

Joseph Schaeffer, Applicant's Engineer, was sworn in by Mr. Renaud. He began to offer his qualifications.

Mr. Renaud interjected and offered that he has been accepted by the Board numerous times.

Mr. Schaeffer described the minor deviations to the numbers, both related to both front yard setback distances. He presented Exhibit A-1, an updated Zoning Summary Chart. He offered that the exhibit reflects corrections to the Zoning Summary Chart that was originally submitted to the Board. The front yard setback to the porch is 6.75 feet. He realized he had made an error in measuring the depth of the porch, which was previously indicated to be 5.875 feet deep. It is actually 6.0 feet deep. The exhibit corrects that. The front yard setback was previously proposed to be 14.25 feet. In the testimony of the old minutes, it was noted that the depth of the porch is 7.5 feet. Given that 6.75 foot setback to the porch, the front yard setback was 14.25 feet. However, the porch has always been 6.0 feet deep. It was probably a misread of the architectural plans. In the more accurate plans, the front yard setback is actually 12.75 feet. However, since Main Street is off angle with the porch, the more accurate measurement is 12.71 feet. Therefore, this approval seeks to clarify the measurement made in previous testimony and to more accurately provide such measurement which (reflects a change of only 0.04 feet and) is only really a technicality of the geometry.

Mr. Topping noted the existing enclosed porch and that the proposed home is being pushed back (away from the street).

Mr. Schaeffer confirmed. He further testified that the other amendment being requested is the front yard setback to Myrtle Avenue. The previously approved setback was 10.8 feet. It is actually 9.98 feet. He opines that the discrepancy came down to a scaling issue of the original survey. It was a drafting error. The footprint of the house is not changing.

Mr. Schaeffer noted that the previous approval was to permit a 12 foot driveway opening at the property line. The driveway leads from a two-car garage and funnels toward the street to a single-car width. Given the length of the driveway, he opines that the geometry does not work to permit turning around the flared entry. Applicant seeks approval to maintain the originally proposed 18 foot driveway opening. To maintain the 12 foot driveway opening would be difficult for Applicant.

Mr. Wiley addressed the Planner's memorandum dated March 11, 2015. Comment #4 has been addressed. Regarding comment #5, the wrap-around porch still encroaches into the sight triangle. Regarding comment #6, he indicated Applicant does not have a landscaping plan to present to the Board but would be willing to condition the approval on the landscaping plan being reviewed and approved by the Zoning Officer. A landscaping plan was provided at the hearing a year ago but Applicant does not have a copy of it.

There was brief discussion regarding the landscaping plan. Mr. Topping indicated he has not seen in. Ms. Andrews similarly raised her concerns regarding seeing the plans.

Mr. Cosenza agrees and recalls that a landscaping plan being presented as an exhibit at the prior hearing. The plans presented at that time, as indicated in the resolution, complied with the required landscaping for new dwellings as well as the replacement tree requirements. Whatever Applicant can present to him, he anticipates that it will comply with the Ordinance.

Mr. Wiley reviewed comment #7; no new walkways are being proposed. Applicant will utilize the public sidewalk to go between the house and the garage.

Mr. Cosenza indicated that should a walkway be provided, it need not be reviewed by the Board because there is sufficient pervious coverage on the lot.

Mr. Wiley reviewed comment #8; the second floor space above the garage is only being used for storage.

Mr. Schaeffer offered planning testimony. He does not see the application as a detriment to the community. The house faces Main Street and does not really face Myrtle Avenue. For that reason as well, if looking at the front yard averaging scenario and specifically the house next door, the permissible building footprint would not exist. The proposed house is completely in the "front yard" of the neighboring house on Myrtle Avenue. Because of the depth of the lot, he does not foresee it being an issue.

Ms. Andrews asked why the original plan would not work.

Mr. Wiley indicated Applicant could address that.

Mr. Renaud suggested that the Board finish with Mr. Schaeffer first.

Mr. Constantine asked if Applicant sought alternative way to address driveway width at street requirement. There is some flexibility to move the garage further back.

Mr. Schaeffer opined that it would not work. The turning movement would be difficult to overcome. The setback of 5.5 feet of the garage is another constraint.

Mr. Topping indicated that there is room, there is some space between the sidewalk and property line.

Mr. Schaeffer indicated that studies would show it would not work. It is particularly difficult on a corner lot where the driveway is off the side street. The 20.36' dimension is too short to permit turning a car around.

Mr. Topping indicated that the distance to the curb is approximately 35 feet. Even an SUV is less than seven (7) feet wide. He opines that a 12 foot driveway width can still work. The ability to flare once you are in the property is reasonable. Perhaps consider centering the cut or start flaring out earlier (maintain 12 feet at the sidewalk and flare out within the public right-of-way). He has a similar condition in his own home.

Mr. Schaeffer indicated that he has studied this and opined that it would not work, in this case. In this particular application, the Ordinance does not work for the corner lot. In the scenario where a garage is in the rear of a deeper lot, there is sufficient room to turn the car.

Ms. McCartin asked if the funnel could be abrupt.

Mr. Schaeffer indicated that if the driveway was 40 feet long, he would agree. However it is only 20 feet long.

Mr. Topping indicated it is deeper, it is 36 feet long.

Mr. Schaeffer indicated that the flare had to begin no closer than the property line.

Mr. Topping indicated that he actually had a question for Mr. Cosenza to address.

Mr. Cosenza indicated that the 12 feet is to be measured at the property line. This is a similar situation to the request made by the 86 Mason Drive application. The 12 feet was required at the sidewalk and Applicant was permitted to flare out immediately within the public right-of-way, which technically requires a variance.

Mr. Topping agreed that it would be a similar application.

Mr. Cosenza further noted that the spirit of the 12 foot driveway opening requirement is to maintain the narrower width for the driveway apron itself and the driveway's crossing over the sidewalk. However, by Ordinance, the 12 foot measurement is to be measured at the property line.

Ms. DiFranza asked if a basement was proposed.

Mr. Wiley indicated yes.

Ms. DiFranza requested that to have a two (2) foot separation between the seasonal high water table and the finish floor of the basement be provided. She noted it was not in her letter but wanted to advise Applicant of that further requirement.

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

Mr. Fulham was sworn in by Mr. Renaud.

Mr. Fulham indicated that the original plan was to save a portion of the basement and add on to it. However, after talking to his engineer and architect, they found that it would not be feasible. The house is old and would not take well to new construction.

Ms. Andrews raised her concerns about the changes in the plans.

Mr. Fulham indicated that the plans are exactly the same; however contractor found that the saving the walls were not feasible to build the house they wanted to build.

Ms. Andrews questioned if testimony was really given that only two (2) walls in the basement would be saved.

Mr. Wiley agreed.

Ms. McCartin noted that it appears that saving two (2) walls in the basement would allow Applicant to call it an addition to a pre-existing non-conforming structure. She asked that since the walls were not being saved, Applicant could not say that anymore?

Mr. Wiley generally agreed but indicated that, technically, when there is a demolition and reconstruction, the Board could move the structure around over parts of the property. The question is if that makes sense. The Board could possibly require a different setback, whereas under the prior application, it would not be possible.

Mr. Topping asked about the materials being utilized. He noted a stone watertable.

Mr. Fulham indicated it would have vinyl siding with a foundation. He indicated the stone base was wishful thinking.

Ms. McCartin asked about the front yard setbacks of the neighboring homes.

Mr. Schaeffer presented Exhibit A-2, a diagram showing the average front yard setbacks. The adjacent home (on Main Street) is 6.07 feet. On Myrtle Avenue, the average front yard setback is actually behind the southern wall of the existing home (effectively behind the house).

Mr. Topping asked what the setback distance on Myrtle Avenue would be.

Mr. Schaeffer estimated that it would be approximately 32.05 feet.

