

**REGULAR MEETING**

**Salute to Flag: 8:04pm**

**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, Donald Ludwig, Suzanne Henderson and David Karp, and Attorney Ronald Mondello and Engineer Christopher Nash

**ABSENT:** Member Michael Levine

Chairman Dunning advised the meeting would be taken out of order this evening. We are going to move to Resolutions first.

**RESOLUTION:** Application #ZBA2016-05 – MKR Enterprises, LLC, Applicant 17 Park Street, Wanaque, NJ (Block 200.01/Lot 1) requesting an interpretation of the expansion of a pre-existing non-conforming use and a D-2 Variance

Attorney Mondello commented that the Board knows well the relief that Tree Tavern/MKR Enterprises was seeking from this Board to basically determine whether or not outdoor eating and drinking had occurred prior to the enactment of the Ordinance that prohibited that particular activity and the D-2 Variance for the expansion. This Resolution represents some, if not most of the Minutes and the Transcripts from each one of the meetings and I have digested that into this Resolution and there are a number of conditions that are placed in this Resolution. I think it is important that I quickly try to summarize at least what those conditions are, certainly the ones that are out of the norm, so to speak.

One of the conditions on Page 63, because there seems to be some issues with respect to payment of transcripts, which is also now included in paragraph g:  
“g. All outstanding fees, including legal and engineering fees, costs and all transcription service fees shall be paid to the Borough of Wanaque (or the transcription service company

**in the event transcription fees remain outstanding) prior to the issuance of a permit or a certificate of occupancy.”**

**“j. The Applicant’s engineer is required to provide what the site would look like completed if you followed the notes to Sheet SP-2 so that the Borough’s enforcement authority can follow what was actually approved by the Board.”**

**“k. In accordance with the applicant’s testimony, there will be a total of 94 seats of the property represented by the existing 66 inside, which is 50 seats inside and 16 bar stools and outside would be 28 seats with no more than 28 customers outside.“**

**“l. Although the applicant has represented that based on those calculations and that no parking variance is required, the applicant shall construct the 7 parking spaces on Park Avenue as per Mr. Petry’s “Conceptual Parking Plan” as agreed to by the applicant with the understanding that Governing Body approval is required.“**

**“m. The applicant shall post a \$5,000 performance cash bond in an escrow account with the Borough of Wanaque and that escrow will not be released to the applicant until the construction code official/zoning official and Board Engineer approve all of the conditions as presented on the plans before this Board as part of this approval.“**

**“n. Any and all permitting issues with respect to any construction, whether it be electrical, plumbing, fencing or anything else that is required on the site, either that has been done or is proposed to be done, will be in accordance with the requirements, ordinances and permits required under both the borough and the State of New Jersey Uniform Construction Code.”**

**“o. The hours of operation agreed to by the applicant and granted under this proposed approval will be: Monday, Tuesday and Wednesday the outdoor seating area will be closed to customers/patrons. Thursday, Friday and Saturday, the outdoor seating will be open from 12:00 p.m. until 11:00 p.m. Sunday, the outdoor seating will be open from 12:00 p.m. until 9:00 p.m.”**

**“p. The Applicant has agreed that the music outside will be turned off at 10:00 p.m. The applicant has agreed to keep outside music to a low volume. No live entertainment is permitted. In addition to the above, the applicant shall abide by the Wanaque Noise Ordinance.”**

**“q. The PVC shed is to be removed from the property.”**

**“r. The holly or viburnum or whatever else is to be planted for screening is to “screen upon planting.”**

**“s. The Applicant shall investigate whether Highlands approval is required and submit a letter to the Board indicating their decision.”**

Attorney Mondello continued that I have circulated this 67 page Resolution to the Board Members and I would now entertain any questions, comments, changes or anything else that the Board Members may have to say with respect to this Resolution.

Chairman Dunning questioned any changes Members?  
Attorney Mondello stated hearing none, seeing none.

Engineer Nash stated he prepared a letter dated December 1, 2017 and it is a Compliance Review. The Applicant submitted a revised set of drawings in October and the comment that I particularly had was that the Applicant was required to prepare an as-built like condition plan, which they did. As you recall Sheet SP-1 was very confusing because it had a combination of what was existing, what was to be removed, what was added, etc. There was confusion among the Board, and I was confused by it as well, so we asked them to prepare this plan. My lone comment is, in addition to that plan, all of the conditions of this Resolution be listed on the plan, so you now have a picture and you have the words of what is supposed to happen here. I think that seals the deal for future people, not at this dais, to understand what it is supposed to look like.

Attorney Mondello stated it makes a lot of sense and, in addition to that, you are, to some extent, the gate keeper as to whether or not the Applicant is going to get a certificate of occupancy. If the Applicant doesn't apply with the conditions that are here, and the conditions in your letter that is dated December 1, 2017, they just don't get the certificate of occupancy.

Attorney Mondello: Any other questions or comments from Board Members.

Member Covelli would like to commend both Attorney Mondello and Engineer Nash for a very good job in how you handled all aspects of this application. It was a difficult application, it raised emotions on all sides of the aisle, and we had to navigate and put those emotions in their proper perspective and adjudicate this matter in a judicious and unbiased manner. I have to tell you Attorney Mondello that I am not familiar with a 67 page Resolution, so thank you for expanding my horizons, and it is understood as to why, and I think you did a good job really pulling everything together, memorializing it, and making sure that it is clear to those that follow on what needs to happen. Engineer Nash, I think your suggestion with regard to putting that in the ledger form on the plot plan, or whatever we want to call that sheet, is a very valuable addition. I just like to thank you gentlemen for everything you did.

Both professionals were appreciative of the kind words.

Attorney Mondello: Any other comments or questions? Hearing none, seeing none, we need a Motion to Memorialize the Resolution followed by a Second:

**MOTION TO MEMORIALIZE THIS RESOLUTION AS PREPARED BY BOARD ATTORNEY:** made by Member Ludwig, seconded by Member Covelli. Voting yes

were the Members eligible to vote: Chairman Dunning, Members Covelli, Hain, Hoffman, Ludwig and Henderson. Motion Carried

Member Covelli advised he has a family commitment that he must excuse himself for. Member Covelli wished his fellow Board Members and the Public a Happy Holiday and a Healthy, Happy & Safe New Year. Member Covelli left at 8:10pm

**Application #ZBA2017-07 – Breen, Dorothy & Joseph**  
**88 Grist Mill Road, Wanaque, NJ (Block 200.01/Lot 1)**

Attorney Mondello advised the Board that now we have the proof of publication that this particular application was published in the newspaper. Unfortunately, for some reason, you were not able to get it the last go around.

Mr. Breen commented that they actually received the certified mail back three days ago, and the newspaper was actually surprised that they mailed it.

Attorney Mondello commented that both of you were sworn in. Although the Board heard the gist of this application, it was deficient with respect to the notice and they have now noticed for this meeting, December 6<sup>th</sup>. What is the Board's pleasure?

Chairman Dunning stated you have provided us with an updated survey with the location of the shed. Let us pick it from there.

Attorney Mondello asked the Breens to summarize what you want to do and why you want to do it.

Dorothy Breen stated we want to put in an inground pool in our yard to replace an above-ground pool that was taken down because it was falling apart. We want to enjoy the summertime.

Joseph Breen also commented that the reason we are here is our property, as you can see, is on the corner and we don't have a backyard, we have a side yard. The pool is behind the house where it has to be.

Chairman Dunning commented you have two front yards and two side yards.

Chairman Dunning stated on the survey you have drawn in the shed. I assume you are going to leave the shed where it is. You have dimensions every which way except one place, from the shed to the fence.

Member Hoffman commented it is by the star (\*) just above it.

Chairman Dunning stated I see it now. The real question is we need a variance on that shed since it is not less than 5' from the property line. Other than that, is everything in compliance Engineer Nash as far as the other footage?

Engineer Nash answered right, except the pool is in the side yard.

Vice Chairman Grygus commented we also need one for the size of the shed.

Attorney Mondello questioned what is the size of the shed?

Chairman Dunning answered it is 7-1/2 by 14, so they need a variance for the size of the shed.

**Chairman Dunning: Do we have any other questions?**

Chairman Dunning questioned Engineer Nash if all the other measurements were okay? Engineer Nash answered yes.

Chairman Dunning: Does anyone in the public have any statements on this application or questions? Seeing none, hearing none, we close the public portion.

**MOTION TO APPROVE THE CONSTRUCTION OF THE POOL IN THE SIDE YARD WITH THE FOLLOWING VARIANCES: FOR THE SHED THE APPLICANTS ARE PROVIDING 3 FEET TO THE PROPERTY LINE, WHERE 5 FEET IS REQUIRED FOR A VARIANCE OF 2 FEET; AND THE APPLICANTS' SHED IS 108.75 FEET WHERE 100 FEET IS ALLOWED BY ORDINANCE FOR A VARIANCE OF 8.75 FEET:**

made by Vice Chairman Grygus, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hain, Hoffman, Ludwig, Henderson and Karp. Motion Carried

**Application #ZBA2017-09 – Magee, Robert & Evelyn**  
**1028 Ringwood Avenue (Block 411/Lot 25)**

Attorney Mondello advised the Board that I am in receipt of the publication in the Suburban Trends indicating what the applicant is seeking this evening and indicating that the meeting is scheduled for today at 8pm and, in addition, I do have the notices to residents within 200' so I deem the application complete. Jurisdiction is vested in the Zoning Board to hear the application.

Attorney Mondello swore in Robert Magee, 22 George Street, Butler, NJ

Mr. Magee advised the Board he would like to add on to my one-car garage and have a two-car garage because I have two vehicles that I need to keep inside and I have an antique vehicle that I keep inside also. I am very fussy with my vehicles and I want them inside, off the road, out of the weather. I don't like to get into a vehicle with all frost on it and then try to get on the road at 5:30am to go to work, and other safety reasons.

**Member Hoffman questioned if there was going to be a garage door in the back or just the garage door separating the new garage from the existing?**

**Mr. Magee answered it is existing right to the next garage.**

**Member Hoffman stated I see that; it is attached directly behind it, but there is no door in the back where you could drive through?**

**Mr. Magee answered no.**

**Member Hoffman questioned this is going to be used just for car storage?**

**Mr. Magee answered yes, just my car storage.**

**Vice Chairman Grygus questioned there is no second floor on it?**

**Mr. Magee answered no. It is only a height of, I believe, 15 feet.**

**Chairman Dunning commented you provided architectural plans of the structure of the new proposed garage. You are going to have an entrance from the garage into your house?**

**Mr. Magee answered yes.**

**Attorney Mondello stated you testified the reason for that is safety. You don't want to be slipping and falling on ice.**

**Mr. Magee stated correct.**

**Member Hoffman questioned there is no entrance from the existing dwelling to the new garage from inside the house.**

**Mr. Magee answered yes there is. When you go into the right side, you will see there is an overhead door and to the right side there is a walk-in door and then there will be stairs going up into the house.**

**Vice Chairman Grygus questioned currently now the garage is not attached to the house?**

**Mr. Magee stated it is not attached.**

**Vice Chairman Grygus questioned does your plan include upgrading the wall between the garage and the house to be fire-rated?**

**Mr. Magee answered whatever it needs to be on the plans, it is going to be correct.**

**Member Ludwig stated that would be part of the permits and per construction code.**

**Mr. Magee stated whatever the code is I will follow.**

**Attorney Mondello stated the variances that you're seeking are side yard, 15 feet is required and existing 31.9 feet and you are going down to 10.8 feet. Correct?**

**Mr. Magee answered yes sir.**

**Attorney Mondello continued with rear yard where 40 feet is required, 40.9 feet currently exists, and you are going down to 18.1 feet. Correct?**

**Mr. Magee answered yes that is the existing garage, which has been there for 100 years.**

**Attorney Mondello swore in Robert Magee, 1600 Ratzler Road, Wayne, New Jersey. The Applicant is my dad (hereinafter referred to as "R. Magee").**

**R. Magee stated you questioned the side yard setbacks and what the current setbacks are, but the new structure is not going to be any more than what the current side setback is. I believe it just changes because it is now being attached to the house. Does that make sense?**

**Attorney Mondello stated as far as rear yard is concerned.**

**R. Magee stated and side yard. So the current garage is 15 feet?**

**Mr. Magee commented the present garage is 10.8 feet from the property line. That has been existing.**

**Vice Chairman Grygus stated that is 10.9 feet on the survey.**

**Member Hoffman stated it is 10.9 feet going down to 10.8 feet.**

**R. Magee stated so the side yard setback is really not changing any then what it currently is; it is just being extended forward. It is not going from 30 feet to 10.9 feet. It really is currently 10.9 feet off of the garage. It's just because we are attaching it to the house that it looks like it is going from 30 feet to 10.9 feet, if that make sense.**

**Engineer Nash stated that is not entirely true. The garage is detached so it is an accessory structure so the side for the house is currently 31.9 feet. When you put the addition on and connect it to the existing garage, it all becomes one structure. Now all the minimum dimensions are measured from the garage, which was accessory and now is not, so the rear yard comes into play. That is a new variance that is needed and the northwest corner of the structure is 10.8 feet, whereas the garage as an existing accessory structure is 10.9 feet. It is .10<sup>th</sup> of an inch if you are going to do the numbers and be technical about it.**

**Member Hoffman commented it needs the variances for everything because now it becomes a main structure.**

**Engineer Nash stated it is one structure now, so it needs those two variances which didn't exist before. They are new variances.**

**Attorney Mondello: Any other questions from the Board Members?**

**Vice Chairman Grygus questioned Engineer Nash: What did you say is the side and rear setbacks are?**

**Engineer Nash answered the side is 15 feet and rear is 40 feet. The south edge is fine at 32+ feet. The way to look at it is there are two structures and they just connected them so really as far as perspective to the property line, they essentially didn't change anything. It is where you are measuring from changed, but physically everything is still there as it appears now.**

**Vice Chairman Grygus questioned what if the requirement on the existing garage had been 5 feet as an accessory structure?**

**Engineer Nash stated but now it is attached to the house so it is a different ball game.**

**R. Magee commented I don't know if it makes a difference also but my parents are planning to move there and this will be their primary residence. They plan on retiring into this home and that is why they want to make it into a home that they can live in with a one floor house.**

**Chairman Dunning: Any other questions Members? Hearing none, seeing none, let's open it up to the public. Does anyone in the public have any questions or statements on this application? Seeing and hearing none, we close the public portion. We need on Motion on this Application.**

**MOTION TO APPROVE THE CONSTRUCTION OF AN ADDITION TO THE EXISTING DETACHED GARAGE WHICH IS GOING TO ATTACH IT TO THE STRUCTURE. FIRST VARIANCE WILL BE FOR THE SIDE YARD WHERE 15.3 FEET IS REQUIRED, THE APPLICANT IS PROPOSING 10.8 FEET FOR A VARIANCE OF 4.2 FEET; AND FOR A REAR YARD VARIANCE WHERE 40 FEET IS REQUIRED AND THE APPLICANT IS PROPOSING 18.1 FEET FOR A VARIANCE OF 21.9 FEET;** made by Vice Chairman Grygus, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hain, Hoffman, Ludwig, Henderson and Karp. Motion Carried

**Application #ZBA2017-01 & 02 – Agostino Properties, LLC**  
**18 Railroad Avenue & 20 Railroad Avenue (Block 236.01/Lots 26 & 21)**

**APPLICANT’S EXHIBITS**

- A-5 Jeffrey R. Houser, P.E. of Houser Engineering November 21, 2017 Report and Minor Site Plan dated 11/22/2017
- A-6 Kenneth Ochab, AICP, PP Planning And Variance Report dated April 27, 2017
- A-7 Four Photos Taken Mid-Morning By Kenneth Ochab Showing the Front of Buildings at 18 and 20 Railroad Avenue
- A-8 Four Photos Taken Mid-Morning By Kenneth Ochab Showing the Rear of Buildings/Parking Area - Lots at 18 and 20 Railroad Avenue

Edward Martin, Esq., 52 Skyline Drive, Ringwood, New Jersey on behalf of the Applicant, Agostino Properties, LLC.

Attorney Mondello advised Attorney Martin that the Board received a letter from Attorney Walker indicating that he now represents the objector, Ron Kidd, from Kidd Realty LLC. Attorney Walker why don't you enter your appearance and then all the parties have a seat.

Michael Walker, Esq., on behalf of Kidd Realty LLC.

Attorney Mondello: Where did we leave off Attorney Martin?

Attorney Martin stated Mr. Agostino had given some testimony and there were some discussions with the Board about the Miceli survey that I had originally filed. In the interim, we have had a site plan prepared by Houser Engineering that was delivered for the

Board's review and this evening I have Jeff Houser of Houser Engineering to testify as to that. Depending on how the evening goes, I also have a Planner.

Attorney Mondello swore in Jeffrey Houser, Houser Engineering, LLC, 1141 Greenwood Lake Turnpike, Ringwood, New Jersey.

Engineer Houser testified he earned his Bachelor of Engineer Degree from Stevens Institute of Technology in Hoboken, New Jersey. Upon graduation, I spent some time at Gerald Gardner Associates doing general civil engineering work and site plan. I then moved on to other companies and I generally worked on commercial projects. I have been at Houser Engineering for about 7 years. I am licensed in New Jersey, New York, Pennsylvania and Maryland. I have appeared before other Boards in Passaic County.

Attorney Mondello: You are offered as an expert in the field of Engineering. Any objections from the Board Members? Hearing none, seeing none, you may proceed.

Attorney Martin questioned Engineer Houser if he was familiar with the Minor Site Plan document dated 11/22/2017 and questioned if he was involved in the preparation of the document.

Engineer Houser answered yes to both questions.

Attorney Martin asked Engineer Houser to give the Board, to the best of his ability, a description of the site plan and then go over the issues raised in Engineer Nash's letter of December 4, 2017.

**Engineer Houser's Testimony:**

Engineer Houser stated I will give you a general review of the property and some of the conditions that are out there. It is known as 18 & 20 Railroad Avenue. The property consists of two separate lots, Block 236.01, Lots 21 & 26. The combined area of the two lots is 0.276 acres. Lot 21 features two frontages; one on Erie Avenue to the north and on Railroad Avenue to the south. Lot 26 has frontage to the south only on Railroad Avenue. Lot 21 includes 1,387 square foot building and the majority of the building is three stories. However, in the rear portion of that it is a one story building. Lot 26 includes the front of the same building and immediately adjacent, which is about 1,092 square feet and three stories. It also includes an accessory masonry garage to the rear of the building. The property is located in a Business Zone. The building is currently utilized as a restaurant and does have some residential occupants in an apartment-type setting. The Applicant is seeking approval for rooming houses. There are no proposed changes to the footprint of the buildings. Additional exterior features of the property include a dumpster located on the Railroad Avenue side of the property, which I believe previously was not enclosed and now an enclosure has been constructed around the dumpster. Lot 26 has a driveway access onto Railroad Avenue and that driveway is currently utilized by employees for parking vehicles. To the rear on Lot 21 there is a macadam parking area that is not organized and there is no striping. Then there is also a gravel area just before you get to the building between the masonry garage and the main three story structure.

**The property as a whole has a number of existing, non-conformities and those include area, lot width, lot depth, front yard, side yard and rear yard setbacks. In addition, Lot 26 includes an existing, non-conformity for building coverage.**

**As I stated earlier, there are no proposed improvements to the footprint of the building itself. However, we are proposing several site improvements which mostly has to do with parking.**

**Erie Avenue access on Lot 21, as I mentioned earlier, there is no organized parking arrangement. We are proposing improvements including striping that will provide 7 parking spaces plus 1 handicap space for a total of 8 parking spaces. We are also proposing improvements to the curb along Erie Avenue. 25 linear feet of curb is to be replaced and, in addition, there will 24 linear feet of depressed concrete, so the entire frontage of Erie will get a new curb. We are also proposing that areas that are outside of the pavement be improved with lawn or landscaping.**

**I mentioned earlier the existing dumpster, which is on Railroad Avenue, has been enclosed with a new painted wood fence around it since the survey was prepared. We are also proposing some markings on the driveway along Railroad Avenue, including striping for a loading zone to access that dumpster as well as signage or painting on the asphalt that says “employee parking only” for the driveway.**

**In total, we have approximately 12 on-site parking spots. 8 of which will be formally organized, 2 will be in a driveway, 2 will be in an existing gravel area.**

**Regarding parking requirements, on the site plan in the upper right-hand corner we provided a breakdown of existing parking requirements and proposed for each lot.**

**For existing Lot 26, there is a restaurant use there based on standards 1 stall for 4 seats plus 1 stall for 2 employees. We have 46 seats in the restaurant divided by 4 equals 11.5 stalls that are required. There are 10 employees on a max shift divided by 2 equals 5 stalls. There is a residential component to that property for 2 stalls per dwelling unit/apartment. So for 2 units, 2 spaces per unit equals 4 stalls. In total, Lot 26 has a required 21 stalls.**

**For existing Lot 21, the residential requirement is 2 stalls per dwelling and there are 3 units for a requirement of 6 stalls.**

**For proposed uses for Lot 26, the restaurant use is not changing so that remains the same; 46 seats and 1 parking space per 4 seats equals 11.5 plus the 5 stalls for the employees. The change here is the rooming use. There is no assigned standard parking for a rooming house use. The nature of an occupant of a rooming house is a little bit different than an apartment. Based on engineering judgment, we assigned 1/2 a stall per room. We are proposing 8 rooms so that would require 4 stalls. Based on the net, there would be a total requirement of 21 stalls, so there is no increase based on that methodology for Lot 26.**

**For Lot 21, the proposed use is residential uses with 2 stalls per dwelling unit. One unit is to remain, which would require 2 stalls, and we would be converting two of the apartments to essentially 8 rooming houses, which would be 1/2 a stall per room for 8 rooms which would be 4 stalls. The total required stalls there would be 6.**

Attorney Mondello questioned Engineer Houser as to the logic behind assigning a 1/2 stall per room. Certainly, a one bedroom apartment would need more than a 1/2 space. Engineer Houser answered it depends on the nature of the occupant. One person you would think may have one car but not necessarily. We do have local public transportation and there are bus stops nearby. We can't say for certain an occupant would not have a car, but I think based on what the applicant has told me based on current occupants approximately 1/2 of the people have a car.

Attorney Mondello questioned what happens if everybody has a car? Where do they park? Engineer Houser answered there are more cars associated with the property.

Attorney Mondello questioned Engineer Nash if he had any comments on that? I am not saying it is wrong, I am just curious as to the foundation associated with 1/2 a stall.

Engineer Nash answered he just testified as to how he came up with that and that is its current use and the Board has to assume this is going in perpetuity.

Member Hoffman questioned is there any sort of historical data you could research with boarding houses in other areas or other towns and the parking needs of those buildings. Vice Chairman Grygus continued or are there any towns that have ordinances for parking for rooming houses?

Engineer Houser stated that our office did do some research. We did not come up with anything specific.

Attorney Mondello questioned does the DCA have any suggestions or do they offer any guidance?

Attorney Martin answered I couldn't find any authority with regard to parking relative to a rooming house. Also, with regard to Member Hoffman's question, I just want to draw attention that there is a pretty big distinction between boarding and rooming houses. This is a rooming house. In boarding houses, all different kinds of services are provided to the residents and that is not this. This is just basically rooms to stay and we could not find any such authority. Likewise, I looked for authority with regard to the differences perhaps between what the average apartment leasee needs or uses versus what someone at a rooming house and I couldn't find anything of that nature. Just based upon Mr. Agostino's testimony from the last hearing, he does have a number of residents he can certainly speak to that again, but he has residents who don't have cars, and I think that is more likely with a rooming house occupant as opposed to someone who has enough money to get their own apartment.

Engineer Nash stated since there isn't a standard here so we have a little latitude. You brought up a boarding house use and to me, if I was going to use my engineering skills, if you are in a boarding house and you are having services provided, one would less likely need to go out because the services are there. Therefore, you would less likely need a car at a boarding house than a rooming house.

Attorney Mondello questioned isn't there a communal kitchen where I can go and cook?

Attorney Martin answered yes.

Attorney Mondello stated so that may be necessarily true.

Attorney Martin stated the services I was referring may not necessarily be services that mean you never have to leave.

Engineer Nash stated we should be using common sense.

**Engineer Houser stated in similar vein, though the standard is to apply 2 parking stalls per dwelling unit, there is nothing to say an apartment wouldn't be occupied by 3 persons each with a car, or 4 persons each with a car.**

**Engineer Nash stated your argument could be that this is an apartment house, we are here on an apartment application, we are a little shy on the parking, we did a survey and the tenants that are there only have one car and one doesn't even have a car. Then that is the testimony but it is flawed because the Board is approving this use in perpetuity so they have to accommodate whatever future tenants will be there.**

**Vice Chairman Grygus stated whatever you apply also depends upon the area that you are in. If you are in an area that has a lot of commercial establishments easily within walking distance, you may be less likely to need a car then if you would if the rooming house was in an area that doesn't have that much. Public transportation only runs on certain frequency.**

**Attorney Martin stated I would be remiss if I just didn't comment at this point. It seems to me based on some of what Engineer Nash has said in his letter as well as my review of the ordinances and actually prior actions of this Board regarding these two properties, I don't believe there really is no approval necessary if they are apartments. In other words, if Mr. Agostino were to be denied on this application, those are valid and legal apartments as of right now.**

**Attorney Mondello questioned were there prior applications for apartments or are they grandfathered in, so to speak.**

**Attorney Martin on 20 Railroad there was a prior Use Variance Application by Mr. Agostino's predecessor and, therefore, those are 3 apartments. Then the 2 apartments above Flip's I think are permitted by the ordinance; the ordinance that talks about residences above store fronts.**

**Chairman Dunning stated in 1997 the Zoning Board granted a Variance for 3 apartments at 20 Railroad. The town ordinance allows 2 apartments over retail business in a Business Zone.**

**Vice Chairman Grygus stated one does not have any retail on the first floor.**

**Member Hoffman stated if you combined both buildings there is a total of 5 apartments and 1 business.**

**Vice Chairman Grygus questioned is it your testimony that you would comply with the parking if it was apartments or wouldn't?**

**Engineer Houser answered we would still be short regardless.**

**Attorney Mondello commented that they have already obtained a Variance so they can continue as apartments and need nothing from this Board.**

**Attorney Martin stated the point I was trying to make was if the Board were to grant this application, I don't see any difference in what already exists in that regard, except for the fact that there is going to be a lot more improvements. If the application is granted, the lot will be paved, it will striped, there will be fence, there will be curbing.**

**Chairman Dunning stated depending on how we view how many cars are required per room. Say it is one per room, then you have a big deficiency.**

**Attorney Mondello stated his argument is, I can leave and still have apartments and the parking is sufficient because I have a Variance.**

**Member Hoffman stated only for the apartments, not for the business.**

**Chairman Dunning stated, here is the thing, you have an apartment on the bottom, you got four rooms and four rooms at 20 Railroad, so 2 cars on the first floor, 4 on the second and 4 on the third. If you go with a one on one theory being the bedroom requires one parking space, and in a one bedroom apartment it is 1.8.**

**Attorney Mondello stated and nobody ever needed to come before this Board for the business because it has always been there and it is permitted in that use, and presumably their parking is deficient. It is what it is; it is pre-existing.**

**Attorney Mondello believes we should move on from this issue and the Board will somehow have to weigh whether 1/2 a stall works.**

**Attorney Martin: Engineer Houser would you mind commenting on a couple of comments from Engineer Nash's letter of December 4<sup>th</sup>, and in particular, paragraph 2 and 3, which discuss the need for some bulk variances.**

**Engineer Houser stated Engineer Nash brought up in a letter that in accordance with §114-12A(7)(a), a maximum number of two dwelling units may be provided for apartments over stores. It further states a Variance is needed as eight (8) units are being utilized over Flip's Bar (18 Railroad Avenue). Rooming houses are not permitted in any zone in Wanaque.**

**Applying the standards of an apartment use is appropriate.**

**We feel like this is somewhat of a double standard because as Attorney Martin just stated that, if they were apartments, we wouldn't need to be here because this approval was granted in 1987. §114-12A specifically relates to apartments above business uses. In this case, the applicant is proposing a rooming house. A rooming house is a distinct use from apartments as indicated as to why we are here for a Use Variance. Therefore, we feel like the application does not require variances related to this special condition for apartments.**

**Attorney Mondello questioned is the density of occupants the same as with apartments versus rooming house?**

**Engineer Houser answered essentially yes because these apartments have 4 bedrooms each.**

**Attorney Martin commented that the footprint of the apartments and what we are requesting be the rooming house is basically the same. They are laid out all the same. In fact, 20 Railroad has an apartment on the first floor and essentially the same layout. If you look back it is actually 4 bedrooms then kitchen, common area. What we are trying to do at 18 Railroad and part of 20 Railroad is just making those rooms, instead of one big apartment, but it would be a 4 bedroom apartment then.**

**Member Hoffman questioned 4 bedroom apartment or 4 room apartment? If you are going to utilize them as an apartment, is every room in that level is going to be used as a bedroom or is one of them going to be a kitchen?**

**Attorney Martin answered no, it has a kitchen, common area and four bedrooms. Looking at the drawing, the first floor is a little different, but the second and third floors of 20 Railroad are essentially the rooming house layout. The first floor apartment is an existing apartment at 20 Railroad Avenue.**

**Chairman Dunning stated that first floor apartment at 20 Railroad has a kitchen area, room 1 and room 2. Is that a two bedroom apartment? What is it? It can't be a 4 bedroom.**

**Engineer Houser stated they are not all 4 bedrooms.**

**Chairman Dunning stated the question was that existing apartment is going to stay an apartment with how many bedrooms?**

**Attorney Martin answered 1; he is using one as a bedroom.**

**Chairman Dunning questioned then which is the bedroom – room 1 or room 2, and what is the other room?**

**Mr. Agostino was able to answer this question since he remains sworn in. In the drawing, the first room would be closer to the street and that would be a bedroom and then the room after that would be a living room.**

**Member Hoffman, now going to the second floor of 20 Railroad, that is being proposed for 4 separate single rooms?**

**Chairman Dunning answered correct. The second and third floors are exactly the same, which are 4 individual rooms with a common kitchen.**

**Engineer Houser continued his testimony and review of Engineer Nash's letter.**

**One of the other variances is the location of the parking. There is supposed to be no parking in the frontage, but we have two frontages, so we wouldn't have any parking no and this would be a hardship. The location of those parking spaces are supposed to be at least 20 feet away from the front yard property line and we are 10 feet from Erie Avenue. Again, it is our effort to maximize the number of parking spaces on the property.**

**Attorney Martin has no further questions of Engineer Houser.**

**Chairman Dunning, referring to the parking lot for Lot 21, stated you are asking for 9x18 parking spaces. The Borough standard is 10x20. In all honesty, 9x18 doesn't work for every parking space. Looking at the average pick-up truck, and I just measured a few because of another application, there are almost 20 feet long, which means if it parks in there, then you don't have your 24 foot wide right-of-way. It is 22 or less depending on if he pulls all the way up. Is there any way to adjust this to make it workable because technically that aisle space is supposed to be 25 foot wide?**

**Engineer Houser answered the front of the vehicle cannot overhang the front edge of the parking space so, in terms of the length, I don't think there is as much of an issue.**

**Chairman Dunning stated the width is also a problem.**

**Engineer Houser stated it can be tight. Obviously 10x20 is an extra foot wider and, depending on the nature of the vehicles, it could be tight, but it does fit in there. I went to school in Hoboken so I know how parking can be tight. You can squeeze a lot of vehicles into some small spaces.**

**Engineer Nash commented typically the parking spaces, looking at the 20 foot dimension, which is the comfortable dimension that the vehicle fits in. This particular application, there is almost 5 feet between the edge of the parking lot and the fence, which allows the vehicle to overhang. It is acceptable practice to give the grade of 2 feet if they have the space. I was even asking for wheel stops originally if it was 2 feet between the edge of the parking lot and the fence because then it is going to be a problem since you could hit the fence sometimes and you would need wheel stops to stop that. I even took that comment away because there is so much room. I didn't have an issue with that for the length dimension and typically the 10 foot width is waived down to 9 in low turnover uses. Particularly in a parking lot like this, it is residential and everyone knows each other so you**

are going to be a little careful when you are opening the door because you know the guy next to you.

Chairman Dunning also questioned you've got behind 20 Railroad parking for 2 employees, how do you propose they get in there?

Engineer Houser answered through Erie Avenue. It is somewhat tight between the masonry garage and the corner of the building, but it can be navigated. It currently is a gravel area and refer to that as employee parking only.

Chairman Dunning questioned if they pull in, they would have to back out or back in and pull out?

Engineer Houser stated actually there is access through Railroad Avenue also, immediately adjacent to the building. It is not entirely on our property. That is why I first said going through Erie Avenue.

Vice Chairman Grygus questioned are you counting any spaces in the garage towards your parking?

Engineer Houser answered no. It doesn't fit any vehicles. The problem is access in and out of there. The garage door faces the rear of 20 Railroad.

Attorney Mondello: Any further questions from Board Members?

Attorney Mondello: Attorney Walker do you have any cross-examination?

Attorney Walker answered yes, I do.

Attorney Walker stated he was trying to follow your computation with respect to the required spaces. First of all, with regard to your standard discussed of 1/2 space per unit per rooming house, is that correct?

Engineer Houser answered yes.

Attorney Walker continued, if I understand you correctly, there is no firm basis or foundation for that is there?

Engineer Houser answered, based on the current occupants with information provided by the Applicant, who said that half of the tenants have cars.

Attorney Walker stated but, right now, the present use is not entirely rooming house is it?

Engineer Houser answered correct.

Attorney Walker stated we can't really base it upon that, can we?

Engineer Houser answered there is no standard.

Attorney Walker stated that is what I am saying; there is no standard. 1/2 per unit is a standard that you somehow came up with, but it has no basis, no foundation, nothing at all that you can substantiate it with. Is that correct?

Attorney Walker: Objection, he just answered that.

Attorney Mondello: Agreed – Next questioned Attorney Walker

Attorney Walker stated based upon you utilizing that standard, what is the total number of spaces that would be required?

Engineer Houser questioned for the rooming use?

Attorney Walker answered for the entire use; both the rooming use as well as the use of the bar and restaurant.

Engineer Houser answered, in the entirety between Lots 21 and 26, 27 stalls.

Attorney Walker questioned how many are being provided?

**Engineer Houser answered 12 on-site parking spaces.**

**Attorney Walker commented it is fair to say that there is an insufficient amount of spaces, substantially inadequate, in terms of the spaces being proposed.**

**Engineer Houser stated using the standards that we presented on the site plan; there is no difference from existing to proposed.**

**Attorney Walker stated I understand that, but right now, we are not looking at what exists, we are looking at what you are proposing. Is that correct?**

**Engineer Houser answered we are looking at both.**

**Attorney Walker stated I guess my point is that we are looking at an application for a Use Variance, which means you are subject to certain requirements based upon the application, and fair to say there are some difficulties with applying standards for a rooming house, but even with your calculations, it is substantially inaccurate.**

**Engineer Houser stated 12 is less than the 27 that we said are required.**

**Attorney Walker stated and, in fact, if your standard is incorrect, they may be woefully inadequate.**

**Engineer Houser stated again it depends on the nature of the occupants. It could be woefully insufficient right now based upon apartment usage. If there are 4 adults in an apartment and they each have a car, we have deficient parking.**

**Attorney Mondello stated the apartments are a legal use.**

**Engineer Nash stated you are changing the use so we are reshuffling the deck here.**

**Attorney Mondello stated the question is fair, but the common sense point is that they could walk away today and keep the apartments as they are and not be required to add any parking. So the testimony is that, in his opinion, and the Board will decide whether or not they believe it is credible, Engineer Houser believes that, in fact, the parking would be less than what apartments would require. The occupancy would be either less or similar. He certainly testified that vehicles would be less. We could hammer this for the next hour, but we agree with you. It is deficient, but it is legally conforming with respect to parking right now.**

**Attorney Walker stated I heard your testimony also some of the apartments contain 4 rooms, but not necessarily 4 bedrooms. Is that correct?**

**Engineer Houser answered that is correct.**

**Attorney Walker questioned if, in fact, it was turned into a rooming house, each room would be a bedroom and each one would have at least one adult in that bedroom. Is that correct?**

**Engineer Houser answered I believe yes.**

**Attorney Walker stated that right now the fact that some of the apartments have more than one bedroom does not necessarily mean that there is an adult in each of one of those bedrooms. Correct?**

**Engineer Houser answered no, not necessarily. But there could also be two adults in each bedroom.**

**Attorney Walker stated there could be, but there may not be. My point is that this application could exacerbate the parking situation right now. Is that correct?**

**Engineer Houser answered it could. It all depends on who is living there.**

**Attorney Walker stated in fact, the density in terms of the inhabitants of the buildings could also increase. Is that correct?**

**Engineer Houser answered no. I believe under a rooming house it is one person per room. In an apartment setting, there is no standard. When you rent an apartment to somebody, you don't know if one person is going to be living there or a family of seven.**

**Attorney Walker stated I believe there isn't any testimony, if you take a look at the Minutes, that there are families residing in any of these homes.**

**Attorney Walker stated I disagree with that characterization because that is exactly the opposite of what Mr. Agostino testified to the last time.**

**Attorney Mondello agreed.**

**Attorney Walker, not sure if this is the proper time, has Alex Zaponi who is a certified engineer and can he address questions to Engineer Houser in regard to his testimony this evening.**

**Attorney Mondello answered no; that would not be appropriate. I had an off the record conversation with Attorney Walker. He wanted to see if he could get his engineer on in the middle of your case and chief, and I advised him that was pretty highly irregular and it is the Applicant's application so it certainly would be your call, but I am guessing, if I was sitting where you were, I would probably say no. You have to wait until his case and chief is done and then you will take it from there.**

**Attorney Walker stated I understand that. I wasn't actually looking to put him on at this point and time, just have the ability to ask questions of Engineer Houser.**

**Attorney Mondello stated no. We will get that on direct.**

**Attorney Walker stated I have nothing further.**

**Attorney Mondello commented thank you and next witness. I apologize. Any residents within 200 feet, questions only, not comments at this point. Questions only on the testimony of Engineer Houser will be allowed. There is going to be a very big portion later on for comments, where you can say anything.**

**Matt Palmieri, 12 Erie Avenue**

**Is the parking lot only going to be used for residents or is it for business and residents together?**

**Engineer Houser answered business and residents.**

**Dan Huntsinger, 16 Erie Avenue**

**Will the curb that is currently existing for the frontage where people cross over that curb to park in the current parking lot, which is actually a front yard, will a Variance be gotten for that and will that be turned into a proper driveway?**

**Engineer Houser answered yes, absolutely. There is 50 feet of frontage along Erie Avenue and currently the concrete curb is broken and you can see where people could just drive over any of the 50 feet. With these proposed improvements, we are putting in a new curb to the east for the first 25 feet, which just leaves the remaining 25 feet of drive aisle to access the parking lot, and that will be a new depressed curb. There is a 10 foot buffer between the first parking space and the property line and then the curb is another 10 feet**

beyond that, so there is approximately 20 feet of lawn and landscaping that will be installed.

Vice Chairman Grygus commented it might help if you just show him where it is on the plan on the easel.

Engineer Houser showed the residents what he was talking about on the plan.

Mr. Huntsinger commented thank you for showing me that. How will you accommodate the landscaping taking away one parking spot that is currently being used?

Engineer Houser answered I was actually there before the meeting and there were 6 cars parked there. Again we are trying to conform to some standards and organize it. Right now there are no spots; it is just macadam. People can park any which way they want. We are going to organize it, make it safer and put true parking spaces.

Mr. Huntsinger questioned how will you accommodate for this area which is the exact same size as a car spot and you re removing it?

Engineer Houser answered there never was one there. We are providing 7 on this site, where there was previously 0.

Vice Chairman Grygus commented that I think we have already established that it is substandard of the requirements, so it is a lot more than that one space to really worry about.

Mr. Huntsinger stated when he walked by there were 9 cars and the lot was completely full, which is mainly Flip's customers. How are you going to accommodate all these additional residents in your parking plan?

Attorney Mondello questioned are there additional residents? You testified the occupancy would be the same.

Engineer Houser answered that he does not see potentially additional residents.

### Richard Purcella, 13 Erie Avenue

I have heard testimony that they are going to pave the lot there. Now, when they pave that lot is drainage going to be put in there because that floods all the time? There would have to be on site drainage.

Attorney Mondello commented good question. Engineer Houser it is off to you.

Engineer Houser answered we have not made any provisions for drainage. Currently, it is all existing impervious coverage that is going to remain and, if anything, it is going to decrease. So in terms of runoff, we are not going to exacerbate that. However, if there is a problem there that I am not aware of

Mr. Purcella commented there is a problem.

Attorney Mondello, addressing Mr. Purcella, stated this is a Use Variance and, although the Applicant is not required to install some type of drainage system if the Board is inclined to granting the relief, which we are not ever close to, they might make that as a reasonable condition of approval.

Mr. Purcella stated I just wanted to bring this up. Because if there is flooding and they pave that it goes right into my basement.

Attorney Mondello commented you are going to have an opportunity to explain that, in depth, and if you have any pictures later on, you can present those.

**Attorney Mondello: Any other questions from residents within 200 feet or from the general public for Engineer Houser? Hearing none, seeing none – next witness.**

**Engineer Nash, addressing Engineer Houser, with regard to comment #9 in my letter, since you are here I want to address it so we can dismiss of the semantics of the comment and your terminology of depressed curb versus curb. Depressed curb is a form of a curb. Instead of having 24 feet here and 50 feet there; it should be 50 feet of curb and 24 feet of it is depressed. The way the notes are on the plans opens it for just a mild confusion. The note on the plan that pointed 25 feet, you have a flag note that points to Erie Avenue, yet the marking for that curb it doesn't show that it is new. One could say 25 and 24 so you are only going to do the depressed curb. I understand the intent, but plans aren't intent; plans show exactly what you are going to do. I just want to make it clear. A resident could look at that and say he is not doing the curb. Why is he only doing 1/2 the curb. Engineer Houser agrees.**

**Vice Chairman Grygus commented since you are going to be modifying that plan, can you get some elevations on that parking. It would help us a little bit.**

**Engineer Nash commented whenever you are adding a full height curb and where there isn't curb now and it is flat, you know what is going to happen. You're backing up water and it is going to go somewhere and, if it is not going out to the street, it is going to a neighbor. I would strongly recommend we have grades in that back packing lot to see where the water is going. It is coming up. The gentlemen (Mr. Purcella) brought up a good point about the drainage and I think that would be very helpful. Attorney Mondello commented it is a reasonable request and the Applicant, I am sure, will comply.**

**Chairman Dunning questioned what is your suggestion had to deal with drainage on the property?**

**Mr. Agostino stated part of the drainage issue is because I had a lot of potholes in there. I recently filled it in with a lot of gravel and those puddles seem to disperse a little bit more. With the added dirt and gravel, and if I can pave it, I think we'll have runoff and I wouldn't want to flood the neighbor's yard at all.**

**Engineer Nash stated that is why if you have the grades then it is black and white.**

**Mr. Agostino stated I would be happy to do that.**

**Vice Chairman Grygus stated make sure you put what the proposed grades would be if you are going to pave.**

**Engineer Houser stated if there is a request to do this, we absolutely need to get topography. It is relatively flat but the difference between 4 inches can have an effect on drainage. We will update the survey to get topography and if need be for me to come up with some improved stormwater management measures, whether it be putting in a catch basin, or recharge it on site, or if there is a public storm sewer in the road we can connect to. I do believe that area to be sandy soil so we could possible recharge it on site.**

**Engineer Nash questioned what was your base map for the site plan.**

**Engineer Houser answered it was the survey prepared by Mr. Miceli.**

**Engineer Nash questioned it didn't have any grades to it?**

**Vice Chairman Grygus commented I just looked at it and there is nothing on it.**

**Engineer Nash stated it has to have grades. You can not do a survey and not have grades.**

**Engineer Houser stated there is. I will have Mr. Miceli prepare it.  
Vice Chairman Grygus stated there are no elevations on the survey.  
Attorney Mondello stated we are on the same page Engineer Houser.**

**Attorney Mondello: Any other questions from Board Members or Public? Hearing none, seeing no, we will close that portion. Next witness.**

**Attorney Martin will like to call Ken Ochab, Professional Planner**

**Attorney Mondello swore in Kenneth Ochab, 1216 Fair Lawn Avenue, Fair Lawn, NJ and stated Planner Ochab has been here a number of times so any objections to the Board accepting him as an expert in the field of Planning? None, your witness.**

**Attorney Martin questioned Planner Ochab if he rendered an expert report in this case dated April 21, 2017?**

**Planner Ochab answered I did, yes.**

**Attorney Martin continued and that report sets forth opinions that you came to after review of this matter?**

**Planner Ochab answered yes. The report actually goes through the criteria for this type of Variance and sets forth a discussion about those proofs as well as some photographs in the back of the report.**

**Attorney Martin asked Planner Ochab to give us a description of the report and provide us with your opinions with regard to this matter.**

**Testimony of Kenneth Ochab, Planner**

**Planner Ochab stated the application is for a rooming house, which is not a permitted use. We are in the Business Zone which extends along Ringwood Avenue and also includes Railroad Avenue in this case. We have an existing facility of two buildings – 18 & 20 Railroad Avenue. I will not repeat what the engineer said about the buildings themselves so you know what is in the buildings, there is a parking lot behind, etc.**

**From a zoning perspective, we are in the B Zone, which allows a number of different uses, mostly retail, commercial, office and the like, but it also allows apartments on the second floor above retail or commercial use provided certain requirements are met. Those requirements include that there has to be at least 750 square feet, no more than 2 apartments, the site cannot be located on Ringwood Avenue.**

**Attorney Mondello commented that he wanted to mark Engineer' Houser's Site Plan and his report as Exhibit A-5, and Planner Ochab's Report dated April 21, 2017 as Exhibit A-6.**

**Planner Ochab continued with his testimony:**

**The apartments are permitted on the floors above the retail in this section of the B Zone. However, we are not proposing apartments. As you know, we are proposing a rooming house use. Because we are proposing a use that's not permitted in the B Zone, we have a Use Variance and that takes us into a discussion about the criteria that the Board needs to consider for a Use Variance. There are basically 2 criteria that come into play here. One is**

a question as to whether or not the rooming house use can be considered as an inherently beneficial use. Now it doesn't seem plausible when you first consider it; however, when you look at similar inherently beneficial uses, they include things like group homes, affordable housing, assisted living and, of course, the standard health related nursing home, etc.

Attorney Mondello questioned if you had any authority for that with respect to rooming house being inherently beneficial?

Planner Ochab answered there is no case law on it at all. That is the first thing we look for whether there had been a decision or legislation that speaks to it. It doesn't speak to it. Rooming houses seem to be left out of the whole spectrum of housing because planners talk about all kinds of housing, but rooming houses and boarding houses as well, just kind of get left out of the entire process for some reason.

Attorney Mondello questioned do you think that is because they are more similar to apartments rather than community residents for the developmentally disabled, community shelters, adult family car, senior citizen housing? Apartments are more akin to a rooming house than what you have on your report on page 5.

Planner Ochab answered yes, I think they actually lie somewhere in between. Rooming houses are like houses for developmentally disabled, except they don't have people with affected illnesses.

Attorney Mondello commented that is a huge difference.

Planner Ochab agreed in terms of the structure, the size and the need, I think that is certainly in play here. So given the, let's say, "conclusion" that we don't have inherently beneficial because there is not legal or structural basis for it.

Attorney Mondello commented that I would instruct the Board that, in my opinion, it is not, so I am glad you are going down that road.

Planner Ochab commented I needed to go there anyway; you just paved the road so to speak.

Planner Ochab continued we have really a conventional Use Variance which is, as you know, subject to the Medici criteria of special reasons and the negative criteria. With respect to that, the criteria here is whether or not the site is particularly suited for the proposed use, whether it's consistent with the planning and zoning purposes and master plan of the municipality. Also from the negative perspective whether or not granting of the variance would render a substantial detriment to the public good, or whether there would be substantial impairment to the zone plan, if the site were so approved for the use.

Attorney Mondello stated, while you are on that topic of positive/negative, etc., do you think that the Board might be able to view those particular criteria with more liberality since you are going from residential to residential?

Planner Ochab answered yes. One of my points here is that residential is an already approved use or an accepted use within this zone and it meets the criteria, visa vie, the B Zone for this area. It is not a stretch at all to consider moving from one residential type to another residential type, which basically almost conforms to the B Zone criteria with the exception that it is just a different "animal", a different type of housing that we are proposing here.

Planner Ochab continued also when you compare what is being proposed here to the apartment use, rooming houses are highly regulated by the Department of Community

Affairs so there is a whole body of regulations about size, rooms, the facilities, the management, there is a whole set of regulations about all of that. From a Planner's perspective, there is some degree of control over how the facility is run, how the operation is run, who the occupants may be, etc. Apartments are not necessarily controlled to that degree.

Vice Chairman Grygus stated in this case it would be because it is 3 units or more. Planner Ochab stated it would be by DCA, but in terms of occupancy and activity and the intensity of use for apartments, that is not really covered under the DCA criteria. We had a lot of discussion about how many vehicles, how many people, apartments are a lot less regulated in respect to that. I just wanted to support that one of the reasons, or arguments, could be that certainly there is a more controlled environment here with rooming houses then there would be with apartments. That speaks directly to the parking issue as well. I have done one other rooming house in Hackensack over the past ten years and in that rooming house there were eight units and two vehicles, so that is my only experience with rooming houses and, as you might image, planners don't get to do rooming houses because there's not all that many of them. Clearly, there seems to be a demand for them because they fill up as soon as they come on line.

Planner Ochab continued with respect to the particular suitability of the site, again use the photographs that are in your report, and I have handouts as well.

Attorney Mondello stated we will mark the photographs as Exhibit A-7 and A-8, which are different than the pictures in Planner Ochab's report.

Planner Ochab described the photographs in Exhibit A-7. Upper left photograph shows the existing building of 18 & 20 Railroad Avenue. Upper right photograph shows the west side of the building with the existing driveway with the bar on the ground floor. Lower left photograph shows the existing building and Railroad Avenue looking west. Lower right photographs shows Railroad Avenue looking east.

Member Hoffman questioned what time of day the pictures were taken since there are no cars in the lot or on the street? There seems to be no parking issues at all, but if this was 6pm the pictures would be different.

Planner Ochab answered mid-morning, around 11am.

Planner Ochab described the photographs in Exhibit A-8. Upper left-hand corner you have the rear of the property and the existing parking looking from Erie Avenue. Upper right picture is a close up of the back of the building where you can see the fire escape and the rear door and the extension to the bar. Lower left shows the property along the west side and shows the existing cedar fence. Lower right shows the property line along the east side where there is no fence but accessory structure in the background.

Planner Ochab continued when you consider the fact that there is already residential use and there is no exterior changes being proposed, in my view it would meet the particular suitability test in terms of just simply converting the use from one residential use to another residential use. It would seem to not affect the neighborhood with respect to that, more control over the type of residential use being proposed here, and would certainly not change the affect that, from a visual or planning perspective, the proposed use in the building would have to the environment on Railroad Avenue itself.

In terms of parking, which has been talked about, one of the positive aspects here is that there is availability of mass transit which is the 197 bus from Warwick, which happens to go through Pompton Lakes, stops at William Paterson College then runs up at the George Washington Bridge Plaza. There is mass transit available for people that don't have cars. I understand that they can actually get a bus to the city or to William Paterson or to I believe Montclair and Pompton Lakes as well.

There are all positive aspects that would lend towards looking at this site in terms of its particular suitability.

With respect to the Master Plan, the re-examination was done in 2010 and it basically confirms the use of the Business Zone in this location. As you might expect, it doesn't say anything about rooming houses or apartments. Master Plans don't go to that level of detail, but in terms of providing the housing choice, there is a Housing Element which is a component of the Master Plan, which does speak to the potential of alternative housing choices. This is a definitely an alternative housing choice with respect to providing housing for those folks who just don't seem to fit into the easy pattern of apartment or communal living like in assisted living. These are folks that are between those two entities that still have a high demand for housing, it's just that they either can't afford to rent an apartment or they don't choose to because of their life conditions or what have you. So we have many different people who demand this type of housing and that would support, not only the Housing Element of the Master Plan, but also the Municipal Land Use Law purposes one of which is to provide for sufficient space and appropriate locations for a variety of uses based on the needs of New Jersey citizens. Certainly, that falls right into line with what we are providing here. It also would support the purposes of zoning which go to providing for a variety of housing within the spectrum of the municipalities' ability to provide that housing. I think we are right on point with respect to that even though the Master Plan doesn't speak to this one way or another and, to be honest, we would never expect it to. This is basically the crux of the positive criteria and, again, you can read through my report which goes into some detail with respect to that as well.

Planner Ochab continued for the negative criteria, there are two essential problems. One is whether the granting of the Use Variance would result in a substantial detriment to the public good. What does that mean? That means what is the impact; is the impact of granting this variance substantial? In my view from a planning perspective the answer would be no that it would not be substantial. The issue at hand really, from a zoning perspective, is the parking issue and I think we addressed that sufficiently enough to conclude that an apartment use considering you could have three or four vehicles per apartment, that use could clearly be more extensive in terms of its parking demand than a rooming housing even if you had one car per room. We are proposing 18 rooms in the 2 buildings, but if you had three or four vehicles per apartment and you had four or five apartments that could be basically be anywhere from 15 to 20 vehicles. Either we are right on par or we just over depending on which criteria you want to use. Again, I looked as well for myself under RSIS which doesn't speak to rooming houses, the Housing & Urban Development material from the Federal Government on rooming houses doesn't speak to parking so there is very little in terms of material or data to guide you with respect to that only what basically the operators are indicating as parking demand. Nevertheless, we have a parking area and there is some parking on the street. My understanding is a lot of the

tavern patrons park on the street, which I know we don't like to count on every occasion, but here I think we have a very unique and unusual situation that the Board can consider. Other than that, I don't believe there would be any other element which would impact the surrounding area with respect to land use planning criteria.

Second prong of the negative criteria is whether or not granting of the variance would result in a substantial impairment to the zone plan. Again, I don't know of any zone plan, to be honest, that speaks to rooming houses, and I have been doing this since 1979.

Rooming houses are not a use that comes into play with a typical zoning drafting; it is only the typical residential uses that you would image like apartments, single family, multi-family. Multi-family typically does not include rooming houses or boarding houses. Here, what you see is what you get. You see a building that is in place. You are getting a residential use which, in my view, is consistent with the B Zone, so there wouldn't be a substantial impairment to the zone plan if the Board would be kind enough to grant the variance. Every Use Variance has some level of impact, but I don't think that the impact here rises to the level of what you might term substantial particularly because apartments are already permitted in the zone and we're simply evolving that use into a different type of residential use.

Thank you very much Mr. Chairman for your time and I appreciate you listening to me and I will be happy to answer any questions.

Attorney Mondello commented that I just handed Attorney Martin a dictate from the Borough Attorney that basically spells out that there is to be a 20% set aside for affordable housing on applications. I guess one can make the argument that rooming houses are affordable housing.

Vice Chairman Grygus questioned in your opinion do they qualify as COAH units?

Attorney Mondello answered I would say no, not unless they're deed restricted.

Chairman Dunning questioned any rental like that is not part of housing?

Planner Ochab commented this is an interesting question. As a rule, I would say no, but in the process of what this use is, they are typically occupied by low income, and in some cases, people just above the poverty level. They would qualify as low income. There is nothing on the COAH level as to dealing with this type of use either. It would have to be a situation where the town would have to petition the court.

Member Henderson commented that since this is a different situation where it is a rooming house wo wouldn't the number of units, or even just the building, be considered affordable?

Vice Chairman Grygus believes every rooming house room would qualify so if you had 4 and 4 in each building you could be looking at 16 units.

Chairman Dunning commented it would be a great help to the Borough's problem with affordable housing.

Attorney Mondello stated it is not that simplistic because, Planner Ochab may or may not agree with me, in order to for it qualify there would have to be a deed restriction for 40 years that it is always to be used as affordable housing. I don't know what the criteria would be for rooming/boarding houses maybe your income level. I may be retired and still have an income of \$100,000, yet it is not that simple. I guess the point is the Board does not want to be remiss in its obligations that are clearly stated in that letter that I gave to Attorney Martin from the Borough Attorney. If the Board were to grant the relief sought

by the applicant, I would be putting in something along those lines that there would have to be some type of compliance, and I don't know what the Borough's Planner would say. Chairman Dunning commented it is a question that we need to address.

Attorney Mondello commented otherwise we will get reprimanded for dealing with the 20% and I don't know how anyone came up with a 20% set aside figure without knowing what applications are, etc.

Chairman Dunning commented that a lot of Boroughs are doing that to protect themselves. Planner Ochab commented that I am doing some work in other municipalities for them and we are currently using 15% as sort of a benchmark until the court figures out where we should be going.

Attorney Mondello questioned do you have any suggestions how the Board is to handle this Planner Ochab?

Planner Ochab answered I think I may need to think about this, but my gut reaction is that I would say, just offhand, a number of units and it might be quite a number of those units would qualify anyway without requirement for set aside. I don't know how you deal with that, but my guess would be that you would get some credits out of them.

Attorney Mondello stated you wouldn't get the credit unless it was deed restricted.

Planner Ochab stated that is a good point, right.

Attorney Mondello stated I am going to reiterate what I just said. If the Board is inclined to grant the relief sought by the applicant, there is going to be a condition. Quite frankly, it is not fair to the applicant but right now I have no idea what the planner is going to say how to fix this.

Attorney Martin stated I certainly would want an opportunity to speak Mr. Agostino more thoroughly about this and research it myself, especially since it doesn't seem to me that the Board will be taking a vote tonight. I just want to be sure that I have an opportunity to speak to Mr. Agostino before any kind of vote.

Vice Chairman Grygus commented I wouldn't see how all 16 wouldn't qualify as COAH somehow.

Attorney Mondello commented this is the problem. The owner doesn't really want to restrict his property for the next 40 years so that only certain people with certain incomes can actually rent from him.

Chairman Dunning commented that the Borough Attorney sent that note out so let him address this a little bit.

Member Ludwig commented anyway we can check with Pompton Lakes since they have a couple of boarding houses?

Chairman Dunning added we have another one right up the street. But all the municipalities have a problem with this COAH housing. Until the court decides where it is going, every town is taking a different avenue to protect themselves. Every application we deal with is the same thing from the Borough Attorney and Mayor & Council, what we are doing with each application? So we have to address it. The other option is a cash payout which will never apply to this.

Planner Ochab commented I don't think so either. I wouldn't even know how to begin to structure that because it is based on value.

Attorney Mondello: Any other questions from Board Members? None

Attorney Mondello: Let's have Attorney Walker do cross examination.

Attorney Walker stated we presently know it is zoned for residential/apartment use, do you have any opinion as to, if it were re-zoned perhaps to rooming house, what effect it would have on the density of the population in the buildings?

Planner Ochab answered the density issue is like comparing apples and oranges. The density with apartments is based on the number of dwelling units, so each apartment would be one dwelling unit and then basically from a planner perspective you calculate the density based on that. A rooming house is based on rooms, not dwelling units. Each room is not the same as a dwelling unit. Maybe a better analysis is by the number of people per building. If you have, as I was trying to say earlier, apartment use there essential very little restriction on the number of people you could have in an apartment use. If the variance is granted here, you have one person per room, so you have four people per floor and that is going to be it because that is regulated by DCA. Whereas, the number of occupants in an apartment is really not regulated, *per se*, other than fire and some other restrictions, but essentially you could have eight or ten people in an apartment without any regulation whatsoever.

Attorney Walker questioned, along the same lines, do you have any opinion as to whether or not the change from residential to rooming house will change the number of adult occupants?

Planner Ochab answered the same would apply here, I think. I'll say in more likelihood would have more adults in a rooming house then you would in an apartment. By the same token, why would you want to have children in this environment where you have a bar on the bottom floor so I would think the adult option would be the more preferred option here notwithstanding the impact it might have on the school system if you have multiple children per apartment.

Attorney Walker questioned is it fair to say that the more adults the more likely it is that there is going to be more automobiles?

Planner Ochab answered no for the same reason I spoke earlier and Engineer Houser did as well that you could have multiple cars per apartment. At least what we know so far through our experience is we don't really have one car per occupant in the rooming house.

Attorney Walker stated I know you had the addressed the parking issue also in terms of the impact on the area. Being that there is, at least based upon the computation, required 27 parking spaces and you propose 12, where do they park?

Planner Ochab answered I don't know if I can answer that question. They park in the parking lot and then after that, as I said earlier, there is parking on Railroad Avenue so they can park on the street to some extent.

Attorney Walker questioned are you aware that there is an ordinance that prohibits parking overnight in the area?

Planner Ochab answered not that I am aware of, but that might be the case.

Attorney Walker stated I guess my question is would that have an impact on the area if there is not sufficient parking for the occupants of the premises?

Planner Ochab answered I would say the real problem is having the parking for the combined set of uses, with the tavern use and the rooming house use. If you have parking prohibited overnight, then the parking basically in the lot would be for the residents of the

building, where the bar patrons would hopefully be gone by some time during the early morning hours.

Attorney Walker commented that might not be the case. Having said that, is there sufficient parking based upon the standard that is being proposed by Engineer Houser right now for the residents?

Planner Ochab stated, if you are doing the calculation according to the standards we use, no, but then again, we've already established that for rooming houses there is no standard in the literature that says if you have a rooming house, here is the number of parking spaces you need.

Attorney Walker stated I guess my concern is and my question is that it will impact the area if there is insufficient parking for the residents of the rooming house. Is that safe to say?

Planner Ochab answered yes, but I don't think we've established that there is insufficient parking for the residents of the rooming house.

Attorney Walker questioned there is a variance being sought for that purpose?

Planner Ochab answered right because we have to look at what the zoning says in terms of parking required. That is why there is a variance.

Attorney Walker: I have nothing further.

Vice Chairman Grygus, wanting a clarification, questioned did you say that the DCA regulation for a rooming house is one person per room?

Planner Ochab answered one person per bedroom.

Vice Chairman Grygus questioned a married couple can't live there?

Planner Ochab answered correct. Of course, on each floor there has to be a kitchen and a bathroom.

Attorney Mondello: Any other questions for Planner Ochab from Board Members?

Hearing none, seeing none, open it to the public. Questions only.

#### Matt Palmieri, 12 Erie Avenue

Would like to ask a question of Mr. Agostino also. Attorney Mondello stated okay.

Mr. Palmieri, questioning Planner Ochab about the low income, discussion wise we don't know how all 16 would not qualify, do you think all 16 units or rooms were classified as low income above the bar, could that have a negative impact on the residents of the Erie Avenue and Railroad Avenue?

Planner Ochab answered what we are talking about here is land use and zoning, so from that perspective, no I don't think there would be an impact with respect to that.

Mr. Palmieri, asking a general question, in terms of rooming houses, are there lease agreements that are like one year long, or how does that work, to keep a transient population out since you said yourself that they fill up as soon as they become available?

Mr. Agostino answered I am not sure what the regulations are for the rooming house, but for my experience the people that have moved in upstairs by me have been there 7 years, 3 years, 5 years and 4 years so there really is nobody moving out once they move in.

Vice Chairman Grygus questioned so they are not under a lease, right?

Mr. Agostino answered no, I don't have a formal lease that they sign. I think I am going to have to if I get zoned for a rooming house. I believe there has to be something in place, but I am not quite sure what it is.

Mr. Palmieri, questioning Mr. Agostino, asked how many people are in your apartments currently?

Mr. Agostino answered over Flip's there has been a professor that has been there for 3 years, an elderly woman that has lived there for 7 years, and an 80 year old man that has been there for about 2 years on the first floor and there are 4 people on the third floor.

Mr. Palmieri stated so really if all 16 rooms, as Planner Ochab said, as soon as they become available they fill up in rooming houses, so you could have more people in your rooming house versus apartments is that correct? The way it is set up right now.

Mr. Agostino answered not if only one person per room would be 4 people for floor.

Mr. Palmieri stated you have 7 people now versus 16.

Mr. Agostino stated I have 7 people on two floors.

Mr. Palmieri stated so you have 14 versus 16 so we could be adding more people.

Mr. Agostino answered I don't know if that is correct.

**Richard Purcella, 13 Erie Avenue**

Can I address this question to Mr. Agostino?

Attorney Mondello commented let us make this the last question for Mr. Agostino. We are trying to focus on Planner Ochab.

Mr. Purcella questioning Mr. Agostino, so as far as you have people living in those apartments right now, how many cars are in those apartments?

Mr. Agostino answered 2 people on the third floor, 2 people on the second floor, which is 4 cars. On the other side, I have 1 car for 4 people. A total of 5 cars.

Mr. Purcella stated I have pictures here that show there are 16.

Attorney Mondello stated that the comment period, you can lay it all out and everyone will listen.

Attorney Mondello: Any other questions for Planner Ochab?

**Dan Huntsinger, 16 Erie Avenue**

So you say that the Business Zone is for Railroad and Ringwood Avenues and the rooming house is currently not allowed there, the whole parking scheme shown for the back that is all on Erie Avenue, how will that be handled because you stated the B Zone is only for Railroad & Ringwood Avenues.

Planner Ochab answered that the B Zone covers that whole area, including Erie Avenue. The entire property is in the B Zone so parking is an accessory use to the buildings that are on Railroad Avenue. So they are all within the same zone and it is all considered together so there is no separation between the two and there is no zoning issue in terms of residential versus business, for instance.

Mr. Huntsinger stated, as part of your proposal as far as the parking went that, in the apartment setup there would be 3 to 4 potential vehicles per apartment. However, the opposite argument was made in his proposal based on the current setup where there are very, very few cars, so that was the opposite argument made to try to justify the rooming house versus the current setup.

Planner Ochab stated I think what we were saying here is that with an apartment use you could have anywhere up to 4 vehicles per apartment, where on the rooming house use, at least the history so far has been you have a 1/2 car per room so you have basically a limitation of , let's say, 9 to 10 cars with the rooming as proposed, whereas hypothetically with the apartment you could have up to 4 vehicles per apartment if you had 4 adults or 2 adults and 2 teenage kids for 6 apartments so that would be 24 cars. You potentially have a lot less vehicles, or parking demands, with the rooming house than you would with the apartments.

Mr. Huntsinger stated I just heard two opposite proposals from the same side.

Planner Ochab stated we are saying the same things but we are coming at from different ends.

Mr. Huntsinger stated it is not the same thing. How will you stop the bar patrons from filling up the lot first if you saying that the lot is going to be reserved for the rooming house patrons because the bar patrons always fill up the lot first, just like when I came here there were nine cars. Also, that is an amazing picture, it looks a football field back there. The lot was completely filled on my way here so that must be namely the bar patrons. How are you going to stop them from parking in the lot when they are accustomed to that? How are you accommodating for the new parking scheme?

Attorney Mondello interjected that my understanding of your testimony, you never said that the parking lot was going to be reserved for residents. You said that hopefully the bar patrons would disperse or leave the parking lot before overnight kicks in.

Planner Ochab stated I was answering a question from Attorney Walker with respect to overnight parking on the street. I didn't actually mean to say or say that the lot would be reserved for the residential patrons.

Attorney Mondello questioned you didn't say that?

Planner Ochab answered no, I did not.

### **Richard Purcella, 13 Erie Avenue**

I have heard how great this rooming house process is. Is there a criteria of who can get into a rooming house?

Attorney Mondello stated that is a great question because I had a very drawn out litigation in Fair Lawn. Typically what happens is it could be the fire department if there is an issue, it could be the construction code official. If it is an issue as to overcrowding, they really are supposed to reach out to the DCA first. It's not 100% white or black, it is somewhat gray.

Mr. Purcella continued what type of individuals are allowed to rent here? In the rooming house that we have at 2 Railroad Avenue now, we have a registered sex offender that is in there. Is there a criteria for this or can the State put anybody they want in there?

Attorney Mondello answered I have no idea what the DCA regulations is. I suspect Planner Ochab has no idea, Attorney Martin has no idea, you can get on the website

tonight and figure that out. We would have no jurisdiction as to say how can or cannot stay there.

Mr. Purcella stated that is what I am trying to find out. The Borough has no input on that whatsoever, so they can put anybody in there they want to; any transients.

Attorney Mondello answered no.

Planner Ochab stated, just so that we can clear that up, I didn't mean to say that the State actually places people, it is Mr. Agostino that places the people in the units.

Mr. Purcella questioned doesn't the State have an option to do so also with Mr. Agostino's consent of course?

Planner Ochab answered I think that only comes into play when there is federal or state money involved in terms of the units, but in this case, it is all private.

Attorney Mondello stated so the answer is no. He has to okay his tenants.

Mr. Purcella commented the Borough in this town has a winter ordinance restricting overnight parking on the street from 1am to 6am. What happens to those individuals are that are supposedly going to be in the resident units and then the bar patrons that usually take up most of the lot as it is now, where are these people going to park?

Attorney Mondello stated my understanding of the testimony is there isn't a problem, or there hasn't been a problem as he has been operating as a rooming house.

Vice Chairman Grygus commented that one of the things that I was going to ask for the next meeting is specifically to request from the Chief of Police a list of parking complaints that they have had on Railroad and Erie Avenues and Villa Place for the last few years.

Could we have the secretary request that?

Attorney Mondello answered sure.

Attorney Mondello: Any other questions for Planner Ochab? Hearing none, seeing none, next witness Attorney Martin.

Attorney Martin stated I have no other witnesses.

Attorney Mondello: Attorney Walker it looks like you can proceed with your case in chief. You have 15 minutes.

Attorney Walker requested if we could put off our case until the next meeting. Attorney Walker's expert agreed in the interest in terms of continuity.

Chairman Dunning stated we can start that off with that the next meeting.

Attorney Martin questioned if there was a possibility we could get some kind of report from this witness before he testifies?

Attorney Mondello questioned if the gentleman was an engineer or planner? Are you going to be submitting a report or anything?

Gentleman answered I can, but I just got the plans a couple of days ago. Quite frankly a lot of the questions that you guys asked were great and they have actually satisfied about 40% of the questions I had having reviewed the plan. But I won't know the answer to them until, just say, we get back to grading and drainage, also where is lighting and landscaping.

Attorney Walker commented that it is his option to prepare one if he wants.

Attorney Mondello stated he is not required to so and the answer is he is not sure.

Attorney Mondello questioned are we carrying this matter until January? Are any of the players changing or are we all still here with the reorganization? So 3 folks are up. The January meeting is Wednesday, January 3, 2018.

Attorney Martin commented that I will need to submit a new site plan 10 business days before January 3<sup>rd</sup>, we have Christmas and New Year's so I am going to request a February date.

Attorney Mondello commented I want the objectors to hear this because there will be no additional notice. February 7<sup>th</sup> is the next meeting and it probably will be concluded so if you have other folks that are interested.

Attorney Walker commented I believe there may be another citizen here this evening who may not be available on February 7<sup>th</sup>.

Attorney Mondello commented we don't care about that. No, it doesn't work that way.

Attorney Martin stated perhaps we can fix that. Mr. Agostino just told me that he is away February 7<sup>th</sup> so is March possible?

Attorney Mondello advised March 7, 2018 is the next meeting for this application.

Vice Chairman Grygus questioned Attorney Martin that his client will agree to any time extensions that are required.

Attorney Martin answered absolutely.

Attorney Mondello commented in 25 years no one has run into court on that basis.

Attorney Mondello again stated the next meeting is March 7<sup>th</sup> and there will be no additional notices sent.

Board requests recess.

Recess 10:18:28

Reconvened 10:24:00

Let the record show that everyone is present that was present before the recess except for Member Henderson who left at 10:17pm

**PUBLIC DISCUSSION:** None

**CORRESPONDENCE:** None

**VOUCHERS:** submitted by Boswell Engineering for Breen's Application in the amount of \$297; and for Serrano' Application in the amount of \$495.

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

**VOUCHERS:** submitted by Ronald Mondello, Esq. for attendance at the December 6, 2016 Meeting in the amount of \$300; and for MKR Enterprises' Application in the amount of \$5,775.

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

**MOTION TO APPROVE NOVEMBER 1, 2017 MINUTES:** made by Member Hoffman, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Hain, Hoffman, Ludwig and Karp. Vice Chairman Grygus not qualified/abstained.

**ENGINEER'S REPORT:** Nothing to report

**DISCUSSION:** None

**MOTION TO ADJOURN AT 10:30 PM:** Motion carried by a voice vote.

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**Jennifer A. Fiorito**  
**Board of Adjustment Secretary**