

HAINESPORT TOWNSHIP JOINT LAND USE BOARD MINUTES

Time: 7:30 PM

Wednesday, July 13, 2016

1. Call to Order

The meeting was called to order at 7:30 PM by Mr. McKay.

2. Flag Salute

All participated in the Flag Salute

3. Sunshine Law

Notice of this meeting was published in accordance with the Open Public Meetings Act By posting on the municipal bulletin board, publication in The Burlington County Times and Courier-Post Newspapers, and by filing a copy with the Municipal Clerk

4. Announcement of “No new business after 11:00 PM”

5. Roll Call

Present: Mr. Dickinson, Mrs. Kelley, Mr. McKay, Mr. Dodulik,
Mr. Krollfeifer, Mr. Lynch, Mr. Selb, Mr. Clauss, Mrs. Tyndale

Absent: Mr. Boettcher, Mr. Katz

Also Present: Robert Kingsbury, Esq., Board Attorney
Martin Miller, Board Engineer
Mara Wuebker, Board Planner
Kathy Newcomb, Zoning Officer
Paula Tiver, Board Secretary

6. Items for Business

A. Case 16-07: Zeus Investments
Block 98 Lot 2.04, 2.05, 2.06
5 Mary Way
Preliminary & Final Site Plan
Attorney: Patrick McAndrew

Requested by letter dated June 21, 2016 to be continued until the August 3, 2016 meeting.

Mr. McAndrew stated that they needed a little more time with their revision.

Mr. Krollfeifer motioned to continue the application to the August 3, 2016 meeting.

Second: Mr. Selb

Roll call: Mr. Krollfeifer, yes; Mr. Selb, yes; Mr. Dickinson, yes; Mrs. Kelley, yes;

Mr. Clauss, yes; Mr. Dodulik, yes; Mr. Lynch, yes; Mr. McKay, yes
Motion carries to continue the application until the August 3, 2016 meeting.

B. Case 16-09: Jason DelPalazzo
Block 109 Lot 3.01
1620 Ark Road
Bulk variance for home

Proper notice was given.

Mr. Kingsbury swore in Jason DelPalazzo and George Ann Bruno.

Mr. DelPalazzo stated he would like to build a new home in the current location that his home is located now. The old house would be tore down. He is limited for the location because the septic system sits behind the house, the pole barn is behind that, and then the wetlands. There is no other location.

Mr. McKay questioned if he would be using any of the old house.

Mr. DelPalazzo stated he would be tearing it down completely. The width will be smaller, it currently is 68' and the new will be 55' wide. It goes back 10' out the back and will have a second story. Currently it is a rancher.

Mr. McKay asked if he was the owner of the property.

Mr. DelPalazzo stated his mother, George Ann Bruno, owns the property.

Mr. McKay questioned if Ms. Bruno was in agreement with what her son had stated.

Ms. Bruno answered yes.

Mrs. Newcomb stated she visited the site and took some pictures if the Board would like to see them. A lot of the homes on Ark Road are older homes that do not meet today's standards regarding size. The homes there come forward due to well and septic and do not meet setback requirements. He cannot meet the front yard setback requirement of 125', but will be building the home at the same setback, 68.54'. Approval has already been given from the Burlington County Health Department for well and septic. The house cannot be moved back due to the septic system. We have had several cases over the past ten years regarding the same issues on Ark, Phillips, and Fostertown Roads where older homes are being replaced with new ones.

Mr. McKay questioned if there are any negative impacts.

Mrs. Newcomb stated she has not. She did have one homeowner that lives within 200' come in and review the plan. They felt comfortable with it and is not here tonight.

Mr. Krollfeifer stated that the current residence is 37' from each side.

Mr. DelPalazzo stated the current is 30' from each side and the new will be 37'.

Mr. McKay opened public comment. None. Closed public comment.

Mr. Krollfeifer motioned to approve.

Second: Mr. Lynch

Roll call: Mr. Krollfeifer, yes; Mr. Lynch, yes; Mrs. Tyndale, yes; Mr. Dickinson, yes;
Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Dodulik, yes; Mr. Selb, yes;
Mr. McKay, yes

Motion carries to approve.

C. Case 16-10: Easton Bible Church

Block 114 Lots 3 & 4

2407 Fostertown Road

Revised site plan

Attorney: Patrick McAndrew

Proper notice was given.

Mr. McKay recused himself from the case.

Mr. Lynch assumed chair position.

Mr. Kingsbury had sworn in the following witnesses:

Paul Adison, Architect

David Maier, Head of Board of Trustees

Bill Nicholson, Engineer

Mr. McAndrew explained that it is a 12 acre campus and they are replacing the building that burned down. The prior building had meeting rooms and offices. The new building will have handicap accessibility and handicap bathrooms. It will also have meeting rooms and offices.

Mr. Paul Adison gave an overview of the old site (exhibit A1) prior to the fire. The old building was a single story building that was 3,254 sq. feet with no handicap accessibility. The new building will be 2430 sq. feet and will be 2 story. The meeting room on the first floor and offices on the second floor. The new building will have the brick to blend in with the old. (exhibit A2)

Mr. McAndrew questioned if there are any changes in the uses and function of the new building.

Mr. Adison stated it will be the same. They consolidated space, made it more affordable to build and less impact on the site.

Mr. McAndrew asked to explain how the elevator serves the new and adjacent old building.

Mr. Adison explained that the two buildings have different levels from each other.

Mr. McAndrew commented that the elevator makes both buildings handicap accessible.

Mr. Krollfeifer questioned what the height of the old building is and the new building.

Mr. Adison stated the new building is just over 32' and they are unsure of the old building, believes around 26'.

Mr. Nicholson provided Exhibit A3 which is a portion of the site plan with some of details removed. It is a 12 acre site. The proposed building sits back 179' from the street line. In addition to the building they propose to recreate the sidewalk and reconfigure the parking spaces that are immediately adjacent to the building. Back in the 2003 approval there were accessible parking spaces there. They are going to reconfigure them to today's standard. They would then be the handicap accessibility to the front door of the new building.

Mr. McAndrew questioned other than the 5 handicap parking spaces, are you leaving the site as it was approved in 2003? The new building is basically in the same location as the old building.

Mr. Nicholson stated that was correct. The footprint of the building is slightly smaller than the old building but will be two stories now.

Mr. Nicholson referred to the Alaimo letter of June 29, 2016 and agree to the items 4, 11, 12, 13, 15, 17, 20, 22, 23, and 24-30 as a condition of approval. They are asking for waiver regarding lighting and parking that are in both letters. Parking is staying the same as it was back in 2003 which include the handicap spaces that they are reconfiguring to meet standards. Between the building addition and Fostertown Road there is a front yard area that was shown as existing parking on the approved 2003 plan, then there is the large more formal parking lot in the back of the building with lighting that was approved back in 2003, is staying the same.

Mr. McAndrew questioned if the peak for parking is defined by the church, such as seating. This is not changing because of the addition.

Mr. Nicholson stated that is correct. There was a question on the parking based on the other uses on site. Parking is governed by the seating capacity of the church. The other activities are not going on the same time there are church services.

Mr. Nicholson agreed to the sidewalk details addressed in the Ragan Design letter dated July 6, 2016.

Mr. Dickinson questioned if the parking lot lights work because he has driven by and it seems to be dark.

Mr. Maier explained that part of the lighting used to be on the building. They did put some temporary lighting that looks away from the neighbors towards the building. There is enough for people to see.

Mrs. Newcomb questioned if there will be lighting back on the building once it is up. It should be shown on the plan.

Mr. Maier answered yes and will put on plan.

Mrs. Wuebker stated that the front gravel parking was not there in 1991. When the approval was given in 2003, the focus seemed to be on the back lot. She questioned if the gravel parking was part of the approval or did they add it on their own.

Mr. Nicholson commented that he cannot speak of what happened prior to 2003. However when he did the plan in 2003, the plan shows it as existing parking. It was included in the parking count, to give the 121 parking spaces.

Mrs. Wuebker questioned if the gravel area parking spaces could be delineated with wheel stops.

Mr. Nicholson stated that area is use for an overflow situation. It is used on Sundays by very few people.

Mrs. Wuebker stated cars parked there from a google map back in April 2016.

Mr. Maier stated that the majority of people do park in the back.

Mr. McAndrew explained the front of the church is in the back.

Mrs. Wuebker had two primary concerns. One identifying the parking spaces which is required by ordinance. The other was lighting especially that there are evening events. There is some lighting but the question is if it adequate. No information was provided.

Mrs. Newcomb questioned if that could be worked out with the professionals.

Mr. Lynch questioned Mr. Miller if acceptable.

Mr. Miller answered yes.

Mrs. Newcomb questioned if any waivers for the parking were address back in 2003.

Mr. Nicholson does not remember.

Mrs. Wuebker explained that the 2003 resolution focused more on the back. She did not seen anything mentioned about the front parking.

Mr. Nicholson stated that he has the plan from 2003 showing that it was an existing gravel parking area there.

Mr. Miller commented that they are asking for some adjustments with the access and drive isles. Some areas measure 22', 25', and 16'. It is listed as items 9 and 10 of his letter. The plan shows the requirement but what is out there now is not.

Mr. McAndrew stated that the way it is constructed it was one way.

Mr. Maier stated they had changed the signs which they know it is one way. The current signs say exit. He questioned if they would like them to put up the two signs that state one way.

Mr. Miller commented that there was 90 degree parking on both sides of the road way. It does not work with a 19' wide isle.

Mr. Maier questioned if they reduce the parking the isle would not have to be that wide.

Mr. Miller stated there would be a way to fix it without the parking there, remove it from one side. The isle would then just be adjusted and it would be ok.

A discussion continued regarding the parking. The parking should be as it was approved in 2003.

Mr. McAndrew believes we should be concentrating on the area of the new building. The second issue is are they in compliance with the 2003 approval.

Mrs. Newcomb questioned if it is not in conformance with the plan, do they need to come back to the board or can it be worked out with the professional staff.

Mr. McAndrew stated they will have to conform or come back to the board.

Mr. Kingsbury stated they must meet the 2003 approved plan.

Mrs. Wuebker questioned does the new addition now trigger a reevaluation of the front parking lot. Do we want to see them try and organize it and light it? There should be adequate lighting for safety concerns.

Mr. Selb commented that they are shifting the handicap spaces to the front of the building and there are still the same number of spaces. Why is it a concern since they are not changing anything?

Mrs. Wuebker stated that is true but does it trigger a reevaluation of the parking.

Mr. Selb commented that they are not changing anything in the front. The new building is going in the same footprint, and handicap parking is going in the front. Why would we want to go further than that?

Mrs. Wuebker explained that is up to the Board. It is just her responsibility to say if there should be upgrades to the parking lot.

Mr. Clauss questioned if the handicap parking would fall under the construction official.

Mrs. Newcomb explained that is an ADA requirement and would be reviewed by Mr. Miller and Mrs. Wuebker.

Mr. Selb commented that they are upgrading the handicap parking.

Mr. McAndrew commented for the building and parking.

Mr. Lynch questioned if they are in agreement to Mr. Miller's letter except for items 9 & 10.

Mr. Miller explained that they will at least look at the access ways to ensure they meet the 2003 approval.

Mr. Nicholson commented that an adjustment will have to be made on the driveway in to the back.

Mr. Lynch questioned if the rest will be ironed out with the professional staff.
Mr. McAndrew was in agreement.

Mr. Nicholson stated they have also agreed to supply additional sidewalk detail, grading from the front door, etc. Paving will be flush with the sidewalk.

Mr. McAndrew stated they agreed to the lighting they will meet in the field.

Mr. Selb stated it needs to be put on record with the Fire Officials concern with adequate water supply in the event there is another fire out there. We know that they are not connected to American Water. There is a concern with the fire fighters and peoples safety.

Mr. Maier stated all the items for the Fire Official have been satisfied.

Mr. Selb questioned if the new section will be alarmed.

Mr. Maier answered that it will be alarmed.

Mr. Lynch opened public comment.

Shirley Stott was sworn in. She has lived in Hainesport for 3 years and loves it. There is a large paved parking lot. The fire had nothing to do with the sanctuary or the education building. The Quaker building was made of old dry wood and that is why it went up so quickly. The office is overcrowded due to having to put everyone in the office and they are ready to move forward quickly. This is a church and they cannot afford the extra things. She invited everyone over to the church.

Mr. Lynch closed public comment.

Mr. Kingsbury explained that the applicant is seeking amended site plan approval, the two issues are the lighting and parking lot and can be worked out in the field with the Board's planner and engineer. The landscaping is referred to the planner's approval.

Mr. Selb motioned to approve the site plan with the conditions stated.

Second: Mr. Dodulik

Roll call: Mr. Selb, yes; Mr. Dodulik, yes; Mrs. Tyndale, yes; Mr. Dickinson, yes;
Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Krollfeifer, yes; Mr. Lynch, yes

Motion carries to approve.

Mr. Katz resumed the position of chair.

D. Case 09-12A: 1521 Route 38, LLC (Classic Nissan)
Block 42 Lot 2.01
Extension of time – two year
Attorney: Damien Del Duca

Mr. Del Duca explained he is here with the owner of Classic Nissan, Thomas Hessert. They are seeking an extension of approval for preliminary major site plan approval that was granted in 2009 for a new car dealership, which was the former Holly Bowl site. The approval were extended by the permit extension act which expired June 30, 2016. The land use law states that the Board may grant an extension of a preliminary approval for at least one year and up to two years. He gave a little history of the application. An explanation of the cross access over Atlantic Woods driveway was given. A condition from the 2005 approval was they obtain an easement. The access is used to bring a vehicle over from the old Holly Bowl site to the dealership lot. Atlantic Wood has not given approval for a written easement but has agreed to allow him to use the access. This has been used for the past 11 plus years with no problem. The 2005 approval states if that easement is not obtained it shall be eliminated. He believes the Board has twice granted them an extension to get the easement. The resolution states that the easement would stay an open issue until the time of final. They are asking for a two year extension from June 30, 2016, which is permitted under statute. The goal is to have a new dealership constructed. They asked that the Board continue to work with them. Extending the approval will help that happen. If the Board denies the extension, they would have to refile for preliminary again. He believes granting the extension is best for both his client and the Township. They have concerns with filing an amended site plan approval and doing site improvements at this time because it would be a waste of time and money due to having to possibly remove the improvements at time of building the new dealership.

Thomas Hessert, owner, was sworn in.

Mr. McKay asked that he explain why they want the extension and why the dealership has not been built yet.

Mr. Hessert explained that being a dealership they work with the manufacturers all the time. The car dealerships were in a recession, things are starting to work its way back. The manufactures change their areas of responsibility for the dealerships all the time. He gave samples of the different things that the manufactures want. It is the pressure and uncertainty of the manufacture and the expense of the new building.

Mr. Del Duca questioned that if the recession that we are coming out of play a role in it.

Mr. Hessert stated the business has not done as much business as it has done before. He wants to be conservative and be able to afford what he would be doing and still make money to pay the employees.

Mr. Del Duca questioned if it is correct that he does not have a former written easement from Atlantic Wood.

Mr. Hessert commented that he has been in constant contact with the owner of Atlantic Wood and will not give a written easement to the property because if he were to sell his business or property. He has had a verbal agreement with him for the last 11 years. They

are great neighbors and help each other out. They only drive one car at a time across the easement, it is not a consistent traffic issue. It has never interfered with Atlantic Wood.

Mr. Kingsbury questioned how their situation will improve when they come back in two years.

Mr. Del Duca stated we cannot force Atlantic Wood to give them an easement. The easement itself will not stop them from building a new dealership. They could stop us from using it, but there is access from Route 38. No indication has been given that they would. He does not believe that would be resolved until the property is sold or redeveloped. The owner does not want to give the easement because he doesn't know what the future holds. It is a condition that will be revisited at time of final site plan. They plan to come in for final within the next two years or their not. They would continue to drive across the road but the Board could say that they have to stop. It will be dealt with again when they come in for final.

Mr. Lynch questioned if Nissan has taken an issue with the lack of the easement being signed.

Mr. Hessert answered no, they do not care.

Mr. McKay commented that the easement is only good to you until the new lot is developed.

Mr. Del Duca stated there is a potential that the current dealership could be used as part of the new dealership. In that case the easement would be important. The lots could also be developed separately. They will continue to use the access as long as they are allowed.

Mr. Hessert stated it is also a safety issue that they do not have to go onto Route 38.

Mr. Selb questioned if they would be updating everything when they move forward because there have been a lot of changes in regulations since 2009.

Mr. Del Duca stated the Board has the right to require them to have the final site plan comply with the revised design standards. He is sure there have been revisions but doesn't know what they are and if they apply to this site. They will deal with that at the time of final with the Board's professionals.

Mr. Krollfeifer motioned to approve a 2 year extension to June 30, 2018.

Second: Mr. Selb

Roll call: Mr. Krollfeifer, yes; Mr. Selb, yes; Mrs. Tyndale, yes; Mr. Dickinson, yes; Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Dodulik, yes; Mr. Lynch, yes; Mr. McKay, yes

Motion carries to approve a 2 year extension.

E. Case 16-11: Hirshland & Company (Hainesport Plaza)
Block 96 Lots 1.01 & 1.04
1500 & 1508 Route 38
Use variance, bulk variances, conditional use

Attorney: Michael Floyd**Public notice was given.**

Mr. Floyd, attorney, stated they are here for an application for a D3 variance, conditional use located on Route 38 known as Block 96 Lots 1.01 and 1.04 adjacent to the liquor store and near Sonic.

Mr. Kingsbury swore in the following witnesses: Larry Hirshland, Hirshland and Company; Brian Meyers, Engineer; Deanna Drumm, Engineer; James Miller, Planner; Yogi Patel, fact witness.

The following were marked as exhibits:

A1: existing conditions color rendering

A2: color rendering concept plan, which was submitted with the application showing the location of a multi-tenant retail building along with a drive thru fast food restaurant.

Mr. Floyd stated that the drive thru fast food restaurant is what needs the conditional use variance because it is located within 2,500' of another fast food restaurant. A landscape buffer of approximately 19' is being proposed where 35' is required. Testimony will be given that it is consistent for the area and with relief that was previously granted by the Board for other sites, circulation on the property, proposed access drives, cross easements with the liquor store lot to help with circulation and parking.

Mr. Floyd referred to exhibit A2. The upper right is the location of the stormwater management facilities, the lower left is the proposed fast food restaurant, Dunkin Donuts, and the large upper right is the retail facility.

Mr. McKay questioned if there were any proposed tenants for the retail.

Mr. Floyd stated Mr. Hirshland will provide testimony.

Mr. McKay questioned if the entire parcel is located in Hainesport Township.

Mr. Floyd stated that it is. It is located in the HC: highway commercial district.

Mr. McKay questioned if there were any inner connections with existing roadways in the ShopRite center with the adjacent liquor store.

Mr. Floyd stated there are no existing access to the shopping center in the rear. However, there are proposed access and drive aisle with the liquor store.

Mr. McKay commented that the Board is interested in those types of things to keep traffic off of Route 38 and circulate within the complexes.

Mr. Floyd stated that testimony will be given by Deanna Drumm regarding those issues and Brian Meyers with the drive isles and how the parking lots have been aligned to have a seamless cross access.

Mr. Kingsbury asked for clarification that they are not seeking site plan approval tonight.

Mr. Floyd stated that was correct.

Mr. Hirshland, president of Hirshland and Company, gave his background information. This property is about two acres. The plan is to put up a Dunkin Donuts in the front and about a 13,000 square foot retail strip with a handful of retail tenants. They do not have any signed leases at this point. They have a lease they are negotiating with a national mattress chain for 6,000 sq. ft., Dunkin Donuts with a 2,000 sq. ft. building, and a cell phone store with 2,000 sq. ft.

Mr. Krollfeifer commented that the application states the different uses and questioned if there would be two food restaurants on the property.

Mr. Hirshland explained that was used as typical uses in a shopping center and not necessarily the final uses. It does look like the mattress deal, Dunkin Donuts, and cell phone leases will get signed.

Mr. Patel stated he started his first Dunkin Donuts 25 years ago. He listed the different towns that he has built Dunkin Donuts in. His business has a 4 hour rush hour which is 6am until 10am. They must follow the Dunkin Donuts protocol regarding the time frame to get a vehicle out of the drive thru, 60 seconds.

Mr. McKay questioned the hours of operation.

Mr. Patel stated they open at 5pm to 10pm. It is not a 24 hour operation.

Mr. Floyd questioned when deliveries are made to the property.

Mr. Patel stated in the middle of the night. They are in and out within 5 minutes.

Mrs. Kelley questioned if there will be any walk in business with tables.

Mr. Patel stated that 80% of business is drive thru. It is normally on the weekend that people use the seating inside.

Mr. Floyd questioned how many Dunkin Donuts does he operate and how many of them have a drive thru.

Mr. Patel stated he has 9 stores and 8 have a drive thru. He is planning on closing the one without a drive thru down and relocate it.

Mr. McKay questioned if the proposed Dunkin Donuts follows the current model for businesses and would it look like the one located on Route 38 near Rt. 295. Is he the owner of that one?

Mr. Patel answered yes. He is not the owner.

Mrs. Wuebker questioned if the other Dunkin Donuts he owns are all free standing buildings and if any are attached.

Mr. Patel commented that he has one attached and the business is not good and it has a drive thru. He plans on closing that one and another one that does not have a drive thru.

Mrs. Wuebker suggested that we stay away from some of the site plan issues. It is difficult to evaluate bulk variances on a concept plan. She recommends that the Board does not grant some of the variances until they are able to thoroughly review the site plan application. There are some concerns on actually how the Dunkin Donuts would work.

Mr. McKay suggested that we get the testimony and line up the relief sought.

Mr. Floyd stated they did receive the planner's letter and agree that some of the comments would be addressed at the time of site plan. Some of the testimony that was heard is for the seeking relief from the number of parking spaces, which is why they thought it important that 80% of the traffic and patrons to the Dunkin Donuts utilize the drive thru as opposed to parking to go in and sit down.

Mr. Floyd continued that Brian Meyers is here to answer any specific site plan questions in the concept plan. Deanna Drumm will speak about prior meetings with DOT regarding access off of Route 38, onsite circulation, and the proficiency of the total number of parking spaces.

Ms. Drumm stated she is a traffic and transportation engineer.

Mr. McKay commented that he noticed that the Dunkin Donuts he passes in the morning sometimes has a very long line. He doesn't know how fast that line moves.

Ms. Drumm explained that Dunkin Donuts standard is to accommodate for 8 vehicles. Some places will be lighter depending on the volume of traffic in the area. The Mt. Laurel one has about 10,000 more vehicles a day in the east bound direction. That would have more customers due to the number of vehicles that are already there. This probably would be less intense than the Briggs Road location. That area also has two office complexes which leads her to believe that they will do about 25% more business there. The closest Dunkin Donuts eastbound is the one at Briggs Road and then the next is located in Pemberton. This location would be about half way. Business will come from pass by traffic from Route 38. There is a right in and right out Route 38 access from the liquor store property. They met with DOT Dec 2015 and April 2016 to discuss concepts and access. DOT wants the two driveways on the liquor store site, along with a right in and a right out on the proposed site. They also asked that they skew the existing egress that is at the liquor store a little more.

Mr. McKay questioned if DOT is mandating improvements in front of the proposed site as well as the liquor store site.

Ms. Drumm commented yes, just the egress.

Mr. McKay questioned if the proposed lot is Mr. Maro's lot and if it would be a lease or a purchase.

Mr. Floyd stated the applicant is under contract to purchase lot 1.01.

Mr. McKay questioned if they would improve the curbing in front of the liquor store as well as the proposed lot to make it uniform from Route 38.

Ms. Drumm stated the existing curbing is about 200', it is something they could propose. The parking is designed to provide circulation as you would find in a shopping center such as Lowes. She believes the businesses complement each other regarding the time peaks. Dunkin Donuts is primarily in the morning, liquor store is afternoon or early evening, and Sonic is primarily lunch and early evening.

Mr. McKay questioned if there is any plan to have access to the ShopRite site.

Ms. Drumm stated there is not. From a planning perspective it would be great, however the drive is a private one.

Mr. Krollfeifer questioned if any landscaping will be used to prevent people from cutting through to that private drive from the proposed lot.

Ms. Drumm explained that they have not gotten that far into the site plan and it would be addressed at that time.

Ms. Drumm is requesting a parking variance. The proposed lot and the liquor store require 202 spaces and they are proposing 152 spaces. They did some sampling counts and they came in at no more than 20 during peak times, don't count customer appreciation day. The liquor store requires 127 space. She believes there will be enough supply to meet the demand. They are proposing a ratio of 4 per 1000 which meets nationwide standards. The townships requires a 5.5 per 1000 ratio. It can be granted without substantial detriment.

Mr. McKay questioned why they were squeezing down the parking to do what to the site.

Mr. Meyers stated that the parking on the liquor store lot will increase. The new parking on the new lot is based on the participated uses for the new development. The difference comes in with the new uses. When you look at it from the use perspective they are more than adequate for parking.

Mr. Krollfeifer questioned where the patrons will come in to access the proposed site.

Ms. Drumm explained they will you probably come in the new ingress but may have someone come in on the ingress on the liquor store site.

Mr. Selb believes Sonic shares in some of the liquor store parking. He questioned if they are taking in to consideration the parking needed for the various retail that will be on site.

Ms. Drumm answered yes. The types of uses that are proposed in this retail are considered low traffic generators. Example the mattress store does not generate a lot of traffic therefore, doesn't generator a lot of parking. These other uses usually open up 9am to 10am which is towards the end of Dunkin Donuts peak.

Mr. Selb stated employees will have to park and will be there all day.

Ms. Drumm commented that is correct.

Mr. Selb has concerns regarding the financial impact their site may have on Mr. Maro.

Michael Maro was sworn in. He is the owner of the Maro Brother's Liquor Store and the vacant lot.

Mr. Floyd asked that he explain how the Sonic utilizes the parking on the liquor store lot.

Mr. Maro stated that the owner of Sonic instructed his employees to park in the DDR parking lot. 90% of those employees park near ShopRite and walk across because they do not want to cause any problems with traffic flow. They added 12 new spots to his site.

Two photos were marked as exhibits: A3 shows lot with one truck on it; A4 shows lot with several trucks on.

Mr. Maro stated the pictures show trucks parking on his vacant lot. He has called the state police on four or five occasions. Their advice was develop it and they will not show up anymore. They are also the ones jumping the curb and causing the problem. It would be in everyone's best interest to get this lot developed. He purchase the property 7 years ago because it was an eye soar, now it is worse.

Mr. Floyd commented that there is an agreement in place for Sonic to park on the liquor store lot but as you heard is a de minimis impact if any. He would also have a cross access and parking easements in place to allow the retail lot to park when necessary on the liquor store lot.

Mr. Dodulik questioned how many vehicles can be stacked at the Dunkin Donuts service window back to where you would turn in.

Ms. Drumm stated she has been told 8.

Mr. Dodulik has concerns with after 8 vehicles are stacked the extra vehicles will now be moving into the isle way. Also he asked if there is a way to make it one way traffic in the front of the building. It seems there would be a potential problem with two way traffic.

Ms. Drumm stated they can look at that from a site plan perspective.

Mr. Dodulik stated if we did that you would not be able to get in the front and would have a difficult time going around. He believes it is a poor design.

Ms. Wuebker commented that we are putting the cart before the horse. We have not seen any traffic reports. The fact they are testifying all this information and nothing has been submitted to the professional staff. The focus tonight is on two conditions. Is it appropriate for this Dunkin Donuts to be located with 2,500 feet of the Sonic? Is the landscape buffer a waivable condition, their asking for 19' where 35' is required for conditional uses? The setback for allowed uses is 25'.

Mr. Floyd stated the most important issues for this evening is the D3 variance for proximity and the buffer.

James Miller explained that the application adheres to all 5 standards. Conditional use not having an adverse impact on the adjoining uses. They are a commercial use that is surrounded by a large complex of other commercial uses. There is a standard of matching the character of the area. This is a retail facility which is a common place in

this type of retail area. They easily meet that condition. Another standard is that the food services be consistent with the character of the district, which they meet. A standard that the new use does not create any nuisance issues, such as light, noise, odor, etc., which they meet. There is a standard that you meet the overall purpose of the general standards, which they meet.

Mr. Miller explained there is a second set of standards that apply to a fast food. There are two paragraphs in the code that list the standards. Paragraph A: They are 1) no noise, 2) no lighting, glare and reflection, 3) no unpleasant or unhealthy odors 4) the traffic will not result in hazard or unreasonable congestion 5) it does not diminish the surrounding property values. He believes they meet the standards. Paragraph B: It tells you how to calculate the proximity control. It requires a 2,500' separation control between fast food uses. Instead of the normal 25' front setback buffer, there is a 35' buffer required for a fast food use.

Mr. Miller believes this application advances purpose A, to encourage municipal action to guide the appropriate use to development of all lands in the state that will promote the public health, safety, and general welfare. Purpose G, to provide sufficient space in an appropriate location for a variety of areas to meet the needs of all NJ citizens.

Mr. Miller explained the proximity of the two fast restaurant will be with a mile area and almost no potential for anymore because the frontage is fully developed with the exception of the subject parcel. There is a separation between the uses and also there is a limit on the number that can be at this segment of the highway. We do meet the intent of the ordinance with not have too many fast food restaurants in the area. Dunkin Donuts is a very small element is a very large retail concentration.

Mr. Miller continued with the second deviation has to do with the width of the planting strip in front of the Dunkin Donuts where there is a 35' standard. There are a number of reasons for this deviation. The primary is if you look at the development pattern in this immediate area, Sonic and the liquor store has a narrow strip. Their planting strip would be an extension of that. These sites work best if you can line up all the driveways. If they were to conform to the 35' it would create an offset between the circulations of the driveways. It would create a problem. The other reason is that one would want the retail building to line up with the liquor store building because the circulation works better and makes it more visible from Route 38. Moving the building back would be a detriment to the retail for long term. In the end what justifies the relief is that it is necessary to allow the efficient and practical way out of the site from a design perspective and allow it to work and balance with the rest of the center.

In regards to the negative criteria, a lot of the analysis is repetitious. In terms of the proximity control the primary way to reconcile the deviation is that the overall objective has been achieved which is not to have an undo concentration of fast food restaurants. It is also due to the character of Dunkin Donuts, it is not one of the more intensive or intrusive fast food outlets. This also allows for the elimination of the vacant lot. He believes it would be a more attractive site and development along Route 38. Regarding the landscaping strip, if the proper measures are taken, one could achieve the same level of attractive landscape in a 20' rather than a 35' strip. He believes the Sonics landscaping is well established and attractive. It provides the screening function of the parked cars in the front. The visual mass of the building that they are trying to screen is minor.

Mr. J. Miller believes that the application as submitted regarding the proximity standard and the width of the planting strip meets the criteria for the variance for the conditional use standard.

Mr. McKay opened public comment. None. Closed public comment.

Mr. McKay asked the attorney to state all the variances that they are seeking and the professionals will deal with each one for the Boards benefit.

Mr. Floyd stated the list of variances:

- 1) Conditional use to allow a fast food restaurant, Dunkin Donuts, to be located within 2,500' of another fast food restaurant.
- 2) Conditional use to allow a landscaping buffer of 19.1' where 35' is required.
- 3) Several bulk variances
 - a) Side yard setback of 14.87' on lot 1.04, 25' is required
 - b) Existing side yard setback of 10.23' on lot 1.01, preexisting condition.
 - c) Maximum impervious cover of 80.6% on lot 1.01, max. 65% required.
 - d) Minimum vegetated area of 19.4% on lot 1.01, less than 35% required.
 - e) Minimum parking setback at 0' on lots 1.01 and 1.04, min. setback of parking or traffic aisle from a side or rear yard property line requires 20'.
 - f) Parking setback of 19.65' on lot 1.04, min. 25' required
 - g) Minimum setback of 17.8', preexisting on lot 1.01.
 - h) Minimum setback of a driveway from a property line of 0' on lot 1.01, preexisting on lot 1.01.
 - i) Allow 64 parking spaces on lot 1.04, 80 spaces required.
 - j) Allow 88 parking spaces on lot 1.01, 122 required

Mrs. Wuebker explained that the first issue whether the Board should grant the conditional use variance for the proximity of Dunkin Donuts to Sonic. Mr. J Miller did a good job addressing that it meets the overall goal. She believes this is a different nature, a coffee market verses a lunch or dinner market. She does not address the conditional use variance. Suggested that the Board put off granting the landscape buffer until site plan. The master plan speaks of wanting to keep a vegetated buffer of 25' on the highway commercial. Sonic goes have a wider buffer, approximately 24', than the liquor store. She would recommend that it be the minimum of 25'. The Board needs to look and see if they should be replicating preexisting nonconforming uses. The big goal should be kept in mind of what you want to achieve along the Route 38 corridor. You could still achieve the cross access between the two but would lose some parking spaces. Maybe they are doing too much on the site. She would recommend denying it for now and revisiting it at site plan.

Mr. McKay questioned if it premature to deal with the landscaping at this time.

Mrs. Wuebker stated it is without a landscaping plan.

Mr. McKay questioned if we could deal with the bulk variances and if any can be grouped together.

Mrs. Wuebker has concerns. She does not know whether the impervious coverage should be approved without a site plan. They are asking for maximum of 85% when the maximum is 65%. That should be held off on due to being a site plan issue. As they are

treating it as one site for the traffic, maybe we should look at the liquor store site to help with it.

Mr. M. Miller stated that is directly related to the detention area and have no idea what is required.

Mrs. Wuebker stated that parking setback is a site plan issue and should be dealt with at that time. Anything that is a site plan issue, the Board should not be granting until site plan.

Mr. McKay asked if parking spaces are included with that.

Mrs. Wuebker stated a site plan issue and they have not seen any traffic studies. The driveway setback should also wait. They cannot go further without having all the information.

Mr. Miller stated he could not do a site evaluation because he did not have a site plan. In respect to the drive thru, it looks like 4 cars not 8, unless they are doubling it.

Mrs. Wuebker stated there are no checklists.

Mr. Kingsbury stated that the conditional use variance for being within the 2,500' of Sonic is an appropriate vote for tonight along with the existing side yard setback for the liquor store. He recommends that they wait for site plan to vote on the other issues.

Mr. McKay believes that all the bulk variances should be held until site plan.

Mr. Kingsbury commented that the Board can defer all bulk variances until site plan.

Mrs. Newcomb questioned if Mr. Maro would have to come back separately for site plan approval on the liquor store for the access.

Mr. Floyd explained that in respect to the egress access from the liquor store lot that it would be all part of this over all approval and part of the DOT permit. Mr. Maro would not have to come back for another site plan application.

Mr. Floyd responded to one comment hoping to find a compromise regarding the landscaping buffer. The applicant is willing to have it conditioned upon an enhanced buffering and they are willing to work with the Board's planner and engineer to make sure any buffering at site plan approval goes above and beyond what is required of the ordinance. They would work with them in advance of the application that it is an enhanced buffer so that they are minimizing the 19.15' buffer area opposed to the 35'.

Mrs. Wuebker believes it is part of the overall site plan. She recommends that they at least do what is permitted in the highway commercial zone.

Mr. Floyd understand the Boards and the Board's professionals concerns in granting the bulk variance relief. It is critically important to move the project forward to get the necessary conditional use variance relief. Testimony was given that it is not practical or feasible as stated by their professionals to increase the buffer. You would lose a certain number of parking spaces, it has an impact on the drive isles, and it is critical to have a

coordinating development between lots 1.01 and 1.04. You do not want to set the building back that you cannot see from Route 38. They are more than will to do the enhanced buffer in this area. They need to get the D3 variances prior to site plan. If they leave without one tonight, they will be in the same position as before the application was engineered. They understand deferring the other bulk variance to site plan approval and the comments in Mrs. Wuebker's letter. They will supply all that information at time of site plan approval and all the backup data. They asked the Board to consider the current number of parking spaces on both sites and that those number of parking spaces are appropriate. Testimony was given that the liquor store never fully utilizes all the parking spaces. Sonic rarely uses the parking spaces, which can be used with the access easement. They are asking for the two D3 variances and that the number of parking spaces are sufficient.

Mrs. Newcomb stated that we normally hear the use variances and the bulk variances are heard at time of site plan, as we did with the recent application for Pep Boys.

Mr. McKay asked Mr. Kingsbury his recommendation if the Board were to look kindly on one or two of the requests and not the others.

Mr. Kingsbury believes they need to vote on the conditional use for the proximity issue of 2,500' of Sonic. Next you could vote on the buffer variance or defer it to time of site plan. He questioned when the applicant would be coming back. If the Board only votes on the one D3 variances, will you prepare a site plan and come back.

Mr. Floyd stated that if they are only granted the one D3 and not the landscape buffer, the applicant will not be fully engineering the site plan at this time. The financial risk is too great to go through stormwater management, DOT permitting, and the other issues with the issue regarding the landscaping buffer hanging out there.

Mr. Kingsbury questioned if the Board denies the buffer are you going to come back with a site plan that complies with the 35' buffer.

Mr. Meyer believes it would not be possible to proceed with the plan with a 35' buffer. He believes he may be able to get to the 25' but will throw off the drive isles. Testimony was given that it is somewhat important to the function and flow of the site. The 35' would change the entire plan.

Mr. Selb commented that there seems to be some flexibility, their engineer is saying he may be able to give 25'. They are also saying they may not come back if we say no to the second use.

Mr. Floyd explained that if they go to the 25' setback, which is any permitted use. They can do that, but the impact on the site is that they will not have the drive isles aligned on the liquor store lot and the new lot, they will be offset. He believes it would create a planning issue with the Board members and professionals.

Mr. Meyer stated he needs to have some assurances on where the buffer line needs to be drawn. If not they are in still in the planning phase and not the engineering phase. The buffer line is critical on how the site lays out.

Mrs. Wuebker stated she would be ok with the 25' which is what is required by the master plan for a permitted use.

Mr. Floyd stated that Sonic was granted relief to 22'.

Mr. Selb commented he is looking that we are consistent and believes 19' is severe.

Mr. Meyer explained how they came up with the 19' which is also based on the roadway being curved. It would make it appear consistent. It also keeps the parking in align across the frontage. The 19' came from the layout of the site.

Mrs. Wuebker believes they did it to line it up but at the same time what is there now is not ideal for a liquor store site. It is basically a sea of pavement. It is driving the parking for the additional site. It is one of the most important issues. If they were to put the Dunkin Donuts adjacent to the retail it would open up the site.

Mr. McKay stated it sounds that if that were the case Dunkin Donuts would go away. He wants his free standing building and company design.

Mr. Floyd stated that is correct.

Mr. McKay stated that the 19 ½' request has merit. Can you improve the results by spreading the landscaping out in front of Maro's Liquor Store? He believes that there are weeds in that buffer now.

Mr. Floyd stated they agree as a condition of any use variance approval this evening to extend the landscape buffer across the liquor store lot and enhance the landscaping already there.

Mr. McKay commented that so it becomes a seamless buffer.

Mr. Selb believes that will work.

Mrs. Kelley stated that the continuation is what is needed for the buffer. Trees are not needed. It should be how Steins Apothecary frontage is. The building have to be equal across. She likes the parallel driveway with the small buffer all the way across.

Mr. Kingsbury stated the first vote should be whether to grant the conditional use for less than 2,500' from another fast food restaurant. All approval will be conditioned on approval site plan.

Mr. Lynch motioned to approve.

Second: Mrs. Kelley

Roll call: Mr. Lynch, yes; Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Dodulik, yes;
Mr. Krollfeifer, yes; Mr. Selb, yes; Mr. McKay, yes

Motion carries to approve.

Mr. Kingsbury stated the next is what buffer will the Board allowed. There were three different measurements discussed: 19.15', 25', or 35'.

Mrs. Wuebker commented another is in line with Sonic.

Mr. Selb motioned for a 19.15' with an enhanced buffer being added to the liquor store as well.

Second: Mrs. Kelley

Roll call: Mr. Selb, yes; Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Dodulik, yes;
Mr. Krollfeifer, yes; Mr. Lynch, yes; Mr. McKay, yes

Motion carries to approve.

Mr. McKay questioned if the applicant is willing to defer the bulk variances to time of site plan or do they want a vote tonight this evening.

Mr. Floyd stated they will defer the bulk variances to the time of site plan approval. They will provide additional data with the site plan for parking setbacks, data with Dunkin Donuts, and history of cars in the drive thru lanes, etc.

7. Minutes

A. Regular Meeting Minutes of June 1, 2016

Motion to approve: Mr. Lynch

Second: Mr. Dodulik

Roll call: Mr. Lynch, yes; Mr. Dodulik, yes; Mr. Dickinson, yes; Mrs. Kelley, yes;
Mr. Clauss, yes; Mr. Selb, yes

Motion carries to approve.

8. Resolutions

A. Resolution 2016-08: Zeus Investments, LLC

Granting Bulk Variances for Monument Sign installation on Block 98 Lot 2

Motion to approve: Mrs. Kelley

Second: Mr. Clauss

Roll call: Mrs. Kelley, yes; Mr. Clauss, yes; Mr. Dickinson, yes; Mr. Dodulik, yes;
Mr. Lynch, yes; Mr. Selb, yes

Motion carries to approve.

B. Resolution 2016-09: Kenneth N Stevens/Janet N Stevens

Granting 2 year extension of preliminary major subdivision approval on Block 98 Lots 2.01 and 2.08

Motion to approve: Mr. Clauss

Second: Mrs. Kelley

Roll call: Mr. Clauss, yes; Mrs. Kelley, yes; Mr. Dickinson, yes; Mr. Dodulik, yes;
Mr. Lynch, yes; Mrs. Tyndale, yes

Motion carries to approve.

C. Resolution 2016-10: A Clear Alternative, Inc.**Granting Use Variance with site plan waiver for installation of a solar panel Array**

Motion to approve: Mr. Clauss

Second: Mr. Lynch

Roll call: Mr. Clauss, yes; Mr. Lynch, yes; Mrs. Kelley, yes; Mr. Dodulik, yes;
Mrs. Tyndale, yes

D. Resolution 2016-11: Zeus Investments, LLC**Granting Preliminary Site Plan Approval**

Mr. Kingsbury explained that this resolution was tabled until the August 3 meeting.

9. Correspondence

A. Letter dated May 31, 2016 from Burlington Co Planning Board to Mr. Blair
Re: Pep Boys & Retail Center, Diamantis Children's Trust Block 100 Lot 8.01

B. Letter dated June 3, 2016 from Alaimo Engineers to Mr. Selb
Re: Pep Boys- Diamantis Case# 15-05A Performance Bond & Plan Distribution

C. Public Notice date June 13, 2016 from Joseph R Arsenault to NJ DEP
Re: Application Block 112 Lot 2.08

D. Certification for continuance of plan dated June 16, 2016 from Burlington Co Soil Conservation District to Mr. Blair
Re: Block 96 Lots 1.02 & 1.03

E. Certification for continuance of plan dated June 15, 2016 from Burlington Co Soil Conservation District to Mr. Blair
Re: Blocks 83.01, 96, 96.01 Lots 1-3, 1, 1

F. Certification for continuance of plan dated June 20, 2016 from Burlington Co Soil Conservation District to Mr. Blair
Re: Block 42 Lot 1

Motion to accept and file: Mr. Lynch

Second: Mrs. Kelley

Roll call: All in favor

Motion carries to accept and file.

10. Professional Comments – None**11. Board Comments – None****12. Public Comments – None**

13. Adjournment

Mr. McKay motioned to adjourn at 10:50pm.

Second: Mr. Lynch

Roll call: All in favor

Paula L. Tiver, Board Secretary