

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – July 7, 2014

1-2014-07-07

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

APPROVAL OF MINUTES

The April 7, 2014 and June 16, 2014 minutes were tabled until the next meeting on August 4, 2014

The June 16, 2014 minutes were distributed prior to the meeting as courtesy to give the Board time to review before next meeting.

CORRESPONDENCE

None

CONSIDERATION AND APPROVAL OF VOUCHERS

A motion was made by Mr. Heredia and seconded by Mr. Gorman 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: Ms. DelRio; Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia;
Mr. Sauchelli
Nays: none
Absent: Mr. Alpaugh
Abstentions: Mr. Morris; Mr. Willis; Mr. Frank

- a. Milelli Escrow 711286
\$175.00 to Larry Wiener (June Meeting Invoice)
\$562.50 to Larry Wiener (July 1 Invoice)
- b. Planning Board Budget
\$25.00 to Larry Wiener (June Meeting Invoice)

RESOLUTIONS & MOTIONS

- a. Resolution Memorializing Salvatore Milelli Denial

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

Mr. Sauchelli stated that the Board has a draft of the memorialization of their resolution from last meeting which was a denial of the Milelli application. He restated that based on how this is a bifurcated application, by turning down the site plan, the Board also turns down the D variance. Any further action on this they have

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to start over. Mr. Wiener said that is the legal position. Mr. Sauchelli asked if anyone had any comments, questions, or updates to the resolution.

Mr. Heredia questioned that it said the applicant provided an architectural plan, he thought the applicant did not provide one, the Board asked for one and he refused to provide it. Mr. Wiener said the Board asked for a colorized rendering so they could actually see what it looks like. Mr. Heredia asked Mr. Wiener to clarify something he said at an earlier time that in these types of applications, given the circumstances, the Board had to treat this as if the applicant had built nothing, as if he was just coming before the Board saying this is what he would like to do. Mr. Wiener answered, “Essentially yes.” Mr. Heredia added that in his experience on the Board over the years, not that the Board has had that many of this similar nature come to the Board, generally when they want to do any type of change or construction to an existing structure, the Board usually gets some type of a site plan, not detailed but at least proposing what they are going to do, like in this case they would put up some type of a chart showing the apartments and where certain things are going to be like closets or bathrooms, or whatever and none of this was done in this case, is that not part of an architectural plan? Mr. Sauchelli commented that that was part of the original application, the Board got the floor plan. Mr. Wiener stated that what the Board was missing were a couple of specific things that they just refused to provide. Mr. Wiener said that what he would think and obviously the Board voting to deny the application was that without those things it was impossible to make a fair assessment of the application. Why the applicant chose not to do so he did not understand himself, but it wasn’t certainly something that was just a visceral reaction, they thought about and had an opportunity a couple of times to think about it. Mr. Sauchelli asked Mr. Heredia if based on his question was he proposing an amendment to the resolution. Mr. Heredia said no, he had a general question for Mr. Wiener in case he needed to be corrected. He was unsure. Mr. Sauchelli said he did not know if it played into anything he wanted to see change. Mr. Sterbenz said there was an architectural plan when the Use Variance was being looked at. There were conditions actually used from the Use Variance Resolution to update the architectural plan which the applicant’s architect did as part of the site plan solution. But the Board was requesting something more than what was submitted to the Board, in particular a rendering to see what the building was going to look like from the outside. That is what the applicant refused to provide to the Board at the last hearing. Mr. Heredia added, it was that in addition to updating the plan they put up there with all of changes that we had discussed and agreed to. Mr. Sterbenz said that yes the updates that were made as a result of the Use Variance approval had to do mostly with the floor plan and the size of the units to clarify how many units there were going to be. There was really nothing having to do with the exterior. Mr. Heredia said okay and based on Mr. Wiener’s opinion the Board really does not need a change.

Mr. Sauchelli asked if anyone else had any questions. Mr. Sterbenz said he had one minor addition to the resolution. Mr. Wiener did a fine job with the resolution. On page 6, reason number 6, it is at the end of the next to last sentence, it says “from the Board’s Engineer”. Mr. Sterbenz wanted to add “prior to the application being acted upon by the Board.” The applicant refused to agree to revise the site plan before the Board would vote. He said take a vote, I am not doing it. Mr. Sterbenz wanted to make sure that the record is fair. It was agreed that that needed to be delineated. Mr. Sauchelli added that Mr. Wiener crafted it so well, but the word palate has two t’s.

Otherwise there being no other comments Mr. Sauchelli asked to obtain a motion to have the resolution memorialized, accepted as written with the couple of exceptions, changes.

The motion was made by Mr. Gallerano and seconded by Mr. Heredia to have the resolution memorialized, accepted as written with the couple of exceptions, changes. It was clarified that only the people who actually voted in the affirmative to deny the site plan at the June 16, 2014 meeting were allowed to vote on the memorialization.

Ayes: Mr. Gallerano; Mr. Gorman; Mr. Heredia; Mr. Sauchelli;
Nays: none
Absent: Mr. Alpaugh
Abstentions: none

WHEREAS, Salvatore P. Milelli has applied to the Planning Board, Township of Mine Hill for site plan approval pursuant to a bifurcated “D” variance previously granted by the Planning Board for premises located at 173 Route 46 and known as Block 1302, Lot 6 on the Tax Map of the Township of Mine Hill which premises are in a “C” Zone;

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. John M. Sydlar, Esquire represented the applicant.
2. The applicant is the owner of the subject premises.
3. The applicant elected to file a bifurcated application pursuant to NJSA 40:55D-76b.
4. The applicant received use variance approval which was memorialized in a resolution adopted September 9, 2013. A copy of that resolution is attached hereto.
5. Said resolution contained 13 separate conditions. One of those conditions was for the applicant to file its application for site plan approval within 60 days of September 9, 2013. The site plan application came in late. The applicant cited changes in its engineering company. The Board granted extensions and ultimately, the application was filed and later deemed complete in April 2014. Pursuant to the Municipal Land Use Law, the Board then had 120 days after submission of a complete site plan to either grant or deny approval. In addition, a review of the site plan submission revealed the need for a further variance for parking buffer to a residential zone.
6. The Board received a completeness and technical report from Paul Sterbenz, the Board’s Planning Engineer, dated 2/25/14 & 4/2/14 respectively.
7. Applicant submitted a Site Plan prepared by Dykstra Associates, Douwe Dykstra, PE, dated 2/7/14 consisting of four (4) sheets and an architectural drawing prepared by Gates Architectural Design, Inc., Joseph Gates, architect, dated 11/26/12 revised through 2/18/14 consisting of one (1) sheet.
8. There was one public hearing on the within application. Same was conducted on June 16, 2014. The applicant’s only witness was Jason Dunn. Mr. Dunn was affiliated with the Dykstra Associates firm that prepared the site plan. Mr. Dunn was qualified as a Professional Planner. He presented the following exhibits:
 - a. A-1 – a colorized rendering of Sheet 3 of 4
 - b. A-2 through A-7 – photographs of various aspects of the site
 - c. A-8 – colorized rendering of the lighting plan of the application
9. Mr. Dunn reviewed the salient features of the site plan, the proposed circulation and the issues confronted with developing the property. He noted there was a net parking shortage of approximately five (5) spaces depending upon how same were calculated. He noted the site had previously functioned with a theoretically greater parking deficit without any significant issues. He also demonstrated a “Plan B” in the event the dual entry driveway on Route 46 could not longer be utilized (this driveway was actually shared by the subject premises and the adjacent unimproved premises – Lot 5 west of the site).
10. As noted, the Board’s Planner and Engineer had submitted two reports relative to the application. The April 2, 2014 report was reviewed by the applicant’s Planner. The applicant agreed to almost all of the requests made by the Planner. There were certain other conditions that would ultimately be subject to (assuming a favorable resolution) the review and approval by the Board’s Planner and Engineer (lighting fixtures and details, confirmation of foot candle calculations, site lighting, etc. all of which are set forth on the record).
11. The applicant rested its case after the testimony of Mr. Dunn. Board members indicated the applicant did not call any other witnesses. The Board members noted an architectural plan had been presented – the Board members indicated that they would have liked to have seen a colored rendering and/or color palette of the proposed exterior treatment of the building. They opined same was a critical element in assessing the total impact from an aesthetic viewpoint of the property. Board members were not seeking anything other than ensuring that the design of the building will be compatible with the neighborhood and the goal of the Township to improve the

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aesthetics along the Route 46 corridor. This site, in particular, is one of the more visible structures on Route 46 which is the Township's most heavily traveled road.

12. The applicant's attorney indicated that the applicant was unwilling to provide anything further and insisted the Board take a vote on the evening in question. The applicant's counsel also stated that, in any event, the applicant was not willing to make any changes to the building should the Board have desired them.

WHEREAS, the Board has determined that the relief requested by the applicant **cannot** be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Mine Hill for the following reasons:

1. As noted in Cox & Koenig, New Jersey Zoning and Land Use Administration, Gann 2014, Chapter 14-3 "*on a bifurcated application, the statute specifically provides the applicant is subject to the additional obligation of showing the proposed site plan or subdivision plat approval can be granted without detriment to the public good or impairment of the intent and purpose of the zone plan and zoning ordinance*". This is a higher obligation than on a mere site plan. The Board finds the failure to provide competent testimony regarding the aesthetics of the building to be a key design element necessary for the Board to make an intelligent and informed decision as to whether or not the applicant had adequately addressed aesthetic concerns associated with the subject premises.
2. The applicant also was not amenable to revising the site plan to incorporate the comments from the Township Engineer's April 2nd review letter prior to the application being acted upon by the Board.
3. As with any application, the burden of proof rests with the applicant.
4. The Board's request for this information was clearly neither an onerous nor punitive condition to impose on the applicant.
5. It should also be further noted that there were numerous delays associated with the applicant finally getting a complete site plan in front of the Board. Those delays were not attributed to any actions by the Board.
6. Had the applicant presented testimony from the architect, at the public hearing, same certainly would have been helpful to the Board. The need for architectural detail was critical to the Board's evaluation of the application. The applicant also refused to revise the site plan to incorporate comments from the Board's Engineer prior to the application being acted upon by the Board. This would have been required as part of the final approval.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Mine Hill on the 7th day of July 2014 that the applicant, having failed to obtain site plan approval pursuant to the bifurcated approval set forth in NJSA 40:55D-76b is now null and void and the application is denied in its entirety.

It was noted that Mr. Sauchelli then returned the chair back over to Mr. Franks.

OLD & NEW BUSINESS

- a. Discussion of Re-Introduced Sign Ordinance

Mr. Frank stated that there were some additions, corrections. Mr. Morris mentioned that there were not any changes from the time it left the Board. Mr. Sterbenz mentioned there was one change and he wrote the clerk on the 17th of June after the last meeting and that change was made, and is part of the draft he had with him. Next to last page of the ordinance, under Signs and Non Residential Zoning Districts. Number 2, before it said one free standing sign, per lot not to exceed the following standards. What was added was the "in the economic development and commercial districts only." Mr. Morris mentioned it was a change that came out of the Board. Mr. Sterbenz said yes from the May meeting. Mr. Frank said that was it. Mr. Morris added it went to Council at their last meeting and no other changes were made that night. Mr. Heredia questioned that there were a couple of changes and a couple were non-substantive and a couple were substantive and it was the substantive changes, that if the Council chose, they would have to reintroduce. Mr. Franks clarified that it was two meetings ago, but at the last meeting it was just one small change. Mr. Morris clarified the E, D and

C Districts. Mr. Heredia asked if it was the ones that prompted the reintroduction, the substantive changes, that were incorporated and reintroduced. Mr. Sterbenz said yes. Mr. Heredia asked if this was one minor

Ms. Goldstein arrived at this time.

change that you still had to have reworded. Mr. Sterbenz said yes and the Council decided to re-introduce it a second time so that is why it was back again tonight. Mr. Morris added they reintroduced it with the Boards changes. As it left the last Planning Board meeting, it is now, the Council has not changed anything. It was just the verbiage on 25-10.2019, that was it, correct? Mr. Sterbenz said correct. Mr. Heredia, asked if the Council only introduced it once? Mr. Morris clarified that the Board made changes last meeting, they were incorporated and then it went to the Council and they reintroduced that version. Mr. Heredia said what was confusing him was that Mr. Sterbenz was talking about one minor change, but there were a couple of changes as he remembered. Mr. Franks and Mr. Morris mentioned that that was two meetings ago during the first introduction. Mr. Sterbenz clarified that there was a second change that he talked about at the last meeting, but upon further review when he was writing an email to Ms. Macchia, he realized everything was ok because of the way the ordinance was written by Mr. Oostdyk. It had to do with the definitions in the ordinance, so it turned out that the second comment was not applicable. Mr. Sterbenz read his June 17th email to Ms. Macchia. “It was thought that there was a need for a second change to the ordinance last night. It appeared that the new definition for a free standing sign conflicted with the definition that is in the current ordinance. Definition of a free standing sign is subsumed within the overall sign definition in the current ordinance. Upon further review I do not think this change is needed as Section 2 of the new ordinance proposes a replacement of the current definition of sign with a new definition in Ordinance 15-14, thus a new ordinance does not create a conflict.”

A motion was made by Mr. Frank and seconded by Mr. Gorman to send Ordinance 15-14 back to the Council for the final approval. A roll call vote was taken with the following results.

Ayes: Ms. DelRio; Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris;
Mr. Sauchelli; Mr. Willis; Mr. Frank

Nays: none

Absent: Mr. Alpaugh

Abstentions: none

COMPLETENESS REVIEWS

None

PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

Application 001-14 Steven Rose

Mr. Frank announced the Public Hearing that the Board had previously deemed complete the Application number 001-14 for Mr. Rose, for a garage building he wants to build. Mr. Wiener stated it is actually a continuation of a prior public hearing and at the end of the hearing, the applicant, after listening to the Board opted to adjourn the application for a future meeting, as it turns out this evening, for the purpose of providing some amended plans which the Board has.

Mr. Wiener asked Mr. Rose to please identify himself for the record which he did, and Mr. Wiener reminded Mr. Rose that he was sworn in at the prior meeting and that he understands he is still under oath. Mr. Rose agreed.

Mr. Frank mentioned to Mr. Rose that he was there last time and per discussion he was taking the opportunity to go back and change his design some and if he would give the Board a description of the changes he made from what he had before and what he has now.

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Mr. Rose said that there were two main comments the Board made the last hearing that they did not like, the three garage doors and the size of the garage. He changed the three garage doors to two. Also, he somewhat reduced the size of the garage. It used to be 32ft wide, it is down to 27ft now. The depth has remained 26ft. Mr. Sterbenz noted that it used to be 29ft in the last plan and in his opinion it was reduced. Mr. Sterbenz commented it was 32' x 29' originally and he now it is 27' x 26' now. Mr. Rose responded the 29 probably includes the overhang, so that would remain the same. He asked if Mr. Sterbenz was looking at the site plan drawings or the building elevation drawings. Mr. Frank mentioned they were talking more the footprint on the ground. Mr. Rose responded the footprint on the ground is still 29ft deep, so it is a 2ft front overhang, 1ft back overhang and a 26ft floor area. Mr. Wiener asked for clarification, when you say footprint on the ground, pretend there is no overhang, it is 26ft? Mr. Rose agreed, 26ft. Mr. Wiener said you add in the overhangs which are the roof feeds, correct, that is how you get the 29'. Mr. Rose agreed. Mr. Wiener said that is the prior iteration and this version, the only thing that changed is the other dimension. Mr. Rose said correct, it was the width. Mr. Wiener stated for the record, Mr. Rose submitted a set that the Board has with a June 26, 2014 date on them, which Mr. Rose agreed are the latest drawings. The drawings of June 26, 2014 are **A3 in evidence**.

Mr. Heredia mentioned he asked a question at the last meeting that the original design of the garage was going to be larger than Mr. Rose's house. He asked if it was now smaller. Mr. Rose said the house is 30' x 24' plus or minus. Mr. Heredia said that depth wise the garage is a little larger but width wise it is smaller so thus it would give an appearance to someone standing in the street looking at your property, the garage will actually appear smaller than the house therefore being more proportionate to the aesthetic of the neighborhood.

Mr. Morris asked about the height change. Mr. Rose said the height was 20ft tall and now it is down to 19ft tall. He also mentioned there was some concern with the roof pitch. The roof pitch was 9/12 and he reduced the pitch to 7/12. He also provided a little sketch of the different roof pitches that he looked at and the reason why he looked at the varying pitches. He is trying to keep a certain area size inside where you could provide a lift, vehicle on a lift and still get reasonable height. So, if he kept that box size in the dimensions and then the roof pitch, keeping the depth as it was, to see how low he could get the roof and pretty much 19ft with a 7/12 pitch seems to be the most reasonable approach. Mr. Wiener said that before it was 20 and asked what was the prior pitch? Mr. Rose responded 9/12. Mr. Heredia asked which drawing was he going with, the third one in. Mr. Rose agreed. He said 18/11 so he kind of just rounded it up to 19.

Mr. Sauchelli mentioned that one of the concerns that was mentioned in the first hearing was the height of the garage as compared to the height of the home. Mr. Rose said he does not really have a good measure on the height of the house as there is really no good way to measure it, but he believed the roof pitch on the house is closer to the 9/12. Given the height of the ease, he is guessing it is about the same height, but they are just guesses.

Mr. Morris asked how big were the doors before? Mr. Rose answered 8ft wide and now they are 11ft wide. Mr. Morris wanted to clarify something that Mr. Sauchelli said. Mr. Morris thinks he was the one, that put it in the record about what Mr. Rose said were concerns about the pitch 9/12, 7/12 and concern about the number of doors. Mr. Morris commented that it was $\frac{3}{4}$ accurate. He really did not have concerns about those, he was concerned about the overall height and width. Mr. Heredia commented that he feels the two larger doors give a much more pleasant aesthetic appearance in relation to the house than the three doors, so he thinks it is much better.

Mr. Morris asked if it still had the same set back on the side, the 11ft which is the shortest. Mr. Rose said the 11ft is to the edge of the driveway, the 15ft is to the edge of the overhang, corner of the house. Mr. Morris asked what the corner was before. Mr. Rose said 15ft. He explained everything was moved slightly forward because he shrunk it down to try to reduce the amount of ground coverage with driveway and what not. He tried to shift everything as far forward as he could with still keeping... Mr. Morris asked Mr. Wiener what the required setback is. There was a setback issue with the corner of the garage or the driveway. Mr.

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Sterbenz said there are two standards. “On private garages no detached garage shall be erected unless all of the following conditions are observed, it should be no closer in distance to any side or rear property line than 25 ft.” There is another standard in the ordinance that has to do with the single family district. “No accessory structure shall be located in the front yard or within 10ft of any side or rear lot line.” It meets that standard but as a detached garage it needs to be 25ft. So that is one variance that has not changed. Mr. Heredia wanted to be clear that the reason they determined that is because as an accessory structure is because it is not deemed the first garage because his existing garage is separated by a breezeway which does not count as being part of the main structure. Therefore it is an accessory. Mr. Wiener said that this is clearly a detached garage. Mr. Heredia remembered some discussion about whether it is considered a second accessory structure. Mr. Morris commented the breezeway negates that. Mr. Wiener said if the breezeway is connected it connects it to the principal structure. Mr. Heredia said it is in this case.

Mr. Frank mentioned he cannot move further in his lawn as he will be in his septic field. Mr. Morris asked if the septic was number 1 denoted in the picture to which Mr. Rose answered yes. Mr. Frank said there are enough problems with them down in the Flats as it is. Mr. Morris said that line couldn't have moved over but it could have shrunk into that direction. It is like grabbing a text box in word, you can shrink it or move it any direction you want. It could have gone in that direction or the other. Mr. Frank asked Mr. Rose if when he shrunk it down, did you kick the garage forward? Mr. Rose answered yes.

Mr. Rose also added that there is some concern with DEP with impervious surfaces. He figured the more he could reduce that the better off. Mr. Morris asked if we know what the DEP requirements are with the wetlands etc. Mr. Sterbenz mentioned that the whole property is located within a riparian buffer. There is a 300 foot riparian buffer from the adjacent stream. There are allowances for doing work in a riparian buffer and it depends upon what you are doing. With respect to building additions, you are allowed up to 2,000 square feet of impervious coverage in a riparian zone. Mr. Rose, by tweeking his plan has gotten his new impervious coverage below 2,000 square feet. On his plot plan it says 1,965 square feet. If the Board does decide to approve this, the Board is going to condition it on him getting a Flood Hazard Area approval from the State. He is going to have to reduce that. Mr. Heredia asked why does he need to reduce it, he thought that by reducing the plan he is now within the 2,000. Mr. Sterbenz clarified that it is not a permit by rule, he needs to go the DEP to get an approval. Mr. Heredia stated that before when he was over 2, 000 he probably wouldn't because the condition is 2,000. Mr. Sterbenz said he did not think the State would have given him the approval, but the fact that he reduced it down puts him in a lot better position to get that approval.

Mr. Morris asked about an applicant who was in last summer and there were some requirements to get some State approvals. His understanding was that those requirements were not allowed to be put into his memorialization because the Board cannot make them do that. The person had a DOT issue, they had an ingress/egress problem. Mr. Morris asked for clarification. Mr. Wiener explained that he thought you can always condition a resolution on approval from a third party governmental entity, one of the ones he always uses is “subject to approval of all other governmental entities and or subdivisions thereof, and/or concurrent jurisdiction”, which in this case is the NJDEP. Mr. Morris stated that his understanding of the other application is it wasn't that they could not deny it, but that the Board could not put in that they could not do anything because of the DOT. It was in their memorialization that they have to get approvals from the DOT, but they could start their site plans whether they got that or not. Mr. Wiener said that was not his understanding, but that each case could be different. Because sometimes if you go ahead and what happens if they do not get the approval and now the site plan no longer works. Mr. Morris stated that he understands and that if this were to get approved, Mr. Rose would have to get DEP... Mr. Gallerano added that typically your building official would not issue a building permit if you did not have all of the other approvals. Mr. Morris stated that the Board is trying to make sure that they are following the rules. Mr. Sterbenz added that he was not suggesting that the Board had to put in there that Mr. Rose is limited to 2,000 square feet of new impervious coverage, he was suggesting the Board condition the approval on him obtaining the approval from the DEP. Mr. Wiener stated that the Board will specify what is granted here, but that doesn't mean when he goes through the other sources he doesn't wind up getting knocked down to 1,500 square feet. Mr. Morris asked would that then trigger a change with the Board or would that just override it. Mr. Wiener said that in other words, the Boards approval would be an “x” but theirs would be attached to the back and then it would

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go to construction. Mr. Wiener mentioned that there is another clause they sometimes put in that says, “if the approval is materially changed by any other reviewing agency”, usually when you are looking at that you are concerned that it somehow became bigger more intense, not necessarily the other direction. You might be concerned about what does it look like now that it is 1,500 square feet, which is just an arbitrary figure Mr. Wiener said he just threw out.

Mr. Willis mentioned that he was looking at the plan and the way it shows the driveway coming up, it comes up to the steps by the breezeway and then the garage. Mr. Willis suggested that Mr. Rose could always take part of the existing driveway out and put in a walk to those steps to grab some impervious coverage if he were close. Mr. Frank asked if the gravel driveway was impervious. Mr. Willis said if it is a stone traveled, non-green area it is impervious. Mr. Gallerano added that the DEP rules actually say a disturbance, a gravel or pavement is a disturbance. The rules are not impervious they are disturbance. It is 2,000 feet of disturbance. It does not matter if it is gravel. Even if you went out there and dug up your grass, that is a violation. If you removed vegetation, you are in violation. Mr. Heredia asked if it was really that severe. Mr. Gallerano answered yes. Mr. Wiener mentioned that a disturbed area will be greater than just looking at the footprint of the building. You have to realize the excavation. Mr. Gallerano added permanent disturbance.

Mr. Frank asked for a brief review of what will be done in the building. Mr. Rose responded to store and work on his own vehicles. He presently has one old car, but would like to get a Model A. Mr. Frank asked if he would be doing any type of commercial work of any type on any wood or vehicles, to which Mr. Rose answered no. Mr. Heredia asked what about the wood shop he originally said would be in there. Mr. Rose said that would remain in the basement. Mr. Frank asked if Mr. Rose planned to do any type of work on friend’s cars to which Mr. Rose said no.

Mr. Morris asked about the doors and how there originally were three 8 foot doors and now there are two doors that are 3 feet wider. Mr. Rose answered yes. Mr. Morris asked Mr. Rose what he thinks the house’s height is compared to the garage. Mr. Rose stated he thinks it is approximately the same, the house might be slightly taller. Mr. Willis stated he felt the house was higher after discussing the various aspects of the house, example second floor etc. Mr. Morris explained that his concern with the structure is that he thinks it is still too big. From an enforcement side, which is his primary job in the town, the Council passes a law and he is the one that has to enforce it. It is the bulk of it that bothers him because when the next applicant comes in with a smaller lot or things like that, it is all about setting precedent. It could lead to problems as others could say he got it why can’t I. In the past things have not been enforced in Mine Hill. Mr. Wiener commented that in his profession they always talk about precedent. We are supposedly trained to find cases that are right on point. The job of the other attorney is to distinguish that precedent. As a general rule, each case is decided on its own merits. Obviously if someone were to come in and say I pretty much have what Mr. Rose has, pretty much the same situation. There may be one element of proof they have. On the other hand he has seen many cases where it is not the same. That is where you need to make the determination. Mr. Wiener said his first impression was, well he shrunk it in one part, and the doors got wider. Ultimately that is the Board’s call, collectively. You are always afraid of setting a precedent and on the other hand if it is a good application and it is a positive benefit, if the applicant has demonstrated there is something there is something unique and peculiar about his situation and where the location of some infrastructure is and he already has the sword of Trenton over his entire property. Then you have to take a look at what the negative impact may be. One of those elements might be opening Pandora’s box, when in fact the way this particular lot is, and where this is located, and the lack of perhaps, and we have not heard from the public yet tonight, the lack may be that a whole bunch of people may find this offensive, may be something to consider.

Mr. Heredia said he saw the Mayor’s point and how enforcement in the 12 years before Mr. Morris got in, was next to zero. He also mentioned how at a Board of Ed meeting the Mayor brought up that people talk and word will get around that Mine Hill does not enforce things, so people will start to move here and try to get away with violating the law with things like stacking etc. He continued, “I know that Mr. Rose is an engineer so I don’t think that he will be going into a car repair business, but what happens when he sells his property.

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Also with the woodshop in the basement, what is the need for such a structure, could he deal with something less in order to prevent a future problem?" Mr. Rose said he has looked at it pretty hard and he feels what he proposes is as small as he can go. Mr. Heredia asked him to be a little more specific. Mr. Rose stated that with the three garage doors before, you could put two cars in and the wood shop in one and then in winter time with the bad weather if you moved things around you could fit the third car in there. With the wood shop in the basement, if possible he would still like to fit the third car in there. Anything smaller he feels he would not allow him to be able to put the three cars in and he would have to seriously think about not building anything at all.

Mr. Willis stated that in his opinion, looking at the frontage of the property on the road and it is 55.5ft which is pretty small, pretty tight and it has nothing to do with the garage and the way the garage is laid out and there is the 24-25ft from the garage to the house where it gives you access to the backyard in the event you have to put a septic in. He stated it is laid out pretty good and smartly and allows for emergency vehicles to get back there rather than try and sneak around the side of the house and being on the neighbor's property. Also he noted that it is passive Open Space behind him.

Mr. Sauchell clarified that since the wood shop is not included, the principle use is to store and repair cars and being able to slip in a third car would be a nice to have. He referenced the Mayor's opinion that it is too big. He mentioned that Mr. Rose has 27ft x 26ft. If the maximum area is 625 square feet, that is 25ft x 25ft. Which is not a huge shrink from what you have if you take away the nice to have option of being able to put the third car in. The floor area maximum, looking through zoning of an accessory building size is 625 square feet, which a 25ft x 25ft would fulfill that aspect. Mr. Heredia mentioned it would allow for two oversized cars versus barely squeezing in three. The 25ft x 25ft would meet the code for how big a building can be. Mr. Morris commented that he feels the height is too high.

Mr. Heredia asked Mr. Morris for some guidance. He asked how much he is really bothered by this that it could cause problems in the future. Mr. Morris said he is sympathetic to anyone who wants to make their property nicer. On the other hand, whatever the Board approves, the next week someone will be in for the same thing, as soon as it is built, but it will be on a postage stamp. The next guy will not be as organized or have taken the proper steps. The Board cannot do things in a box without foresight, the Town is going to pay for and deal with it. This structure at the present time is asking for the granting of three variances, which is a lot and the Town has to deal with it once it occurs. Mr. Wiener added to keep in mind that variances run with the wind. A lot of times you may get someone you are very sympathetic to and they do a great job. Tomorrow someone may come along and get offered a lot of money for their property, they take it. Someone else comes in and they might not treat the property the same. It is something to keep in mind, variances run with the wind. Mr. Heredia voiced his concern that if Mr. Rose moves, the next person may not use the structure for the same purpose. Mr. Rose asked if there are ordinances that are on the books that would keep it from happening. Mr. Heredia added there are a lot of them, but enforcing them is the problem as people may take us to court which costs the Town money.

Mr. Morris asked where the 625 square feet came from and Mr. Sterbenz said it is a Local Ordinance. Mr. Morris asked Mr. Rose if he could survive with 67 or so less square feet. He asked Mr. Rose if he could shrink it to 25ft x 25ft. The Board would grant the height. The side setback would suffice. Mr. Morris asked Mr. Rose if he could survive with the 25ft x 25ft as that would prevent the Town from having to deal with negative aftermath. Mr. Rose stated he understands that people can obviously take the Town to court for anything. He also said he spent quite a bit of time since the last meeting to try and get it down there and he really did not see being able to use it and making it worth his effort to build the garage and shrink it down in there. Mr. Morris asked if there is a single car garage on the house now, to which Mr. Rose said yes. He asked if the mustang was in there and the answer was yes. Currently, he has a van and another mustang sitting outside. Mr. Morris said he does not consider that a hardship. Mr. Morris said he would support this if Mr. Rose would agree to leave the roof where it is, but I will drop it to 25ft x 25ft.

Mr. Willis had a question about whether septic is impervious? The answer was no. He questioned what would happen if the Board made the change that once you exceed a certain footprint on your property that the

Town requires an alternate septic location in case of a failure. Mr. Wiener said that is usually with new construction. Mr. Sterbenz said the Board would need an ordinance to provide an alternate location for any construction, new or existing and that would sort of narrow down a lot of the smaller lots. This should be looked at for all applications. Mr. Wiener said you just have to consider that people can get variances for small deviations and it certainly would have a big impact on an application like this. Mr. Willis felt it would not have an impact on an application like this, but rather on one where it was 100ft x 100ft lot. Ms. Goldstein asked what the little red image is and Mr. Rose said that is a shed. She also wanted to confirm that it would not be in the best interest to move that building forward. Mr. Willis said he did not think so, plus it allows for egress to the backyard.

THE FLOOR WAS OPEN TO THE PUBLIC

Seeing no additional members of the public wishing to be heard, the floor was closed to the public.

Mr. Frank asked if Mr. Rose was going to heat the building. He said with a hot water boiler. He also said radiant heat is definitely an option since it hangs on the wall. It was also discussed that something like a small shed that would be attached to the back of the building could possibly hold the boiler.

Mr. Wiener suggested that they poll the Board to see where everyone is.

Mr. Gallerano stated that he understands where the Mayor is coming from and that if you grant the variance, you open the flood gates and the next thing you know everyone wants the same thing or something bigger. He does have a concern with the square footage. He would be more comfortable with the 625. It takes a variance off the table. You don't set the precedent. The next person comes in and like the Mayor said wants 800 square feet and you gave it to him why can't I have it and now you have a legal battle. The height I am not so concerned about. He would be more comfortable with the 625.

Mr. Rautenberg said the concern he got from listening to everything is that there is an excessive amount of variances. He is not too concerned with the precedent setting as he has not been around long enough to experience that. His thought that if he is in Mr. Rose's shoes, it is not his problem, it is the Town's. There have been a couple of people have said that in its history has not enforced ordinances properly, they have let people slide. That is not Mr. Rose's problem. Mr. Rautenberg said he would want his garage built and he would resent it if the Board said you can't do it because they are worried about what might happen in the future. Mr. Morris asked him if the number of variances concerned him to which he answered yes.

Ms. Goldstein said she would be more comfortable also if with the 625 number and the number of variances concerns her too. As far as precedent goes she thinks it is about that, throughout time the Board has not historically kept to what they need to keep to and it has its affects over time. From her experience sitting on a condo board if you set a precedent someone is always going to try and take it one step further, the more you give the more that will be the case, it is human nature. Aesthetically, she likes this rendition concept the best. When I was indicating that we digress, we are focusing too much on the nice to have unfortunately, nothing personal but too much on the nice to have versus the hardship or the need to have. I hear you, it would be ideal, but maybe this is just not place to do that kind of a structure, unfortunately.

Mr. Gorman said he is also a little concerned with the size, the 625 would be a little bit better. It looks like we went from 9ft doors to 11ft doors. It was said before 8ft doors but the drawing shows 9ft. 10ft doors for a Model A would be more than sufficient. He also said he understands where the Mayor is coming from as he knows there have been a lot of issues and things have not been enforced over time. The Mayor is doing a pretty decent job of trying to straighten the town out. The height does not really bother him. He likes the way it looks from the artist's rendition. If he could get it down to 625 that would be better.

Mr. Frank said he would like to see it get down to the 625 too. His concern is if he sells his house eventually. He will have one list, a four post lift, which will need to be fastened to the ground. If he sells the

house Mr. Frank is concerned about what might happen then. If Mr. Rose can get it down to the 625, he has no problems with it as he is ok with the setbacks etc.

Mr. Heredia said that this is a very rare time for him having sat on this Board on and off since 1999 he sees all sides. Being a car lover himself and having some antiques he has one under a cover and one in the one car garage. He sees the Mayor's concern too as he was once a Councilman in the Town so he knows full well what the Mayor is talking about if you want to enforce something and it is a violation, what it can entail and it is a very large headache. He also can see the point to the future, the 10, 20 years from now. Maybe Mayor Morris will be like Frank Druetzler from Morris Plains and he will still be sitting as Mayor 30 years from now or we could have someone who is a lot worse and the Mayor could sell out and we may have a major problem down there. He sees all the sides and he is a resident tax payer and he does feel sorry. In cases like this he lets the law guide him. It is the hardship. Where is the hardship? Mr. Rose already has one car garage with an antique car in there and you want another one to work on another antique, but based on your testimony, I just can't bring myself to see where the hardship is for me to grant a variance based on everything he has heard and based on that he would also feel more comfortable if he would stick within the 625ft that the law says you have to have.

Mr. Sauchelli asked Mr. Rose if there was a house on the garage side of his property to which he answered yes. Mr. Sauchelli asked if the building on roughly sited on that property where Mr. Rose's is. Mr. Rose answered they are on a curve, so it is kind of hard to explain. Mr. Sauchelli clarified from the neighbor's stand point, Mr. Rose's garage would be kind of behind and off to the side. Mr. Rose said they are the same distance from the street. Mr. Frank said he was down there and he is on a pretty good curve, and it's not really that visible and there is some type of tree line going down there. Mr. Rose clarified they are shrubs. Mr. Sauchelli commented that with the existing garage plus a new building Mr. Rose would have room for three vehicles. To him that would provide adequate coverage for his collectibles. The 625 square feet has served the Planning Board fairly well in the past and kept things down to a reasonable scale. He also has a problem with the height, but would feel better with the 625

Ms. Del Rio said she agrees with the 625. She has a problem with the amount of variances that would need to be granted.

Mr. Willis said he likes Mr. Rose's plan, he does not have a problem with the height at all, he really does not have a problem with the amount of variances, but he would still like to see the 625 just because it would eliminate a lot of headaches down the road for everyone, not Mr. Rose, but everyone else.

Mr. Morris said as he is listening to everyone ... Mr. Frank asked if it will help with the DEP to get it down to 625. Mr. Morris said it can't hurt him to be under the 2,000 foot threshold. Mr. Frank asked for confirmation that Mr. Rose needs to apply to DEP before he can put a shovel in the ground and get approval because of the stream and wetland issue. Mr. Frank asked what the average turnaround time is now with DEP. Mr. Sterbenz stated it is a 90 day review time when it's deemed complete. Mr. Morris commented that the house to the right of Mr. Rose had a big addition which makes the height of the garage not an issue anymore, which he rethought since they began talking. The side setback is not an issue. The 625 will open up a Pandora's box that he is not ready to go through. Mr. Morris asked him if he wants to rethink as it is an open application.

Mr. Frank asked if he would need to come back with the plans drawn for the 625. Mr. Wiener said that would be best. Mr. Wiener added if the Board was so inclined to approve it with a stipulation that he reduce the 625 feet and authorize him to draw the resolution so that between now and the meeting when the Board adopts the resolution there would be an actual plan here. Mr. Rose would have to do that to get his permit anyway. Mr. Willis added that it would be subject to approval from the DEP. Mr. Wiener stated that will always be no matter what.

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – July 7, 2014

Mr. Heredia asked Mr. Wiener if Mr. Rose gets the size down to 625 feet, how many variances would he still need. The answer was three small ones, height, side yard and second structure, which Mr. Morris stated he could accept.

Mr. Rose voiced his concern over the mention of hardship to which he never stated there was. It was explained that it is what the zoning law requires. Mr. Heredia explained that at one point Mr. Rose asked aren't there some laws, yes there are, you came to us for relief from one of them. One of the laws says there has to be a hardship and not a self-created hardship. Members of the Board commented on what a fine job Mr. Rose did on his application and drawings.

Mr. Rose stated that he looked at what could be built that was attached, which doesn't look nice. That in turn brought him down this road and looking at detached and with that comes the number of variances involved. He wants to make sure that the time and money he will be spending to get the DEP permit will be worth it. He would like to take the opportunity to think about it

Mr. Sterbenz reminded the Board that they need to act on the application by August 5th. Mr. Wiener suggested that they have an extension to September 16th. Mr. Rose agreed to that extension.

A motion was made by Mr. Frank and seconded by Mr. Heredia to grant Application 001-14, Mr. Steven Rose an extension till September 16, 2014 with adjournment until August 4, 2014 subject to his, which he has already stipulated to, an extension of time to decide this case until September 16, 2014

The roll was called:

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

The extension was approved by said votes.

OPEN TO THE PUBLIC

None at this time.

Mr. Franks asked if there was any discussion needed. Mr. Morris wanted to let the Board know about enforcement issues that the Town is dealing with. The Town has a court date with Mr. Martinelli, J&E Auto, on July 15, 2014 for operating his car lot in violation of a number of areas, violation of his Court Order from the Court of Dover, violation of any site plan. Mr. Sterbenz visited the site, as we are having problems running soil conservation. It is going to fall into Mine Hill's lap. Soil Conservation he has issues, he had piles of dirt, no silk fences. Morris County Soil supposedly came out and said all is fine. The Town is going to have him on a standard violation of operating without a site plan. He was approved last July and has not taken one step towards his site plan development.

Mr. Wiener said that without getting into specifics, one of the biggest issues you have to keep in mind is that taking people to municipal court in violation of zoning ordinances is like pushing a boulder up hill. Courts really do not know what to do with them, municipal prosecutors can't get their head around them. Mr. Morris stated the municipal prosecutors are overwhelmed so the Town is having it prosecuted by the Municipal Attorney, who will be paid by the hour as it is above our retainer.

Mr. Curry did get an attorney, Mr. George Johnson, Wharton's attorney. He got all of the discovery. He has an \$8,000 fine as he built it without a permit and has not taken it down yet. He is trying to get the Construction Board of Appeals to knock it all down.

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – July 7, 2014

13-2014-07-07

Work is going to come to the Planning Board. The State Bureau of Fire Protection has started working in Mine Hill going into businesses that are operating at severe hazards. For example; spray booths with no fire suppression, a body shop that spray paints outdoors. They will either close up and leave or come into Town Hall for variances. Matson Automotive has been sited and has an \$8,000 Fine hanging over him. There is going to be a lot of work coming into the Board. Anything having to do with a Life Hazard is not grandfathered. The question was discussed if these are fire violations why are they coming into the Board as the Board cannot grant that relief. It was explained that one business was denied even putting in a booth. They are expansion of non-conforming uses. This is what is going to trigger them coming into the Board. The danger of the fumes from the paint to the lungs was discussed.

ADJOURNMENT

There being no further business, a motion was made by Mr. Frank and seconded by Mr. Heredia to adjourn the meeting at 9:30 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan
Mine Hill Deputy Municipal Clerk

Approved on this _____ day of _____, 20____

Planning Board Chairman