

**CITY OF NEW BRUNSWICK
BOARD OF ADJUSTMENT
SEPTEMBER 26TH, 2011
MINUTES
7:30 p.m.**

I. ROLL CALL

Nancy Coppola
Deb Celey
John Cox
John Sutton
Peg Chester
Sue McElligott
Doug Sheehan

Board Staff:

Glenn S. Patterson, PP, AICP, Board Secretary
Aravind Aithal, Board Attorney
Todd Bletcher, Board Planner
Charles Carley, Board Engineer
Mark Siegle, PP, AICP, City of NB Principal Planner

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)

III. SALUTE TO THE FLAG

IV. MINUTES OF THE BOARD'S AUGUST 22ND, 2011 MEETING

Approved.

V. COMMUNICATIONS AND REPORTS-

Resolutions of Memorialization of Approval

- A. METRO PCS, Z-2011-10** Site plan and variance application for the location of six (6) panel antennas on an existing water tank and placement of related equipment at the base of the tank located at 1 Comstock Street, Block: 700, Lot 3, Zoning District: IN-2

Motion made to approve made by Ms. Celey, seconded by Mr. Cox

John Cox- yes

Deb Celey- yes

Peg Chester- yes

Doug Sheehan- yes

John Sutton- yes

VII. OLD BUSINESS

- A. SCOTT KWONG, #Z-2011-07**, Variance application of the construction of an addition located at 37 Senior Street, Block 86, Lot 3, Zoning District: R-5A

Mr. Kwong was sworn in.

Mr. Aithal asked Mr. Kwong to clarify the ownership status for the property as the application indicates that he is a contract purchaser. Mr. Kwong stated that he had the owner's permission, as he owns it jointly with his parents. He agreed to provide documentation as a condition of approval if the Board were to approve the application.

Mark Stefanelli, Architect, was sworn in (note: all of the following statements were made by Mr. Stefanelli unless otherwise noted). He stated that the plan had been modified to move the addition back to 2.5 feet and the direction of the staircase has been changed to 90 degrees. The rear yard setback is increased by a foot. The variances requested are still the same. The first floor will have a bedroom in the rear, bedroom in the front, a kitchen and a living room. The second floor will contain three bedrooms plus a common area.

Richard Lapinski, Planner, was sworn in (note: all of the following statements were made by Mr. Lapinski unless otherwise noted). The application seeks to expand an existing dwelling on a conforming lot with confirming park. Bulk variances are created by the proposal. The side yard setback has been increased to allow construction without encroaching onto the neighbors property. Due to the plan revision an additional variance for total side yard setback was created but it is de minimus. There are also variances for rear yard setback and impervious coverage. Mr. Lapinski introduced exhibit A-2 (aerial photograph of the neighborhood). The photo showed the area to be mainly residential with the likely probability that the majority were rented out to college students. He stated that the many of the lots in the area are 25 feet wide and are developed whereas the lot in question is 50 feet in width, which is conforming.

Mr. Lapinski stated that the variance for the side yard setback can be justified on a C-1 hardship due to the location of the existing building which requires an addition to be encroaching. He stated that the same justification can be applied to the rear yard setback as the rear yard encroachment is due to the front yard setback being in excess of the required 10 feet. The building and impervious coverage variances can be justified on a C-2 flexible basis as they create no detriment. The off-street parking requirement is met and by meeting it the building and impervious coverage variances are created. This can be justified as a purpose of zoning which is to improve traffic circulation and this would get more cars off the street, which is not the case with many of the neighbors.

Mr. Lapinski stated that there is no detriment to the surround properties as they are put to a similar use. The variances are de minimus and not likely to be perceived by the neighbors. The use complies with the zoning ordinance and the existing conditions create the need for the variances.

Peg Chester asked who would occupy the dwelling?

Mr. Kwong stated that he would occupy the house with his mother and the other bedrooms would be rented out.

Mr. Cox asked Mr. Kwong if he considered laying out the house differently.

Mr. Kwong stated that he had but the layouts did not work.

Public Comment:

None.

Board Discussion:

Ms. McElligott stated that she saw the use as being substantially similar to the uses in the area.

Motion to approve made by Mr. Cox, seconded by Ms. McElligott.

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| Nancy Coppola | Yes |
| Deb Celey | Yes |
| John Cox | Yes |
| John Sutton | Yes |
| Peg Chester | Yes |
| Sue McElligott | Yes |
| Doug Sheehan | Yes |

VIII. NEW BUSINESS

- A. WOMEN AWARE, INC, Z-2011-11**, Site plan and variance application for the use of the property for the operation of a victims of domestic violence residence located at 268 Livingston Avenue, Block 259, Lot 25, Zoning District: C-3A

The applicant was represented by Peter Vignuolo, Esquire. He stated that the applicant was seeking site plan and variance approval to remodel an existing building that has three existing apartments that will be expanded via the construction of a dormer. He stated that the variances are necessary for off-street parking, with three spaces proposed, and six required. He stated that no screening can be proposed for generator in the rear yard. Mr. Vignuolo stated that there are existing variances that will be continued.

Phyllis Adams, Women Aware Executive Director, was sworn in. She stated that Women Aware is the women's domestic violence agency for Middlesex County. She stated that the property is currently vacant and is being proposed for the use of three units with no staff to be housed on site. She stated that there is an on-site garage that is slated to be demolished once the appropriate funds are secured to do so. She stated that the housing is permanent supportive housing with stays of up to three years. She stated that the clients come through the shelter program before being offered a unit.

Kurt Ludwig, Architect, was sworn in. He introduced exhibits A-1 (colorized floor plan) and A-2 (colorized site plan). He stated that the third floor right side dormer was being proposed and that there would be minimal interior improvements to the first and second floors. The third floor he stated would have improvements to increase the living space. He stated that the front steps would be replaced and a generator and concrete pad would be located in the rear of the building.

Mr. Cox asked if the garage were to be demolished if the fence would be continued around the property.

Ms. Adams stated that it would.

Mr. Vignuolo stated that the variances are justified as both C-1 and C-2 hardship theories as the building is located on a narrow lot and under the C-2 criteria there is no detriment and the provision of a shelter benefits the public good. There is no impairment to the zone plan as it is

an existing structure with an inherently beneficial use and there is a benefit to the public good as it is housing for victims of domestic violence.

Public Comment:

None

Motion to approve made by Ms. Celey, Seconded by Mr. Cox

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| Nancy Coppola | Yes |
| Deb Celey | Yes |
| John Cox | Yes |
| John Sutton | Yes |
| Peg Chester | Yes |
| Sue McElligott | Yes |
| Doug Sheehan | Yes |

- B. **19 US HIGHWAY 1, LLC, Z-2011-05** , Site plan and variance application for the construction a mixed use building located at 19 US Highway Route 1, Block 703, Lot 7.02, Zoning District C-5.

Board Attorney Aithal, recused himself due to a conflict as his firm had previously represented the applicant. John Sullivan, Esquire, stood in to represent the board for this application.

The applicant was represented by Thomas F. Kelso, Esquire. He stated that the applicant is a wholly-owned LLC of Edgewood Properties. He stated that the site is located on Route 1 South and is developed with the Loews Theater and a restaurant. There are also approvals for another restaurant pad and a 70,000 square foot retail building. Mr. Kelso said that the applicant proposes to replace the retail with a mixed-use building with 236 residential units, and 12,300 square feet of first floor retail space. He stated that the residential component of the building will be for rental and that residential is not a permitted use. He stated that a height variance would be required along with bulk variances for front yard setback and impervious coverage. Mr. Kelso added that the site would bring new ratable to the City and create a mix of uses on the site.

Ron Aulenbach, Project manager, was sworn in (all of the following statement were made by Mr. Aulenbach unless otherwise noted). He stated that he is trained as an engineer, but does not possess a license. He stated that the licensed engineers are available tonight for additional information, but he would be giving the presentation. Mr. Aulenbach reviewed a PowerPoint presentation about the application. The access points off of Route 1 are to remain the same. The theater and existing restaurant do not change. They have been unsuccessful in attracting a retail user to the site over the seven years they have owned the site. A mixed-use building is proposed where the retail is approved now. The building is a four-story wood construction structure. There will be interior courtyards in the “e” shaped building. The building site is on a bluff over the Raritan River. The theater is adjacent to the building and holds a strong lease that prevents new development within their lease line. The north side of the building will face the theater. Edgewood intends to maintain ownership of the property and not flip it. The building will have many resident amenities. To the south of the building is Raritan Gardens. There is a grade differential between the two sites. Garages will face out on the ground floor.

The individual garages will face outward on the north, south and west sides. The main entrance is off the south side towards Raritan Gardens. The new restaurant pad is proposed, but no tenant is signed at this time, so it may change its footprint, which may require further board review. A fast food drive-thru is proposed to the east of the site. Edgewood is currently pursuing Sonic as a tenant. The access to the site is through two driveways off of Route 1. Alternate access points have been reviewed, but no other locations work due to grade issues and other problems.

Mr. Aulenbach reviewed the D &R Engineering report. A loading space is not provided and he felt the small scale retail works without providing one. The retail will most likely be neighborhood oriented such as nail salons, pizza, etc. The angled parking facing Route 1 casting a glare onto said highway will be addressed through the additional of a wall. The landscaping to the south does not meet the buffering requirement, but due to grade differential there is no light cast onto the adjoining property. A dumpster will be shared with the restaurant and residential trash will be stored inside and picked up via a private hauler. The slumping ground in the rear of the theater will be addressed to correct the situation and work to correct the situation will begin prior to the applicant's proposal beginning. The parking lot conditions will be improved and the applicant offers to walk the site with the city engineer to identify any needed improvements.

Mr. Cox asked if the garages would be used for storage or parking?

Mr. Aulenbach replied that the garages will be used for parking only and each unit gets one spot. The garages will have direct access to the interior hallway from the garage.

Ms. McElligott stated that Route 1 is crowded and asked why another access point wasn't feasible.

Mr. Aulenbach stated that the traffic expert would address that question.

Ms. Coppola asked how the pool access was secured.

Mr. Aulenbach stated that access to the pool area required a swipe card.

Mr. Aulenbach reviewed the comments of the Bignell Planning Report. He stated that the loading area and trash comments have the same answer as previously given. The requested fence on the south is not needed due to grade differential. The 71 parking space lot with three entrances cannot be modified due to restriction in the Loews theater lease. Modification of the lot would result in the loss of 11 parking spaces. The garages facing out on the north side towards the theaters raise a concern about aesthetics. Mr. Aulenbach presented exhibit A-2 (a variation on the building elevation). The alternate slides the garage back fifteen feet. This provides more visibility for cars backing out and while still providing a buffer between the court yard.

Mr. Sutton asked how would you stop people from parking in the parking space and not in the garage?

Mr. Patterson asked how would the applicant prevent the theatergoers from parking in the spaces.

Mr. Aulenbach stated that this will have to be managed by the staff in the leasing office during the day. The applicant will consider removing six of the garages if the Board feels this is better. The access to the bluff area is not shown as the City and County felt this was not a secure plan after its original approval.

Karl Penke, Traffic engineer, was sworn in (all the following statements were made by Mr. Penke unless otherwise noted). The DOT access permits were received at the time of the original development and are still valid. The current proposal will generate less traffic than the previously approved plan. No new DOT access permit is needed. Access from Route 1 South remains good through a deceleration lane. There are two such access points, which also serve as egress points. The interior site circulation remains similar to the current conditions. The system is logical and accommodates deliveries and customers. The parking complies with the City and RSIS standards. The theater parking based on actual observation is accommodated within the theater lease line. An alternative access through Raritan Gardens is not feasible due to grade differentials. Fire access to the site is from the Rutgers Village firehouse and trucks use Route 1 North to Edison and a u-turn to Route 1 South to access the site. The path is on a major highway with no traffic lights. The police have a plan to access the site in the event of a catastrophic event that shuts Route 1 South down. The police director has provided the Board with a letter about this. Divided highways create this type of access issue. An alternative for access is to use the Route 1 median area to allow an emergency access across it, but DOT must allow this. The applicant is prepared to make application to DOT as a condition of approval, but not hold the application to actual construction if DOT denies the application. The applicant will construct the access if approved.

Ms. Chester asked what public transit access is there to the site, especially if it houses students? Mr. Penke stated he was not sure of the status.

Ms. McElligott asked if access could be provided through Raritan Crossing on the opposite side of Route one.

Mr. Penke stated that there were grade differential issues.

Les Nebenzahl, Planner, was sworn in. He stated that variances are necessary for front setback, impervious coverage, a "d" height variance and a non-permitted use variance for the residential use. He stated that the positive criteria were satisfied in that the site is uniquely suited for the residential use due to its size and location on Route 1 and that it is ideal for mixed-use development. He stated that it furthers the goal of providing for the general welfare and it promotes reason "G" in the MLUL as it encourages efficient use of land. He stated that height can be granted based on the same basis. He stated that the impervious coverage is less than the existing and the front setback difference of 70 feet is not significant.

Ms. McElligott stated that the residents of the adjacent apartments access the bus stops. The proposed site has no access and can it be added.

Mr. Aulenbach stated that grade differentials could make it difficult but will consider a shuttle or extending the existing sidewalk to Route 18.

Public Comment:

None.

Board Discussion:

Mr. Cox stated that the current proposal is a better application than the previously approved retail application. Ms. Celey and Ms. Coppola agreed.

Ms. McElligott stated that she liked the proposal so long as the conditions discussed for emergency access and sidewalks were looked into and implemented if feasible.

Ms. Chester expressed a concern if a catastrophic event were to happen that restricted access. Mr. Cox mentioned that mutual aid (from surrounding towns) could address this.

Motion to approve with conditions made by Mr. Cox, seconded by Ms. Celey.

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| Nancy Coppola | Yes |
| Deb Celey | Yes |
| John Cox | Yes |
| John Sutton | Yes |
| Peg Chester | Yes |
| Sue McElligott | Yes |
| Doug Sheehan | Yes |

C. LUKLIN, LLC Z-2010-15, Variance application for the conversion of attic space into additional bedrooms located at 46 Morrell Street, Block 77, Lot 36.01, Zoning District: R-5A

The applicant was represented by Jennifer Burgess, Esquire. She stated that the applicant was requesting a parking variance to allow for additional occupancy in the attic. She stated that the units were constructed a few years prior as two-unit rentals, which predominantly were rented to college students. Currently there are six tenants in each unit for a total 24 occupants. The applicant, Burgess stated, is seeking an additional two occupants in each attic.

Susan Sheffmaker, Architect, was sworn in (note: all the following statements are made by Ms. Sheffmaker unless otherwise noted). She stated that the first floor is common area and the second floor has three bedrooms. The attic is a finished recreational room. The proposal is to turn the attic into a bedroom. There would be no physical changes to the attic outside of adding a door. Five parking spaces are required as only two are provided.

Elizabeth Seruma, LLC member, was sworn in. She stated that she wanted to convert an existing finished space and create a bedroom. She stated they bought it in 2009 after it was built-in 2008. She stated that she maintains contact with the tenants and their parents and has a maintenance man who handles trash and maintenance items. She stated that she felt there was a lack of housing in the area near Rutgers. She stated that her current occupants requested to have more occupants to make the rent lower.

Mr. Cox stated “with Rutgers building new housing and reducing enrollment why did you think there is a need?”

Ms. Seruma stated that her housing is well maintained and close to campus.

Mr. Patterson asked Ms. Seruma what she charged in rent.

Ms. Seruma stated that she charged \$3782 per unit or +\$600 a bed.

Paul Grygiel, Planner, was sworn in (Note: all of the following are statements by Mr. Grygiel unless otherwise noted). He stated that the applicant was seeking an increase in the occupancy of the existing dwellings in a conforming use. He stated that the provision of off-street parking

is the only issue. He stated that there is an existing parking variance now and there would be a parking variance in the future. Mr. Grygiel went on to discuss how additional student housing was being proposed near the campus and any additional housing outweighs the detriments from the new housing. He stated that parking is regulated by on-site limitations and on-street parking regulations. Many students do not need or have a car due to transit access. The Board has heard student housing proposals recently and much of the existing housing is substandard. These are new buildings in good condition where housing can be added. He stated that the following purposes of the MLUL were furthered by this application: Purpose A- general welfare is promoted as it is modern housing; Purpose E and G: population density and appropriate location are met. The negative criteria are addressed as additional population is added but the building is not being expanded. No additional car would be added as the existing occupancy exceeds what regulations allow. The use is consistent with the zone plan. The master plan notes a need for student housing in this area. Other plans such as those from Devco and Woodrow Wilson School discuss more student housing in this area.

Ms. McElligott stated that the bedroom in the attic is mostly under the 7 foot ceiling height.

Mr. Patterson stated that to have 7 occupants per parking space is a much greater ratio than the ratio of occupants to parking space in the most recent applications approved by the Board. He also stated that the larger occupancy houses such as this have been more problematic than the smaller units. He stated that this dwelling would not have been permitted to be constructed under the current ordinance. He stated that this leads to a degradation of the quality of life in the neighborhood. Mr. Patterson acknowledged the need for student housing, but did not think this was the appropriate type.

Public Comment:

None

Board Discussion:

Mr. Cox stated that there are too many students for this house as proposed. Mr. Sutton concurred.

Mr. Sutton made a motion to deny, it was seconded by Mr. Sheehan.

(Yes vote equates to an approval to deny the application)

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| Nancy Coppola | Yes |
| Deb Celey | Yes |
| John Cox | Yes |
| John Sutton | Yes |
| Peg Chester | Yes |
| Sue McElligott | Yes |
| Doug Sheehan | Yes |

- D. LUKLIN, LLC Z-2010-14**, Variance application for the conversion of attic space into additional bedrooms located at 50 Morrell Street, Block 77, Lot 35.01, Zoning District: R-5A

This application was done as a co-presentation with Z-2010-15.

Mr. Sutton made a motion to deny, it was seconded by Mr. Cox.

(Yes vote equates to an approval to deny the application)

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| Nancy Coppola | Yes |
| Deb Celey | Yes |
| John Cox | Yes |
| John Sutton | Yes |
| Peg Chester | Yes |
| Sue McElligott | Yes |
| Doug Sheehan | Yes |

IX. ADJOURNMENT