available meeting is September 10, 2015. He announced that Applicant will be carried to September 10, 2015 at 7:45 PM in this time. There will be no further notice.

Mr. Cosenza noted that Applicant was likely to be available October 8, 2015.

15-1071 **Hary Disano Homes LLC** – Applicant is seeking bulk variance approval for a front yard setback to construct a new single-family dwelling.

6 Myrtle Avenue Block 215 Lot 6.01 R-2 Zone

John F. Wiley, Jr. appeared on behalf of Applicant. He indicated the application is basically for several bulk variances; some were created because of the undersized lot for a single-family dwelling. Applicant is seeking to demolish existing home and construct a new 2 ½ single-family dwelling with an attached single-car garage. The application is actually correcting several non-conforming yard setbacks. The prime issue is the front yard setback. Applicant is at the 25 foot point, which is the normal setback provision in the zone; however, there is the averaging provision. The property next door is set back at 44.7 feet, at 4 Myrtle Avenue, while the other property is 25.2 feet, at 26 Myrtle Avenue, which is a house of relatively recent construction. Applicant will be testifying with respect to the setbacks on this side of the street. The Board will see that the 44.7 setback is an anomaly, although it should be noted that the current setback is 67 feet on a lot only 100 feet in depth. He presented Paul Fletcher, Applicant's Planner and Engineer.

Mr. Fletcher was sworn in by Mr. Renaud and provided his qualifications and experience. He was accepted by the Board as an expert in the field of planning and engineering.

Mr. Fletcher indicated that the property is known as 6 Myrtle Avenue, located in R-2 zone. It is located on the southerly portion of Myrtle Avenue, approximately 220 feet from Main Street. The existing home is in disrepair and is set in the rear of the property. The property itself is 50 feet wide and approximately 102 feet in depth. Applicant proposes to demolish the existing home and construct a single-family dwelling with an attached single-car garage. As Mr. Wiley mentioned, the demolition of the existing structures will eliminate a number of non-conformities: side yard, combined side yard and rear yard setbacks as well as accessory structure setbacks. The new home will comply with all other provisions of the ordinance, with the exception of the front yard setback. The reason is because the property to the left has a 25.2 feet setback while the property to the right is set back almost 20 feet further back, which averages to approximately 35 feet. On a 100 foot depth of lot, this would mean losing 10 feet of buildable area. It is not a very large lot.

Regarding the neighborhood pattern, Mr. Fletcher prepared an exhibit, marked as Exhibit A-1, an analysis of the front yard setbacks of all of the homes fronting on Myrtle Avenue. The neighboring lot at 4 Myrtle Avenue is 44.7 feet, which is considerably the largest setback on the block. The following page is a copy of the Borough Tax Map #75, which shows the lots toward Main Street, their lot depths become considerably less. The lots at the end of Myrtle Avenue are typically 150 feet in depth whereas the lots closer to Main Street are shallower, closer to 100 feet in depth. He opined that this analysis shows that these features present a hardship for Applicant, under the C-1 criteria. He noted that the proposed setback will be more in character than the existing 67 foot setback and more in character than the average of 34 to 35 foot setback.

Mr. Wiley referred to Mr. Constantine's report. Regarding comment #4, he asked if any patios, sidewalk or hardscape improvements will impact coverage calculations.

Mr. Fletcher indicated there may be additional patio areas provided but there is sufficient space to not require a variance. 50% impervious coverage is permitted and 37% is provided, so he does not anticipate any issues. He noted that the exterior doorway as shown on the architectural plans does not match the site plan (in that there is no pad or gap in landscaping). He indicated that Applicant will ensure that the plans will match. Regarding comment #7 regarding landscaping and tree removal, there are two (2) existing trees: a 21" tree on right side proposed to be removed as well as a multiple 17" tree at the front of the property. He indicated that Applicant and his professionals have had discussions regarding this tree and have decided that they will attempt to save the tree (as opposed to removing it as shown on the plans); they will prune the branches (instead). They will narrow the driveway and, if necessary, put a well around the tree in an effort to save the tree. The 21" tree, however, is simply too close to the proposed house to allow it to remain. The replacement tree calculations are shown on the plan.

Mr. Renaud asked for clarification regarding the tree removal. He noted that there was not a specific note for the 17" tree.

Mr. Fletcher clarified the location of the 21" tree to be removed and offered that the note for the 21" tree is typical, so any "X"'s denote tree removal.

Mr. Constantine asked for clarification regarding the 17" tree.

Mr. Fletcher reiterated that the tree in between the proposed driveway and private walkway will be saved.

Mr. Constantine asked if this affected the tree replacement calculation.

Mr. Fletcher indicated that it would. Less replacement trees would be required. A street tree, shade tree and ornamental tree will be provided pursuant to the Ordinance.

Mr. Topping opined that the tree replacement calculation was not shown correctly. He believed more replacement trees would be required; the 21" tree requires five (5) replacement trees, not four (4) as shown.

Mr. Fletcher indicated that, based on his understanding of the ordinance, that within the development area, 10% of trees are allowed to be removed, and allowed to round up to one (1).

Mr. Cosenza indicated that the issue is regarding rounding. The ordinance allows for 10% of trees to be removed without replacement. There is one (1) eligible tree. The question is if the ordinance allows for rounding of 0.1 to 1, which he would not typically allow. That is the crux of the matter.

Mr. Topping questioned if 10% of the 21" tree could be considered.

Mr. Renaud believed that fractional trees could not be considered; he suggested Mr. Wiley to provide a memorandum regarding what the number should be. He agreed that 10% of 1 is not 1.

Mr. Wiley agreed and would concede to that.

Mr. Wiley next referred to Lisa DiFranza's engineering report. Regarding comment #2, he indicated that Applicant will comply. Regarding comment #3, he asked if a basement is provided.

Mr. Fletcher confirmed yes.

Mr. Wiley indicated that, as a condition of approval, prior to obtaining building permits, Applicant can do a soil test pit in order to ascertain the seasonal high water table elevation in the area of the dwelling and reported back to the Construction Official in order to determine a two-foot separation is obtainable.

Mr. Fletcher agreed.

Mr. Wiley indicated that, regarding comment #4, proposed roof drains will drain away from properties.

Mr. Fletcher interjected that his design is to have the roof drains be directly connected into storm inlet that is at the front of the property. All of the roof runoff will be directly conveyed to the stormwater sewer system. There will actually be less surface runoff.

Mr. Wiley indicated that Applicant will comply with all other comments in the report. He asked Mr. Fletcher to provide planning testimony, to the positive and negative criteria.

Mr. Fletcher indicated Applicant will look to the C-1 criteria for hardship due to the depth of lot and the location of the homes on the adjoining properties. In terms of the C-2 criteria, where the benefits outweigh the detriments, clearly, Applicant is demolishing an existing eye-sore, cleaning up lot and constructing a new home that would be a hugely aesthetic improvement. He opined that the reduction of the non-conformities to the side and rear of the existing structure far outweigh the variance request for the front yard setback which is more of a technical variance because of the anomaly of the location of the house on the right side of the property.

Mr. Wiley indicated that he had no further questions for Mr. Fletcher.

Mr. Constantine asked for clarification how the benefits outweigh detriments.

Mr. Fletcher clarified that, frankly, there did not appear to be any detriments. The granting of the front yard variance will allow for the elimination of the non-conformities of the existing structure.

The proposed home will be more in conformance.

Mr. Topping asked about testimony regarding hardscaping.

Mr. Wiley indicated that no new variances will be required by adding additional paved areas. The buyers for the home may want a deck or patio, but he believed whatever is done will be in conformance. There is room.

There being no further questions from the Board, Mr. Topping opened hearing to the public for questions for Mr. Fletcher. There being none, Mr. Topping closed the public portion.

Anthony Disano was sworn in by Mr. Renaud. He is a managing member of the Hary Disano Homes, LLC. He advised the Board that the proposed home will have vinyl siding. It will have typical colors, a light color, tan or gray, which will differ than other homes in the neighborhood but otherwise conforming to the overall look of the neighborhood. They will use cultured stone. He also noted that they will construct a masonry porch, which brings the classical look to typical construction. The cultured stone will be brought down to the ground. He believes it looks better. Decks and patios will be based on the desire of the buyer and will be conforming to zoning regulations.

Mr. Wiley indicated that he had no further questions for Mr. Disano.

Mr. Topping indicated that the property to the right side is fairly well-planted. While he noted the numerical aspects for the front yard average provision, the proposal is to set a porch further into the 25 foot setback. That being said, the piece of the house that is stuck out the most is completely windowless. He appreciates the porch design, but he asked if anything further could be done to address this (exposed corner). He believes the house does not give that much all back to the street, particularly given the proposed right side elevation.

Mr. Constantine indicated that he agreed with Mr. Topping's point. While he agrees with Applicant's testimony that non-conformities are being removed, he noted that, by going by what is being provided by Applicant's evidence, there are five (5) homes that have a shorter setback but that the majority of the homes, 13 of them, are further back.

Mr. Wiley noted that the deeper setbacks are on lots that have deeper lots. On a deeper 150 foot lot, setting a house back 35 feet is not a big deal; but on a 100 foot lot, it is a big deal.

There was a brief discussion regarding the exhibit.

Mr. Renaud indicated that he observed a 28.73' proposed rear yard setback. He asked if (setting the home further back by another) 3.73' would bring it closer to conformance.

