

**METUCHEN ZONING BOARD OF ADJUSEMENT
MINUTES**

June 9, 2022

The meeting was called to order at 7:45pm by Daniel Topping, Chairman, who read the statement in accordance with the Open Public Meetings Act.

Present:	Angela Sielski	Jonathan Capp
	Brian Tobin, Vice Chairman	Robert Renaud, Esquire
	Jonathan Rabinowitz	Christopher Cosenza, Planner
	Iris Delgado	Patricia Kaulfers, Zoning Official
	Daniel Topping, Chairman	Denise Hamilton, Secretary
Absent:	Byron Sondergard	
	Jonathan Schuchman	
	Robert Mannix, Engineer	

OLD BUSINESS:

Grand Home Investments – Applicant requires bulk variance approval due to existing non-conforming setback conditions to construct a second floor addition. (Carried from 3.10.22).
326 Durham Avenue - Block 40 - Lot 37

Mr. John Wiley, Applicant’s Attorney, stated that the three bulk variances requiring approval are due to pre-existing conditions. Changes suggested by the Planner have been incorporated into the plans.

Mr. John Riggio, Architect, was sworn in by Mr. Renaud. He has been a registered Architect in New Jersey since 1999, and has appeared before various Boards. He was accepted as an expert witness.

Mr. Riggio explained that the parcel has a 90-degree property line and has a one-story single-family house that fronts on Westinghouse Street. Applicant’s proposal is to construct a two story, single-family four (or five) bedroom house with a one car garage, and front steps leading to a covered front porch. The existing steps from the garage to the house will be eliminated. As a result of the change, both the porch and garage setback would conform to code. The driveway will be 24ft wide allowing for space in the front to fit two cars. Each parking space would be 20 x 8ft. The area could fit a total of three cars. Inside the family room will be a secondary access door to the garage. Included is an addition that fronts on Durham Avenue requiring no variance.

Mr. Cosenza mentioned that all required changes were made, and along with effort to improve the design, will be an improvement to the neighborhood.

Mr. Paul Fletcher, Planner, stated that the application complies with Borough requirements. The proposed landscaping includes five street trees, shade and two flowering trees, and foundation planting to run along the perimeter of the structure.

Mr. Wiley said that the final landscape plan will be submitted to the Planner for review and approval.

Mr. Cosenza confirmed that the April 27, 2022, landscape plan was the most recent submitted and was sufficient. A final review would be preferred prior to submission for building permits.

The Board was in agreement with Mr. Cosenza's request.

Mr. Topping opened the floor for questions/comments. No one stepped forward. The floor was closed.

Mr. Renaud summarized that variances requiring approval are for the minimum combined side yard total because the 18-foot requirement will not be met, although none is required for the undersized lot. The C1 variance would be more applicable.

The Board agreed that many lots are in similar situations. Consideration is taken that the zoning occurred after the lots were formed and the application had been improved.

Motion to approve was made by Ms. Sielski and seconded by Mr. Rabinowitz. Ms. Sielski, Mr. Tobin, Mr. Rabinowitz, Ms. Delgado, Mr. Capp and Mr. Topping voted yes. Motion was approved.

NEW BUSINESS:

Kathleen & Orin Puniello – Applicant requires bulk variance approval for second floor addition due to existing non-conforming setback conditions.

57 Kempson Place - Block 186 - Lot 17

Mr. Orin Puniello, Applicant, was sworn in by Mr. Renaud. The proposal is to add a second floor, and an extension into the backyard for the kitchen. The proposed dwelling will have four bedrooms and 2.5 bathrooms. The expansion onto the 2nd floor is causing the two variances. The second-floor addition is triggered by the left side yard setback where 6.56ft exist and 8ft is required. The other variance is for combined side yard setback where 18ft is required and 9.25ft exist. The right side will not be impacted. Variances fall under the C1 and C2 criteria. The lot width is undersized, which is a pre-existing condition, and the change could bring it more into conformance with current standards. The side yard would only be deficient 1.64ft. The benefits would be granting for the modernization of a 75-year-old house and an upgrade for the neighborhood. The plans were created not to increase the need for other variances and the addition to the rear yard is in conformance.

Mr. Cosenza stated that the variances were created by the existing footprint.

The Board agreed that no existing conditions were being worsened. The application appeared to be consistent with the C1 Hardship Variance.

Mr. Topping opened the floor to the public for questions and comments. Hearing no response, the floor was closed.

Mr. Renaud stated that due to lot, size, shape and location of the existing dwelling, the C1 Variance would be more applicable.

Motion to approve was made by Mr. Rabinowitz and seconded by Ms. Sielski. Ms. Sielski, Mr. Tobin, Mr. Rabinowitz, Ms. Delgado, Mr. Capp and Mr. Topping voted yes. Motion was granted.

Vicon Foods – Applicant requires approval for a non-conforming use to variance previously granted to allow outdoor dining.

424 Middlesex Avenue - Block 104 - Lot 24 & 25

Mr. Fred Dubowsky, Applicant's Attorney, explained that the application is to permit outdoor dining. Applicant was given permission for outdoor dining temporarily due to the Covid pandemic. This option

became a preference by some of the patrons, who are mostly elderly and have reservations about eating indoors because of increased health risks. To continue with this service, approval of a D-Use Variance is being requested.

Mr. Renaud mentioned that Applicant hand delivered notices to residents on the 200-ft list, and was able to obtain signatures, with one exception. Signature for that exception was obtained before tonight's meeting with resident waiving notice. The Court is relying on Applicant's statement that all neighbors within 200ft of the property were served notices. Applicant previously appeared before the Board in 2010 and 2012. Tonight's hearing is for a non-conforming use and granting of the D-Variance would require a two-thirds member vote.

The Board requested a brief history on prior appearances.

Mr. Dubowsky explained that a fire damaged the property in 2010, however, it was restored in the original concept as an Inn. The need for outdoor dining was not required at the time. Since Covid the request for this type of dining has become increasingly popular. The Inn must adapt and be able to offer fine dining inside and out to remain competitive in the industry. The number of parking spaces will remain the same.

The Board recollected that one of the previous applications was for outdoor dining with a patio.

Mr. Dubowsky agreed that this idea was presented before the Board, however, since it was not a need, the application was withdrawn. Covid has changed that landscape and outdoor dining has become a necessity for the business. Although this initially upset the neighbors, a mutual agreement was reached that allowed for outdoor dining to continue. This service has since been discontinued which has had a negative impact on the business, therefore the Applicant would like to resume this option.

Stacey Gordaychik, Architect, was sworn in by Mr. Renaud. She has been an Architect since 2007 and is licensed in New Jersey. She was accepted as an expert witness.

Ms. Gordaychik referred to the diagram showing the layout of the property previously submitted to the Board. She stated that the area has an existing paver patio of approximately 22 x 24.5ft and the proposal is to expand that seating area to 29 x 33.4ft. Trees 8ft in height are proposed for the north side. Concrete planters will be added along the parking area and a pergola onto the patio area. They will be providing low voltage string lights. Tables will seat up to four people with the maximum being 36 patrons. Outdoor heaters will be included. There are no changes to total occupancy. Applicant will adhere to the Noise Ordinance and shut down at 10:00p. Outdoor dining will not affect the empty lot on the Linden Avenue side. No parking spots originally designated from the previous resolutions would be taken away with the proposed changes.

The Board inquired how outdoor dining would be affected during inclement weather and seasonal changes.

Mr. Dubowsky stated that outdoor dining will be available all year. Heaters will be provided and a more substantial structure will be available instead of a tent.

Mr. Cosenza requested additional explanation for the proposed expansion of the patio.

The Board inquired about the improvements made during Covid to accommodate outdoor dining.

Mr. Dubowsky responded that umbrellas, tents and heaters were provided for patrons. Tables were also available outside for people waiting to be seated inside. Both indoor and outdoor closing time is 10:00pm. Sunday closing time is 8:00pm.

The Board requested additional information on the shrubbery to be planted around the patio area.

Ms. Gordaychik responded that on the north side they are proposing to raise the earth two feet and have six feet plantings on top. Planters along the parking will have vegetation. They are also proposing arborvitaes to be evenly spaced two feet.

Mr. Topping invited questions for the Architect.

Residents inquired about the increased size proposed for the patio, the impact the increase will have on the existing drainage, proposal measures for noise and light control, and why the reduction of parking spaces?

Ms. Gordaychik was unable to respond to the measures for drainage, however, she said that the trees should assist with the control of noise and light.

Mr. Renaud mentioned that there is a reduction in parking spaces from 24 in 2010 to 22 today. For this reduction a relief from a condition for 22 spaces is required.

Mr. John Barree, Professional Planner, was sworn in by Mr. Renaud. He is licensed in the New Jersey and a Member of New Jersey Certified Planners. He has appeared before numerous Boards throughout New Jersey.

Mr. Barree stated that the D2 Variance is for a non-conforming use that requires approval. The Property is a historic structure which predates many surrounding structures. The D2 use gained approval after the 2010 fire. They are requesting outdoor dining which was a Covid response measure throughout the state and was offered temporarily. With the pandemic, this has become a way of life and Applicant is seeking to expand the operation to include outdoor dining permanently. More seats will not be added to the restaurant, but instead seats will be removed from inside to be placed outside. It will exist as weather permits and not seasonal. The intent is to take a two-phase approach to the project. They will begin now with existing patio for tables and umbrellas, and move forward with the pergola in the Fall. They would not be able to relocate landscaping until the Fall. There are currently 22 parking spaces on the property and no deviation is proposed. The property is in the R1 Residential Zone, which is why a variance is required for dining. The pergola will match the characteristics of the building. The Borough has deemed that outdoor dining is suitable. There is an active roadway in the front which lends itself to a commercial establishment. Special reasons of how purpose of zoning may be advanced is that: a) provides for public safety and general welfare; and b) provides adequate lighting and open space for public welfare. Outdoor dining can be accommodated on the site. It also promotes a desirable landscape. Retractable fabric will match the character of the building and help to minimize light and noise. Applicant will work with professionals to design what is agreeable to all parties. The proposed expansion causes no detriment to the Borough. Steps have been taken to conform with the Master Plan and Zoning Ordinance. Negative criteria are the concerns from neighboring property owners. The intent is to have the entire area paved. Design for drainage could be discussed. The goal is to have 12 tables to allow for a variety of seating options with 36 seats as the maximum. String lights are currently on the property and not flood lights. The intent is to run that same type of lighting within the pergola around the top but have candle lights on the tables. They will use canvas to soften the impact of the lights. Proposed height of columns for the pergola is ten feet with crossbars of two feet. The nature of the restaurant is fine dining.

Mr. Dubowsky stated that an application with the state was required to serve alcohol. There were 18 tables during Covid that were part of the application.

Residents inquired about transfer of permits under new ownership, number of restaurants situated in a residential zone, parking by the fence area, disappearance of stacked parking approved in 2010, monitoring the headcount, and disappearance of valet parking.

Mr. Renaud responded that variances are approved for land usage, therefore permits would transfer to new owners.

Mr. Barree stated he that was not aware of the number of restaurants operating in residential neighborhoods.

The Board clarified that all other restaurants with outdoor dining are in a permissible area. The Metuchen Inn was included into the area when the Zoning Ordinance was written.

Mr. Dubowsky stated that the number of parking spaces approved are being utilized. There were two additional spaces allotted for a total of 24, however, two were unnecessary and were omitted, reducing the number to 22. The valet parking is still available but not being utilized.

Mr. Renaud stated that there are two prior resolutions with conditions and relief would have had to be requested. The 2010 Resolution was approved for 24 spaces with valet parking for up to 41 stacked spaces. If Applicant wanted the removal of spaces, it would require Board approval. Conditions for the 2010 and 2012 Resolutions must apply.

Mr. Cosenza stated that the 2012 Resolution seating capacity was for 123 seats and not 125. A waiver of site plan could be requested by Applicant. Testimony from the previous applications that were granted should also suffice for the D2 Variance.

Mr. Renaud stated that the application tonight is to expand a non-conforming use.

Mr. Cosenza questioned whether the 20 x 20in concrete planters would be sufficient for public safety. He suggested larger planters or concrete filled bollards, three to five feet away from the edge of the patio area, and spaced no more than four feet apart. Night time may need additional blockage. Concern was expressed for the loss of spaces and ADA space omitted. At least one ADA space is required, along with the access isle. Additional suggestions/recommendations included the parking area, space for bikes, removal of fence, berm affecting storm water management, and trees to help with noise reduction.

Mr. Barree was willing to discuss other options to accommodate public safety.

Mr. Renaud questioned the recently paved parking area, removal of an ADA space and striped area, and on street parking. A condition in 2010 Resolution prohibited on street parking by valet services.

Mr. Barree responded that the suggestions/issues would be addressed with the Applicant.

Constantine Papanicolaou, Applicant, was sworn in by Mr. Renaud. He stated that during Covid he was requested to cease indoor dining service. He applied for permit for outdoor dining with the state and city and was permitted to offer outdoor dining through to November 2022. With outdoor dining, nothing negative occurred while the business revenue increased until recently. Reason for the recent

decline was because he could no longer offer outdoor dining. People went elsewhere. He is unable to compete without outdoor dining. The request is for approval of one tent and a patio. To approach the drainage and water flow, on the original plan, a special easement was constructed in the backyard and that easement should suffice. Valet parking has not been offered because patrons were not receptive to the service. The parking spaces offered remain at 22, which was the number that was approved. The noise issue with the neighbors will be addressed. An agreement with the church allows staff to park in their lot. The restaurant offers a safe environment. Outdoor dining will be seasonal. A retractable awning is proposed and will be retracted in the winter. There is no canvas over the top. Maximum capacity is 120 people. The lot was paved approximately two years ago. There was never an ADA designated space.

Mr. Renaud stated that the ADA space is a requirement and additional research would be required regarding its omission. He inquired about the extension of the permit.

Mr. Papanicolaou stated that they would apply early for the permit extension.

Residents inquired about movement of the servers along the fence line, whether or not outdoor dining had been advertised, what would happen for parties of more than 36 people, how to cease from having employees park in front of their homes, and effectiveness of the swale.

Mr. Papanicolaou responded to several of the concerns. There will be a buffer so servers will not be seen by residents and will continue with the path in use. The engineer was hired and designed a system to get water to the swale. What exists in that area is asphalt. There is no way water would run onto neighboring properties. Events hosting over 36 people would not be permitted outside.

Mr. Cosenza concurred that drainage would not be changing. With minimal increase, the swale should be able to handle the additional runoff since some of it is asphalt. The proposal for Board approval of 36 tables would be a condition. A review with the engineer could be conducted.

Mr. Topping opened the floor to the public for comments.

Residents not in favor of the application commented that parking had become a problem along with other concerns. Turning on to Route 27 from Linden Avenue poses a safety issue. Outdoor dining causes noise and light pollution. Neighbors are asking for consistency and truth from the Applicant. They are not averse to outdoor dining and change.

Residents in support of outdoor dining stated that the site is historic and change is good. For health reasons outdoor dining is preferred. Clients appreciate the refinement of the private setting. Noise was tolerable and did not pose a problem.

At 11:08pm Mr. Topping announced the hearing stop and continue at the next Board meeting. Valid points were presented for Applicant to consider, including concerns for hours of operation and noise. The patio size proposed is larger than what is allowable per square footage. Consideration should be taken from both sides on how vital eating out has become for the restaurant business. A decision should be made by the Board at the next meeting. To close now was not a dismissal but adherence to the law.

Mr. Renaud announced that the meeting would be carried to July 14th, 2022, 7:45pm in the Courtroom, and no additional notice would be given.

Motion to close the public portion was made by Mr. Rabinowitz and seconded by Mr. Sielski.

CORRESPONDENCE:

Minutes for March 10, 2022

Motion to approve was made by Ms. Delgado and seconded by Mr. Rabinowitz.

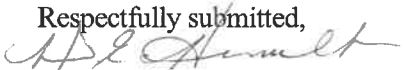
The Board welcomed the new member, Mr. Capp.

ACKNOWLEDGEMENT:

Due to the recent resignations of Ms. Judith Sisko and Ms. Catherine McCartin, the Board expressed appreciation for their combined service and contributions of over 35 years. Their knowledge and presence would be missed.

ADJOURNMENT:

Motion to adjourn was made by Mr. Tobin and seconded by Ms. Sielski. With all in favor the meeting was adjourned at 11:21pm.

Respectfully submitted,

D. E. Hamilton