

REGULAR MEETING

Salute to Flag: 8:03pm

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, Michael Levine, Suzanne Henderson, and Attorney Ronald Mondello and Engineer Christopher Nash

Member David Karp arrived at 8:40pm

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

APPLICANT'S EXHIBIT

**A-18 Colorized Version of SP-2 Sheet of Site Plan prepared by Petry Engineering
Showing Property & Parking revised June 23, 2017 (Poster Board)**

**A-19 Colorized Version of Revised SP-3 Sheet prepared by Petry Engineering Showing
Landscape Plan & Detail Areas revised June 23, 2017 (Poster Board)**

OPPONENT'S EXHIBIT

O-26 SP-2 Sheet revised June 23, 2017 and Prepared & Highlighted by Petry Engineering

Michael Rubin, Esq. of 1330 Hamburg Turnpike, Wayne, NJ, Attorney for the Applicant. The last time we were here, Engineer Nash gave some of his comments as to engineering points on the application and a number of Board Members also gave their comments. We also talked a lot about the prior application that the owner went through several years ago and there was some controversy about what was approved then and as to what is there today and as to what is being proposed now, and the Board ask that we prepare some new exhibits as to exactly what is being proposed at this time and to show what was approved the last time. We had Engineer Petry do quite a bit of work over the last several weeks and on a timely basis, we filed an new plan showing the application which we tried to show all of the issues that the Board and its professionals have raised over the last several months. I filed these myself on a timely basis so the Board and Engineer Nash would have them and Engineer Nash did file a responsive report, which the Board has and Engineer Petry will discuss.

Attorney Rubin's witness, continued from the April Meeting, is J. Michael Petry, P.E. of Petry Engineering, 155 Passaic Avenue, Fairfield, New Jersey. Attorney Mondello did remind Engineer Petry that he remained sworn.

Attorney Rubin stated we will go right to the changes rather than go back into history. Attorney Rubin directed at Engineer Petry stated you heard the testimony over the last several months and you saw some of the exhibits, you have been on the site a number of times, could you tell us what changes were made to the drawing and identify the drawing that has now been filed with the Board for this evening's meeting.

Engineer Petry stated that the plans that are revised and before this Board are dated June 23, 2017. What we tried to do in those plans was to address the comments of the June 7th Boswell letter as the feedback that we received from this Board at the hearing on June 7th. I think the best thing for me to do, rather than regurgitate everything I discussed last month, is to highlight the changes of what is on the plans that are before you this evening.

Engineer Petry continued what I can tell you, at Attorney Fernicola's request, we've ensured we listed the variances on the title sheet in our Site Data Chart that are required as part of this application. They include a parking variance for 37 spaces required versus 31 spaces provided on site. A variance for parking in the front yard for 2 spaces in the smaller front lot and an aisle width variance for 2 existing spaces and 1 proposed space; where the aisle width requirement is 25' and 1 of the existing spaces and 1 of the proposed spaces has 24-1/2', and the 2nd proposed space has 23'. Those dimensions are shown on the revised SP-2, which is marked as Exhibit A-18-Colorized Poster Board Site Plan SP-2 in the set that is before you, revised to June 23, 2017. This plan depicts the site plan and parking layout and the dimensions I referred to are shown on the Parking Layout on the sheet to the right.

One of the things that this plan shows is what we are proposing to do with all the parking in the proposed condition. As a response to the Board's comments, we restriped the smaller lot in the front to ensure that the first parking space is outside of the right-of-way line.

SP-2, in the parking layout sheet, is a little bit bigger scale and easier to read, shows what we have done in that front lot. In essence what we have done, in addition to restriping the lot, we have set a 25' wide drive aisle off of the existing bollard that is there to protect the air conditioning unit. We go 25' from there and show a 20' deep stall and from that point towards the property line we take out the pavement in what is shown in dark gray and the triangular shape, and we take out the pavement along the right-of-way as well.

The first space would start 5-1/2' off of the right-of-way line, and the spaces are striped so that the last space backing up provides, at the barest of minimums, a 3' swing for the car before it would impact the garage. The space closest to the garage has ample room to back out, swing his tail and get out of that space without impacting the garage or any of the buildings. That is based upon our design. Additionally, this sheet (SP-2) also shows that we are removing the portion of the driveway that is on existing Lot 2 (the property located to our right) and we are re-constructing the driveway, as was originally proposed on the plan as was shown in 2005. So we will have a 15.2' wide driveway at the throat; it will be 16' at the bottom of the stairs; and a new curb will be placed in that location to ensure that the driveway is completely founded within the subject property.

The parallel parking spaces that were proposed and were commented on by Engineer Nash have been eliminated from this plan. We have completely and totally eliminated the parallel parking spaces, which is how we have dropped down to 31 spaces on site.

We did add the additional handicap space that Engineer Nash indicated was required. We agreed at the meeting that it was required and we incorporated that space in the rear at the access point to the outdoor seating area. From this Board's comments, we established a new access route to that area that is ADA compliant. It is not a ramp; it has sufficient grade so that it can be a walkway so no guardrails, no curbs necessary. It is a walkway that traverses from the loading area of the handicap space, parallel to the curb, and up to the front left round corner where the chiminea is today with the chairs around it. That area will be finished in pavers and a connecting walkway would be provided to the new bar area, which remains relocated as I described at the last meeting. The seating area and the bar area would be ADA compliant and accessible and they would be accessible directly from the additional handicap stall that has been shown on the plans.

The entire lot has been called to be restriped so that all of the spaces are striped 9x20 as what was approved in 2005. The backups where they are critical have been shown on this plan and those critical points come literally at the spaces that are along the frontage of the existing bar closest to the entrance to the apartment on the second floor. There is a space next to the handicap that is greater than 25' backup; it is labeled as 25.2' and we actually field measured these. The next space, which we have labeled EA (Existing Space A), has a 24-1/2' backup. EB (Existing Space B) has a 23' backup and PC (Proposed Space C) has a 24-1/2' backup. Those are the 3 spaces, 2 existing and 1 proposed, that are non-compliant with your 20' depth and 25' backup requirement. There are all short of the 25' backup requirement.

In addition, we have included on SP-3, which has been marked as Exhibit A-19, is a landscape plan and a detailed drawing. On the left side, the landscape plan shows the proposed landscaping that we had suggested for this property. At the front lot we have called 10 green mountain boxwoods that will be installed at 30" height at planting that will line the existing driveway. We had discussions about the driveway and about the property line and what the applicant has agreed to do in this plan is to remove pavement so that

there is sufficient area there to install these boxwoods and they will be installed along the existing driveway so that driveway doesn't have to be relocated. In addition, we have called for 26 blue hollies, girl and boy hollies, along the property to our left, Lot 4, and those hollies start where the existing deciduous trees and they run along the side of the parking lot, along the side of the proposed bar and all the way up to a point opposite where the main seating area ends. The 37 blue boy/girl hollies along the common line with Lot 2 will replace the area that is now servicing as a herb garden. These will be planted between the curb line and the existing fence line, which was established at the last hearing, does belong to the owner of Lot 2, and those 37 hollies will screen the property that is serving as the parking lot from the adjacent residence. These hollies are deer resistant and they will grow to 8' in height and 3' in width and will be a very dense hedge between both properties and the subject property. You can probably buy them up to 4' in height at planting, from the top of the ball.

Vice Chairman Grygus questioned, on the northeast corner of the property, where you said 10 green mountain boxwoods, your drawing SP-3 actually says 17. It is 10 or 17? Member Covelli also counted 17 circles.

Engineer Petry stated the boxwoods grow to about 3' to 5' in height and about 30" in diameter. Since we are covering 6 parking spaces, 17 is probably correct.

Member Covelli stated, on the right-hand side of the property, westerly side, you are relocating the curb line to be within the property line to correct the defect that exists.

Engineer Petry answered yes.

Member Covelli stated but on the left side, the easterly side, the boxwood side, I thought we established at the last meeting that, in fact, that driveway is on the applicant's property unless we can prove that a piano was sufficient to serve as barter for a piece of land.

Engineer Petry stated the driveway has not been relocated. The shrubbery is planted on the applicant's property outside of the existing driveway in an area where we have taken out pavement on our property.

Member Hoffman stated it will be if approved. It is not done now.

Engineer Petry stated no obviously, it has not been done. Nothing will be done until approvals are received and that pavement would need to be removed in order to plan those shrubs along the driveway.

Engineer Petry continued that we also performed an investigation of the existing drainage system because there was some confusion as to what was built versus what was actually approved. We compiled a drainage study, which we submitted to the Board, and in that drainage study what we established was that, while the drainage that was constructed is different than what was approved, it has virtually the same capacity within a very small margin of error. There was one proposed drywell system that was supposed to be constructed that was 10x20 and it was located in the general area of the rear portion of the parking lot just to the right of the door to the restaurant if one was facing the front of the restaurant. There is a drywell that is there today. We measured the depth of that drywell and measured the size of the tank from that drywell and we did for the other three drywells that are on site as well. There are two more drywells within that same parking lot; one about 1/2 way between that drywell and the house and then one out towards the right-of-way line which is the lowest drywell in the system. Those drywells are inter-connected by

an overflow pipe and there is no overflow pipe out of the system in the front. In fact, if the system were to fill up, that is the point at which it overflows by bubbling out of the lowest grate and into the street. In addition, there is an inlet that is serving as a drywell in the smaller parking lot to the left of the building. We actually all of the same information of that and it has roof leaders that are connected to it as well. The pipe runs down between the curb and the fence line is a pipe that all of the overflows from these systems connect into and that pipe connects into the front system. The pipe drains the rear area, which includes an off-site swale that comes from the adjacent property, comes down along the property line and it drains the area going up from this property to the south, which is fairly substantial. That pipe traverses the site and also connects into the same drainage system. What we found was that the system has, within reason, the same volume as the system that was designed even though it is set in four separate systems.

As the Board pointed out, there was additional impervious that was installed. I had a conversation with Engineer Nash to try to determine what I thought was the best way to do it. I suggested that we use a straight line approach and that is what my study shows that we did. Basically, what we established was, there was this much volume, the proposed system could hold this many pockets of water, cubic feet is what we measure it in as engineers, and there was much increase in the impervious. Because we increased it by more, we had to add more detention. Using that method, we established and proposed a detention basin in the back portion where this pipe starts and we do that by constructing an outlet structure and a berm with a short wall along the right side of the property that allows the existing swale from the adjacent property to drain directly into the pipe undetained, but the over land flow that is coming through the subject property would be captured in a basin that has an orifice in it and an outlet structure. That orifice would allow that basin to fill up and provide 1850 cubic feet of storage in a storm. Doing a straight line evaluation that is about 325 cubic feet more than would have needed to have been provided in 2005 had the same approach been taken.

In Engineer Nash's review letter, he suggested that we maybe take a different approach and evaluate this based upon the municipal ordinance. This weekend, I went through the municipal ordinance and it basically tells me that, unless I am increasing impervious by more than an acre, I don't need to provide detention; I don't need to do anything. Even if you combine 2005 and today, we are not increasing impervious by even ¼ of an acre, it is actually .2122 or something like that. The increase in impervious, even combining what was built, what is proposed and what was done in 2005, would not drive the detention requirement on this property, based upon your ordinance.

The practical person says that is all well and good, but then why do you propose a detention basin. Because we know this area has an issue, we know this is the low point in the area, and we know it has propensity towards storm water issues. So when there is that type of problem, we need to do something about it and as engineers we do it. We have incorporated this and, in my opinion, as we come around to talk about variances and proofs for those variances, which you are going to hear is, that is one of our proofs. We are providing a benefit to the surrounding neighborhood by virtue of establishing additional flood storage, even more than would have been required by 2005 standards, which by the way had the same ordinance back in 1988. We are going to provide a benefit to this neighborhood by providing an additional flood storage on this property that is going to benefit those, not on this property, but all the surrounding properties.

Vice Chairman Grygus commented so essentially then, what you are saying is that, the borough ordinance does not apply to any lot that is under an acre, which seems crazy. Engineer Petry stated that is absolutely correct. The State standard actually was adopted in 2007 and strongly encouraged municipalities to adopt that same standard. That standard said if you increase more than a ¼ of acre of impervious or if you disturb more than an acre of land, you have to meet the reduction standards. If you are within a deep flood zone, you have to meet that regardless of what your ordinance says. Wanaque, since they already had an adopted ordinance for storm water, chose not to mimic the state ordinance. I will point out that, even if we did apply the state ordinance, we are still a little bit under .228 acres of new impervious and we certainly didn't disturb more than an acre of land, we still wouldn't be subjective even under the state ordinance to a detention requirement.

Engineer Nash stated Engineer Petry and I spoke several times over the past month and I do agree with what he said. If you look in my most current letter, the bottom of page 3, there is a discussion on meeting the DEP requirements. The stormwater management ordinance that the Borough adopted is the model ordinance from the State. They are required to adopt it. It was a mandate; there wasn't really an option, and it was for, what is called "major projects" and this is not a major project and doesn't fit the definition of it. You have to either add more than a ¼ of impervious coverage or disturb more than an acre. Since the property is virtually an acre, and we are not disturbing all of it, so it doesn't meet that criteria. It is also less than a ¼ of impervious. They are not bound by that ordinance like other properties, i.e., the property that is under construction for instance that 36 unit development, that was disturbing more than an acre and adding more than a ¼ of impervious so that had to meet strict detention requirements. This does not. Since I wrote this letter, I have had discussions with Engineer Petry and I am backing off from what I am saying on the bottom of page 3, top of page 4. I am back to agreeing with the methodology used here. I would also like to hear from Attorney Fernicola's client if there has been any drainage issues over the years.

Attorney Fernicola responded that yes, they do have a drainage problem on their property. Engineer Nash stated I haven't heard it yet and I will be curious to hear what it is.

Member Covelli, just as a summary, we have actually not changed anything on the property with respect to the systems that were installed. But what is there, exceeds what is required.

Engineer Petry stated yes, and we have added another system in the rear. We have added a surface basin in the rear, which has not been constructed yet.

Engineer Petry continued with, at the Board's request, we also performed a code analysis of the bathrooms at the subject facilities. The limiting factor in this instance is the men's room, which has one water closet and one urinal. Believe it or not, there are different standards for restaurants and bathrooms. Based upon that limitation, if we were considered solely a tavern, we could have up to 132 people (staff and patrons); as a restaurant we can have 400 people (staff and patrons), with the basement facilities that exist today. Even considered solely a tavern, and not a restaurant, we would have the ability to have 132 people (staff and patrons) at the site.

Finally, we performed an evaluation of the potential for on-street parking on Park Street. We included that as a separate sheet outside of our set because it is not (a) our intention to build it; and (b) nor do we have the ability to build it because it is in the municipal right-of-way. Park Street has a 33' wide right-of-way and currently has approximately 24' of parkway (the paved area). In order to park on a parkway, it needs to be 28' wide that provides for an 8' parking lane and 2 – 10' drive lanes and that is considered acceptable under RSIS standards. To construct that at this location, we would have to expand the pavement along the Berta's frontage all the way to the right-of-way line. In doing that as Engineer Nash points out in his letter, and we agree, you couldn't build that and not get some sort of an easement from Berta's, whether it be for temporary grading, temporary access, but from a more practical perspective as a designer, build a sidewalk, if you are going to have people parked. There is a sidewalk that comes down from the adjacent property down to the wall, that sidewalk could be extended along the wall, as is shown on our plan, but in order connect that walkway to the 7 parking spaces that we show on our plan, one would need to get either an easement for that sidewalk onto Berta's property or a dedication from Berta's. There is an ability on Park Street to accommodate 7 public spaces within the street, safely removed from the intersection and with the properties from Berta's, connect those with a sidewalk through to at least the adjacent property next to us. It is an opportunity that is available to the municipality. It is obviously not available to this applicant, but it would have a service to the community.

Member Covelli questioned, if 7 spaces are available on the Borough right-of-way, is it safe to say that the wall falls on the Berta's property line?

Engineer Petry answered it is within reason at property line, yes?

Member Covelli questioned why does Berta have to provide an easement to a Borough right-of-way?

Engineer Petry answered they don't. What my suggestion is in the plan that we submitted, and you can see it on Exhibit A-11 (loose sheet with packet), which has already been marked into evidence, there is a sidewalk that runs down and pretty much stops at that wall.

Chairman Dunning questioned if there is parking allowed on both sides of the street?

Engineer Petry answered that there is no signage that suggests otherwise. But the paved parkway itself is not sufficiently wide enough for parking on that street, per RSIS standards.

Member Covelli stated I am sure the property owners think that they own up to the last blade of grass before it gets to the street, not recognizing that the Borough has the right-of-way.

Engineer Petry stated probably and correct.

Member Covelli stated you said the right-of-way is 33' and the street is 28'.

Engineer Petry stated it varies because there are no curves.

Member Covelli questioned if the street was in the center of the right-of-way.

Engineer Petry stated it is slightly off centered as it gets to the intersection. It is a little bit off centered maybe by a foot. At the intersection of Grove, it is more towards the northerly side, the opposite side of the street. It is favoring by a foot and as it gets closer to us it probably favors the south side by a foot. It wiggles; it wiggles down the road.

Member Levine questioned since Tree Tavern can't commit to any of this and the Borough has to, why are we considering this?

Engineer Petry answered you are not considering it. I was asked to evaluate it by one of the Board Members. So what we did was took the time to evaluate and determine what could fit if the Borough were to look at it, and that is exactly the way submitted it. I think I said in my cover letter that it is not our intention to construct it, but we were asked to evaluate it and I didn't want to walk it and hear we didn't do what we asked of you.

Member Covelli questioned why can't it be considered, considering the last applicant we asked them to approach other public property owners for an easement for the exit of their apartment complex and, in this case, why can't this as a Borough right-of-way be approached as an offsite improvement for parking?

Engineer Petry answered it certainly could be.

Member Covelli stated that is what I wanted you to answer because you almost gave the answer to Member Levine as if it can't be considered. It can be considered.

Member Henderson questioned who would pay for it?

Member Covelli answered the applicant.

Member Henderson questioned then you are cutting back on residents' property?

Member Covelli stated no, you are reclaiming currently underutilized right-of-way that is lying foul at this point.

Member Hoffman stated you couldn't say that offsite parking would be only used by the applicant because it would be public parking for anyone.

Member Covelli stated it is not dedicated to the applicant, but it provides additional capacity in the area.

Member Hoffman stated if it was available in the area, it would be available to anyone and any resident to use. It would be lost at his expense.

Attorney Rubin stated that is correct, but at the applicant's expense.

Member Covelli doesn't see it that way. I see it as there is a certain capacity for parking on Park Street between Grove and pick a place as your delineation. I am sure every neighbor in that neighborhood, including Tree Tavern, has visitors and they park in front of someone's house. If I lived on that street and I can't park in front of my house, because someone is visiting Tree Tavern and legally parking in front of my house because it is the town's right-of-way of which anyone can utilize, that takes a potential spot away from me, okay then I will go park in front of the Berta spot. It adds capacity to a situation that has a finite number of places. So I don't personally think it should be thrown off the table. It is controllable by the applicant if the Borough were to give the applicant the permission to make the improvement.

Member Levine stated it is not dedicated to the applicant.

Engineer Petry stated that is correct.

Member Henderson stated it is benefiting one resident or occupant on that street while the other residents, although I know the town has the right of taking a certain amount of the property from each resident.

Member Covelli stated no, the town is not taking anyone's property.

Member Hoffman stated it is the town's property that the residents are using it unknowing that it belongs to the town.

Member Levine stated that is the point. Anybody can park.

Member Covelli, as it exists, there are natural barriers to the use of that right-of-way for parking as we speak. The area is not clean.

Engineer Petry answered correct.

Member Covelli stated, for example, the property owner to the east of the applicant has lawn in front of their house, which in fact means the that the right-of-way of the municipality is actually lawn in front of that property. I could pull right in, park on the lawn, get out and visit anyone in that neighborhood I so chose.

Engineer Petry stated that is correct.

Member Covelli stated, to your point, there is no sign that says I can't park here at this time, or parking prohibited or the like. However, if I pulled up there today, and parked in front of the Borough's right-of-way for that street in front of the Berta property, I would either hit rocks or debris or mailbox of whatever else is there. There is a need and capacity of the applicant and capacity on the street. That is my only point.

Engineer Petry stated that is correct, and there is a need.

Member Karp arrived at 8:40pm

Attorney Rubin, questioning Engineer Petry, in the first proposal we had, we suggested parking at the Berta Chateau parking lot. That has been withdrawn.

Engineer Petry answered yes it has.

Attorney Rubin stated so there is no parking in this plan that is before the Board this evening to park on Berta's property as such as was in the first plan that was submitted.

Engineer Petry answered that is correct.

Attorney Rubin, in your professional opinion, you have shown a number of issues relating to bulk type variances and will any of those bulk type variances, if implemented, be detrimental to anyone in the neighborhood or the community at large?

Engineer Petry answered, while I haven't gotten into my planning testimony yet, I do not believe that they will be.

Attorney Rubin reiterated there is nothing detriment that we are doing that is going to hurt anyone in this neighborhood.

Engineer Petry answered actually I think we are doing things that would actually improve the conditions of the neighborhood.

Attorney Rubin stated there is planning testimony that you are also going to render and we might as well do everything at the present time because this is our chance to put everything on the record. If you do have some issues regarding the variances that are being suggested and also the site plan, and this is a site plan that is now on the table, could you please advise the Board as to your professional opinion as to the variances that are being requested.

Engineer Petry continued that the property is in an R-15 Zone, the existing restaurant and bar is clearly a pre-existing, non-conforming use at this property. It was granted at least one use variance for expansion in 2005. As an expansion, the Municipal Land Use Law criteria for this application would require the applicant to seek a D-2 Variance, expansion of a pre-existing, non-conforming use under the D-2 criteria. I offer that this Board recognized the fact that there has been a historical outdoor use of this property for service of food and alcohol and our goal here this evening is to establish exacting what is a reasonable expansion of that use.

While nobody could put an actual number on the amount of people who utilized the facility or the amount of times that the facility was used, I was struck at the December 7th meeting by one person's testimony specifically, Mr. Redner, who indicated that the property was regularly used by a private club aptly named 39 Boys & Gates because it had 39 members plus Mr. Gates; 40 people. If this club gathered at one time as a group outside, as they said they did regularly, we know that at least with that group there were 40 people utilizing the outside. What we have presented to this Board is a plan that depicts seating outside for 50 people, reduced from the 99 that exists today, and existed when this facility was operating illegally perhaps two years ago. The 50 seats are established in specifically designated areas on the plan and they are shown on the site plan on SP-2. There are stools and high-top tables at the bar area, there is an area designated for tables with chairs, there is an area under the existing canopy with a table and four chairs. The total outside seating is 50. This plan also shows, as the Board requested, all of the seats that are to be removed, so that it is very clear where people will be at the bar area, relocated 10' from the property line, in the seating area, which is shown on the survey as the gravel picnic area, and in the patio which has an existing canopy over it today.

I note for the record that the R-15 Zone anticipated outdoor seating and recreational uses as part of the zoning requirements set forth under 114-9, the R-15 District. In fact, it specifically lists pools, fireplaces, etc. as permitted accessory uses within this residential zone. Clearly, the zoning for this property anticipates that the residents and their guests will be utilizing outdoor areas in all properties in this neighborhood for the use of pools, parties and recreation. None of that necessarily means that one is anticipating a commercial facility in those same types of utilization. However, what happens in a residential area can be anticipated to include outdoor gatherings on a regular basis in nicer weather. The plan is clearly utilized seasonally. The Board can set reasonable limits as to what that season is and what times the outdoor utilization can take place. What the applicant has proposed, because he has 50 seats outside and 66 seats inside, is that we derive our maximum capacity based upon the maximum parking that we have provided. We have 31 spaces; 4 spaces of which are required for the residents. There are 3-1/2 spaces that are required for our employees and that leaves the balance of the spaces times 27 gets us to 94 guests at property. We would accept the condition, if this Board were to grant the approval, that we would have no more than 94 patrons on the site. Currently, this type of condition already exists because the restaurant has a sign inside of maximum occupancy sign of 70 guests. That is all that is allowed inside the building and it doesn't matter how many seats there are, we are only allowed to have 70 people inside the building. That is policed by police, health and fire subcode. Similarly, the overall facility can be evaluated in the same criteria. If there are 50 patrons utilizing the outside, only 44 patrons will be allowed inside and that is probably not an unreasonable restriction because that'll probably never happen. From a practical perspective, if it is a nice night and people are outside, there are going to be a lot less people inside. There are those who don't ever want to eat out, and there are those who don't ever want to be outside, but in the nicer weather, people would prefer out rather than in. While we still have applied for the parking variance, we believe that this is a reasonable condition that will go along with the parking variance that would establish a limitation on the property that would forever hold the maximum occupancy on the site.

The D-2 criteria requires that the applicant prove that special reasons exist for the expansion and that the negative criteria be met. The Land Use Law suggests that limited expansions of pre-existing, non-conforming uses can be considered by the Board with purely aesthetic consideration only. If the Board felt we were making visual improvements to the property by virtual of separation, by virtue of aesthetic improvements and cleaning up the site as it has been cleaned up, the *Burbidge* case said that is enough. *Burbidge v. Mine Hill*, the applicant sought the approval of the board to expand the pre-existing junk yard within a residential zone and they relied heavily on the fact that they were relocating and containing areas and providing visual screening to those areas and improvements to those areas and that was sufficient reason by court order to create the expansion of that pre-existing, non-conforming use. The Board needs to understand that such conditions can be made to ensure that the neighborhood is properly protected. I suggest that this is such a case. The applicant has made improvements already to the rear of this property, albeit without Board approval, that have dramatically improved aesthetic appearance of the rear of the property. You cannot deny walking in and walking to the back of his property that it is a beautiful site. It has first rate furniture, well-manicured and well maintained and it has been improved for a use that fits at this particular location. In addition, this proposal adds landscape screening that will improve, not only what was proposed in 2005 and not constructed, but will can ultimately be maintained at this property because what is being proposed here is evergreen, deer resistant, not subjected to the types of wind and snow loads that arborvitae would be and includes plantings in areas that were lightly, if planted at all at the time the original approval was granted.

The second reason that I would offer is that the proposed parking improvements creating additional parking on this property will alleviate the need for on-street parking. The discussion has been that there are people that are parking up and down Park Street to go to this facility and by creating 31 spaces as shown on this plan, and limiting our maximum occupancy by patrons to 94, we believe that we would have the ability to contain our parking for our patrons on site and free-up the paved area along the Park Street right-of-way; thereby creating for a free flow of traffic which is another use identified under the Land Use Law.

Finally, as indicated we have included a surface detention basin in the back portion of the property and that surface detention basin, while not impacting the off-site property which drains to the common property line, it will contain an area and provide for storage in storms and that storage is over and above what is required regardless of what criteria you apply. If you apply the straight line criteria that was utilized in 2005 as we did in our study that says that we are still providing 325 cubic feet more than what would have been necessary. If you apply your current ordinance, we are providing 1800 cubic feet of storage more than what is necessary. Either way, we are improving what is a difficult drainage condition within this area and that system protects from flood which is Section B under the Municipal Land Use Law as a separate and apart special reason. None of the special reasons apply solely to this property; they apply to the community in general. The detention basin services a global need within the neighborhood. The aesthetic improvements service the neighbors, not this property. The parking servicing the free flow of traffic services the neighbors and not this property. Again, I will refer back to *Burbidge* where it says "when a non-conforming use cannot be eliminated, a municipality may and should seek to harmonize the use within its environments. To this end, the municipality

ought to require aesthetic improvement as a condition of any expansion.” While we already have a privacy fence, we improved that condition by adding landscaping. We improved that condition by screening by eliminating pavement and by adding parking on the site.

The application also has several C Variances; one of which is for parking. I stated a condition that the applicant is going to accept with regards to parking and it is literally called for on the plans, that a maximum patron occupancy of 94 will be accepted at the property. Utilizing that condition, the site would have conforming parking, but that is not how your ordinance counts parking. So regardless of the fact that we are willing to accept a condition, we have to seek the variance. In my opinion, the variance can be granted under the C-2 criteria. The property has plenty of space to expand parking. There is lots of area in the back where we could push this all back, we could construct more parking and we could get to the 37 spaces and we could still probably not need to build a detention. I’ve done any number of restaurants in the 35 years that I have been doing this, and the facility of the restaurant is driven by the kitchen. How big is your kitchen, is how many people you can serve. When you are a combination a bar and restaurant, you have the ability to push that number a little bit further and this is certainly it. At 94 patrons on the site, this facility would be at capacity. We believe that with 94 patrons, we have ample parking and we believe that the C-2 is justified to this specific instance because the granting of the C-2 and not requiring additional paving and additional stormwater runoff when it is not necessary, it is appropriate. I will further that by the fact that the owners of this facility, who live in the two residential structures that are on the property, work at the facility. Yet your ordinance requires us to count residents and employees, so we are in essence double counting spaces for people who both live and work there. We believe that there is two levels of safety built into this parking variance and we believe that with those criteria in place that the C-2 is appropriate for parking at this location. I believe that not paving the additional land for parking and allowing the flexibility of seats that have been described, indoor and outdoor during peak usage periods in nice weather because there is a lot of overlap going on here, is sufficient to outweigh the detriment of not paving parking for 116 seats when it is impractical to use all 116 seats at one time.

Attorney Rubin questioned if you could also comment regarding the additional landscaping as an attribute of the new plan.

Engineer Petry stated the additional landscaping goes to the aesthetic improvement that we put forth. That is one of the special reasons for the Use Variance itself. It is not only the improvements that have been made to the rear but it is also the landscaping improvements that provide appropriate screening for this location to the adjacent property owners. That is one of the special reasons under the Municipal Land Use Law.

Engineer Petry continued the restriping of the spaces in the front parking lot has been outlined in Engineer Nash’s previous letter as an variance for parking within the front yard. As I put forth in my letter, I don’t necessarily agree because the criteria that is being applied there is that of a commercial zone. It is actually specific for a commercial zone. I understand Engineer Nash’s thinking because it is commercial use, but it is not a commercial zone and I don’t believe it applies. However, I am not going to argue with the Board and am going to put on the proofs for the variance. First and foremost, the

previously approved parking plan that was granted in 2005 had 2 spaces that were located within that same front yard. There was a variance sought for those 2 spaces, but those 2 spaces did exist on the plan and that plan sheet is in our set so that you can look at it if you want. Parts of the first 2 spaces are located within the same front yard as the first 2 spaces were. While I believe that if the Board interprets the variance is required, I would offer that the plan is not dramatically different than the plan that was previously approved by this Board. That the aesthetic impact of those spaces is no different than the plan that was previously approved by this Board. In this particular area, where we're parking forward of homes happens on a regular basis in residential areas in driveways, but having parking that is forward of the building is not out of character with this particular neighborhood and, therefore, I believe this variance, if it is deemed necessary, can be granted under a C-2 criteria as well.

Member Levine questioned if you can explain when parking spots are being used, what is the egress or ingress of fire trucks when called on? How will the trucks get in and out of the property?

Engineer Petry answered the fire access is the same as it today, same as it was in 2005. There is a 25' wide driveway that is unrestricted in the existing small lot to the left of the house that is a two-way driveway and there is no parking in that driveway obviously that there are 20' deep stalls there. The existing driveway necks down to approximately 17' now. It was designed as 15' at the throat in the previous plan and it is exactly what we called for on the plan so the existing access for fire is not unchanged by this plan. The drive aisle width is at least 23' at its narrowest point in the rear if the spaces are 24.

Member Levine questioned if the fire vehicle goes in, how does it get out, back out or turnaround?

Engineer Petry answered I did not do a k-turn for the rear portion of the lot. In my opinion if this building is on fire they are probably not going to pull a fire truck into the back parking lot. I think they would hook up to a hydrant on the street and pull a hose back there because you are not going to put a \$1.2 million piece of equipment that close to a burning building.

Engineer Petry continued finally with the backup of the 3 spaces, 2 existing and 1 proposed, is a variance. Your ordinance requires 20' deep spaces and a 25' drive aisle. 2 of the existing spaces have 23' and 24-1/2' respectively and the 1 proposed space as 24-1/2' respectively from the rear of the 20' parking stall. I can tell that my opinion, and based upon ULI Standards, a single bay drive aisle, with parking on one side and a drive aisle that services two-way traffic, the standard for a large car is 42'. If you are parking between two buildings it goes to about 42'.7". What we have in our tightest condition is 43' and it is from curb-to-curb. We meet what is considered what is considered industry standard despite the fact that we don't meet your ordinance. In fact, we exceed industry standard, despite the fact that we don't meet your ordinance. The numbers I just gave you 42' and 42'.7" for what is called a modular width that is from the nose of the parking space to the opposite area backup the 42' and 42'.7" is for an 8-1/2' wide space. The wider the space, the less backup area you need because you can start your swing earlier in a wider space. All of these spaces are 9' wide. It is a standard that you may want to look at as you review your ordinance moving forward. It's probably what the industry sees as necessary.

In my opinion, from an engineering perspective, the backup that is proposed for these 3 spaces is in excess of industry standard and is more than what is required. In fact the 2 spaces that have the worst condition, are spaces that have been in operation since 2005 and continue to function adequately since 2005 and while that is not proof on its own, it is in my opinion a proof of what is there actually works. The spaces could be increased by a relocation of the curb further away from the building and closer to the property line of Lot 2 by about 2' and while that can be done, I don't believe that that is necessary in order to facilitate the parking at this location. Therefore, I believe that it would be appropriate to grant the variance to leave the additional spaces supplemental area for screening between this property and the adjacent property. I believe that the benefit of that variance under the C-2 criteria is strictly to the benefit of the adjacent property owner not to this property. I believe from that perspective the C-2 provides a benefit for the backup to the adjacent property owner.

With regard to the Negative Criteria, I believe that this site does represent an appropriate location for this specific use based upon the activity and the history of this site over several decades. I offer that the conditions that the applicant has implemented in these plans and those I have incorporated, not only on the plans as set forth in my testimony as reasonable conditions, will create what is a sensitivity factor for this property in this neighborhood and with your zoning ordinance. With those implemented I believe the expansion will not pose any substantial detriment to the public good, nor will it impose any impairment to your zone plan and zoning ordinance. Again, quoting the *Burbidge* case, "the municipality's ability to insist on specific changes as part of an expansion safeguards the general welfare." This statement specifically enables your ability to protect both aspects of the Negative Criteria when dealing with a minor expansion of an existing, non-conforming use. In my opinion, the Board has an opportunity here. That opportunity is to set forth conditions that will forever govern the outdoor use that has historically existed at this facility and those conditions will provide the protections set forth in the Municipal Land Use Law for the Negative Criteria. I believe what I have outlined would be appropriate, would be reasonable and would be acceptable to the applicant and I ask that this Board act appropriately and grant the expansion that has been requested.

Vice Chairman Grygus commented that when you made the reference to the testimony by Mr. Redner at that time I am sure Polly's did not have a capacity of 66 additional people so I think you are comparing apples to oranges there.

You said that, although you were not required to detain or handle more stormwater on the site, you are proposing to handle more stormwater on the site than you are required because you understand that a problem exists in the neighborhood. My comment to that would be I think the same exists with the parking. We have had testimony here from people that the parking has been an issue there, so even though you're proposing to come up to what the ordinance calls for, and actually you are under it, I believe that even at ordinance there is an issue. To expect that four people are going to show up in every single car that comes at capacity is unrealistic.

My question to you would be, understanding that occupancy is enforced by the fire code official, who is a part-time worker, whose is really very rarely going to come out unannounced and if he does it is going to be based upon a prior complaint, how is that enforceable by the applicant? First of all, how does he know as people come and go that he

has 94 people and, if he does, is he going to turn people away? I just see it as something that is unenforceable.

Engineer Petry answered that you would have to ask the same question as to the 70 that are in the facility at the same time now. It is an obligation that a property owner has to meet the requirements that are set forth. In this instance, there is a requirement set forth by the fire official that says you can't have more than 70 people in this building. I don't care if they are patrons or employees, 70 is the maximum you are allowed to have. If there were a problem at the facility, and there over capacity, that would be a burden on the applicant. The applicant would be the person responsible; the owner of the facility has that responsibility at all times. If police were called to the facility for some reason, and they were over occupancy, then that is the owner's responsibility and the owner would be fined accordingly.

Attorney Rubin commented something that really goes beyond Municipal Land Use Law and municipal ordinances and that is the marketplace. If the site is filled, you can't get another car in and a patron comes up, he is not going to fight; that patron is lost to this business because they are just going to keep on going and they are not going to fight any traffic. They are gone; they are leaving and that is what happens in real life.

Vice Chairman Grygus stated they can go park on the street like they did before. We had testimony here from people that it was a nightmare at times.

Attorney Rubin commented they are not going to be parking blocks away. People just don't do that.

Vice Chairman Grygus stated they are going to be parking on Park Street, which we had testimony earlier that this has been an issue.

Attorney Rubin agreed that no one wants a car that they don't know in front of their house and that is suburbia.

Member Ludwig stated you were saying based on the parking available on site as to how many people are allowed.

Attorney Rubin stated people are not going to come here. Also the second point, in the same vein, is the kitchen can't handle a lot of people. It is a small kitchen. I assume most of you have either visited the site or looked at it at an official visitation to look at during the number of months the application has been before the Board, you can't have this kitchen that is on this site handle great amounts of people; it just doesn't work. They can't feed people on huge amounts. It is the marketplace that is going to dictate what happens on the site. This is a small modest restaurant facility and it has been for years and we are not changing it. It will always be a small modest place and it is never going to have huge crowds because it can't. The kitchen can't handle it. The parking can't handle it. The seating can't handle it. It is just isn't going to happen. Most respectfully, we've gone through a lot of testimony and Engineer Petry has really spent a tremendous amount of time, but some things really go beyond the law. You just aren't going to have huge amounts of people at this site. The site just doesn't warrant it. All of you that have seen the site, you have all been there, you have seen what the kitchen looks like I assume, you've seen what the backyard looks like and you can't fit a lot of people there.

Attorney Fernicola, addressing Attorney Mondello, commented that this is a closing argument.

Vice Chairman Grygus, with all due respect, if it worked we wouldn't be here.

Board requests recess.

Recess 9:21:43

Reconvened 9:30:27

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

Chairman Dunning has questions for Engineer Petry.

In your parking schematic, in the front parking lot, can you back out of the left-hand side of the garage without hitting the car or truck that is parked there? There is enough room to back out of there, because the way it lines up it looks like you backup straight you are going to hit somebody.

Engineer Petry, referring to A-12, answered yes you can. You can see the full size pickup truck parked there. There is a man door at that side so it does not block the two.

Chairman Dunning stated there is nothing shown here. You put a measurement 7'.2" to something.

Engineer Petry stated it is 7'.2" from the back corner of the space to the garage.

Chairman Dunning, referring to space #1 marked PC, what is in front of that space?

Engineer Petry answered the entrance to the apartment.

Chairman Dunning questioned how do those people get out if there are two cars parked in that space and the space below it?

Engineer Petry answered there is no walkway there, but if these two cars are parked tight to this line, then they come out between spaces #1 and what has been marked EB.

Chairman Dunning, referring to the south side of the building where the word "bar" is written on that door, you have a parking space dead in front of that. The space above the one marked #4. That is adequate space to get out of that door?

Engineer Petry answered yes.

Chairman Dunning, referring to the space above that, does that space block the stairs coming off of the deck, which would be an emergency fire exit (about less than 2')?

Engineer Petry answered it is not because half of that area is outside of the space itself.

There is sufficient room to get off of the stairs. In fact, if the Board wishes, both of those spaces could backup towards the curb line and we would still have greater than 25' of backup.

Chairman Dunning stated I am just looking at the fact that in an emergency to get out of this building is not so easy. The cars are all blocked in there tight and, if you get a rush of people coming out, it could create a problem.

Engineer Petry stated the spaces that are there exist today and it has not been a problem on the site today.

Chairman Dunning stated the fence that is on the property that is facing the wrong way, is that going to be addressed?

Engineer Petry stated it is in the letters that Engineer Nash put forth and the areas where the fence is put up backwards and we don't have landscaping we will turn that fence around.

Chairman Dunning questioned what about where there is landscaping?

Engineer Petry answered, where we are proposing landscaping, my understanding was the Board preferred the landscaping. We would remove the fence at that location, if it is not necessary.

Chairman Dunning commented that the fence was never approved by the Building Department. The c.o. was denied on the fence because it is facing in the wrong direction. Is that going to be addressed?

Engineer Petry stated yes it will be addressed.

Chairman Dunning questioned that the whole fence will be turned around?

Engineer Petry answered yes.

Member Covelli stated, now that the fence has been erected, to the Chairman's question, you will reverse the fence but leave it in its entirety? It does serve as an additional buffer.

Engineer Petry answered it wasn't our intention, but if that is what the Board wants us to do, then we will do that. We were going to replace the fence with the screening where it's proposed, because that was what was originally approved, then we'll turn around the fence where the fence is to remain and there isn't additional landscape buffering through the rear portion of the building. If the Board wants the fence to remain, we will turn around the fence. This will be in addition to the shrubbery.

Chairman Dunning questioned, the restrooms inside the restaurant, are they ADA accessible in shape and size?

Engineer Petry answered I did not do an ADA code compliant for the existing restrooms. I can't comment on that.

Chairman Dunning stated, since we are increasing the capacity here, that should be addressed.

Engineer Petry stated I believe that there is a handicap accessible stall within the facility, but ADA compliance requires some pretty strict measurements so I would have to check those measurements to ensure it was in compliance.

Chairman Dunning stated that needs to be addressed.

Attorney Rubin stated it is a building code issue rather than a zoning issue. He can't get a c.o. without compliance.

Attorney Fernicola stated I don't think it is a code issue. If they are seeking to expand the use and if it is not ADA compliant that would be a condition.

Attorney Mondello stated I would agree; it is a reasonable condition.

Attorney Rubin stated we all agree. We are all on the same page.

Attorney Mondello stated problem solved. I am making it a condition.

Chairman Dunning, referring to garbage pick-up, stated we talked about that briefly. Has that been addressed in your drawings? Garage pick-up, location, the whole function.

Engineer Petry stated it is addressed in the drawings and it is not changing from what exists today.

Chairman Dunning questioned if you have tried to purchase any property to increase your parking?

Engineer Petry answered, as I indicated in my testimony, there is actually sufficient land here to increase the parking on site. We could literally push this parking lot backwards in order to expand the parking. We could do that to gain the 37 spaces that would be required under code for all 50 seats outside and all 66 seats inside. My testimony was I believe that a C-2 variance would apply because, in my opinion, it doesn't serve the good of the neighborhood to pave for 37 spaces when we have 31 and the additional 6 spaces would

be (a) seasonal in nature; and (b) offset by the fact that we would accept the maximum occupancy on the site. We certainly could push back and construct additional parking. Chairman Dunning commented that parking of cars has been major issue with this whole application and we have kicked it around and your street parking on Park Street is difficult. It is a substandard roadway with allowable parking on both sides. There is no signage to stop anybody from parking on both sides of that street with one car coming down the middle basically.

Engineer Petry stated that is absolutely true and it doesn't comply with an standard that is set forth in the RSIS Guidelines.

Vice Chairman Grygus commented typically people request a variance because they usually cannot comply with a specific ordinance, not that they don't feel they need to. Engineer Petry stated I beg to differ. I think you request a variance when you can't comply and that is normally under a C-1 criteria and in the alternative, you request a C-2 variance when it doesn't necessarily make sense to comply, and it's a balancing act. In this particular instance, we have 66 seats and if all we looked at were the 66 seats that are inside, we are over parked. Now I understand there was a discussion early on about overflow parking occurring up and down Park Street and I understand that was probably a result of what was discussed early on in the first couple of hearings where there was discussion about what was going on outside 2 or 2--1/2 years ago in the back portion of the property. As I indicated, there were 99 seats in the back and 66 seats inside.

Vice Chairman Grygus stated yes, but your attorney just said that chances are in all likelihood the kitchen can't handle any more and we are never going to reach 114 so why should we assume that the parking issue that occurred in the past was because we exceeded 114. If the kitchen couldn't handle more than 114 going forward, how could it have handled more 114 going back?

Member Hoffman questioned is the kitchen really the issue if it is a bar and the patrons are coming more for beverage?

Engineer Petry commented that is why when we look at facilities such as this we look at both aspects of the business, and you can serve food outside or you can serve alcohol outside, or you can serve both inside. If you're drinks and dessert outside and you are serving patrons in the restaurant

Member Hoffman stated you are asking us to consider using less parking because the kitchen can't supply food for that amount of patrons, but the bar can supply drinks to more patrons so there might be more capacity than you are parking is able to sustain.

Vice Chairman Grygus commented, like I said, you said that in reality there never will be a parking issue because we can't handle more than 114 people, but yet you are saying that the reason why there was a parking issue before was because – well how did you handle more than 114 before?

Engineer Petry answered that is when I started my discussion on there is a balancing act, in essence, between the two uses – whose here drinking and whose here eating. My point is – Vice Chairman Grygus commented my point is how do you enforce it? Clearly, you can handle more than 114 people because you must have in the past which is why we had a parking issue according to your testimony.

Engineer Petry stated I believe the testimony in the early proceedings wasn't mine. It was that there was a parking issue on the street.

Vice Chairman Grygus stated you just said it was in all likelihood because there was more 114 people there.

Engineer Petry stated because there was 99 seats outside.

Vice Chairman Grygus stated correct and so how did the kitchen support those additional people before? When you say we are going to limit it because we are never going to reach that limit because the kitchen can't support it now, so the parking is not going to be an issue.

Engineer Petry answered I stated in my testimony that a reasonable limit would be imposed at 94 patrons and at 94 patrons we meet the parking with the 31 spaces that we have by your ordinance. If we apply the residence, the staff and 94 patrons by your ordinance we have sufficient parking.

Member Ludwig questioned what are you basing the 94 on? The size of the building?

Engineer Petry answered I am basing it on your parking ordinance. I am working backwards. By your parking ordinance, what we are proposing is 31 spaces; there are 4 for residents and that leaves 27. There are 3-1/2 for staff which leaves 24-1/2 and multiply that by 4 and that gives you 94 patrons.

Member Hoffman questioned who is going to stand there with the clicker when it says 94 reached and everybody else stay away?

Engineer Petry stated I think that the owner has that responsibility.

Member Covelli, just for a clarification Engineer Petry, and I think you have just explained it concisely, but just for the record, you are not in this application changing, amending or requesting any variance to the 66 seat capacity that was granted in 2005 for the inside. That remains unchanged. That remains in force without a request for any variance to that number.

Engineer Petry answered correct. But in addition, we would impose an overall total 94 patrons both inside and outside. So if there were 66 inside, there could only 28 outside.

Attorney Mondello questioned what would be the months of operation for outside drinking and dining?

Engineer Petry stated that is a question better answered by the owner. Obviously, it is weather related.

Attorney Mondello stated I have seen in other places everything from March to November, or May 1st to August 31st.

Attorney Rubin stated not here, you are not going to be out there in March. The owner, Mr. Ryan, can testify to that.

Member Ludwig questioned what are the hours of operation of the bar outside?

Attorney Mondello answered Mr. Ryan can answer that.

Member Levine questioned where does the 3-1/2 or 4 people per car come from? Is that just an assumption you are making?

Engineer Petry answered your ordinance requires one space for every four seats for restaurants. That is where it comes from. That is your ordinance requirement and that is what we have implemented.

Member Covelli stated Engineer Petry or Attorney Rubin or Mr. Ryan can answer this question. Obviously, we know the testimony has provided and has been affirmed that the

2005 conditions placed upon the applicant were not met. What assurance does this Board have that any conditions, were we to grant a variance, were to be adhered to?

Attorney Rubin stated you have a certificate of occupancy issue. Generally, in variance cases and in anything where you have to get permits.

Member Covelli stated that is all well and good, but this is 2017 and your variance was approved in 2005, which is 12 years. We are sitting here today and Engineer Petry started his testimony this evening by telling us all the things that weren't done in 2005. You can cite me the code all you like Attorney Rubin, but it doesn't answer my question. I will restate the question: What assurance does this Board have that this time, if the applicant were granted a variance, what assurance do we have that the conditions placed on that variance will be satisfied?

Attorney Rubin stated it is the certificate of occupancy. You can't move forward without a certificate of occupancy and you can't get that certificate unless the work is done.

Member Covelli stated so you are telling me that in the 12 years, between 2005 and tonight, that property has never had a c.o.?

Attorney Rubin stated, I am sorry, but I was not here and I was not representing him so I do not know the answer. You have to ask the Zoning Officer who is no longer here. The certificate of occupancy is real. You can't move forward without one.

Member Covelli to Attorney Mondello, what is your suggestion?

Member Henderson has a possible suggestion and let me know if it this is something valid to ask for. In large construction projects, we ask for performance bonds or escrow. Since this is a small project, can you ask for money to be in escrow, conditional on the fact that they complete everything that is asked for?

Attorney Mondello stated that certainly is one way. I was thinking of something, which perhaps is somewhat unorthodox, but I can't imagine any Superior Court Judge frowning upon it given the unfortunate sins of the past, that the applicant would have to return in six months and testify that a-b-c-d-e.... was done and was completed to the satisfaction of the Board.

Attorney Rubin commented that is still a certificate of occupancy issue. I don't know if the municipality's ordinances provide for an escrow because I know some towns do.

Attorney Fernicola voiced his concerns that when I hear about these conditions it is as if I am sitting here, and I had the same concern last month, that it is a foregone conclusion that he is getting the Use Variance to expand the non-conforming use. We haven't crossed this witness, we haven't presented our own witness.

Member Hoffman stated I think you are jumping to conclusions.

Vice Chairman Grygus stated, as Member Covelli said, if the Board were to grant and Member Covelli stated that is exactly what I said.

Attorney Rubin stated usually in some municipalities there is an escrow requirement for construction but I don't know if there is one in this borough. Having represented a number of folks in this town on building issues, I don't think so.

Attorney Mondello stated she is suggesting some type of developer's agreement.

Attorney Rubin stated a developer's agreement can be made a condition of approval, yes. A developer's agreement can have a number of conditions built into it.

Engineer Petry stated, in other municipalities, what we have seen as a requirement of approval and Engineer Nash can comment if he wishes, is that prior to the issuance of a c.o. an as-built survey has to be completed, which includes all of the information contained on

the property and submitted for approval. That would get submitted to the municipality, but it can be submitted to the Board Engineer if you so choose and that may be less onerous, cumbersome and legal than a developer's agreement where it is a relatively small project and something that can answer all of the questions.

Member Covelli stated, what you are suggesting Engineer Petry is that there is almost a two-prong system where the existing system of the c.o. is conditioned on Engineer Nash reviewing that as-built survey, going down the punchlist of conditions, and making sure they are satisfied and then, for example, he finds one of them is not, he is able to go back to the applicant and say you have not satisfied condition six.

Attorney Fernicola stated the as-built addresses what is physically constructed.

Member Covelli continued and, therefore, he would be in a position to say I cannot sign off on recommending the c.o. be issued until item six is addressed, as an example. Is that what you are representing?

Engineer Petry responded that is what we have encountered in a number of municipalities, yes.

Attorney Mondello stated there are three options and the Board may decide to take all three – (1) bring Mr. Ryan back in six months and cross-examine him as to what was done and wasn't done; (2) you have a developer's agreement; and/or (3) an as-built survey.

Attorney Fernicola stated none of these address the issue that the applicant proposes as a condition limiting the number of patrons. So Engineer Nash goes out and the as-built addresses the physical things that are constructed on the property. It in no way, shape or form addresses the limits of the number of patrons. The c.o. doesn't address that. They issue the c.o. today and tomorrow there is a 115 people at the property. The record is replete in 2005 and the members that were here and your Resolution includes it. Not one seat more than 66 seats. The testimony is tonight is that they added 99 seats to the outdoor alone so how do any of these things address a limit on patrons.

Attorney Mondello stated the Board sends a letter to the appropriate official and asks them over the course the next year to have random spot checks and they either do it or they don't.

Member Covelli stated I hear you Attorney Fernicola, but I don't think the scenario that you laid forth, and I don't want to debate this with you, is limited to this applicant. I think any and every business in this municipality that attracts patrons, to Engineer Petry's point, has a limit and how that limit is enforced from this legislative judicial body to the enforcement is not for us. What my concern was the fact that we put conditions on the applicant in 2005 and I want to know what assurance we have in 2017 that we are not back here again.

Attorney Fernicola stated my point is that in 2005 he came for a Use Variance, he conditioned it on literally not one more seat added beyond the 66. He got the Use Variance in 2005 and he substantially increased beyond the 66. That is not any property, it is this property and that is this applicant. That is the evidence in this case.

Member Henderson questioned if you can put conditions within –

Vice Chairman Grygus commented that I think we are getting way ahead of our ourselves. I think we should finish all our testimony and then if we have questions about then that is the appropriate time to ask.

Attorney Mondello stated we won't have to worry about conditions if the Board denies it.

Chairman Dunning to Engineer Nash, you have some comments? Do you want to go over your report?

Engineer Nash stated just some comments on the planning testimony from Engineer Petry. Just so that the Board is aware, I am also a Professional Planner.

With regard to the parking and the front yard variance, there is a bit of contention about whether it is or it isn't a variance. The way I am interpreting the ordinance and the way I look at it is, yes you are in a residential zone and therefore Engineer Petry is saying it doesn't apply. But this is a use that's not what's normally in a residential zone. If you take the use that is not normally in a residential zone, it is out of place so in order to make it somewhat into place and applying this no parking in the front yard, you are at least getting the vehicles off the front of the property as you drive down the road you don't have that appearance of a commercial property. That is the perspective that I am looking at it. At the last meeting, I was incorrect because the ordinance says there is no parking in the front yard. What I was incorrect in was interpreting what the definition of a front yard is. I misinterpreted it as the front yard setback. I think this has a 40' front yard setback so I was saying you can't park in that first 40', but the front yard in the ordinance is the defined as "the distance from the front of the building to the property line". So you draw a line outward from the building and you can't park in front of that line if you will so it only accounts for the 2 spaces.

Member Covelli commented that effectively you are saying you can't park in the right-of-way.

Engineer Nash stated no; you can't have parking

Member Covelli stated you can't count the right-of-way as your parking.

Engineer Nash stated correct. That is that issue, but Engineer Petry has also acquiesced and said I'll put it on the table as 2 parking spaces.

Engineer Nash continued another item in your planning testimony on your positive proof you were talking about the additional landscaping you are putting in as a positive. However, that was supposed to have been done in 2005, so it really should have been there, so it is almost like you are taking credit for something that should have been there and existing already. I don't see that logic. I know that not all of it is being added, but the portion that should have been there along the east property line really shouldn't get credit as an added aesthetic improvement to support the positive defense of the variance. Those are my points.

Attorney Mondello: Any other questions from Board Members

Attorney Mondello: Any members from the public have questions only for Engineer Petry on the testimony that he just gave? Questions only; we have plenty of time for comment.

Robert Barbagallo, 48 Short Street, Wanaque

You talked about the town right-of-way by Berta's that is going to increase some of the parking. There is that wall there plus there is a rock ledge that comes down through there, so I don't understand how that is going to happen. I don't know what I missed, but I didn't quite get it.

Engineer Petry stated what I described at the last hearing, one of the Board Members asked if it was possible to extend parking along Park Street in the area of the existing wall. What we did was perform a topographic survey of the street, we located the wall, located the sidewalk that comes down to the wall, we established the right-of-way on Park Street and we prepared a conceptual parking plan that could add 7 spaces in the area between the wall and the intersection in essence. There wouldn't be parking where the wall is. In fact, we'd extend the sidewalk down along the wall and the parking would start at the end of the wall.

Mr. Barbargallo questioned if they were going to blast that rock out, along the wall?

Member Covelli answered that was not included in the 7 spaces that he depicted. It would remain untouched under the concept proposed.

Engineer Petry stated correct. So the 7 spaces would require the relocation of the mailbox that is there. That mailbox could be relocated down to the intersection. We kept parking 50' from the intersection because, in my professional opinion, that is a safe distance from an intersection for parking, and you could get 7 parallel parking spaces there. However, in order to do that you would need at least a grading easement from Berta's because you would be building up to the limit of the right-of-way. The right-of-way is the area that municipality owns. The town just doesn't own that paved way, which is about 24' wide, they actually own about 33', so they own a piece on either side.

Mr. Barbargallo are we talking in the parking cars are asking to be down on that flat piece where there is a little building from there down?

Engineer Petry answered I didn't present the plan, but I can show you the plan. It has been submitted to the Board. Here is the intersection of Grove, this hatched area here is the existing wall, there is the existing mailbox, so there is an inlet down here and we would run an expanded right-of-way out there and park 7 spaces down here where there is gravel now.

Mr. Barbargallo stated that makes sense. But when you said about the sidewalk, I didn't understand it.

Attorney Mondello: Any other questions – Hearing none, seeing none.

Attorney Mondello: Attorney Fernicola your witness.

Attorney Fernicola stated, Engineer Petry if I understood your testimony, you are not proposing to remove any of the 66 seats inside the restaurant. Is that correct?

Engineer Petry answered that is correct.

Attorney Fernicola questioned and you're proposing an additional 50 seats in the outdoor area. Is that correct?

Engineer Petry answered that is correct.

Attorney Fernicola stated you are providing for, under this application, 116 seats, yet your suggesting that a condition of approval would be limiting the patrons to 94 seats. Correct?

Engineer Petry answered correct.

Attorney Fernicola stated you are providing then 22 seats beyond the limitations of the 94 patrons. Correct?

Engineer Petry answered that is correct.

Attorney Fernicola questioned do you agree under NJ Law that the expansion of a non-conforming use is disfavored?

Engineer Petry answered I agree that it requires a D-2 Variance.

Attorney Fernicola stated my question was a little bit different. Do you agree that under NJ Law the expansion of a pre-existing, non-conforming use is disfavor?

Engineer Petry answered I don't know that I agree with the statement.

Attorney Fernicola stated Engineer Petry I am going to take your site plan revised as of, I think, June 23, 2017, Sheet SP-2, marked as Exhibit O-26, and put it on the easel. I am going to give you this yellow highlighter and I am going to ask you if you would highlight on O-26 every item that represents an expansion from the 2005 approvals that were granted to this applicant.

Engineer Petry highlighted, in yellow, the requested information on Exhibit O-26.

Attorney Fernicola questioned if he highlighted the pipe that is along the eastern property line adjacent to the Bellante's property.

Engineer Petry answered no I didn't.

Attorney Fernicola questioned was that included in the 2005 approvals granted by this Board?

Engineer Petry answered it wasn't included. No it was not included. I do not consider that an expansion, so if you would like, we'll do it in a different color.

Attorney Fernicola answered no. Why don't you identify for me items that have been constructed since 2005, which weren't included in the approves currently on the property?

Engineer Petry questioned why don't we use the survey?

Attorney Fernicola stated I am asking you to do it on Exhibit O-26.

Engineer Petry stated I just included things that are proposed here tonight.

Attorney Fernicola stated my question is for to highlight items, such as the piping that was installed along the eastern property line, which was not included in the 2005 approvals granted by this Board.

Attorney Rubin stated the witness doesn't agree with the premise of the question; it is not answerable.

Attorney Mondello agreed.

Attorney Rubin stated let him answer it as he will, instead of suggesting the answer to your question.

Attorney Fernicola stated, first of all, this is cross-examination so that is not even a proper objection. The witness was asked to identify, based on the testimony that is provided in this case that there were drainage improvements that were constructed that weren't included in the 2005 approval, and I had him just identify the piping along the eastern property line. I am asking you now if you are physically capable, with that highlighter, identifying

Attorney Mondello commented hold on a second. What Attorney Fernicola is saying is, he may or may not agree with you that this piping is an expansion or not be an expansion, but your position is it's not. The factfinders sit up here. They may or may not accept that, but why don't you just highlight it in yellow with the understanding that your testimony is, it's not an expansion.

Engineer Petry stated Attorney Fernicola's first question to me was could I take the yellow highlighter and mark on O-26 everything that is considered an expansion.

Attorney Mondello stated then he changed it.

Engineer Petry continued with then he asked me another question and I asked for a different color highlighter and I don't think I am out of line doing that. If the Board wants me to highlight it in yellow, I don't the record will be clear, but I am more than willing to highlight it yellow.

Member Covelli stated I understand Engineer Petry's concern. Now you have a document that's marked up with all the same color. What is it representing?

(Professionals searched for a different color highlighter)

Attorney Fernicola stated, in pink or green your choice, identify for the Board any improvements or structures that have been constructed on this property which were not part of the 2005 approvals.

Member Hoffman asked if you could explain to us what you are writing on.

Engineer Petry stated I am highlighting, in pike, and marking up SP-2

Member Hoffman right, but where on SP-2.

Member Ludwig stated it is actually, I think, on the western side.

Member Hoffman questioned are you doing the drainage on the western side?

Engineer Petry stated I am going to highlight everything that I understand was constructed and not included in the 2005 plan.

Member Hoffman asked, as you are marking it, can you say what it is because we can't see it from here.

Engineer Petry stated certainly. I've highlighted the pipe that is between the subject property and Lot 2 that runs near the property line. I can't tell you whether or not that pipe was there in 2005, but it wasn't on the plans in 2005. I have highlighted four drywell systems; only one drywell system was on the plan in 2005 and that drywell system was not in the exact location of any shown. There is a walkway and pad that hosts an existing shed that we've suggested would be removed as part of this application not shown on the 2005 prior plan. While I am sure they were there, it has been pointed out by Engineer Nash that the five air conditioning units that are located behind the building were not shown on the 2005 plan. I can't image that there weren't condensers on the grounds but they weren't shown on the plan. I did show as a change the parking configuration in the front lot because that is not constructed as was originally designed, so I consider that to be change. There were some changes to the curb line and I am just showing a squiggle in pink along the common property line between the subject and Lot 2. That curb line was built differently than what was shown on the approved plan. I had previously highlighted the 4 spaces that we are adding along with the shuffleboard court, the outdoor picnic area that we are asking for approval on, the path, the stone areas within the rear portions of the property, seating areas, and I showed the relocated bar area. I will put a little pink over where the existing bar area. I will highlight the existing light fixtures. I think I covered all.

Attorney Fernicola questioned the piping that is underground along the common property line with the Bellante's property what is the depth at which that pipe was installed?

Engineer Petry answered I don't know exactly.

Attorney Fernicola stated you are proposing plantings over that pipe as part of your site plan that you are proposing. Correct?

Engineer Petry answered yes. It is a 6" pipe so there is certainly sufficient room to plant around the pipe.

Attorney Fernicola questioned how do you know if you don't know the depth of the pipe?
Engineer Petry answered because it's only 6" wide. You can plant forward of it or beneath it depending on where it is and a particular location.

Attorney Fernicola questioned what is the width of the area that you are proposing for the plants?

Engineer Petry answered actually it is the area that exists today. It does vary in width. Scaling from 06 and this is 20 scale plan, it varies along the curb line from about 7-1/2' to about 9-1/2' and the pipe is 6".

Attorney Fernicola questioned you are saying that the plantings is at a minimum of the width of that area currently is 7-1/2'?

Engineer Petry answered that is what I am scaling from the survey information, yes.

Attorney Fernicola questioned is that consistent with your visual observation of the property from your site inspections?

Engineer Petry answered I can tell you that it does vary. There's a curb there now that has a little modular block behind the curb, there is a fence and I think fence is pretty close to the property line, it's slightly clear of the property line I think according to the survey, there is an herb garden there now. Yes I would think that's reasonable.

Attorney Fernicola questioned what is your understanding, if any, when food and alcohol were served outside at the subject property?

Engineer Petry answered my understanding is purely the testimony of those who were here at the earlier meetings. I was not there myself. So it is all hearsay.

Attorney Fernicola questioned but you are testifying that this Board should expand the outdoor food and service so I am asking you, as the expert offering that opinion to this Board, what is your understanding as to when food and alcohol were first outdoors at the subject property, if you have an understanding?

Engineer Petry answered I believed that the testimony that was offered was as early as 1955. That is from recollection.

Attorney Fernicola stated you made reference to a club. You said they regularly used the property for the outdoor service of food and alcohol. I think you indicated the name was 39 + Mr. Gates; was that the name?

Engineer Petry answered I actually believe the name of the club was 39 & Gates. That was the testimony that was provided in December.

Attorney Fernicola questioned when is your understanding as to how many times a year the Club 39 & Gates used the property for the outdoor service of food and alcohol?

Engineer Petry answered I don't know.

Attorney Fernicola questioned do you know whether or not they brought they own food and alcohol or was it served from the kitchen located at the subject property?

Engineer Petry answered I heard the same testimony as you. I don't know.

Attorney Fernicola questioned when the Club 39 & Gates had an event at the subject property in which food and alcohol was served outdoors, do you know how long they were at the property during these affairs?

Engineer Petry answered I don't know.

Attorney Fernicola questions do you know the time of year that they had these outdoor events at the subject property in which food and alcohol were served?

Engineer Petry answered I don't know.

Attorney Fernicola stated one thing though that is not identified on your site plan is the fact that there are heat lamps located in the outdoor area of the subject property where it is proposed for the outdoor service of food and alcohol. Is that correct?

Engineer Petry answered there are portable heat lamps. There are also portable chimineas.

Attorney Fernicola stated let's stay with the heat lamps. Am I correct that the portable heat lamps are not identified on your site plan?

Engineer Petry answered yes, because they are portable.

Attorney Fernicola questioned am I correct that they are located in the rear area in which food and alcohol is proposed for outdoor service?

Engineer Petry answered yes.

Attorney Fernicola questions is it fair to say that the purpose of the heat lamp is to expand the time of year that the outdoor could be used by providing a heat source to patrons?

Engineer Petry answered I don't know that it expands the time. It is a service to patrons.

Attorney Fernicola, let's be clear, is the service additional heat or warmth to patrons who are obtaining food and alcohol in the outdoor area of the subject property?

Engineer Petry answered certainly.

Attorney Fernicola questioned do you agree that providing an additional heat source in the form of heat lamps expands the period of time that the outdoor area of the subject property can be utilized for patrons for the service of food and alcohol in that rear area?

Engineer Petry answered I don't know that it necessarily expands the time. I think it is something that is offered for the comfort of the patrons.

Attorney Fernicola questioned what do you mean offered for the comfort of the patrons?

Engineer Petry answered I am one of the people who actually likes to eat outside and likes to drink outside and many facilities that I visit have these types. In fact, most recently, in my visit to Highlawn Pavilion as we sat out finishing dinner and having our dessert, it got cold and my wife asked that the put on a heater. Would we have been there if the heater wasn't on, we were already there. It was 9:30 and it was getting chilly. They put on the heater and my wife was comfortable. I think it is a service to your patrons to have this type of capability within the environment. I don't think it affects what time of year it is going to be utilized. In my opinion.

Attorney Fernicola questioned if the chimineas also a heat source offered for the comfort of outdoor patrons at the property?

Engineer Petry answered absolutely.

Attorney Fernicola questioned do you agree that the heat lamps and the chimineas have the potential to expand the time period that patron utilize the outdoor area of the subject property?

Engineer Petry answered again I don't believe that it is something that would expand the time period. I think it is something that is there as a creature comfort for those who are utilizing the facility.

Attorney Fernicola questioned is it your understanding that the heat lamps were installed by Mr. Ryan or on behalf of Mr. Ryan?

Engineer Petry answered the heat lamps may be there. Installed is a strong word.

Attorney Fernicola questioned well is it your understanding that there were heat lamps in the rear of the property prior to Mr. Ryan purchasing the property in 2002?

Engineer Petry answered I would be surprised if they were.

Attorney Fernicola questioned would you be surprised if there chimineas located in the rear of the subject property prior to Mr. Ryan purchasing it 2002?

Engineer Petry answered I would be surprised if there were chimineas. There may have been fire pits. I don't know. Chimineas are relatively new.

Attorney Fernicola stated, if I understood your testimony during the questioning from Attorney Rubin, did you state that the Board could put limits on when the outdoor use of the property could take place?

Engineer Petry answered certainly.

Attorney Fernicola questioned, was it your testimony on direct that based on purely aesthetic reasons alone would justify the D-2 Variance for the expansion of the non-conforming use?

Engineer Petry answered in this instance, yes. I believe it, but I believe that I also offered two other special reasons; those being items b. and h. securing from flooding and free flow of traffic.

Attorney Fernicola stated, but in response to my questions, was it your testimony to the Board that the aesthetic reasons alone, in your opinion, justify the grant of the D-2 Variance for the expansion of the non-conforming use, correct?

Engineer Petry answered yes.

Attorney Fernicola, with regard to securing of flooding, that was your testimony with regard to the construction or proposed construction of a detention basin in the rear of the property, correct?

Engineer Petry answered correct.

Attorney Fernicola questioned and that proposed detention basin could be constructed at the rear of the subject property without an expansion of the outdoor service of food and alcohol, correct?

Engineer Petry answered I could be, yes.

Attorney Fernicola, referring to the free flow of traffic, that is your reference to the 31 parking spaces that are proposed on site at the subject property?

Engineer Petry answered the expansion of the parking and the limitation of the patrons on site.

Attorney Fernicola questioned did you also, if I understood your testimony correctly, rely upon these three factors: the aesthetics improvements, the free flow of traffic and securing flooding, as a justification for the grant of the bulk variance under C-2 criteria?

Engineer Petry answered yes, I believe I referenced that.

Attorney Fernicola commented so you rely on the same factors justifying the grant of the D-2 Use Variance and the C-2 Bulk Variances, correct?

Engineer Petry answered correct.

Attorney Fernicola, so these three factors (aesthetics, detention basin, parking) do the justify in your opinion an unlimited number of variances to be granted by the Board?

Engineer Petry answered it is not an unlimited number of variances. I think there were three specific variances.

Attorney Fernicola stated my question is different. In your opinion, do those three factors justify the grant of an unlimited number of variances?

Engineer Petry answered no.

Attorney Fernicola stated, but in your opinion, they justify the grant of both a Use Variance and Bulk Variances, correct?

Engineer Petry answered the Bulk Variances is for the number of parking spaces.

Attorney Fernicola stated no but my question is different. Your offering those same three factors as the justification for this Board to grant both a Use Variance under D-2 and C-2 Bulk Variances, correct sir?

Engineer Petry answered yes and I tried to enumerate the three C-2 Bulk Variances but. Yes the three that are necessary.

Attorney Mondello jumped in, what do you mean by aesthetics? Because I've read verbiage several times and aesthetics does not equal beautification. In that case, it was a junk yard and they kept all that crap in the front yard and they were surrounded by residential housing and the applicant moved all of that ugly stuff to the backyard. I don't know if that is beautification, but they consider that to be aesthetics. They didn't put in a lot of landscaping; the just moved the operations from the front to the back. So what is aesthetics in this case?

Engineer Petry answered you are correct when it comes to aesthetics the court has held that mere beautification is not enough. In essence what they look for is for you to bring a property, not into conformity, but into an overall appearance that is

Attorney Mondello stated the term they used is "visual compatibility of the use".

Engineer Petry continued appropriately compatible with the neighborhood. I think that is the phrase that they use. In this instance, by pulling the proposed use in away from the property lines by creating contained areas that are defined and well maintained and by providing visual separation by virtue of landscaping I believe that we have achieved that, and kept it relatively small in scale. At the end of the day, if this rear area were Mr. Ryan's private patio for his family parties, I would not think that that's overly impactful given the size of the property and the ability to have an outdoor use at this property.

Attorney Fernicola, do you contend that prior to Mr. Ryan's ownership of the property that there was outdoor sound amplification equipment at the property?

Engineer Petry answered I don't know. I don't recall the testimony from any of the witnesses who talked about amplification; I just don't know.

Attorney Fernicola questioned would you agree that, if prior to Mr. Ryan's ownership of the property there was no outside sound amplification equipment at the property, that the installation of that equipment would represent an expansion of the non-conforming use?

Engineer Petry answered it would, in my opinion, be part and parcel with the expansion that is proposed, yes.

Attorney Fernicola questioned is it your understanding that prior to Mr. Ryan's ownership of the property there was not live music entertainers who performed in the rear of the subject property?

Engineer Petry answered I have no idea. I was not there.

Attorney Fernicola, like the sound amplification equipment, if there was not live outdoor performances of entertainers prior to Mr. Ryan's ownership of the property would you agree that that would represent an expansion of the non-conforming use?

Engineer Petry answered I don't know, honestly. I'd look at it and say if Mr. Ryan hired a guitar player or combo for a family party in his backyard that is amplified sound and it is something that would not be unexpected in a residential zone.

Attorney Fernicola stated people generally don't have parties with live entertainment in their back yard multiple nights out of the week, correct? Fair to say?

Engineer Petry answered that is fair to say.

Attorney Fernicola continued but a bar/restaurant will have live entertainment multiple nights a week, every week that they are open. Fair to say?

Engineer Petry answered I don't know that.

Attorney Mondello: Chairman is waving the flag.

Chairman Dunning stated our next meeting is August 2, 2017. Let us poll the Board – who is not going to be here August 2nd?

Attorney Fernicola speaking to Attorney Mondello: If you don't have a quorum, could you let me know.

Chairman Dunning stated as of right now, we have one.

Attorney Mondello stated we will see everyone August 2nd. If we can't reach a quorum, the next meeting date is September 6th. I think we have a quorum and I don't anticipate any problems.

Attorney Fernicola questioned if the applicant is anticipating resting his case after the conclusion of Engineer Petry.

Attorney Rubin stated there are a couple of questions for Mr. Ryan.

Attorney Mondello stated that is correct.

Attorney Fernicola stated fair enough.

Attorney Mondello, questioning Attorney Fernicola, who are your witnesses?

Attorney Fernicola will be presenting his Planner.

Next Meeting is August 2nd.

PUBLIC DISCUSSION: None

RESOLUTION: None

CORRESPONDENCE: None

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

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

VOUCHERS: submitted by Boswell Engineering for the Agostino Properties Application in the amount of \$485.

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

MOTION TO APPROVE APRIL 5, 2017 AND JUNE 7, 2017 MINUTES: made by Member Vice Chairman Grygus, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Karp.

ENGINEER'S REPORT: Agostino Application – Review letter prepared and delivered to Board Members.

DISCUSSION: 1049 Ringwood Avenue – Member Covelli stated the property got a lot lower. Member Ludwig questioned if it was in the same footprint that was approved because it looks so different.

MOTION TO ADJOURN AT 10:39 PM: made by Member Covelli, seconded by Member Ludwig. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary