

Board Chairman Gary Frank called the regular meeting of the Mine Hill Township Planning Board to order at 7:30 pm and led those present in the Pledge of Allegiance.

OPEN PUBLIC MEETINGS NOTICE

Mr. Frank announced that adequate notice for this meeting had been given as required by law.

ROLL CALL: Members Present – Mr. Alpaugh; Mr. Frank; Mr. Gallerano; Ms. Goldstein;
Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Sauchelli
Members Absent – Mr. Willis
Alternates Present – Ms. DelRio; Mr. Rautenberg
Also Present – Mr. Wiener, Board Attorney; Mr. Sterbenz, Engineer; Ms. Macchia,
Municipal Clerk/Planning Board Administrator; Ms. Istvan, Deputy
Clerk
Public Present – 3

Mr. Morris introduced Mr. Rautenberg, the new Planning Board Alternate Member. Mr. Wiener swore in Mr. Rautenberg.

Mr. Morris left at this time.

APPROVAL OF MINUTES

A motion was made by Mr. Frank and seconded by Mr. Heredia to approve the minutes June 19, 2013, March 3, 2014 and May 5, 2014 (with corrections made), except the April 7, 2014 minutes are to be tabled until they are revisited and corrections are made. The roll was called, and the motion was approved by the following vote:

Ayes: Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Sauchelli; Mr. Frank
Nays: none
Absent: Mr. Morris; Mr. Willis
Abstentions: Mr. Alpaugh; Mr. Gallerano

CORRESPONDENCE

None

CONSIDERATION AND APPROVAL OF VOUCHERS

A motion was made by Mr. Alpaugh and seconded by Ms. Goldstein to approve the vouchers as presented contingent upon sufficient funds available in escrow. Seeing no further discussion, the roll was called and the vouchers were approved by the following vote:

Ayes: Mr. Alpaugh; Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Sauchelli
Nays: none
Absent: Mr. Morris; Mr. Willis
Abstentions: Mr. Frank

- a. Martinelli Escrow 711285
 - i. \$368.75 to Mr. Haggerty (205445)*
 - ii. \$131.25 to Mr. Haggerty (204807)*

- b. Milelli Escrow 711286
 - i. \$187.50 to Mr. Wiener (5/14 Invoice)
 - ii. \$25.00 to Mr. Wiener (5/13 Invoice)

- iii. \$31.25 to Mr. Sterbenz (236996)
- iv. \$118.75 to Mr. Haggerty (204806)*
- v. \$518.75 to Mr. Haggerty (205447)*

- c. Steve Rose Escrow 711289
 - i. \$75.00 to Mr. Wiener (5/13 Invoice)
 - ii. \$156.25 to Mr. Sterbenz (236997)

- d. Planning Board Budget
 - i. \$100.00 to Mr. Wiener (5/13 Invoice)
 - ii. \$125.00 to Mr. Wiener (5/14 Invoice)
 - iii. \$187.50 to Mr. Sterbenz (236998)

*Please note: these invoices represent the very last of the billing from Mr. Haggerty’s office.

RESOLUTIONS & MOTIONS

None

OLD & NEW BUSINESS

- a. Discussion of Introduced Sign Ordinance

The Board further discussed the ordinance and the changes that the Council incorporated per the Board’s recommendation. The ordinance was already introduced and this is the referral to the Board, but if there are substantive changes it will get reintroduced. Mr. Sterbenz noted Section 25-10.20.19, Paragraph 2, being revised to indicate that freestanding signs shall be only permitted in the ED and C Districts pursuant to the discussions at the May 5th Planning Board meeting. It was also discussed that there was a need for a second change. It appears that the new definition for a “freestanding sign” conflicts with the definition that is in the current ordinance. The definition of freestanding sign is subsumed within the overall sign definition in the current ordinance.

A motion was made by Mr. Sauchelli and seconded by Mr. Heredia to return the Sign Ordinance to the Town Council with the Planning Board’s endorsement accepting the two comments noted regarding freestanding sign definition and the zoning question.

- Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Sauchelli;
Mr. Frank
- Nays: none
- Absent: Mr. Morris; Mr. Willis
- Abstentions: Mr. Alpaugh

COMPLETENESS REVIEWS

None

PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

Application 001-14 Steven Rose

Mr. Franks noted that Mr. Rose sent a letter saying he was unable to attend tonight’s meeting and any necessary extensions were fine with him.

Application 002-13 Salvatore Milelli

It was noted that Mr. Frank recuses himself from this matter for reasons of proximity of the subject property to his business. Mr. Sauchelli is acting as chairman.

John M. Sydlar of Fein, Such, Kahn & Shepard, introduced himself as the attorney for the applicant and noted that they are only proceeding under a reservation of rights for the reasons set forth in his June 2, 2014 letter. Mr. Wiener questioned the reservation of rights and asked for it to be put on the record since there are members of the public present. Mr. Sydlar said the reservation was that the application was deemed complete in April and the 45 day period has expired. Mr. Wiener stated that if you take a look at the statute that specifically applies to bifurcated applications and he quoted from 45:55-D76, the time limit is 120 days from when it's deemed complete.

Jason Dunn was sworn in as the planner for the applicant. Mr. Dunn of 11 Lawrence Road, Newton, NJ is a licensed professional planner and licensed landscape architect in the State of NJ with over 15 years of experience with land development and design. He works closely with engineers and surveyors in all capacities of design and variance testimony. He appeared before several boards in Sussex, Morris and Warren counties to provide variance testimony. He also presented site plans using engineer drawings to present to Boards. He graduated Rutgers University in Environmental Planning design and a degree in Forestry from Paul Smith's College. He is presenting drawings prepared by civil engineers. He has always been accepted as an expert in front of Land Use Boards.

Mr. Dunn went through each comment of Mr. Sterbenz report to the best of his ability and expertise. He went over the report with his engineering staff. He will be talking about some of the points made. He is able to present the facts that have had happened and things that were presented as part of the Use Variance as well.

A motion was made by Mr. Alpaugh and seconded by Mr. Gorman to accept Mr. Dunn as an expert. The motion was approved by a voice vote.

Mr. Sydlar asked Mr. Dunn if he had received the letter dated April 2, 2014 from the Planning Board's Engineer and Planner. Mr. Dunn answered yes and proceeded to make comments on the recommendations and suggestions made by Mr. Sterbenz.

Page 1 – Mr. Sterbenz summarized the original submission – Mr. Dunn had no comments.

Page 2 – Continuation of the submission and provides a summary of the application – Mr. Dunn had no comments.

Page 3 - Completeness Section – Mr. Dunn has no comments

Section 1.01 through 1.04 - Technical Comments in Section B – Mr. Dunn said the applicant agrees to provide those notes as Mr. Sterbenz supplied.

Section 1.05 – A though D - Mr. Sterbenz noted some errors in the zoning schedule in his review. Mr. Dunn's office reviewed those comments and agreed there are some discrepancies and drafting errors that need to be corrected and will be.

Section 1.06 is about a buffer strip along the northerly boundary that references a requirement of 50 feet in the Ordinance Section 25-10.11c. Mr. Sydlar asked Mr. Dunn if the 50 foot buffer is an actual requirement or does the ordinance only apply to properties that are designated as Industries that abut a Residential area? Mr. Dunn said the way he read the ordinance, the 50 foot buffer refers to situations where an Industrial uses abuts a Residential use. Mr. Sydlar then asked in an event that that is not accurate does Mr. Dunn have any suggestions with regard to how they can address the buffer zone with regards to the site plans. Mr. Dunn then referred to Exhibit A1 (Sheet 3 of 4) which is a colorized rendition of the site plans and also depicts a modification to the site plan that Mr. Dunn will discuss later. Mr. Dunn mentioned that a Residential property exists to the North of the applicant's property. It is a vacant home with an over grown lot and there is a difference in elevation between the back of the applicant's parking lot and where the house exists. The elevation is over Mr. Dunn's head so he estimated it to be at least a 6 foot difference. There is a buffer that is required between the post parking area and the property line in the rear area. The applicant has about 6 feet and 25 feet is required. Mr. Sydlar asked if the applicant eliminated the parking spots at 14 and 15 would that address the issues in regards to the buffer zone at least to the extent that it would make it make the minimalist impact on the ordinance. Mr. Dunn explained that as part of the application they tried to expand the parking as much as they could as they testified during the Use

Variance. To do that they expanded the pavement toward the rear to accommodate two more parking spaces, which brought the pavement area closer to the property line. It is not a vegetated area as it has already been cleared of vegetation over the years, so it would not have a significant impact to the residents behind them. That, in addition to the fact that there is existing vegetation and a different salvation, Mr. Dunn proposes that they leave it as it is because there really is not much of an impact. Mr. Dunn also said as an alternative they could put some type of a fence along the northern property line if the Board feels that is important. Mr. Heredia questioned that Mr. Sterbenz said in his memo that a 50 foot buffer is required, but Mr. Dunn is saying that is only if the residential home abuts an industrial zone, but because this is a commercial only 25 feet that is required? Mr. Dunn answered yes, that is what they understood it to be. Mr. Heredia then asked Mr. Dunn if they had 25 feet. Mr. Dunn said they do not. There is approximately 10 feet existing and they are reducing it to 6 feet. Mr. Heredia then questioned that depending whether it is 25 or 50 feet that is required, the applicant only wants 6 feet and they will use the overgrown vegetation as the buffer zone, to which Mr. Dunn answered yes.

Mr. Sterbenz then stated that the ordinance is clear, there is a 50 foot buffer that is required in the C Zone. Page 122a and 123 of the Ordinance. There is a Zone Boundary along the rear of the site. The property to the rear is residential zone. The buffer right now is non-conforming and is becoming more non-conforming as a result of the traffic circulation improvements being proposed. Mr. Sterbenz does not have a problem with the traffic circulation improvements, the issue he raises is that nothing has been done in back of the property to try and mitigate the reduction in buffer to the residential property to the rear. The other big issue is that in Exhibit A1 Mr. Dunn shows the dumpster right at the driveway entrance to the property to the rear which is a real negative for that particular property owner. Mr. Sterbenz stated that he feels the dumpster should be relocated and moved away from the driveway entrance of the property to the rear which depends on the applicant's property in order to gain access. Mr. Sterbenz indicated in a letter, that the reduction in the buffer requires a variance from the Board and there will need to be some testimony tonight from Mr. Dunn to justify that variance and Mr. Sterbenz also indicated in the letter what type of proofs would have to be put forth tonight to justify the buffer.

It was clarified that the house in the rear is in a Residential Zone which requires a 50 foot buffer. Mr. Alpaugh questioned that in order to get a true 50 foot buffer it would encroach upon the building? Mr. Dunn agreed and added that they would have to remove all of the pavement and part of the building and vegetate that area in order to comply. Mr. Alpaugh added that the situation is not just a few feet here and there, we are dealing with significant. Mr. Sterbenz added that it is very non-conforming to begin with right now. It is not 50 feet right now. It is a lot less than that.

Mr. Dunn stated that in his initial testimony, nothing is needed because there is a change in elevation and existing vegetation. Mr. Dunn then submitted 6 photos he took himself this spring. **Exhibit A1** There is existing vegetation on the applicant's hillside. It is only about 6 feet. There are some hardwood trees and overgrown vines there. **Exhibit A2** shows a photograph of the rear of the property looking northeast. **Exhibit A3** is a photo looking east and there is an existing dumpster. **Exhibit A4** depicts the existing driveway to the residential lot that is the only access to that lot and it shows the overgrown nature and vegetation that exists on that lot as well as a part of the house. **Exhibit A5** depicts the Eastern sideline taken from the rear of the property showing a buffer between each property. **Exhibit A6** shows the rear of the building and an existing refrigerator unit which was proposed to be removed. **Exhibit A7** shows the existing vacant house and the overgrown nature of that property to the rear of our property.

Mr. Dunn's said that his testimony is that the 6 foot buffer has no impact of the visual nature of the residential house looking into the applicant's property. Mr. Sydlar asked if the 6 feet is throughout or only in certain points. Mr. Dunn said that if you stand at the end of the applicant's paving and you look towards the North towards the Residential Property, there is an immediate change in elevation of about 6 feet and it continues uphill to the existing residence. Mr. Sydlar asked with regards to the existing buffer zone that is there, that is preexisting, what is the description of that, would you say it is consistent all the way through or is there more of a buffer in certain areas than others. Mr. Dunn replied it is inconsistent, there are some trees that are heavily foliated and some that are not, that too tall you can see through. Mr. Heredia asked if they are the types of trees that lose their leaves in the winter. Mr. Dunn answered yes they do lose their leaves. Mr. Heredia mentioned that would give even less of a buffer. Mr. Dunn replied it is a buffer. Mr. Sauchelli asked how far back the residence from the property line is. Mr. Dunn said it appears to be over 200 feet from the back of the property. Mr. Alpaugh asked what is the depth of the applicant's lot, front to back. Mr. Dunn

answered 212 feet. Mr. Heredia questioned if someone were to move into the residence in the back and they cut down some of the overgrowth, what would the buffer be then? Mr. Dunn responded between 6 to 9 feet. Mr. Sauchelli asked for clarification of a comment that the vegetation is partly on both properties. Mr. Dunn stated that his testimony is strictly about the vegetation on the applicant's property. Mr. Wiener explained that the required buffer falls on the applicant's property. The applicant already said that if you look at the existing infrastructure already on site there isn't 50 feet. Mr. Wiener expressed that he assumes that the testimony is intended to make the case why in this particular instance 50 feet should not be required. Mr. Alpaugh stated that it depends on who is doing the development. He continued saying if the residential homeowner was coming in to do the development, even a new home, as the first builder they would be required to do the buffer, as he understood the way the ordinance was written and there are some changes in there so it may be different. As the applicant is the commercial side, he is required to do the buffer because the existing homeowner would stay the same. If he owned both lots he could split the buffer in between the two pieces. The way the lines get drawn depends on who is doing it. This application is very clearly for the commercial lot. Mr. Dunn says his testimony is that this is a special instance because of the existing infrastructure that is on the lot and the existing paved areas and irregularly shaped house. Ms. Goldstein asked that the realistic way to add to the buffer would be to remove the two parking spaces in the back. Mr. Dunn said there are a couple of different alternates. They could take the parking spaces away which would mean they would be less conforming as far as the amount of parking that is required, which he would cover later. Or they could add a fence, which in his testimony would not make much of a difference because of the change in the elevation and the distance of the house. Mr. Heredia commented that when looking at the pictures Mr. Dunn took, he could clearly see through some of the vegetation to the house. He then asked Mr. Dunn how he thought a nice stockade fence would have no bearing at all. Ms. Goldstein commented that the elevation is what makes the difference. Mr. Dunn then commented that it would depend on where the fence would go. If it were at the top of the slope it may help. Mr. Heredia commented that elevation or no elevation he can see the house from the applicant's property and you could probably see the applicant's property from the house to which Mr. Dunn said yes that is what exists today. Mr. Alpaugh then commented that the adjoining property grades continue up. It is not that the house is 6 feet higher, it is that the property line from where the parking stall is to the property line is approximately 6 feet high and that grade continues up to the house, so the house is at a higher level than 6 feet to which Mr. Dunn agreed per his visits to the site and neighboring properties.

Mr. Sydlar then asked Mr. Dunn what is the nature of the present use of the property? Is it mixed Residential and Commercial? Mr. Dunn answered yes. He also answered it is not used for Industry purposes. Mr. Sydlar then asked Mr. Dunn if Section 25-10.11C only applies to Industrial use to which he replied that is how he understood it, but that Mr. Sterbenz mentioned there may be something else he had not seen. Discussion ensued as to whether the most up to date version of the ordinance was being used by Mr. Sydlar to which it was determined it was. Mr. Wiener said on page 122 it mentions from Zone C it says 50 feet. Mr. Sydlar asked what Section C stated. Mr. Sterbenz then read from the section Required Landscape Buffer Areas When Abutting Residential Zones and Areas. "Under Zone C it states one has a minimum depth buffer of 50 feet, but buffer may be decreased if a buffer area is already provided on the adjoining Residential Property with a total buffer to be a minimum of 50 feet." That is what is applicable here. Mr. Dunn commented that it puts the neighbor's property into play as well in to his testimony where he said there is 6 to 9 feet of vegetation on the applicant's property and there is more on the Residential Property. Mr. Sterbenz stated that it would only come into play where we had another site plan in the C district with Benkendorf where he secured easements with the three abutting Residential owners and obtained easements so that the buffer width on those properties plus what he was providing on his own property equaled 50 feet. Mr. Sterbenz commented he did not believe the applicant had an easement to the best of his knowledge.

Mr. Sydlar asked Mr. Dunn if it was his understanding that it was previously a preexisting, non-conforming use of mixed Residential and Commercial to which Mr. Dunn agreed. Mr. Sydlar also asked if it was correct that whether 50 feet is required or not, there is a preexisting problem that it does not provide enough buffer within 50 feet, whether it is a combination of either of the two properties to which Mr. Dunn agreed. Mr. Dunn stated that if they removed pavement then they would be increasing the buffer, but it would encroach upon the traffic circulation of the site. Mr. Sauchelli mentioned that speaking for the Board they are not trying to wedge 50 feet out of this and Mr. Dunn said they are willing to work with the Board, he just wanted to tell them all the facts he knows. Mr. Wiener stated that he thinks Mr. Dunn made his testimony,

that it is impracticable to comply with a 50 feet buffer and he is trying to come up with some alternatives and has provided some testimony that it can be mitigated in other ways. Mr. Dunn agreed.

Item 1 of Section 1.07 - Mr. Dunn directed everyone to Item 1 of 1.07 in Mr. Sterbenz letter. He questioned where the 0.5 stalls per apartment was derived. When beginning the concept design for the site they looked up the ordinance and found there was not specific parking standard for apartments, rather there was something that said dwelling, one and two family, which Mr. Dunn presumed that they would fit into 25-10.16.7. That may not apply here so they can use RSIS either as a guide or if that is the applicable regulation. He mentioned that it actually helps their case if they use the RSIS which he could demonstrate if the Board wanted him to. Mr. Heredia asked if it was one or two family house or one or two family apartments. Mr. Dunn said the Ordinance says “dwelling, 1 or 2 family.”

Mr. Alpaugh then explained for the new member what RSIS (Residential Site Improvement Standards) was. They are a set of standards adopted by the State that cover the entire State. They may be superseded in various places, but generally it is a standard that is being used. Mr. Wiener added it is a way to try and provide some uniformity with 565 municipalities.

Mr. Dunn stated when they analyzed the required parking as it relates to the RSIS standards they found that there are 10 parking spaces required as a result of the apartments. Mr. Heredia asked if Mr. Dunn’s analysis conforms to how the law is written, does the 1 or 2 family dwelling apply to the structure in discussion. Mr. Sterbenz noted that there is a void in the ordinance in respects to parking standards for apartments. The RSIS is technically not applicable here because you have a mixed use. The two uses are not separated, they are co-mingled. The RSIS is useful to provide a benchmark to the Board as it is a very good standard, well thought out and it does have specific parking requirements for apartments with different bedroom mixes here. It is more applicable than using the ordinance. The half of stall per apartment unit is very, very low according to Mr. Sterbenz

Mr. Sydlar then asked Mr. Dunn if he remembered the testimony he provided during the Variance Application with regards to the actual parking and what the requirements were and that the preexisting use required a lot more parking and that what they are proposing actually reduces the impact on those parking requirements. Mr. Dunn answered yes although he did not recall the exact numbers, that there was a restaurant use in the building and that was part of the Use Variance testimony that they would be reducing the parking requirements on this lot by allowing the apartment uses with commercial. Mr. Wiener questioned if there were more stalls or less stalls post development. If this plan was implemented did they make reference to the prior use on site, would there be an increase in parking spaces? With the new site plan they would be increasing the number of parking spaces. Mr. Wiener asked how many parking stalls are there. Mr. Dunn answered that is an interesting question as he does not have an exact answer right now as the parking spaces are not delineated on the property. Mr. Sydlar questioned that the existing condition originally required 47 total parking spaces? Mr. Dunn answered yes, but that Mr. Wiener’s question was..., at which time Mr. Sydlar answered he knew, and continued with his question that at this time are there 47 available spaces? Mr. Dunn answered no. Mr. Sydlar then asked now based upon the proposed use how many parking spaces are needed to which Mr. Dunn answered 28 using the .5 per dwelling and that 23 are proposed. Mr. Sydlar stated that 23 is closer than the 47. Mr. Sydlar then asked Mr. Dunn if it was his understanding that the 23 spaces that are proposed are more than what currently exists on the property, to which he answered yes and added with improved circulation. Mr. Sauchelli then mentioned that the property to the left has been used for parking to which Mr. Dunn said they did not include that as part of their site plan and that it was not a significant amount of spaces. Mr. Sydlar then questioned the way the property exists right now under the zoning it requires 47 spaces. Mr. Dunn answered that if they did not have the Use Variance approval it would be 47. Mr. Sydlar then asked if 47 spaces exist based on the actual property owned by the applicant. Mr. Dunn responded, somewhere between 15-20 spaces exist where you could park a car, back it out safely and still have cars go by it. Mr. Dunn stated he feels his company is improving the circumstance. Mr. Sterbenz mentioned that if Mr. Dunn had used the lead he made in his report it would mean they would only need 26 instead of 28 spaces because he used taking the 6 apartment units and dividing it by .5 instead of multiplying it by .5. The 2 bedroom units would be 1.8 stalls per unit according to the RSIS and the 1 bedroom would be .8 stalls per unit. Ms. Goldstein asked how many bedrooms. Mr. Sterbenz said there are 8 bedroom all together. There are 2 two bedroom units and 4 one bedroom units. Mr. Sterbenz then asked if they could revise the plans so they could move on from the issues to which Mr. Dunn said yes he would, using the RSIS standards for their parking calculations.

Section 2.01 – Mr. Sydlar then mentioned that this section has to do with the recording of the deed and that Mr. Dunn has nothing to do with that to which Mr. Dunn agreed. Mr. Sterbenz asked if someone from their professional team was going to take care of it to which Mr. Dunn said yes they agree to do 2.01.

Section 2.02 – Refers to Sheet 3 revising the distances between the parking lot and dumpster enclosure. The correct distance is 2.48 foot from the dumpster to the Northern Property Line and 1.34 foot from the parking space 19 to the Eastern Property Line. The revisions have not been made yet but that is because they are proposing a different lay out to address some other comments from Mr. Sterbenz.

Section 2.03 – Discusses the sidewalk. Mr. Dunn said they agree to modify the site plan so that it is a full 4 feet and not use the curb as part of that width.

Section 2.04 – Has to do with easements. Mr. Sydlar said he was not sure what the easement requirements are, but there are no formal easements and there will not be any formal easements. Mr. Dunn then explained the Interface of Lot 5 and Lot 6. The applicant is Lot 6 and the existing entrance straddles both Lots. The applicant's has about 12 feet and Lot 5 has about 10 feet and currently people have free movement without any signage or arrows as shown in the drawings to go in and out. The DOT did improvements several years ago and built a retaining wall to the east of the access which in Mr. Sterbenz report it mentions that it inhibits the sight distance looking east if one pulls out of the parking lot to which Mr. Dunn agrees. If the owner of Lot 5 decides to tear up the pavement, put up a fence or plant vegetation, since there is no easement they could do that and then how will people circulate on the applicant's property. They will just be able to pull in and not pull out. Mr. Sydlar stated that if there is an easement granted to allow continued use of the current entrance/exit, it is preexisting problem, it is not a problem right now as the owner of Lot 5 is allowing the use. Mr. Wiener asked Mr. Dunn to walk everyone through how a person would move through the applicant's property if there is no easement. Mr. Dunn explained a person would enter off of Route 46, make a right and out to the East through the next door neighbor's property, Lot 7 and 8, and out onto the exit to Weber Lane over an existing easement that exists that allows cross access. Alternatively a person could drive around the site, circle back to that exit and pull out. But Mr. Wiener stated that would not be very desirable to have someone in and out on the Lot 5 side. Mr. Sterbenz added the comment which comes from the Use Variance hearing because that paved area is being used by patrons of that particular building both from a parking perspective and an ingress and egress perspective and because an informal easement is in place and if the owner of Lot 5 decided he did not want that encroachment taking place on their property any more, and had that pavement removed, it would have a significant impact both from an ingress, egress perspective and also an overflow parking perspective. Mr. Sterbenz stated he felt the Board should encourage the applicant to try to rectify this, not make it a condition of approval. Mr. Dunn agreed to make the adjustments Mr. Sterbenz suggested.

Section 2.06 - Discussion ensued about how hard and dangerous it is to see traffic on Route 46 when trying to exit the applicant's property on the Lot 5 side and how you have to inch your vehicle out onto Route 46 to actually see vehicles traveling Westbound on the inside lane. Mr. Sterbenz recommended the better of the two egresses would be the exit out towards Weber Lane. Mr. Sydlar asked Mr. Dunn if the current site plan included Lot 5 to which Mr. Dunn said it does not. In the event that Lot 5 decides to enforce no encroachment on their property Mr. Sydlar asked Mr. Dunn if there were many options of going to the DOT and having the retaining wall removed to improve the ingress egress. Mr. Dunn said yes and that he is competent to testify to that as he has been involved in those applications before. Mr. Sydlar also asked Mr. Dunn that if Lot 5 were to become developed, could the DOT or Board require Lot 5 to use it as an egress to which Mr. Dunn answered yes. Mr. Wiener stated that the having another option to exit the applicant's property if the combination ingress/egress through Lot 5 and Lot 6 were no longer a possibility is what is needed and that Mr. Dunn has shown that. Mr. Dunn has offered to remove the exit arrow that is on Lot 5 and just leave the entrance arrow on Lot 6.

TEN MINUTE BREAK WAS TAKEN

Mr. Sydlar asked Mr. Dunn if he had an opportunity to review the letter dated April 2, 2014 to which he said yes. Aside from sections 2.05, 3.03, 3.04 and 4.06 Mr. Sydlar asked if Mr. Dunn agreed with all of the recommendations and agree to make the changes that are suggested. Mr. Dunn said yes the applicant agrees to make those changes. Some that were not mentioned, does not mean the applicant does not agree with, but that they just need a little further discussion.

Section 2.05 – This requires communication with the Fire Department which the applicant has tried to make contact with, but has not been able to thus far, but will continue to do so. Due to the change of use and change in the traffic circulation Mr. Sterbenz feels the Fire Department should review the plans to make sure a fire truck is able to enter and exit the property. Mr. Wiener commented that this may be an issue for the DCA due to the number of residential units that would prompt a Trenton inspection. Mr. Sydlar suggested in the past two weeks to Ms. Macchia that the plans be submitted to the Fire Department for their review and comments. Mr. Dunn said they are not exasperating an existing condition. They are not adding any barriers but rather opening up more area. Mr. Alpaugh mentioned that the case is with any Fire Department they may not voice an opinion and that the applicant should not be held back if that is the case. Mr. Sterbenz said that they just need to submit it to the Fire Department. Mr. Dunn agreed to keep trying. The Board agreed, that neither the applicant nor the Board can force the Fire Department to respond.

Section 3.03 – Mr. Dunn explained that this section questions whether there are any septic improvements as part of the site plan. Mr. Dunn answered no, as no physical changes are warranted. Mr. Wiener asked if it should be referred to the Board of Health. Mr., Sterbenz stated that the system here is more than 2,000 gallons a day is State. Mr. Dunn mentioned that they did a study as part of the Use Variance that was submitted to the Board and it was found that the existing use has a calculated flow of over 2,000 gallons a day so it warrants a State permit which they are going to pursue. There will be no physical changes. There is actually less flow with this use than before. Mr. Alpaugh stated that they need an NJPDES T1 permit... The resolution with regard to the variance actually says that it is conditional. Mr. Sauchelli asked, so if any improvements or repairs would be made, it would be pursuant to that inspection from State? Mr. Sydlar answered so long as a T1 Permit... Mr. Dunn stated that a T1 permit doesn't usually require any improvements, it is just paperwork. If it was a failing system that would be different, but this one is fine and has been working for years. Mr. Heredia asked as part of the State permit would they come out and inspect the system and make sure it is working properly. Mr. Dunn said they have the right to do that, but may chose not to. Mr. Heredia mentioned that there was some discussion on the variance side that there was some question about when the last inspection was. He just wanted to make sure that if the permit was issued the State would look into it. Mr. Dunn said yes and the County Health Department too. Mr. Sydlar stated that it is their obligation to submit and it is up to the State to grant the permit or not.

Section 3.04 – Condition of the existing pavement. Mr. Dunn said they do recognize they need to upgrade the pavement in some areas, that there are cracks and it is warn. They propose to fix the cracks first and the then seal coat the entire site because they are doing new line striping and it will look better. Mr. Alpaugh asked if their plan was to just seal coat and no new top. Mr. Sauchelli said he has not walked the whole parking lot but are there areas that need additional repairs that don't require more. Mr. Dunn commented that as part of the proposed site plan there is a significant amount of new pavement required to accommodate the grading so the front portion will look brand new with new pavement. Mr. Sterbenz stated it is a good improvement and it will help.

Section 4.06 – Existing Lighting. Mr. Dunn commented that the way they addressed the lighting on the site is by adding two light posts in the front, the main part of that being the decorative feature of it. The front of the site is already lit by a flood light on a utility pole. They did not analyze the extent of that but it has been working over the years for the commercial area. They propose to keep the lighting as it is but adding the decorative lighting as it adds to the aesthetics of the site and also provides more light. Mr. Alpaugh asked what type of fixtures are they? Mr. Dunn said they proposed a decorative lantern type. Mr. Sterbenz recommended they use either LED or metal halide, to which they agreed to do. It might just change the specific fixture. Mr. Sterbenz stated his biggest concern was the rear of the building where 9 of the parking stalls will be located to the rear of the building and there is currently no lighting and the tenants will have to walk from the rear to the front to gain access to their apartments. There is lighting on the building Mr. Dunn stated.

Exhibit A8 was presented – Lighting plan of the application. It shows where the lighting is on the building. Mr. Dunn did revisit the site after Mr. Sterbenz's comments to note where the lighting on the walls is. Mr. Sterbenz noted that there are no foot candle lines on the drawings for him to gauge how illuminated the site is and whether it complies with the ordinance. Mr. Dunn offered to investigate the site with a light candle meter and give the results to Mr. Sterbenz and upgrade the lighting on the building if they need to. Mr. Alpaugh stated that is an important requests to fulfill. The applicant did agree to complete the testing and upgrades if found to be necessary after testing.

Mr. Sauchelli asked about the dumpster referred to earlier. Mr. Dunn explained that the dumpster had been relocated to the Eastside of the property to have it out of the way of the driveway and also to be out of site. It will also allow for a front load garbage to reach it and be able to back out and pull away. The parking has been reconfigured slightly to make sure it all works. Mr. Sauchelli then asked about the egress around the building. Mr. Dunn stated that it is 24 feet from the dumpster to the line striping, it then narrows to 12 feet along the side of the building which is appropriate since it will be a one way direction. Mr. Sterbenz said it will be appropriate and he is fine with it. A concept sketch was presented at an earlier testimony that Mr. Sterbenz was comfortable with.

When the testimony of Mr. Dunn was complete, Mr. Sauchelli asked the Board members if there was anything they wanted to ask. Mr. Alpaugh suggested they use LEDs for the site lighting as much more economical and environmentally. Mr. Sauchelli asked if they would be on a timer or sensor. Mr. Dunn stated that they are on a timer now and they will continue to do so and that he will check the ordinance in reference to that.

Mr. Heredia asked if anything was going to be done to improve the aesthetics of the building itself, as in the past from his experience, it was whenever you have major construction or change of use, it is the Boards opportunity to help improve the neighborhood or in this case commercial zone. An issue that has been mentioned to him is the building itself and its appearance on the outside.

Mr. Wiener said it makes sense but that we should try and take care of the site plan first. He mentioned the Board may want to see a color palette, design detail.

Mr. Alpaugh revisited the lighting issue saying they need to make sure the lights stay on throughout the night for the residential entrances. Mr. Sydlar said that there is existing lighting right now and that they are only giving testimony to the decorative lighting. They are going to complete the study and see if additional lighting will be required. On the A8, sheet 4, the orange dots indicate where the lighting currently exists. Mr. Heredia added he feels additional lighting should be in the parking lot as well.

Section 6 - Mr. Sterbenz mentioned that he recommended conditions in Section 6 of his report and asked Mr. Sydlar if his client agrees to comply with the conditions. Mr. Sydlar said yes if they haven't already been done. Mr. Sterbenz said none of the conditions have been addressed. Mr. Sydlar went through the conditions and said yes to A, B, C, D, E (to the extent it is required), F, G, H.

Discussion of the buffer continued. Mr. Dunn reminded the Board that he testified that there was not a need for a fence or vegetation. After talking with the client, the client is willing to install a 6 foot stockade fence, or something the Board would like to do, or shrubs to help mitigate any negative that might come from that area. Mr. Sauchelli was concerned with the slope and if planting shrubs would work. Mr. Dunn said planting shrubs would not be a problem. Mr. Alpaugh and Mr. Heredia prefer a fence over the shrubbery as it provides more of a buffer. Mr. Alpaugh recommended a synthetic material for the fence for better durability, easier upkeep and appearance in the future. Ms. Goldstein asked where would the fence be placed and it was agreed at the top of the slope at the property line which in effect will provide close to a 12 foot buffer. Mr. Wiener mentioned that if it is condition of approval, Mr. Sterbenz look at the final design and make sure the conditions have been met.

Mr. Sauchelli returned the discussion to the architectural, appearance, color palette. Mr. Wiener recommended the Board should see a colorized rendering, the architectural details for the lighting fixtures. Mr. Sydlar then said they will not be providing or proposing any improvements to the building. He stated that what they have proposed already exceeds what they offered to begin with in addition to the two COAH when they originally proposed one. Mr. Wiener reminded the Board that they can say what they want but unlike a regular site plan application, where if the applicant follows the ordinance and does everything it says in the site plan, the Board must approve them. There is a big difference when one comes in on a bifurcated site plan associated with a D variance. You still have to find that whatever plan they are proposing implements the

intent and purpose of the D variance. Mr. Wiener mentioned he was not present at the original hearing, but he was lead to believe that one of the important considerations was what was the structure going to look like in the present and future. He added personally he does not see anything wrong with asking for a color palette, details for the fixtures that are going to be on the site. It is up to the applicant and the Board will make its determination. Mr. Heredia voiced that he would like to see something like Mr. Wiener described because he feels the outside appearance of the building does need to be improved or reconditioned. Mr. Alpaugh asked if it was the end of the applicant's testimony and that there would be no architectural testimony.

Mr. Sydlar said yes it was the end, but that they would suggest it will get painted and if there is a color preference but because the color now is not all that great, but as far as testimony and presenting a palette that is not part of the presentation or application.

Mr. Sauchelli referred back to the parking issue and that there are 23 spaces available, but the requirement is 26 according to the calculation used based on the RSIS and is the Board granting a variance for the parking. After reviewing the plans it was noted by Mr. Gallerano that only 22 spaces are available to which Mr. Dunn agreed and apologized that the figure had not been updated. Mr. Sterbenz mentioned that he did not feel a variance is needed for the parking since there is a significant disparity between the number of existing stalls and what is theoretically required, it is upwards of 50 stalls. There are 47 on the plan. There are probably only 20 on the site right now. Mr. Dunn did not have a specific number, it is probably about 20 stalls altogether. Right now, the requirements getting reduced down to 26 and they have 22. The disparity between what is being provided and what is required is so much less than what it is under the existing condition.

Mr. Sauchelli asked if the Board has to worry about impervious coverage. Mr. Dunn said they were able to make the site improvements without making the impervious coverage more by adding some planting areas and taking away pavement. Mr. Sauchelli said they added some green areas that they do not have on the site now.

Mr. Sauchelli said he was going to put it before the Board. Mr. Wiener reminded the Board that they just needed a simple majority to prevail it does not require the super. Mr. Sauchelli asked the Board because everything that was in the air about this and since a lot has been discussed, does anyone feel they need to see an updated plan? Mr. Heredia voiced that he felt so much is at stake here that is not reflected in the plans and so much is missing or got moved that he felt uncomfortable voting either way right now. Also, the Board has to adhere to the Master Plan and the intent of the Governing Body. The Governing Body's ongoing project is the Route 46 Beautification Program and when he hears that is all they are going to do and there is not going to be any color palette, no aesthetics, anything like that, he does not feel it is conforming to the Governing Body's intent and Master Plan.

Mr. Alpaugh voiced that the proposed site improvements have been generally well thought out. The process of the thinking, relocation of the parking stalls, and everything that has been done with that, along with dealing with the ingress and egress, he commends the applicant and his professionals for the hard work. He personally would like to see a top coat on the entire paved area instead of just the sealing. He does have a problem with the overall building aesthetics and would like to see improvements in that area. On the other hand if the Board denies the application because of not having a palette etc. the appearance of the property and structure will remain the same as they are now and all the improvement discussed and agree upon will not take place. We are talking about a site plan on an existing building. They have made improvements to make the site perform. Also, it is more residential in nature since the restaurant no longer exists. He voiced he was torn and would like to hear the opinions of the other members of the Board.

Mr. Sterbenz was asked for his opinion. He stated that if we go back to the resolution for the Use Variance and he wished it was more definitive. "Aesthetic improvements proposed by the applicant would constitute a special reason to justify the granting of a Use Variance Burbridge vs Mine Hill Township... Testimony was presented that the parking area for the building is in a state of disrepair and there is a disorganized traffic circulation pattern and the applicant proposed to repave and stripe the parking area to fill landscaping making the site more aesthetically pleasing and safer to use." There really is no discussion in that particular

paragraph on the building itself and he does not recall anything that was discussed about this building to make it better looking as part of a Use Variance Grant. The site was clearly discussed but this was the first he heard from the Board. He just wants to be fair.

Mr. Alpaugh commented that with testimony from an architect we might have a better idea of what could be done to improve the outside appearance of the building. Mr. Heredia asked Mr. Wiener if it is not spelled out specifically in granting the variance legally what can or can't the Board do, do they have to stick to the parking lot? Mr. Wiener said they are entitled to some architectural testimony, that asking for a color palette or any of those things is that onerous. On the other hand, he does not want to make something that is perfect and good, enemies. There are economic considerations. You have to look at what is realistic from any applicant. He feels that is where Mr. Alpaugh was coming from. He does not know, as he has seen the building a couple of times. Like they said it is usually an opportunity, but it is the real world. They said they would pave the parking lot, the parking lot is not going to be paved, but it will have something that is good, but not perfect. You have to consider and weigh.

Mr. Alpaugh said that asking for some type of architectural testimony and some type of palette is not asking for a lot.

Mr. Sauchelli asked Mr. Sterbenz if it is a reasonable request to ask for some discussion and testimony around the subject to which Mr. Sterbenz replied "Yes". Mr. Wiener stated that the applicant has rested. Mr. Sterbenz reminded the Board that if they were looking for formal architectural testimony, Mr. Dunn would not be providing that as an architect that produced that plan and another hearing would need to take place for architect to be present.

Mr. Sauchelli asked Mr. Sterbenz if he would feel more comfortable seeing an updated plan as opposed to managing all of the changes on the current site plans. Mr. Sterbenz said that is a policy decision of the Board. If they want to approve it and have all of the conditions in the resolution he will make sure it all gets done. If they don't feel comfortable with that number of conditions and they want to see another revision to the plans in an effort to trim down the number of conditions, he will make sure it gets done under that scenario as well. It is really the Board's call. All Boards are different. Some don't like to see many, many conditions when they do resolutions. They try to have revisions done as you go through the hearing process to try and minimize that. Other Boards want to get their business done, they have confidence in their professionals and they are willing to have a larger list of conditions because they know it will get done. It is really the Board's call. Mr. Heredia stated that given the circumstances in the application he feels more comfortable having an updated site plan.

Mr. Sauchelli asked about the Light Study. Mr. Sterbenz explained that Mr. Dunn will go to the property in the evening with a light meter and he will walk around the parking lot and measure the foot candle readings at various points. He will plot it on a drawing for us to see. If he obtains foot candle readings that do not measure up to the ordinance, Mr. Sterbenz stated he feels Mr. Dunn will not even submit the findings. He will put a lighting plan together based on tonight's testimony and it will show new lights with new foot candle patterns that comply with the ordinance.

Mr. Alpaugh stated that from experience he agrees with Mr. Sterbenz that we don't need to, but he would recommend we suggest to the applicant they provide the Board with an updated document with the changes that were requested, that the list goes down significantly, they get to see it again to understand what they had been talking about because somebody says something but not everyone sees or hears it the same way. It is also a benefit to the applicant they have to do that work either way. In his experience it will cut six months, or significantly cut the time spent going back and forth down. He would prefer to see an updated site plan.

Mr. Wiener asked if he wanted that before a final vote or a condition of approval. Mr. Alpaugh replied it could be done both ways. Mr. Sauchelli asked if he would like to see it before a final vote. Mr. Alpaugh said that would be preferable. He added that what his vote tonight might be changed when he sees the final plans. Mr. Wiener said it is the Board's call. Mr. Wiener said that in terms of policy, with the size of the site, the

scope of the improvements and admonition years ago from Judge Stanton to Boards like this about having multiple sets, use the power to make them redo plans sparingly because it is expensive. Mr. Alpaugh said it is not his intention to have them to do a set of plans to play the game, but if it has to be done either way and in order to get this to develop and to get this site to be approved, you have it as a condition in theory your vote is first and if the vote goes the other way then you are not doing the plans either way. Mr. Sauchelli said his concern with conditioning a lot of things, conditioning requires follow up and the detailing engineering of course would be Mr. Sterbenz follow up, but since there are concerns with aesthetics and appearance etc. in order to put some doubts at rest he feels an updated plan is in order.

Mr. Gallerano stated it seems that everyone would like to see a revised plan so it would be to the applicant's benefit to come back with a revised plan and let the Board see it and maybe they would like to think about coming back with some architectural enhancements.

Mr. Rautenberg mentioned that one of the things you want as requirements is definitions. He agrees that the Board is correct in asking them to come back and let the Board see what they have as a final plan. On the question of aesthetics, he is happy with the changes mentioned and sees that as a win even though they might not be the total win that the Mayor and other part of the government are. On the other hand that is coming out of someone's pocket. He would really like to see pictures of what can they do to this thing to make it prettier. Is it paint, is it paint with trim around the windows, is it a red door. Mr. Alpaugh said there may be a very creative simple solution that turns all of their heads, but they haven't been given that.

Ms. Goldstein said she is pleased with the site plan but feels it would be in the Board's best interest to see a final version of it so that they would be a little clearer as to what is happening. She was a little surprised at the lack of anything in the architectural perspective, it would make it an easier decision. The benefit would be overwhelming.

Mr. Rautenberg asked if the Board could give them any type of guidance as to what the Board is looking for. The Board is not expecting the Tai Mahal, but a nice coat of paint would be good. Mr. Wiener said the Board needs to be cautious as it is the applicant's case. Having sat where Mr. Sydlar is in front of many Boards, you've got eyes, you've got ears, he has heard the colloquy tonight, the record is pretty clear, the Board wants to see something and if the proposal is nothing than where the paint is going to be, that is their call.

Mr. Alpaugh commented that what has been proposed is a significant improvement on the site. A pretty picture on a board like what they showed tonight, that shows the site and it says we are willing to change, paint the trim and change the way the sign looks, we're willing to change this or do that, we're willing to do nothing. Whatever it is but we kind of get a little more of a buy in and that piece has not been touched yet. He stated that was his sense.

Mr. Heredia said a couple people had brought up shrubbery as part of this and he thinks it was part of a variance and he heard nothing about shrubbery tonight either. Mr. Alpaugh mentioned it was shown in the plans and Paul addressed it in his review so and we have had that. Mr. Gallerano mentioned that they did agree to address Paul's comments. Mr. Wiener agreed saying a great majority of them to their credit.

Mr. Sauchelli mentioned it sounds like the sense of the Board would be to entertain a motion to carry this to the next meeting and have the applicant provide an updated plan. Mr. Sterbenz asked Mr. Dunn if he would be able to revise his plans and submit those plans by the 27th of June to the township. What is significant about that date is it is 10 days before July 7th. Because if not, if he cannot get the plans in, then they are going into August and it would be getting very close to the 120 days from April 7th. It was determined July 7th and August 4th are the next two meetings and August 4th would fall within the 120 days. Mr. Sauchelli asked what the point was and Mr. Sterbenz mentioned that if it exceeded 120 days they would have to get an extension from the attorney tonight and he wanted to make sure the Board was protected. Mr. Wiener mentioned, or they don't get an extension and then a denial. Mr. Sydlar said "right, that's what's gonna..., there is not extension. There are no amendments to the plans. That mostly, the things we have

agreed to are just changing some writing, writing the word COAH on the plans, that's like a lot of them, but there's not that much, yes there are a lot of numbers, but substantively there is not that much." Mr. Wiener than asked if it was the applicant's position to vote tonight up or down. Mr. Sydlar said yes and said the Board has had the opportunity and if it is conditioned on it and then there is a final approval vote then the Board has the chance to say whether it was complied with. Adding an additional step and the possibility of having to go to an August meeting puts this case almost two years in. Mr. Heredia said they could do July. Mr. Sauchelli asked Mr. Sterbenz that he asked if the updated plans could be supplied by what date, to which Mr. Sterbenz replied June 27th, ten days before the meeting, ten days from now. Mr. Wiener then clarified with Mr. Sydlar that even if they could get the plans in by June 27th, Mr. Sydlar wanted a vote tonight. Mr. Sydlar responded correct. Mr. Heredia said he is ready to vote. Mr. Wiener said he just wanted to be clear on that and he did not want to put words in anybody's mouth. Mr. Heredia responded that what Mr. Sydlar is saying is he won't do anything based on their discussion that is it, right? That what we see is what we see and that is it, nothing more and nothing less. Mr. Sydlar responded correct. Mr. Heredia responded he was ready to vote. Mr. Wiener asked if Mr. Sydlar wanted to sum up at all. Mr. Sydlar responded his sum is if it is voted no, they would without question appeal it.

Mr. Sauchelli asked Mr. Wiener given the aesthetic questions given this evening, in his experience what can be conditioned into a resolution regarding that. Mr. Wiener replied the Board could put in a condition to the resolution that the applicant supply a color palette for the municipal planner to review for consistency. Mr. Sauchelli asked, but wouldn't the applicant first have to agree to paint the building to which Mr. Wiener said no, you could put the condition in. Mr. Sauchelli questioned that they have to paint the building? Mr. Wiener replied no that they have to supply a color palette. But a color palette just gives us a palette with color it does not actually say they are going to paint the building. Mr. Wiener said he understand the draw backs to that and he agrees with it, but the question that was posed can we put anything in it. The comment was said that it does not really have any substance or do anything. Mr. Heredia said he thought that they were all in agreement that they wanted a revised plan and more architectural testimony and based on that he was ready to make a motion. A comment was made by one of the Board members that the applicant said he is not going to provide that, that he wants a vote, so we need to vote. Mr. Heredia asked the vice chairman if he can make a motion. Mr. Wiener said I don't know if there is any more discussion.

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Mr. Sauchelli open it to the Public and no one raised their hands and it was closed to the public.

Mr. Heredia made a motion to deny the site plan due to the applicant's failure to provide additional information and a revised site plan as was asked by the Board. Mr. Gallerano seconded it. The motion was approved by a voice vote.

Mr. Sauchelli wanted to make sure everyone understood the vote as they are casting an affirmative for denial. If you vote yes to the resolution you are denying the application. If you are voting no to the resolution you are not approving it, you are just not agreeing with the denial. Mr. Wiener clarified there would have to be a second motion made to approve it. The only way it wins is by a vote to approve. Mr. Sauchelli clarified that if you vote yes, you are voting to deny. If you vote no.... you disagree with the denial Mr. Heredia added. Mr. Sauchelli responded that is a double negative which he was trying to avoid. Ms. Goldstein asked for clarification of what does it mean if you vote no? Mr. Wiener said that it means there might be a follow up motion if there is no motion then it dies. Mr. Wiener recommended a follow up motion should Mr. Heredia's motion fail.

Mr. Wiener said, "Now we have to make sure everyone votes and since it is the only night the Board heard testimony everyone is eligible to vote". It also saves the continuation added Mr. Alpaugh. He also said that Mr. Wiener might want to comment on this, that he noted in the minutes before when there was a denial, it is an appropriate place to make some comment if you wish on why you are denying. Mr. Wiener said, "It is critical and he wanted to remind the Board the law is a little different. Most of the time when you have a site plan and you follow that check list and do everything in that site plan ordinance, you have to be approved. Well, the applicant has not done everything in this, so, but even if he had, because it is part of a D Variance,

he still has to meet criteria you don't have to meet with a regular site plan. It is an enhanced burden of proof. Although he still gets a simple majority vote. One of things that I think in considering this is the fact that aesthetics were an important element and you have to decide if asking for a color palette, how onerous is that on the applicant. Tonight for whatever reason is the first night that we have had notice for a meeting and could proceed. There were other meetings for whatever reason didn't happen, so the record should be clear on that. So those are things you need to have to decide when you vote on this. So if you deny, somebody wants to take us to court, somebody takes us to court. I don't want that to be your reason to either grant or deny, or else otherwise everybody who comes in here." Mr. Heredia added it should not be their reason to grant or deny, right, to which Mr. Wiener said no. He added, "You should always be aware and that is why it is very important, and you will get to go to a certification course on this, it is very important that you follow the law. It is not whether you like an applicant or dislike an applicant or even if it you quote, unquote like something, just follow the law. The applicant is supposed to give you information, the applicant agreed too many things. There is always a case where there is one side of a line and another side of a line, there is always a dividing point. You asked the applicant and I asked the applicant and he was very frank and candid that he wanted a vote and if you think he made his case you can vote to approve it and if you didn't think he made his case or that you do not have enough information to decide this then maybe it is appropriate to deny this." Mr. Alpaugh asked if they should do a roll. Mr. Heredia added that he felt based on what Mr. Wiener just said that it is the first time since he has been on and off the Board since 1999 that an applicant denied refused everything that was asked. Mr. Sauchelli asked that since it is a combined use for it now, appeal is to Council or Court? Mr. Wiener responded Court. Mr. Heredia asked Morristown, right? Mr. Wiener responded yes. He added, "Now let me just read this to you so it is clear in the record, on a bifurcated application, the statute specifically provides the applicant is subject to the additional obligation of showing the proposed site plan, or subdivision approval can be granted without detriment to the public good or impairment and intent of the purpose of the zone plan in zoning ordinance, this is not a requirement for the approval of site plans or subdivisions. That's what is special when you bifurcate an application. The applicant was relieved in the first part, but making formal site plan approval, the burdens of doing that, straight to a D variance, granted, now we do a site plan. And that's where we are. The applicant has to demonstrate in terms of the negative criteria. In a normal site plan it is not. Once you get a use variance, that is no longer a non-conforming use, it is a big step up. Difference when you are granted a use variance, if Godzilla destroys your place and it is a nonconforming use, you are out of luck and I guess you can sue the Japanese government for not killing him the first time. On the other hand, if you have a use variance, you have the right to rebuild, you have an absolute right to rebuild." Mr. Heredia asked so their protection under preexisting nonconforming went away by the granting of the variance in the first half of the application. Mr. Wiener said right. Mr. Sydlar said not a bifurcated. Mr. Wiener said, "He did not want to confuse anyone, he wanted to point out that without an approved site plan, the applicant has lost the first phase of this. He just wanted the Board to understand that the benefits that you get when you get a Use Variance and an approved site plan. That you don't get simply by saying my three family house has been here forever when George Washington roamed these parts therefore I have a non-forming use, you can do whatever you want with the zoning ordinance."

Mr. Rautenberg had two questions. He asked if the applicant said they were willing to paint the building. The Board agreed yes. He then asked Mr. Sterbenz if he had a preference either way on seeing a new plan or could he live with what he has. Mr. Sterbenz clarified the issue is when will the Board get that plan is really what he was saying before as it is really a policy call of the Board and the Board has really already spoken, that they would rather see the plan now because they feel there are too many details out there that are unresolved and the Board would rather get them resolved now before they take a vote.

Roll call was taken.

Mr. Alpaugh – "I am voting in the affirmative with Mr. Heredia to deny this application for the following reasons. I do think the applicant has, as stated prior in my commentaries on due diligence, to try to do his best on this site and has worked very hard to come up with a good solution. Unfortunately, without getting additional information and seeing it on a plan where I can truly see it all put together, I do not feel comfortable approving the application. I also have significant concerns in reference to the traffic pattern, and

especially the adjoining property, and the easement and that was discussed, and not that they are not trying to do their best, it does not mean that it is a solution we can definitely live with. The final thing is without that submission, without having a lighting study where I can see the lighting levels and I can look at the lighting levels and the fixtures that would be on the building and how they relate to the site, to the building, and to the aesthetics, I couldn't find myself approving this."

Ms. Del Rio - "I vote no. My rationale is that while I understand the aesthetics of the building are extremely important I think there has been a phenomenal amount of improvement on the site with the landscaping, and the greenery added, and the black top being repaved, and the lines being redrawn that, that warrants a lot of effort on the part of the applicant."

Mr. Gallerano - "I am going to vote yes to deny. Two reasons that Mr. Alpaugh stated. I don't feel I have enough information in front of me to make an informed decision. There are a lot of comments in Mr. Sterbenz's letter even though they have agreed to address those comments, we don't have it in front of us. I think I would have been able to make a better decision with those revised plans in front of me. So, for that reason again I am going to vote to deny. I also don't feel they have met the burden of proof on the relief that they have requested, I don't think adequate legal proof will come into play as far as positive negative criteria, also, for that reason I am not in favor of the application."

Ms. Goldstein - "I am going to vote yes to deny. I think there is just still a lot of unanswered questions that I would like to see pulled together before making a final decision because it is a complex situation. I am impressed with the overall design improvements, certainly, but it concerns me that we fall short of the further questions, issues, concerns, whatever we want to say architecturally."

Mr. Gorman - "I am also voting yes to deny. I would like to see as Mr. Alpaugh has also stated, the updated plans. There are a lot of changes and suggestions Mr. Sterbenz had in his report. It would just be easier if we could actually see them on the paper. Also, the fact that the lighting levels aren't necessarily where they should be for someone parking in the back parking spots, they might be walking in the dark to get to the doors. There is just not quite enough information yet in front of us to make a better decision."

Mr. Heredia - "I vote to deny based upon a few factors. I also do not feel comfortable without seeing a revised site plan based on everything that was discussed this evening. There was just too much that was addressed. The applicant's planner was not point specific in regards to the lighting plan and lack of showing that on the drawings. I also am very uncomfortable not having any architectural testimony, that is the first time that I have been on this Board in all the years that I have been on it that it has not been provided. I think aesthetics as far as the Master Plan that the Governing Body is currently trying to do in our commercial zone that the aesthetics and a testimony on that matter are very important. Like Mr. Gallerano, there is so much out there I don't think I also have enough legal proofs put in front of me based on testimony to vote up or down on this. Given the overall history of the application I would absolutely need to see something before me finalized before I vote to find it creditable."

Mr. Sauchelli - "I am also going to vote to deny for most of the reasons already stated. I would have liked to have seen a revised plan just to pull it all together. I think we were light on the legal proofs as Mr. Gallerano stated."

Mr. Wiener announced 6-1.

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None at this time.

16-2014-06-16

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – June 16, 2014

ADJOURNMENT

There being no further business, a motion was made by Ms. Goldstein and seconded by Mr. Alpaugh to adjourn the meeting at 10:40 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan
Mine Hill Deputy Clerk

Approved on this _____ day of _____, 20____

Planning Board Chairman