

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, and 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)**

OPPONENT’S EXHIBIT

**O-27 6 Pages of Photographs (P-1 thru P-6) Prepared by Peter G. Steck, P.P. and
Dated September 7, 2016**

**O-28 11x17 Sheet of NJDEP Aerial Photographs of 17 Park Street taken in 2007 and 2015
Prepared by Peter G. Steck, P.P. and Dated August 2, 201**

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.

**Peter G. Steck, 80 Maplewood Avenue, Maplewood, New Jersey.
Still under oath from the August meeting and will be continuing his testimony.**

Planner Steck's Testimony:

Planner Steck identified Exhibit O-27 as being prepared by me and dated September 7, 2016 consisting of six pages that have been pre-identified as P-1 through P-6. The first page consists of photographs taken by me on September 2, 2016 and I believe they accurately depict existing conditions.

Page 1 has three photographs with a caption above each photograph and shows the conditions of the property as they exist today.

First Photograph: Looking from Park Street, you see the front yard parking on the left-hand side and the driveway on the right-hand side. My client is off to the right on the other side of the fence.

Second Photograph: View toward the rear of the property and is taken from the right-hand side at the fence line. I did measure from the fence line to the applicant's curb, and it is less than 5'. The fence as I understand it is my client's fence and there is a 5' distance to the curb line, which is less than what is on the applicant's plan. That is significant because there is landscaping proposed there and the plan scales to more than 5' so I don't know where the extra footage came from. I measured it in the field and it is above 5' exactly to the fence. I also note the applicant is proposing planting there and as you know there is a drainage line right there so I am not sure how you plant shrubs on top of a drainage line.

Third Photograph: Shows from the applicant's property looking across to the seating area that exists today. At the beginning of it is the shuffleboard court that is the closest to my client's property

Page 2, on the upper section, are two panels. No. 4 is the current zoning map and you will see in purple it says subject properties so it shows you that the applicant's property is clearly in the R-15 Zone. Panel No. 5, to the upper right on the second page, shows the approximate location of the subject property. It is from your land use plan and that coincides with the zoning designation. It is a medium high density single family zone, which happens to coincide with the R-15 Zone. Below that are two aerial photographs secured from the NJDEP GeoWeb site. To the right you have a 2007 photograph which shows you the extent of largely gravel area on the subject property. Inserted to the left of is a 2012 aerial photograph which shows you how the pavement has been expanded from 2007, it shows the seating area, smoking area and cooking area that were inserted in the rear of the property.

Page 3 reproduces the standards from your zoning ordinance of the R-15 District. Essentially it is a single-family district that allows one home for each 15,000 square feet of lot area. Commercial uses are not permitted in this zone.

Page 4 shows a photograph of the applicant's website that I secured at the time I did the exhibit on September 7, 2016, which is an advertisement for the Tree Tavern. It indicates the opening hours and refers to "our beautifully landscaped terrace" so it references that the applicant is trying to attract people to the exterior of the building. It also shows Happy Hour proposed and it references the hours of 4pm to 7pm on Tuesday thru Thursday.

Page 5 is a photograph from the website secured on September 7, 2016 showing the seating area that has been constructed in the rear of the property. There are tables, chairs and umbrellas. Below that is another photograph from the applicant's website apparently added by one of the patrons referencing the 2nd Annual Pig Roast. As you can see the

applicant , at least on this date and, I guess, this is the second time this was held, there are a lot of people sitting outside with wine glasses.

Page 6 – I compared the variance plan from May 12, 2005 for the applicant with the 2012 aerial photograph. On the right-hand side I highlighted the photograph by outlining the buildings and reproducing what was referenced as “the edge of gravel area” so that, almost like an “L” toward the rear of the building, was the limit of the gravel area. I superimposed that on the 2012 aerial photograph to emphasize how the parking area has been expanded from its historical use and, in fact, the last variance that was approved in 2005. Finally, below that I have a blow-up of part of the google earth photo taken June 17, 2010 that shows, in detail, how the parking area has been expanded.

I also have another page that might be helpful, which has been marked as Exhibit O-28. This was prepared by me on August 2, 2017 and the reason I prepared it was really for two reasons. (1) The NJDEP had come out with a more recent aerial photograph of 2015 so I wanted to include that. (2) The applicant, in the applicant’s drainage report, indicated what areas were expanded and consequently deserved some kind of treatment in terms of the additional runoff and I wanted to highlight that. O-28 is an 11x17 sheet. On the far left-hand side you see the condition of the subject property in 2007. In the center panel, you see the condition of the property with the most recent aerial photograph (infrared photograph which tends to make the trees disappear). I draw the Board’s attention not only to the subject property, but to my client’s property, which is to the west. You will see that there is a dwelling in the front and there is an improved rear yard with a shed, pool and lawn area. Finally, on the right-hand side I have highlighted in the rear of the property items that were improved after the Board of Adjustment decision from 2005. Here you see the expansion of the parking area and, not only is it expansion, but it is paved. As the Board recalls, there was an issue of stormwater runoff and it was intended to be in gravel. It shows the seating area and I understand that the applicant, at the last meeting, reduced the amount of outdoor seats from 50 to 28, but it also shows the detention area that is going to be disturbed. The reddish-pink improvements in the rear of the property are clearly expansions of the non-conforming use. Aside from the operational aspects, this is what was physically done to make the outdoor of the rear yard more accommodating to patrons of the establishment. I also highlighted the two parking spaces in the front because those were not authorized. This is supposed to be a residential zone. The applicant is requesting that paved area be authorized in the front, even though it is in the front yard, for parking,

Planner Steck continued just to re-cap how I testified at the last meeting, I kind of set the stage, as the Board can recall, by referencing this law case, *Belleville v. Parrillo*, and what I wanted to emphasize with that is that the evaluation of a non-conforming expansion is not just a numbers situation where there seven seats inside and now there are seven seats outside, the answer is you have to look at both the numbers and the character of it. This was a case about a bar that introduced live music where there was only recorded music before and dancing. The Court said, when you are reviewing whether it is an expansion or not, you just don’t look at numbers; you have to look at the character of the use that is going on. It is both the quantity and the character that are important. This is an application for expansion of a non-conforming use. I read from the Cox Treatise at the last meeting that the policy of New Jersey and the Land Use Law is that, while the applicant is

protected if the use was legally established, you can't force the applicant to shrink the use. The applicant has the right to continue it but not to expand it. Assuming that you know what the limits of that use are, public policy and the Municipal Land Use Law discourages expansion of non-conforming uses. In fact it would say, it would be nice if they would disappear; that would be unjust to the applicant, but the policy is that over time they wither and die because the public policy is this is a residential zone and your master plan and the zoning ordinance are consistent that this should be a residential area.

One of the difficulties of this case is you have to evaluate whether the applicant has met the proofs based on, as you know, the positive and negative criteria. One of the hard parts about this case is that I don't think you know the magnitude of the variance that the applicant is asking for. The Board has already ruled on the fact that there were some non-conforming rights about some outdoor use. Unfortunately, there is no Resolution that the Board has produced that quantifies what that is.

Attorney Mondello stated I don't think you can point to any rule that says that Resolution had to be done as soon as the Board decided that there was a pre-existing use and I am working on that. The record, in and of itself, shows that there was this pre-existing use. I don't mean to be disrespectful, but you are insinuating that the Board decided that without any type of evidence, without any quantification as to what occurred, but it is in the testimony and they listened to it. It was like paint drying on the wall, but they heard it. Planner Steck stated that has nothing to do with my point.

Attorney Mondello apologized.

Planner Steck stated my point is that, if the Board had ruled on it and if you had a Resolution, presumably the Resolution would say the applicant established that it occurred outdoors this frequently, with this many seats, with these hours of operation, presumably there would be some bounds. It means nothing to say the applicant has a history of outdoor use because you don't know the magnitude of that. The point that I am making is if the applicant is asking you to approve an expansion of a non-conforming use, at least in writing, you don't have the baseline. Is the expansion a little bit of an expansion or is the applicant asking for a major expansion. Without some detail and normally when the Board makes a decision it would be embodied in a Resolution. It would have a number of findings of fact and there might be some limits because it is meaningless to me, if you have apparently concluded that there was some outdoor use.

Attorney Mondello stated it is much more than that. Did you read the prior transcripts of the hours of testimony the Board listened to with specificity as to what occurred?

Planner Steck stated you are now characterizing what happened and normally, if the Board makes a decision, that is embodied in a written Resolution.

Attorney Mondello stated it is coming within 45 days after the decision.

Planner Steck is stating that, while each Board Member certainly was here and listened to the testimony, you are characterizing it as being very thorough and deep, but the answer is there is no Resolution that exists now so we don't know what the terms of your approval because we don't have a written Resolution. Does that mean you ruled that the applicant can serve alcohol outdoors every day of the week? Was that your ruling? I don't know what it is. All I am saying is that for you to accurately judge what the magnitude of the variance is, you first of all have to know what the baseline is. Is this maybe a minor expansion or is this a major expansion?

Attorney Fernicola addressing Planner Steck questioned did you review the Resolutions from 2010 through 2013 in this matter that were previously marked as Exhibit O-24? Planner Steck answered I did.

Attorney Fernicola questioned, based upon these Resolutions that had been adopted by the Council particularly in 2010 and 2011, where there limitations imposed on the outdoor use of the subject property?

Planner Steck answered yes. I am going to make a distinction here: there were Resolutions passed by the Governing Body as the local alcoholic beverage control board that set certain terms, certain limits, on at least the consumption of alcohol. That is a little different from zoning.

Attorney Fernicola questioned do the Resolutions define the pre-existing, non-conforming use?

Planner Steck answered they do not. Resolution #110-0-10, dated June 14, 2010, even though different than zoning, shows you that there was some apparently concern by the Governing Body in issuing a liquor license that says: "a) The hours and days of outside operation would be limited to Friday, Saturday and Sunday 2:00 P.M. until 9:00 P.M." The next condition on the liquor license is "b) No entertainment outside, this should include live entertainment as well as electronically produced or amplified, i.e., Radio, C.D. or any recording. The licensee or his designee shall establish and institute procedures to prohibit fights, brawls, arguments, shouting and disturbing noises.", and that the Police Department is to be notified of any pre-arranged gatherings consisting of more than fifty (50) outside guests. Absent whether the applicant had a zoning right to do this, there were limits established in 2010 by virtue the issuance of a liquor license.

Attorney Fernicola questioned were those limitations on the outside operation Friday thru Sunday 2pm to 9pm and no outdoor entertainment, live or electronic, continued in the 2011 Resolution?

Planner Steck answered yes. The 2011 Resolution #90-0-11, dated June 13, 2011, had the exact same conditions for outdoor operations as Resolution #110-0-10. Again, there were certain limits having to do with the public safety, public welfare that were instituted. The applicant clearly wants more than that. The applicant wants to operate more than three days a week and wants to be there after 9pm. Two things come to mind: (1) Applicant apparently has operated since this time beyond those bounds. Now there's a history of other liquor licenses issued.

Attorney Rubin stated I must object at this point because that is clearly a false statement. I don't know how a witness like Mr. Steck could announce that because everyone knows, because it is in the record, that the Resolution of the Governing Body was changed in 2013. To say this operator, Mr. Ryan, was doing something wrong or against the Municipal Governing Body or insinuating that he is doing something that is horrendous is just the wrong impression because that is not what the facts are in this case.

Attorney Fernicola stated first of all this is not a proper objection. It is a speaking objection. Secondly and more importantly, there was already a determination made by the Superior Court and why the injunction was granted because when the limitations were changed and they were decreased in 2013 that the represented, at best, an expansion of a non-conforming use. There was evidence based on the Zoning Officer's Memorandum from 2002 and 2010, but the judge specifically found, even if there was clearly an expansion of the operation, that it was beyond the Council's authority and it required a Use Variance

from this Board and why the injunction was granted. For counsel to get up here and make this speaking objection is contrary to why there is an injunction that was granted by the Court in January of 2016. That is the record.

Planner Steck continued with what the Resolutions prove to me is that there clearly is some adverse impact from the operations outdoors.

Attorney Fernicola questioned how do you reach that conclusion that there is an adverse impact from the outdoor operations at the subject property?

Planner Steck answered I reached it in two fashions. First of all there are conditions of the liquor license, absence the zoning controls, and that the purpose of this liquor license is again to protect the public welfare. The other issue I would call it common sense. My client has a nice backyard, nice pool and pool shed. When the applicant operates outdoors what goes on. There are lights, conversations, there has been music, there is smoking, and my understanding that there are people that look at the pool next store over the fence, there are disruptions that make my clients' rear yard unusable during certain evenings. The applicant is only outdoors during the better weather, in the summertime, and that is when the pool is used. What is happening by the applicant increasing the activity in the rear yard of that commercial establishment, they are making the rear yard of my clients' dwelling unusable. My clients have small children out there, they don't want to have their children exposed to some of the conversation, to some of the noise, to some of the activity. They would like to use their pool after 4pm and would like to use it in the early evening and they have been unable to do it when these activities are happening next door.

Attorney Fernicola questioned, in your opinion, how does the disruption to the Bellantes rear yard from the outdoor operation on the subject project impact the criteria that this Board is to consider and whether or not to grant a variance for the expansion of the outside service of food and alcohol.

Planner Steck answered I will address the positive criteria more specifically, but they address the negative criteria. The applicant is in a single-family zone, master plan says it should be single-family, and the neighbors should have the right to reasonably their yard. Applicant seems to say I am going to keep the number of people the same. I will take the people from inside the tavern and I'll put the same people outside. While this kind of goes to the *Parrillo* issue, while you might say there are fifty people inside, why can't there be fifty people outside. The answer is the impact of people drinking, talking and smoking outside is different when they are inside the tavern. There is no objection this evening to what goes on inside the tavern, but when they bring it outside and, again, all these improvements of the paved area, now the handicap ramp, the benches and tables encourage outside activity. The answer is that is the more offensive part of this operation. If that same person outside tasting wine is inside the tavern, we don't care; that is what a tavern is, but when you put outside and when you expand it outside, it has a substantially negative affect. It impairs the intent and purpose of the zone plan and zoning ordinance and it is detrimental to the public good. My clients can't use their outdoor area, which they should be entitled to do it, when these activities are on. In addition to having to meet the negative criteria, applicant has to meet the positive criteria. So what did Mr. Petry, the applicant's Planner and Engineer, say were the benefits. Applicant said we are going to improve the drainage, we are going to add more landscaping, and going to improve the aesthetics. Yes, applicant is proposing to improve the drainage. Why is that needed

because the applicant illegally expanded the paved area. If the extent of the gravel and paved area was the same as was approved, you wouldn't need drainage improvements, but because the applicant illegally expanded the dimensions and then added paving, instead of gravel, that is why there now has to be drainage improvements. The fact that the applicant is trying to protect the neighbor from stormwater runoff is not a reason for granting the variance. The reason the applicant is doing that is to try and cover the fact that he illegally expanded, without permission, in the rear yard for outdoor activity. In my opinion, the aesthetics are not beneficial to the surrounding area. Applicant is proposing landscaping and that's not going to affect the lighting, or the noise, or the negatives that happen to my clients' rear yard. This is a residential area and the applicant has rights of some non-conforming activity outside and, in my opinion, undefined at the moment, but this is looking less and less like a residential area. Applicant wants to park more in the front yard; the variance is two more spaces in the front yard paved. Applicant wants to add all these chairs and tables on paved areas in the rear that is not a single-family house.

Attorney Fernicola questioned if the non-conforming use is expanded because of the grant of the Use Variance, does that increase the Tree Tavern's or decrease its compatibility with the Residential Zoning Classification?

Planner Steck answered it is clearly going in the wrong direction. It is expanding a commercial use in terms of numbers of people and the frequency. Keep in mind, the applicant doesn't want bounds; he would like to do this every night, later than 9pm, which was the earlier liquor license limitation. The applicant says you should be happy that I am providing the code required amount of parking. Keep in mind, what is the code requirement? One car for every four seats. I don't know how much you go out to taste wine or go out to eat, but it is not true that every car is filled with four people. With this means is that if the applicant complies with the zoning code requirement, in my opinion there is still going to be an overflow of parking onto the streets. You know these streets here. The pavement in front of this property is only about 24' wide and it is very difficult to traverse this area because the streets are substandard. So there is not only an impact to my clients, there is a degradation of the single-family zone, which is recommended in the master plan, and in my opinion, it is detrimental to the street system because it is only 24' wide. The applicant at one time is proposing to expand the street system and I don't know where that is as part of the application and clearly they need someone else's approval, not just this Board, but the fact that commercial parking is going in a residential area, even if you could expand the street, is not a positive thing. It means that the area is becoming less and less residential which, in my opinion, is substantially detrimental to both the zone plan and the zoning ordinance.

Attorney Fernicola questioned that the improvements to the rear of the property that were depicted in Exhibits O-27 and O-28 based on the aerial photographs that were constructed by the applicant after 2005, do you consider those a minor or substantial expansion of the non-conforming use?

Planner Steck answered that is clearly a major or substantial expansion for two reasons. Just the extent of them is major. Also it is in the most sensitive part of the property because it is adjacent to other people's rear yards. The rear yard of your house is kind of your sacred area; that is where you are protected from the street, you are more secure and

that is the area where you relax and you are allowed to have some privacy. In this case the expansion is not only significant in terms of the physical improvements, but it is in the most sensitive part of a residential neighborhood.

Attorney Fernicola questioned, in your opinion, would the general welfare of the public be promoted from an expansion of this bar/restaurant into the rear of the property as depicted in O-27 and O-28.

Planner Steck answered in my opinion it would not be improved, it would be substantially impaired and these improvements would result in a substantial detriment to the public good.

Attorney Fernicola questioned do you consider a bar/restaurant an inherently beneficially use as you understand the law?

Planner Steck stated I am under oath and am going to say “no”.

Attorney Fernicola questioned, in your opinion, do the improvements that were constructed after 2005 in the rear amount to an intensification of the commercial use of the subject property?

Planner Steck answered they clearly do, and again, as evidenced by the fact that the applicant has to address new drainage issues. They affect drainage, they bring the activity, both parking and use of the outdoor tables, in the rear of the property, which is typically the more sensitive part of a residential neighborhood. It is an affront in my opinion to the integrity of the residential zone.

Attorney Fernicola questioned, in your opinion, does the proposed drainage improvements, landscaping and improvements to the aesthetics satisfy the criteria to justify the granting of the Use Variance for the expansion of the non-conforming use of the subject property?

Planner Steck answered, in my opinion, these improvements are basically insubstantial.

They do not, to any measureable degree, modify the impacts of this activity onto any of the adjacent residential properties; (1) I don't believe the applicant has the 7-1/2" or whatever shows on the plan between their paved area and my clients' fence; (2) I don't know how they are going to plant on top of a drainage line; (3) the shrubs are going to be approximately the same height as the fence; and (4) in my opinion, they are not going to have any affect in terms of noise, nor any impact in terms of light, noise, the conversations, the smoking.

Attorney Fernicola stated you've indicated you believe the expansion would have a negative impact on the neighborhood. What factors do you rely upon to support that belief?

Planner Steck answered it is clearly an incompatible use with residential development.

There are zones in Wanaque that allow restaurants and this is not one of them. The fact that the applicant says I am going to comply with the parking requirement doesn't mean there isn't going to be an overflow of parking on the street. If this were in a permitted zone, in many cases you would have on-street parking that would be expected to be used for commercial purposes and that is part of it because you are not going to have four people, on average, in every car that comes to this place. That is just not realistic experience. This is going to have an impact in the rear yard particularly, but it is going to overflow to the front of the property and the area is going to look less residential and the answer is it is going to impact on a street that is substandard in width.

Attorney Fernicola questioned with an increase in noise from an expansion of a non-conforming use, in your opinion, have a negative impact on the residential neighborhood.

Planner Steck answered yes. That is clearly a legitimate land use impact to consider and the fact that it is clear that many municipalities impose limitations on activities into the evening, and in many cases they prohibit commercial activities on the weekends. Here is a situation where you have just the reverse. If you were in a commercial area, it would tend to die down on the weekends and you would have the employees during business hours on the weekdays. Here we have a use that is off-hours and it tends to peak in the late afternoons and the evenings and especially on the weekends. Those are the times when you want to relax in your single-family house or your backyard, so it is just the opposite of what you want in a residential zone.

Attorney Fernicola questioned do you consider the outdoor playing of both live and electronic music to have a negative impact on the neighborhood as part of the noise consideration?

Planner Steck answered yes. It extends into the evening and, as you know, at any bar or restaurant you can say last drinks are at a certain time, but people tend to hang around and stay after hours. The fact that there is conversation and music and noise in a residential setting with 28 people in the rear, in my opinion, is substantially detrimental. Especially given the fact that the applicant doesn't want any limitations on the number of days that this operates.

Attorney Fernicola stated there has been testimony and photographs showing gas heaters and chimineas and how does that relate to the intensity or expansion of the non-conforming use of the subject property?

Planner Steck answered it allows the applicant more frequent use of the rear yard because now, even though it is chilly, the applicant can offer heating units to extend the frequency and duration of use even though the weather is getting colder.

Attorney Fernicola: I have no further questions for Planner Steck at this time.

Attorney Mondello: Your witness Attorney Rubin

Attorney Rubin, referring to O-27 that you prepared, I call your attention to Photograph #3, "View of rear of subject property looking east", which obviously shows what looks like a parking area and such. Does that look to you like a typical one-family home in the Borough of Wanaque?

Planner Steck answered no.

Attorney Rubin commented it looks like a commercial establishment, does it not?

Planner Steck answered it does.

Attorney Rubin commented that is where we are seeking the expansion of this pre-existing, non-conforming use. Have you read some of the testimony that has occurred before you appeared this evening?

Planner Steck answered I have not read the transcript; I have only discussed it with Attorney Fernicola and with my clients. I was here during the last three hearings.

Attorney Rubin asked is there any question in your mind that this site has been a restaurant since around the mid 1920's?

Planner Steck answered my understanding is that the substantial evidence only went as far back as 1979 on the record. So the applicant, in my opinion, has not met the burden of proof to even establish a baseline of what was a legally permitted non-residential use.

Again, just the fact that there might have been a restaurant there, does not answer the question in terms of the character and extend of it.

Attorney Rubin questioned you did not read from the transcripts or listen to any recordings tapes?

Planner Steck answered that is correct.

Attorney Rubin questioned did you read that there were people/patrons of this establishment in the 1950's and 1960's, long before 1979?

Planner Steck answered I understand that the earliest testimony was someone that recalled in the 50's, but that doesn't pre-date the 1954 initiation of zoning.

Attorney Rubin questioned who is the trier of facts in this matter?

Planner Steck answered the Board.

Attorney Rubin continued it is up to the Board's recollection of what witnesses said.

Planner Steck agreed.

Attorney Rubin continued not your characterization or Mr. Fernicola's characterization or my characterization, it is the Board's. The Board makes that decision as to what a witness says and if a witness says it is 1950's and I believe it has been repeated several times, you accept that as being what the trier of facts have determined?

Planner Steck answered first of all we don't have a Resolution of the Board and if someone says that there was a tavern here in the 1950's, that doesn't mean it pre-dated 1954.

Attorney Rubin commented so you are saying everything is up in the air as to what the witnesses said?

Attorney Fernicola objected as this is argumentative.

Attorney Mondello: Do you want to respond Attorney Rubin and then I would like to jump in for thirty seconds.

Attorney Rubin wants the witness to answer the question even though an objection was made.

Attorney Fernicola stated it is an objection and it is up to the Board Attorney to rule on this.

Attorney Mondello stated Attorney Rubin I am just asking if you have a response to Attorney Fernicola's objection that it is argumentative.

Attorney Rubin responded it is not argumentative; this is cross examination. I am allowed to ask any question that is germane to this matter.

Attorney Mondello stated Planner Steck is pretty tough so can you answer the question?

Planner Steck stated in my opinion the applicant has not met the burden of proof because they haven't demonstrated that the use pre-dated 1954.

Attorney Rubin commented as we say it is up to the Board as to their recollection of the testimony and how they weigh that testimony. It is up to the Board, is it not, as to the quality of the testimony and how they weigh that testimony?

Planner Steck stated I already answered that.

Attorney Rubin continued if they disregard that testimony, then they agree with you. If they don't, then obviously there is an issue. Silence is what your answer is?

Planner Steck stated I wasn't a question; it was a statement.

Attorney Rubin stated, moving forward, the Resolution of the Governing Body, you very nicely spoke about the 2010 Council Resolution and the 2011 Council Resolution, but what you failed to do was, I won't use the word disingenuous but it is totally

Attorney Fernicola stated why don't you just ask a question – Attorney Mondello can we have counsel to ask a question instead of getting his editorialization of the testimony and witness, it is not proper.

Attorney Mondello commented could you just ask the question Attorney Rubin. I know Mr. Steck from many, many years of working with him and he is pretty resilient and he can sort of dance on his own.

Attorney Rubin stated I have also worked with Mr. Steck.

Attorney Rubin to Planner Steck, calling your attention to Resolution #90-0-13 (Exhibit O-24) the 2013 Municipal Council Resolution as to the liquor license, and I quote “a) The hours and days of outside operation would be limited to Monday through Thursday from noon to 10 p.m., and Friday, Saturday and Sunday from noon to midnight.” Now, taking that information from the Resolution of 2013 and I represent to you that it is the same Resolution in 2014, 2015, 2016 and 2017, is there any reason why that was not included in your testimony?

Planner Steck answered yes because it is my understanding that the Court made a decision that this Resolution did not address the issue of expansion of the non-conforming use so that the Governing Body, by issuing this liquor license, can't override what is really the jurisdiction of the Board of Adjustment. So this Resolution is not dispositive of the extent of non-conforming protections.

Attorney Rubin questioned it may not be dispositive, but do you have professional opinion that if a Governing Body in any municipality gives you a Resolution on the question that we have before us, do you just throw out that issue or do you use it in your planning report?

Planner Steck answered if the Court has already

Attorney Fernicola has an objection that this seeks a legal conclusion. We also have an issue of collateral estoppel. The Judge has already determined and granted the injunction that the 2013 Resolution was invalid because it represented going into the authority of this Board that this expansion required a Use Variance and the Council was without the legal authority, so we have already had a legal determination.

Attorney Rubin stated I don't recall the Judge saying that.

Attorney Fernicola, addressing Attorney Rubin, stated you weren't in the case at the time, where you counsel?

Attorney Rubin answered no I was not, but I have looked at the transcripts and I don't see those words.

Attorney Mondello: Mr. Steck can you answer the question?

Planner Steck answered my understanding is that this 2013 and apparently the subsequent liquor license Resolutions are not at all dispositive of the expansion of non-conforming use issue.

Attorney Rubin stated you made mention of the allegation that Mr. Ryan paved a portion of the rear without approval. Did you see anything in the record that showed that the then Board Engineer gave approval to use paving rather than gravel?

Planner Steck answered I know that there is information, but in my opinion, the engineer did not have authority to do that because it was contrary to what the approval was in 2005 and it was also contrary to the submission to the Highlands Commission which only indicated that this was an expansion of a residential use. There was no mention in that application that this was a commercial use and that the parking that was proposed was related to the tavern use.

Attorney Rubin stated quite frankly I don't recall that being part of the record in this matter going into the details of the Highlands Application. Is there something in the record that you saw that showed that we dealt with a Highlands Application in this matter?

Planner Steck answered I am aware of correspondence from the Highlands Commission that indicated that they could not find the plan that documented the improvements proposed, but I did view the application to the Highlands Commission and it only referenced residential use and there was no mention made of the commercial use.

Attorney Rubin questioned and that was part of the record of this matter?

Planner Steck answered I don't know whether or not it is, but I have seen correspondence from the Highlands.

Attorney Rubin, calling your attention to the Board of Adjustment transcripts of March 1, 2017, did you have an opportunity to read that transcript of what occurred on that evening?

Planner Steck answered no.

Attorney Rubin stated, since you referred to it, that is where the Board voted after looking at some five different versions of motions that the Motion is "that based upon the testimony and the evidence presented here that some form of a consumption food and/or drink did occur prior to 1979" and the Board passed that Motion by a majority vote of the Board meaning that there was food and drink consumed outdoors prior to 1979. How would the Board making that finding on March 1, 2017 and now having monthly meetings on this application, is it your opinion that the Board can now disregard what they did on March 1st?

Planner Steck answered no. The Board found that there was some consumption outdoors. It did not find that that pre-dated the ordinance in 1954; it didn't find that it occurred every night of the week; it had no description of the hours; the number of people; the frequency of it; whether there was music or no amplification. Those findings are not part of that Resolution.

Attorney Rubin referring to the 1979 year, do you know that your client, through counsel, agreed that it was 1979?

Planner Steck answered no I don't.

Attorney Rubin rests at this time.

Attorney Fernicola has no further questions.

Attorney Mondello: Any Board Members have questions for Planner Steck?

Member Hoffman stated the applicant produced a rental agreement from the previous owner of the property to the previous owner of Tree Tavern. Do you know what the date of that was?

Planner Steck answered no.

Member Covelli stated what you're referencing was a document submitted by the objector (O-17) that is a lease between the two parties – the owner of Tree Tavern at that time and the owner of the house – that is dated 1951 that refers to renting the property “part of tract of land on Park Street, described in a Deed recorded in Book N-22, Page 412, being hereby leased all the frontage on Park Street, being 109 feet, a depth of 150 feet, to be used for picnic grounds and parking, and for no other use whatsoever.”

Attorney Fernicola stated that was on the Bellantes' property, not the applicant's property.

Member Covelli stated correct. I am reading this that was the basis of our decision that there was usage for this outdoor activity dating back to 1951.

Planner Steck stated that was different tract; that was a larger tract.

Member Hoffman stated it was a co-joined tract that was leased by the owner of this tract so I'm assuming that as those units were combined for the lease that the activity crossed over between the two properties.

Attorney Fernicola stated you have to base it on the testimony.

Planner Steck stated it was a different situation and let me give you an example. There is a case that talks about a non-conforming two-family in a business zone on a large lot and it was non-conforming because it was a business zone and didn't allow residential. Someone came and subdivided off vacant land. The point is the removal of land changes the situation.

Member Hoffman stated I don't think this is pertinent.

Attorney Mondello stated maybe I can help since I know Mr. Steck didn't read it, but I read it. This is the transcript December 7, 2016 and there are at least five witnesses and I am going to summarize what they said because I personally take some umbrage with your statement the Board had no baseline, no evidence.

Mr. Anderson was sworn and he indicated that he was at Polly's in the 60's and through the 70's. Several groups would gather outside to eat, drink, and play bocce ball, a tent would be erected and we would go there for clams, corn, hamburgers and beer. Many different groups would go there especially on weekends.

Maurice Houckes testified that he belonged to the VFW and he and many veterans frequented Polly's. He belonged to the club called the Wanaque Good Times Social Club. They would be outside playing horseshoes, bocce ball, they would eat hot dogs, clams, drink beer. All of this in the early 70's.

Gilbert Foulon testified that Sheriff Englehardt would always have political events outside and they occurred from 1974 on.

Jimmy Henrick in the 50's as a young boy sat on the wall and said his father took them on a regular basis for outdoor parties at Polly's. In addition, a lot of clubs would go there to eat and drink outside. Baseball clubs, softball clubs, football clubs weekly or even more frequently than that, mostly during the day.

Joseph Burke as a young man would watch the old men play bocce ball in the 50's, early to mid-60's eating and drinking outside.

Roger Redner stated a lot of clubs. 39 Boys & Gates in the tent yard. Food and alcohol all the time. 60's and 70's. People would take a bus to see the Giants football game and return there to eat and drink outside.

Attorney Mondello continued so most respectfully Mr. Steck I believe that there was some baseline. Maybe it is not as accurate or specific as the objectors would want, but there is a baseline.

Planner Steck stated I am still waiting for something before 1954.

Attorney Mondello questioned what is the exhibit you showed the Board?

Planner Steck answered that is a portion of your zoning ordinance.

Attorney Mondello so I am going to show you what is on-line, which is the actual zoning ordinance, and it says that the establishment of districts was established on December 19, 1983, is that accurate? Then I want you to turn to the first page and is that accurate?

Planner Steck answered you read it correctly. All I can tell you is that the applicant's witness, Mr. Petry, said at the last hearing that 1954 was the important date.

Attorney Mondello asked Planner Steck to turn to the next page and that is just an on-line copy of the first page of the zoning code for Wanaque. What is the date on the top of that? Planner Steck asked to be shown the page.

Attorney Mondello stated you are on it. It says adopted by the Mayor & Council Wanaque January 31, 1979 so you are relying on Mr. Petry?

Planner Steck answered no. I am relying on the fact that there records demonstrate through newspaper ads that the ordinance pre-dated that and Mr. Petry affirmed and in fact he was a little earlier since he said 1954 was when the residential zoning was established. So that is the key date to establish.

Attorney Fernicola stated the 1979 amendment is in the record and I specifically marked it.

Attorney Mondello stated you are correct and I agree.

Attorney Fernicola continued that it was an amendment not the adoption date of the initial zoning ordinance.

Member Covelli, addressing Planner Steck, stated I have sat here for eleven months and you showed up last month. I take it as an affront that you sit here and started this red herring that started at the last meeting with questioning a decision we made back in March and the testimony. When we started to question you, you can't affirm that you even read the testimony that no less than a dozen people came up here that was weighted by this Board and we made the decision and now you are all, including Attorney Fernicola, now sitting here giving professional testimony, but had not read the record, and question the decision that we made and say that we were wrong, that we were baseless in our decision. You are a Professional Planner and you are here to give your testimony. You are not here to re-decide what we decided six months ago.

Attorney Fernicola commented that is not what he did.

Member Covelli stated I am entitled to my opinion and that is what I have been listening to for the better part of this meeting and for most of last meeting and I want that on the record that I am tired to listening to that questioning of what we did. That is done. There is a legal recourse if you don't like what we did and I think we want to move on here.

Attorney Fernicola stated your counsel read what the Motion was and I made this argument back in March. The Motion was that some form of consumption of food and drink outdoor was prior to 1979. What Mr. Steck has said, and respectfully what you have

misinterpreted, that there wasn't a determination as to the frequency, the days of the week, the number of people, and the duration during the day and in order to grant an expansion of the non-conforming use, that is what he described as the baseline. The fact is he is not re-arguing that this Board determined that there was some outdoor service of food and alcohol prior to 1979. What he is saying that you don't have a baseline as to the intensity of that use prior to 1954 and that is what before you in this variance application. We are not here seeking re-consideration of what the Board granted in March, but you have now Member Covelli stated that is not what you said at the last meeting. You put it to question what we voted on at the last meeting.

Attorney Fernicola commented because Mr. Petry said it was 1954.

Member Covelli commented that Mr. Petry wasn't here during that time either.

Attorney Fernicola stated your own Council has acknowledged that it was the early 50's that the town adopted the zoning ordinance, and Attorney Mondello has stated that in the past.

Attorney Mondello stated well I stand corrected.

Member Covelli stated your own submission shows us a lease that refers to picnicking that took place where they had to rent space going back to 1951.

Attorney Fernicola stated not on the subject property.

Member Hoffman stated it was from the subject owner at the time. So why do you think that the picnic is only going to be on the rental property? How do you know that they are not using the bathroom which would co-join the two properties.

Attorney Fernicola answered because it is the applicant's responsibility.

Member Hoffman stated it is our interpretation.

Attorney Fernicola stated that is fine. We are not re-arguing what you did in March.

Member Hoffman stated you are making it sound like we're wrong with what we did. This pre-dates 1954. I understand his position that we don't have a quantitative number of how people were there to quantitate our expansion. I understand that and I don't need him to reiterate that nine times.

Attorney Fernicola stated that's the applicant's burden though in this case is to establish what the baseline use was prior.

Member Hoffman stated we are wasting time.

Attorney Mondello commented we are going to move on and respectfully disagree with Mr. Steck and Mr. Fernicola. The baseline is in the transcript and anybody can read it. I did.

Attorney Mondello: Any more questions Attorney Rubin? No

Attorney Mondello: Any other questions from Board Members for Mr. Steck?

Hearing none, seeing none. Open it up to the public

Attorney Mondello: Anyone from the public within 200' of the subject property have any questions, not comments. There will be a period for comments, but we are not interested in that now. We want to know if you have any questions for Mr. Steck on his testimony and what you just heard from him. Hearing none, seeing none.

Residents in general have any questions for Mr. Steck? Hearing none, seeing none.

Board requests recess.

Recess 9:13:43

Reconvened 9:24:29

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

Attorney Mondello: Any other witnesses Mr. Fernicola? No

Attorney Mondello: At this point, members of the public and we will start out with residents within 200' of the subject property can approach and give them comments. It is 9:30pm and the Board was hoping to dispose of this matter tonight between we have four other applications that have been waiting, so if it is the same repetitive thing, maybe you don't get up there. However, we are not dissuading anybody from coming up here. You will have to state your name, spell your last name and give us your address. Witnesses will be sworn in.

Lydia Perry – 17 Park Street, Wanaque – Front House On The Subject Property

I live in the front house on the property since 2003. I am now married with two small children, 4-1/2 year old and 2-1/2 year old. I don't have issues with noise or character, which Mr. Steck had mentioned. A lot of the members that attend Tree Tavern are like family to my family. They know my children by name and we send each other holiday cards, and we've become family. As far as the character of Tree Tavern, it is really a beautiful place. I enjoy going there with my mom friends. My children, I don't feel like they are unsafe when we play either right by the house or when we are out in the neighborhood. It is an enjoyable place for me and my family to live with my small children.

Member Covelli questioned how she knew Mr. Ryan.

Ms. Perry answered he is my father.

Member Hoffman commented do you understand that a variance like this is attached to the property and not attached to the owner of the restaurant. If an approval is made here, it goes for the perpetuity of the property. It is not just a decision on the business now, but it is a decision on the business in the future. Do you understand that?

Ms. Perry answered I understand that.

Attorney Fernicola questioned do you work at the Tree Tavern?

Ms. Perry answered no, I do not.

Robert Barbagallo – 48 Short Street, Wanaque

I have been here for several meetings and I have the same beef that I had from the first day I came here. What is going on with the parking? I missed the last meeting and the one before that there was talk about putting eight down the street. That is not going to solve any problems. Where are we with the parking? I own five houses back there and if you go back to the way it was, you can't get a fire truck to those houses and you can't get an ambulance to those houses. It is a small street and when the park and park crooked you can't get a fire truck through there. I don't even know how the town lets that exist, it is a life safety thing. I think I am repeating myself from other meetings, but it is the way it is and I don't know what you guys are doing. My opinion is to give everyone on that street a voucher to park. If you don't have a voucher in your window, tow it. I know they said

something tonight about maybe reducing the amount of parking in the parking lot or seats that means you are going to have more people out on the road. Looking around, I believe I am the only person here that can say they lived here all their life at least not by me. What I am trying to get to is I heard a lot of testimony about this happened then, this happened now. I have been here since the 50's and before that. A lot of the stuff you guys are telling me that people testified to, I am sorry, but I can't agree to all of it. Yes there were some parties. I think I testified before about bocce ball and all the Italian guys. I believe most of the parties were on Flip Villa's property, which is where his houses are these days. I don't care about the bar; it was there before I was born and I like the bar and Mike, but I don't like what they are doing on the street. I pay a lot of taxes and would like a fire truck to be able to get to my house if it was burning and I think all you guys would like the same thing if it was your property.

Brittney Leslie (Gormley) – 5 Park Street, Wanaque

I am 32 years old and have lived here all my life. I grew up on Mullen Ave and now live on Park Street. I am married and have two young children and they ride their bikes up and down that street. Seeing people come in and out and it is so narrow between their driveway and they can't see if my kids are riding their bikes or I am walking with the stroller. It is tight. When I come home from work and they have happy hour and people are hanging outside it sounds all great and everybody in the town loves the idea of it, but I live on that street, with my kids. It is not safe for me to walk my kids after work, for them to be riding their bikes. My major concern is the parking. I am not saying that they don't have a nice place. I know the family and my kids play with Lydia's kids. They are not bad people. The parking is a problem. My uncle owns my house and I have lived it in for six years and my husband works in town and we aren't going anywhere any time soon. I am just really concerned with my kids' safety and there has to be something down with the parking. I really think if you open the back, parking is going to be an issue again. If this does go through, you really have to work on the parking because they can't open and be the way it was two summers ago. There was a car parked on someone's lawn and they owner had to come out and try to find the owner of the car and the car sat there until the person decided to leave. That is not fair; you can't park on people's lawn. I also had a party bus sitting outside my house for three hours waiting for people to leave the party. I live in a residential community; do I want a party bus sitting outside my window? No, I don't. Also I agree with what my uncle said about safety – fire trucks, ambulances. We have kids that have medical issues.

Attorney Mondello: Any other residents within 200'? Residents

Janie Bennorth – 19 Terrace Lane, Ringwood

I don't go to Tree Tavern a lot, but the times I do go it's because it's an older crowd, calmer crowd and a place I can go and talk with somebody. I avoid places like Prime 15 where kids are doing beers and shots. I have not been to a hearing, but listening to the hearing I have to tell you on my street on Terrace Lane in Ringwood I have the same issues. I have called the police numerous times with neighbors that have had parties that can't get ambulances down, can't get fire trucks down. I don't think it is unique to Tree Tavern. It is the area that we live on. We live on small streets; and Cupsaw and Erskine in

Ringwood are all small. We all have the same complaints. Tree Tavern has an area where it is an older crowd. Look at the crowd that is here; they are not the 20 somethings. I would just like the board to know for me it is a nice place to go. It is a respectful and classy place to go.

Melissa Griegel – 15 Dewey Drive, Ringwood

Several years ago I was invited by a friend to go to Tree Tavern and even though I've been on the Board of the Chamber of Commerce of Ringwood for years, I had never heard of this place and we allow Wanaque Businesses to join the Ringwood Chamber of Commerce. I was told it was near Berta's. I went there and was amazed to find this little gem of a restaurant hidden amongst this neighborhood. The backyard is beautiful and this is an oasis in the middle of Wanaque. I support local business and I think both of our towns need more business. You just have to look at all the empty stores we have in our towns. This is a fine establishment and I have since become a regular customer and know all the people who work there. When I walk in, it is like walking into Cheers; they know who I am, what I want to drink and eat. I also bring my children there for pizza. It is a family friendly place and now a rowdy crowd. All of the years I have been going there, I have never parked in the street and have always found a spot in the lot. I have never seen a single rowdy person, a bar fight or brawl. It is older people and families. They were very strict when we were outside. At 9:30pm they said last call since they would not be serving anything after 10pm, and after 10pm, they said you could sit quietly outside until 11pm. I remember sitting way back by the furthest chiminea one time and they came and to us and said it is past the curfew, you have to come inside or leave. They were very, very good about making sure everyone was quiet and respectful. I feel that if you buy a house next to a restaurant, you bought the house next to the restaurant. If you don't want to live next to a restaurant, then don't buy the house next to the restaurant. I understand his concerns. I have children and personally wouldn't buy a house next to a restaurant. I feel that you know what you are getting into. If you have family or your wife's family has lived there and you've lived there, and it has been there since the 20's or 50's, or whatever year you want to give it, it was there when they purchased the house. I feel this is a wonderful, family friendly establishment and I love going. The outside makes the place. Because it is a family friendly place, and I feel so close to all the people that work there, right before you closed the outside because of this lawsuit, I had a planned an event there about for 20 family members for a very special family reunion. I wanted to have it at a place that I felt comfortable, had shuffle board outside and a beautiful lawn and was going to be quiet, nice and peaceful, where I knew the owners would cater to our dietary needs and what we wanted to do. I had to cancel it because a few weeks later he was no longer allowed to have outside seating, and my family wanted to be outside since it was in June. I want you to please consider letting Tree Tavern have their outside.

Robert Ferdon – 22 Morningside Place, Wanaque

I met Mike in 2002 or 2003 shortly after he brought the property. We are both Past Presidents of the Wanaque Chamber of Commerce. After I stepped down, he followed up and picked-up where I left off. The business community in this town has always been important to him. I am in the wine business and sell him wine and a salaried employee so what I sell him makes no difference to my company. He has always wanted to do what's

right. Since 2000 I basically hang out in two places; a place in Montvale and Tree Tavern. They have a few things in common; they are both owned by families, both have older crowds, they are not shot and beer joints, and there is never any fights. It is a good crowd who likes wine and cocktails, it is a family atmosphere and that is the way I feel about Tree Tavern. I just hate to see what is going on there because, as someone who has cared about the business community in town from the Chamber of Commerce, I see one person, or two people, who purchased a house in 2009 decide they want to destroy a guy's business because it became successful. I think that is just horrible. Between 2001 and 2009, I considered it important as part of the business community to try and attend every Council Meeting, Planning Board Meeting and Board of Adjustment Meetings and have heard a lot of testimony and I personally was disgusted by his (Mr. Steck's) testimony and I am glad somebody spoke up tonight because I thought it was very deceptive and that is not what Wanaque is about. Mike and Chris are good people and they contribute to the community and I have probably done over 30 fundraisers at Tree Tavern over the years and it is just sad to see what is going on and I hope you guys can find your way to doing what is right.

Attorney Fernicola questioned Mr. Ferdon that earlier tonight you were holding up a sign, would you read into the record what the sign said?

Mr. Ferdon answered I didn't hold up a sign. This was given to me about five minutes ago.

Attorney Fernicola questioned what does the sign say?

Mr. Ferdon answered "I Support The Tree Tavern".

Attorney Fernicola questioned you weren't holding it up during the hearing?

Mr. Ferdon answered no. It was given to me about five minutes ago. A woman in the audience commented that she had just given it to him.

Attorney Fernicola questioned are you aware that prior to Mike Ryan's purchasing the property in 2002, that the Borough Zoning Officer advised him in writing that it was not permissible to serve and food and alcohol outdoors on the property?

Mr. Ferdon answered I never got into that discussion. I looked at the property in 2001 because I was thinking of buying it.

Attorney Fernicola commented so you weren't aware that Mike, before he brought it, was told he could not serve food and alcohol outdoor on the property?

Mr. Ferdon answered I wasn't aware of that.

Member Hoffman questioned Mr. Ferdon on the amount of times you have been there, have you ever had a problem parking?

Mr. Ferdon answered there have been times when I have pulled up and said it was too crowded.

Member Hoffman questioned have you ever parked on the street?

Mr. Ferdon answered I parked on the street once before, but I usually park in what they call the family parking lot over to the left in front of the garage. I don't like crowds personally so if I come there and it is too crowded I go home.

Marcie Ober – 29 Townsend Road, Wanaque

It was my idea for these signs because I sometimes think you have to express yourself, so I am going to ask how many people here feel in support of Tree Tavern? Attorney Fernicola Objected and Attorney Mondello instructed the Board to ignore the fact that people are

raising signs. You are certainly entitled to bring a sign, that is freedom of speech, but to encourage the rest of the attendees.. Ms. Ober apologized and takes responsibility. Ms. Ober stated she is a grateful patron of Tree Tavern for many years. Also being a woman of a certain age and feeling that I can walk in there and sit down and have a quality meal, good conversation and not feel uncomfortable in any way means a lot to me. I appreciate so much the warmth of Mike, his employees and all the patrons. I have personally never parked on the street and I have never had a problem parking. I appreciate the outdoors and the beauty of nature and our town.

Attorney Mondello questioned how many times have you been there since you testified you never had a problem parking?

Ms. Ober answered I think probably at least 50 over 4 or 5 years. I probably go there twice a week. I go sometimes on the way home from work around 7pm.

Attorney Mondello questioned you are never there for dinner on a Saturday night.

Ms. Ober answered I am. I will take my family, my husband, my kids and I go to the fundraisers.

Member Hoffman questioned you never had a problem parking?

Ms. Ober answered never once.

Ms. Ober continued that I know that change is hard sometimes and I am empathetic to people that suffer in the face of change or not change; has it been here forever, is it growing, is it thriving, is it beautiful for our town. Please do consider the larger picture.

John Blaise – 2 Highland Cross, Oakland, NJ

We have only frequented Tree Tavern for only maybe six months now. Not being very familiar with Wanaque, I can only say that it has made me a Wanaque wannabe in the sense that we have now discovered Wanaque and have seen a lot of growth and businesses. I don't want to talk about the quality of Mike's restaurant since we all know that it is a high quality place. When I hear the reference of tavern, I think that term is not the proper use for Mike's establishment. It is a really up-class or higher class establishment that brings quality and respect and reputation to not only his business but the Wanaque. As far as complaints and things from neighbors, I would only say that I am in the process of considering moving from Oakland and I would consider and certainly be willing to make an offer on any of the properties that surround Mike's property because I would have no problem purchasing a property next to Mike's establishment. Yes, when you buy a property next to a restaurant, you should know the consequences. You are a grown up, a family person and if you have children you shouldn't complain if you buy under those circumstances. Even if you raise my taxes, I would like to state for the record I would certainly be willing to buy a property in Wanaque. I think you have a beautiful town here and I wish you a lot of success.

Attorney Mondello questioned if you ever had any parking issues?

Mr. Blaise answered my wife and I usually go the minute the restaurant opens so we are always the first car there. I cannot comment on the parking situation, but I think in knowing Mike and the respect that he would have for your Board, if you granted him this request, I am sure that he would also honor any requirement in the approval of his request with regard to parking. I am sure he respects the neighborhood and the parking request of the neighbors and I am sure he would abide by any request or demand you make on his approval, and I would certainly strongly suggest his approval.

Attorney Fernicola questioned you stated you decided to go to Tree Tavern about six months ago?

Mr. Blaise answered only about six months ago, yes.

Attorney Fernicola questioned sometime in 2017?

Mr. Blaise answered yes.

Attorney Fernicola questioned you hadn't been to Tree Tavern prior to 2017?

Mr. Blaise answered no.

Attorney Fernicola stated you mentioned my client and knowing that he brought next to a restaurant. Were you aware that Mike Ryan was told prior to purchasing the property in 2002 by the Borough Zoning Officer that he was not permitted to serve food and alcohol outdoors on the property?

Mr. Blaise answered no. I would have no awareness of that.

Attorney Fernicola questioned do you think someone who buys a restaurant and prior to the purchase is told that he cannot serve food and alcohol outside at that property should abide by that instruction?

Attorney Rubin objected stating that has nothing to do with his testimony. If we are talking about his testimony before this Board, fine; but we are far beyond that.

Attorney Fernicola stated then counsel agrees that his testimony about my client purchasing it in 2009 is also irrelevant, then it's fine.

Attorney Rubin stated it is on the record that the restaurant has been there since 1920's.

Kevin Carroll – 1 Mountain Avenue, Wanaque

I live right around the corner from Tree Tavern and have been living there for over 1-1/2 year so I wasn't there during the summer. I would like to point that the traffic pattern is not that bad. I have never had a problem coming out of my street during what would be a peak hour for Tree Tavern, 5 or 6pm. I travel in and out frequently. Yes, there is normal traffic back and forth that goes on all week even when Tree Tavern isn't open. Just wanted to point out that I have never had a problem with the traffic.

Vice Chairman Grygus questioned have you lived there since before the outside area was shut down and when it was in operation?

Mr. Carroll answered no. I wasn't living there then, even though I have been in town all my life.

Attorney Fernicola wants to clarify that when you moved there 1-1/2 years ago that outdoor area had already been shut down by the judge. Is that correct?

Mr. Carroll answered yes.

Jack Fehrenback – 58 Brooksyde, Ringwood

Mike's place is a classy place and I go there because of the class of people. I want to address the problem that is being discussed of traffic. I have just returned as a Captain of Ringwood Ambulance. Yes, I could get ambulance back there. Do we have a problem in Ringwood? I think we have an issue right now up in Ringwood, which is too many cars. Chief has to go and clean it now and then so it's not just your problem, and it is just not on that street. It is in Erskine Lake and Cupsaw Lake.

Attorney Mondello questioned are you referring to narrow streets? Is that correct?

Mr. Fehrenback answered correct, as far as getting emergency equipment through. It is a problem all around this whole area up here.

Ron Casson – 8 Knolls Road, Bloomingdale

I take exception to a bunch of things he (Mr. Steck) in reference to planting trees along the wall that could be planted over drainage line, it would muffle the noise, the lighting in the back doesn't light up like a football field and it is low lighting on the trees, etc. I believe it gets dark in the summertime 8 or 8:30pm and the lights aren't bright and if the gentleman's kids are going to go out in the pool they need lights to go out the pool so I don't understand where all talk was coming from.

I stumbled upon this place when it was opened and I went and sat there and had a few cocktails and met a bunch of nice people and have been going there on a regular basis. Enough people have talked about the staff, the people that go there and I think one of the issues here is safety. I can appreciate the safety of the street and I think an easy solution for that would be just no parking on one side of the street. I think it would be the north side where the fire hydrants are and if there was no parking there fire trucks and ambulances could get through and the other parking they would have to do what they have to do. Attorney Mondello stated that is a Mayor and Council issue but appreciate your comment. Mr. Casson stated that nobody has given a solution for the problem.

Abbey Jordan – 6 Grove Street, Wanaque

When you are going towards Tree Tavern, I am the first house on the left that everybody would pass by on the corner and I have lived there for 3-1/2 years. I did live there when the outdoor was open and I had attended Tree Tavern when the outside was open. I have been very upset that I can't go there in the evening time now outside and enjoy even though I have my own backyard. It would be nice to go there and have a drink. I did want to point out that one of the things I have noticed since I have been there recently, when the outdoor closed, is that a lot of the outdoor space is in the back of the property. When I was there when it was opened there wasn't much noise but the few people that congregated in the back it didn't seem to spread towards the street side of the bar. I just wanted to point out that I have not noticed an increase in traffic. I can't comment on the parking because I walk there which is a nice feature to have. Since living there, and since having the outdoor open or not open, I haven't noticed more traffic. I have two small children. I have three dogs and walk them frequently on the street and I don't feel that it is unsafe with the traffic there. I would also like to point that there are other bars and establishments probably about less than a 1/2 mile from this place that I am much more worried about the clientele that frequent those establishments, then Tree Tavern. It also seems like when I am walking the people that are coming to Tree Tavern stop me and ask me where this establishment and I give them directions because I know it is in an odd location, but the people are always friendly. Every time I go there people are nice and I have never have experienced an increase in traffic back by my house.

Attorney Mondello, hearing none and seeing none, closed the public portion of the meeting.

Attorney Fernicola's – Closing Statement

Thank You Mr. Chairman, Members of the Board I know it has been quite a few months and I appreciate and the Bellantes' appreciate your time on this matter. The issue you have before is one of the most difficult variances to obtain in the State of New Jersey and that is a Use Variance. It is particularly frowned upon in this situation where you have commercial establishment in a residential zone. Mr. Petry, their own expert witness, has acknowledged that under the law of the State of New Jersey the expansion of a non-conforming use is frowned upon. The courts and the State policy is to bring the property into conformity, not to continue to expand. Mr. Steck has said, in more technical terms, but the grandfathering, what you had prior to the ordinance adopted you have a right to continue. You don't have a right because you are a commercial establishment in a residential zone to expand that use. In this particular situation, you have a member of the Wanaque Planning Board who came before this Board in 2005 and represented to this Board that if you granted him a variance to expand the residential use that he had 50 chairs and 16 stools and he literally said not one chair more, not one stool and that this property was used for private parties. That was his representation; that's what was incorporated into this Board's Resolution. He completely disregarded the law that he is aware of and built, not minor, but substantial improvements: the bar that Member Hoffman pointed out with plumbing and electric with no permits and no approvals; he expanded the parking; he put in 99 or 100 in the rear. You don't have to be a lawyer or a Planning Board Member but in this particular case you have a Planning Board Member who completely disregarded the law and in essence is coming before this Board now and, based upon that position, wants preferential treatment. The preferential treatment is because the justification that Mr. Petry gave of a landscaping and drainage doesn't justify a grant of a Use Variance to expand a commercial structure in a residential area. This is a business enterprise and a private business and its expansion doesn't serve the general welfare of this community and it doesn't come close to meeting this standards. The *Burbridge* decision referred to your counsel and the decisions in this State that have allowed the expansion have actually brought the property into more conformity or capability with the surrounding zoning. In this case, the residential. That *Burbridge* what you had, if you remember, was that you had a junkyard and auto repair shop that was utilizing the front of the property for storage, there was a giant sign and what they did by allowing the expansion in the rear, they took all the commercial uses from the property in this residential zone, relocated it in the rear property, and you had a situation where that applicant actually stipulated to remove the signage so there wouldn't be any commercial signage. That was a justification because it brought it into more conformity. What you have here is Mr. Ryan wanting to come in and expand a commercial business. He is not making this property more conforming with the residential area. He is intensifying the non-conforming use, the commercial use of the property in a residential zone and there is no legitimate justification under the Municipal Land Use Law that there is any public benefit any general welfare so the positive criteria is not met and that the negative criteria is obvious to lay people that when you have a residential zone there is an increase in traffic, increase in noise, people loitering when they are outside and at the bar that those are negative to the residential area. You had residents come before you to say that traffic congestion is a problem and certainly an expansion of a commercial use doesn't eliminate or alleviate, it makes traffic congestion worse, not better. The other thing that you have

and I know there was a debate tonight about what Mr. Steck was testifying to. You have a real lack of evidence in this case as to what the applicant is actually asking for. Is there any member of this Board who can specifically say right now and identify for me what exactly is the variance relief that the applicant is requesting from this Board? Is he requesting seven days a week, what are the hours of operation, what was the baseline; so what is he asking for specifically? Do you know that? Do you know specifically what he wants to do with the property, what is the expansion? None of that. They have come in generic terms saying we want a Use Variance for an expansion of a non-conforming use. This application has continued to change during the pendency of the application. At one point they were going to use Berta's for parking, and when we pointed out their notice was defected, they retreated from that position and abandoned the position. What specifically is the variance that is before you? What specifically is the applicant seeking relief from? Despite twelve months of testimony, I have not heard Mr. Petry, Mr. Ryan or any other witness coming before this you and saying this was the prior use of the property and this is the expansion that we want for this property as to hours, as to frequency any of those things. Now they come before you last month and tell you that we are going to limit the outdoor to 28 seats. Well this is different than a lot of applications because you had that representation made and you pointed out Mr. Covelli that you the same representation with a different number of seats made in 2005. The applicant didn't live up to that representation to this Board. Why I know that you are not an Enforcement Board, it goes to the credibility of the witness that you had the same witness testify before this Board in 2005 that they would limit the use of the property and failed by any measure to comply with that representation. Did an expansion, as Mr. Dunning pointed out, to the deck of the rear of the residential building, all the other improvements that were constructed so how can you rely upon that as substantial and credible evidence with the record in this case as to what is taking place on this property. How do you reconcile the law in this state that expansions of non-conforming uses are frowned upon and they are disfavored and that the applicant bears the burden to establish the positive and negative criteria. This applicant has done nothing more than to say, look I was grandfathered for an outdoor use of this establishment and therefore I should have an expansion of that use. That is not what the law is because, if that was the law that simply having some commercial use in a residential zone justified the expansion of the commercial use, you wouldn't have an application for a Use Variance. You would just go to the town and get a permit. That is not the body of the law in this State. All the testimony tonight from people, either family members or people who go to the bar, none of them have addressed the criteria that this Board has to employ, which is the positive and negative criteria; how an expansion of the business benefits the general welfare of the community. This is not that type of use; it is not a nursing home, it's not a cell tower, the things that the court has determined that are the type of uses that benefit the community as a whole and an expansion of those uses benefit the community as a whole. The only person who permits from an increase in patronage to the outdoor use of this property is Michael Ryan and his family. Why he certainly is entitled to make money, no one is disputing that, but he is not entitled to expand that use just so he can make more money. That is not permitted when in 2002 he was told that the outdoor service of food and alcohol was not permitted at this property. He was told again in 2010 by the Zoning Officer. He took no appeal of the Zoning Officer's decision in either 2002 or 2010 and he brought this property with wide-eyed open in 2002 that it was not permitted. Damn the

torpedoes, full speed ahead when he wanted to do outdoor service, he just went ahead and did it and everyone else on the block could suffer the consequences. He no municipal approval in either from this Board or from the Construction and now he is coming belated and saying it justifies the criteria when there is no justification other than his private benefit. To summarize this, you have a situation where an applicant has come before you that he wants to expand, which will increase the incapability of his commercial use in this area with the residential zone, and you can't justify it. He didn't complain in 2010 when the town gave him permission but he was limited to three days a week and he didn't come back and say I have a pre-existing, non-conforming use and am allowed to do it seven days a week. That wasn't his complaint; that wasn't his challenge. He didn't complain about that and then the town illegally granted those expansions in 2013 and that's again why the judge granted the injunction because only this Board has the authority to permit an expansion of a non-conforming use. There is not an adequate record. They are seeking to substantially intensify the commercial use of this commercial property in a residential zone. They are not making it more compatible; they are increasing the negative impacts and none of that justifies the expansion. I understand you ruled in March. We are not arguing that. You made a determination. He had something and has a right to continue it, but he doesn't have the right to expand it. He certainly doesn't have the right, based on the absence of proofs in this case, the spelling out, what the benefits are and that there aren't any negative impact to justify the grant of the Use Variance. You have testimony that there is traffic condition that is dangerous and that is going to be expanded. There is going to be increased noise to the residents and that's detrimental. There is clearly no hardship because he was told in 2002, before he purchased the property, that it wasn't permitted, and he made representations in 2005. In summary, the outdoor use of this property is not consistent with a residential neighborhood. Even the use of heaters and chimineas are all designed to expand the use to increase the period of time that the outdoor use of the property can be utilized. If this record justifies if drainage improvements and aesthetic improvements through landscaping justify, when literally the hardest variance is a Use Variance to obtain, then any application should be able to expand a non-conforming use because as long as they have the money to pay for drainage improvements and landscaping then, in the opinion of Mr. Petry and this applicant, that justifies a Use Variance for the expansion of a non-conforming use. What it comes down to is that if you can afford to put in drainage and make landscaping improvements then you should get a Use Variance. That is not what the law is in this State and I respectfully request that you deny the variance to expand the non-conforming use.

Thank You on behalf of my clients.

Attorney Rubin's – Closing Statement

Mr. Chairman and Members of the Board yes this is an application under 40:55D-70(d)(2), which specifically is for an expansion of a non-conforming use. It is not a new use for this property because that would be, what we call, a D1 Variance or Use Variance application, which is a harder application to obtain according to our case law. A D1 is when there is nothing on the property and your establishing a use. If this was a virgin piece of property and never had been used for commercial use and Mr. Ryan wished to put some kind of commercial use that is D1 Variance and that is a hard variance. As Mr. Fernicola has said, Use Variances are hard to get, and I admit a D1 is a hard variance to get and I know this Board has heard D1 Variances from time-to-time. However, this is not a D1, this is D2 Variance and does not require an applicant to jump through the hoops as he is required to do under a D1. A D2 life is somewhat easy. It's not an easy task since you have to have witnesses, you have to show the reasons why you are seeking a Use Variance to allow an expansion of a non-conforming use. What do we have here? We have a period of time when there was an outdoor use and through the court system it was shut down and now with a court order that said 1979 was the year that was to be used and it says so right in the court order. Mr. Fernicola was there and agreed to 1979, and to say otherwise these last several meetings that it was the 1950's is absolutely contrary to the objector's position before the court and that is why we came before this Board and had all of these meetings based upon a 1979 year when all things were to start. We brought any number of witnesses, which the Board heard, all using 1979 because that was the year the court order mandated and counsel for the objector agreed to at that time, and did not enter any objection whatsoever that that was the proper date. What are we doing here? We are looking to make a situation a lot better. Yes, there is drainage problem. As Mr. Petry said there is rain water that comes off of the neighbor's property onto our property and we are trying to alleviate that situation with stormwater management. That, I represent to the Board, is a significant improvement as to this property. Also, we are doing a lot of landscaping and we are making the property better. You have seen photographs of before, during and after by everyone, by ourselves, by the objector's counsel, by planner, we have seen it all. This is a lovely piece of property and you can't take that away from it. What Mr. Ryan has done in cleaning up this property and that is what his testimony was, that he was cleaning a backyard that was really a mess and made into something that is a credit to the community. I respectfully suggest to this Board that, not only do we have those issues on groundwater, rain water management, and landscaping, but also the aesthetics of this property have been enhanced very much by Mr. Ryan and the people who have helped him and work for him. There is no question that what happened through the years is becoming an expansion today because it has been proven by the Board that what was there, heretofore, was not of the quality that there is today. We are seeking 28 seats outside and 66 seats inside and the 66 is consistent with what has been there forever and what we are seeking is 31 parking spaces on the site and according to the town requirements and ordinance, the 31 parking spaces are what is required. Although you may criticize what the ordinance requires, that is what it is, so there is no additional bulk variances being sought for the parking. We comply with the parking.

A lot has been said about what the Governing Body did and I admit the Governing Body cannot usurp the powers of the Board of Adjustment. We have a very clear Municipal Land Use Law that says what the powers of the Board of Adjustment and Planning Board

are, and what Governing Body powers are in the land use arena. But what happened here, and it is kind of interesting, and I look at the Resolution which is 90-0-13 and it was adopted in June of 2013 and was again adopted with the same language in 2014, 2015, 2016 and 2017; all these years it is the same Resolution. Did the Governing Body hold a hearing like this Board has been holding hearings for all these months? No, they have not, but these are all people that know the community. The Mayor and Members of the Governing Body all know this town; they know it probably better than most people because they are the elected officials. They noted the decision that, for better or worse, and whether it was right or wrong, they made a decision that this was a pre-existing, non-conforming use and that there were certain conditions that Mr. Ryan had to adhere to on the Resolution as to days of the week, the hours, the entertainment and noise and crowd control. This is what he has been abiding by until the court somewhat changed it, but he has abided by it for the last four years. What we are saying to this Board that, if most respectfully, the Board would allow the expansion of the non-conforming use, unless this Board wants some modification of it, all the recommendations in the Resolutions of 2013 thru 2017 be a part of any approval. Just so the Board knows, we have lived with that Resolution and we will live with it again if this Board allows us to do it. Of course, it is a Use Variance whether it be under D1 or D2, this Board has the ability to change, modify or do whatever it wishes within the scope the Municipal Land Use Law to allow this to move forward and we do respect that if the Board feels that there is some change whatever we have as true hours, days and such. The interesting part about this whole thing is that historically this has been a restaurant from the 1920's all the way to today. I represent to this Board that this is extraordinary. To have a business that is in the same location for some 90 plus years is an extraordinary track record; you just don't see that. Whether it be in the early or mid 1950's, I represent to this Board that the testimony is clear from the various witnesses who appeared that there was outside dining and drinking over the years. People ate, drank, had recreation, they played bocce, horseshoes, they did whatever people in those days of the 50's, 60's and right up to when the court said no more pending these proceedings. I respectfully ask that we have proven what we believe are special reasons, we have proved that we are doing the right thing for the community, that there is no detriment to anyone, the neighbor brought their house, as I recall testimony, sometime in the 1960's and the restaurant had been there for years and years prior to that so the folks that built that house and that the objectors now own and reside in certainly they knew that there was a restaurant right next door to them. For all those reasons, I respectfully ask that the Board allow the expansion of this pre-existing, non-conforming use and allow Mr. Ryan to serve the public as he has and continue to be a credit to the community.

Thank You

Vice Chairman Grygus, questioned Attorney Rubin, asked if he was present at the court hearing when the judge issued the injunction?

Attorney Rubin answered I don't think so.

Vice Chairman Grygus questioned you were not retained at that time, or was that a prior counsel?

Attorney Rubin answered I believe it was after.

Vice Chairman Grygus questioned what is your understanding of why the judge issued the injunction? On what basis do you feel that the judge issued the injunction?

Attorney Rubin answered as far I can put together was based upon representations made by the objectors that there was no Use Variance approved to allow the outdoor dining. I can't say exactly what the testimony was or what the affidavits were. I was not involved in the case at that moment. I was retained afterwards.

Vice Chairman Grygus stated I think it is Attorney Fernicola's contention, and correct me if I am wrong, you are saying that the judge issued the injunction because the Mayor & Council never had the right to grant the expansion beyond the original Friday, Saturday and Sunday?

Attorney Fernicola answered there were two things. We had argued that based on the memorandum from 2002 and 2010 as well as the Sergeant's memorandum that it wasn't a pre-existing, non-conforming use. The judge specifically didn't have to address that because clearly, based on the Resolution of 2013, that the Governing Body had no jurisdiction to permit the outdoor service of food and alcohol at this property and required an application to go before the Board. You had the Zoning Officer's determination of 2002, which was never appealed, and that Governing Body didn't have the authority to override him, and then when they specifically expanded the use/hours in 2013, the judge granted the injunction.

Vice Chairman Grygus stated you are saying it was the judge's ruling that they didn't have the power to grant Friday, Saturday and Sunday and definitely didn't have the power to grant Wednesday thru Sunday.

Attorney Fernicola stated right because the Zoning Officer in 2002, and that was part of the record beforehand, and then in 2010 it was stated it's not a pre-existing, non-conforming use, and he had the Resolution showing the time and, of course, subsequently you had the evidence that we had the audio recording in June of 2013 that the Governing Body did not conduct any public hearing. The adopted a Resolution without any hearing and that is when Mr. Rubin was involved and that is when he conceded and said I'll come back before the Board. Because the only discussion on the record on June 10, 2013 was the fact that the application for the renewal of the liquor license was not completed; that there was some document that Mr. Ryan had not submitted so they couldn't consider it. That was the audio recording and, of course, you have the Resolution as part of O-24 that they expanded the operation. There was never any public hearing, no public discussion but a Resolution adopted.

Member Covelli stated nor did they have any authority even if they had a hearing. This is the only Board that can grant a Use Variance.

Vice Chairman Grygus is not sure if your client can answer this question, but did they have an issue prior to the expansion beyond Friday, Saturday and Sunday? Because that existed for quite a while before any of this ever came about.

Attorney Fernicola stated it was prior to 2013 it was only used, like you saw there was that bar-b-que in September of 2011, it was only used a few times by Mr. Ryan. The intensity of the use started in 2013 when they expanded and that is why it became an issue. That is why the litigation subsequently ensued because at that point that's when it became so detrimental to my clients.

Attorney Rubin stated I cannot comment on that because I was not in the case. All I know there is a court order and the court order says take this matter to the Board of Adjustment for hearing and also 1979 is your date. On that date, Mr. Fernicola did not object and didn't do a thing with it and allowed this application to be filed because he didn't object to and this Board heard meeting after meeting it was 1979.

Member Covelli objected stating I don't want this to start all over again. 1979 is long ago but can we talk about what the issue is here tonight. I do have a question for you Mr. Rubin, if I may. So we have copies of Resolutions adopted by the Governing Body in 2010 and 2013 that reference Mr. Ryan's liquor license and in them there is discussion of hours of operation. The Resolutions are not identical in terms of the hours of operation. Mr. Rubin commented "correct". Member Covelli continued so what are the hours of operation for the outside that is being proposed?

Attorney Rubin answered the 2010 Resolution was amended by the Governing Body to reflect the information in the 2013 Resolution and reiterated for the four years thereafter and it says that the hours and days of outside operation shall be limited to Monday thru Thursday from noon to 10pm and Friday, Saturday and Sunday from noon to midnight. That is what this says.

Attorney Mondello commented he wants to know what your client wants.

Member Covelli stated I asked you what your client wants and I also read the Resolution of 2010 that says it is Friday, Saturday and Sunday. I would have to say that's a big difference between Friday, Saturday and Sunday and Monday thru Thursday, Friday, Saturday and Sunday. You went from three days to seven days.

Attorney Rubin stated this Resolution still exists today. That is what is on the books of this community.

Member Covelli stated that Resolution was nullified.

Attorney Rubin stated it absolutely was not nullified. There is no order of any court that says it's nullified. The court said to come here and figure out the land use issue and that is what we are doing.

Member Hoffman questioned what are your new proposed hours? That is what I want to know now. What do you want us to consider?

Attorney Rubin stated, I have had this discussion with Mr. Ryan, and we have made a decision that Monday, Tuesday and Wednesday we could close the outside.

Member Covelli stated you are looking for Thursday, Friday, Saturday and Sunday and what would be the outside hours? Attorney Rubin has to confer with his client.

Member Hoffman stated I agree with you Attorney Fernicola that this is important to know these hours. If we are going to grant something, I want to know what I am granting. Attorney Fernicola stated I just don't know how we are here for a year and we are getting it now.

Attorney Mondello commented so the record is clear Mr. Ryan did testify as to what hours, but things may have changed.

Attorney Rubin stated we will be out of there by 11pm.

Member Hoffman, please, start time and end time. I want definite times, not maybe; real numbers.

Attorney Rubin: Noon to 11pm on just those days – Thursday, Friday, Saturday & Sunday

Member Covelli commented I don't believe your client needs to be open until 11pm on Sunday nights.

Attorney Mondello requested Mr. Ryan come up to the microphone and tell the Board exactly what the hours are going to be on Thursday, Friday, Saturday and Sunday. You remain sworn in.

Mr. Ryan stated what is on the table is for outdoor use:

Monday-Tuesday-Wednesday – We will not be open outside

Thursday-Friday-Saturday – Noon to Eleven (12pm – 11pm)

Sunday – Noon to 9pm

Attorney Fernicola questioned any representations on outdoor entertainment?

Mr. Ryan stated we have wave music playing outside at a very low level.

Vice Chairman Grygus stated that was something that was prohibited in all the Resolutions.

Mr. Ryan stated the Resolution of 2013 said that outdoor music was allowable.

Vice Chairman Grygus stated in all the prior ones it was prohibited.

Mr. Ryan stated that is right.

Attorney Fernicola questioned if we could have it clarified on the record. Are they proposing outdoor entertainment?

Attorney Mondello stated yes, low level music. It has to comply with the Noise Ordinance.

Member Covelli stated the Noise Ordinance is Chapter 82 of the Borough Code. If we use the Resolution as a reference point states entertainment outside, including live entertainment, as well as electronically produced or amplified, i.e., radio, cd, or any recording shall comply with the Code of the Borough of Wanaque Chapter 82 Noise.

Attorney Mondello stated he didn't say live bands; he said low level music.

Mr. Ryan stated correct.

Attorney Fernicola questioned so no live entertainment?

Attorney Mondello answered no live entertainment.

Vice Chairman Grygus commented any resident can play in their backyard as long as they maintain within the Noise Ordinance.

Member Ludwig questioned if Mr. Ryan was current with all his permits for all the work you did?

Mr. Ryan answered yes, we did and all inspected.

Attorney Fernicola stated there were no permits for the outdoor bar.

Mr. Ryan stated the permits were taken out and inspected and approved. Member Ludwig had suggested we get the permits for the work we did and which I went ahead and did.

Member Hoffman commented that your new proposals are moving some of that material. You are going to get permits and inspections for this?

Mr. Ryan answered yes.

Member Covelli questioned if the fence permit was closed?

Mr. Ryan answered I don't know if it's closed because Jack pointed out that part of the fence was backwards so I'll fix that. Either that or I'll put planks on the other side and you can see them on both sides.

Chairman Dunning stated that permit is still open.

Member Henderson questioned if we have a final plan presented to us.

Chairman Dunning stated we are going to get to that. We don't have a final plan.

Chairman Dunning, addressing Attorney Rubin, commented we have had a lot of testimony for ten or eleven meetings. What is missing is a final plan.

Attorney Rubin agreed. In all matters, there always has to be what we call a compliance plan and what we usually do is when we get the Resolution I usually give the Resolution to our site engineer and tell him to do the plan according to the Resolution and submit it to the Board Engineer for approval.

Chairman Dunning stated since we have heard so much testimony and so many changes to the original, we don't want to talk about 2005, but the present application, the Board is a little confused as to what the final plan is going to look like. We have a couple of options, we can withhold making the Resolution until we see the final plan or we can demand an as-built plan for review. Your choice.

Attorney Rubin stated I'll take the as-built plan.

Attorney Mondello stated that would mean coming back to the Board.

Attorney Rubin stated as-built plans are administrative.

Attorney Mondello stated I know, but I don't think that is what the Chairman had in mind giving Mr. Ryan's past.

Attorney Rubin stated then it is up to Mr. Nash to say yes or no.

Member Levine stated isn't that all on the premise that we are going to approve the expansion? Because if we don't approve the expansion, we don't care about drawings.

Chairman Dunning stated right and if it is denied then it's all moot and we don't have to worry about it. If it does get approve, we have to deal with this lack of document.

Member Henderson commented that if an as-built is done, I think we should state exactly what is proposed.

Chairman Dunning stated that is what we are trying to get.

Attorney Rubin stated usually some of the heavy lifting is done by the Board Attorney based upon the Minutes of the meeting and all of the things that were agreed going into the Resolution, if there be one.

Attorney Fernicola stated there's been no framing of what the actual application before this Board is voting on.

Attorney Mondello stated I thought Mr. Petry did that.

Attorney Rubin stated hours of changed, etc.

Member Covelli stated I don't think Mr. Petry's drawing changed. I think what we are talking about now is what would be contained in the Resolution if one were made to make an approval what the conditions of the Resolution were. I think the drawing is a finalization of what Mr. Petry already presented. He showed the plantings, the fence, Mr. Ryan just testified he will fix the fence, drainage calculations, landscaping to be done, Mr.

Petry presented what type of shrubbery so the deer don't eat them, we moving the bar, we are moving the smoking area, and we are relocating the handicap accessibility.

Attorney Mondello stated the last revision was June 23, 2017.

Vice Chairman Grygus stated the number of seats alone in the outdoor area has changed from that plan. The plan here shows 64 seats total and Mr. Ryan agreed to 28. Does the seating number include the chairs at the bar, I don't know.

Chairman Dunning stated the plan is very vague.

Member Rubin thinks the plan can be firmed up and I think I would agree with that. We don't want to come back and go through another hearing.

Vice Chairman Grygus stated I really don't know what I am voting on.

Member Rubin stated we have to show no more than 28 outdoor seating, with 66 indoor for a total of 94. Otherwise, the parking doesn't work.

Engineer Nash stated the hours of operation should also be on the plan.

Attorney Mondello stated I have to sift through Mr. Petry's testimony and back and forth and pull out what the final numbers are.

Vice Chairman Grygus stated it is 28 total outdoor seats. If there are 16 stools at the bar area, that only allows 12 in the seating area.

Member Rubin stated that is all there is, 28.

Vice Chairman Grygus stated show the plantings on the plan, show the fence, show everything that we have talked about so that as a Board Member we know exactly what we are looking that, if it is approved, and a year from now and go to that site, that is what we should see.

Attorney Rubin agreed. You always like to have paper in front of you, absolutely.

Member Hoffman stated it also makes it easier for the Code Official to know if it is compliance.

Attorney Rubin stated as I mentioned a moment ago doing it forever, we get the Resolution and I give to the site engineer and he then sends it to Mr. Nash for his review because it is an engineering issue.

Chairman Dunning stated the Board wants to see the plan, a final plan which the Building Department is going to review before they issue a permit.

Vice Chairman Grygus stated it appears we are looking at carrying this application.

Member Levine commented that what if we wait and see if we are going to approve it.

Attorney Mondello stated the Vice Chair doesn't want to take a vote until he sees a plan that accurately depicts everything that we have gone over for the last twelve months. It could be denied.

Attorney Rubin stated I think what Mr. Levine is saying makes some sense because now you are asking the applicant to spend a significant amount of money to do everything that you are asking without knowing what the Board's intention is.

Member Henderson stated that is what you are supposed to provide a plan for us to agree or disagree on.

Attorney Fernicola stated the Board told them several months ago and it has since changed.

Attorney Rubin agreed it has changed and I will do whatever the Board asks. We want to move forward.

Attorney Mondello: Does the Board want take a vote on this expansion of a non-conforming use or do they want to carry it and wait for another plan that more accurately depicts what Mr. Petry testified to at the last hearing.

Further discussions were held regarding the vote and Mr. Ryan expending additional monies before a vote is taken and why the Board wants a “final” plan with all the changes noted thereon, and what the Board will be voting on.

Attorney Mondello stated it is a D2 Variance and although Mr. Fernicola is accurate that expansions are very much disfavored, I also agree with Mr. Rubin that it is an easier variance to get versus a D1. The bottom line is that the Board has already decided that food and beverages were served back there. No matter what, even if you decline or deny the motion for the relief sought, the expansion, he is going to be able to serve some level of food and drink there. We are already decided that unless some higher authority in the Superior Court says you made a mistake. But the Board wants to see another plan that more accurately depicts what Mr. Petry’s testimony is. Mr. Rubin has said he will do whatever the Board wants.

MOTION TO CARRY THE APPLICATION TO THE OCTOBER 4, 2017 MEETING AND THE APPLICANT COMES FORTH WITH A FINALIZED PROPOSED PLAN: made by Vice Chairman Grygus, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Karp.

Attorney Mondello: Let me be clear, we are not bringing Mr. Petry back to re-hash his testimony. There will be no more testimony.

Chairman Dunning, addressing Attorney Rubin, will you have the plans in time for the next meeting? We do have a full agenda for that meeting.

Attorney Rubin’s concern is that he will not have the Minutes from this meeting.

Vice Chairman Grygus commented the only thing that came up at this meeting were the hours of operation. Everything else is in the prior Minutes.

Member Covelli commented that you could also get the tape, but I will tell you fix your shrubs, fix your fence, seating is agreed, parking you are in accordance with the ordinance, hours of operation for the outside (M-T-W closed/T-F-S is 12pm to 11pm/Sunday 12pm to 9pm), no live entertainment, 28 seats outside. Please supply Mr. Fernicola with one.

Next Meeting is October 4, 2017 – 15 copies needed before September 22, 2017.

Member Ludwig left the meeting at 10:50pm

PUBLIC DISCUSSION: None

RESOLUTION: None

CORRESPONDENCE: None

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the August 2, 2017 Meeting in the amount of \$300 and for attendance at the September 6, 2017 Meeting in the amount of \$300.

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

VOUCHERS: submitted by Boswell Engineering for the MKR Enterprises' Application in the amounts of \$1,358 and \$495.

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

MOTION TO APPROVE AUGUST 2, 2017 MINUTES: made by Member Hoffman, seconded by Member Henderson. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Levine, Henderson and Karp.

ENGINEER'S REPORT: Carmela Serrano Application – Board Secretary handed out this Application to the Board Members

DISCUSSION: None

MOTION TO ADJOURN AT 11:00 PM: Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary