METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

June 11, 2015

The meeting was called to order at 7:49 p.m. by Daniel Topping, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

Present:	Suzanne Andrews	Brian Tobin, Vice Chairperson
	Catherine McCartin	Daniel Topping, Chairperson
	Angela Sielski	Jim Constantine, Planner
	Judith Sisko	Robert Renaud, Attorney
	Byron Sondergard	Chris S. Cosenza, Zoning Officer
Late:	(none)	
Absent:	Jonathan Rabinowitz, Alt. I	Lisa DiFranza, Engineer

RESOLUTION

15-1063 **Jason Judovin** – *Bulk variance approval to permit a 6' high fence along the front property line on a corner lot* – approved May 14, 2015

48 Amboy Avenue Block 194 Lots 11 - 12 R-2 Zone

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

OLD BUSINESS

15-1060 **DCR Landscaping & Construction, Inc.** – Applicant is seeking preliminary and final major site plan approval, d(3) conditional use variance and bulk variances with exceptions and waivers for a contractor's establishment.

104-108 Norcross Avenue Block 49 Lot 54 L-I Zone

Mr. Renaud indicated that the Board received a letter from Applicant's attorney requesting that the application be carried to the September 10, 2015 meeting. It will be heard on that date at 7:45 p.m. in this room. There will be no further notice.

NEW BUSINESS

15-1067 **Carol & John Milich** – Applicant is seeking bulk variance approval for driveway expansion.

186 Mason Drive Block 12 Lot 51 R-1 Zone

Mr. Renaud asked Applicants who will speak.

Ms. Milich indicated that she will speak since she prepared most of the paperwork with Mr. Cosenza.

Ms. Milich was sworn in by Mr. Renaud.

Mr. Renaud indicated that the Board has received an application for an expanded driveway. He asked Ms. Milich to tell the Board what it is she is proposing and why she is proposing it.

Ms. Milich described the contents of the application materials that the Board received. She indicated that photos were shown of the existing driveway. The survey was marked up to show the expanded driveway. She described the proposal as not really being a full two-car wide driveway, but more like straightening out the driveway so that they can avoid crushing the sides of the driveway. Access is very difficult. The driveway and the dwelling are at an angle. They are on a corner lot. Mason Drive is a busy street and there is a bus stop nearby. It is requested that a small portion of the driveway be straightened out, which will require widening the driveway at the apron so that they can pull straight in.

Mr. Topping asked if the only variance being requested is the increase of the width of the driveway at the throat of the driveway.

Mr. Cosenza confirmed yes, but explained that, technically, it is to be measured at the property line.

Ms. McCartin asked if the angle of the concrete apron would be changed.

Ms. Milich indicated she did not want to expand on the right side, as it is already too close to the intersection.

Mr. Cosenza indicated that the angle of the driveway apron could not be changed; it should be parallel with the street.

Mr. Topping clarified the question for Applicant. The apron is parallel with the street. The driveway runs on an angle. He asked if that geometry would be addressed.

Ms. Milich indicated they would attempt to do so with the mason.

Mr. Topping indicated that the Ordinance permits a maximum driveway width of 12 feet, which, ordinarily, is plenty generous. It is more beneficial to pedestrians and it is to the benefit and intent of the Borough to keep it at 12 feet to ensure a walkable community. In this case, he scratches his head because of the geometries and the pre-existing conditions. It would be unfair to hold Applicant to hold it at 12 or even 15 feet.

Ms. Milich agreed. The properties were developed in the 1950's.

Ms. Andrews asked if the opening was 15 ½ feet and if the request was to expand it to 19 ½ feet

Ms. Milich confirmed.

Ms. Andrews asked if it was the driveway or the apron.

Mr. Tobin indicated that the apron was the concrete area with the elevation change.

Ms. Andrews indicated that, looking at the photographs, was not clear, though it is in the drawings. If the driveway was straightened out, would Applicant still need the four (4) additional feet?

Ms. Milich indicated that, yes, the driveway is being widened to the left. This original purpose of the project was actually just to replace all of the sidewalks. They wanted to address the issue with the access to the driveway. She indicated in her packet she included photos of other properties of driveways at an angle on a corner lot. She compared her proposal of 19 feet being narrower than other driveways in the neighborhood. One example was 206 Mason Drive, which was done last year. The other property for comparison was 157 Mason Drive.

Ms. Sielski asked about the application's impact on the Complete Streets policies and associated driveway width provisions.

Mr. Constantine indicated that the driveway width provision existed before. To address the Board's concerns to that, the Board could find that there are unique and particular circumstances here in that the driveway is situated at a 45 degree angle, which is a rare condition, and it is located at the corner. Today's standards push the driveways away from concerns. There are maybe two (2) or three (3) dozen example of this in the Borough.

Mr. Cosenza noted that it would appear that this condition occurs only in this particular neighborhood.

Board members agreed; Mr. Constantine opined that there may be a couple more as well.

Ms. Milich indicated that she had discussed that with Mr. Cosenza and further noted that even some of the straightened-out driveways are not in conformance. They do not have the same issues of access.

Mr. Topping noted that the condition exists also at 167 Mason. He agreed with Mr. Constantine's comments that there are unique hardships and are grounds for approval.

Ms. Sisko asked about the material, as noted in the Borough Engineer's report.

Ms. Milich indicated that was a good question, it was something she asked her mason to consider providing a separate quote, but deferred to the Board's decision on the variance request first and she asked, for the Board, what the difference be between the materials.

Mr. Tobin indicated that there is no difference; it is just a uniformity issue.

Ms. Milich indicated that she understood; it may be either asphalt or concrete.

Mr. Cosenza indicated it did not really matter, as long as the apron and sidewalk were concrete.

Board members and Ms. Milich agreed.

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

Mr. Topping indicated that the merits were well-presented. He asked fellow Board members for any other thoughts.

Mr. Renaud clarified that the Board is zeroing in at a c(1) variance, which is a hardship variance, based on the size and shape of the property and the configuration of the improvements that are on the property. He believed the Board was not looking at a c(2) variance, which is a flexible variance. As Mr. Constantine pointed out, between the angle of the driveway and the proximity to the corner, those were the reasons to support the variance. You also have to look at the negative criteria, in that whether the granting of the variance would impair the intent and purpose of the zone plan and zoning ordinance or have substantial detriment to the public good, for which there does not seem to be any why the application would not satisfy the negative criteria.

He further suggested to the Board that they stay away from looking at what other properties in the neighborhood. Unfortunately, we can never have enough information about those other properties – if they got variances, expanded illegally or were built before the zoning ordinance was amended to narrow the driveway. He indicated that unless there is a pattern of granting variance to a peculiar distance, other properties should not be a factor that the Board should take into consideration.

Mr. Topping indicated that was well-said and, in addition, even though other examples were presented, Applicant proved that there are difficult geometries involved. He also appreciated Applicants' desire to willingness to maintain and upgrade sidewalks.

Mr. Constantine suggested using that as a finding of fact for the Board.

A motion to approve the application as presented was made by Mr. Sondergard and seconded by Ms. Sisko. Roll call vote taken. Ms. Andrews, Ms. McCartin, Ms. Sielski, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Topping voted yes. Motion carried.

Ms. Milich thanked the Board and indicated that she appreciated all of the help she got during the process from Mr. Cosenza. She asked what the next steps were. Could she start working on the project?

Mr. Renaud indicated that the Board will vote on a resolution next month. Next steps are ultimately up to the Zoning Officer.

15-1064 **Joseph W. Rufolo** – Applicant is seeking use variance and bulk variance approval to convert a doctor's office on the first floor with apartment on the second floor to a two-family dwelling.

69 Amboy Avenue Block 203 Lots 4 & 5 R-2 Zone

Mr. Wiley appeared on behalf of Applicant. He indicated that this is a property that presently houses a chiropractic office on first floor and apartment above. This development preceded Mr. Constantine's time. At one point, the Borough did permit medical offices on Amboy Avenue; in fact they encourage development on Amboy Avenue and Main Street. In mid-1980's, that development pattern was discouraged by the revised Master Plan and zoning ordinances. The present use is a non-conforming use. Applicant is seeking approval to remove the office and convert to a 2-bedroom apartment. Originally, Applicant sought approval with a three-bedroom

apartment, but after a discussion with the Technical Review Committee (TRC), the plan was revised to a two-bedroom apartment. He requested Applicant to be sworn in.

Mr. Rufolo was sworn in by Mr. Renaud.

Mr. Rufolo indicated that he recently purchased the property. He has developed a couple other properties in town. He decided that the best use of the property was to abandon the medical office and convert it to an apartment. His son appeared at TRC where a number of recommendations were suggested and some of which were incorporated into the revised plans before the Board. A letter was submitted that outlines the modifications that were made, which Mr. Wiley reviewed:

1) One of the bedrooms in the 3-bedroom unit was converted to a study.
2) This was accomplished by removing a closet from the original plans.
3) There had been an issue regarding the steps to attic and its location. It was discovered that the steps are located in the hallway of the second floor unit
4) One of the (exterior) doors (leading to basement) will be replaced.
5) The other (exterior) door will be eliminated.
6) Presently, there are five (5) parking spaces at the rear of the building. However, only four (4) were needed. The notion to convert the 5th parking spot into a grassy area with picnic table and grill for tenant use was suggested (by TRC) and incorporated.
7) There are two (2) existing A/C units on the side of the building will be replaced and placed on concrete pad.
8) The concrete/gravel area will be returned to grass.
9) Landscaping in the front of the building will be enhanced with boxwood bushes.
10) Steps in the rear will be replaced. There will be new siding. Mr. Rufolo indicated that he liked the present gray color with the red brick. He is thinking about sticking with the gray color -- cedar impressions in the front and straight siding on sides and the back. The rear steps and decking would be gray to match the siding and white handrails on the sides. It would look a lot nicer.

Mr. Topping asked about the floor plans.

Mr. Wiley indicated that the office would be converted to an apartment.

Mr. Topping indicated that he believed that some interior renovations would be necessary.

Mr. Rufolo said, yes, on the first floor. There are some existing bathrooms. The kitchen and second bathroom would be added to the first floor.

Mr. Topping asked who prepared the plans.

Mr. Wiley indicated Applicant prepared the plans.

Mr. Rufolo indicated he took his plans and went to a licensed and registered engineer who took his drawings, reviewed and sealed the drawings.

Mr. Topping indicated he did not have a sealed copy.

Mr. Cosenza clarified that it would appear that not everyone received a sealed copy; the plans in the file and given to the Board professionals, were signed and sealed. The seal is raised.

Mr. Topping indicated that, generally speaking and the correct answer is, he prepared it. He is in violation of his own work if he did not prepare it; he supposed that he is allowed to supervise the work. The plans were not well-presented and not professionally well-done. The plans do not lead to an understanding of what is being done here. He says that with due respect given the change of use. This type of conversion may require professional review. His concerns have little to do with zoning; it has to do with the change to a residential use on the ground floor. He believed the ground floor use must have ground floor access. He did not want to speak out of turn, but unless there is an exemption for two-family houses or the amount of work being done, he warned Applicant that there is an aspect of this where the Applicant would have to come back to the Board if Applicant requires ground-floor access. It is easy to look at this as a non-conforming building and to say there was no access to the commercial aspect, so how could have an additional accessibility to the new apartment use. He warned Applicant that the Fair Housing Act may come into play here.

Mr. Wiley indicated he would look at ADA and FHA compliance prior to pulling a permit.

Ms. Sisko asked if the second floor is what it is now.

Mr. Rufolo indicated that the second floor layout is identical to what it is now.

Ms. Andrews asked what the first floor is now.

Mr. Rufolo indicated that there were 7-8 small offices accessible from a narrow hallway.

Ms. Andrews asked how the second floor tenant accesses the unit.

Mr. Rufolo indicated that there is a front door to the house, which leads to a tiny lobby. Straight ahead is a set of stairs leading to a door to the second floor unit. To the left (within the lobby), there is a door to first floor unit. There is also an exterior stairway at the rear of the building.

Ms. Andrews referred to the photograph of the house; she asked about the dormer and if there was an attic.

Mr. Rufolo indicated that there is an attic. On the second floor, stairs fold down and the second floor tenant would have access to store stuff in the attic.

Mr. Wiley indicated that the first floor tenant would have access to the basement for storage.

Ms. McCartin reviewed the application and curiously noted a comment that the present site is too small for a medical use.

Mr. Wiley indicated that the planner will testify to that issue.

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

Joseph Schaeffer, Applicant's Planner, was sworn in by Mr. Renaud. He offered his qualifications and experience.

Mr. Wiley asked Mr. Schaffer to describe the project.

Mr. Schaeffer described the project. Aside from minor outside changes, most other changes are internal. A d variance is required. The R-2 zone does not specifically permit two-family homes. They are requesting a variance to convert from a non-conforming use to a use that is not conforming, but is residential in nature.

With respect to the benefit to approving the application, currently, there is a medical office that would require 10 parking spaces and two (2) spaces for the apartment. The proposed project would require four (4) parking spaces and is proposing four (4) parking spaces. The amount of impervious surface is being reduced as well. In and of itself, the change of use reduces the intensity of uses and is proposed to be more conforming to the Ordinance. At the moment, the property is an anomaly; it is the only mixed-use building on the block. It does kind of stick out, even though it was an allowed use when it was built.

He opined that there is no detriment to the zone plan and ordinance. He recalled speaking to the Board on an application, where he appeared as a member of the public, on an application at the corner of Henry Street and Jonesdale Avenue. It was like a stealth duplex; just like in this application, the house appeared to be a single-family home on the outside. That is important because that there are several of these homes in both neighborhoods; it is part of the vernacular of the Borough to have a two-family use in a building that appears to be a single-family home. The proposed changes would maintain the single-family appearance.

He opined that this advances the purposes of the master plan. As per Mr. Constantine's letter, it was suggested in the 1983 ordinance to remove medical office uses along Amboy Avenue.

Mr. Topping noted the use variance and asked about the non-conforming nature of the exterior improvements and any engineering issues: parking, turning movements and so on. In addition to the use, Applicant is seeking to grandfather in all of the 1950's-ish layout.

Mr. Cosenza offered that, for technical purposes, given the two-family use, the application is exempt from site plan review; there are no site plan elements to adhere to. Also, at the TRC, there were only very brief discussions related to any exterior or engineering issues because it was found that the fence was to be repaired –

Mr. Wiley interjected that Applicant would be replacing the fence altogether.

Mr. Cosenza agreed; in addition to that, as long as the parking lot was re-striped, parking lot repaired and so on. Drainage remains unchanged; in fact it would be improved by way of the decrease of impervious surfaces. It was found that there were very little, if any, engineering issues to address.

Ms. Andrews asked about the two-way access.

Mr. Topping clarified the requirements; if it was done from scratch, this project would not comply.

Mr. Cosenza agreed; the condition presently exists and is not being reduced; thus requiring additional exceptions is not necessary, but is noted. However, he heard testimony regarding the parking requirements being greatly reduced. Therefore, the non-conforming nature of the driveway width and driveway aisle width is benefiting from the reduced intensity of the proposed conversion.

Mr. Wiley agreed. He indicated, for the record, that the spaces would be nine (9) by 18 feet, as opposed to 10 by 20 feet.

Mr. Topping indicated that the theme of de-intensification was well presented. There will always be non-conforming aspects to the property. He has no further questions.

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

Mr. Topping opined that the request is reasonable: Applicant pulled back from the third bedroom and made many revisions as suggested by the Technical Review Committee. He desired additional details and advised, particularly given a change of use and the use variance application, that plans be prepared and presented by a professional. He suggested that application be conditioned with additional landscaping to reinforce the benefits.

Ms. Sisko agreed that the additional requirements be imposed.

Mr. Topping indicated that he believed that the two-family use may be exempt from the accessibility requirements; however, given the way the plans were presented and changing half of the building, windows may need to be enlarged for egress, as necessary. He noted that, whoever reviews the plans, should be scrutinizing them.

Mr. Constantine agreed that the conditions were reasonable; the application was fast-tracked after the TRC hearing and dumped here. He believes Applicant understands that the plans should be better prepared, even for single-family additions.

Mr. Wiley indicated Applicant would be amenable to presenting an architectural and landscaping plan.

Mr. Topping indicated that Mr. Constantine said it better than himself; he raised his personal concerns regarding the way the floor plans were drawn and presented. Perhaps, the editorial is to Mr. Wiley, to let his clients know that he would like a good plan.

Mr. Wiley duly noted same.

Mr. Constantine noted that, in fairness to Mr. Topping's comments and recommendations, this application went very smoothly from the TRC and Applicant is to be commended for basically adopting all of their recommendations and fast-track the application to this Board.

Ms. Sisko asked for what grounds the application is to be voted upon.

Mr. Renaud indicated that Board is looking at a d variance to permit a two-family residence in a zone that does not permit two-family residences. There are existing conditions that are c variances, related to the size and width of the lot, and so forth, none of which are changing. The

standard for a d variance are special reasons as found in the Municipal Land Use Law, which he believes Mr. Schaeffer already spoke to, that is, the special reasons for the variance, which include a change from a use which is not permitted, to a use, which though is still not permitted, is at least is residential, which is permitted in the zone. It is still not conforming; it is closer to the zoning ordinance. It will also become conforming to the Residential Site Improvement Standards with respect to parking. It was under parked for a medical office. Those are really the two (2) primary special reasons for the granting of the variance.

A motion to approve the application as presented, with the conditions of providing architectural and landscaping plans was made by Ms. Sisko and seconded by Ms. McCartin. Roll call vote taken. Ms. Andrews, Ms. McCartin, Ms. Sielski, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Topping voted yes. Motion carried.

Mr. Topping noted that he appreciated the summation of little moves that will make Metuchen a better place. He looks forward to seeing this as a two-family residence.

CORRESPONDENCE

Minutes from May 14, 2015

Mr. Cosenza noted that he mistakenly had "2014" in the resolution date; he indicated that he would revise it to read "2015".

A motion to approve the minutes with the corrections as noted was made by Ms. Sisko and seconded by Mr. Sondergard. Roll call vote taken. Ms. Andrews, Ms. McCartin, Ms. Sielski, Ms. Sisko, Mr. Sondergard, Mr. Tobin and Mr. Topping voted yes. Motion carried.

ADJOURNMENT

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

The meeting adjourned at 8:46 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION
GRANTING C VARIANCES TO
JASON JUDOVIN
48 AMBOY AVENUE
BLOCK: 194, LOTS 11 & 12
APPLICATION NO.: 15-1063

WHEREAS, Jason Judovin, hereinafter referred to as "the Applicant," is the owner of Block 194, Lots 11 and 12 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 48 Amboy Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

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

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on May 14, 2015 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 March 19, 2015.
3. Proof of payment of taxes and assessments.
4. Application and escrow fees.
5. Plan of Survey of Tax Map, Lots 11 & 12, Block 194, prepared by Jack L. Held, Licensed Land Surveyor, William Held Associates, Inc., dated July 13, 2010,

WHEREAS, the Applicant Jason Judovin appeared pro se; and

WHEREAS, the Applicant seeks C variances to permit the installation of a 6 ft. tall privacy fence on the front/side property line of Applicant's home, which fronts on Amboy Avenue along McCoy Avenue, while providing required screening in the public right-of-way and without providing the required sight triangle at Applicant's existing single-family home located at 48 Amboy Avenue; and

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

WHEREAS, the Applicant requires the following C variances:

§110-112.2.B(1), 4 ft. high fence permitted, 6 ft. fence proposed;

§110-112.2.B(1), 50% open required, solid privacy fence proposed;

§110-112.2.B(2)(a), 10 ft. setback from property line along a street required, no setback (fence on line) proposed;

§110-112.3.E, sight triangle in accordance with Article 35 required, non-conforming sight triangle proposed;

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 194, Lots 11 and 12 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 Amboy Avenue.

3. The property is located in the R-2 Zone District. The site is a non-conforming lot 50 ft. in width by 100 ft. in depth located on the northwest corner of Amboy Avenue and McCoy Avenue. The site currently contains a one and a half story, single-family residence with a shed, no garage, and a black-top driveway. Applicant proposes to enclose the rear yard with a privacy fence along the McCoy Avenue side of the property, along and interior to the driveway, and then along the rear property line.

4. The fence is permitted in the rear yard, but would require several variances on the McCoy Avenue side for height, non-openness, no setback and no sight triangle, as set forth above. Applicant proposes to screen the fence on the McCoy Avenue side by a planting bed outside the property line in the non-paved portion of the public right-of-way. There are no sidewalks along McCoy Avenue.

5. The lot and the existing dwelling have existing non-conformities for lot area, lot width, front yard setback (McCoy Avenue) and side yard setback, as well as driveway setback from the rear yard. None of these would be changed by the granting of the application.

6. Jason Judovin, Applicant, was sworn in and gave testimony. He indicated that he and his wife are the owners of the property. They seek to install a 6 ft. high privacy fence along the property line in order to keep their young daughter safe in the rear yard and in order to provide privacy. Mr. Judovin described what he perceived as benefits to the community in enhanced safety and in not having passersby look into his rear yard. He also indicated that there is a hardship. Mr. Judovin indicated that the 6 ft. height is required for privacy, as is the request to not have an open fence. He indicated that his enclosed yard would be too small if he were required to step the fence 10 ft. off the property line. He also indicated that he did not feel the sight triangle was necessary because there is a gap between the property line and the paved

portion of McCoy Avenue, so the sight triangle is not an issue. He indicated that he proposed to screen the fence as per the ordinance through a planting bed which would be located in the public right-of-way. Mr. Judovin indicated that there are no sidewalks and that there are trees in the public right-of-way which would preclude the installation of sidewalks.

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

8. The Board discussed the application with the Applicant. The Board Planner suggested that the fence be set back 3 ft. to provide for screening to take place on the Applicant's property rather than in the public right-of-way. The Board Attorney interjected that if the proposal to install the fence on the property line was accepted, a variance would be necessary from §110-112.2E, because the Board would not have jurisdiction to permit the screening to take place in the public right-of-way.

9. After much back and forth between the Board and the Applicant, Applicant agreed that he would be satisfied with a variance which allowed a 2 ft. setback rather than a 10 ft. setback. The Board Planner indicated that a 2 ft. setback would at least permit the screening plants to be planted on the Applicant's property rather than the public right-of-way. It was agreed that the screening would be subject to the Zoning Officer's approval.

10. The Board finds that the relief requested, as modified by the requirement that there be a 2 ft. setback from the McCoy Avenue sideline, may be granted because the Applicant has demonstrated that hardship exists under *N.J.S.A.* 40:55D-70(c)(1) because of the size and shape of Applicant's property and the situation uniquely affecting Applicant's property and the existing structures thereon, that is, the narrowness of the lot, the location of the residence and the

existence of the property as a corner lot, and has demonstrated sufficient reasons for the requested variance.

11. The Board further finds 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 proposed vinyl privacy fence will be attractive and because the situation affecting this property is somewhat unique because of the corner lot situation.

12. The Board further 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 Jason Judovin be and is hereby granted in accordance with the application and plans filed herein, as modified, 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 be required to comply with the following conditions:

1. The fence shall be placed no closer than 2 ft. from the property line on McCoy Avenue.

2. Applicant shall screen the fence as provided in §110-112.2E within the area between the fence and the property line. Such screening shall be subject to the review and approval of the Zoning Officer.

D. 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.

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

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.

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 May 14, 2015 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.

I hereby certify that the Zoning Board of the Borough of Metuchen took the foregoing action at its meeting held on May 14, 2015.

Sharon Hollis

Sharon Hollis, Secretary

Dated: June 11, 2015