Mr. Wiley agreed that it would.

Mr. Constantine indicated that something closer to 30 feet is ideal in this particular case. He is not sure the house needs to be at the average provision, but something closer to conformance is better. This may help deal with the transition that Mr. Topping raised his concerns about.

Mr. Topping clarified that his concern is regarding the corner elevation. While he understands not wanting to have headlights coming into the house, but there seems to be some lack of detailing at the corner. He would like the Board to consider what the porch and the massing of the house is and how it is affecting the neighbors. He believed three (3) to four (4) feet helps.

Mr. Constantine noted applicant could add more windows.

Mr. Topping agreed; there should be more vertical interest at the corner.

Ms. McCartin indicated that she would like more windows up front as well.

Mr. Topping expressed his desire to have the third floor window on the left side to be centered on the gable.

There being no further questions from the Board, Mr. Topping opened hearing to the public for questions for Mr. Disano.

Benjamin Yang, 26 Myrtle Avenue, indicated that he would not like to have windows face to face. He also raised his concerns regarding drainage and flooding. His property is lower.

Mr. Renaud indicated that testimony had been given that all roof leaders would be connected directly into the storm inlet at the front of the property. He asked if he was opposed to windows facing his home.

Mr. Yang indicated he was concerned about windows facing his home.

Ms. Sielski indicated that the side of the garage is actually facing Mr. Yang's home. There are no windows on the first floor.

Mr. Yang began to discuss the plans.

Mr. Renaud suggested that the Board recess to allow Mr. Yang to look at the plans.

Mr. Topping agreed as Ms. Sielski provided a copy of her plans to Mr. Yang.

The Board recessed at 8:29 PM and reconvened at 8:32 PM.

There being no further questions from the public, Mr. Topping closed the public portion.

Mr. Renaud summarized the variances being requested: Lot width and Lot Area, which are pre-existing non-conforming conditions. To those two (2), it is an existing lot, but the law is such that you cannot prohibit a property owner from building a home on an existing lot even though it may have non-conforming dimensions. The good parts of this application are that it does eliminate the existing non-conformities and, other than the front yard variance, it does not bring in any other new ones. The one to focus on is the front yard variance. Applicants' Planner & Engineer has proposed that the Board consider the C-1 variance in that it is a hardship because of the location of structures on adjacent properties or the C-2 variance with the contention that the benefits of granting the variance (essentially the removal of the existing non-conformities) outweighs the detriments of granting variance (the front yard variance). While the detriment is a violation of the ordinance; however, the Board can determine that that several non-conformities are being eliminated. He believes sufficient testimony has been provided. The foundation is there and believed it is up to the Board to decide if they can agree that the benefits outweigh the detriments. The Board must also keep in mind the negative criteria, that is, can the variance be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and zoning ordinance. Those are the legal issues to consider. The Board can condition the variance on certain things, such as: require the home be moved back

with or without the rear yard setback variance, shrink the house or any combination of things. Also, additional windows on the right side or additional landscaping could be conditioned.

Mr. Wiley indicated that Applicant would not have an issue setting the house back an additional 3.73'. He noted that, after discussing with Mr. Constantine, shutters can be provided, which will scale down the elevation visible to the street.

Mr. Topping requested that additional landscaping be provided, with taller landscaping.

Mr. Constantine indicated that the tree replacement needs to be re-calculated to five (5) replacement trees, which may be accommodated on the site. He suggested a revised landscaping plan be provided, as a condition of approval, to show additional replacement trees, an additional street tree and other landscaping.

Ms. Sisko indicated that she has observed a lot of activity in this area. This will be a tremendous improvement to the neighborhood.

Mr. Topping agreed and offered that it could, perhaps, be an inspiration. He appreciated Applicant's efforts.

A motion to approve the application with conditions noted above was made by Ms. Sisko and seconded by Mr. Topping. Roll call vote taken. Ms. McCartin, Ms. Sielski, Ms. Sisko, Mr. Sondergard, Mr. Tobin, Mr. Rabinowitz and Mr. Topping voted yes. Motion carried.

CORRESPONDENCE

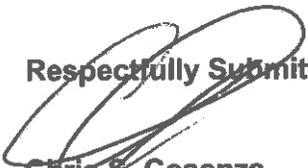
Minutes from July 9, 2015

A motion to approve the minutes as written was made by Mr. Tobin and seconded by Mr. Kandel. Roll call vote taken. Ms. McCartin and Ms. Sisko were not eligible to vote. Ms. Sielski, Mr. Sondergard, Mr. Tobin, Mr. Rabinowitz, Mr. Kandel and Mr. Topping voted yes. Motion carried.

ADJOURNMENT

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

The meeting adjourned at 8:47 p.m.


Respectfully Submitted,

**Chris S. Cosenza
Recording Secretary**

