

**METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION GRANTING  
A USE VARIANCE, BULK VARIANCES, WAIVERS  
MINOR SUBDIVISION AND PRELIMINARY AND FINAL  
SITE PLAN APPROVAL TO  
DCR LANDSCAPING AND CONSTRUCTION, INC.  
BLOCK 48.04, LOT 2.01  
APPLICATION NO. 05-691**

**WHEREAS**, DCR Landscaping & Construction, Inc., hereinafter referred to as "the Applicant," is the contract-purchaser of a portion of Block 48.04, Lot 2.01, as shown on the official Tax Map of the Borough of Metuchen, said property being located on Leonard Street in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, the Applicant has applied to the Metuchen Borough Zoning Board of Adjustment for a use variance, bulk variances, waivers, minor subdivision and preliminary and final site plan approval; and

**WHEREAS**, the Metuchen Borough Zoning Board of Adjustment held a public hearing on said application May 11, 2006, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, the Applicant was represented by Richard Mongelli, Esq., who presented the sworn testimony of Douglas Rodden, the owner of DCR Landscaping & Construction, Inc. and Paul J. Fletcher, P.E. & P.P., New Jersey License No. 32041 together with the following plans and exhibits:

1. Preliminary and Final Minor Subdivision and Site Plan Lot 2.01 in Block 48.04 prepared, by Paul J. Fletcher, P.E. & P.P., New Jersey License No. 32041, dated September 22, 2005 and last revised February 28, 2006 consisting of six sheets.

2. Building plans entitled "Proposed Dwelling for DCR, Leonard Avenue, Block 48.04, Lot 2.01, Metuchen, New Jersey" prepared by Roger C. Winkle, architect, dated October 27, 2005 consisting of five (5) sheets.

3. Photographs marked A-1 through A-11 of the subject property and adjacent area; and

**WHEREAS**, the Board also considered the report of the Borough Engineer dated May 5, 2006 and the Board Planner dated May 4, 2006; and

**WHEREAS**, after hearing the testimony in support of the application and any and all other persons desiring to be heard, the Metuchen Borough Zoning Board of Adjustment has made the following findings of fact and has drawn the following conclusions of law:

1. The Applicant is the contract-purchaser of a portion of Block 48.04, Lot 2.01 as shown on the official Tax Map of the Borough of Metuchen, said property being a vacant piece of property located at the end of a cul-de-sac on Leonard Street in the Borough of Metuchen, County of Middlesex and State of New Jersey.

2. The owner of the property is Tree Top Partnership.

3. The property is located in the LI Light Industrial Zone District and contains 2.61 acres. The lot has

approximately 48 feet of frontage at the end of Leonard Street right-of-way and backs on to the Lehigh Valley Railroad Company right-of-way. The property is for the most part currently vacant except for some storage.

4. The Applicant proposes to subdivide the property into two separate lots. "Proposed tract one" will be merged with Block 48.01, Lot 64. The Applicant proposes to construct an office/garage/storage building together with storage areas, driveway and parking lot on "proposed tract two".

5. The Applicant requires a use variance from the requirements of the LI Zone in that the contractor's storage yards or equipment maintenance facilities are prohibited in the LI zone. The Applicant's proposal to operate a landscape contracting business from the proposed structure and to store and maintain certain equipment relating to that business in said proposed structure as well as on "proposed tract two" causes the need for a use variance.

6. In addition to the use variance, the Applicant requires the following bulk variances for "proposed tract two".

a. Minimum lot width at street line - 200 ft. required, 47.95 feet provided.

b. Minimum lot width at setback line - 200 ft. required, 64.62 feet provided.

7. DCR Landscaping & Construction, Inc., is a full service landscaping, maintenance and design and build company which also provides paving and masonry. The company has 30

employees, but only 5-7 of those employees are on site on a regular basis.

8. The company's proposed hours of operation at the site will be from 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 4:00 p.m. on Saturday. There are no Sunday hours.

9. The Applicant proposes to store on the site various vehicles used in its business. Those vehicles include pickup trucks, dump trucks, small and large tow trailers, rollers, back hoes and small excavators. The Applicant has indicated that approximately 10-15 of the vehicles and equipment are on site in the morning before the employees go to the job sites. Approximately 2-4 pieces of equipment or vehicles are left behind. The Applicant also proposes to provide parking for some of the vehicles inside the proposed garage area.

10. The Applicant has proposed as a part of its site plan the location of an L-shaped structure that is 60x70 ft. to provide garage parking, maintenance and equipment storage as well as office and conference areas. The proposed site will be paved as per the representations of the Applicant from the right-of-way of Leonard Street to approximately the front of the building plus any additional area necessitated by the location of the entrance and the proposed handicapped parking space. The Applicant has represented that the customers coming to the site

will enter only the first floor for contracting and/or design purposes.

