

BOARD OF ADJUSTMENT MINUTES

April 5, 2017

REGULAR MEETING

Salute to Flag: 8:00pm

OPENING STATEMENT:

This is the Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Herald News and the Suburban Trends on January 11, 2017 respectively, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk

ROLL CALL: Chairman Jack Dunning, Vice Chairman Bruce Grygus, Members Frank Covelli, Barry Hain, Peter Hoffman, Michael Levine, Suzanne Henderson, David Karp and Attorney Ronald Mondello and Engineer Christopher Nash

ABSENT: Member Don Ludwig

**Application #ZBA2016-05 – MKR Enterprises, LLC
17 Park Street, Wanaque, NJ (Block 240/Lot 3)**

BOARD'S EXHIBIT

B-1 September 4, 2016 Review Letter of Christopher J. Nash, P.E., Board's Engineer

APPLICANT'S EXHIBIT

A-10 February 28, 2017 Letter of Agreement Between Berta's Chateau and The Tree Tavern For 8 Additional Parking Spaces

A-11 NJGIN 2012 Aerial Imagery of the Properties of Tree Tavern, The Bellantes and Berta's Chateau (Poster Board – Imagery From NJDEP Geographic Information Systems Warehouse)

A-12 Series of Photographs of Tree Tavern's Site Taken June of 2016 (Poster Board)

A-13 Colored Version of the June 23, 2016 Site Plan Submitted (Poster Board)

Michael Rubin, Esq. of 1330 Hamburg Turnpike, Wayne, NJ, Attorney for the Applicant, began presenting his case for a D2 Use Variance regarding the expansion of a pre-existing, non-conforming use pursuant to New Jersey Statute 40:55D-70(d)(2). Some of the testimony is going to be repetitive of what you heard over the last number of weeks, but now we are seeking a Use Variance and before we were seeking an Interpretation.

Attorney Mondello asked Attorney Fernicola to enter his appearance for the record.

Paul Fernicola, Attorney for the adjacent property owners, Marc and Lisa Bellante. I believe that the proposed site plan and your engineer's review letter, going out to the property and inspecting it, is a little bit different. We know that some of the structures are already there as a more typical fashion when you come to the board first. The outdoor bar that is identified, with the 16 seating, that is literally on the property line and that is not depicted on the site plan. The site plan doesn't give the distance from the property line, but using the scale, I measured it at approximately 12.5' and I think that is an issue. The 2 structures are not included in the application but they require side yard setback variances and that is not in the notice of application. There are additional bulk variances that are required for these structures that the applicant has not identified. I wanted to bring that up.

Attorney Mondello stated I have reviewed Attorney Rubin's publication and I believe he has the catch-all phrase in there so I am very comfortable saying that jurisdiction is vested in this Board. First witness Attorney Rubin:

Attorney Rubin questioned the existence of a report prepared by Engineer Nash. It was confirm that it was his original report from the first meeting in September. There is no new report.

Michael Ryan, Resident of 17 Park Street, Wanaque, NJ and owner of MKR Enterprises (Tree Tavern).

Attorney Mondello advised Mr. Ryan that he remains sworn from the previous meetings.

Attorney Rubin questioned Mr. Ryan as to when he brought the restaurant property and asked him to generally describe what the property looked like. We are really dealing with the outside of the building. We are really not involved with what was happening inside, except that it was a restaurant.

Mr. Ryan stated he purchased the property in 2002 and it was a restraint called “Andrews”. The outside of the property had gotten a little bit overgrown because the owner, Andy, had gotten quite sick and wasn’t able to maintain the property for the last couple of years before I brought it.

Attorney Rubin asked if he could be more exact as to what did the back look like.

Mr. Ryan stated there was a pebbled surface for a good chunk of it; there were some bushes that were overgrown and a couple of trees that were saplings that had grown a little bigger. Overall it was pebbled area that used to be picnic area. I found all kinds of signs for the picnic area, the horseshoe pits, the bocce pits and remnants from the concrete from that and I had to remove all that. After I removed all that, I started fixing up it. I changed the pebbles from white to the red ones there now, tried to grow grass with seed but that didn’t work out so I put sod down, and I just started fixing it up and making it more beautiful.

Attorney Rubin questioned what did you do about the patrons coming to that rear area and having a place to sit, drink, eat, whatever?

Mr. Ryan stated he started putting out different kinds of chairs, there were old tables that were rotten and had to be thrown out, and a couple years later I put in some nicer tables and chairs.

Attorney Rubin questioned if you had to move things around because the Board felt that they did not like the way the configuration was back there, could things be moved? There is nothing permanent there?

Mr. Ryan answered yes, there is nothing with a foundation under it.

Attorney Rubin asked about the bar.

Mr. Ryan stated he installed a bar for both personal use and for the business. I do live on the property. It is a 2x4 construction sitting on a patio with a granite top on it. It has 4 seats on one side and 5 on the other. It is on a patio that has room for some other tables and chairs.

Attorney Rubin questioned if it had to be moved, could it be done?

Mr. Ryan stated it could be.

Attorney Rubin questioned what about the fire pit?

Mr. Ryan stated they are really not fire pits, they’re chimineas, which were brought at Lowe’s and Home Depot. They are not pits, they are just a steel enclosed chiminea that you put a sterno log in it. These are more decorative than anything else. When it gets dark, I put a sterno log in each of the four I have to a pretty impression at night. You can sit around them and warm up if it is a cool night. We have dining at the tables and if someone wants to retire from eating at the table, then go to the fire pit area, then can do that.

Attorney Rubin, referring to the outdoor seating area on the site plan where it says 64 seats total, tell us what that is about. This is the original submitted plan prepared by Petry Engineering 6/29/16 – Exhibit A-9.

Mr. Ryan stated the outer perimeter of that area is sod and there is a walkway going through the sod and in the middle there is a red/mahogany colored pebble with tables and umbrellas with four chairs around each table. There are a couple of picnic-kind of table; they are rectangular with the benches included. All these chairs and tables can be moved.

Attorney Rubin, in that same rear area of the site, again looking at Exhibit A-9 Site Plan of Existing Conditions, there seems to be a walkway leading to something called a “patio”. Tell us what that is about.

Mr. Ryan stated we just put in a walkway going up towards the back of the property. It is a high point on the property where you can look back down onto the main picnic area. It is a beautiful view of the fire pits and people dining out there. There is no eating there. People just sit at one of the chimineas. It is just a seating area.

Attorney Rubin stated, let us talk about the bar area. It says here “existing outdoor bar area with 16 bar stools”. Tell us about this area as far as seating.

Mr. Ryan stated there bar is two sections, in an L shape, and it has 4 seats on one side and 5 on the other and then there is a patio out from it that has a few high-top tables with high-top chairs. People can eat and drink at those locations.

Attorney Rubin questioned for the short period that you used the outdoor area, did people actually eat and drink there?

Mr. Ryan stated yes they do.

Attorney Rubin, on the other side of the outdoor site, is something called a “shuffle board area”, can you tell us what that is about?

Mr. Ryan stated it just looks like the cruise ship shuffle board with the sticks. It is just a fun little thing that is paying homage to the old bocce pits that used to be there. I didn’t think flying hard balls and drinking went together very well, so the shuffle board seemed like a better idea.

Attorney Rubin stated what was testified to at great length at previous meetings that there were bocce courts, they are gone, and instead you have a shuffle board court?

Mr. Ryan stated yes, and patrons do use the shuffle board and seem to enjoy it.

Attorney Rubin questioned if any of this can be seen from Park Street?

Mr. Ryan answered no, it is set back. The property is set up where there is a front house, that my daughter lives in with my grandchildren, and you come in the driveway and you come to the building and behind the building is the picnic area, which you really can’t see from Park Street at all.

Attorney Rubin wants to talk about the parking. On the site plan there are a number of parking stalls that are shown. Describe what is called the “front parking area”.

Mr. Ryan stated, if you are facing the back of the property from Park Street, looking at it on the left side of the property there is a parking area that is ours and is used by our employees and to the right side of it is a larger parking area which is the main parking area, but they are both part of the property, which is macadam, and leads to the right side of the building. As you go further back into the property, around the curb, there is overflow parking. On a busy night, this area can be used, especially on a Friday night. Our busy time is Friday and Saturday, but primarily Friday. So on occasion, that side area is used. The spaces on the property furthest back and adjacent to what we call the outdoor seating area do get used on busy nights Also, on a busy night sometimes during the summer, we would get street parking going on for sure on Park Street. Parking is allowed on Park Street with no restrictions.

Mr. Rubin questioned, knowing that you are coming before this Board and that there be a permission by the Board to allow the eating, drinking and use of the rear/bar portion area of the site, did you feel you had to go out and find some extra parking just in case it was needed so people didn't have to park on the street.

Mr. Ryan stated he has explored a couple of options.

Mr. Rubin what was the option that finally came about?

Mr. Ryan stated he made an agreement with Peter Bernstein, the owner of Berta's, to use 8 spaces in his lower parking lot. The parking lot in question is about 150 yards from our parking lot, and is within walking distance. Berta's parking lot is quite large and they have one section of it, which is right adjacent to Park Street and is called the "lower lot", which probably has 15 spaces, and it is 8 of those spaces that I have made an agreement to take. I did ask Peter to put this agreement in writing and he did.

Attorney Rubin requests that the Agreement between Berta's Chateau and Tree Tavern be allowed into evidence and marked A-10.

Attorney Rubin questioned that this is a seasonal kind of thing?

Mr. Ryan stated correct.

Attorney Rubin stated the agreement said the seasonal use of the 8 parking spaces in Berta's lower lot from May through October on Thursday, Friday and Saturday evenings from 4PM to 11PM. In your opinion, since you are the person that has been running the restaurant, do you think this would take all the cars off the street?

Mr. Ryan yes, for sure.

Attorney Fernicola objected stated his is giving an opinion and he hasn't been qualified.

Attorney Mondello stated so noted, and you can answer the question.

Attorney Rubin, in your opinion, as to the person who runs the restaurant, will 8 parking spaces suffice so that there is no longer any need for on-street parking?

Mr. Ryan stated in my opinion it is.

Mr. Rubin questioned Peter Bernstein is ready to do this, sign this and has no problems?

Mr. Ryan stated it is all done.

Mr. Rubin stated obviously this is kind of informal, but if a more formal document is required by the Board, Mr. Ryan interjected that it could be obtained.

Attorney Rubin, drawing your attention to the existing restaurant, and we are talking from the time you took title to the restaurant and started running it, to present, have there been police problems with this site?

Mr. Ryan stated no, none at all.

Attorney Rubin stated contrary to years ago?

Mr. Ryan stated, from what I understood, there were always police on the property back in Polly's days.

Attorney Rubin stated and those days are gone?

Mr. Ryan answered yes.

Attorney Rubin stated, so your testimony is that since you have had it right to today, you have no problems?

Mr. Ryan said right, no problems.

Attorney Rubin continued with no closures because of alcoholic beverage violations, problems with fighting, brawls; all those kinds of things that used to be at this location years ago.

Mr. Ryan stated no, it doesn't happen anymore.

Attorney Rubin questioned, since you are the person that runs this place, how do you categorize the business?

Mr. Ryan stated it is set up as a wine bar. We have a full bar, and a restaurant menu. The business attracts an older crowd who are interested in going in the evening on a date or a spouse and having a good quiet evening out. We also do get families.

Attorney Rubin questioned are you open during the day?

Mr. Ryan answered that we start at 4pm.

Attorney Rubin questioned the area that we are here before the Board for, the outdoor bar and seating, is that a seasonal business only?

Mr. Ryan stated yes from May through part of October, depending on what Mother Nature gives us as far as weather is concerned. It would not be used in the cooler weather, or rainy weather. Only nice weather, when it allows. This would be the only time the rear area would be used.

Attorney Rubin stated, you do understand that if this Board, just to clean up all the records, if this Board allows you to use this back area, you would have to take a drawing, such as we have today, of the site plan or any changed site plan, and amend your liquor license so that your liquor license reflects everything that this Board has done?

Mr. Ryan answered true.

Attorney Rubin stated so you want everything to be consistent, and clean up whatever records there are in the community?

Mr. Ryan answered I do.

Attorney Rubin stated there was a possibility of valet parking that we spoke about early on. Do you feel that you need valet parking now that you have Berta's.

Mr. Ryan stated I don't at this point, but it is always an option. I did contact two services and got proposals from these two services for doing it.

Attorney Rubin questioned this is an option you think you could use (tandem parking)?

Mr. Ryan stated if needed.

Attorney Rubin questioned, in those parking areas that are unstriped, would they have to be striped in order to be consistent with the site plan so there is no question where cars are parked or would be parked on site?

Mr. Ryan stated yes, I would do that. I have to re-surface the parking lot with that tar anyway so I would put in new stripes.

Attorney Rubin mentioned a short time ago there was a Deed that was prepared pursuant to an older Board of Adjustment application and the Deed is dated May 13, 2016 and it reflected the approval by the Board of Adjustment of October 2005. Do you remember signing that Deed?

Mr. Ryan stated I do.

Attorney Rubin, referring to the Deed as Exhibit A-7, has some restrictions in it on the site and where did those restrictions come from?

Mr. Ryan answered the Mayor & Council when they were doing their annual liquor license approvals they put those restrictions on my license.

Attorney Rubin stated that the Deed states, among other things, that the hours and days of outside operation should be limited by Monday through Thursday from noon to 10pm and Friday, Saturday and Sunday from noon to midnight.

Mr. Ryan stated that is true.

Attorney Rubin stated that is what the recorded Deed says and that is what the Mayor & Council agreed to.

Mr. Ryan stated that is right.

Attorney Rubin continued are you representing to this Board that those are the hours and days of this description that you would adhere to.

Mr. Ryan stated he would adhere to those restrictions.

Attorney Rubin stated the second restriction says entertainment outside, including live entertainment as well as electronic, amplified,etc., shall comply with the Code of the Borough of Wanaque, Chapter 82, Noise. The licensee, or his designee, shall establish and institute procedures to prohibit fights, brawls, ...etc. All that is in one paragraph, which has come from the Mayor & Council, and you agree that what is in this restriction would be applied to this operation.

Mr. Ryan stated he would adhere to that.

Attorney Rubin stated the third item says the licensee, or his designee, shall be responsible for the noise and crowd control. The licensee, or his designee, shall continuously police and patrol the licensed remise so as to keep in clean, free from debris, discarded bottles and cans and other trash or rubbish. Again, that come from the Mayor & Council and do you agree that that would be a restriction upon yourself also?

Mr. Ryan stated I agree.

Attorney Rubin stated the fourth item of restriction says the licensee, or his designee, shall notify the Wanaque Police Department of any disturbances, breaches of peace,...etc. detrimental to public peace and well-being. Do you also agree to that restriction?

Mr. Ryan stated I will.

Attorney Rubin referred to a fifth item, although not numbered, that says additionally, the rear property of 17 Park Street, known as the "picnic" area was formerly addressed as the "wooded area", will be utilized to entertain patrons while they are served outdoors food and alcohol and/or walk out on their own accord with food and/or alcohol to this back property location. Is than accurate description of what is going on back there and will you abide by it?

Mr. Ryan stated it is very accurate and I would abide by it.

Attorney Rubin stated that most respectfully you are asking this Board to allow the expansion of that area for food and drink.

Mr. Ryan stated I am.

Attorney Rubin questioned when you brought this place, did you think you could use the back?

Mr. Ryan stated I knew there was potential because I saw all the remains of the old work, but sure I thought it could be used; it just took me some time to get it to the condition that I wanted it to be in.

Attorney Rubin stated when we have our Site Engineer/Planner testify he will also testify that there appears there may be some trees, shrubs, landscaping, buffering and such, do you agree that whatever he is testifying to it will be done and it is all part of your application?

Mr. Ryan stated yes and it is.

Attorney Mondello questioned Mr. Ryan as to what factors would trigger the need for valet parking?

Mr. Ryan answered that I don't know that it will ever become necessary because the capacity of the kitchen is limited on the amount of customers, but if it ever did happen, I think it would increase by about 20% the parking capability because you would have a whole area where you could double and triple stack with the valets.

Attorney Mondello stated the question I am asking is what factors would trigger your decision, i.e., this weekend I need valet parking or the next weekend. It is because you see 12 cars on the street, what factors would trigger your decision to go spend money on a valet parking business.

Mr. Ryan stated I haven't thought through the exact perimeter of what would trigger that, but I did want to get it in case and I did get two proposals. However, I don't know what exactly would trigger it.

Vice Chairman Grygus questioned how would you get from your location to the parking area in Berta's? It would be from Park Street to Grove Street.

Mr. Ryan stated walking it. You would go down Park Street to Grove and up into the parking lot.

Vice Chairman Grygus believes it is more than 150 yards.

Vice Chairman Grygus also questioned how do you police people utilizing that versus parking on the street, which would be a much short walk?

Mr. Ryan stated we would probably just have most of our employees park over there to alleviate that parking on property and, therefore, the patrons could park in the spaces that the employees are occupying, which would free up a few. Myself and my manager would have to physically police it and make sure it is working well.

Vice Chairman Grygus commented you are only showing 3-1/2 spaces for employees.

Mr. Ryan stated right.

Vice Chairman Grygus questioned would you have signs in your driveway directly people?

Mr. Ryan stated we would have signs and would have information from myself and my manager that there is addition parking at Berta's.

Member Hoffman questioned you are going to be standing outside directing people?

Mr. Ryan stated what we did last summer was every hour we would actually go out and walk around the street and see what was going on and make sure everything was okay so we would step up that same policing effort.

Member Hoffman questioned wouldn't you have to have somebody out there at all times as the parking lot gets more full so you would get your patrons before they parked on the street and direct them to the additional parking, even though it is only 3 additional spots and you added 64 additional seats?

Mr. Ryan stated we would direct the employees there and maybe talk to some of our regular customers to park there.

Vice Chairman Grygus has a question about that but doesn't know if he should ask the engineer or Mr. Ryan because you are saying you have 64 seats between those outdoor seating areas, but that doesn't include the seats and the benches that are in the "fire pit enclosure". When I went out to see the site, I came up with a lot more and after I totaled everything up I came up in excess, with everything, with the bar stools, for the whole outside are of 90 seats.

Mr. Ryan wasn't sure if that included the couple stacks of chairs that were talked about the last time, which are now gone. There were picnic tables that are now gone off the property. All those extra seats that you were talking about are gone.

Vice Chairman Grygus commented again you are not accounting for anything that is inside the fire pit area either.

Mr. Ryan stated no.

Member Hoffman questioned what is your proposal for the total number of seats in this outdoor area?

Mr. Ryan stated what is on the site plan now.

Vice Chairman Grygus stated that is not accurate because you have seats around fire pit, and there are two benches out front of it that are not on the plan.

Mr. Ryan stated that way the restaurant works is these are what I call "niche seating", where if someone eats dinner at a table and when they finish eating dinner they might go sit by a chiminea or in that little building so it is not like it is all seating all the time; they are niches where people can go; more of a beautification effort. No one is going to come and fill up every single seat in the place; it can't happen. Those are all just different spots for different niches for when you are sitting at the restaurant.

Member Hoffman questions why would you think that if there is seating available that someone is not going to sit there? Is it going to say reserved for dining?

Mr. Ryan stated we do have some signs that where we say "no service beyond this point", but the dining area is the main picnic area with the round tables and the chairs. The rest of them are just niches for when someone is finished eating there, they go sit somewhere else.

Attorney Mondello is trying to clarify what Mr. Ryan is saying. If myself or a couple wouldn't drive to your restaurant just to go sit by the fire pits.

Mr. Ryan said no. People come in for having a meal and then they may retire to another spot to a walk up to the top of the hill or to sit around one of the 4 chimineas.

Attorney Mondello questioned would they drive to your restaurant to have a couple of glasses a wine by that fire pit, as opposed to eating.

Mr. Ryan stated they could.

Engineer Nash stated there is a requirement, the bar stools for instance, he can also make the argument that people are going to come in for a drink and then sit at a table.