Ms. McCartin asked about the proposed garage front yard setback, from Myrtle Avenue.

Mr. Schaeffer indicated it is approximately 20 feet and steps into the front yard setback a little bit (but will be no closer to the street than the house will be).

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

Ms. Sisko asked what variances are being amended.

Mr. Wiley indicated that two (2) variances are requested to be amended: 1) front yard setback on Myrtle Avenue, which is just a dimensional correction, and 2) a new variance for the driveway.

Mr. Topping indicated his main concern is the driveway. He discussed the application on Mason Drive in which the Board compromised by permitting the flare to occur before the property line.

Mr. Constantine opined that it can work if the garage was canted and the garage was made a foot shorter. The Board could still grant a variance but still require the 12 feet at the side walk and flare out can be designed as desired. It would allow the Borough to stay with its Complete Streets Policy. Anyone can make arguments like this and other towns are struggling with issues like these. Why have a Complete Streets Policy if variances are granted. A variance is still necessary but this would be a good compromise.

Ms. Sisko indicated that she is comfortable with that.

Mr. Topping asked if that would be acceptable with Applicant.

Mr. Wiley requested an opportunity to talk to his client.

The Board recessed at 8:37 p.m. and reconvened at 8:46 p.m.

Mr. Wiley indicated that Applicant would accept, as a condition, the 12 foot width at the sidewalk and taper into the yard.

Mr. Constantine agreed and indicated that the variance is still required because it is measured at the property line, at which point it will be greater than 12 feet.

Mr. Renaud indicated possible conditions: 1) locate the approved landscaping plan, if not, a landscaping plan shall be submitted and subject to the review and approval of the Planner and/or Zoning Official and 2) the upstairs of the garage should only be for storage.

Mr. Topping discussed the merits of the application. There are setback issues due to the shape of the lot and the lot is a corner lot. It would be impossible to build a viable house based on the geometry that exists there. He is satisfied with the engineer/planner's proofs and rationale given.

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

RESOLUTIONS

15-1058 **Raymond Zipf & Angela Dohl** - *Applicant is seeking bulk variance approval to construct a rear addition on a corner lot. – Approved 2/26/2015*

413 W. Chestnut Avenue Block 51.05, Lots 42-44 R-2 Zone

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

14-10331 **Greenway Village LLC** - *Applicant is seeking preliminary and final major site plan approval with use variance, bulk variances and exceptions in order to construct two (2) buildings with 49 residential apartments and a parking lot. – Approved 2/26/2015*

392 Amboy Avenue Block 134 B-3 Zone
Lots 60.01, 60.02, 61, 62

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

CORRESPONDENCE

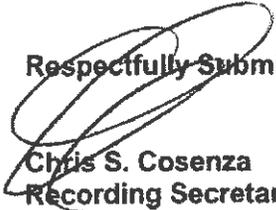
Minutes from February 26, 2015

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

ADJOURNMENT

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

The meeting adjourned at 8:53 p.m.


Respectfully Submitted,

Chris S. Cosenza
Recording Secretary

METUCHEN BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION
GRANTING C VARIANCE TO
RAYMOND ZIPF & ANGELA DOHL
413 W. CHESTNUT AVENUE
BLOCK: 51.05, LOTS: 42, 43, 44
APPLICATION NO.: 15-1058

WHEREAS, Raymond Zipf and Angela Dohl, hereinafter referred to as “the Applicant,” are the owners of Block 51.05, Lots 42, 43, 44 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 413 West Chestnut 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 a C variance; and

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on February 26, 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 February 4, 2015.
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 February 18, 2015.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, PP, Borough Planner, dated February 24, 2014.

7. Plans entitled "Zipf Residence, 413 West Chestnut Avenue, Metuchen, NJ 08840," prepared by Marcille Architecture, dated January 28, 2015 and consisting of one (1) sheet.

WHEREAS, the Applicant appeared *pro se* and gave testimony; and

WHEREAS, the Applicant seeks a C variance to construct a one-story addition at the rear of an existing dwelling where there is no foundation and settlement is occurring; and

WHEREAS, the subject premises is a corner property situated in the R-2 Residential Zone District and contains a total of 5,305 sq. ft. (0.122 acres). The property has 54.92 feet of frontage along West Chestnut Street and 95.65 feet of frontage along Center Street. The property currently contains a two-story dwelling, shed, concrete driveway, paver walkway and patio area; and

WHEREAS, the Applicant's property currently has the following non-conformities:

§110-64, minimum lot area – 7,500 sq. ft. required, 5,305 sq. ft. existing non-conforming;

§110-64, minimum lot width – 62.5 ft. required, 55.92 ft. existing non-conforming;

§110-64, minimum lot depth (average) – 100 ft. required, 94.87 ft. existing non-conforming;

§110-64, minimum front yard setback (West Chestnut Avenue) – 25 ft. required, 23.17 ft. existing non-conformity;

§110-64, minimum front yard setback (Center Street) – 25 ft. required, 11.43 ft. existing non-conforming;

§110-112.3, a driveway in the front yard area shall maintain a maximum width of 12 ft. at the driveway apron. The existing driveway at the apron is 24.5 ft.

§110-112.6, accessory structures that exceed a height of 10 ft. above grade shall be set back a minimum of 5 ft. from side and rear properties. The existing shed is set back 3 ft., existing non-conforming. An exemption for the shed was previously granted (12-005).

WHEREAS, the Applicant requires the C variance:

§110-64, minimum front yard setback (Center Street) – 25 ft. required, 11.43 ft. existing non-conforming, 13.81 ft. proposed to new addition;

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 51.05, Lots 42, 43, 44 shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 413 West Chestnut Avenue.
3. The property is located in the R-2 Zone District. The site currently contains a two story, single-family residence, shed, driveway, walkway, and patio area.
4. Mr. Zipf & Ms. Dohl were sworn in by Mr. Renaud. Mr. Renaud explained the procedures of the hearing for Applicant.
5. Ms. Dohl indicated that her property is on a corner lot in the Radio Section. The house is on a non-conforming existing lot, located at the intersection of W. Chestnut and Center

Street. It therefore has two front yards under the zoning ordinance. The house currently is non-conforming as to the front yard the Center Street side. There is an old existing addition at the rear of the building. It enclosed the staircase to the basement, which previously had no access to the basement from inside the house. It is not heated or vented and has no foundation. It is in disrepair and not very wide. They would like to remove the old, poorly constructed addition, reconstruct the stairwell and expand the kitchen. The addition would follow the existing side walls of the house and will not come any closer to Center Street than the existing walls of the house. There are a few existing conditions that are not conforming and they are all part of the application. They include lot area, lot width, lot depth, front setback from Chestnut and front setback from Center, none of which would change. The addition adds 64 square feet to the house. The variance is required because the proposed addition encroached into the required front yard setback to Center, but no farther than the rest of the house presently encroaches.

6. Mr. Zipf indicated it would enable the Applicants to add a refrigerator and some space to the kitchen.

7. Mr. Topping asked about the AC condenser unit. Ms. Dohl indicated that it would have to be moved, probably closer to the street. The driveway is right against the rear of the house. Ms. Sisko asked if landscaping would be continued. Ms. Dohl indicated that the landscaping would have to be replaced. Mr. Tobin asked if landscaping would be extended around the AC unit. Ms. Dohl agreed that it would.

8. Mr. Topping asked about the materials and if the addition would match. Ms. Dohl indicated it would match, it is vinyl.

9. Mr. Constantine asked about the material of the shed. Ms. Dohl indicated it is wood, made by an Amish building company. The colors match.

10. Mr. Renaud indicated the application is for a C variance to allow for further encroachment into the front yard setback, or what we will call the front/side yard setback. Additionally, after discussing with Mr. Cosenza, Applicant will require a variance from § 110-112.6.A if the AC condenser unit will be located into the second front yard area on the Center Street side.

11. Mr. Cosenza asked if the unit could be brought to the other side of the house.

12. Ms. Dohl indicated that there is the driveway in the back and the patio on the side of the house opposite Center Street and there would be no room for the condenser. Mr. Cosenza noted that Applicant appears to be constrained in relocating the unit.

13. Mr. Renaud noted that if the variance is to be granted, there should be reference to what that setback distance can or should be.

14. Ms. DiFranza noted the main line of the house is 13.81 feet from Center. She thought the unit could be 10 feet from the property line. Ms. Dohl indicated that she would work with her contractor to see where the condenser could be located.

15. After some discussion, the Board, after input from its professionals, determined that a variance would be granted for the location of the condenser from § 110-112.6A and that eight (8) feet was the minimum setback distance that would be permitted, with proper screening subject to the Zoning Officer's approval.

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

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

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

18. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and the zoning ordinance because the existing residence already does not conform to the dimensional requirements and the addition will cause no further deviation.

19. The Board finds that the granting of the application for 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 C variance of Raymond Zipf and Angela Dohl be and is hereby granted in accordance with the application and plans filed herein, subject to and conditioned upon the following:

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

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

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

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

E. Applicant shall comply with the following additional conditions:

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

2. Applicant shall comply with the recommendations and requirements contained in the Board Engineer's memorandum dated February 18, 2015.

3. Applicant is granted a variance from the provisions of §110-112.6A for the location of the air conditioning condenser to the extent that same may be located near the rear sideline of the house on the Center Street side, no closer than 8 feet from Center Street. The air conditioner condenser shall be properly screened with landscaping, subject to the approval of the Zoning Officer.

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 February 26, 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 March 12, 2015.



Sharon Hollis, Secretary

METUCHEN BOARD OF ADJUSTMENT

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

TO
GREENWAY VILLAGE, LLC
392 AMBOY AVENUE
BLOCK 134, LOTS 60.01, 60.02, 61, 62
APPLICATION NO.: 14-1033

WHEREAS, Greenway Village, LLC, hereinafter referred to as “the Applicant,” is the owner, together with Aros Investments, LLC, of Block 134, Lots 60.01, 60.02, 61, 62 as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 392 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 D variance, C variances, waivers/exceptions and preliminary and final site plan approval; and

WHEREAS, the Metuchen Board of Adjustment held a public hearing on said application on February 26, 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 February 6, 2015.
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., Board Engineer, dated February 24, 2015.

6. Memorandum of Looney Ricks Kiss, Inc., Jim Constantine, PP, Borough Planner, and Mike DiGeronimo, AICP, P.P., dated February 24, 2015.

7. Architectural plans prepared by Marcille Architecture, consisting of five (5) sheets, dated January 7, 2015.

8. Plans entitled "392 Amboy Avenue, Block 134, Lots 60.01, 60.02, 61 & 62, Borough of Metuchen, Middlesex County, New Jersey," prepared by Menlo Engineering Associates, Inc., dated November 14, 2014, last revised January 5, 2015.

9. Memorandum by Shirley M. Bishop, P.P., Metuchen Affordable Housing Consultant, dated February 4, 2015.

10. Photographs of existing uses.

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

WHEREAS, the subject property is situated in the B-3 Office Business Zone District and contains 66,594 sq. ft. (1.53 acres). The properties are located at the end of Amboy Avenue bordered by the Middlesex Greenway to the south and NJ Transit railroad to the north and west. The lots contain a one-story building for an automotive repair use, a plumbing business office and warehouse, a two-story residential building, a metal garage, patios, walkways, driveways, some trees, gravel and broken asphalt parking areas; and

WHEREAS, the Applicant proposes to demolish all existing features and construct two apartment buildings, one 2-story, 16 unit building and one 3-story, 33 unit building, for a total of 49 units, with associated parking facilities, lighting and landscaping improvements; and

WHEREAS, the Applicant requires a D(1) variance as follows:

§110-77(a), does not permit apartments on the first floor in the B-3 Office Business District Zone B-3; both proposed apartment buildings propose residential units on the first floor; and

WHEREAS, the Applicant requires C variances as follows:

§110-64, minimum side yard setback (left), 10 ft. required, 5.8 ft. proposed (Amboy Avenue).

§110-64, minimum side yard setback (combined), 40 ft. required, 15.9 ft. proposed.

§110-64, minimum rear yard setback, 25 ft. required, 21.1 ft. proposed.

§110-64, minimum impervious coverage, 70% required, 71.2% proposed.

§110-151(d), the maximum width of a two-way traffic driveway for apartments is 22 ft., where 24 ft. is proposed.

§110-154(b), the minimum number of parking spaces required for the proposed apartment building is 90. There are 72 on-site parking spaces and 4 street parking spaces proposed. Applicant seeks a *de minimis* exception from the residential site improvement standards.

§110-175(b), driveways and parking lots shall be appropriately buffered and screened to minimize the impacts of noise, lighting and glare and other nuisances. Parking areas shall have a minimum 5 ft. of buffer area, and where the parking area is on tract adjacent to a residential use there shall be a minimum 10 ft. of buffer area. The Applicant proposes 2.3 ft. of buffer area for the parking area, and 6.7 ft. of buffer area towards the residential use; and

WHEREAS, Applicant requested the following waivers/exceptions:

§110-130(F), building setbacks from driveways, parking areas and private streets within the site shall be 25 ft. for residential developments, 6.7 ft. proposed.

§110-132(B), dwelling unit mix, developments of 25 or more units, the mix dwelling shall not be more than 75% of the total number of dwelling units shall have the same number of bedrooms, the Applicant proposes 86% of the apartments shall be 1-bedroom units.

§110-130(B), building location, states "...a building shall be located to front towards and relate to a public street, both functionally and visually. In a multiple-building development, buildings located on the interior of a site shall front towards and relate to one another, both functionally and visually. To the greatest extent possible, the development shall divide proposed buildings into smaller, individualized groupings, utilizing such features as courtyards, quadrangles and alleys that encourage pedestrian activity and incidental social interaction among users. Spatial relationships between buildings shall be geometrically logical and architecturally formal. No building shall be oriented to front toward a parking lot. All buildings shall be located to allow for adequate fire and emergency access." The proposed development does not comply with this section.

§110-136(A), massing for the proposed three-story residential building. This provisions states, "... depth of offsets require an individual offset be not less than two (2) feet in depth." (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

§110-136(B), horizontal courses, this provision states, "...all visibly exposed sides of a building shall have an articulated base course and cornice. The base course shall be traditionally proportionate to the overall horizontal and vertical dimensions of a façade and shall align with either the kickplate or sill level of the first story. The cornice shall terminate the top of a building wall, may project out horizontally from the vertical building wall plane and shall be ornamented with moldings, brackets and other details that shall be appropriate to the architectural style of a

building. The middle section of a building may be horizontally divided at floor, lintel or sill levels with belt courses. Building courses shall be considered an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors and details of the building.” (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

§110-136(C), continuity of treatment, which states, “...the architectural treatment of a façade or roof shall be completely continued around all visibly exposed sides of a building. All sides of a building shall be architecturally designed so as to be consistent with regard to style, materials, colors and details.” (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

§110-136(J), lighting, states, “...light fixtures attached to the exterior of a building shall be designed to be architecturally compatible with the style, materials, colors and details of such building and other lighting fixtures used on the site. Consideration shall also be given to the type of light source utilized and the light quality such produces. The type of light source used on buildings, signs, parking areas, pedestrian walkways and other areas of a site shall be the same or compatible. The use of low-pressure sodium or mercury vapor lighting either attaches to buildings or to light the exterior of buildings shall be prohibited.” (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

§110-134(A), consideration of context, states, “...an individual development plan shall not be considered on its own, but with sufficient regard to the existing streetscape neighborhood and district in which it is located and to the Borough generally. Extreme consideration and respect shall be given to abutting and nearby properties and the existing buildings, site

improvements and open spaces located thereon and in adjacent portions of the public right-of-way." A design waiver was requested for the proposed plans due to the insufficient treatment of a relationship between the Amboy Avenue and the Middlesex Greenway. (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

§110-177(A), landscaping, states, "The entire development shall be extensively landscaped in accordance with a plan conceived as a complete pattern and style throughout the total site. All areas of the site not occupied by buildings and other improvements shall be intensively planted with trees, shrubs, hedges, ground cover and perennials and annuals. (During the course of the presentation of testimony, Applicant agreed to comply with this provision rather than require a waiver/exception).

WHEREAS, the Metuchen Board of Adjustment heard and received testimony and evidence as follows:

1. John Wiley, Jr., Esq., appeared on behalf of the applicant. He gave an opening statement. He explained that the application is in front of the Zoning Board of Adjustment, as opposed to the Planning Board, due to unique issues. The property is located in a unique location, bounded by the Amtrak line on one side, TD Bank on the other and the Middlesex Greenway to the south. The property is in the B-3 Zone which permits apartments; however, it does not permit apartments on the first floor. As a result, Applicant seeks a use variance along with a number of bulk variances. Applicant will present an engineer, architect and principal of the developer to testify. The Applicant developed the Central Avenue project that contains the liquor store, restaurant and apartment building. The last witness will be the planner to testify to the planning criteria.

2. Michael Marinelli, Applicant's Engineer, was sworn in, qualified, and gave testimony. Before he began, Mr. Sondergard explained that he has had his car repaired by one of the current tenants of the property, but that would not affect his impartiality. Mr. Wiley indicated that the tenant also fixes his son's cars and noted Mr. Sondergard's comment.

3. Mr. Marinelli presented Exhibit A-1, an aerial exhibit of the property depicting existing conditions of the property. The lot is irregular, almost triangular in shape. The property is commonly known as 392 Amboy Avenue, located on the north side of Amboy Avenue. The property is 1.53 acres in area and is located entirely in the B-3 Business-Office Zoning District. Surrounding the property is TD Bank to the east, the rail line to the north and the Greenway to the south. Immediately north of the rail line is the D-1 Zone where the Whole Foods application has been approved. Beyond the Greenway are residences in the R-2 Zone. The site is currently developed with three (3) structures: a single-family home to the east, a connected building housing a number of businesses and a metal warehouse to the north. To the west is a large gravel lot and storage area. The only access is off of Amboy Avenue. This site fronts on the dead-end portion of Amboy Avenue. Applicant seeks approval to remove all structures and construct two (2) residential apartment buildings.

4. Mr. Marinelli presented Exhibit A-2, a colorized rendering of the site plan depicting the proposed improvements to the property. There will be two (2) residential apartment buildings. The western building will be a two-story 15,960 square foot building with 16 dwelling units. To the east will be a three-story 34,800 square foot building with 33 units. The access will be narrowed to a 24 foot driveway that heads north into the site, between the 2 buildings, and heads west and dead-ends, providing access to a 72-space parking lot with four (4) ADA spaces. There will also be four (4) on-street parking spaces. Applicant also proposes to put in the typical

amenities as expected and necessary. There will be sidewalks, a 16x16 trash enclosure and others improvements.

5. What is not shown on this plan, but has been asked by Borough professionals, are improvements to the area at the dead-end of the Amboy Avenue public right-of-way. It was suggested to provide a lawn and landscaped area. Applicant has agreed to do that. Accordingly, the curb will extend to the south and a sidewalk will be provided across Amboy Avenue and connect to the Greenway. Mr. Wiley indicated that Applicant would be willing to do so as a condition of approval.

6. Mr. Marinelli indicated that Applicant also agrees to provide bike storage. There will be bike storage within the units as well as exterior bike spaces for residents and visitors. The submitted site plan includes a landscaping plan containing a substantial number of trees, shrubs and ground-cover plantings. There will also be safe and adequate lighting including pole-mounted and wall-mounted lighting. The lighting will meet the standards of the Ordinance. Stormwater management will be handled in that on-site impervious coverage will be reduced. He described the natural drainage: the lower 1/3 of the site drains to the south toward the Greenway, the upper 2/3 of the site drains north toward the rail line. He indicated that the Borough Engineer raised concerns regarding the additional runoff and its potential impact to the Greenway. He indicated that can be remedied to prevent negative impact to Greenway. Impervious coverage is being reduced. Mr. Marinelli stated that the improvements will achieve less runoff to the Greenway. The site is exempt from water quality requirements. All existing utilities will be capped and abandoned. New services will be brought off of Amboy Avenue. HVAC units and transformers will be on the east side of the eastern building and south side of western building.

7. Mr. Marinelli indicated that there are several bulk variances required in addition to the use variance:

- Side Yard Setback: 5.8 feet is proposed whereas 10 feet is required. This setback distance is located only at the southwestern corner of the western building, which is the result of the irregular shape of the lot;
- Combined Side Yard Setback: 15.9 feet is proposed whereas 40 feet is required. Again, this is the result of the constraints of the lot. If the site was rectangular, Applicant would not require this variance;
- Rear Yard Setback: 21.1 feet is proposed whereas 25 feet is required. This setback distance is located only at the northwestern corner of the eastern building;
- Impervious Coverage: The percentage of impervious is being reduced from 75.7% to 71.2% whereas a maximum of 70% is permitted.

8. In addition to the variances, several design waivers are required:

- Two-way Driveway Width: Because the driveway provides access to 90 degree parking, Mr. Marinelli recommends a 24 foot wide drive aisle; in order to be consistent, a 24 foot driveway is proposed, whereas a maximum of 22 feet is permitted;
- Setbacks from Parking Area: Currently it is 0.3 feet, 2.3 feet is proposed whereas 5 feet is required. This occurs only in the area where the parking lot pinches along the rail line;
- Setbacks between Parking Area and Buildings: 6.7 feet is proposed whereas 10 feet is required. This setback distance is located only at the northwestern corner of the western building;
- Number of Parking Spaces: The Site plan provides parking for 72 on-site parking spaces whereas 90 parking spaces are required by RSIS. Applicant seeks relief from RSIS. Mr.

Marinelli opines that site conditions warrant the reduction in parking that is required. 42 of the 49 units will be one-bedroom units. The site is located in an urban area and is close to mass transit. Additionally, there will be places for bike racks. He noted that Borough is considering reduced parking requirements to half in the downtown area;

- Dwelling Unit Mix: 86% of the number of units are one-bedroom units whereas a maximum of 75% of units of the total number of dwelling units of the same number of bedrooms is permitted;
- Massing: The length of a building cannot exceed 150 feet without sufficient offsets. 200 feet is proposed.

9. Mr. Wiley addressed the Engineer's memorandum. He referred to Page 3, comments #4, #5 and #6 to which Applicant agreed to comply. Page 4, comment #1, plans will need to be modified to provide a sidewalk connecting into the Greenway along the southerly right-of-way, subject to the review and approval of the Borough Engineer. Comment #2, Applicant will agree to comply and provide landscaping, subject to the review and approval of the Borough Planner. Comments #3, #4, #5 and #6 will be complied with. Comment #7, a waiver will be necessary for RSIS; however, he noted to the Board that an Ordinance to reduce parking in the downtown area is being considered.

10. Mr. Renaud clarified that the proposed Ordinance regarding parking will not reducing RSIS parking requirements, rather it will emphasize the consideration of local conditions as permitted by RSIS. In any event, the Board cannot grant waivers, only DCA can. The Board can grant *de minimis* exceptions.

11. Mr. Wiley indicated Applicant will comply with comments #8, #9, #11, #12. With respect to comment #13, he asked Mr. Marinelli to testify to the seasonal high water table. Mr.

Marinelli indicated they should be able to provide a two (2) foot separation; there will be no basements.

12. Mr. Wiley indicated Applicant will comply with comment #14. With respect to comment #15, Applicant agreed to coordinate with Fire Department. Mr. Marinelli indicated that there is a fire hydrant nearby.

13. Mr. Wiley indicated Applicant will comply with comment #16 and with #17, provided that N.J. Transit permits same. With respect to comment #19, Mr. Marinelli indicated Applicant will provide a refuse area which will be located in the northeastern corner of the parking lot. The space is adequate for two (2) side-by-side dumpsters. Gates and drop-pins will be provided. With respect to comment #21, there is an existing light post that will be maintained. Mr. Wiley indicated Applicant agreed to comply with comment #22. He further indicated that will comply with the Board Engineer's stormwater management comments and that stormwater management will be subject to the Board Engineer.

14. Mr. Marinelli indicated that the proposed development will not increase flow to the Greenway. There is an inlet within the Amboy Avenue right-of-way that collects water from Amboy Avenue and site and discharges into Greenway. The original plan had roof leaders directed to Greenway. Applicant has agreed to modify the design to link them to the existing stormwater system to the south.

15. Mr. Marinelli indicated Applicant will generally comply with comments regarding utilities. He clarified that there is a hydrant not more than 100 feet away from the site. With respect to comment #8, proposed utilities will be installed below grade. With respect to comment #9, there is an existing utility pole in the location of the proposed on-street parking. Applicant desires to relocate the pole.

16. Mr. Renaud indicated that, after discussing with Mr. Cosenza, variances may be necessary for the proposed HVAC equipment. Mr. Marinelli clarified that they will be located on the west side of the eastern building and on the south side of the western building. Mr. Cosenza indicated that variances will be required if the units are less than three (3) feet from the side lot line shared with the bank and if it is anywhere in the front yard area between (the stub end of) Amboy Avenue and the front of the building.

17. Mr. Marinelli indicated that Applicant will agree with comments #11 and 12 regarding utilities, as well as the other utility comments, and that, outside agency approvals are pending.

18. Mr. Wiley addressed the Planner's memorandum. He referred to Page 6, comments #17 and #18, which considers improvements in public right-of-way. Applicant will agree to work with the Planner with respect to foundation plantings, additional screening, landscaping and bike racks, and that approval shall be conditioned on the Planner's approval. He indicated he had no further questions for Engineer.

19. Mr. Topping asked about the electric utility transformers to be located at the site. Mr. Marinelli clarified that there will be no transformers proposed.

20. Mr. Topping noted testimony regarding a curb and lawn area within the Amboy Avenue right-of-way. Mr. Constantine clarified that there will also be landscaping improvements there as well.

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

22. Mark Marcille, Applicant's Architect, was sworn in, qualified and gave

testimony. Mr. Marcille presented Exhibits A-3 and A-4, renderings depicting the three-story east and two-story south buildings, respectively. He indicated that the attempt was to provide town-center style architecture, with an attractive, warm, inviting design with traditional textures and materials. The designs relate to each other and to adjacent sites. The three-story building will have more commercial feel, given its proximity to TD Bank with horizontal base, cornice and other details. The two-story building will be more residential in nature, with a gable roof, dormers and shutters. The three-story building will have an entrance on Amboy Avenue. There are multiple entrances on all buildings, but more on the two-story building. Mr. Marcille stated that Applicant will attempt to comply with all comments from Mr. Constantine's reports. With respect to comment #12, a waiver will be required from Building Location and Design, § 110-130B.

23. Mr. Topping noted the exhibits appeared different than submitted plans. Mr. Marcille indicated the plans have been revised in response to Planner's comments. With respect to comment #13, offsets have been increased from 1'-4" to 2'-0" in an effort to comply with § 110-136A, so as not to require a waiver/exception. With respect to comment #14, a horizontal base will be provided to comply with § 110-136B, so as not to require a waiver/exception. With respect to comment #15, Applicant will comply with § 110-136C, so as not to require a waiver/exception. With respect to comment #16, the wall-packs will be removed and residential-style light fixtures will be provided to comply with § 110-136J, so as not to require a waiver/exception.

24. With respect to the air conditioning condenser units, Mr. Marcille stated the two-story building will have 16 units installed along south side of the building, facing the Greenway. The three-story building would have 33 A/C units (one per unit), which would be on the east side

of the building. Mr. Topping noted the units were not shown on the plans and that was a lot of condenser units to not be shown on the site plan. Mr. Constantine requested Mr. Marcille to illustrate to the Board where the units would be located. Mr. Cosenza asked if the units can be ganged. Mr. Wiley indicated that he would have Applicant testify as to the location of the units.

25. There was a discussion regarding the A/C condenser units in front of the two-story building. Mr. Cosenza clarified that the three (3) foot setback is the standard to rear and side yard setback lines, whereas the location between the stub end of the Amboy Avenue right-of-way and the two-story building is still considered a front yard area. It is a technical matter understanding the physical improvements of the street stops at the driveway entrance. Mr. Wiley clarified that it is not a vacated street, but the reality it is an open space as opposed a street. Mr. Marinelli agreed with Mr. Cosenza that it is still a front yard area. Mr. Constantine noted that this area is still an important issue to address. Given the high traffic of the Greenway, it should be treated like a typical right-of-way to be fronted upon. It is a legitimate front. It is noted that § 110-112.6.A prohibits locating A/C units in the front yard and requires a 3-foot setback in side and rear yards. Variances would be required from these provisions if the A/C units were to be located as described.

26. Ms. Andrews asked about the location of the Greenway. Mr. Marinelli indicated that the Greenway runs approximately 30 feet from the southerly lot line. There is a grade change between the subject site and the Greenway. A sidewalk would be provided, with its access approximately 100 feet east from the driveway entry to appropriately connect to the Greenway (because of the grade change). The Board discussed the merits to the project facing the Greenway. Ms. Andrews raised her concerns regarding the 200 foot list and related notice. Mr. Wiley indicated that all property owners on the 200 foot list received required notice. Mr.

Renaud confirmed that 200 foot notice is what is required. Mr. Marinelli clarified that several residences, within the Rose Street and Memorial Parkway block, were noticed.

27. Mr. Topping stated that the new elevations show with a new entrance on the two story building, but there is no relation to the floor plans, which do not show this entrance; he asked if revised plans were provided. Mr. Marcille indicated he would have to provide revised plans; the entrance leads to apartment #4. There was additional discussion on this question. Mr. Marcille eventually agreed on behalf of applicant that the entrance in the middle of the south side of the south building will connect up with the center interior hallway depicted on the floor plan.

28. Ms. Sielski indicated that the treatment to the south side of the two-story building is important. She asked if a fence would be provided on the site because of its proximity to the Greenway and rail line. In the winter, you can see straight through the site. Mr. Wiley indicated Applicant would provide additional testimony on this subject.

29. Mr. Topping noted the brick use; he asked what other materials were being considered. Mr. Marcille indicated it would have vinyl and stucco, with aluminum wrapped windows. Ms. Andrews requested clarification regarding the combination between vinyl and stucco. Mr. Constantine asked Mr. Marcille to compare the design with the Suburban Square building on Central Avenue. Mr. Marcille indicated it is very similar in appearance.

30. Mr. Tobin asked about the rear access to the two-story building. Mr. Marcille described access to the building; there are three (3) distinct entrances providing stairwell access to a group of units.

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

32. Seth Robertson, 11 Rose Street, thanked the Board for reiterating his concerns of

visibility of the HVAC units. He asked where exactly the HVAC units will be located and how they will be screened. Mr. Marcille stated that they are not shown on the rendering. They will be shown on the elevation facing Mr. Robertson's property. They will be screened with greenery. Mr. Robertson noted that there is a small hill and issues related to its maintenance. Mr. Wiley indicated the hill is on property owned by the County and is part of the Greenway.

33. Ms. Andrews raised her concerns regarding the location of the HVAC units; the Board does not have anything to look at to react to. Mr. Marcille indicated they could be placed into the green triangle on the west side of the south building. He would defer to Applicant. Mr. Topping raised concerns regarding noise from the A/C/ units. Mr. Cosenza briefly discussed the performance standards of the Ordinance regarding noise. He believes the limit is at 65 decibels to be measured at the property line. Typically, it is not an issue if it is property screened. Mr. Topping requested data for noise. He believes it is 65 decibels during the day and 55 decibels at night. Mr. Cosenza asked if that is to be provided for at the property line of the greenway and/or residential properties. Mr. Topping requested for both.¹ There being no further questions from the public, the next witness was called.

34. Jeff Josell, owner of Greenway Village, LLC, the Applicant, was sworn in and gave testimony. He has developed other property in the Borough. He developed the Suburban Dodge property on Central Avenue, which has been redeveloped into Wine Chateau, a restaurant with apartments over, and a three-story apartment building. He also developed property on Amboy Avenue with a daycare facility with apartments over. Greenway Village LLC will own

¹ § 222-6B(18)(a) of the Borough Ordinances prohibits the operation of air-conditioning or air-handling devices that exceed the maximum sound level limitations of continuous sound levels measured at the property line of 55 dBA. It is noted that Chapter 222 is not part of the Land Development Chapter and that the Board is without authority to grant variances from Chapter 222.

and manage and maintain the property. Common areas will be maintained. The project will not be developed in phases. With respect to parking, one (1) space per unit will be dedicated. There will be a limited offer to purchase a second space. Mail will be provided in vestibule areas within buildings. In terms of refuse, a private hauler will be utilized.

35. With respect to mechanical equipment, each unit will have its individual furnace and A/C condenser unit, much like that of a typical single-family house. They will not create any more noise than a typical unit. They will be scattered along the front of the two-story building. The lines cannot be too long, so they cannot be ganged in one (1) location. They can be ganged into groups of four (4). With respect to the western building, residents will park on the north side, so the physical front of the building will be on the parking lot side; he prefers the A/C condenser units not to be there while residents walk to their apartment. He feels the south side is the ideal side. They will be screened in a location where the dead-end of Amboy Avenue will now be closed off. Ms. Andrews asked if any could be located behind the building. Mr. Josell indicated that residents will enter the building from the north; he does not desire to have residents walk by A/C condenser units. Mr. Constantine asked if any units could be placed on the west side. Mr. Josell indicated that four (4) could be located there.

36. Mr. Topping asked about the units for the three-story building. There is an approximate five (5) foot dip in grade from the drive-thru lane of the bank to the proposed grade of the property. The units will not be visible. Mr. Constantine asked if the units would be visible on the northern side. Mr. Josell indicated they may be visible from Lake Avenue. Mr. Marinelli clarified that the grade change is approximately four (4) feet on the northernmost side of the three-story building, no so much as one moves to the south.

37. Mr. Josell indicated that the A/C condenser units are not very apparent at the

Suburban Square. He has not received complaints from Central Square residents. It is his intention to hide them as best as possible and to make this a desirable place to live.

38. Ms. Sielski raised her concerns about lack of fencing at the site. She referred to Metuchen Gardens, which has a similar situation, where the site abuts a freight line. The fence provides separation from rail line. She asked if any plans to provide fencing at this site. Mr. Josell indicated that there is landscaping along the buffer area. After discussion with Mr. Constantine, more landscaping can be provided to fill in the gaps. Mr. Sondergard indicated that, these days, fencing is located along most residential properties. Most are put up by the rail line. He suggested that one be provided.

39. Ms. Sielski indicated Amtrak tends to put up a chain-link fence versus a nice-looking fence. She further raised her concerns regarding lighting on the south side. Mr. Josell indicated lighting will not spill off-site. He further clarified that he would utilize stucco material for the trim. He referred to his project on Central Avenue as an example.

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

41. Tamara Lee, Applicant's Planner, was sworn in, qualified and gave testimony. She indicated she is also a licensed landscape architect.

42. Ms. Lee indicated that Applicant is proposing 49 units on a 1.53 acre site in the B-3 Zone. The site is very irregular. The geometry of the site represents many of the constraints and creates the hardship for the bulk variances requested. Additionally, the site has limited accessibility and is isolated, which creates the need for the D variance to permit residences instead of commercial uses on the first floor.

43. Ms. Lee noted that use variance is not required for the entire project. There are

apartments on the second and third floors are permitted under the zoning ordinance. It is the 19 apartments on the first floor that need the D variance. Ms. Lee opined that the reason for the first-floor commercial requirement, after reviewing the Master Plan, was to develop planning policies to ensure vibrant downtowns and that one of the ways to do that is to promote commercial development on the first floor and residential above. This works well in the downtown areas. This draws in customers and promotes economic vitality downtown. By having apartments above, hopefully they will spill out into the streets and support commercial businesses in the downtown. Unfortunately, the underlying assumption is that there is a busy street in front. The subject site, however, does not get any pass-by or pedestrian traffic because it is isolated, off the main street, Lake Avenue, and on a dead end, cut off by the Greenway and the railroad line. For those reasons, commercial development in accordance with the permitted uses in the zone is not viable. Ms. Lee's opinion was that the development that occurs now is typically referred to as low-value ratable. She pointed out that the existing uses on the site are not permitted uses in the B-3 Zone. Despite the request for the use variance, the site is actually going to become more conforming to the Ordinance, since residential use is permitted and the existing uses are not. So there are a lot of reasons why commercial development will not work here.

44. Ms. Lee further testified that, for the same reasons, it is a much better site for residential development, particularly because it is a quiet, secluded area. Towns typically like to place single-family residential homes on quiet streets and apartments in busier areas. This is actually unusual for an apartment development. She opined that, as a result, these will create a high-value ratable. In addition to that, because the site is at the end of Amboy Avenue, she opines that it is similar to cul-de-sac insofar that these types of sites tend to self-police themselves. This will be a safe apartment development.

45. Another reason suggested as to why the site is appropriate for strictly residential development is proximity to the Greenway. The project was designed to bring more residents closer to the Greenway. There will now be a direct access to the Greenway. There is not a lot of outdoor space in an apartment development; therefore, having the Greenway is an advantage and will make it highly valuable. The Whole Foods development would permit residents of this development to utilize the Greenway to access Whole Foods. There are also residences south of the Greenway. At this time, these residents look at unsightly buildings. The project will be more visually desirable. In addition, the western building will break up the view of the tracks from the residents in the R-2 Zone. It was Ms. Lee's opinion that this site is particularly well-suited for the proposed development, which is one of the proofs for the positive criteria for the (d)(1) variance.

46. Ms. Lee opined that this application supports the purposes of the Municipal Land Use Law, as well as goals and objectives of the Master Plan. She described how the project supports subsections (a), (g) and (i) of Section 2 of the MLUL. With respect to the Master Plan, there are other goals being supported. First and foremost, it is closer to conformance to the Ordinance than what is there now. It is more compatible to the Greenway and residential neighborhood. There will be economical housing close to the train station. She recalled Mr. Josell's discussion regarding parking. It is a walkable community with access to the train station. She noted there will be mostly one-bedroom units with no amenities for children. She opined that it will generate few school children. Ms. Lee offered the opinion that the situation presented by this site is not addressed in the zoning ordinance because it is an uncommon situation.

47. Ms. Lee further testified that, as far as the negative criteria, since the application does advance a number of objectives, she does not anticipate any detriments. Lighting will be

more residential and pedestrian scale. In terms of traffic, purely residential development has a very low traffic generator, as opposed to commercial development on the first floor. In 2009, the Circulation Plan Element indicated that improvements were required at the Lake/Amboy Avenue intersection, which is now completed. The NJDOT classifies this intersection as level C, through 2025. When considering the lower-traffic generator, located at the end of the stub street, she opined that very little traffic will be generated at the intersection. Her opinion was that there is no substantial detriment to the public good or substantial impairment to the zone plan or zoning ordinance.

48. Ms. Lee addressed the enhanced proofs, given this is a d(1) variance, opining that ordinances are designed to address the most common situation. This site is not a very common condition in the B-3 Zone. Because it is off a main road and is on a dead end and is isolated. Even though it deviates from the Ordinance, as long as it supports planning objectives, the use variance can be justified. She provided testimony to the other variances and waivers. Her opinion was that the 90 parking spaces will not be necessary. As noted before, a number of the bulk variances are a result of the shape of the lot, located at pinch points. The purpose of side yard setbacks is to ensure distances between buildings. In this case, there is significant space between buildings. Impervious coverage is actually being reduced. She believes the issues related to the accessory structure variance (A/C condenser units) will be addressed; they will be significantly screened from noise and view. In her professional opinion, Applicant has satisfied all of the positive and negative criteria.

49. Mr. Sondergard noted that Lake and Amboy Avenue are very busy streets. He offered that the bank generates traffic. He noted that at least 49 cars will be introduced to the intersection.

50. Ms. Lee stated that current uses do not conform to the ordinance. The current uses are also low-value. She indicated she made her comparison to what the Ordinance would permit, which would be commercial uses on the first floor. First floor commercial would generate much more traffic than residential uses. Mr. Sondergard opined it was a false comparison, as it was made with a project that would be impossible. Ms. Lee indicated that was a fair point. The purpose of the planning testimony was to make the comparison as it relates to the merits of the application and how it compares to what the Ordinance permits.

51. Mr. Sondergard noted that there will be additional traffic; he asked Ms. Lee if traffic would significantly impact the intersection. Ms. Lee opined that it would not. When the NJDOT did its study, they did it based on the areas that contribute to this intersection being built out in accordance with the Ordinance. Applicant will be building this project with a use that will generate less traffic than what the Ordinance permits.

52. Mr. Topping noted that there were references to a draft Ordinance. Outside of referencing it again, he asked if benchmarking was made with other projects. Mr. Wiley suggested that Applicant testify to that given he constructed a similar development on Central Avenue. Mr. Topping indicated that was reasonable.

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

54. Leonard Roseman, 40 Miller Drive, asked Ms. Lee how far the train station is from this location. Ms. Lee indicated it is 200 feet closer to the train station, as compared to Suburban Square. It is less than a 1/2 mile away. Mr. Roseman asked about the COAH requirements. Mr. Wiley indicated there is a 15% set-aside requirement.

55. Mr. Josell testified there would be seven (7) affordable units: two (2) three-

bedroom units, four (4) two-bedroom units and one (1) bedroom unit. Mr. Cosenza confirmed that same is referenced in the report of the Borough's affordable housing consultant, Shirley Bishop.

56. There being no further questions from the public for Ms. Lee, Mr. Topping closed the public portion.

57. Mr. Wiley requested Mr. Josell to come back forward and speak to the Central Avenue parking and affordable housing characteristics. Mr. Josell indicated that at Suburban Square, there are 37 spaces for the 33 units, which meets the parking need for the project. There is shared parking with Wine Chateau and Lola's Bistro. There are generally no parking issues except for Friday and Saturday nights, which is handled by valet parking, as testified before this Board on that application. Mr. Josell stated that he builds mostly one-bedroom units, which limits school children. The average demographic for his buildings are within the 26-36 age group, signed to one-year leases. Many renew their leases and tend to live 4-6 years. Residents like being in Metuchen and sometimes use the apartment as a stepping stone to buy a house in Metuchen. He does get commuters who walk to the train station in from Suburban Square as well as the building he owns on Amboy Avenue. As far as parking, it is a very low parking requirement. The COAH units have not had a negative impact on parking, even with school kids in the affordable units.

58. Ms. Sisko asked about the RSIS exception. Mr. Renaud suggested that the Board not consider the draft Ordinance that has not yet been passed. It is never correct to count on an Ordinance being passed until it is passed. He does not believe it would have had an impact on the application anyway because the Ordinance cannot vary RSIS standards. Having said that, Mr. Renaud indicated that the RSIS standards do not set out a hard and fast rule. Section 5:21-4.14(c)

states, "Alternative parking standards to those shown in Table 4.4 shall be accepted if the applicant demonstrates these standards better reflect local conditions. Factors affecting minimum number of parking spaces include household characteristics, availability of mass transit, urban versus suburban location, and available off-site parking resources." Section (f) provides, "When, in the judgment of the local approving authority, on-street parking is available, then only that proportion of the parking requirement which is not available on the street shall be provided in off-street parking facilities. A length of 23 feet per on-street parking space shall be used in calculating the number of available on-street parking spaces." So if the Board finds that there are four (4) parking spaces on the street, the Board is supposed to deduct that from the parking requirement. If the Board finds the any reasonable alternative parking standard would apply, for example that 72 spaces is enough, given its proximity to mass transit, location, household characteristics, and so forth, the Board could find that 72 is enough, then, in that case, the Board would not have to grant an exception. The Board would have set the standard. If the Board found, for example, that Applicant should have 80 spaces and only provides 72, the Board could grant a *de minimis* exception.

59. There being no further questions from the Board, Mr. Topping opened the hearing to the public for comments regarding the application.

60. Laurie Lindsey, 29 Beechwood Avenue, was sworn in by Mr. Renaud. She indicated that she understands changes are inevitable. However, to classify businesses that currently sit at this site as low-value, was incredibly offensive. At the very best, they operate in retail-fashion and the businesses support the residents of Metuchen.

61. There being no other comments from the public, Mr. Topping closed the public portion.

62. Mr. Wiley wished to clarify that Applicant provided testimony regarding economics. He noted that auto repair shops is not a permitted use and is obviously a non-conforming use. While they use technical terms, he wished to clarify they do not mean to be offensive.

63. Mr. Topping noted that the application was well-presented. He believes a lot is being asked for at this site but is well-intentioned. There are conditions to be further considered. The application is worth considering.

64. Mr. Renaud suggested that the Board discuss if there any particular variance they wish to address. He noted that there is a D variance for the residential use on the first floor only and a number of c variances. He is not entirely clear as to where the A/C condenser units are to be located. In the past, the Board has left those issues to the Planner and Engineer to decide if and how many units can be there. Applicant gave an explanation as to why the units should be located on the south side of the westerly building. Four (4) units could be placed to the west side of the two-story building and six (6) on the north side of the three-story building. The Board could permit the professionals address them, knowing that the units have to go somewhere. He further noted that applicant agreed that there were no disagreements with the Engineer's and Planner's memoranda. Applicant will be required to comply with recommendations and requirements within them and be required to submit revised plans to reflect them. Since it would be a D variance, Applicant requires five (5) affirmative votes.

65. Mr. Topping expressed that the A/C condenser units could be worked out with the professionals; there are also conditions for improving the stub end of Amboy Avenue, provision of landscaping, bike storage, and so forth.

66. Ms. Andrews asked Mr. Constantine if the concerns can be addressed. Mr.

Constantine indicated that Applicant has worked with him to address issues in the past. In fact, the landscaping at Suburban Square is used as a model. He noted that one (1) space per apartment is typical. As noted in his memo, he suggested that the one (1) space closest to the western side of the westerly building be eliminated; the setback is very narrow. He further indicated that a number of visual tricks could be done to address much of the concerns. The desire is to have the building front on the Greenway. He believes it can work.

67. Mr. Topping agreed with the concept of one (1) parking space per one-bedroom apartment. He noted that the proposed ratio at this site is 1.46. He noted a number of spaces at the stub end that could be eliminated that would allow for a better plan. He asked if there was precedent in a resolution to allow for spaces to be land-banked. Mr. Constantine indicated that he and Ms. DiFranza have discussed that. They are comfortable with reducing the parking that is provided. The residents would be five (5) to 10 spaces away. The project is incredibly transit-friendly. He suggested at least the four (4) spaces at the south side of the end be eliminated. There was discussion to land-bank the entire stub end of the parking lot, which accounts for approximately 10 spaces, reducing the parking provided to 62 spaces, to which Mr. Constantine noted could be supported by referencing the Master Plan (given that the corresponding Ordinance has not yet been adopted). Mr. Topping indicated he was OK with the concept of land-banking.

68. Mr. Renaud summarized all of the conditions.

69. Mr. Tobin expressed his appreciation to Mr. Constantine and Ms. DiFranza for their fantastic review memoranda. It made the application very quick and easy to understand.

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

of the application, and the questions and comments from the public, 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 134, Lots 60.01, 60.02, 61 and 62 shown on the Official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey and more commonly known as 392 Amboy Avenue.

3. The property is located in the B-3 Office Business Zone District. Applicant's proposed use is not a permitted use in the B-3 Zone in that the B-3 Zone does not permit apartments on the first floor.

4. The property consists of 66, 594 sq. ft. of land on which a one-story building for an automotive repair use, a plumbing repair business office and warehouse, a two-story residential building, a metal garage, patios, walkways, driveways, some trees, gravel, and broken asphalt parking areas are situate.

5. The properties are located at the end of Amboy Avenue and are bordered by the Middlesex Greenway to the south and NJ Transit railroad to the north and west and a bank to the east.

6. The Applicant proposes to demolish all existing features and construct two apartment buildings, one two-story, 16-unit building and one three-story, 33-unit building, for a total of 49 units, with associated parking facilities, lighting and landscaping improvements.

7. Applicant requests a D(1) variance to permit construction of the proposed apartment buildings with apartments, rather than retail or office on the first floor and also

requests C variances and waivers/exceptions as indicated above, which requests included a *de minimis* exception for parking requirements. During the course of hearing, Applicant agreed to comply with the requirements of §110-136(A), (B), (C), and (J), as well as §110-134(A) and §110-177(A), rather than require waivers/exceptions from these provisions.

8. Applicant requests that the D(1) variance for apartment use on the first floor, that the C variances previously set forth, that the *de minimis* exception from the RSIS parking requirements, and that the waivers/exceptions from §110-130(F), §110-132(B) and §110-130(B) be granted.

9. In addition, Applicant also requests that the variance that the variances identified during the testimony pertaining to the location of the A/C condenser units be granted, subject to the approval of the Board Engineer and Board Planner as to the location of said units and the landscape screening of said units. Specifically, Applicant seeks variances for the location of the A/C condenser units from the provisions of §110-112.6(A). Applicant shall comply with §110-112.6(D).

10. The Board finds that, based on the testimony of Mr. Josell, as well as Ms. Lee and the comments of the Board Planner, that the proposed parking on the site will be adequate for the proposed use, taking into consideration household characteristics, the availability of mass transit, and urban location, available off-site parking resources, and the four available on-street parking spaces. Accordingly, to the extent necessary, the Board found that the granting of a *de minimis* exception from parking requirements should be accepted as better reflecting local conditions. Moreover, the Board determined that, subject to the approval of the Planner as to exact location, 10 of the proposed 72 parking spaces should be land-banked so that they could be provided at a future date if conditions were deemed to warrant their construction.

11. The Board further finds that the application for the D(1) variance requested may be granted because Applicant has demonstrated through the testimony of Ms. Lee, that special reasons exist to support the granting of the requested variance, specifically subsections a, g, and i of Section 2 of the Municipal Land Use Law. Additionally, the Board accepted Ms. Lee's testimony to the effect that the *Medici* criteria were met in that this property, while located in the B-3 Zoning District, is unique and different from the other properties in the zone in that it has no frontage on a main road, is located at the end of a dead end, and is bordered by the railroad tracks and the Middlesex Greenway.

12. The Board further finds that the requests for C variances can be granted under both the C-1 and C-2 criteria. As to C-1, there are both an exceptional shape to the property, and exceptional topographic conditions and physical features which uniquely affect this specific piece of property, and that because of same, the strict application of the above cited ordinance provisions would result in peculiar and exceptional practical difficulty to and exceptional and undue hardship upon the Applicant. As to the C-2 criteria, the Board finds that the benefits of the requested deviations from the bulk requirements would substantially outweigh any detriment which would result from the granting of such variances. An additional benefit of the granting of the requested variance is that the existing uses are not permitted uses, so that the granting of the requested variance will make the property more in conformance to the Zoning Ordinance requirements than the conditions presently existing.

13. The Board further finds that the granting of the requested variances will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance and that there will be no substantial detriment to the public good resulting from the granting of the requested variances, for the reasons stated by the Applicant's Planner, including that lighting will be of a

residential and pedestrian scale, that purely residential development is a very low traffic generator, and that the isolation of the property itself and its unique situation negate any detrimental effect.

14. The Board further finds that the application for preliminary and final site plan approval with D(1) variance, C variances, *de minimis* parking exception and other waivers/exceptions as previously set forth, may be granted as being in general conformance with the intent and purpose of the site plan regulations.

15. The Board further finds that the granting of the requested waivers/exceptions are reasonable and within the general purposes and intent of the provisions of the design criteria contained in the ordinance, and that the strict application of these design requirements would cause a hardship and be impractical.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Metuchen that the application of Greenway Village, LLC for D(1) variance, C variances, *de minimis* parking exception, waivers/exceptions, and preliminary and final site plan approval be and is hereby granted in accordance with the application and plans filed herein, subject to and conditioned upon the following:

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

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

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

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

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

F. 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.

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

H. Applicant shall comply with the following additional conditions:

1. Applicant shall comply with all of the agreements and representations made by the Applicant during the course of the hearing as set forth above.

2. Applicant shall comply with all of the recommendations and requirements contained in the Review Memoranda of the Board Engineer and Board Planner, both dated February 24, 2015.

3. Applicant shall comply with the provisions §110-136(A), (B), (C), and (J), §110-134(A), §110-177(A).

4. Applicant shall provide improvements and enhancements to the area at the dead end of the Amboy Avenue public right-of-way, including providing a lawn and landscaped area and extending the curb to the south and constructing a sidewalk across Amboy Avenue to connect to the Greenway.

5. Applicant shall provide bike storage within the units as well as exterior bike spaces for residents and visitors.

6. Applicant will make the revisions required by the Borough Engineer with respect to drainage to the Greenway.

7. Applicant will comply with the landscaping requirements of the Board Planner.

8. Applicant shall submit its plans for the review and approval of the Metuchen Fire Department.

9. Applicant will work with the Planner with respect to foundation plantings, additional screening, landscaping and bike racks.

10. The architectural plans shall be revised so that the front door shown on the new elevations on the south side of the westerly building will connect up with the center interior hallway depicted on the floor plan for that building.

11. Applicant shall comply with all of the recommendations and requirements contained in the report of the Borough Affordable Housing dated February 4, 2014.

12. Applicant shall land-bank up to 10 of the parking spaces shown on the plans at the northwest line of spaces shown, as determined by the Board Planner and Board Engineer. In the event that either the Applicant or the Borough Zoning Officer shall determine that existing

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.

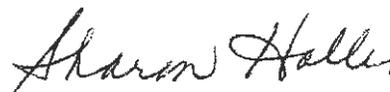
BE IT FURTHER RESOLVED that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of February 26, 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 March 12, 2015.



Sharon Hollis, Secretary