11. The remaining portion of the parking area of the proposed site will be gravel as shown and depicted on the plans filed herein. In addition, the Applicant proposed to provide certain storage areas as shown on Sheet 4 of its plan along the portion of the strip running from the parking lot parallel to the Lehigh Valley Railroad Company right-of-way and along Block 48.01, Lot 74. These storage areas will be utilized for landscape material storage, plant storage, dumpster area, bulk mulch, bulk topsoil, equipment storage and block bin storage.

12. The building plans indicate that all office operations will be located on the 2<sup>nd</sup> floor with the exception of one "office" on the first floor, which office will be used for meetings with clients/customers. Garage doors will be provided in the rear area of the building. While the building shows a scheme of windows, wall treatments, etc., the Applicant has agreed to work with the Board's Planner as outlined in the Planner's report to complete the architectural details of the building and to provide an entrance and entrance expression at the front (street/cul-de-sac) building facade.

13. The Applicant proposes to provide a security gate for restriction to the rear of the property at some point along the side of the building, which gate shall appear on any revised

plans and be subject to the approval of the Planner, Engineer, Fire Official and any other necessary agency.

14. The Applicant has represented that "proposed tract one" will be merged with the adjacent property Block 48.01, Lot 64 in order to prevent the lot from becoming landlocked. In addition, the Applicant will provide an access easement on its plans which will be included as a part of the subdivision in order to create an additional access for "tract one".

15. The Applicant has agreed to provide depressed curb around the cul-de-sac per the request of the Borough Engineer.

16. The Applicant has agreed to comply with the Engineer's report dated May 5, 2006 except that the Applicant has requested and the Borough Engineer has recommended a waiver of the requirements of Ordinance §110-45.f.1 and 110-53.I(1). In addition, the Applicant has requested and the Borough Engineer has recommended a waiver of Section 110-130(f) which requires a 15 foot setback between the buildings and driveways or parking area.

17. The Applicant has agreed to provide a copy of an updated boundary survey signed and sealed by a licensed professional surveyor upon which the plans are based.

18. The Applicant had requested a partial waiver from §110-145 requiring that the parking lot be paved and curbs be installed that define the parking lot and driveway. The

Applicant will pave up to the front or the vicinity of the front of the building. The remaining portion will be gravel.

19. The Applicant has also agreed to the following requests of the Borough Engineer.

- a. To provide a foot candle lighting contour map.
- b. To construct a concrete apron at the driveway together with depressed curb defining the cul-de-sac.
- c. To revise the grading plan so not to interfere with other properties.

20. The Applicant's expert Paul Fletcher, a professional planner and professional engineer, testified that the LI district is basically an industrial warehousing area. The proposed construction by the Applicant was found by Mr. Fletcher to be a significant improvement at the end of Leonard Street. He further opined that the use is well-suited given the topography and the flood zone area. The proposed plan satisfies several purposes of the Municipal Land Use Law including the providing of employment, security from flood, adequate open space, locating development that does not conflict with the development in neighboring municipalities or neighborhoods as well as providing an appropriate location for the activities similar to the Applicant's business.

21. Mr. Fletcher found from the review of the Applicant's submitted ecological report that no wetlands or wetlands

transition areas or other environmental constraints exist on the property.

22. It was his further opinion that there would be no negative impact on the zone plan, the zoning ordinance or the Master Plan given the adjacent uses and the substantial aesthetic improvement made to this area by the proposed application. Moreover, Mr. Fletcher found that this use was compatible with the surrounding uses, which for the most part are storage and warehouse uses.

23. Mr. Fletcher determined that this proposal would be an economic benefit to the community. The proposed development would accomplish this goal without causing any residential blight given the fact that no residential area is located adjacent to the subject property. As a result, he found that the proposed plan was consistent with the Master Plan, consistent with the neighborhood and would enhance the neighborhood.

24. The Applicant also agreed to comply with the Planner's report dated May 4, 2006.

25. After hearing the sworn testimony on behalf of the Applicant and no one having appeared in opposition thereto, the Metuchen Zoning Board of Adjustment makes the following findings:



A. The Board finds that the testimony set forth above on behalf of the Applicant satisfies the positive and negative criteria under N.J.S.A. 40:55D-70(d). Under the standards required by N.J.S.A. 40:55D-70(d), the Board must find that the Applicant has satisfied its burden on both the positive and negative criteria. In proving the positive criteria, the Applicant seeking a use variance must demonstrate special reasons to the Board which include proof that the site is particularly suitable for the proposed use. Thus, the positive criteria requires that the permission for the use be justified based upon the uniqueness of the property and that special reasons exist for the granting of the proposed variance.

B. The Board finds that the Applicant has demonstrated the uniqueness of this property and that special reasons exist for the granting of the variance. Specifically, the Board finds that the LI zone is particularly suited for the Applicant's business. The LI zone was created many years ago and the changing types of uses that could locate in the LI zone are more varied than the ordinance provides. In fact, a use like the Applicant's use results in beautifying the area even though the use itself is prohibited. Moreover, the Board agrees that the property as situated is particularly well-suited for the type of activities and storage that are proposed to the extent that it is not adjacent to any residential areas and borders on a

railroad right-of-way and an industrial building. The project fulfills the needs of the Borough and many of the purposes set forth in the Municipal Land Use Law and the Borough's Master Plan.

C. As to the negative criteria, the Applicant must demonstrate that the granting of the variance is not detrimental to the surrounding properties, the zone plan or zoning ordinance. The Board finds that the Applicant has demonstrated that the application satisfies the negative criteria as set forth in N.J.S.A. 40:55D-70(d). Specifically, the Board finds that the proposed project will have little, if any, negative effect on the surrounding properties, the zoning ordinance or the Master Plan. Given the testimony presented on behalf of the Applicant, it is clear that the proposed application will in fact enhance the area rather than be detrimental to surrounding properties. The testimony in support of the Applicant's proposal also indicates that the development of the property will have no detrimental impact on any residences given the fact that there are none in the area. Moreover, the proposal will enhance an area that is in need of improvement.

D. The Board finds that the Applicant has also demonstrated the need for the bulk variances requested both from the positive and negative criteria, particularly, as they affect this specific property and its unique shape. Clearly, even if

the subdivision were not to occur, the two deviations for which bulk variances are required would still be necessary. Accordingly, the Board finds that the bulk variances and design waivers may be granted as requested and as listed above.

E. Notwithstanding the proposal for waiver of buffer plantings, the Board finds that the plantings that could have been utilized in the buffer should be utilized to further enhance the proposed building and its surrounding environs. Given the fact that the proposed storage areas will be up against other storage areas and a railroad right of way, the opposite side of which is used in a similar manner, there is no need for providing buffer areas.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of the Borough of Metuchen that the application of DCR Landscaping & Construction, Inc., be and is hereby granted for a use variance, bulk variances, waivers, minor subdivision, preliminary and final site plan approvals 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 Zoning Board of Adjustment.

B. The Applicant furnishing proof to the Secretary of the Zoning 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 issued until all fees and escrows are paid in full.

C. Construction of the project in accordance with the terms and conditions of this Resolution and the drawings submitted herein, except as modified per the reports of the Borough Engineer and the Board Planner as set forth in their reports or in their testimony or conditions of this resolution.

D. No additional deviations from the bulk requirements of the zone plan will be permitted without further approval by the Board.

E. The site plan shall be amended to address in more detail all of the requests of the Borough Engineer and the Board Planner. In addition, architectural plans shall be subject to the approval of the Board Planner.

F. The Applicant shall provide the following:

i. A deed of subdivision to be reviewed by the Zoning Board Attorney as to form and the Borough Engineer as to description including acknowledgment of the merger into Block 48.01, Lot 63. Said deed shall include a merger into the deed for the adjoining lot all of which shall be subject to the attorney's review and approval. In addition, said deed shall include an easement area as shown and described on the plans herein.

ii. The Applicant shall pave the driveway up to the front of the building and around any handicap spaces so that proper access is provided to the building.

iii. The Applicant shall provide drop curb around the cul-de-sac in areas required by the Borough Engineer subject to the Borough Engineer's approval.

iv. The Applicant shall provide a foot candle lighting contour map subject to the Borough Engineer's approval.

v. A concrete apron shall be provided at the driveway.

vi. The Applicant shall provide a revised grading plan subject to the approval of the Borough Engineer that does not result in any interference with any adjoining property.

vii. The plans for the building shall be subject to the approval of the Board Engineer.

viii. The proposed security gate and its placement shall be depicted on the plans and subject to the approval of the Borough Engineer and the Borough's Fire Official.

ix. What otherwise would be provided for buffer landscaping will be relocated around the building subject to the approval of a landscaping plan by the Board Planner.

x. The Applicant shall locate a front building entrance subject to the Board Planner's approval.

xi. The Applicant shall comply with the Borough Engineer's report, except as otherwise waived as set forth above in paragraphs 15 and 17.

G. This application is conditioned upon the following outside agency approvals or letters of no jurisdiction.

- i. County of Middlesex Planning Board.
- ii. Freehold Soil Conservation District.
- iii. Borough of Metuchen Fire Department.
- iv. Middlesex County Utilities Authority.
- v. Middlesex County Water Company.

**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 shall result in automatic revocation of the within approval and shall 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 if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

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

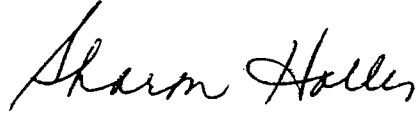
**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of May 11, 2006 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Zoning Board of Adjustment to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairman and Secretary by 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.

Dated: June 8, 2006



---

Sharon Hollis, Secretary