Therefore, I don't need to count the bar stools. You can't go by how he functions now; what if he sells the place and somebody else really wants to maximize what they have there. That is why the ordinance is written the way it is to have an accounting of the seat equals how many parking spaces. They are all related. You can't go by how I've used the use because somebody else will be it next week and use it a different way.

Member Covelli wants to remind everybody in the room that a variance runs the life of the property.

Vice Chairman Grygus stated this runs to my next question: Do you know if Mr. Bernstein is willing to put that as a Deed to you because if he sells his business and the next person comes in and says I don't want you parking there. If we were to grant a variance based upon the inclusion of those 8 spaces, that changes the whole dynamics if those spaces go away.

Mr. Ryan stated I don't know. I have not approached that subject with him.

Attorney Rubin stated our understanding was to really refine that initial agreement and record it in the County Clerk's Office.

Member Hoffman questioned if you would be able to refine that before we come to a conclusion.

Attorney Rubin stated it would have to be a condition and I agree. I don't want Peter to sell the place either and a new owner says I don't even know about this. We want it to be a matter of record. As you all know, that is a huge area that he has there.

Member Hoffman commented that those 8 spots are not really convenient to this property. If it was done via valet, I could see it; but I don't see patrons walking that distance.

Attorney Rubin stated the question was we were looking for extra space in the area and we went out and looked for what we could find. Here is beautiful asphalt parking lot a short distance away that we thought it made some sense. Obviously, the Board has to approve, but we thought it was a good idea because putting all the employees and Mr. Ryan's car and any family members that also help out in the restaurant off the site and putting them over there that would help to, opening up spots in his lot.

Member Covelli stated I think there needs to be formalization because at the end of the day Mr. Ryan is a very nice man but he can sell that place tomorrow. Anything granted by this Board runs the life of the property and there has to be an assurance as to what is taking place.

Attorney Rubin agrees. I want to protect my client and wouldn't be doing my job unless he was protected. Yes, it has to be recorded.

Mr. Ryan questioned, since I don't know what Peter is thinking and this is the first I am hearing about a Deed, would it be possible to look at the agreement and/or the valet because the valet would accomplish the same additional spaces by having a valet on site. If for some reason Peter is unwilling to, have the valet stack the vehicles in my parking lot.

Member Hoffman believes that the parking lot is not shaped for that.

Mr. Ryan stated I have seen it work. I had two people come up to the site and they both drew a plan for me about how it would work.

Member Hoffman asked if you could submit those plans at the next meeting.

Attorney Mondello also stated that there is a witness to testify to that.

Vice Chairman Grygus stated there were a lot of things that were in the prior approval on the site plan that just were never carried through. For example, there was supposed to have been a vegetative buffer along the property line on the front parking that was part of the original approval that wasn't done. The expanded parking was supposed to have been block and that was never done as a permeated surface. There was supposed to have been trash enclosures that were never followed through on.

Mr. Ryan stated there is one.

Vice Chairman Grygus stated right now all the garbage pails are just lined up behind. There was actually supposed to be a fenced-in enclosure.

Member Covelli stated as you have been testifying, I have been looking at the 2005 plan and have been glancing over at the current one, and I am looking at all these things that weren't ever done.

Attorney Mondello questioned was it that Mr. Ryan?

Mr. Ryan stated I am not sure what you are referring to. There is a garbage enclosure. Member Covelli stated Mr. Grygus just listed a few and I am looking at a row of shrubs that go all the way down along the side of the property.

Mr. Ryan stated we put in a 6' tall fence in. There is a fence in the front as well.

Chairman Dunning stated on the west side you have parking where you have three cars and a buffer maybe 8' to the property/neighbor to the west of you. This plan shows that basically right on the property line with seven cars.

Mr. Ryan stated the parking is not on the property line.

Chairman Dunning stated I said very close; in other words, there is no buffer. The old site plan had a buffer built in.

Mr. Ryan stated there is more than 10' there now.

Chairman Dunning stated on the new plan there is not 10', there is not 5'. I am looking at the plan you presented with this application.

Attorney Mondello added versus what was supposed to be done in 2005.

Chairman Dunning showed Mr. Ryan the plan that was approved in 2005. We have a Resolution on it and you agreed to many things; none of which any of it was ever done. Now you came back with a plan that is totally different and you got rid of all the buffers and everything you agreed to in the 2005 plan, so do we throw that 2005 out and start over again? Where are we going with this?

Mr. Ryan stated sorry I'm not sure how to answer the question.

Chairman Dunning stated all of this we approved, you agreed to. Mr. Ryan stated right. Chairman Dunning continued you never did anything. Mr. Ryan stated he put in the fencing instead of the bushes. It was an effective shield that did the same thing.

Member Henderson stated you can't substitute things for things that have are approved. That is not your decision to make.

Vice Chairman Grygus stated the 2005 approval had a whole row of plantings along the east side of our property. Mr. Ryan stated there is a little planting there in the back.

Vice Chairman Grygus stated they are not shown on this plan.

Member Covelli stated nothing is shown; the impervious surface isn't shown. It is all paved. Mr. Ryan stated it is all paved.

Member Covelli stated the plan was not followed. That is what we are trying to tell you; even 12 years later.

Chairman Dunning stated, even your house, the deck on the back of your bar building, is bigger than what we approved.

Mr. Ryan stated that was a letter I gave to Jeff Brusco as the zoning official and building inspector where I depicted what had happened and I gave him that notice and it is in evidence now which shows the reasons for the changes and hoping that the Board would not have a problem with it and Jeff never questioned it.

Chairman Dunning stated our approval was based on documents you supplied, now of which you followed at all, even to the planting schematic of how it is laid out in your 2005 plan. We have a Resolution. As far as the Deed, the Mayor & Council added something to

that and it has nothing to do with this Board. We approved none of that. We went on your testimony in 2005 that you would only use the bar with 50 seats, 16 bar stools, and we granted you a real break on the parking variances because you said you used it for only private parties basically. We didn't hold you to what the real parking requirements were. Now we are at 180 degrees in the opposite direction.

Attorney Mondello stated the Board has made it crystal clear that for whatever reason Mr. Ryan has not carried through on the obligations with respect to the 2005 site plan. This is now a new application and he is proposing new stuff and it is up to the Board to decide, at some point in time, whether or not you are going to approve the application. If, in fact, you decide that is the way to go, you can impose all kinds of reasonable conditions, if that is the path that the Board eventually takes. I think Mr. Ryan has gotten the point.

Member Covelli stated I understand that in theory counselor. The problem is when we do that it is not followed.

Attorney Mondello stated I think what is going to have to happen, if the Board decides that the applicant has met his burden of proof, is that he is not going to be issued a c.o. to conduct that business until all the requirements are met.

Member Covelli stated we are not a policing authority.

Attorney Mondello stated I understand that, but there can be some coordination between the Board and the Building Department, but you are absolutely right.

Attorney Rubin stated David Hammerle is your policing authority having spoken to him many times on many different issues and different properties and I would say that you have someone who has their finger on a lot of things happening in the Borough, and if he is told that Mr. Ryan can't have a c.o. to use this back area until all conditions are met, I know Dave will make sure that that happens. He is very persistent having worked with him now on at least three or four different sites, but he is your policing authority. You are right, this Board is not a policing authority.

Member Levine questioned if you have somebody coming in to run a party outside, do you have a limit to the number of people that can attend?

Mr. Ryan stated when we have any private party, we limit them to 50 people; indoors or outdoors.

Member Levine stated you mentioned a program to control the crowd so that there is no fights or anything, do you have an actual written program that you are going to follow?

Mr. Ryan stated we do not have a written program. We don't have that type of clientele and myself and my manager walk around constantly looking for any issues that crop up.

Chairman Dunning stated it was mentioned early on that you have wine tasting. How many people does that drawn?

Mr. Ryan stated we do and it depends. They are almost fundraisers for local groups and they go from 30 to 50 people depending on how effective the group is communicating the event.

Chairman Dunning questioned if it interfered with your other business there?

Mr. Ryan stated no. We only do it on Sundays when we are closed as a restaurant so the wine tasting is always on a Sunday. Sometimes they are held outside. We did one for the

Ringwood Ambulance Club which was an outside one, but most of the time they are inside. It also depends on the weather.

Member Levine stated the Deed restriction says you can be operational until midnight and your Berta's agreement says only to 11pm.

Mr. Ryan stated we close our restaurant at 11pm every night. The Deed allows until 12pm, but we, as a matter of policy right now, go to 11pm.

Chairman Dunning questioned you close the bar or restaurant at 11pm?

Mr. Ryan stated everything closes at 11pm. Last call is 10:30pm in side and we try and have everyone gone by 11:15pm. Sometime it is a little later, but most of the time it is pretty close.

Member Covelli, referencing the 2005 plan, there are 33 spots, including 3 in the garage, and in the current plan there are 34, but only 2 identified in the garage. Can you explain?

Mr. Ryan explained I am not sure what I witness will testify to, but I think it might have been the parking along the curb that was additional.

Attorney Rubin stated Mr. Petry will have to testify to that.

Attorney Rubin, questioned Mr. Ryan about what percentage of your clientele are regular customers. Meaning constant people that come to the restaurant on a regular basis.

Mr. Ryan stated it is 70%.

Member Levine questioned if that included the outdoor parties?

Mr. Ryan stated if a group comes in that is a separate event, not part of the 70%.

Member Covelli stated that were 31 arborvitaes that were proposed to be planted and approved in 2005 and they were to be 5' high when they were planted. That was all eliminated and you believe a 6' fence would substitute as a buffer, not a screen but a buffer. Mr. Ryan stated we have a buffer in the back area where the picnic area is, but the fence covers the parking lot area.

Member Covelli stated these plantings were to go, as you face the property from the street, on the left-hand side so they would have gone all behind the building all the way up into, which is referred to on this plan as "the gravel area to remain as parking". There is no reference to an outside. Your testimony is that a 6' fence was decided to substitute that and that was legal substitution.

Mr. Ryan stated that was substitution for the parking area and we did put plantings in towards the back.

Attorney Mondello: Any other questions from Board Members? Hearing none, seeing none, your witness Attorney Fernicola.

Attorney Fernicola: Before I question the witness on cross-examination, I would ask that you give the legal instruction to the Board since there was reference to conditions that were imposed on the Mayor & Council and I would like the legal instruction that only the only Board in this municipality that has the authority to grant an expansion of a non-conforming use is this Board of Adjustment, and the fact that the Mayor & Council

approved an expansion should not be factors or evidence relied upon by this Board in deciding the variance tonight.

Attorney Mondello stated we agree and I think the Chairman alluded to that at least once, perhaps twice.

Vice Chairman Grygus stated we are well aware of that.

Attorney Fernicola stated that Member Covelli had mentioned it and it came up in your prior testimony, the Resolution from 2005 with specific reference to paragraph 7 that referred 50 chairs in the restaurant and 16 bar stools.

Attorney Fernicola questioned if the Engineer's letter was marked in this case. Do you typically mark B-1 as a Board Exhibit?

Attorney Mondello believes it isn't marked and we don't typically mark it, we just simply take judicial notice of it.

Attorney Fernicola requests that this letter be marked as B-1.

Attorney Mondello agreed and marked the September 4, 2016 Review Letter of Christopher J. Nash, P.E., the Board's Engineer, as Exhibit B-1.

Attorney Fernicola mentioned that Engineer Nash made reference to paragraph 7 of the Resolution, " During the hearings, the applicant testified that presently there are 50 chairs in the restaurant and 16 bar stools, that the facility is used primarily for private parties and, that if the application were approved, not one seat or stool would be added to the establishment nor would the present used by expanded..." Is that your recollection of the representation that you made to the Board.

Mr. Ryan replied right. It was referenced to the building.

Attorney Fernicola questioned do you also agree that your 2005 site plan did not identify or show any outdoor seating at the property? Correct?

Mr. Ryan replied correct. It was about an inside expansion.

Attorney Fernicola, referencing A-9, the current site plan depicts outdoor seating with 64 in outdoor area, 16 bar stool and do you agree with my handwritten notes, 8 inside what is identified as the existing fire pit enclosure with seating. Do you agree with that 8?

Mr. Ryan stated 8 could fit in there for sure.

Attorney Fernicola stated that is 88 seats. So you went from a Resolution identifying a total of 66 that in this site plan your proposing an addition 88 seats; so you are more than doubling the capacity based on those numbers of 66 in 2005 and 88 depicted in 2016/2017.

Mr. Ryan replied I disagree. These are different niches; that are not all to be used the way you are describing.

Attorney Fernicola, referencing Engineer Nash's comment that the Municipality Code determines the number of parking spaces by the number of seats, are you aware of that?

Mr. Ryan stated yes.

Attorney Fernicola do you agree that the arithmetic is correct; that the 2016 site plan identifies 88 outdoor seating, correct?

Mr. Ryan stated it looks like it, yes.

Attorney Fernicola questioned the actual seating as far as the number of individual seats, benches and the tables, none of those are actually depicted in any of the outdoor areas, correct?

Mr. Ryan replied correct, they are not shown.

Attorney Fernicola questioned the circled area at the back of the property, closer to the east side that was an area installed by you after you purchased the property in 2002? And there is seating in that area?

Mr. Ryan replied yes. There are about 5 or 6 seats around the chimney.

Attorney Fernicola questioned what is depicted as a square patio area that is also included as outdoor seating that was also installed by you when you purchased the property?

Mr. Ryan replied yes.

Attorney Fernicola questioned this outdoor stone picnic area, that area was also installed by you?

Mr. Ryan replied correct.

Attorney Fernicola questioned what is depicted as the outdoor bar, it appears to me you have granite countertops?

Mr. Ryan replied yes.

Attorney Fernicola questioned do you agree that on the west side of the property, there is a sink as part of the granite?

Mr. Ryan replied there is a sink.

Attorney Fernicola stated that is literally flushed against the fence on the property line.

Mr. Ryan replied it is.

Attorney Fernicola questioned do you agree that Vice Chairman Grygus identified that the site plan was inaccurate from the number of outdoor seating and do you agree that the site plan A-9 is not accurate as far as the depicting the location of this outdoor bar area where it actually exists on the property? Does this site plan of 2016 (A-9) does not depict the bar area flush against the property line?

Mr. Ryan replied it does not.

Attorney Fernicola, referencing the 2005 Resolution, paragraph 5 which refers to the west side of the property, indicated that the existing bar/restaurant was 8.1 feet and that the required side yard setback is 20'. This is what I was referring to earlier, not so much for the notice argument, but that there are bulk requirements. Do you know if the existing fire pit, and do you agree, that that is within 20' of the west side property line? The area that is depicted as the existing fire pit enclosure with seating. Do you agree that is within 20' of the west side property line?

Mr. Ryan replied I am not sure since I really hadn't looked at it. The space between the fence line and that building is I don't know how far it is.

Attorney Fernicola, based on my review of it, it appears to be about 10' to 12'.

Attorney Mondello, to your point about bulk variances, I was listening, but doing some quick research and I just want to quote Cox here, "note that where a variance or other approved subject to conditions has been granted by the governing body under its powers of *de novo* review, application for excision of condition should be regulated to that body as the requirements for giving notice of an application seeking to modify or eliminate a significant condition or conditions in the memorializing resolutions". It is pretty obvious to me that some of those requests that Mr. Ryan is making, he is making application to this Board for excision of some of those conditions in the Resolution.

Attorney Fernicola, please let me be clear, I am not raising it because of the notice. I am raising because there is case law when you deal with an expansion of a non-conforming use, if that expansion required bulk variance that is evidence for the Board to reply on that the expansion is too intense for the property because it requires a bulk variance versus being able to comply with those bulk requirements and that is the reasoning I am bringing up that it is evidence that it is too intense for the property.

Attorney Fernicola stated tonight you said that in 2002 when you purchased the property that you believe that the service of food and alcohol in the outdoor area was permitted. Correct?

Mr. Ryan replied yes.

Attorney Fernicola stated however, we saw in the earlier hearing, the letter from February 22, 2002 from the Wanaque Zoning Officer, Jeffrey Brusco, (Exhibit O-4) that you had received a letter from the Zoning Officer advising you that the service of outdoor food and alcohol was not permitted and required a use variance.

Mr. Ryan replied I would agree with that.

Attorney Fernicola questioned did you receive a copy of that letter?

Mr. Ryan stated I received a letter from Mr. Brusco which indicated that the property as in an R-15 Zone and service of food was overall not permitted. The second paragraph states however it is a pre-existing use.

Attorney Fernicola stated you got a second letter from Mr. Brusco in 2010 concerning the outdoor service of food and alcohol at this property. Correct?

Mr. replied I believe so, yes.

Attorney Fernicola mentioned policing, do you currently employ any security or a bouncer?

Mr. Ryan replied no.

Attorney Fernicola questioned do you agree that when you purchased the property in 2002 that there wasn't 90 outdoor seats in the rear of the property?

Mr. Ryan replied there weren't 90 seats. There were decrepit picnic tables.

Attorney Fernicola questioned do you agree that there wasn't outdoor music, particularly using amplification system in the outdoor area when you purchased the property?

Mr. Ryan replied when I bought it there was none.

Attorney Fernicola questioned is there any sidewalk from Berta's to the Tree Tavern property?

Mr. Ryan replied no.

Attorney Fernicola stated people would have to walk in the street or on private property?

Mr. Ryan replied on the street.

Attorney Fernicola commented that you testified that very consistently that on Fridays and Saturdays that you had overflow parking on Park Street.

Mr. Ryan replied on good nights, when it was good weather.

Attorney Fernicola questioned when the residents of the Park Street have guests coming to their homes on Friday and Saturday night, does that take up the available parking?

Mr. Ryan replied we never took up all of it.

Attorney Fernicola questioned was there ever situations that there were so many patrons at your facility that it was difficult to get a car down Park Street?

Mr. Ryan replied I won't say so, no.

Attorney Fernicola questioned did it come a period of time that you had to put notices on cars?

Mr. Ryan replied no.

Attorney Fernicola questioned did fire trucks have difficulty accessing Park Street because of the number of patrons parked on the street.

Mr. Ryan replied no.

Attorney Fernicola questioned did you obtain any construction permits for the outdoor bar before it was constructed?

Mr. Ryan replied no.

Attorney Fernicola questioned do you agree that there is only one point of ingress and egress into and out of your property?

Mr. Ryan replied there is two.

Attorney Fernicola asked the two be identified. Mr. Ryan pointed them out on the plan.

Attorney Fernicola, as far as getting to the rear of the property, there is one on the east side of the property?

Mr. Ryan replied right and pointed to one "over here".

Attorney Fernicola stated one to the front area.

Mr. Ryan agreed.

Attorney Fernicola stated that doesn't connect. The building separates the front area from the rear area. As far as cars, there is one way to get in on the east side of the property.

Mr. Ryan replied right.

Attorney Fernicola questioned have you ever seen patrons from your establishment walk across the Bellante's property?

Mr. Ryan replied no, never.

Attorney Fernicola has no more questions for Mr. Ryan.

Vice Chairman Grygus, questioning Mr. Ryan, in the calculations that I am looking at in the parking area, it is saying that for the inside 50 seats and 16 bar stools with 6 employees. I am going to assume that 2 of them are yourself and your manager (Mr. Ryan agreed) so that gets you to 4. Let's say there are 2 in the kitchen (Mr. Ryan agreed and advised they both ride their bikes to work) and so that leaves 1 waitress and 1 bartender handle 66 seats. Mr. Ryan advised generally that is the case but on Friday nights there are 2 waitresses. Vice Chairman Grygus stated that is more than 6 employees, which will go to my next question, you are saying that outside you only have 1 employee, which is a bartender so who serves outside.

Mr. Ryan advised that the inside waitresses serve both.

Vice Chairman Grygus stated the 2 waitresses handle the 50 seats inside and the 64 plus outside.

Mr. Ryan replied that is correct. The way we operated during the two summers we were open, when it was a nice night, nobody sat inside; it was empty. We always had outside and nobody was sitting inside.

Member Levine questioned the reason you substituted the fence instead of the plantings was that so you would have room to put the bar area in?

Mr. Ryan replied that I thought it was better from blocking headlights and things like that. It would just be a better screen.

Member Levine questioned if you put the plantings instead, you would not have been able to put the bar up against the fenced area. You wouldn't have enough room.

Mr. Ryan replied we would still have put it in. We would just have moved it out.

Member Henderson commented that with this application the plan that was submitted was 2016 (Exhibit A-9), which does not accurately reflect what is currently at the site. Then we had the 2005 plan, which was approved, and none of that is on the current plan that has been presented for approval. Shouldn't we get an updated plan as to what should be on there from 2005 and then that should be submitted for this application?

Attorney Mondello stated the application is the application. The latest site plan, A-9, that is what Mr. Ryan is proposing and I am glad you brought this up. I want to read from two appellate division cases:

“It should be noted that where the grantee of the variances is convicted for violation of a condition imposed in the grant, he is not thereby estopped from applying to the Board of Adjustment to be relieved of the condition on the basis of the doctrine of unclean hands” Colin v. Fair Lawn, 85 N.J. Super. 234, Appellate Division 1984; and

“Nor does he forfeit his variance” Walle v. Board of Adjustment Township of South Brunswick, 124 N.J. Super. 244, Appellate Division 1973

Why do I read that to put that into English, the lack of cooperation on Mr. Ryan's part may be very disappointing to some of the Board Members and they may even stronger emotions with respect to that; however, it doesn't come into play when you vote on this variance. He either meets his burden of proof or he doesn't. We shouldn't take that and incorporate your disappointment, or maybe something stronger than that, with respect to this vote.

Vice Chairman Grygus stated, by the same token, if the Board felt that those conditions were warranted, can we reinstate them in 2017?

Attorney Mondello stated no.

Member Covelli stated there are certain things though that you have to understand.

Member Levine and I happen to sit on another Board together and I will use the shrubs as an example. What you will never get back is the 12 years that has elapsed where those 5' trees would not be 5' trees 12 years later. So that time will always be lost; can't make it back up. I am not here to beat up the witness but the other part of the equation is there is a credibility factor when you come before the Board and you make a representation. In reading this Resolution that was written by your predecessor, and I read words like “considerable testimony was deduced” that this volunteer board sat for months to abstract and come to an agreement and then provisions of that are “arbitrarily substituted”, there is nothing devious meant by that, other than just someone made a decision and, in my opinion, arbitrarily, to substitute. That doesn't mean there was any malice made, but the fact of the matter is the process is there for a reason. The process is to give credibility to

the whole procedure and that was bifurcated. So, yes I think it is our responsibility to divorce that and look at this as an application.

Attorney Mondello agreed and understands. You are right, it could go to Mr. Ryan's credibility. I promised to do a, b & c and I did a. There is nothing wrong with that.

Member Henderson questioned then what is the point of coming for a variance if it is not enforced?

Attorney Mondello stated that is another section.

Attorney Rubin has another question for Mr. Ryan. On the substitute fencing, when the fencing was proposed and put up, was it inspected by the then Construction Code Official, Jeffrey Brusco.

Mr. Ryan stated he had to take a fence permit and he did inspect it.

Attorney Rubin stated you took out a permit and Mr. Brusco signed off on it?

Mr. Ryan stated I did and I believe so; he even inspected it after it was put up.

Attorney Rubin stated he was the Construction Code Official and Zoning Officer at that time.

Mr. Ryan replied yes.

Attorney Rubin stated he obviously knew what the Board's Resolution for it because he was part of the Borough.

Mr. Ryan replied yes.

Member Hoffman questioned did you tell Mr. Brusco that you were installing this fence as a substitution for these plantings or did you tell him that you were going to put these plantings in later or did you just not mention them at all?

Mr. Ryan replied that I just asked for a fence permit.

Member Hoffman stated you just asked for a fence permit and he inspected a fence permit.

Mr. Ryan replied he did.

Member Hoffman stated he might have been under the assumption that these plantings were to go in later.

Mr. Ryan replied I don't know.

Member Hoffman stated the insinuation that because he inspected the fence he let you go and required you not to put these plantings in I don't think that is fair.

Attorney Mondello stated that this goes to the weight of the evidence and you can decide that the way you want to decide that.

Chairman Dunning questioned what year did you put the fence in?

Mr. Ryan replied I don't recall. It was probably within a year of the approval. It was part of the requirements.

Chairman Dunning stated 2006/2007.

Mr. Ryan replied right.

Member Hoffman questioned if Mr. Ryan had a copy of the permit for the installation of the fence?

Mr. Ryan replied I am sure I do somewhere.

Member Covelli, to Member Hoffman's point, I think that anyone that applies for any permit is not asked why. We don't ask why you are putting up a fence, why are you deciding to put an addition on your house if it is a building permit, why did you decide to put new electric in that section of that house. You are applying and then you need to meet the Uniform Construction Code and inspections are done.

Member Hoffmann commented for that permit only, but because he inspected that permit doesn't mean he abolished/made it not necessary to put these plantings in.

Attorney Rubin commented that Mr. Brusco was the Construction Code Official and Zoning Officer. He knew what was going before this Board and he allowed this to happen. Attorney Fernicola commented that is not fair to Mr. Brusco.

Attorney Mondello commented that Attorney Fernicola's objection is how could you possibly speculate as to what the Construction Code Official was thinking.

Attorney Rubin stated of course not. I am not saying I don't what Jeffrey was thinking at the time. All I know is that Mr. Ryan put in a fence, put in some shrubbery, maybe not exactly what was asked for, but the Board asked a question before about policing and this Board does not do policing, but here is the person who is. Jeffrey Brusco, at that time, was the person who policed and obviously we went all those years with no enforcement and the only reason we are here today is because Attorney Fernicola's clients forced the issue.

Attorney Mondello stated Attorney Rubin your point is well taken; however, I think what the Board is trying to say is that, although Mr. Brusco came out and he inspected the fence, etc., that in no way, shape or form realized Mr. Ryan of the conditions that this Board imposed upon him.

Attorney Fernicola added that the Zoning Officer doesn't determine compliance with Board of Adjustment's Resolutions; that is not his responsibility. When you apply for a zoning permit he determines whether the use or structure complies with the zoning ordinance; he is not reviewing Resolutions from the Board of Adjustment.

Attorney Mondello: "Enforcement – even though variances are often made subject to conditions, it must be realized that the enforcement of these conditions is not the function of the Municipal Agency, the Board may learn that a condition attached to a variance has been violated and that fact or suspicion should be reported to the Zoning Officer or other official of the municipality charged with the enforcement of the zoning subdivision or site plan ordinance. If there is a violation of an ongoing condition that constitutes a violation of the Land Use Ordinance then the municipality may institute a suit for injunctive relief."

There are twelve cases cited. I tend to agree with Attorney Rubin because I am the Zoning & Planning Board Attorney in Bergenfield and I make sure that the Construction Code Official and the Tax Assessor and some other folks get a copy of the Resolution and they should read it.

Attorney Mondello: Are there any other re-direct Attorney Rubin.

Attorney Rubin: No sir.

Attorney Mondello: Any residents within 200' of Mr. Ryan's property, do you have any questions for Mr. Ryan. Questions only. Hearing none; seeing none.

Attorney Mondello: Residents of Wanaque that have questions for Mr. Ryan. Hearing none; seeing none; next witness Attorney Rubin.

Board requests recess.

Recess 9:22:49

Reconvened 9:32:00

Let the record show that everyone is present that was present before the recess.

Attorney Rubin calls Mr. Petry as his next witness.

Attorney Mondello swore in J. Michael Petry, P.E. of Petry Engineering, 155 Passaic Avenue, Fairfield, New Jersey.

Engineer Petry will be testifying as an engineer and planner in support of the application. I hold a Bachelor's Degree in Architecture from the New Jersey Institute of Technology, which I obtained in 1984; Licensed as a Professional Engineer and have been in New Jersey continuously since 1992 and am also licensed as an Engineer in New York and Pennsylvania. I am licensed as a Professional Planner by virtue of examination in the New Jersey and am registered as an Architect in New Jersey. I have been in the field of infrastructure, improvements and site developments for my entire 33 year career. I have appeared Planning & Zoning Boards throughout New Jersey, including this municipality's Planning Board. I don't know that I have the pleasure of appearing before this Board before.

No objections to Engineer Petry testifying in the fields of engineering and planning.

Attorney Rubin asked Engineer Petry to explain what the site is and what is going on there. Engineer Petry stated that the existing property 17 Park Street and I am going to refer to 3 Exhibits that are on the Easel:

A-11 NJGIN 2012 Aerial Imagery of the Properties of Tree Tavern, The Bellantes and Berta's Chateau (Poster Board – Imagery From NJDEP Geographic Information Systems Warehouse)

A-12 Series of Photographs of Tree Tavern's Site Taken June of 2016 (Poster Board)

A-13 Colored Version of the June 23, 2016 Site Plan Submitted (Poster Board)

On this image (A-11) Park Street is almost parallel to the top of the sheet. Grove Street is running along the left side of the sheet. Subject property is outlined in red, which includes the existing restaurant and residence. Mr. Ryan occupies the residence. The parking area is clearly shown. The adjacent residence owned by Attorney Fernicola's client is shown basically to the left and Berta's property is shown immediately to the left of that along with Berta's parking lot.

The parking area that Mr. Ryan has an agreement, which has been referred to as the lower parking lot, and that is the parking area closest to Park Street. I can't quite count the striping on this image, but they are perpendicular to Park Street at that location.

Member Levine question where is the path to the street; from the parking to the street?

Engineer Petry stated I don't know that there is a direct path through the wooded area to Park Street.

Member Levine stated they have to go all the way to the left, up and back.

Engineer Petry replied yes. They would have to come up to the left, across the road and down Park. Based upon the tax map that is shown in the upper right-hand corner of the site diagram, that probably constitutes about 800' along the street if one was to work from Berta's driveway to the Tree Tavern driveway.

Attorney Mondello questioned Engineer Petry if the area was lighted, can people see if they are walking that distance?

Engineer Petry replied I don't have information on the lighting.

Attorney Mondello stated the Chairman is indicating he doesn't think so.

Engineer Petry stated I have driven it several times. The streets are relatively narrow and relatively dark so my memory would say it is probably not lit.

Member Levine commented so it would relatively be unsafe to walk in the street.

Engineer Petry stated I don't believe there are sidewalks in this section of either Grove or Park.

Attorney Rubin commented that we have been saying this is essentially going to be for employees. I really wouldn't see patrons using it. In any case, talk to us about the parking areas on the site itself.

Engineer Petry, referring to the site plan showing existing conditions before this Board, there is an ingress and egress drive to the right of the residence located at the front of the house so that traverses the westerly property line and services parking spaces that abut the front of the restaurant. There is a rear area that has an L shaped parking lot designation with 3 spaces immediately behind the building and a series of spaces along the back adjacent to the outdoor area that has been discussed. We show 3 unstriped parking spaces along the curb line as well as the area where overflow parking occurs. Within the secondary driveway, which is to the left of the residence in the front, there are parking spaces that 90 degree, in fact perpendicular to the easterly property line and that is different than what was depicted on the original site plan. On the site plan version that I had there were parallel spaces along that property line, rather than perpendicular.

Member Levine questioned what do you define overflow? Are those parking spots to be included in the total required parking spots or are they just going to be space there?

Engineer Petry stated the reason on my plan all the overflow spaces that are unstriped is because there is no designated spaces there today. It is where people park when the lot is full. They tend to park along the westerly curb line and along the easterly side of the existing residence and park parallel to the curb.

Attorney Rubin commented these spaces will be striped in the event the Board allows us to move forward with this site plan.

Engineer Petry replied yes. In the event the Board approves the plan, the striping of those areas can be implemented as shown on the plans that have been submitted.

Engineer Petry continued that the overall property has a total depth of about 400' and it is just over 100' frontage along Park. There is approximately 41,697 square feet total of property, which is just short of an acre of land. As it has been described, there are two separate buildings and two separate parking lots within the facility. There are a total of 7 striped spaces in the easterly lot. There are 2 in the existing garage. The larger lot has a total of 21 striped spaces within the area and 1 of those spaces is a handicapped space.

Engineer Petry continued there is an existing gazebo that has been talked about as a fire pit area. That gazebo is a temporary structure in the area that is designated a smoking area and in answer to several Board Members questions I didn't count the seating in there as seating because it is a designated area for smokers to go and every restaurant has an area

outside and this particular restaurant happens to have theirs inside of a temporary structure. In my mind, that was a little better than what you see at most restaurants because it keeps people out of the parking area that are coming out to have cigarettes. Beyond that, there is an open bar with 16 seats and we designated the seating areas on the plan. The canopy structure for the bar and the bar itself as it stands further back towards the property line, and I know that is where the sink is, we can certainly accurately depict the canopy and the sink if the Board feels it is necessary. Attorney Rubin questioned those are all removable items? Engineer Petry replied everything on site is moveable.

Engineer Petry stated we have considered the 64 seats and 16 bar stools are a total of 80 seats and that is what we considered in our parking calculation when we established the existing parking requirement of 20. In the parking calculations, the fourth line says outdoor bar seating 1 space for every 4 seats equals 20 spaces.

Engineer Petry stated there has been much discussion about the previous applications that were before this Board and the work that has been done. I had an opportunity to review the 2005 plan and I will try and answer some of the questions as to the differences. But the plans that I had from 2005 show a total of 24 spaces, not 34. If 24 is the correct number, then the difference between the 24 that were approved and the 28 that are striped, are primarily in the easterly lot. Where the approved plan showed 3 parallel spaces along the easterly property line and in the existing conditions there are 7 striped spaces perpendicular to that property. The balance of the parking layout appears to be in general conformance with the plan that was approved by this Board. I understand that the rear portion of the lot had been designated as gravel and was to remain gravel. I will note for the record that, from a stormwater management perspective, DEP in their regulations considers gravel to be an impervious surface and they do so because in many instances people who have gravel lots pave them and so they consider it from a runoff perspective to be the equivalent; especially if you have been parking on that gravel surface. From a runoff perspective, I think what you are seeing in terms of this lot is certainly not an expansion of the area that was approved by this Board, it is similar in shape, layout and parking space structure, but yes it has been paved. From a runoff perspective, that is not going to have a significant differential. In the easterly lot, that is not the case. The pavement was actually constructed closer to the property line than what the original plans showed. It believe they did show a 10' setback at that location and the existing parking is between 2' and 3' from that property.

Attorney Mondello questioned, if you know, what were the parking requirements for the 2005 site plan?

Engineer Petry replied if my recollection is correct, the requirement was 24 spaces and the proposal was for 24 spaces.

Attorney Mondello questioned no parking variance was granted by this Board?

Chairman Dunning stated we gave him a parking variance.

Engineer Petry stated the Resolution refers to plans revised per comments, but doesn't give a specific date of those plans and that is why I am not certain that I am referring to the correct one.

Chairman Dunning stated the Resolution talked about the parking spaces as far as being paved, striped and whatever, but doesn't give a total number. Somewhere we gave them a variance since they required more than 24 spaces.

Attorney Rubin stated for the purposes of this application what we have today, here on the plans, how many parking spaces are we seeking?

Engineer Petry stated the requirement, based upon the restaurant and the outdoor, would be a total of 44 spaces required. Our plan shows a total of 34 spaces on site and the agreement with Berta's would provide a supplemental 8 spaces also.

Attorney Rubin, referring to Mr. Ryan's testimony, the alternative valet parking with tandem parking, can that be accomplished on this site?

Engineer Petry stated I have been involved with any number of restaurants and catering applications in the course of my career, I have had the opportunity to work with valet people and put together plans, and the 20% figure Mr. Ryan gave you came from my lips and I think it was confirmed by his valet people. 20% is generally a number that is achievable and we believe would be achievable on this site. The 34 spaces that we show on site would probably yield an additional 7 on this property, so we would be able to provide a total of 41 spaces on the property if we were to valet.

Vice Chairman Grygus commented that your 44 spaces does not incorporate the seating in the fire pit or any of the benches that are on site.

Engineer Petry replied that is correct.

Vice Chairman Grygus, in the rear parking area, the space that is immediately adjacent to where the mini structure is where the deck is, clearly that looks like a sub-standard space.

Engineer Petry replied we didn't count that as a parking space.

Vice Chairman Grygus questioned how did you get 9 back there? You show 10 on the plan and I am only counting 9 without that.

Engineer Petry orally counted 10 while pointing to plan.

Vice Chairman Grygus stated you can't count the corner because, if you have someone in that overflow space, it is not useful. You can't count the corner one and you can't count the one right next to the building.

Engineer Petry stated we didn't count the one right next to the building, there are 3 here (pointed on plan), and I counted this (pointed on plan) as a space and those are overflow spaces.

Vice Chairman Grygus stated but you are counting those overflow spaces towards your requirement.

Engineer Petry stated yes.

Vice Chairman Grygus stated you can't use the corner one.

Chairman Dunning stated you counted 3 unstriped parking spaces towards your requirement.

Engineer Petry agreed that you would be boxing in that car.

Vice Chairman Grygus stated technically you have 9 spaces provided back there.

Engineer Petry stated technically we have 33 spaces in total.

Attorney Mondello stated you could use that space if you valet.

Vice Chairman Grygus said yes or if it was an employee designated only space.

Engineer Petry stated the revised total spaces is 33.

Member Levine questioned could you clarify one thing, did Mr. Ryan state that he never has more than 50 patrons at one time?

Attorney Mondello thought it was for only private parties.

Member Levine thought it was for everything.

Engineer Petry believes his testimony was if he rented out either inside or outside for party there are no more than 50 guests.

Attorney Mondello stated that is my understanding of the testimony too.

Vice Chairman Grygus stated, if you are going to count again the unstriped overflow spaces on the front parking area, then you can't count the 2 spaces in the garage, because if somebody was in those spaces, you couldn't get in and out of the garage.

Engineer Petry stated the garage spaces are servicing the residents upstairs, which is Mr. Ryan's residence. He works at the facility.

Vice Chairman Grygus stated, if you are going to count a parking space, it would have to be uninhibited; be used at any time by whoever it was intended be it a resident or patron.

Engineer Petry commented that, as mentioned before, or designated as an employee only space and in this instance, the garage is Mr. Ryan's garage and it is his space. So it can be designated for him and he understands that on Friday nights he can't get his car out, but I think he will be working.

Engineer Nash stated you can use the same logic for that back corner space then.

Engineer Petry stated you could if it was an employee space.

Engineer Nash stated you could, not us.

Attorney Mondello stated what I am struggling with is you have those 8 spaces offsite that are going to be for employees, and perhaps some residents.

Engineer Petry stated the garage spaces would never been accessible by customers of the facility.

Attorney Mondello said right, so the Board is struggling with why it is included in that count.

Engineer Petry stated because the ordinance requires us to summarize all the parking based upon all the uses. So we have spaces that are required for the apartment, and for the house and for employees and guests. We control our house and our employees. We can have the residents of the house park off site on Friday and Saturday nights and we can have the employees park off site on Friday and Saturday nights and that would constitute probably about 6 or 8 spaces.

Vice Chairman Grygus questioned what if Mr. Ryan moved out and rented that house out?

Member Covelli believes he can't per the 2005 Resolution, but then again how much do we follow the Resolution.

Chairman Dunning, the 7 parking spaces, are you requesting a variance for a 9 x 17 parking space?

Engineer Petry stated when I measured them, I measured what was actually striped so the answer is, if they are required to be 9 x 18, then can either provide an overhang to the fence or, I think there is space for the 18.

Chairman Dunning, referring to the 2005 approval, I believe we gave them a variance to reduce to the size of the parking space from the traditional 10 x 20 to a 9 x 20.

Vice Chairman Grygus, directly his question to Engineer Nash, the spaces that are just to the south of the striped handicapped space, if someone was parked in that unstriped overflow area, the first one, could someone get out of those 2 spaces.

Engineer Nash stated 20' is not comfortable, but you can get out. I have a couple of questions. One thing that kind of really got glossed over very quickly is the requirement on the previous approval to not pave; we paved it and it was gravel and DEP views gravel as impervious anyway so it doesn't matter. The battle that engineers always have with DEP is want we want gravel because does work, but the DEP doesn't count it. It is a battle and it actually functions. So to say that it doesn't matter because DEP doesn't count it, that is not a good argument because it still functions to absorb water.

Member Covelli commented that is a very good point because the DEP does not live in the house next door.

Engineer Nash stated either way it functions to absorb water, which is the reason why the Board wanted it.

Vice Chairman Grygus stated it wasn't gravel it was cross-hatched blocks (basket weave). Engineer Nash commented that is different because that is a little more impervious than gravel. But the whole gravel argument that it is going to be paved at some time in the future; we do a lot of work with Jersey Central and we do substations for them, which are about an acre in size and they are all gravel and it is about 24" worth of gravel. So they really absorb water. We have to design a detention basin as if it was impervious so it is never going to be paved but the DEP does view it. It doesn't matter in this case but the Board wants it to absorb water because it does and they chose to pave it and you lost tree growth and you lost all the water absorption over the years.

Vice Chairman Grygus stated he didn't see any detention basins incorporated after it was paved either, or any catch basins.

Engineer Nash stated it is a small area, but it is one of these deals where everything counts. They are fighting for every little parking space and we are fighting for every little square inch of gravel.

Member Henderson stated another thing to note is that everything we are talking about here has a reason for it and when you make your own changes, it affects other people; it affects your neighbors, the water flow, absorption within the soils and all that. Decisions just can't be made on their own. There is a reason why we have certain standards in place and requirements in place.

Member Covelli stated the 2005 drawing refers to a proposed open grade seepage pit, which is on the westerly side of the parking lot. It even references that it would be open grate.

Engineer Petry stated there are grates there today. They are shown on the drawing.

Member Covelli, to the Chairman's point, back to #8 of the 2005 Resolution, it actually goes into the detail that based on both the testimony and the representation of the applicant, I am quoting, "parking spots 1 through 8 would be paved and striped and the remaining spots 9 through 17 would be constructed with basket weave pre-cast paving, which would allow striping and not adversely affect the drainage from the site, while still providing meaningful parking spaces". I think that is a lot of detail to your point, which was just overlooked and not followed. The Engineer's point is being glossed over right now. That is an entire section of the Resolution from 12 years ago that wasn't followed. It is interesting reading.

Chairman Dunning, back to the 7 spaces up in the front there, in the 2005 approved drawings, we had a buffer area to screen that from the neighbors, that was 20' and 18' on the top, now you have 2' to 3'. Don't you think as a good planning move you should have a buffer between your neighbors? Chairman Dunning stated I am talking about from the end of the building to the street. You had 18' and 20' feet of a buffer with 3 parking spaces. Now you paved it within 2' to 3' of the property line without a buffer.

Vice Chairman Grygus stated in the original plan the headlights would be pointing not towards the neighbors, but now with the change they are pointing towards the neighbors and there is no buffer.

Member Covelli, and to the Chairman's point, there is an existing dwelling right there.

Chairman Dunning commented that was the whole idea of keeping the buffer.

Engineer Petry stated I understand. In terms of screening of headlights, I understand that Mr. Ryan on his own put up a fence rather than the evergreen buffering and I understand the growth rate of arborvitae and I appreciate from Member Covelli. The bottom line is, if the Board were to impose a condition that the pavement in that area be removed and the evergreens that were shown on the previously approved plan be installed and, in fact, extended along the front area adjacent to the residents near where those certain parking spaces are located, that is within your purview to do so.

Vice Chairman Grygus stated the problem with that is if you pulled that back to the original plan your head-in parking wouldn't work. You would lose essentially another 4 spaces. I am sure that is why it was done.

Chairman Dunning, referring to the notes on that plan "existing plantings within the long property to be retained for uses as a buffer", so whatever growth was there was enough there to form some kind of buffer area. That has all been removed now.

Engineer Petry stated I understand the Board's concern about the deviation and I understand the Board's position. I have listened to the questions since December.

Chairman Dunning question if there is a fence there?

Engineer Petry stated there is.

Chairman Dunning stated it doesn't show it on your plan. The wooden fence that is shown ends at the rear of the building. I know there is a fence there, but it doesn't show anything on your plan.

Engineer Petry stated the fence does run along that side of the property line. I understand it is not noted on the plan.

Vice Chairman Grygus questioned can you, with any degree of accuracy, quantify the number of seats and or benches that are in the fire pit area and any other benches throughout the outdoor area.

Engineer Petry stated I look at the fire pit area I thought that the number that has been tossed around as 8 is a relatively accurate one. That is inside.

Vice Chairman Grygus believes that there are 2 benches outside.

Engineer Petry stated there are 2 benches outside and there are actually benches along the pit area, like park benches.

Vice Chairman Grygus stated if you have 5 park benches that is another 10 seats, plus 8 inside, you are up to another 3 or 4 spaces.

Engineer Petry stated that is correct. But as Mr. Ryan indicated in his testimony, everything here is moveable and removable and I think that what this Board is going to be burdened with at the end of the year is determine exactly what is the appropriate number for this particular site is going to be. The applicant has put forth his plan with what exists on the site today and I think that was the proper way of doing it. We have a total of 80 outdoor seats with some benches and some seating in the fire pit area totaling 90/95 seats. I am not certain what the reasonable number and that is the direction, in my opinion from a planning perspective, we have to come to. Because what we are looking at here is a D-2 Variance and as I get into my planning testimony beyond just describing what is there and matching that versus the approved site plan, what we have to deal with is what can this accommodate and what is appropriate for this use at this location. I think as I get into my planning testimony some of those answers might come out and help bring this to a point where it gets to a closure.

Attorney Fernicola stated the applicant has to present to the Board what they are seeking approval. When the engineer says it is for this Board to determine the appropriateness, it is not for this Board to come up with the number. They need to present and select a site plan, which has been right from the start inaccurate, it is incomplete, you don't even know how many seats and benches that they are proposing because, as what has been pointed out and acknowledged by the witness, what is depicted is not accurate. It is not for this Board to guess; that is what the applicant's burden is to tell you how many seats so that you can determine the required parking spaces.

Attorney Rubin stated what is interesting in this site is the uniqueness of Mr. Ryan's operation in that in nice weather when people eat outside, the inside is empty. That is an unusual situation which doesn't happen very much in restaurants, where you have an empty restaurant with everyone being outside.

Member Levine questions is that guaranteed?

Attorney Fernicola stated it also goes to the intensity of the outdoor use and now when you are seeking an expansion that is a negative impact when they say no one sits inside in the summer months.

Vice Chairman Grygus stated you are now almost saying, getting back to the comment that was made before, that they go from a table eating to a bar stool so we don't count both of those. Now you are saying well when it is nice they don't go inside, they go outside. A seat is a seat and a bar stool is a bar stool.

Attorney Rubin stated I know, but what I am saying is it is an unusual situation here.

Member Hoffman stated I don't think we can use an unusual situation to make this kind of determination.

Vice Chairman Grygus stated it doesn't mean it is going to happen every night of every day.

Attorney Rubin stated no, but Mr. Ryan has said it a number of times, it has never happened when the outside is filled and the inside is filled. It has never happened in this place.

Member Hoffman stated that many seats and it can conceivable happen, so we have to plan for that to conceivable happening.

Attorney Mondello stated that this Board is designed for variances. The ordinance says this but if we had to always follow the ordinance, this Board would not exist. To Mr. Rubin's point, I am not sure you don't consider something like that. By way of example, I have sat on the Zoning Board in Bergenfield and the Planning Board and there were a lot of temples and the argument is well we don't need a lot of parking because the Orthodox Jews don't drive. Well, maybe some of them do, but I think you do have to take into that particular situation into account because it is logical; it does make sense.

Member Hoffman stated I understand, but I don't think that you can just dismiss all of those seats thinking that it is all going to be in one spot or all going to be in the other.

Attorney Mondello stated I believe Engineer Petry is saying, listen here is what we are looking for and then we are expecting the Board to say either this works or really we think, after our deliberations, and questioning and testimony, this really works, as far as number of seats.

Vice Chairman Grygus stated I know that we did grant some kind of parking variance on the last application based upon that it was only going to be a-b-c. Now it is d-e-f, and we are still deficient from when it was a-b-c and now it is expanded and we are asking for more relief of that.

Member Henderson stated what is going to stop him from adding 20 more next year, and the year after another 20.

Attorney Rubin stated your Zoning Officer won't let us.

Attorney Fernicola stated I think, at a minimum, there has been testimony by both Mr. Ryan and Engineer Petry that the site plan A-9 is not accurate to the conditions and at a bare minimum, they need to prepare a plan, submit it to the engineer for review, because this Board is being asked to guess what they are approving because they don't know what is on the site.

Vice Chairman Grygus, to counselor's point, I personally would like to see every seat, every table and every bench marked on the plan. Whether it is a table with chairs, chairs around a chiminea, a bench on a pathway, whatever it is, I would like to see it there. Because if the Board did grant, what does the Zoning Official have to go by to see if they are in compliance a year, six months or two years from now. If it is not depicted of what they actually are on the plan, do you understand what I am saying?

Attorney Mondello stated Engineer Petry is suggesting that total number of seats would be in the Resolution and whether it's a bench that they removed, or whether a table that they added, the Zoning Official would add up the number of seats and say you are above or you are at what the Resolution suggests.

Engineer Nash questioned shouldn't they be proposing; this is what we propose.

Member Covelli stated I am taking what counselor said and my colleague said that we need a definitive number and the location.

Engineer Nash stated if an applicant comes in for a height variance, it is either approved or denied. We don't say make it 3' or 2'; we don't do this. They come in with this and it is either yes or no. It is their application.

Member Covelli, to counselor's point, we also put a definitive that the variance granted for 6' 6"; we don't say the variance is granted for somewhere around between 6' and 10' whatever it is.

Attorney Fernicola stated I do agree with the Board's Engineer because it is not up to you to redesign someone's site plan.

Chairman Dunning stated the biggest problem we have is it is there already. If this was a normal application where none of this was built illegally, we would be looking at a site that has nothing on it.

Attorney Fernicola stated but what your comment is even more of a reason why you should have a plan that accurately depicts, because we dealt with this with our own Board, because when you have someone build something that without the approval, but the plan needs to depict what is there now, more so that what you are saying a conceptual plan.

Chairman Dunning stated we agree with you that certain things are out of place.

Attorney Fernicola stated and triggering side yard setbacks.

Attorney Rubin agreed that it would be good to see exactly what is there and I would have to take that up with Mr. Ryan and Engineer Petry, but it obviously sounds logical that the Board knows exactly what it has before it.

Attorney Petri stated in terms of seating locations, in all honesty and in all fairness to both the Board and the applicant, what we tried to do is we tried to give you what was there in terms of a number of seats because if I show you there are 4 tables with 4 chairs and somebody takes a chair from one table and drags it over to the other now there is a table for 5 and a table for 3 but there are still the same amount of chairs, but are you not in compliance with the approved plan because I have now moved a chair.

Vice Chairman Grygus stated point taken. The reason why I said to put what is there so that we can come up with a total number. Here is the problem, when I visited the site there was a stack of white plastic chairs there. The applicant testified that there was some picnic tables there that he has since donated and I seem to recall there were some folding tables. I mean are we to look at those and say well are they or aren't they being used? Obviously things are there for a reason.

Engineer Petry stated I think you look at it that the applicant is applying for a total of 80 seats outside.

Vice Chairman Grygus stated then we need to come up with a number for the fire pit area. Attorney Rubin stated it is a reasonable business.

Member Hoffman stated that doesn't matter, you still need parking for that seat.

Vice Chairman Grygus stated the variance is twelve months of the year, not seasonal. I think if you want to stick with the 64 in the rear area and the 16 at the bar, you need to tell us what you are requesting for that fire pit area.

Member Hoffman, questioning the removable buildings, are they all powered with electricity and is that removable along with your plumbing? Are these hard piped or self-contained? Is this a building that has underground wiring and plumbing going to it? How

removable is it? Even though it is on a temporary footing, it still has relatively permanent utilities.

Engineer Petry stated it does have power and it does have plumbing.

Member Hoffman stated so those are not really portable.

Engineer Nash stated it also has granite countertops. I have a granite countertop that had four guys bring in one little section.

Member Hoffman stated you can take it apart but it is something can be moved. A chair can be moved, a table can be moved, but your plumbing is connected so how movable is it?

Vice Chairman Grygus, questioning Engineer Nash, there are certain construction standards or construction codes that dictate that, based upon the number of seats and tables or whatever I would think would have to dictate what you have to have as far as restroom requirements.

Engineer Nash stated that is code and architect's stuff. I am not familiar with that.

Vice Chairman Grygus questioned how do we know that what he is proposing for the additional outside, that the existing restroom area meet that requirement.

Attorney Mondello questioned what is the Board's pleasure? Continue with Engineer Petry's testimony?

Member Covelli would like to see the map from 2005 as Sheet 1, see the existing as built as Sheet 2 and the proposed on Sheet 3, so I can flip back and forth and be reminded of all the things that were never done, what is there and what is being asked. After hearing the comments of this Board, and as the Chairman just said, but I am not sure you heard him, that it is up to you folks on how you are going to present that to us. At the end of the day, I don't think I can get much clearer as saying that I should 3 sheets of paper so I can go and back and forth between what was approved in 2005, what is there now, and how you want to present this application.

2005 Plan is Exhibit O-1, April 11, 2005 Variance Plan, Revised & Approved Plan is May 12, 2005.

Vice Chairman Grygus asked Engineer Petry to include the shed on the property, there are also some air conditioning compression units that are running along that easterly side of the property and would encourage you to research some more of the ordinance because we do have an ordinance limiting one accessory structure to a site so in this case that would require another variance.

Attorney Fernicola stated he raised a good issue. Our argument is going to be these are not accessory structures because these are an extension of the restaurant bar use. When you build an outdoor bar, you take an indoor use, which is obviously a bar/restaurant, now you have an outdoor bar/restaurant that is not an accessory structure; that is a principal structure because of the principal use on this property. I am pointing out an issue that is going to be argued with this Board later on.

Attorney Rubin states it makes no difference. We are going for a use and bulk variances. Vice Chairman Grygus stated it does because if the Board may want some screening there because of the neighbor to the side. So it is important to know everything that is there. I would like to see something different that you are going to do to handle your garbage then just having all the cans piled up either between the neighbor's property and the back of the building; something that can all incorporate recycling, which is usually a normal requirement for a commercial entity. To counselor's point before, that when you require bulk variances it kind of negates the expansion. So my point of requiring additional variances for the accessory structures, it is an additional variance.

Attorney Mondello stated there is language in the notice, which is sort of a catch-all that includes other variances and waivers.

Vice Chairman Grygus stated I am not saying it for notice; I am saying for his table on the drawing if they are going to be considered accessory structures, he is going to have to add a line for variances. If the shed is over 100 square feet, that will need a variance also. There is a back-up generator in the front of the site also.

Member Covelli stated if that wasn't shown on there, how do you know when it was there. You have to have a record of what was there that we base the testimony and to Bruce's point, if we have a Resolution approving anything we have to reference that it was there. Member Levine would also like to see the connections for the plumbing and electric where it has been tied off.

Chairman Dunning stated you are showing on the rear of the building facing the rear of the property, there is a deck up there now, so that building is expanding out to the end of the cement slab. It does not agree with what we approved, but that is what built. I think Mr. Ryan stated he cleared that up with the Building Inspector to extend the deck out on the rear of the building.

Attorney Rubin stated because there was new, different plan.

Chairman Dunning stated we never saw the new plan. It was probably presented to the building department and they approved it, fine. We never saw and it is not shown on the plan the exact size of the deck.

Attorney Mondello stated that Member Henderson mentioned this about an hour ago, she would like to see a different set of drawings, the Chairman would like to see a different drawings and it sounds like the rest of the Board would like to see a more accurate set of drawings and that is where we are Attorney Rubin.

Further discussions were held about what type of revised plans are required.

This is necessary because any variances run the duration of the property. At the end of the day, all this stuff needs to be documented.

Engineer Nash clarified that the Board is looking for a Topographic Survey. A two/three dimensional picture of what is out there. Any additional documents must be delivered to the Board Secretary on or before Friday, April 21, 2017.

The Board believes that this matter will be continued to the May and June Meetings (May 3rd and June 7th).

MOTION TO CARRY THIS APPLICATION TO THE MAY 3, 2017 MEETING DATE:
made by Vice Chairman Grygus, seconded by Member Covelli. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp. Motion Carries

PUBLIC DISCUSSION: Claire Wollock, 8202 Warren's Way, Wanaque, NJ
Mrs. Wollock is questioning the size of the parking spaces at Wanaque Reserve; both regular and handicapped. She has measured every single parking space in Building No. 8 and has prepared a list. Not one parking space meets the requirement of 108 inches from a yellow line to another yellow line.

Attorney Mondello stated the standard is 9 x 18.

Vice Chairman Grygus advised Mrs. Wollock that the Pulte Development was heard by the Planning Board, not the Board of Adjustment.

Mrs. Wollock continued that she has contacted the town and the Condo Board President, who is a Councilman, and others and has not received any response and is extremely frustrated. She has calculated that only 56 parking spaces on the interior for the unit owners would have fit, which means that Pulte would not have been able to provide 15 extra spaces if they meet the qualifications of 108 inches.

Attorney Mondello stated that obviously this application that you are referring to was not before this Board so I will assume that it was before the Planning Board. Understand this that when the Planning Board hears applications, they can grant variances; so if they felt that the applicant met their burden and had good reasons for shrinking the size of those parking spaces, that is what might have happened, or reducing the number. I don't have those answers, and this Board doesn't have those answers, but I suggest that you go to a Planning Board Meeting because they should have a portion of the meeting that is for public comment on anything not on the agenda. The next Planning Board Meeting is April 20, 2017 at 8pm. You may even want to go to a Mayor & Council Meeting.

Mrs. Wollock stated the reason she is doing this is because we are in the transition period for three or four years. The transition period means that at a certain period of time, the builder completes his project, and this has not happened yet, and the bond is still being held.

Member Levine accurately stated that the bond is for the infrastructure and that is not the parking spaces. Transition is an undefined period of time when you identify all the deficiencies in all the buildings and come up with a cost to fix it. You then have to go before the judges, courts, or whatever, to state your case. Some portions of the claims have been paid to the Association and some are still outstanding that are being worked on. That is what they mean by transition.

Mrs. Wollock stated when we go to meetings, we are told we cannot be told what we are asking for. I am concerned because we are going through a transition, the parking spaces are so irregular, people are having accidents, they are swiping a column, and you can even pay \$18 to get styrofoam pads for the columns.

Member Levine stated he has those. It is not that difficult to pull out of the parking space. I didn't get those styrofoams for the ability to get my car out without hitting them. I put them on so that when people open the door to get into the car they are not smacking the door against the column. I have not measured my space because I don't have a problem getting out and my wife has no problem either.

Mrs. Wollock would like all the parking spaces measured and it could be a bargaining tool to get what we need from Pulte to rectify certain things. They also don't meet the handicapped parking space standards.

Chairman Dunning stated you should to the Mayor & Council Meeting on Monday, April 10, 2017 at 7pm for the workshop and 8pm the regular meeting. You can attend both. Sometimes they have more public discussion at 7pm than 8pm. You have everyone you need there; the Town Engineer, the Town Administrator, the Mayor and Council and Borough Attorney.

RESOLUTION: None

CORRESPONDENCE: Board Secretary is handing out two new applications. Attorney Mondello advised that these two new applications would be heard after Mr. Ryan's Application is complete.

VOUCHERS: submitted by Boswell Engineering for the MKR Enterprises Application in the amount of \$873.

MOTION TO APPROVE: made by Member Covelli, seconded by Member Hain. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp.

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the April 5, 2017 Meeting in the amount of \$300.

MOTION TO APPROVE: made by Member Covelli, seconded by Member Levine. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp.

MOTION TO APPROVE MARCH 1, 2017 MINUTES: made by Member Covelli, seconded by Member Hoffman. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp.

ENGINEER'S REPORT: Since the two new applications were handed out tonight, I have yet to review them.

DISCUSSION: None

MOTION TO ADJOURN AT 10:52 PM: made by Member Covelli. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary