

REGULAR MEETING

Salute to Flag: 8:04pm

OPENING STATEMENT:

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

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

ABSENT: Vice Chairman Grygus

**Application #ZBA2017-05 - Sylvia, Ryan
86 Burnside Place, Haskell NJ (Block 311/Lot 8)**

Attorney Mondello advised the Board that he reviewed the proof of publication and the notice to residents within 200 feet of the subject property and deems the application complete and jurisdiction is vested in the Zoning Board to hear the application.

Ryan Sylvia, 86 Burnside Place, Haskell, is the client and also an attorney and will be testifying. Ashley, his fiancée, is also here for moral support. Attorney Mondello swore in Mr. Sylvia.

Mr. Sylvia testified that he brought a foreclosed home and we are looking to do an add-a-level on the second floor. Currently there is a half-story addition. The house is in a state of massive disrepair and is uninhabitable in its current condition. We are proposing to remove the second level, add a new add-a-level on top of it adding about 354 square feet to the home. We are here for a left-side yard variance only. We care going straight up and 2' into our own backyard that would leave us with a 45' clearance between us and the neighbor in the back. Quite frankly why we are doing this is to move into town. We both grew up in Wayne and we are looking to relocate to a more wholesome community and start our lives together.

Chairman Dunning stated you submitted a set of plans and we are going to go over Engineer Nash's report. You have a copy of Engineer Nash's letter from Boswell Engineering and his comments on the application.

Mr. Sylvia stated I am not sure.

Engineer Nash stated I believe it was mailed, but now that I'm thinking of it, it is possible it was mailed to the address on the application, which nobody lives there.

Engineer Nash pointed out one error in my report under comment #5, the first line a. If you go to the fourth column, Proposed, it says 10,000SF and obviously that is not correct. It should be 5,037SF. This is one of the variances that is pre-existing, non-conforming. Everything else is in order. The only thing that I pointed out in my review was that we definitely need a copy of the survey for the record. The architectural plans took the land surveyor's survey, put it on his plan, and the basis for your variances and for the relief are all dimensional and bulk, which is from the survey. So we need the survey because the architect can't take somebody else's work, put it on his plan and then just say we need a 10' variance. We need a copy of the survey, which we don't have. I would also be comfortable with that being a condition in an approval.

Chairman Dunning stated it exists because the architect put it on his plan.

Engineer Nash continued all of the non-conformities are existing and this proposal doesn't exacerbate any of the existing non-conformities. The bulk non-conformity, the width of the lot needs to be 80' and is 49.93', lot depth needs to be 120' and it is only 100'. Again, the applicant can't do anything about this and the same with two side yard non-conformities. The only thing that they are changing is the second floor is cantilevered to the rear so the rear yard is getting smaller by 2' but they had some spare distances so there isn't a variance needed for that.

Chairman Dunning questioned the shed that is in the rear yard on the left side, is that going to stay there?

Mr. Sylvia answered I plan on repairing the existing shed and keeping it.

Chairman Dunning commented that the shed is going to need some variances. The shed is not conforming to the Borough Codes. It is supposed to be 5' off the property lines. We don't know what the size of the shed is either and it may be over the limitations of for a shed.

Member Covelli stated just include it in the variance. That way if you take it down, you take it down. If you fix that one you are okay. If you put another one back there, you are okay.

Mr. Sylvia formally requested the shed remains as is.

Attorney Mondello commented those would be pre-existing variances much like Engineer Nash has already outlined.

Member Ludwig stated it should be shown on the survey correctly.

Chairman Dunning commented that the architect took the information from the original survey prepared June 2017 and it should be there.

Engineer Nash stated the shed is 10 x 20. Rear is 5' and the side is 1'.

Chairman Dunning commented it needs a variance for 4'.

Member Covelli questioned why are they here?

Attorney Mondello answered the Construction Code Official used this, even though they are pre-existing variances, they are making some changes. They are only going up so somebody could argue that something is being exacerbated, i.e., maybe the side.

Engineer Nash commented it is a non-conforming lot and they are expanding a non-conforming lot.

Attorney Mondello stated anytime you are making changes on a lot that's non-conforming, you are exacerbating the problem.

Engineer Nash stated if the lot was conforming in 10,000SF, they wouldn't be here.

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

MOTION TO APPROVE THE APPLICATION FOR BLOCK 311, LOT 8, 86 BURNSIDE PLACE FOR A BULK VARIANCE WITH THE FOLLOWING CONDITIONS: WHERE THE R-10 ZONE AND THE EXISTING LOT AREA IS 5,073 SQUARE FEET AND THE MINIMUM REQUIREMENT IS 10,000 SQUARE FEET FOR A VARIANCE OF 4,927 SQUARE FEET; LOT WIDTH REQUIRED IS 80 FEET AND 49.93 FEET IS EXISTING FOR A VARIANCE OF 30.07 FEET; LOT DEPTH OF 120 FEET REQUIRED AND 100 FEET IS EXISTING FOR A VARIANCE OF 20 FEET; SIDE YARD SETBACK REQUIRED 15 FEET WITH 4.9 EXISTING FOR A VARIANCE OF 10.10 FEET; SIDE YARD TOTAL OF 35 FEET REQUIRED AND 20.1 FEET IS EXISTING FOR A VARIANCE OF 14.9 FEET; AND FOR THE EXISTING NON-CONFORMING SHED APPROXIMATELY 10 X 20 LOCATED IN THE REAR OF THE PROPERTY WHERE A MINIMUM 5 FOOT SIDE YARD SETBACK IS REQUIRED AND 1 FOOT IS EXISTING FOR A SIDE YARD VARIANCE OF 4 FEET. THIS APPROVAL IS ALSO CONTINGENT UPON THE APPLICANT PROVIDING AN ORIGINAL COPY OF THE SURVEY: made by Member Covelli, seconded by Member Ludwig. Voting yes were Chairman Dunning, Members Covelli, Hain, Hoffman, Ludwig, Levine and Henderson.
Motion Carried

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

BOARD’S EXHIBIT

B-3 September 27, 2017 Review Letter of Christopher J. Nash, P.E., Board’s Engineer

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

Paul Fernicola, Esq. of 219 Broad Street, Red Bank, NJ, Attorney for Lisa & Mark Bellante.

Attorney Rubin commented that since the last meeting you had asked for us to have Engineer Petry prepare a new plan which took into account all of the many items which have been agreed upon by the applicant and hopefully we have placed on the plan for your review and are satisfied that everything that has been discussed is now shown on SP-1. The last revision is September 11, 2017. Even though the Board had stated no more testimony, in the event you had a question about anything on the plan, Engineer Petry is here.

Engineer Nash’s September 27, 2017 Report was given to Attorneys Rubin & Fernicola.

Engineer Nash commented that some of the notes that were placed on the plan I thought needed some tighter language, if you will, to be less vague, and I will go over each numbered comment individually.

Comment #1. The hours of the outside operation.

Monday – Wednesday	Outside Closed To Patrons
Thursday – Saturday	12 noon to 11pm
Sunday	12 noon to 9pm

Engineer Nash reviewed the Noise Ordinance, which is §82, and there are no references to an 11pm curfew. All the Noise Ordinances kick in between 10pm and 8am. I did have a chance to discuss this with Attorney Mondello and we concur on the issue of when the Noise Ordinance kicks in, which is 10pm. With my Comment #2 in terms of closing the outside, my comment would make reference to music playing outside. So the music outside would have to stop at 10pm, not 11pm. Despite what I say in Comment #2, the outside could remain open, if you will, until 11pm, assuming there are no violations of the Noise Ordinance.

Attorney Mondello questioned do you understand that Attorney Rubin and Engineer Petry? There is something on the plans that says low volume music. There is to be no music after 10pm.

Attorney Rubin stated we were just following the testimony.

Attorney Fernicola stated his client is fine with this.

Engineer Nash stated that disposes of Comments #1 and #2.

Engineer Nash continued with Comment #3.

The SP-1 says: “No live entertainment outside and any radio music will be kept at a low volume.” My comment is because this is a contention application, the Board may consider defining the term “low volume”.

Attorney Rubin stated that it looks like you covered it already in the prior comment.

Attorney Mondello stated I would simply add that there is a Noise Ordinance and there isn't going to be music after 10pm and low volume music certainly could not exceed any of the decibel levels that are in the Ordinance. I am guessing when the applicant says low it will be something considerably lower than the maximum decibel levels that are very technically outlined in the Ordinance. I see Mr. Ryan shaking his head, but I don't how else to further define that.

Engineer Nash stated it has to be empirically defined and you to the Noise Ordinance then with those decibel levels. That is the way it is defined.

Attorney Rubin stated I agree. You really have to have a standard.

Engineer Nash stated there is a standard. On the plans it says that it will be kept at a low volume and low volume is different to everybody.

Attorney Mondello stated there is a Noise Officer who will go out there with presumably some type of machine and if it exceeds the specified decibel level there is a \$3,000 fine. It is going to have to be less than the outlined decibel levels. You can't violate the Ordinance.

Member Levine stated the Ordinance is not a low volume, it is the maximum volume.

Attorney Mondello stated it is, but I don't know how else other than the maximum allowable level.

Member Levine stated which doesn't mean low volume.

Engineer Nash stated that is exactly why I brought it up.

Member Covelli commented that it is also the standard of everyone else in this municipality is held to.

Other comments between Board Members and Professionals were made about the meaning of low volume, maximum level, and decibel levels.

Attorney Mondello stated you are going to have to take the representation from the applicant that it is going to be low volume. Something significantly less than the maximum decibel level. Otherwise, you enter a very thorny thicket because I don't know if it is 1/10th, 25%, 50% and as Engineer Nash stated his hearing versus my hearing.

Engineer Nash continued with Comment #4.

The Board had pointed out that some or all of the permanent fencing was installed in the wrong direction. The note on the plan to address that says: “the fences will be repaired as necessary.” To me that doesn’t describe what the Board’s problem was.

Chairman Dunning stated that is the problem. It is an open permit that was never closed because the fence is facing in the wrong direction.

Engineer Petry stated we have to do everything necessary in order to meet the code and close the permit.

Chairman Dunning stated you have to do a 180 so the good side faces the neighbors.

Member Ludwig stated or he could double side it.

Engineer Petry stated or he could repair it as necessary in order to meet the code.

Member Levine stated, if I remember correctly, the previous statement was that they were going to put in another fence facing the correct way.

Engineer Petry answered that is an option. They could turn the fence around.

Engineer Nash stated the plan still needs to be changed because I am not comfortable with the note that says “the fences will be repaired as necessary”. It doesn’t mean the same thing. To me that means there is damaged fence and they are going to repair it; it doesn’t mean it is installed in the wrong direction.

Member Covelli stated they are going to meet the requirements of the Ordinance, as any other applicant in the Borough has to do.

Engineer Nash continued with Comment #5. This comment has to do with, if you look at Sheet SP-2, and particularly the drawing on the left side. To me, it memorializes what the Board had talked about but, at the same time, it is also confusing. Once the improvements are done, if you took that plan and when out in the field to verify that everything was done, to me it is confusing. There is confusing language for the future condition. I am asking that more of a proposed condition plan, without all of the existing things that are going to be removed. If it is confusing to me, I would assume it would be confusing to anybody else in the future looking at that plan. It is almost like you have to create an as-built before you do it; more of a proposed conditions plan. I know you can’t prepare an as-built.

Chairman Dunning questioned Engineer Petry on the one note you have, from the top down it is the third note, to remain: 9 tables with umbrellas and 24 chairs and under that it says 12 chairs to be removed. Are you leaving the 9 tables?

Engineer Petry answered we are leaving 9 tables and 24 chairs.

Chairman Dunning replied that is not what your note says and if you are leaving all that you are over the 28 limit.

Engineer Petry read to remain: 9 tables with umbrellas and 24 chairs. 12 chairs to be removed. Right now on that gravel picnic area there are 36 chairs.

Chairman Dunning stated you have too many chairs.

Engineer Petry stated no. I got 24 chairs there and I have 4 chairs to remain in the canopy table.

Chairman Dunning and you have 4 chairs above that note to remain. The first three notes if you kept the 24, you have 24 – 4 – 4, which is 32.

Engineer Petry stated from the top, to remain existing canopy table and 4 chairs. To remove is the next note: remove 4 chairs and chiminea to remain. To remain: 9 tables with umbrellas and 24 chairs. I am up to 28 seats. 12 chairs to be removed. Relocate

existing stone walk. To remove 8 stools, to remove 8 stools at the bar. Going to the other side, to remove 3 picnic tables with benches; remove the bench at the shuffle board court; remove 4 chairs and chiminea to remain; remove 8 seats and outside bench; structure to remain not open to the public. We have cut down to 24 seats outside. There are no stools at the bar area. Stand-up bar only.

Chairman Dunning questioned what about the bar-type tables that were out in front of the bar?

Engineer Petry answered no chairs to remain.

Chairman Dunning questioned the tables are remaining?

Engineer Petry answered yes. It says remove existing bar and seating area and reconstruct bar 10' off property line. The seating at the bar has been completely removed.

Chairman Dunning questioned in front of the bar, to the right of the bar, you had stand up type bar tables with bar chairs, are those tables remaining?

Engineer Petry answered the tables can remain, but the stools cannot.

Chairman Dunning commented you are going to have a stand up area for potentially 16 people there between the tables and the bar. You are leaving the bar tables and the bar and just removing the stools. And the number 28 people will be outside based on the parking variances and you have another 16 people there.

Engineer Petry stated we are limited to 28 people outside. We understand that.

Chairman Dunning questioned that you have a bar and bar tables, they don't count into this picture?

Engineer Petry answered they don't. Every person outside counts.

Chairman Dunning questioned if you have 16 people at the bar and the bar tables, only 12 people can sit at the tables and you have shut the rest down?

Engineer Petry answered that is correct. We are limited to 28 people outside. I can't prevent people from standing at the bar, but I can prevent more than 28 people from being out there.

Attorney Fernicola questioned if the 16 were included in the parking calculation or did they just base it on 28 seats?

Chairman Dunning stated that is where I am going.

Engineer Petry commented we are allowed 28 seats/28 people outside. That is my understanding of what this applicant has agreed to. 28 people, not more than 28 seats.

That is what we have and that is what we are asking for.

Member Hoffman commented that right now you have a place for 44 people because you have 28 seats and 16 standers.

Member Covelli stated what the applicant is testifying to is that if 16 people are standing there, they can seat 12. He is using the count of 28.

Engineer Petry commented we can have 9 tables of 2 people seating outside which is a very practical situation. There may be 24 seats there, but there are only 2 people at a table.

That is 18 people sitting down. In my mind, we can have 10 people at the bar. We still only have 28 people outside.

Member Hoffman questioned who is going to enforce this 28 restriction?

Engineer Petry answered that is what our approval is for. Management will limit the people outside to 28.

Attorney Rubin stated we all know who is going to be calling and that is the next door neighbor because that is what happens in real life.

Attorney Fernicola stated the reality is they haven't included this in parking.

Chairman Dunning commented, forget about seating, they are only going to allow 28 people in the outside service area.

Attorney Rubin stated there is no parking for more than that. Where are you going to put them, there is no place to put cars.

Chairman Dunning stated they park up and down the street and we know that.

Attorney Rubin stated we have everybody on site now.

Chairman Dunning questioned you are not going to allow anyone to park on the street?

Attorney Rubin stated we going to tell them they can't.

Member Covelli commented that at the end of the day, the applicant is making a representation. The applicant is in the position of violating or complying with what we approve so does everyone else that comes to this Board, so does every resident that owns house that invites four people over and bring their own cars and park in front of the neighbors. They made a representation and we are either going to accept it or not.

Attorney Rubin stated the applicant represents that there cannot be more than 28 patrons in the outside area otherwise it is a zoning violation.

Attorney Mondello stated I get it that Mr. Ryan has not complied with the last site plan and yes the Board has some apprehension to say the least. But he doesn't come into this application with unclean hands. That is not the way the courts look at this particular situation. You are going to have to give him the benefit of the doubt and hope that he does exactly what he says he is going to do this go around. If he doesn't, there is an enforcement mechanism.

Member Ludwig stated in prior testimony he had said that if he took some chairs out during the better weather from inside he eluded to the fact that he could increase the number of people outside because of total occupancy. This would be an enforcement problem.

Engineer Petry commented it is our understanding that the Board was not favorable to that approach. We had put that forth that there would be a total of 98 people on the site and the Board was uncomfortable with that so we stepped back and said we'll take 28 outside. 28 chairs; 28 people. I explained what your Ordinance looks at parking for restaurants so our opinion was, one way or another, whether it is 28 chairs or 28 people, that is our limitation.

Member Covelli questioned what you are presenting on behalf of your client, is that if it is a beautiful night and 28 people show up at Tree Tavern to drink outside, etc. and not one patron shows up for inside, there won't be any more than 28 outside.

Engineer Petry answered that the representation, yes.

Member Covelli stated regardless of the count inside, there is no more than 28 outside.

Engineer Petry answered that is the condition that this applicant is putting forth before the Board. No more than 28 people, nor more than 28 chairs outside under any condition.

Member Henderson questioned then why are there extra tables at the bar?

Engineer Petry answered, because as I just indicated, we could have 9 tables with 2 people at them and that is 18 people, and 10 people standing at the bar for a drink. We have a total of 28 seats and they may not all be occupied.

Member Covelli commented you have heard the Board's concern that this drawing can be somewhat confusing to the enforcement authority that will follow this should the Board approve this application. If approved, can you draw a proposed plan that takes into account these notes in addition to the sheet so you have a road map for the enforcement agency to follow if you met the requirements in accordance with your application? Engineer Petry answered if the Board were to vote on this application and make that a condition, I guarantee you that I can present that plan to Engineer Nash to his satisfaction.

Member Covelli addressing Attorney Rubin commented that the Board has reluctance with this based upon the applicant's prior non-conformance. Would the applicant be willing to post a \$5,000 escrow account to be held by the Borough until such time as, if this Board was to approve the application, and all the conditions that go with that, were met and signed off by the Construction Official who is the enforcement authority?

Attorney Mondello commented that he is going to have to post that anyway because this Resolution is going to about 97 pages.

Member Covelli stated, in addition to that, he needs a Compliance Escrow; not a pay for the Resolution escrow. The escrow is returned when everything has been satisfied.

Member Levine stated at that point.

Member Covelli, questioned Member Levine, are you saying he is going to dig up the trees and decide to reverse the fence again?

Member Levine stated there is something there. It doesn't have to be the fence, it could be the chairs or anything else.

Attorney Rubin stated it should be noted that after the c.o. is issued, and I assume that would be the trigger for giving back the escrow deposit, then this Board is no longer involved then it is the Zoning Officer who will come in with his Summons. This Board is not a policing authority; the Zoning Officer is. He has to know what to enforce and he has to read the plan and have it clear.

Member Hoffman commented that is to the point of Member Covelli and Engineer Nash. Attorney Rubin stated we all agree.

Member Covelli stated this was borne out of Member Henderson's concerns. We did banter around here a developer's agreement, posting a performance bond and in this case Mr. Ryan's money would be used and if everything was done properly, Mr. Ryan would receive his money back with a little bit of interest. If Mr. Ryan doesn't comply, he won't see his money.

Attorney Rubin agrees that using a surety would be cumbersome but using cash bond is easier and I would absolutely recommend Mr. Ryan to find \$5,000 to put up cash.

Member Covelli questioned is it your representation that your client has agreed to this? Attorney Rubin stated yes, we will do that.

Engineer Nash continued with Comment #6. This is kind of a repeat we just talked about it with the Chairman's confusing note. It says remove something and in the same note it says that it is going to remain, and it was confusing to me. Engineer Petry is going to clear that up for everyone.

Engineer Nash's Comment #7. My last comment, and I believe we heard it from the Planner, which was a legitimate comment about installing shrubs on top of the drain line.

It is not something that I think is physically possible assuming that the drain line is 2' below the ground surface. The roots of the shrubs are going to interfere with the drain line whether during construction or after the roots start growing and entangle themselves inside this pipe. It is a 4" diameter pipe, which is small and the roots would take over. My recommendation is that the pipe be moved somewhere, somehow around the landscaping. If it can be done within the landscaped aisle and maybe just right at the back of the curb. It is plastic pipe so you can move it horizontally pretty easily. If the pipe is dug up and exposed, it can actually just be pushed over; it doesn't need any more work done than that. Engineer Petry stated understood and we'll accommodate that either within the landscaped area or outside the area.

Engineer Nash stated this completes my report.

Attorney Fernicola, questioning Engineer Nash, would you agree that the capacity of the outdoor bar should be included in the parking calculation?

Engineer Nash answered I believe it is in terms of number of people.

Attorney Fernicola questioned can you look on the front sheet because, am I wrong, in their calculation of 31 that they included on Sheet SP-1 that they included any portion of the outdoor bar?

Engineer Nash answered because it is a tradeoff.

Engineer Petry commented that, even though Attorney Fernicola didn't ask me, I can certainly say that the parking calculations say outdoor bar/eating 1 space for every 4 seats, 28 seats equals 7 spaces. We've agreed that whether it is 28 seats or 28 people your Ordinance looks at it the same way. We are agreeing to both conditions; no more than 28 seats and no more than 28 people.

Attorney Fernicola, addressing Engineer Nash, stated my question was different. We know they included the 28 seats, but you have this outdoor bar that has the capacity for stand-up patrons and do you believe that the capacity in the outdoor bar for stand-up patrons should be included in the parking calculations?

Engineer Nash answered that the testimony is that there will be no more than 28 people so it kind of is calculated in the parking. I believe that they are counting for the people that are going to be outside. When you are talking about capacity, there is more spaces at the various tables and bar space than 28.

Attorney Fernicola stated there are 28 seats outside is the way I understand the testimony that is being proposed. Is that your understanding?

Engineer Nash answered my understanding is that there is 28 seats, but there's more accommodations than just the 28 seats. People can stand up at the bar, but if they stand up at the bar, assuming that it is full capacity, that there has to be an empty seat for that person standing at the bar.

Attorney Fernicola stated I am asking you under the ordinance would you still include calculating the parking that is required, the stand-up capacity at that outdoor bar?

Engineer Nash answered this is a little bit different because of the testimony. It is based on people, not capacity and seats.

Attorney Fernicola questioned your Ordinance refers to seats, is that correct?

Engineer Nash answered yes. So they are saying there are 28 seats, which is 28 people. So there are no seats at a stand-up bar.

Member Ludwig stated we should phrase it as people.

Chairman Dunning stated that's how it is going to read.

Attorney Rubin stated Engineer Petry knows that is what he has to change on the plans.

Attorney Fernicola stated my point is that there is 28 seats outdoors and that is what they used to come up with the parking for the outdoor, but they have a capacity for more in the stand-up area.

Member Ludwig commented if we put the restriction as 28 people versus.

This discussion continued with regard to the different interpretations of parking calculations and 28 people versus 28 seats, capacity, and the potential for additional people to be at the stand-up outdoor bar area.

Attorney Mondello commented that this forum was not meant for this. Attorney Rubin can you address this issue?

Attorney Rubin commented that the Ordinance does not speak of capacity. If we did, we would have a whole different parking scenario, and there are Zoning Ordinances that speak of capacity because they have stand-up bars with hundreds of young people standing around and that is not what this application is all about. If you talk about capacity for the outdoors, it could be 100 people, but it is not. It is 28 and that is the representation we are making. We are saying there can't be anymore a capacity maximum of 28 persons, whether they are standing, sitting on a floor, on a bench, on anything; it can't be more than 28 people outside. So most respectfully, I think we have done exactly what the Board has asked us to do.

Engineer Nash, addressing Engineer Petry, let's move to the inside. What is the arrangement on the seating on the inside? How many table seats and how many bar seats? Engineer Petry answered there are 66 total seats inside with 16 of that total at the bar. Engineer Nash stated I believe the applicant is being consistent. On the inside portion, they are identifying that there is 16 stools at the bar and they are counting them. On the outside, they have no stools at the bar and they are not counting them. You can make a case that there is 16 stools at the bar, but you can have people standing in between the stools therefore the capacity is greater and we need more parking and we can go on until midnight again. The applicant is being consistent. The stools are in the inside are identified. The stools in the outside are not there, so they are not counting them.

Attorney Fernicola questioned Engineer Petry that there is a note on SP-1, it says the seating and hours of operation do not apply to residential uses associated with the property, and what does that note mean?

Engineer Petry answered if Mr. Ryan wants to have his family over for a party and he has 50 people in his family and they want to sit outside, they can just like any other resident in Wanaque in a residential zone.

Member Levine questioned if he can have that at the same time the business is open?

Attorney Mondello answered absolutely not.

Engineer Petry stated the applicant's stipulation is if he is using it for his family, he should be allowed to do it as any other resident can do. If he is using it for the sale of food and beverage, he knows he is limited to 28 people/seats (call it what you will) outside.

Also, your Ordinance, in a separate section, does refer to parking count by patron. Your Ordinance does it both ways; seats and patrons §114-14.4 SBD-2 Zone under Section E. Parking & Loading Requirements (c) Full-service restaurants: one space per four patrons, plus one space per two employees. It's the only place it says patrons is in that particular zone.

Attorney Fernicola has one other question to clarify something. It was my understanding that they are proposing the hours of operations to start outdoors at 12 noon. I believe the testimony was the existing hours of operation started at 4pm. This would be an expansion of the outdoor hours of operation that is being proposed in the current plan.

Member Covelli commented that it was in accordance with the liquor license as a model and I wrote 12 noon – 11pm. I also mentioned about Sunday and people being there after 9pm and he agreed and cut back Sunday hours to 9pm.

Attorney Fernicola commented I was referring to Mr. Ryan's testimony that I believe he testified that the outdoor area was open at 4pm.

Member Covelli commented he might have said that's what frequently happens, but as reference point we used 12 noon, which is in the last two liquor license renewals for 2011 and 2013. That is where our numbers came from versus what the applicant testified.

Chairman Dunning commented he could open at 7 to 10 if he wants to. It is his business and he can do whatever hours he wants as long as they are within time of what the Mayor & Council approved for his liquor license renewal.

Attorney Mondello: If there is anything else from the Board, hearing none; seeing none. If it is alright with the Chairman, I would like just spend three minutes just going over what the legal analysis should be.

As a preface, the Board had already voted and found that there was a pre-existing, non-conforming use that food and alcoholic beverages were served outside.

We are now at the point where the Board has to decide what is known as the D-2 Variance, which is an expansion of that pre-existing, non-conforming use and both Mr. Petry and Mr. Steck, both Planners, referenced a very popular case, *Burbridge*. The *Burbridge* case by Justice Clifford started out with two important factors or criteria that the Board has to start thinking about and the first one is special reasons.

What does special reasons mean and in the Municipal Land Use Law it refers to another section where there is a laundry list of purposes. If the application advances one of those purposes, that would be a special reason. The courts have also found that another special reason could be that the use is particularly fitted to the particular location for which the variance is sought then that is another special reason. I do believe that Mr. Petry had said that one of the special reasons is the improvement of aesthetics. Second, the variance can be granted as long as this variance does not substantially impair the intent and purpose of the zone plan and zone ordinances. Some courts have suggested that this negative criteria

factor, this portion, should actually be viewed with greater liberality when it is D-2 Variance as opposed to a

D-1 Variance. Some courts have suggested some leeway is to be given. Those are really the two factors that the Board needs to focus on and, if possible, explain why you are voting in the negative or the affirmative.

I, of course, have to draft a Resolution that you will review at some point in time, whether you deny the application or approve the application, and you will have to either tell me change the Resolution or at some point, you will accept the verbiage that I use and memorialize that and that Resolution will become your words.

Application back to the Board for a Motion to either grant or deny.

Is anyone disqualified from voting because they missed a meeting, etc.

Board Secretary advised that she had signed Affidavits from any Member who missed a meeting certifying that they listened to the tape.

The full Board can vote; however only 7 will vote. Member Karp is the 2nd Alternate who will not be voting.

Member Covelli: MOTION TO APPROVE APPLICATION ZBA2016-05, MKR ENTERPRISIES, LLC, 17 PARK STREET, BLOCK 240, LOT 3, FOR A D-2 USE VARIANCE WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT'S ENGINEER IS REQUIRED TO PROVIDE WHAT THE SITE WOULD LOOK LIKE COMPLETED IF YOU FOLLOWED THE NOTES TO SHEET SP-2 SO THAT OUR ENFORCEMENT AUTHORITY CAN FOLLOW WHAT WAS ACTUALLY APPROVED BY THIS BOARD; (2) IN ACCORDANCE WITH THE APPLICANT'S TESTIMONY, THERE WILL BE A TOTAL OF 94 SEATS ON THE PROPERTY REPRESENTED BY THE EXISTING 66 INSIDE, WHICH IS 50 SEATS INSIDE AND 16 BAR STOOLS, AND OUTSIDE WOULD BE 28 SEATS WITH NO MORE THAN 28 OCCUPANTS OR CAPACITY OUTSIDE; (3) THE APPLICANT HAS REPRESENTED THAT BASED ON THOSE CALCULATIONS, NO VARIANCE IS REQUIRED FOR PARKING; (4) IN ADDITION, THE APPLICANT WILL POST A \$5,000 PERFORMANCE CASH BOND IN AN ESCROW ACCOUNT WITH THE BOROUGH OF WANAQUE AND THAT WOULD NOT BE RELEASED TO THE APPLICANT UNTIL THE CONSTRUCTION OFFICIAL/ZONING OFFICER APPROVED ALL OF THE CONDITIONS AS PRESENTED ON THE PLANS BEFORE THIS BOARD AS A PART OF THIS APPROVAL; (5) ANY AND ALL PERMITTING ISSUES WITH RESPECT TO ANY CONSTRUCTION, WHETHER IT BE ELECTRICAL, PLUMBING, FENCES OR ANYTHING ELSE THAT IS REQUIRED ON THE SITE, EITHER THAT HAS BEEN DONE OR IS PROPOSED TO BE DONE, WOULD BE IN ACCORDANCE WITH THE REQUIREMENTS, ORDINANCES AND PERMITS REQUIRED UNDER BOTH THE BOROUGH AND THE STATE OF NEW JERSEY UNIFORM CONSTRUCTION CODE; (6) THE HOURS OF OPERATION GRANTED UNDER THIS PROPOSED APPROVAL WOULD BE MONDAY-TUESDAY-WEDNESDAY THE OUTDOOR SEATING AREA WOULD BE CLOSED TO PATRONS/THURSDAY-FRIDAY-SATURDAY IT WILL BE OPEN FROM 12PM UNTIL 11PM/SUNDAY IT WILL BE OPEN 12PM UNTIL 9PM; (7) AS REPRESENTED BY THE APPLICANT IF HE WERE TO HAVE A PARTY FOR HIS OWN FAMILY ON NON-OPERATIONAL TIME, HE WOULD BE ALLOWED TO DO SO IN ACCORDANCE WITH THE

REQUIREMENTS OF ANY OTHER RESIDENT OF THE BOROUGH OF WANAQUE AND WOULD THEREFORE BE SUBJECT TO ANY AND ALL ORDINANCES, REQUIREMENTS THEREOF; (8) THE MUSIC OUTSIDE WOULD BE CURTAILED AT 10PM OUTSIDE AND THE APPLICANT HAS REPRESENTED A LOW VOLUME AND AT NO TIME WOULD THE APPLICATION BE IN ANY VIOLATION OF ANY EXISTING OR PROPOSED NOISE ORDINANCE OF THE BOROUGH OF WANAQUE

Attorney Mondello addressing Attorney Rubin: It is pretty obvious that this has been going on for more than a year. I am going to have to comb through the record and there may be some other conditions that Mr. Ryan agreed to and testified to that I will, of course, have to include in the Resolution. I am sure you don't have any problems with that.

Attorney Rubin absolutely.

Member Covelli, addressing Mr. Ryan, and questioned, do you agree with that? Anything that you have agreed to previously that my memory may have slipped, despite my notes.

Attorney Rubin commented that there are always loose ends to be put together in a Resolution.

Chairman Dunning stated all I want to add to Mr. Petry's re-draw of this site – you are going to show the bar, the stand-up bar tables so that everything that's going to be used on the site is on the plan. If you can locate those 9 tables with the chairs and make an arrangement, show something, so that when the Code Official goes he can count chairs, can look at tables, can see the stand-up areas.

Member Ludwig stated including the fence.

Chairman Dunning stated the fence is a permit problem that has never been closed and that has to be dealt with. It is an open permit on the fence so whatever they do with that, that is already a violation that has to be dealt with at the Building Department.

Chairman Dunning addressing Attorney Mondello: Are we okay with all of this?

Attorney Mondello answered yes.

Chairman Dunning addressing Engineer Petry: When you get the Plan done, we would like it sent to Engineer Nash for his review before it becomes final.

Member Covelli added in other words that in the time it takes Attorney Mondello to prepare the Resolution and by the time we were to adopt that Resolution that Plan would be on file and reviewed and approved by Engineer Nash.

Engineer Nash stated it would be a Compliance Review and I would issue another letter based on their Plan that it complies with the Resolution.

Member Covelli added prior to us adopting the Resolution.

Attorney Mondello provided that the Motion passes.

MOTION TO APPROVE THE APPLICATION: made by Member Covelli, seconded by Member Hain. Voting yes were Chairman Dunning, Members Covelli, Hain, Hoffman, Ludwig and Henderson.

Member Levine voted no.

Motion Carried – 6 Yes/1 No

Board requests recess.

Recess 9:24:14

Reconvened 9:35:47

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

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

APPLICANT’S EXHIBITS

- A-1 Application No. ZBA2017-01 = 18 Railroad Avenue, Wanaque
Application No. ZBA2017-02 = 20 Railroad Avenue, Wanaque
- A-2 Deron Hoeland Design LLC Drawings for Interior of 18 Railroad Avenue
- A-3 Deron Hoeland Design LLC Drawings for Interior of 20 Railroad Avenue
- A-4 Variance Plan/Survey Prepared by J. P. Miceli dated 8/15/2016

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

Attorney Mondello advised the Board that he reviewed the proof of publication and the notice to residents within 200 feet of the subject property and deems the application complete and jurisdiction is vested in the Zoning Board to hear the application.

Attorney Martin commented that we are here this evening in connection with a Use Variance application that I filed on behalf of Agostino Properties, LLC, which is a single member LLC, Joseph Agostino. The application is for not only 18 Railroad Avenue but the building right up against it 20 Railroad Avenue and the application seeks a variance from zoning ordinances to allow a rooming house in both structures. There is a site plan and drawings attached to the application and I also have a Planning Expert here this evening, Ken Ochab, who is also prepared to testify in conformance with his report that was submitted with the application.

Attorney Mondello swore in Joseph Agostino.
Joseph Agostino, 17 Belmont Avenue, Wanaque, NJ

Mr. Agostino is the sole owner of the applicant, Agostino Properties, LLC and Agostino Properties is the owner of 18 and 20 Railroad Avenue, Wanaque. The applications before the Board this evening are to allow rooming houses to be operated at those locations. If you are standing in the street, the property to the left is 18 Railroad, which is the property with Flip’s Bar on the bottom. The property on the right is 20 Railroad. I purchased 18 Railroad in 2000 and 20 Railroad last year, 2016.

Mr. Agostino described to the Board the layout of 18 Railroad. Flip's Bar is on the first floor and currently there are four rooms, a kitchen and bath on the 2nd floor and four rooms, kitchen and bath on the 3rd floor.

Attorney Martin presented drawings to be marked as Exhibits.

Attorney Mondello stated he marks the Application Exhibit A-1 and we go from there.

Attorney Martin explained Exhibit A-2 would be a set of drawings for 18 Railroad that are referenced as plans prepared by Doren Hoeland Design LLC showing generally the layout of the floors.

Mr. Agostino stated that A-2 is for 18 Railroad and the 1st floor shows Flip's Bar. The 2nd and 3rd Floors are essentially the same layout. Four rooms, a kitchen and a bathroom on each floor. The attic consists of storage area.

Mr. Agostino stated that A-3 is for 20 Railroad and there is a one bedroom apartment on the 1st floor. Four rooms, a kitchen and a bathroom are on the 2nd and 3rd Floors; identical to the other footprint on the other side at 18.

Attorney Martin confirmed that these two buildings both have a 2nd and 3rd floor and the footprint is essentially the same on all four of those floors. Is that correct?

Mr. Agostino answered yes.

Attorney Martin questioned, in terms of a rooming house, what are you asking the Board to approve in terms of how many individuals would live on each floor?

Mr. Agostino answered one person to each room, so four people per floor. Four people on the 2nd floor and four people on the 3rd floor in each building, both 18 and 20 Railroad.

Member Covelli questioned how many on the 1st floor in 20 Railroad?

Mr. Agostino answered it is a one room apartment rented to one elderly gentleman right now. There is only one bedroom and the other room is the living room.

Member Hoffman noted on the plan that it shows Room #1 is not connected to that individual one room apartment. Was it all one unit?

Mr. Agostino answered it is one unit.

Member Hoffman questioned Room 1 would be bedroom and Room 2 would be the family or living room?

Mr. Agostino answered correct.

Member Covelli questioned if that unit, since it is different than rest, is that cordoned off? Someone on the 2nd floor can't get to the 1st floor unit other than going outside and knocking at the door?

Mr. Agostino answered no, it is connected. They have to go down the staircase and you would walk past the door to the entrance to the apartment.

Member Covelli questioned, so the person living there for example, if they are sleeping in Room 1 they go into the common hall to go into their living room?

Mr. Agostino answered no. They don't at all go into the common hall.

Member Hoffman stated that is not what it shows.

Member Covelli commented when you look at that page where it says Room 1 next to the closet there is also a door into that other room; shaded area of the wall?

Mr. Agostino answered that is a doorway and that shouldn't be like that. It should be a closed door right there to the foyer.

Member Covelli questioned I would access Room 1 from Room 2?

Mr. Agostino answered yes.

Member Covelli continued and my only ingress and egress to Room 1 is through Room 2?

Mr. Agostino answered yes. There is only one entrance.

Member Hoffman questioned that door to the hallway does not exist?

Mr. Agostino answered the entrance is over by the kitchen. There is only one door that you can get into that apartment and it is in the kitchen area. Whatever that is down by the foyer, I am not sure. It is a mistake. It is a doorway inside the apartment.

Member Hoffman questioned so that is a continuous wall from the entrance door to the stairwell?

Mr. Agostino answered yes.

Member Hoffman stated it is a mistake on the drawing.

Attorney Martin commented that what we are looking at right now is not an area that we're asking be covered as part of rooming house?

Chairman Dunning answered right, but it comes into the body count, room count and parking variance count.

Member Covelli commented that even though per Mr. Agostino's testimony there is only one person living in this apartment, two people could live there.

Attorney Martin answered I believe so, yes.

Member Levine questioned is that the only area where somebody presently is living on either one?

Mr. Agostino answered no. At 18 Railroad there are four people living on the 2nd floor and I have four people on the 3rd floor.

Member Henderson questioned and at 20 Railroad?

Mr. Agostino answered two people renting as an apartment on the 2nd floor and two people on the 3rd floor renting as an apartment and one elderly gentleman renting the lower floor apartment.

Member Levine questioned, if they are all being rented presently, you don't consider it a rooming house? You consider it an apartment house?

Mr. Agostino answered I was under the impression that it was shared rental apartment until the State came in and said it wasn't and they told me I could do it either the hard way or the easy way. I asked what would be the easy way and he said you have to get zoned to be a rooming house.

Member Henderson commented that is why you are before the Board.

Attorney Martin, just to clarify that, and I am not trying to testify for the applicant, we have a pending application before the Department of Community Affairs, which is sort of pending and I have been in touch with the State for some time now and they are basically waiting to see what happens here with this application. They haven't put this in writing to me but it seems to me that the State would approve of this type of rooming house situation. As a matter of fact, there were a couple of things that they asked Mr. Agostino to do in the interim. He obtained a fire inspection, got a fire report that we had produced for the State. The State is certainly aware of this situation and we have even paid some application fees and they are simply waiting for us to go through this process before they proceed any further for obvious reasons.

Member Covelli commented that there is one part of that which is missing. I've lived in this town since 1997 and to my knowledge, and I once lived very close to Railroad Avenue, and I have been to Flip's but I won't be until this application is over, but with that said, I've known those buildings to be what they're being used for now in the past. You are saying you are making application to the State, what is different now that didn't exist last year, five years, ten years, fifteen years ago.

Attorney Martin commented I was going to have Mr. Agostino testify as to his understanding of the use of the buildings. We believe the buildings have been used in this fashion; I just don't know that I have the proofs to show that this has been an active rooming house for all these years. I don't know that I can.

Member Covelli questioned you brought 20 Railroad from Gallo?

Mr. Agostino answered no, from Ted. I didn't know Gallo. 18 and 20 Railroad are under the same roof.

Chairman Dunning commented that Gallo is the corner property.

Member Covelli questioned this is not the corner property?

Member Hoffman answered no, this is Flip's.

Attorney Martin stated although that is a rooming house.

Attorney Martin stated I actually went to the Wanaque Library and I spoke to a local historian and I looked through articles in the various newspapers trying to find either photos or articles about Flip's and the building. I found articles about Flip's, but nothing that actually references that back in whatever year these were rooming houses; although that is what we believe.

Mr. Agostino stated he has lived in this area 50/55 years, and am familiar with these buildings. There were two families, my grandmother and another sister, I guess Donderos, and they built the building together in 1903 and is separated by a fire wall. So when the property became available at 20 Railroad, and needing the parking in the back, I purchased the property last year.

Member Hoffman questioned who was Flip?

Mr. Agostino answered Flavio Villa. Flip was my step-grandfather. Lived upstairs and there were apartments and maybe it was a hotel before that. It is really hard to find anything on record.

Member Covelli questioned when we look at the building, what you are saying is that it is actually been two buildings all this time even though it appears to the eye to be one building?

Mr. Agostino answered yes, and it still is considered two.

Member Levine asked Attorney Mondello to explain the difference between a rooming house and an apartment.

Attorney Mondello answered that an apartment typically has their own kitchen, their own bathroom and a rooming house is not set up that way. A rooming house is set up for communal bathrooms and a communal kitchen. As Attorney Martin has indicated there are highly regulated by the Department of Consumer Affairs and if you don't have a rooming house or boarding house license, it is \$5,000 every time are able to produce that particular license.

Member Henderson questioned if there is a zone?

Attorney Mondello answered it is not permitted.

Chairman Dunning stated I don't think we have a permitted use in any zone for rooming house. It is not in the code.

Member Henderson questioned do we have any other rooming houses in town?

Member Covelli answered the a few doors down.

Member Henderson questioned is filed as being a rooming house or is it recognized as a rooming house?

Attorney Mondello stated the Rules of Evidence are somewhat relaxed so we don't consider what you are saying testimony, but tell us.

Attorney Martin stated we know that from two sources. Mr. Agostino knows that is a rooming house down the street, but also my Professional Planner was able to pull that up off some State website that there is a rooming house at the end of the block. I believe it is 2 Railroad Avenue. We believe that's a 35 room approved rooming house at the end of the block.

Attorney Mondello questioned approved by whom?

Attorney Martin stated we believe it was on the DCA website. We can check that since I didn't think we were going to get into that so much tonight.

Chairman Dunning stated we are familiar with that corner building.

Mr. Agostino stated can I say there is something different though from my proposed plan from theirs. That is 23 rooms without a kitchen and bath for anybody. I am going to have a kitchen and bath for every four people on each floor.

Member Levine stated you are asking for a use variance to make it a rooming house, what is it now approved as?

Mr. Agostino answered rental apartments.

Member Ludwig stated I have been here since the 70's and it has always been a rooming house to me.

Member Henderson questioned why can't you just keep it as a rental apartment?

Member Mondello answered I don't think it is being utilized that way. We may be calling it an apartment, but apartments have their own kitchen and their own bathroom. He has one kitchen and one bathroom for four tenants on each floor.

Mr. Agostino stated that 18 Railroad is being used a rooming house, but 20 Railroad is not. I am operating it as an apartment because I didn't want to get into trouble with the State again until I get approved.

Member Covelli questioned, basically what you are saying is that as a shared apartment, you have two people using two rooms each?

Mr. Agostino answered yes, pretty much.

Member Covelli questioned and then they share the kitchen and they share the bathroom?

Mr. Agostino answered yes. It is a shared apartment. What's different came down to a door and a doorknob, is what the State said. I said I think it is a shared rental apartment and he said well there is a deadbolt here and there is a door missing there and that was the difference between a rooming house and a rental apartment.

Attorney Martin stated in preparation for this application, I did a tremendous amount of research about this. There are cases all over the place that talk about whether something is a shared apartment or a rooming house. Courts go through all these factors and look at all kinds of different things. What Mr. Agostino mentioned before, he testified that the State

we could do this the easy way or the hard way. I think what he means by that is, but I wasn't present for that conversation, the State probably meant we can debate this and argue this and wind up in front of a judge as to whether it is or it isn't being really used right now as a rooming house, but why don't you just try to get yourself licensed and then you can go on and do this and that is what lead us here.

Attorney Mondello stated I have another question. We just had the Tree Tavern and what did we find about the Tree Tavern that it operated outside prior to an ordinance making it a prohibited use. If this has been functioning since the 40's, 50's, 60's, you may actually be here for an interpretation.

Attorney Martin stated I wanted that to be the thrust of this and I still do. I was hoping to run across some article that said it was 1930 and look at this rooming house, but I wasn't able to do that. But from all accounts, and from what I've been told, this building has been used like this for decades.

Member Covelli questioned that shared apartment that you are currently functioning under, how long has your structure, the one you have owned for 15-17 years, been operating that way?

Mr. Agostino answered probably about 7.

Member Covelli questioned before that you actually had one person in each room with the kitchen and the bathroom?

Mr. Agostino answered no. Before that I tried to operate as apartments.

Attorney Martin asked Mr. Agostino to explain to the Board what happened when you did that?

Mr. Agostino stated he found with the apartments it wasn't the ideal place for a family to move into and at times you might have a sister-in-law move in and they have kids and all of a sudden I have ten people living in an apartment and it would take me three months to go to the State and do something about it and get those ten people out. For me, it was a lot easier to have four people and, if one person moved out, okay then I would fix the room up as I do always when somebody moves out by painting, cleaning and I would add new furniture, and I would only lose one tenant and I wouldn't lose three months' rent. I also wouldn't have ten or twelve people all of the sudden bombarding a rental and then I had to get them out.

Attorney Martin questioned so part of the issue is having the control that these units need to have the ability to only have four people?

Mr. Agostino answered yes.

Attorney Martin questioned each person has their own bedroom so to speak, is that correct?

Mr. Agostino answered correct, which I furnish myself.

Attorney Martin, referring to 18 Railroad, how long have some of these folks been with you?

Mr. Agostino answered the professor has been here a couple of years. I have the little old lady Sandy that has been there for seven years and she works at the monastery. She couldn't afford to live anywhere else. She pays what she can each month in rent because she has medical issues. I had another elderly man that was here earlier who is 80 and works at Shop Rite.

Attorney Martin questioned am I correct that you had some residents here earlier that left before you were able to be heard?

Mr. Agostino answered yes.

Attorney Martin stated I was actually going to question Mr. Agostino regarding the site plan and parking issue. I can go into that now if you wish or if there are further questions with regard to the history and such.

Member Covelli questioned is it your intention to come before this Board and ask us to grant a Use Variance for this to be a boarding house as defined by the State of New Jersey whereas Mr. Agostino has presented there would be four rooms, for example, per floor with an occupant in each room sharing a kitchen and a bathroom?

Attorney Martin answered rooming house, not boarding. There is a big difference between these two terms. Boarding means there would then be all kinds of services provided by the boarding house. Rooming houses have the same definition except for that huge portion. Other services would be having meals, social work type situations, having someone come in and make sure.

Attorney Mondello tried to clear up the difference between rooming house and boarding house. A rooming house has these separate, single rooms and we get to share the kitchen. A boarding house is I own the place and each one of you guys pays me another \$50 a month and I prepare your meals, maybe do laundry, and do repairs. In the absence of Mr. Agostino having fifteen people who have lived here for 75 years say I know that was a rooming house and this is the way it was used and I knew the three guys that lived upstairs, and apparently he doesn't have that evidence, so apparently he is going to have proceed on a D-1 Variance.

Attorney Martin stated I am not completely giving up on the idea that Mr. Agostino certainly can testify given his familiarity with the property since he has been around it his whole life that the use right now is the use that has been present for decades as far as we are concerned.

Attorney Martin questioned Mr. Agostino based on our knowledge of rooming houses and our contact with the State, assuming the Board here at some point does grant our application, is there any real change that is necessary to the living area as far as you know? Mr. Agostino answered no.

Member Covelli would like some things clarified. So if your family has owned Flip's Bar and the building, 18 Railroad, since 1903 when it was built, it wasn't until last year you actually acquired the other separate building?

Mr. Agostino answered that is correct. I should have brought it in the year 2000 when the Donderos were selling but I was kind of buying my place at the same time and had all my eggs in one basket, but it would have been nice if I could have.

Member Henderson commented it really sounds like you are running a nice place and you are helping people out in need, it is just that classifying it as a rooming house concerns me because you might have other people come into town trying to open up rooming house who might not be as reputable.

Attorney Mondello stated each application would fly on its own.

Member Henderson stated I understand that, but is this going to open a door where we are going to have ten more applications coming down the road?

Member Covelli stated there is no zoning in the Borough of Wanaque for it. So we are hearing an applicant on pre-existing, non-conforming use.

Member Ludwig agreed that this is a pre-existing, non-conforming use that has been there.

Attorney Mondello stated if the Board decides that then we don't have to do anything.

Member Hoffman stated he has no other testimony to prove that, other than the applicant.

Attorney Mondello stated you can't make a decision on whether or not there will be a deluge of other rooming houses coming in. We can't make a decision on whether making a precedent or not making a precedent. It has to be on the facts.

Attorney Martin would like to make a point on that since I have done a lot of research into this issue. It is not every property that could do this. I don't know if any of you have visited the property, part of the statute and part of the rooming house law goes into single occupancy bedrooms. He is set up that way and that is why I think it was always a rooming house. Most properties that I am familiar with, it is rare to have this kind of set up so it is not as though anyone can just decide to open up a rooming house. There would have to be the right type of property that could accommodate multiple bedrooms and the one kitchen and one bath and possibly have that on multiple floors. It is not that common I don't think.

Member Covelli questioned Mr. Agostino if he was the sole owner of Flip's Bar?

Mr. Agostino answered yes, and I hold the liquor license.

Member Levine stated any apartment that has a kitchen and a bathroom and three bedrooms can then become a rooming house with one person in each bedroom, no?

Attorney Martin answered no. When you say can be, as has been noted here tonight, in Wanaque you have to get a variance and licensed by the State.

Member Hoffman believes he is asking if that situation happens, can somebody come forward with an application.

Attorney Mondello answered sure.

Member Levine yes because that is basically what you have here. You have four bedrooms, a kitchen and a bathroom, which could be an apartment.

Attorney Martin stated it could be and was used as one at least on some occasions. But, as my client testified, that is not necessarily a benefit in this scenario. This building is not the type of building that is going to lend itself to family life. If someone rents this unit on 18 Railroad above Flip's, Mr. Agostino already testified as to what happened. Next thing you know there are ten people up there. He has so much more control over what is going on now given the set up currently.

Member Levine questioned can somebody come in as a couple and rent one of the bedrooms as part of a rooming house and have two people in there?

Mr. Agostino and Attorney Martin answered no. It is single occupancy.

Member Covelli continued as required by the State to meet the definition of a rooming house. If the State or the Zoning Officer did an inspection and found a couple in one of the rooms living there that would be a violation of the license being sought in this particular case. Hence Mr. Agostino saying he has more control.

Attorney Martin agreed.

Attorney Mondello commented it is highly regulated by the State. You've got to have a lot of things the State requires, like a common hallway. It is not an apartment. Even the size of the walls are supposed to be different.

Attorney Martin stated the State has come at least twice for inspections and they have asked for a couple of things.

Mr. Agostino stated there have to be locks on the doors. I've had a complete fire inspection done so they were satisfied.

Attorney Mondello questioned you have met all the fire code requirements for a rooming house?

Attorney Martin answered I sent them a report.

Member Covelli questioned does the building have sprinklers?

Mr. Agostino answered no.

Member Covelli questioned is it central station, alarms in every room and in the hallway?

Mr. Agostino answered yes, hard wired and battery back-up. They just wanted me to clean up the extinguishers, the lights. There is emergency lighting.

Attorney Mondello advised Member Covelli it is highly regulated.

Member Covelli questioned if there was a fire escape on the building?

Mr. Agostino answered yes.

Member Hoffman commented that the only thing I can't figure out is how they come from the second floor down to the ground. If that ladder comes down, it is going to be blocking the downstairs door. It comes down right in front of the first floor access.

Chairman Dunning stated that this is an issue for the fire inspector and/or the building inspector to see it drop down and if it blocks the door.

With this application, a site plan prepared by Mr. Miceli was submitted and has been marked as Exhibit A-4.

Attorney Martin questioned Mr. Agostino about the site plan and the fact it addresses parking issues here. We have already established that you own Flip's Bar, and that there are occupants at the premises currently, not only at 18 Railroad, but 20 Railroad also. Can you address as far as parking issues right now, have there been issues with overcrowding or parking problems at the premises?

Mr. Agostino answered no.

Attorney Mondello questioned is there not an engineer who put these plans together who would be testifying, instead of Mr. Agostino?

Chairman Dunning stated a surveyor put this plan together.

Attorney Martin stated Mr. Miceli is not here tonight. I saw Engineer Nash's letter and I believe we can work with him on that. I didn't change the plan for this evening because I wasn't sure exactly first how the issue of the Use Variance was going to be received. I didn't think we would finish the application tonight and I figured just bringing Mr. O Chad was enough in terms of bringing experts tonight. He is a Professional Planner. Also, Mr. Miceli has not been well and I may need to retain a different engineer at some point, which I will do if necessary to revise this.

Chairman Dunning commented that what we are going to look for is a drawing showing the parking area a lot more defined than on this survey, which is going to be a requirement per Engineer Nash's letter. Somewhere we have to decide what the parking requirement is because obviously you are going to need a variance because of the parking, but what numbers are we looking at, and how do we define those numbers. As Engineer Nash's letter identifies, you have two front yards because you are fronting on both streets. The

parking area fronts a street and you cannot park in the front yard. That is the main variance you are going to have to overcome.

Attorney Martin commented I assume the Bulk Variances can be considered as part of our Use Variance application.

Chairman Dunning answered correct.

Attorney Martin commented what I think would be prudent and a good way to proceed if I call Mr. Ochad since he is here to go into the planning issues and then bring a new set of plans with an engineer the next time.

Chairman Dunning stated the other problem is we have a 10:30pm cut off. Mr. Ochad has twelve minutes, can he do it?

Attorney Martin answered no and advised the Board that he would rather call it an evening especially since we have some work to do.

Attorney Mondello commented that you might want to consider the avenue of an interpretation. That this is a pre-existing, non-conforming grandfathered use. If you are able to convince the Board with enough credible evidence that that occurred, we move to site plan. If the Board decided that the applicant met his burden of proof that this use existed prior to the ordinance that basically said it is prohibited.

Attorney Martin commented, without holding the Board to anything, would testimony be something that could be sufficient on that issue.

Member Covelli stated you may want to look into the beginning of the Tree Tavern application.

Attorney Mondello stated there was testimony, there was some documents from the Mayor & Council, there were liquor licenses and all kinds of stuff going on. Also, I haven't looked closely at the publication, did you put anything in with respect to an interpretation by the Board as to whether or not this is a pre-existing, non-conforming use?

Attorney Martin answered I didn't, but I could amend the notices and send them out again.

Attorney Mondello stated it is the applicant's application so whatever he wants to do.

Chairman Dunning stated he had the opportunity to stop at the property this morning and look at it and Mr. Agostino gave me a tour of the building. We can have a Saturday morning pre-meeting site inspection and, if you want to walk through it, you can actually visualize as to what this building looks like. Part of the wall on 20 Railroad you can see the brick wall that is between these two buildings even though from the outside you swear it is one building. Also, as far as your drawing when you get to that upgraded site plan, you have to show somewhat of the interior of Flip's because that is going to play into the parking variance based upon the number of bar stools, seats, tables, shuffle board spaces, pool tables, whatever, and your occupancy limit on Flip's and bring that into the plan.

Mr. Agostino answered 99.

Chairman Dunning stated in order to come up with a parking variance, we have to know how many seats, spaces that are available in Flip's. Also, if you show the interior seating, it may be less than 99, so then it is the Board's decision as to whether we are looking at seating or occupancy.

Member Covelli stated the calculation of parking is going to be tied into the occupancy of the entire building and the first floor of the building is the bar.

Discussions were held about the next few meeting dates and when the applicant would be able to hire an engineer and deliver new plans.

MOTION TO CARRY THE APPLICATION TO THE DECEMBER 6, 2017 MEETING: made by Member Ludwig, seconded by Member Hoffman. Voting yes were Chairman Dunning, Members Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Karp.

Next Meeting is December 6, 2017 With No Additional Notice to the property owners. However if the applicant decides that he wants to bifurcate and first do a hearing on whether or not there is a pre-existing, non-conforming use, then a new notice must be sent out and published.

Member Ludwig left the meeting at 10:25pm

PUBLIC DISCUSSION: None

RESOLUTION: None

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the October 4, 2017 Meeting in the amount of \$300.

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

MOTION TO APPROVE SEPTEMBER 6, 2017 MINUTES: made by Member Covelli, seconded by Member Levine. Voting yes were Chairman Dunning, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp.

ENGINEER'S REPORT: Joseph & Dorothy Breen – Board Secretary handed out this Application to the Professionals & Board Members

DISCUSSION: None

MOTION TO ADJOURN AT 10:300 PM: Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary