

BOARD OF ADJUSTMENT MINUTES

June 7, 2017

REGULAR MEETING

Salute to Flag: 8:00pm

OPENING STATEMENT:

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

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

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

BOARD'S EXHIBIT

B-2 June 7, 2017 Review Letter of Christopher J. Nash, P.E., Board's Engineer

APPLICANT'S EXHIBIT

A-14 April 26, 2005 Letter of William R. Gregor PE PP

A-15 Colorized Version of Sheet 2 of 3 of Site Plan Drawing Prepared By Rotonda Engineering Dated April 11, 2005 and Revised Through May 12, 2005 (Poster Board)

A-16 Colorized Version of Revised Survey of John P. Miceli dated May 15, 2017 (Poster Board)

A-17 Colorized Version of Revised SP-2 Sheet prepared by Petry Engineering Showing Property & Parking dated May 26, 2017 (Poster Board)

Michael Rubin, Esq. of 1330 Hamburg Turnpike, Wayne, NJ, Attorney for the Applicant,

Paul Fernicola, Attorney for the adjacent property owners, Marc and Lisa Bellante, would like to put an objection on the record concerning this Board's jurisdiction.

As Counsel and Chairman Dunning know, I raised this issue yesterday. This matter is before the Board based upon a Court Order so the Superior Court retained jurisdiction over this matter. I have raised the objection that we were here in April and there was an agreement based on the numerous deficiencies and errors in the plan that the Board requested revised site plan be submitted by the applicant. There is no surprise that I have appeared before this Board on numerous occasions on this application starting on September 7, 2016. The Applicant and his Counsel refused to provide us with the site plan. I did not see the revised site plan until this evening. Based upon the fact that there is a Court Order that we were part of that litigation, this is different than a typical application and, at a minimum, there was an obligation to provide it so that we could be prepared. It involves now due process issues for the Bellantes for their right to have their experts and their counsel be prepared for this hearing and, for that reason alone, we have requested that I want it marked as an Exhibit my request that this hearing be adjourned because of the refusal to provide us with the revised site plan. Now that I have had the opportunity to review it, there are still numerous deficiencies. This Board is without any identification of what are the variances that are actually being applied for. There is no list and clear indication of the variances. You have no idea as to the scope because the plans are unclear and what should have been done is a clear indication of what represents the Use Variance for the expansion of the non-conforming use. You have no clear identification as to the extent of the expansion. That, in and of itself, the applicant should be compelled to submit a revised application. Now that I have seen the revised application tonight, and based on the testimony last time, the notice for this application is clearly defective and divests this Board of any subject matter jurisdiction. The revised plan, and as to testimony, they identified the use of 6 spaces within Berta's parking lot. That amounts to a second principal use of the Berta property/restaurant. A second principal use is not permitted on an individual property. The attempt of this applicant, in his revised site plan, to utilize 6 of the spaces on the Berta property to satisfy his parking requirements necessitates the grant of a Use Variance for the Berta property. It required every property owner within 200' of Berta's to receive notice that there was a Use Variance that was seeking because of trying to add a second principal use to that property. It also requires a review to determine whether or not the use of the 6 parking spaces on Berta's property for the applicant's use is consistent with the prior site plan granted to Berta's, so for that reason alone, the notice is defective and because people within 200' didn't identify the second Use Variance. All these deficiencies caused by the applicant and this application should not proceed tonight for those reasons alone.

Attorney Mondello will address a couple of these and then ask Attorney Rubin to respond.

Attorney Mondello, with regard to the site plan delivery, I do understand that the Superior Court has retained jurisdiction but it remanded it back here and I know of no obligation for the applicant to send a copy of the site plan to any of the objectors or any residents. They can always go to the municipal building and review that. Having said that, there has been somewhat of a, hopefully, cordial relationship between you guys and I would have hoped that you could have worked that out.

Secondly, as far as no list of variances on the site plan, again that is not a legal requirement with respect to the site plan. Even if it was, the planner hopefully will be addressing those variances that are encapsulated in this application.

Finally, with respect to the notice deficiency, very creative. What do you say Attorney Rubin?

Attorney Rubin stated it is not a second principal use. The principal use of Berta's is the restaurant. There is parking adjacent to the restaurant as we all know and Mr. Ryan has made arrangements to use a portion of that parking, which is an ancillary use of the restaurant premises. It is not a principal use. This is something that has come up obviously within the last meeting or two. It was not something that was even envisioned when we first brought the application that we would be utilizing off-site parking, but this is off-site and requires some form of agreement. Most respectfully, I believe that we have not changed the use of the Berta property. It is still a restaurant with a parking lot and that several of the spaces in that parking lot are to be used for the Tree Tavern Restaurant is, most respectfully, of no moment as to the land use law. You can do it by a simple agreement and does not require any amendment for anything. We did this to oblige the Board because the Board thought we needed some extra spaces. We went out to Berta's and they were very nice about it and gave us the right to use these spaces for certain hours and days. Most respectfully, I believe we can move forward with this application. One of the things that I first started with is: What is the obligation of Mr. Ryan and ourselves to supply the neighbors with anything. There is nothing in the Court Order or in the New Jersey Municipal Land Use Law that says I have to provide or an application generally has to provide an "interested party" with anything except the original notice. The original notice was sent and it covered a myriad of different issues and I believe it satisfies the Municipal Land Use Law as it relates to this total application.

Attorney Mondello would concur, especially with the notice.

Attorney Fernicola wants to give specific citations. You cannot have an accessory structure on a property that doesn't contain the principal structure. And that was addressed by the New Jersey Supreme Court it is decision of *Nuckle v. Borough of Little Ferry*, 211 and it was addressed by the Appellate Division in a published decision in October of 2016 in *New Jersey Transit Authority v. Franco*. That the accessory structure and the principal structure have to be on the same property and that when they are not on the same property it is no longer an accessory use; it becomes a principal use.

Attorney Mondello stated I know Mr. Nuckle and he owned both of those properties. Does this applicant own both?

Attorney Fernicola answered no, so it is even worse than Nuckle, because Nuckle wanted a hotel, if you remember, and then the road on the other property that he owned, so you had common ownership, but it was still a second principal use. This is a second principal use of the Berta property. Counsel hasn't addressed the legal issue that you can't have an accessory use on someone else's property. That constitutes a second principal use of the Berta property requiring a Use Variance and requiring the proper notice to the applicant. I would suggest that before you instruct the Board, that you specifically review the *Nuckle Decision* and the *Decision from the Appellate Division in New Jersey Transit v. Franco* because it is clear and unequivocal that, in those cases, that you can't have an accessory use on a separate property from the principal use and that is exactly what is being proposed by this applicant by attempting to use the Berta property to satisfy their parking application and it is going to negate everything that has taken place because the notice of not being proper and that is something that this applicant came up with for the first time in April; that was not part of their initial submission when they filed in August, 2016. They added that during the pendency of this case. That is why the notice is inadequate and the Board doesn't have jurisdiction over this matter.

Attorney Mondello, again Thank You Attorney Fernicola, these are excellent arguments, they are creative; however, your objection is noted and overruled. Jurisdiction is, in fact, vested in the Zoning Board. There is a fellow with a black robe that may find that my decision is incorrect, but let us move forward. Next witness please.

Attorney Rubin stated the last time we were here, there was mention of a revised plan to address some of the issues that the Board had. There was one issue that one of the Board Members brought and I do want to resolve that issue. There was a question asked of Mr. Ryan as to a portion of the driveway and parking area that was paved rather than left in gravel and Mr. Ryan testified that he was advised to do it by the Board of Adjustment at that time during the 2005 application. We looked in the old records, this is kind of interesting because Engineer Nash used the same report of the then Engineer Gregor dated April 26, 2005 and found in paragraph 26 the direction to pave that area. Since this is part of that 2005 application, I would ask that this be made part of the Board's records. Engineer Nash referred to it in his report so I feel that it is quite report that this be made part of the record for these proceedings, especially paragraph 26 which advises Mr. Ryan would be paving that area.

Attorney Mondello stated no objection to the admission; however Engineer Nash indicates to me that he did not refer to another engineer's report to create his own report. Is that correct?

Engineer Nash stated just with regard to that one statement. That was a quote from the Resolution of 2005 in the Findings of Fact.

Vice Chairman Grygus stated I thought the approved final plan approved called for the geo-block. It was never the Board's Resolution to be paved.

Attorney Rubin stated the reason I brought in because it was Mr. Ryan's contention, which he testified to, that Bill Gregor told him to do it, and it is part of his engineering report, and that is why I brought it in so that you could see he didn't make it up; that it is in the report. Exhibit A-14 = April 26, 2005 Letter of William R. Gregor PE PP

Attorney Fernicola stated this is a letter dated April 26, 2005. The approvals are memorialized in a Resolution of October 2005. This is prior to the testimony being represented. I am not even sure, because I am just being handed it for the first time, that what counsel says is depicted in this is accurate in paragraph 26. Beyond the point that it is not incorporated into Resolution what this Board. The Board's Engineer did not grant the approval; that came from the Board and, therefore, and obviously memorialized in a Resolution in October. This also says a second driveway is proposed for access to the new garage apartment. What was said was "Both the existing and proposed driveways and parking areas are shown as gravel. This is not recommended. All parking and access areas should be paved." This was a recommendation from the engineer that the Board obviously did not accept because that is not what it incorporated in this Resolution.

Attorney Mondello stated I am sure the fact finders will determine that and they will either throw it in the garbage or they will place some type of weight.

Attorney Fernicola stated I am asking that you instruct the Board that what guides this Board is the Resolution from October 2005 and that is the only thing that guides the Board. Attorney Mondello stated this is a new application and why should that Resolution guide or bind this Board.

Attorney Fernicola because that is the basis of the approval.

Attorney Mondello stated your objection is noted and we need to move on. It is 8:20pm and your argument is noted for the record. I would like to move on.

Attorney Fernicola stated that counselor is offering this as a basis to say that the applicant had legal authority to pave those driveways and that is not consistent with the Resolution and not legal authority.

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 Rubin stated, as you may recall, Engineer Petry testified earlier in these proceedings and prepared the original site plan drawings and has prepared and filed the amended plan, which he will describe the changes that he made for presentation this evening.

Attorney Mondello reminded Engineer Petry that he was still under oath.

Attorney Rubin calling attention to the changes made and amendments made to the original plan that was presented to the Board, could you please advise the Board as to what changes were made.

Engineer Petry stated what the Board had requested at the last hearing was that we submit a revised set of documents that included a detailed topographic survey, a copy of the approved plan and a plan that clearly depicted what was on the site, what we intended to keep and what intended to eliminate. That is what we tried to do in this last submittal. What I have done is I've taken the 3 plan sheets that are in the set that has been submitted to the Board and I have colored them and mounted them and they include the previously approved site plan prepared by Rotonda Engineering and revised through 5/12/05, which is marked as Exhibit A-15 a Colorized Version of Sheet 2 of 3. I believe this is the drawing that the Board was referring to at the last hearing and we confirmed that before we included it into the set and was the basis for the Resolution. I am also going to mark

Exhibit A-16 which is the revised Survey prepared by John P. Miceli, and that drawing is revised 5/15/17 and that is the basis for our revised SP-2 Sheet, which is marked A-17. Those are the 3 plan sheets in your set.

Engineer Petry, referencing A-15 the site plan approved in 2005, included the two separate parking lots, the parking spaces within those lots are noted in different areas as either 9x20 or 10x20 and Engineer Nash picked that up in his report as well. They are actually striped as 9x18. The driveways are shown in the yellow and pink. There is separate driveway that leads to the garage on the left side of the existing residential structure. That parking area has 5 spaces outside and 2 within the garage. The parking area that was approved in 2005 in the rear of the building has a total of 17 spaces shown, including 1 handicapped space.

Engineer Petry continued that one of the items the Board spent a good deal of time talking about at the last several hearings was the fact that there was supposed to be 24 arborvitae proposed along the common property line between this Lot and Lot 4.

Member Covelli stated 31, and Engineer Petry stated you may count 31, but the plan says 24.

Engineer Nash stated you just said the plan says 9x20 or 10x20 spaces, but they are actually 9x18.

Engineer Petry stated there are 31 shown on the drawing and it is labeled as 24.

Somewhere in the area of 24 to 31 arborvitae were supposed to be planted and they were never planted.

What we see and what is marked A-16 is perhaps part of the reason that those arborvitae were not planted is because along the left side of the existing restaurant/apartment, there are a series of 6' to 8' maple trees along that property line. They are not shown on the survey. The fact is, you go back to our site plan that was submitted months previous to this and they weren't shown on that either and the reason is they weren't shown on the survey before. The row of arborvitae were supposed to extend all the way back incorporating a screening of the entire parking area and an area beyond that and there is nothing there now. One thing that is there now is the bar, which services this outside area. The bar is built right up against the fence that runs along that property line.

The parking lot was striped somewhat differently in the front, the area to the left-the smaller parking lot in the front, which is striped for 7 spaces perpendicular to the adjacent property line. Those 7 spaces were shown as 5 spaces, 3 parallel to the line and 2 in front of the garage doors in the previous plan. The Resolution called vegetation between those proposed parking spaces and the property line to be maintained. A fence was extended down to about halfway along the adjacent building so was the screened area immediately in front of the garage, but the balance is unscreened and open. Part of the reason that there is little greenery between the two is because the adjacent driveway is actually on this property. A good deal of that driveway actually cuts across the iron pin that represents the corner is literally in the center line of that driveway today. A good portion of that driveway is on the subject property, which doesn't give the applicant any right to change the plan that this Board approved but, in fact, what is shown there is different than what was approved. I think the Board has made it known to the applicant that he deviated from the plan and they are not understanding of that.

Member Covelli questioned Engineer Petry if he could re-state what you just said in terms of the neighbor's driveway is actually located partially on the applicant's property?

Engineer Petry answered yes and I am going to take a blue marker and I am going to mark A-16 with the location of the driveway for the adjacent property. You can see by the area that is the subject property that is outlined in green that the center of that driveway is literally at the property line of the subject property. At the street line, half of the neighbor's driveway is on the applicant's property.

Vice Chairman Grygus stated I think what is confusing is it is depicted on the plan as a gravel driveway but, if I am reading it correctly, the one edge of it says "edge of pavement". So that's the neighbor's driveway where it says "edge of pavement", even though it is gravel?

Engineer Petry answered yes.

Member Covelli remembers that this was a pre-existing condition in 2005. To your knowledge, that existed?

Engineer Petry stated yes, absolutely. I go back to A-15 and the driveway is not shown on A-15.

Vice Chairman Grygus stated it never came up in any prior hearings, but Member Covelli remembers something about this at some point.

Engineer Petry stated yes, it certainly was a condition that existed.

Engineer Petry continued with Exhibit A-17, SP-2, which is our site plan. What we tried to do on this site plan was to provide the Board the information that they asked for in two pieces because it got too cluttered trying to do it one. On the left-side of this drawing, we talked about what's there in terms of seating, what is going to be removed and what is going to remain, so there is a distinct count.

I am going to start in the upper rear corner of the property there is a stone area in the back where there are 4 chairs and 1 chiminea and the 4 chairs and 1 chiminea in that area will be removed.

Coming back down the hill, about halfway down between there and the canopy that is in the middle of the property, there is a bench along the side. It looks like a park bench. That park bench is going to be removed because didn't want it to be perceived as seating for service. We looked at it in our first go around, we didn't count it but the Board said they wanted to count everything so we went back and counted every single, solitary thing.

There is an existing patio with a covered canopy in it that has 4 chairs and 1 table in it, and the applicant is going to maintain those 4 chairs and 1 table with the Board's approval obviously.

Coming further down the hill, there is a series of tables and chairs in a large picnic area immediately across the parking lot. The main seating area for the outdoor area and the area that has probably been there the longest in terms of what happened. There are currently 3 picnic tables with attached benches are going to be removed.

Presently, there are 9 tables on that patio in the center portion of the gravel patio that have umbrellas and 4 chairs each. Those 9 tables with umbrellas and 4 chairs each would remain.

There is 1 chiminea in the front right corner and in the front left corner there are 2 chimineas there with 4 chairs and there is 1 chiminea in the back with 4 chairs. Those would remain.

There is a bar that has 8 stools and an additional 8 stools that are at separate high-top tables. Those will remain, but we are going to relocate the bar to be 10' off the property line. The requirement for an accessory structure is 5' but since this has a canopy over the top of it, I assume it would be an accessory structure so we propose moving it 10' off the property line because we have the room to do it.

Attorney Rubin stated you have examined that structure and it can be moved without any difficulty? Is it a movable structure?

Engineer Petry stated it is a removable structure. As the Board Members discussed at the last meeting, there is plumbing to the sink, there are countertops that are granite, but all of this can be removed by the appropriate contractors and relocated 10' away from the property line.

There are also a bench and a table at the bocce court and would like to keep the table, but we are going to remove the bench because we don't want to have to count the seating. There is an enclosure that we refer to as "the smoking shed" that has movable seats in it and benches outside of it. The total there is 8 seats and we are going to remove those 8 seats.

The plan says that we will also remove the enclosure. The applicant would like this Board's consideration to maintain the enclosure if possible, locked so that it could be for personal use for the residence only. It happens to be his favorite place on the property. If the Board is inclined to do so, I can tell you that the enclosure would meet the setback requirement to the side yard.

Attorney Rubin questioned that would not be used for the commercial purposes of the site?

Engineer Petry answered no, if it is allowed to stay. It is a movable structure and if the Board required that it be removed, we would obviously remove it. WE believe that it is an esthetically pleasing fixture and it provides an area for the owner and his family to enjoy outside as solely theirs.

Attorney Mondello stated Engineer Nash has brought to my attention that, perhaps your testimony with respect to the bar being movable maybe inaccurate. In fact, in his opinion the bar needs to be deconstructed and then reconstructed. Is that more accurate?

Engineer Petry answered yes. It has to be taken apart and put back together. You can't slide it down the patio; it is certainly something that requires a contractor to move it. It will require contractors and will require permits to do so because there will be plumbing changes.

Chairman Dunning questioned, when you move the bar forward, are you changing the walkway that comes up into the elevated area?

Engineer Petry stated yes. Right now the walkway comes up to the front area of the bar and we call for it to come up to that same patio area. We've slid the patio with the bar. So we have taken the whole configuration and slid it forward.

Chairman Dunning stated it is elevated up. Are you going to build another ramp over there somewhere?

Engineer Petry answered no. There is a walkway up from the parking lot now so there would still be a walkway.

Chairman Dunning stated it's a ramp, but you are moving the bar on top of where it is now.

Engineer Petry answered the walkway will come to the front edge of the bar.

Chairman Dunning stated it would be under it. If you look where you got that little block wall along the bar, you are putting the bar on top of the walkway.

Engineer Petry stated the right edge of the walkway is at the right edge of the canopy and the bar sits back from the edge of the canopy.

Chairman Dunning stated that is not how it is drawn.

Engineer Petry stated if it is necessary we will move the ramp.

Chairman Dunning questioned is this whole back area barrier-free construction - handicapped accessible?

Engineer Petry answered it is not.

Chairman Dunning commented that someone in a wheelchair could never utilize the outdoor portion of this establishment.

Engineer Petry stated that he has not looked for ADA compliance in the existing condition. I didn't see sufficient accessible route to get there, so I didn't anticipate that the area was accessible.

Chairman Dunning stated once you get off of that little block pavement, you are on gravel, which isn't good for a wheelchair, so you can't get to your large seating area where you have your 9 tables and 4 chairs at a table.

Engineer Petry commented that is true.

Member Covelli questioned if this area is required to be ADA compliant?

Chairman Dunning stated that is the question.

Engineer Petry stated it is a fair question and I don't know the answer. I would have to look at code for that.

Chairman Dunning stated, because if it does, it would have a major impact on your design of the lower area of the back elevation, and use of materials.

Engineer Petry stated I don't know that every area within a facility, whether it be an outdoor facility or an indoor facility, every area does not have to be accessible. I know that is the code, but I don't know if the existing ramp meets code today. I can't tell you that the area is accessible today.

Chairman Dunning stated it doesn't meet code. A handicapped ramp basically is one foot (1') of ramp for one inch (1") of elevation. I don't think it even comes close.

Engineer Petry agreed on both counts.

Member Covelli stated my understanding of ADA, you would be doing a modification so you are supposed to be working towards barrier-free as oppose to a pre-existing condition, In this case, you are talking about an area for which you are doing construction, it is my understanding you are then supposed to be cognizant of a plan to make it handicapped accessible. That was in place in 2005.

Engineer Petry stated I don't disagree with the statement. I don't know if the area is required to be if it is inclusive of the restaurant. The restaurant is accessible. There may be stipulations in the ADA Code that say that is sufficient - people can eat inside. I don't know that outside has to be, but if it does, and I will check that because it is a great question, I think that area up to the patio could be made accessible with a ramp, but I don't know that the balance of the areas have to be accessible. We could get people to the bar.

Chairman Dunning stated I don't mean going up the hill so much as your main seating area we will call it. There are no paver blocks or macadam to get there.

Engineer Petry stated, if it is a requirement, I think the bar area and the gravel area are at a close enough of an elevation to each other that, if I could get people from the parking lot to the bar area, I can get them from the bar area to the patio. I will look at making changes to the plan if that is a requirement.

Chairman Dunning stated I believe New Jersey uses the Barrier-Free Construction Code, which is a little different than the ADA Federal Code.

Engineer Petry agreed that there are some subtle differences.

Vice Chairman Grygus stated you are proposing doubling your seating and there has to be some kind of code as to what kind of restroom requirement you have to have as far as fixtures.

A Professional answered yes there is. It is based on occupancy.

Vice Chairman Grygus stated we have never seen any architectural drawings showing what exists. Will it satisfy another doubling of the seating?

Engineer Nash stated that is a good point, but I am not familiar with it. It is more of an architectural question for an architect.

Attorney Rubin stated we will have to find that answer.

Member Henderson referring back to the ADA issue stated it is usually based on a certain percentage cost of construction, maybe 20%, and based upon a priority of what gets addressed. You can't pick and choose. Engineer Petry stated it is true. You actually have to put a certain amount of money towards ADA compliance, but it is a percentage.

Attorney Fernicola stated that is renovation. This is new construction, not renovation.

Member Henderson stated it depends on the type of project whether it is renovation or new construction.

Member Covelli referring back again to ADA because I heard you use the term it will require, yet in another statement you said it would be a relatively easy fix to get someone from the parking lot to that main area where the 4 tables are. I am wondering if the applicant would meet that code regardless of whether it is "required" because if it is an easy fix I would think it is not only a good thing for allowing a handicapped person to be able to utilize that if we were to grant the application. But also the fact that it is good for business as well as it is good for people having that ability to enjoy that like someone else who doesn't have a disability. I am asking if the applicant will be putting it on the record that he will make that accommodation, at least to the area. Obviously, as the Chairman points out, the other is a much bigger and broader question that probably has a diminishing return in terms of what your accessing that person with a handicap to, versus the basic seating area of outside that you are trying to purport as a benefit to going.

Engineer Petry, as I look back over my shoulder as you are asking the question, and my client nodded his head "yes" we will make the area ADA accessible to the bar.

Engineer Nash stated you will also need a path to get there so if all the cars are parked across the back, there won't be access, so you will have to create a wider aisle, if will. You may lose a parking space as a result.

Engineer Petry believes we have the ability to do it having been at the site. I will look at it in detail and I will provide this Board that detail.

Engineer Nash, just so the Board is aware, the ADA law is a civil rights law and that is why it has its teeth. You are respecting the civil rights of the disabled person and that is why it is so important. This is why we are all obligated to follow; there is no choice in it.

Engineer Petry, in terms of what we are proposing to do, the plan calls for a total of 64 outdoor seats to remain. What we counted today, including benches, totaled 99; so we would be eliminating 35 seats over what had operated, whether it be without this Board's approval several years ago. What we are looking for in the plan is 64 outdoor seating in total with 66 inside seats. The overall parking, what we show on the right-hand side is that our intention was to maintain the 2 spaces that are in the garage that service the residence, the 7 spaces that are striped along the common property lot line with Lot 4 and the existing spaces within the rear of the property which would be supplemented with a handful of new spaces. The existing space in the corner is not counted on the survey because it was not part of the original site plan approval, so that space measures 13x18 now and if it is utilized we would ask that that be included in our count. Additionally, the spaces behind the house are 3 spaces on a concrete pad that are regularly utilized and 1 additional space on the asphalt adjacent to the entrance to the apartment unit, which is regularly utilized. We would stripe those spaces as part of this application and those 4 spaces, because of their location, have less than adequate back-up versus the code requirement that is within your ordinance.

Member Levine questioned where are the residents' parking?

Engineer Petry answered currently there are 2 spaces that are in the garage that service the residence and they are 2 spaces behind the house that service the service.

Member Levine questioned which are not part of the count?

Engineer Petry answered it is not part of what is striped today, but it is part of the count overall because we have to count the requirement for those as part of our requirement count.

Engineer Petry continued, when we do our requirement, we say we have 2 residential units which each require 2 parking spaces by your ordinance; that is 4 parking spaces required. In our parking calculations, we have a total of 6 employees within the existing restaurant and we have to provide 1 space for every 2 employees so that is 3 spaces, which is 7 spaces. We have 66 seats within the restaurant and bar. Per your ordinance we are required to provide 1 space for 4 seats so that is 16-1/2 spaces. If you look at what our requirements are today, it is 23-1/2 spaces by code. What we are asking for is to add a bartender outside, which is another 1/2 space, so we go from 23-1/2 to 24 and 64 seats outside which would require a total of 16 spaces. All total we require 40 spaces. What our plan depicts is 35 spaces and I have counted 6 spaces of the rental at Berta's, which the Board will recall from last meeting, the agreement was for 8. I have only counted 6 because we will use this for the employees, not guests. The employees would be shuttled by the owner from the garage back and forth because they have fixed shifts. If his daughter, who lives in the house, does the same thing, they could part 1 car for the apartment and 1 car for the house in the garage so each residence has 1 car on site, and 1 car can be off-site at Berta's. We will have 2 off-site residence parking spaces and I said our requirement for employees is 3-1/2 spaces, so I only counted 6 spaces off-site. I did not count the original 8, because then we would be parking customers off-site.

Member Levine questioned during working hours, the resident who is parked in the garage has to get out and move their car over to Berta's.

Engineer Petry stated there are 4 spaces association with the two families that live there. On peak hours, and this is only peak hours, they would have 1 space each on-site and 1 space each off-site. They would move their vehicles to Berta's on Friday and Saturday nights when they know it is going to be crowded.

Vice Chairman Grygus stated you made some mention of a space somewhere that doesn't meet the egress requirement for backing up. Where was that?

Engineer Petry stated there are two spaces that have less than the 25' back-up; one has 17-1/2' and the other has 20' at its corner.

Chairman Dunning stated you have the same problem in that lower parking lot. You only have a 20' space in the aisle.

Engineer Petry stated I have gotten to the parallel parking spaces yet.

Chairman Dunning stated your lower parking space is in the Borough right-of-way.

Engineer Petry stated I understand that as well, and that was something that was raised by Engineer Nash's letter. Certainly, our dimensions and the parking spaces are based upon the existing striping. There is certainly room to slide that striping up so that the first space is not within the right-of-way. There is the ability to slide all those spaces up.

Chairman Dunning questioned how do you deal with that 20' aisle? It doesn't work.

Engineer Petry stated we proposed 2 parallel parking spaces in the large lot and 2 parallel parking spaces in the small lot and those 2 parallel parking spaces in each lot would cause a 20' minimum back-up aisle for vehicles that are parked in that area. Why did we incorporate those spaces? We did it because for practical perspective, when the facility is full, that is how people park. They park along those curb lines and they are left with 20' back-up and whether or not that meets the ordinance of the Borough, it is how the facility has functioned at peak hours.

Chairman Dunning stated we also have to be realistic. It doesn't work for a large vehicle. I measured a GMC Sierra today and it is just under 20'. How does he back out of the space? He doesn't.

Vice Chairman Grygus added suppose a person comes in and drives to the back lot and everything back there is full. It is going to take about a 19 point turn to get out without backing all the way out.

Engineer Petry stated there is an area within the rear that would probably provide sufficient turn around because the back-up from the 3 spaces that are above Lot 4 today is significant. There is a fair amount of area there in which to make a k-turn.

Vice Chairman Grygus stated we also haven't addressed any location at all on the plan for garbage and recycling, which could take parking.

Engineer Petry stated garbage and recycling is stored today beneath the deck and the area doesn't affect the parking today.

Vice Chairman Grygus questioned how is it collected?

Chairman Dunning questioned where is it on this plan where it is stored?

Engineer Petry stated it is not depicted on the survey or on the plan itself.

Chairman Dunning questioned, commercial buildings, don't they use dumpsters? The town is not supposed to pick up commercial properties/businesses.

Member Covelli stated this is a residential and commercial site. You could make the argument both ways.

Engineer Petry stated it is picked up by the town; there is some storage for the residents that happens in the back. The primary refuse storage area is immediately next to the garage, at the front left corner of the garage, and if you look at the survey it is labeled "refuse storage area enclosed with fence" at that location.

Member Hoffman questioned is that for the residence or is that for the business?

Engineer Petry stated that is for both.

Member Covelli recalls that the area is open, but it is fenced, and it is closest to the neighbor's property. Actually, it is right by the house.

Engineer Petry agreed.

Vice Chairman Grygus assumes they are using regular garbage cans, and they don't have to take them out to the curb like everybody else.

Engineer Petry stated yes, but I don't know about the curb pick-up.

Vice Chairman Grygus stated you take them from all the way in the back and front and all the way out to the front of the property?

Chairman Dunning stated let us get back to the parking at this time.

Chairman Dunning stated where you show 17.5', how does that work?

Engineer Petry stated this parking space, because it has the ability to turn out sooner, there is a space between it and the next, where the concrete pad is. It is a wider space so that car has the ability to swing earlier and the fact is the wider the parking space, the narrower the back-up is required. You can start your turn earlier.

Engineer Nash stated that is not true. The ordinance says when you have 90° parking, you need a 25' aisle. That is what it says; it doesn't say if the space is wider it is less.

Engineer Petry stated I am not suggesting that we are in compliance with the ordinance; the Chairman asked me how it worked. It is reality versus code.

Engineer Nash stated but we have a code that guides us and we have standards.

Engineer Petry stated I understand that and I understand it requires a variance.

Chairman Dunning questioned is that 17.5' adequate for two large trucks passing each other?

Engineer Petry stated the throat of the driveway, at the front corner of the building, is only 17'.

Chairman Dunning countered it is less than that. If you go where the block is laid around the tree, I roughed it out at less than 14'. Do you need a variance for that?

Engineer Petry agreed, but it is a pre-existing, non-conforming condition.

Member Covelli stated most of the issues were here in 2005. Whether we were pulling in to park in the park outside or to go in the bar to have a bite or a drink, these issues existed. I just want to put that on the record because we are overly interested in re-designing this man's entire parking lot.

Vice Chairman Grygus stated unless you are intensifying the amount of use.

Member Covelli stated that is a different point. But whether there are two cars that have to pass there, and they are the only two cars in the parking lot, or whether the parking lot is completely full and two cars have to pass at the throat, they couldn't do in 2005 and they

can't do it yesterday, they can't do it today under your drawing and they can't do it tomorrow unless you are changing something.

Attorney Fernicola stated that they also noted in 2005 they were removing the encroachments from the Bellantes' property at the frontage, which would reduce it to 13'.

Member Covelli stated those are some of the things I want to talk about and that is why I don't want to keep re-engineering his existing driveway.

Chairman Dunning stated they changed the parking schematic. There was less of the width of that aisle against the front of the building. If you go back to the original plan, they have no parking in front and behind the front building. The question is on the upper one at 17.6'. That parking schematic has changed in the original plan.

Member Covelli agreed and it was also a vehicle parked there. And to Engineer Petry's point, I am sure somebody pulls in there because it is a nice easy place to park your car and go in and wet your whistle.

Attorney Mondello, to Member Covelli's point, nothing has changed since the 2005.

Member Covelli stated the Board has every right to deliberate and ask the questions, I just want to stay focused on how much we can change and how much hasn't changed.

Vice Chairman Grygus stated let us remember that one of the bases of that 2005 approval that it was occasional use, private parties only on weekends. So the likelihood of having that type of encounter in those areas was a lot less than when you have the use that is being proposed now.

Attorney Mondello stated, to Attorney Fernicola's point, this is an expansion.

Vice Chairman Grygus is arguing the fact that it wasn't there then, it is there now. I am just saying that the intensity is much greater now so that the likelihood of having that scenario of a car coming in and going out at the same time is much greater under the proposed use than it was with the 2005 approval.

Member Covelli stated there is validity to that, but there is invalidity to that because the problem exists whether there are two cars in that entire parking lot. I just want to get to the point to talk about that there is no shrubbery and quite frankly, when I walked that site, there has been nothing done to shield anything from either neighbor's property. At the end of the day, I understand why everyone has torches lit ready to burn somebody's house down because that is place has had nothing done to address that problem. When two cars meet in the driveway, one guy has to figure out if he is moving or not, but the fact that there are people on either side and we have done nothing to address; it is wide open there and nothing has been done. Yes, I saw the 6' to 8' oak trees there. They are deciduous and arborvitaes are not so there is no screening in the winter, other than the twigs and trunk, and there is limited today. With everything that is happening on the left-hand side of the property and the kitchen fans were blowing and everything is going on, on that side of the property, with no shielding and those spots that were changed in direction, are now pointing directly into the neighbor's house and their property, and none of that is being addressed. But those two cars will have a problem with that parking lot; I agree with that. It is fact whether there are fifty parties or two; it is going to happen.

Attorney Rubin questioned Engineer Petry if he had anything further on changes?

Engineer Petry answered I do not.

Attorney Mondello: Do any of the Board Members have additional questions?

Member Covelli questioned if you want to take my rant and put it into a question. What are we doing to shield the two sides?

Attorney Mondello stated let him respond. Maybe there is something we missed.

Engineer Petry stated we have not included any landscaping within the proposed plan. We have maintained the privacy fences between the properties. One of the reasons for keeping the bar 10' off the property line was to allow us the ability, if the Board's reaction was such that we could incorporate landscaping between it and the property line.

Member Covelli stated the fence on the east side of the property appears to me to be not owned by the applicant, but rather by the neighbor.

Attorney Fernicola stated there was testimony that they put it up incorrectly.

Member Covelli stated nope, that is the west side. I am talking on the east side. Another word, the fence between the party you represent and the bar. Who owns that fence? Can anyone answer that question for me.

Attorney Rubin stated Mr. Ryan says it is not him. It is the neighbors.

Member Covelli stated so we have an agreement on who owns the fence, so when you say that he is maintaining the screening, he is not maintaining the screening on the west side because it is not his to maintain. The one that he put up on the east side, in lieu of the 31 arborvitaes that never went up and it is a 5' fence.

Engineer Petry agreed that the fence on the east side is on the subject property.

Chairman Dunning stated it is facing the wrong way. The finished side is supposed to face your neighbor, not yourself.

Engineer Petry answered understood.

Member Covelli questioned the shed.

Engineer Petry stated the shed is about 2' from the property line.

Chairman Dunning stated if you go back to 2005, the plan that was never followed, we have screening on both sides of that property, completely on the east side between 24, 31, whatever number you want to use, and in the front section the shrubbery stuff that was there was supposed to remain; it has all been cleaned out.

Engineer Nash asked that Exhibit A-15 and Exhibit A-16 be put up so we can see both of them at the same time and explained the difference in the plans is the original plan from 2005 on the left the yellow shading is the parking lots and then the pink area is the parking lot that is existing. Typically, when an applicant comes to the Board, you are familiar with this is what we are proposing as opposed to this is what we built and now we want approval. You can see the difference in the two very clearly there how it is not even close. You can see how much closer to the property line things are. The important thing about a buffer is that it is more than just plants and shrubs screening; it is distance. Having a buffer area doesn't mean just visual screening; it's a distance issue too. On both sides, the buffer areas were reduced in square footage.

Attorney Mondello stated he is perplexed. Why would those buffer areas be reduced?

Why wouldn't the applicant now say, okay I was supposed to do this in 2005, sins are forgiven, but we will do it now. We will put the 31 arborvitaes in now. I must be missing something.

Chairman Dunning stated because they don't have room.

Engineer Nash stated they want parking instead of arborvitaes.

Engineer Petry stated I don't know that in fact is the case because if you look at where the arborvitaes were proposed versus where this construction has occurred, the parking area is really not significantly closer in this area.

Engineer Nash countered yes it is. It was 15' to 20' and it is removed to like 16' (not sure if this was the correct number spoken). That is significant in percentages.

Engineer Petry, in terms of the arborvitaes, is not what I would recommend for this site because it is going to be deer food in very short order. There is room to plant a row between the parking area and the fence and we could expand that to the rear area where the activity is occurring and we could plant in that area, if we were to relocate the bar as shown on A-17. We have the ability to those evergreens back in this area, wrapping around the bar, and we can incorporate that if that is what the Board wants to see happen. We can do the same thing on the adjacent side to Lot 2 and put the remainder of those same arborvitaes in that area, or whatever other plant may be more suitable, along that curb line area.

Member Hoffman stated you would have to do the lower, smaller lot too because those lights are shining right into the neighbor's house. The one on the lower left; the front 7. Chairman Dunning agreed, that is the worst area.

Engineer Petry stated I think we can do that with something lower than an arborvitaes.

Member Hoffman stated well it has to be at least 4' or 5' high. It has to be as high as the lighting.

Member Covelli, to refresh our memories, the neighbor's driveway is actually on Mr. Ryan's property. So that complicates the matter that Mr. Ryan doesn't even have full use of his own property as a buffer.

Chairman Dunning stated in 2005 we weren't concerned about the driveway because we had a large buffer area. Member Covelli agreed.

Attorney Rubin stated for some reason I didn't see in any Resolution that there was an encroachment in 2005.

Chairman Dunning stated because the driveway wasn't shown on any documents.

Vice Chairman Grygus questioned the dimensions of the pvc shed and how far off the property line?

Engineer Petry stated it is about 7'.8" high. If the Board is concerned about the shed, the applicant will move the shed so it is in compliance with the site setback. It is a pvc shed and has a snow blower and leaf blower in it and it could be moved without any contractors.

Attorney Mondello stated the Engineer is indicating that the shed has to be removed regardless.

Attorney Rubin stated we will just remove it; it is gone. We are not removing it; it will just be removed off site; taken away. We want to do whatever we can to make this a little smoother obviously.

Attorney Mondello: Any other questions for Engineer Petry from the Board Members?

Member Covelli questioned what are we proposing for those two areas; the one area is to the east of the front parking lot where we said it is a very square footage challenged area, what would we do for a buffer between the neighbor and there, and then on the west side of the property next to the detractor, what would we do there because that entire fence line is completely open without any plantings, yet there is a whole rock garden, maybe a raised

garden, but we have no screening of shrubs; we have nothing to screen us from the property. I have seen a playset and I am sure there are children over there and they are right next to the fence with nothing to the parking lot. We put a lot of thought into the back.

Attorney Rubin stated we are going to take care of that right now. Engineer Petry, as you have already indicated, there is space to put in arborvitae at a certain height but it may not be the species that was originally indicated but there would be a species that would be acceptable to the Board. Perhaps we could show on your plan, on both sides, what we can do and what would be acceptable to the applicant?

Engineer Petry again stated that I would recommend going away from arborvitae. I understand that it is a popular screen because it grows really tall, really fast, and the bottom six feet of it ends up really bare, really fast. In my opinion I would go with either a holly along the lines or a viburnum along the lines; both of which are evergreen. They are not going to get to be 20' tall, but they are going to get to be sufficiently tall to screen highlights and provide visual separation.

Member Covelli stated I think you made a very good point. You do not necessarily want anything that is 20' high. Arborvitae also have a tendency when they get iced and stormed they split and lot of other things start to happen, be that as it may.

Engineer Nash commented that hollies are bushy plants and you don't have lift in certain areas so you have to be careful about those.

Engineer Petry stated that holly will get to be 6' to 8' wide, if it is not trimmed, and it will get to be 8' high. They are very deer resistant and in this area I would look for something more like one of those two plants, rather than the arborvitae that were originally proposed and approved. I think it would be more appropriate at this location.

Member Levine questioned how many years will it take for them to get to full height?

Engineer Petry answered that they are not the same growth rate and that is one of the reasons why I said arborvitae are a popular choice.

Member Levine stated I am not talking 20', but to get to the maximum; is it 10 years, 20 years?

Engineer Petry stated it is probably 8 to 10 years.

Member Hoffman questioned how long will it take for them to get sufficiently dense and high enough to act as a screen? Put something in that is going to be 4' tall above surface level?

Engineer Petry stated they will screen headlights at planting because headlights are generally at 30" and that is where you would like to be, let's start there. But some of the SUV's are higher than that and so we like to see those types of plants go in at 48" planting height (above surface level), which is a little bit more money and a little bit harder to find. Vice Chairman Grygus stated why don't you just then revise the plan and show us what you propose.

Member Henderson questioned we were always saying that the 2005 plan is what the Resolution is based on, correct? Attorney Mondello stated sure.

Member Henderson continued are we saying that the 2005 plan is what we want to use as a base and everything on that plan should, in fact, be what is on site and be working off of?

Attorney Mondello answered no. It is the applicant's application. He could decide to completely ignore what was done in 2005 and I am not so sure that the Board would be

pleased with that type of approach, but it does not have to be a mirrored image of what was presented before.

Attorney Fernicola stated the Board has to give him permission to alter what was required as a condition.

Vice Chairman Grygus stated we can't enforce the Resolution.

Attorney Fernicola continued that it is not as simple as the applicant just proposing. He needs relief from this Board to eliminate the conditions of approval that were imposed in 2005. It is not as simple as making a proposal; he has to get Board permission to eliminate those conditions of approval.

Attorney Rubin stated that this is one thing that I think we agree on. The Board has to approve whatever changes are made so that is why we are here.

Attorney Mondello: Any other questions for Engineer Petry?

Member Hoffman questioned what about the west side of the applicant's driveway that encroaches? Is anybody going to propose something for that?

Engineer Petry stated we are not, but I understand and have heard counsel for the neighbors discussion about the fact that that was supposed to be fixed in 2005.

Member Hoffman stated according to the 2005 plan, it was shown to be fixed.

Engineer Petry stated we will go back and look at that.

Member Hoffman stated that would narrow your driveway there and you would have to extend it closer to the residence.

Engineer Petry answered that is correct. I think that is exactly what was shown in 2005 showing a 15' wide driveway at the throat at the street off of the property line post construction.

Attorney Fernicola stated there was also planting also required in 2005 on the west side of the property so when the Board asked for the revised plan, is the Engineer for the applicant going to include plantings on the west side of the property. I heard him address the east side.

Vice Chairman Grygus stated I think we addressed that. He addressed both sides.

Engineer Petry stated I didn't see specific plantings called for in the 2005 plan. It says in that area "existing plantings along property would be retained for use as a buffer". I understand that whatever was there – I have seen the rock garden, the herb and vegetable gardens and all of that is utilized on site for the restaurant. It looks like we are going to have to do something there and perhaps relocate the vegetable garden to another location to accommodate the buffer that the Board is talking about and what would be appropriate for the neighbors.

Attorney Fernicola is requesting, so we don't have a similar argument next time we are here, that the applicant be specifically instructed that when he provides the Board with the revised plan, that he is required to provide a copy to myself.

Member Covelli questioned Attorney Rubin – would you agree to do that?

Attorney Rubin answered if the Board so instructs, it will be done.

Attorney Mondello stated he will supply that.

Attorney Mondello continued that some of the Board Members would like Engineer Petry to address Engineer Nash's letter that he worked on late last night, point-by-point, if it is convenient Engineer Petry.

Board requests recess.

Recess 9:25:57

Reconvened 9:36:54

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

Attorney Mondello: Engineer Petry would you be so kind, and you did indicate to me, off record, that when you update or revise the plans to show the landscaping, you will be going to put a variance chart, or variance listing on the new plans. Isn't that correct?

Engineer Petry answered "yes we will".

Attorney Mondello continued, why don't you proceed addressing Engineer Nash's June 7, 2017 letter, which letter has been marked as Exhibit B-2.

Engineer Nash's June 7, 2017 Review Letter is attached to these Minutes for reference to Engineer Petry's response to each item.

Engineer Petry, starting with Page 2 because page 1 is factual listing of the documents reviewed. Engineer Nash agreed.

General Item 1: The 2005 application to the Board received two use variances...

This is a statement of fact. I don't think we need to respond to it.

General Item 2: States the Zoning and the Site Data Chart. Engineer Nash has corrected me in terms of the setbacks. We took the setbacks to the front building only; we didn't consider the two separate buildings, so we will revise the Site Data Chart to look at the two separate buildings.

The paragraph after that goes on to say that the shorter dimension of 8.1' is different. The 8.6' that is shown on the current survey is different than the 8.1'. I don't understand this either. It is a survey by the same surveyor, but that is the dimension that is shown, so we are going to use the 8.6' that he is showing. Again the 17' is different and I agree that the 2005 Resolution doesn't talk about the combined total side yard is a variance. I am going to show that as an existing non-conformity on my Site Data Chart. I look at it as an existing condition that we are not affecting. If the Board grants variances for existing, non-conformities, that a decision that this Board makes. This application doesn't affect my opinion.

Item 3 Site Plan Comparisons

First Bullet: Talks about the arborvitae and existing shrubs between the house and the rear. I think those shrubs are trees, but that is the only thing we differ on.

Second Bullet: The front parking lot has been widened approximately 12' and that again, is fact. You can see it from what has been marked A-15 on the left and A-16 on right. We are going to go back and look at that area and see what we can do in terms of the screening. Something in that area we would probably look towards boxwoods, something that are denser and shorter so that so that they provide a screening for the headlights, but not a visual buffer for people traversing the street.

Third Bullet: Talks about the shed. The applicant has agreed to remove the shed, and we will show that as being removed on the revised plan.

Fourth Bullet: The new site plan shows 5 condenser units and an emergency generator... I agree nothing is shown at the rear of the house in the 2005 plan. Those units

are there, but I can't tell you how long they have been there. I would have to assume that some sort of air conditioning units were in that location in 2005 despite the fact they weren't shown on the plan.

Fifth Bullet: The rear of the main parking lot was not construction in accordance with the approved plan... I think if you look at what was counted on the survey. There were 6 spaces on the survey along the rear, there are 3 spaces along the rear, there are 6 spaces on what has been marked as A-15. The number of spaces in the rear parking lot is the same as what was approved. I think the area in question is this corner area. We want to make that a parking spot and I would agree with Engineer Nash that it wasn't shown that way in the 2005 plan. We are going to implement screening within the area between the curb and the fence/property line. Our plan will not call for a change in the parking area. We would look to not reduce the area that is there on the plan we are proposing to the Board. We understand that is a change and we understand that is part of our expansion.

Sixth Bullet: From the Resolution, item 8 of the findings of act and conclusions of law... This is referring primarily to this parking area in the back and we agree that it is paved. The applicant, in his mind, followed the direction of the board engineer's recommendations. We would not be looking to remove asphalt and restore it to a gravel parking lot at this location.

Member Covelli questioned if we have any quantities of what water is hitting that impervious surface? Do we know if there is any flooding going on with the neighbors' properties or anything of that nature? There was a reason, and I cannot recall all of it, I can piece it together in my mind – yes Engineer Nash.

Engineer Nash stated I was going to suggest providing drainage calculations because there was a detention system proposed that was constructed completely differently but also so much additional asphalt was added so it changed the impervious coverage so, in effect, the detention system needs to be larger than what was originally designed.

Attorney Fernicola also questioned do we have evidence of Highlands' approval because that was an issue in 2005 concerning this area as I recall looking through the Minutes?

Attorney Mondello to Attorney Rubin: Can you answer Attorney Fernicola's comment about the Highlands?

Attorney Rubin answered I thought there was a notation somewhere in the old file that there was a Highlands' approval. I cannot remember it. I did not bring that portion of the file with me. I don't know why Mr. Gregor put that in his report. I have no idea and he is not here and I can't comment on it. All I know is that was a direction that Mr. Ryan followed.

Vice Chairman Grygus commented I think what may have happened is Bill may have recommended pavement so that you could delineate parking spaces, which you can't do with a gravel area. But, we did the compromise of the basket weave blocks because you could accomplish both. It doesn't make it impervious, yet you could still delineate the parking spaces.

Member Hoffman, stated that is another thing, even though it said on Mr. Gregor's recommendation, it says on the drawing "gravel area to remain". It should not have mattered what Mr. Gregor had in his suggestion to us. That should have been more paramount.

Vice Chairman Grygus continued, more importantly the Resolution specifies the basket weave.

Chairman Dunning stated Mr. Gregor suggested that the ordinance said the parking lot should be paved. Where we went from there, went back to stormwater management and that is how we got to the basket weave.

Attorney Rubin doesn't understand is he did and it was inspected. The town inspected; everything was inspected. Mr. Gregor inspected otherwise he would not have been open for all those years, and it was accepted.

Chairman Dunning stated, in my estimation, I don't think it was ever inspected because our whole Resolution was not followed.

Vice Chairman Grygus stated there was no way you should have ever gotten a c.o. because it didn't comply with the Board's Resolution.

Chairman Dunning stated I think that it was it confusing the hell out of this Board.

Attorney Rubin stated I have no idea and Mr. Brusco isn't here anymore who was the Zoning Officer and Mr. Gregor isn't here. I don't know who is here anymore that was there in 2005, so we are trying today to make things happen to adhere to what the Board would want us to do, not only in 2005 but today.

Attorney Fernicola stated there are representations in those Minutes by the applicant back in 2005 that Highlands wanted less impervious area.

Attorney Mondello stated I am looking at what I believe to be the letter from the Highlands. I haven't read the whole thing but it says, "Therefore the subject project/activity is deemed exempt from the provisions of the Highlands Water Protection and Planning Act subject to the following limitation(s):" It doesn't speak about the limitations that you are talking about Attorney Fernicola.

Attorney Fernicola questioned since she made the changes, isn't it the applicant's burden to show that they have the authority of the Highlands. It is not burden.

Attorney Mondello stated he got it and the letter is addressed to him dated April 27, 2005.

Attorney Fernicola stated right, those conditions didn't exist. He didn't pave the parking lot in April of 2005, he did it at a subsequent period of time. He didn't get his approvals until October of 2005.

Member Covelli stated we have a situation of either debating what did or what didn't happen, or the remedy is for you to do a calculation to determine what is the impact of what is there, which you are saying the applicant wants to maintain. If the calculations support that, then the only other point, as I see it Attorney Fernicola, is your point is that exemption, in fact, the exemption and therefore it is a non-issue, or it is an issue because what was done is not in compliance, which is out of our hands.

Attorney Mondello stated there is a lot more pavement, so between myself, Engineer Nash and Engineer Petry we will figure this out.

Attorney Fernicola stated the exemption was based on the representation there was no increase in the impervious coverage.

Engineer Petry stated his dealings with the both Highlands and DEP, the regulations are pretty clear I think. They consider gravel the equal of pavement. They look at them the same way. Whether it is gravel or pavement, DEP is not going to care.

Member Covelli stated that representation has been made here before.

Engineer Nash stated they would care if there is additional impervious. This is substantial and you can see it.

Engineer Petry agreed and stated we can establish the difference.

Attorney Fernicola stated the patio and walkway would all be included now.

The testimony below covers the following two bullets:

Seventh Bullet: A single, large detention system is depicted on the 2005 site plan...

Eighth Bullet: There is no storm manhole with grate on the 2005 site plan....

Chairman Dunning questioned stormwater management stating something has been put into the property under the pavement, do we have any information on that? Somebody designed it and somebody installed it.

Engineer Petry stated there is a system that has been designed and that is shown on the plan that Engineer Nash pointed out and it is a subsurface seepage pit with a fair amount of holes in the middle of the rear parking lot.

Member Hoffman stated that is not what was done. Do you have a plan or drawing of what was put done and the capabilities and capacity of that?

Engineer Petry stated there are 3 seepage pits that are shown on the survey, but in terms of their size and capacity and construction details, I don't have that. I can certainly establish what the volume of the seepage pit itself is. I could certainly establish what the depth is, and estimate what the gravel area around that seepage pit is. I can't tell you exactly without digging up the pavement. There is just no way of doing it.

Member Hoffman stated someone put it in and whoever that person was must know what they put in and maybe you should try and find out who that was and what their design plan was and then you would be able to get some estimation of the capacity.

Engineer Petry stated we could do that and perhaps even establish permeability.

Engineer Nash stated the other question, which is perplexing, is the pipe that is right along the west property line and I don't why it is there. It interconnects the seepage pits, but one would think it would have been built out of perc pipe to disperse the water. I don't know what the impact on the adjacent properties; there is no soils, no perc test and things like that.

Chairman Dunning questioned if a permit was taken out to put that system in?

Engineer Petry stated that system would have been put in as part of the site improvements. I can't tell you how, in 2005, this Board did it. What other municipalities have is there is a requirement for a bond posted for construction inspection often by the Board Engineer. I don't know if that service is provided now by Engineer Nash's firm or not, but in other municipalities that is what happens, and the people go out and inspect what was installed. If that actually happened, then there would be documentation as to what was put in. I can give you my best estimation as to why the pipes that come out of these drywells are labeled as "overflow pipes" and they connect to a pipe along the property lines. The lowest elevation of the grades seems to be out by the street, where it would make sense that if all of them are connected together where it is going to go out to the street so it doesn't affect the property owners, that may also explain why this drywell, which wasn't on the plans, is there, but I don't know since I haven't investigated the whole system.

Attorney Fernicola stated the piping that Engineer Nash refers to is not depicted in the 2005 plans. Did the witness answer the question about whether a construction permit was issued for this piping?

Attorney Rubin stated he wouldn't know that.

Engineer Petry stated, I think my statement was I don't know how this town approaches that. In most towns it is done as part of site plan approval; it is not a separate permit.

Member Levine questioned what did the contractor use to do his construction? What drawings?

Engineer Petry stated I don't know. I wasn't here in 2005.

Member Levine stated doesn't Mr. Ryan or anybody have a record set?

Member Henderson also added or who he hired?

Engineer Petry stated they are all good suggestions. There is some investigative work that needs to be done here to try to satisfy the concern with regards to drainage and for me to be able to even do the calculations that the Board has asked for.

Chairman Dunning stated if Mr. Ryan remembers who did it, maybe they would have some information on it.

Engineer Petry stated there may be construction photos that would give us an inkling as to what was put in. This is the research that we are going to have to do.

Engineer Nash stated there wasn't enough information provided because I don't have the depths of the individual seepage pits. The inverts that were mentioned I wasn't sure if that was to the bottom of the pit or to the pipe; usually it's in reference to a pipe. It was difficult to see how that whole thing laid out and then this one pipe that extends to the south dead ends, again, that to me suggests that it is more of a disposal field than a detention system that you are seeping into the ground below. It might be a good thing or it might be a bad thing. If it is showing up on the neighbor's property, obviously it is a bad thing. I don't know, I assume we would have heard that and haven't heard that yet.

Ninth Bullet: The 2005 Site Plan shows the proposed curb on the northwest corner on the property... This talking about the improvements that were to be made to the entry and exit drive to take them off of adjacent Lot 2 and that has not been done. As I indicated in my testimony, we will incorporate those changes into the plans that you see for the next hearing.

Member Covelli stated it is not up to us to design your plan, but your client is encroaching on the west side and his neighbor is encroaching on his east side. We have allowed the neighbor on the east to encroach, but we are removing our encroachment on the west. I guess there is a question of why are we allowing the neighbor to the east to continue to encroach? When that property could be a part of a buffer to the east. Just an observation.

Engineer Petry stated I will discuss it with my client and it may be in his best interest to work something out with the neighbor and do something with the driveways, especially now that it has been raised as an issue.

Tenth Bullet: The parking space layout varies between the approved and new Site Plans. A detailed discussion is given below in the "Parking" section.

Eleventh Bullet: No structures, walks, patios, picnic areas, stone areas....

Engineer Petry stated he agreed to this statement.

Twelfth Bullet: For the buffer area between the west side of the main parking lot and Lot 2...

Engineer Petry stated I think this is one of the issues that we agreed to rectify in terms of the plantings.

Parking

4. We are agree there are considerable differences between the approved parking and the parking as depicted on the new site plan. Engineer Petry believes we have been addressing that.

5. ADA Accessible Guidelines required minimum number of handicap parking spaces for two to fifty cars is 2 spaces and we show 1 and an additional space is required. Engineer Petry agrees and I think that will probably come more deeply into play as we get into that back area. If we make that accessible, one of those spaces should be in that rear area, and probably about the access route to that area.

6. Each handicap space will need compliant striping and signage. Engineer Petry agreed.

7. No parking is permitted in the front yard; therefore a variance is required for the 7 parking spaces in the front yard parking area including the 5 head-in spaces closes to Park Street and the 2 parallel spaces. Engineer Petry stated I disagree because what I think the ordinance calls for is no parking allowed on front yard, not the required front yard. The front yard, according to the survey, is 22.4'. If you carry that 22.4' across, it would be 3 spaces and 1 of the parallel parking spaces because I don't think it says the required front yard. I might be wrong, but that is my interpretation.

Engineer Nash stated you are wrong because it says the front yard is not subject to interpretation. The front yards has a definition in the ordinance, and it is the front yard setback, which is 40' in this zone.

Engineer Petry stated yard front – “the space on the same lot with a main building extending the full width of the lot and situated between the street line of the building and the front line of the building projected to the side lines of the lot”. Based upon that, I thought I was right, but I don't know that I am.

Vice Chairman Grygus stated say you cannot have a 6' fence in the front yard, so if your house is setback 20' from the front yard, you are saying that it is 40'?

Engineer Nash stated in this zone. It depends what zone the property is in.

Vice Chairman Grygus continued you can have that fence at the top corner of your house and that is considered side yard.

Engineer Nash stated no. The fence has to step down from 6' down to 4' when you hit the front yard, which is the front yard setback.

Vice Chairman Grygus stated for fencing we have always done the front of the house to the side lot.

Chairman Dunning stated it is viewed two different ways. The setback is one way and the other is actual front of the physical house itself.

Engineer Nash stated the section that we are talking about is off-street parking; it is a commercial parking lot. So there is no building in play here. It is parking lot and you can't park in the front yard that is the context of it.

Vice Chairman Grygus questioned does this have two front yards since you have two structures on the property?

Engineer Nash answered no. The front yard is relative to the street that it fronts. There is another application that I reviewed for the board house, and that property fronts Erie and Railroad Avenue. So it fronts two properties so it doesn't have a rear yard; it has two front

yards. It all depends where you are. This one has a front yard and rear yard. Some ordinances are relative to the direction of the house and I don't think this ordinance is written that way; it is relative to the street that you front.

Engineer Petry stated the same front yard parking condition existed in the approved plan and I don't know whether a variance was granted for that or not, but there were at least 2 spaces that were located within the front yard.

8. A portion of the parking space in the northeast corner of the front parking lot is outside the applicants property and in the public right of way....

Engineer Petry stated we agree.

9. The 2005 plan has conflicting notes regarding the parking space dimensions... Engineer Petry stated we agree. They are striped as 9s because I have measured them myself.

Member Levine questioned if they are going to be made 10?

Engineer Petry answered no.

Engineer Nash stated so you would need a variance for parking.

Engineer Petry stated stall size to maintain the 9x18 that were constructed, somewhat in accordance with the approved plan.

Engineer Nash stated the approved plan says 9x20, but it says 10x20 also.

Engineer Petry agreed it says both.

Engineer Nash stated it does scale 9x18/9x20, but it is hard to tell. If you are going scaling versus what works, I would lean on the works.

10. Wheel stops have been installed on the front parking lot head-in spaces....

Engineer Petry agreed.

11. Requests the aisle widths to be 25' for 90° head-in parking....

Engineer Petry stated we understand there are 5 deficiencies on the plan and we will evaluate those and determine which we believe we need to maintain and which variances we need to seek.

12. The parallel spaces located behind head-in spaces where the aisle widths are substandard is a scenario that is not prudent.

Engineer Petry stated opinion, but I like it.

Engineer Nash stated it is taking the substandard aisle one step further and it is kind of in synclly stated what the Chairman was saying that you are backing out of a space and typically you are a full aisle width and if you don't your bumper is going to hit the side of the car. It is not bumper-to-bumper. (Member Ludwig jokingly commented it is a good thing there is no alcohol involved at this place.) I am a scientist here, but I can tell you one thing my sentence was longer and I cut it shorter last night. It did have something similar to what Member Ludwig said.

Vice Chairman Grygus stated it is exacerbating because while you are paying attention trying not to back into the car behind, you could hit the car alongside you, or vice versa.

13. The two parallel spaces in the front lot are adjacent to a ground mountain air compressor and the unit should be protected with bollards.

Engineer Petry stated we can accommodate that assuming that we continue to incorporate those spaces.

Engineer Nash stated I think you would want them regardless because you have a car driving within inches. The edge of the parking lot and the condenser unit is right there. It is something that you would just want for your own protection.

14. The 2005 plan shows the front parking lot to be used for residents and employees and this concept has changed in the new plan.

Engineer Petry stated that is correct. In fact, that area was not even going to be striped in the 2005 plan and it is a change we are looking for approval for.

15. The aforementioned Resolution doesn't specify how many parking spaces were approved, however item 7 of the findings of fact and conclusions references the 66 total seats....appears to a total of 24 spaces....

Engineer Petry stated I think we have beaten that horse for several months.

16. 4 parking spaces dedicated to the residential use should be so noted with signage to ensure they are available to the residential during peak restaurant demands.

Engineer Petry stated, as I explained, I think what we are looking to do is to maintain the 2 spaces within the garage permanently for residents and have the other 2 residence spaces off site during peak hours. That is how we will continue to seek this Board's consideration. Member Covelli, listening to testimony, the residents are family members so that the ability to control the use of those residential spots is within the family.

Engineer Petry stated that is correct.

Attorney Fernicola stated it may not be always family members, so it is not a condition of approval.

Attorney Rubin stated that is true, except it would be very hard for someone to buy the restaurant unless they were living there and were part of the home because it is so tight. Everything is in one place. It would be very unusual if this wasn't, if it ever was, a package; it all has to go together.

Member Ludwig said it is possible that someone could be absentee and rent out the two apartments. Unlikely, but it could happen.

Attorney Rubin stated anything could happen.

Attorney Fernicola questioned are you anticipating that it be a condition of approval that it could only be family members?

Attorney Rubin stated no. We could never do that because who knows what happens in the future. But we know what it is there today, and it is family members.

Engineer Nash stated we currently have a known quantity, how many vehicles do the residents that live there have now? It is 4 or is it more or less?

Attorney Rubin answered 4 vehicles.

Member Covelli wants to know, if before the end of the night, if Mr. Ryan is going to advise the Board about what happens to his garbage.

Attorney Mondello reminded Mr. Ryan that he is still sworn in.

Mr. Ryan stated that garbage and recycling both stay in that little bin area in the front by the garage, and on a garbage day we walk it out to the street.

Member Covelli questioned that is both for the residence and the business?

Mr. Ryan answered yes, it is all together.

Member Covelli questioned if you store it under the deck?

Mr. Ryan answered there are often times we keep two or three barrels under the deck where it is hidden with a plastic lattice work. We keep the bulk of it up in the front near the garage where there is an enclosed area for the garbage pails. On garbage day we bring it out to the street.

Member Covelli questioned do you serve bottle beer? If so, do you have one of those things that smashes the bottles?

Mr. Ryan answered yes, we serve bottle beer. No we don't, we just put it in a recycling bucket and it is taken.

Attorney Rubin questioned if anyone else had questions for Mr. Ryan.

Attorney Mondello also questioned if anyone had questions for Mr. Ryan - Hearing none, seeing none.

Attorney Mondello – Are there any questions from residents within 200' of the subject property for Engineer Petry:

Kathy Assidio, Owner of 13 Park Street, Wanaque, NJ

Where are you talking about that my driveway is infringing on Mr. Ryan's property?

Engineer Petry, referring to Exhibit A-16, is the survey by J.P. Miceli and it shows that your driveway encroaches. Engineer Petry described the encroachment while showing it to Ms. Assidio on A-16. Pointing out the corner of Mr. Ryan's property, that line crosses diagonally through your driveway through the front.

Ms. Assidio stated, on her Deed, it said that 15' was given for a piano years ago.

Attorney Mondello confirmed that Ms. Assidio stated 15' was given for a piano.

Ms. Assidio stated from the property line where he is talking about. It was a deal that was set up between the Pallavicinis and the original owners of my property. It is on my Deed.

Attorney Mondello stated we cannot give any legal advice, but it would have to be in Mr. Ryan's Deed.

Ms. Assidio continued when the house was brought, the titles were passed and everything else, the original owners sold it to Forellis who turned around and sold it to my parents in the 70's and the titles were clear. My mother paid cash for the house.

Attorney Mondello stated that issue would have to be dealt with, not before this Board, but between neighbors. Won't don't have jurisdiction.

Ms. Assidio I am just trying to point out because he is saying he owns that ,but according to my Deed it doesn't show that.

Engineer Petry questioned if Ms. Assidio had a recent survey or the one from the 70's and she advised not recently, but she would have to look.

Ms. Assidio also wants to point out that if you are going to put shrubbery or whatever you are going to put, make sure it is something that I am not going to have to rake the leaves because I am tired of raking the leaves other there on that side with all those trees and everything else that he has growing; trees, mulberry bushes, poison ivy.

Attorney Mondello continued do you have any questions for Engineer Petry? There will be an opportunity for comments.

Attorney Mondello: Any other questions for Engineer Petry on his testimony so far –
Hearing None, Seeing None

Attorney Mondello sorry Attorney Fernicola but you have 10 minutes to cross-examine and then of course we are coming back.

Attorney Fernicola since I have a 1-1/2 hour drive we can conclude, but the only thing I would say that, in addition to the revised plans that the Board has requested, I think he should submit a plan for the parking on Berta's property, that is part of this application. Attorney Mondello, it seems unorthodox but any objection to supplying.

Attorney Rubin stated I understand that is a paved parking lot and it is identified in the agreement by how many paved parking areas there are.

Vice Chairman Grygus questioned so would that be written into the Deed of Berta's; the use of those 6 parking spaces?

Attorney Rubin stated it will be an agreement. It won't be in the Deed.

Vice Chairman Grygus stated what happens when Berta's is sold?

Attorney Rubin stated, what will be forever, is your Resolution.

Chairman Dunning questioned what is the agreement? Is it a year-to-year lease, 100 year lease?

Engineer Nash stated I assume Berta's came with an application with a set requirement of parking. Do they have excess parking?

Chairman Dunning stated they came in during the late 80's, early 90's.

Attorney Rubin stated they have more than sufficient parking. This is common knowledge in the area that there is an immense amount of surplus parking on that site.

Member Ludwig recommends at the height of Berta's, people parking on the street because the parking lot was full.

Vice Chairman Grygus stated what might appear to be surplus on low activity, you can't count that going forward.

Attorney Fernicola stated that is my point; it is based on the ordinance.

Vice Chairman Grygus stated the only way you can count 6 spaces off site into this is if it is written into the Deed.

Attorney Rubin needs to see what the term of the agreement is because I am not too sure on that, but we will put that into the list of things that we would be presenting the next time; what the terms are and how it will be recorded and how it will be perpetuated.

Attorney Mondello stated since Attorney Fernicola has a long ride home, he is going to start his cross examination next month, July 5, 2017.

Member Covelli questioned Engineer Petry if any thought has been given to on-street parking?

Engineer Petry answered we have not considered on-street parking in any of our calculations. I don't think the ordinance allows us to and what we've tried to do in terms of improving our parking situation is to work towards eliminating on-street parking because that was one of the concerns raised very early on in this hearing.

Attorney Mondello questioned Attorney Rubin if the professionals would be able to meet that date with respect to all of the things that we have discussed this evening – revising the revised site plan?

Engineer Petry stated that would be the 23rd of June because it falls on a Sunday.

Chairman Dunning stated we would have to get the plans in that Friday before that, June 23rd.

Attorney Mondello stated since that it is a very short turnaround time, are we suggesting that it be carried to the August 2nd meeting?

Engineer Petry stated he just heard groan from behind me, so the answer is no.

Chairman Dunning questioned the Board if there was anyone that can't make July 5th? It appears the Board Members can be here.

Attorney Fernicola stated his expert will not be available July 5th, but will be August 2nd. I just want to let the Board know I will not have my own witness, but we will do the cross examination. I am not suggesting we postpone July 5th.

This matter will be continued on Wednesday, July 5, 2017.

PUBLIC DISCUSSION: None

RESOLUTION: None

CORRESPONDENCE: Board Secretary handed out Engineer Nash's Review Letter on the Agostino Application.

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

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

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the June 7, 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.

MOTION TO APPROVE MINUTES: No Minutes were presented.

ENGINEER'S REPORT: Agostino Application

DISCUSSION: Vice Chairman Grygus would like the Board Secretary to ask Dave if there is an ordinance that requires commercial establishments within the Borough to have their own private garbage collection.

Chairman Dunning stated for years nothing was happening there.

Member Covelli stated the other problem is this is a mixed use.

Attorney Mondello stated the town has an obligation to pick-up the residential garbage so how do you separate it? It is probably a reasonable request to have the commercial garbage be picked up.

Chairman Dunning, as far as Berta's, we will try and find the plans because they were here for a full variance review after they were closed by the Board of Health. We should have a full set of plans with parking and everything else.

MOTION TO ADJOURN AT 10:35 PM: made by Member Covelli, seconded by Member Ludwig. Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary



June 7, 2017

Borough of Wanaque
Zoning Board of Adjustment
579 Ringwood Avenue
Wanaque, NJ 07465
Attention: Ms. Jennifer A. Fiorito

Re: MKR Enterprises
Second Engineering Review
17 Park Street Block 240 Lot 3
Wanaque, New Jersey
Our File No. WQES-122

Dear Members of the Board:

We are in receipt of the following items relative to the above referenced application:

- Borough of Wanaque Planning Board/Board of Adjustment Application for Hearing, dated June 29, 2106
- Applicant's Description of the Application entitled, "Addendum to Application"
- Wanaque Planning Board/Board of Adjustment Checklist "S"
- Wanaque Planning Board/Board of Adjustment Checklist "U"
- Developer's Escrow Agreement
- Owners Consent Form
- Site Inspection Consent
- A plan entitled, "Site Plan of Existing Conditions," prepared by Petry Engineering, LLC, dated June 23, 2016
- **A set of plans, four (4) sheets in all, entitled, "Use Variance/Modified Site Plan, Expansion of Outdoor Seating, Prepared for MKR Enterprises, located at 17 Park Street, Block 240 - Lot 3, Borough of Wanaque, Passaic County New Jersey," prepared by Petry Engineering, LLC, dated 5/26/17 (note sheet 2 in the plan set is the approved Site Plan prepared by Rotonda Engineering LLC, dated 4/11/05, from the 2005 approval)**

In addition, we reviewed the Wanaque Board of Adjustment Resolution for this property dated October 5, 2005, the Board Engineer's review letter (May 16, 2005) from the previous application, and a letter from the Applicant's attorney (June 14, 2005).

A site visit was made on September 3, 2016 by this office.

The purpose of this review letter is to provide the Board with our comments on the revised Site Plan submittal. We offer the following comments based on a review of the above listed items:

General

1. The 2005 application to the Board received two use variances (expansion, by volume, of the restaurant and the expansion of the second residential unit) and one bulk variance (a side yard variance: 20 feet required, 8.1 feet proposed). Under this application, the Applicant is requesting a use variance for the expansion of outdoor seating into the rear of the property.
2. The property is located in the R-15 Zone. The Site Data Chart (Zoning Table) shown on the Title Sheet needs to be corrected as indicated below:

	Code:	Existing:	Compliance:
Side Yard, Total	45 FT	25.6 FT	existing non-compliance
Side Yard, Any	20 FT	8.6 FT	variance granted in 2005

The previous plan showed an 8.1 foot dimension and is incorporated into the 2005 Resolution. The current plan shows an 8.6 foot offset which is greater than the approved variance. The 25.6 foot measurement is the sum of the minimum side yard (8.6 feet) to the east property line and the minimum measurement to the west property line (17.0 feet) from the northwest corner of the house to the west property line. The 25.6 foot total side yard is non-conforming and was not addressed under the 2005 approval.

Comparison of the 2005 approved Site Plan to the new Site Plan

3. The following items are a comparison between the 2005 approved Site Plan and the new Site Plan:
 - 1st • 31 Arborvitae are shown along east property line, on the 2005 Site Plan, from the rear of the parking lot to the front of the garage to provide screening to the adjacent property to the east. The new Site Plan shows 11 existing shrubs that extend from the rear of the house to 15 feet short of the front of the garage.
 - 2nd • The front parking lot shown on the new Site Plan has been widened by approximately 12 feet. This widening reduced the buffer with Lot 4 to the east. A note on the 2005 Site Plan pointing to this area states: *Existing plantings within and along property line to be retained for use as buffer.* There are currently no plantings between the front parking lot and the adjacent property.

- 3rd • No shed is shown in the east side yard on the 2005 Site Plan. The new Site Plan shows that a shed was constructed in the east side yard at the southeast corner of the restaurant. In accordance with §114-20 Fences and sheds, *Storage structures not in excess of 100 square feet of floor area and 10 feet or less in height shall be permitted only in the rear yard and shall be no closer than 10 feet to any principal building and no closer than five feet to any side or rear lot line.* **The shed shown on the new Site Plan is in the side yard, is approximately 2 feet from the principal building, and is approximately 4 feet from the side lot line. Therefore, three variances are needed for the shed. The shed height is not known. If it exceeds 10 feet a fourth variance would be needed.**
- 4th • The new Site Plans shows 5 condenser units and an emergency generator in the east side yard. These units are not show on the 2005 Site Plan.
- 5th • The rear of the main parking lot was not constructed in accordance with the approved plan. The three spaces immediately behind the restaurant are constructed 6 feet from the property line where the approved plan shows to closest point 15 feet from the property line. The southwest corner was squared off and constructed closer to Lot 2 by 10 feet and an addition parking space resulted.
- 6th • From the Resolution, item 8 of the findings of fact and conclusions of law says a portion of the parking lot was to be constructed with *basket weave pre-cast paving, which would allow striping and not adversely affect drainage from the site, while still providing meaningful parking spaces.* The entire existing parking lot is paved with asphalt.
- 7th • A single, large detention system is depicted on the 2005 Site Plan. The new Site Plan shows that three individual seepage pits were constructed and connected together with pipe. It is unclear how this system operates, if perforated pipe was utilized, or what the capacity of this system is versus the approved detention system.
- 8th • There is no storm manhole with grate on the 2005 Site Plan in the front parking lot. The new Site Plan shows that a storm manhole with a grate was constructed in near the center on the front parking lot.
- 9th • The 2005 Site Plan shows the proposed curb on the northwest corner on the property to be constructed within the Applicant's property. The new Site Plan shows that the curb was constructed on the adjacent property – Lot 2.
- 10th • The parking space layout varies between the approved and new Site Plans. A detailed discussion given below in the "Parking" section.
- 11th • No structures, walks, patios, picnic areas, stone areas, shuffleboard courts, or lighting (six light fixtures) are included on the approved Site Plan. All of these are depicted as existing on the new Site Plan south of the main parking lot.

- 12th
- For the buffer area between the west side of the main parking lot and Lot 2, the 2005 Site Plan has a flag note that states: *Existing plantings within and along property line to be retained for use as buffer.* This buffer area scales in width from 3 feet at its narrowest point and tapering up to 18 feet at its widest point. The new Site Plan shows the west parking lot line reconfigured. The buffer area scales 6 feet near the front and 8 feet at the rear corner. The 2005 Site Plan shows approximately 1,850 square feet of buffer area and the new Site Plan shows 1,400 square feet. Not only is the area reduced by 450 square feet but the existing plantings were supposed to be maintained as buffer. There are currently no plantings in the buffer area.

Parking

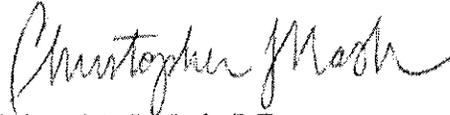
4. There are considerable differences between the approved parking and the parking as depicted on the new Site Plan. The differences are primarily due to both the main parking lot and the front parking lot being expanded. The locations of the expanded areas are described above.
5. In accordance with the Americans with Disabilities Act – Accessibility Guidelines, the required minimum number of handicap parking spaces for a parking lot of 26 to 50 cars is two (2). The new Site Plan shows one (1) handicap parking space therefore, an additional handicap parking space is required.
6. Each handicap parking space will need compliant striping and signage. The signs need to be centered within the space and face the driver.
7. In accordance with §114–27B, no parking is permitted in the front yard. **Therefore, a variance is required for the seven (7) parking spaces in the front yard of the front parking lot. This includes the five (5) head-in spaces closest to Park Street and the two (2) parallel spaces.**
8. A portion of the parking space in the northeast corner of the front parking lot is outside the Applicant's property and in the public right of way of Park Street. The striping needs to be reconfigured so that the space is entirely within the Applicant's property.
9. The 2005 Site Plan has conflicting notes regarding the parking space dimensions. There are two notes point to parking space number 6. One note says: *10' x 20' parking space (typ)* and the other says: *9' x 20' parking space (typ)*. The Resolution does not state that a variance or waiver from the standard (10' x 20') parking space was granted. The parking spaces on the new Site Plan are all 9' x 18' except the space in the southwest corner of the main parking lot and the handicap space (although two are needed).
10. Wheel stops have been installed on the front parking lot head-in spaces and the head-in spaces abutting the restaurant. These are appropriate and necessary locations and should be shown on the new Site Plan.

11. §114-25E(1) requires aisle widths to be 25 feet for 90° head-in parking. There are five (5) locations where the aisle width is substandard and they are shown on the new Site Plan on the Existing and Proposed Parking plan. In the front parking lot, a 20 foot dimension is shown; along the west side of the restaurant, from north to south, dimensions of 20 feet, 17 feet – 5 inches, and 20 feet are shown; and, the space in the southwest corner is only afforded 13' – 4 inches where 25 feet is required. **Variations are needed for these five deficiencies.**
12. The parallel spaces located behind head-in spaces where the aisle widths are substandard is a scenario that is not prudent.
13. The two (2) parallel spaces in the front parking lot are adjacent to a ground mounted air conditioner compressor. The unit should be protected with bollards.
14. The 2005 Site Plan shows the front parking lot to be used for residents and employees. This concept has been changed with the new Site Plan.
15. The aforementioned Resolution does not specify how many parking spaces were approved, however item 7 of the findings of fact and conclusions of law references the 66 total seats. Coupled with the total employees and the two residential units, the total number of spaces in the approval appears to be 24. It should be noted that number 7 of the Resolution states: *During the hearings, the applicant testified that presently there are 50 chairs in the restaurant and 16 bar stools, that the facility is used primarily for private parties and, that if the application were approved, not one seat or stool would be added to the establishment nor would the present use be expanded....*
16. The four (4) parking spaces dedicated to the residential use should be so noted with signage to ensure they are available to the residential users during peak restaurant demands.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

BOSWELL ENGINEERING



Christopher J. Nash, P.E.

CJN/s

cc: Jack Dunning, Chairman, via email
Ronald P. Mondello, Esq., Board Attorney, via email
Mike Ryan, MKR Enterprises, LLC

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