

Board Chairman Steve Sauchelli called the regular meeting of the Mine Hill Township Planning Board to order at 7:00 pm and led those present in the Pledge of Allegiance.

OPEN PUBLIC MEETINGS NOTICE

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

ROLL CALL: Members Present – Mr. Frank; Mr. Gallerano; Ms. Goldstein; Mr. Gonsalves;
Mr. Gorman; Mr. Heredia; Mr. Sauchelli
Members Absent – Mr. Morris; Mr. Willis
Alternates Present - Mr. Rautenberg (Arrived at 7:05pm)
Also Present – Mr. Wiener, Board Attorney; Mr. Sterbenz, Board Engineer;
Ms. Istvan, Planning Board Administrator/Recording Clerk,
Public Present – 14

APPROVAL OF MINUTES

May 4, 2015 Minutes –

Mr. Heredia noted the following should be added to the minutes on page 2 under Public Hearings Application 003-15 Piotr Kowal, after the third paragraph which ends with "... located in the rear of his property": "Mr. Heredia inquired as to whether there would be heat and what type of floor there would be. Mr. Kowal said he would not have heat, but would have electricity and it would be on a six inch cement slab and three foot foundation."

Mr. Rautenberg arrived at this time.

A motion was made by Mr. Heredia and seconded by Mr. Gonsalves to approve the minutes of May 4, 2015 as amended. The motion was approved by a voice vote.

CORRESPONDENCE

None

CONSIDERATION AND APPROVAL OF VOUCHER

A motion was made by Mr. Heredia and seconded by Ms. Goldstein to approve the vouchers as presented provided there are sufficient funds in the escrow accounts. Seeing no further discussion, the roll was called and the vouchers were approved by the following vote:

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

- a. Escrow
 - i. \$375.00 to Larry I. Wiener for Pine Tree Nails 5/13/2015 - 711292 (PO 17745)
 - ii. \$292.50 to Maser Consulting for Dollar General 5/21/2015 - (PO 17807)
 - iii. \$195.00 to Maser Consulting P.A. for Kowal Variance 5/21/2015 – 711294 (PO 17808)
 - iv. \$292.50 to Maser Consulting P.A. for Pine Tree Nails 5/21/2015 & 6/19/2015 - 711292 (PO 17886)
 - v. \$32.50 to Maser Consulting P.A. for Kowal Variance Review 5/20/2015 – 711294 (PO 17887)

b. Planning Board

- i. \$18.92 to Daily Record for Master Plan Reexamination Report Hearing Notice – (PO 17786)
- ii. \$200.00 to Larry I. Wiener for Planning Board Meeting (PO 17746)
- iii. \$225.00 to Larry I. Wiener for Reexamination of Master Plan (PO 17747)
- iv. \$2,247.75 to Maser Consulting for Master Plan Reexamination Report (PO 17562)

RESOLUTIONS & MOTIONS**Resolution 008-15 – Resolution of Memorialization for Piotr Kowal Case No. 003-15**

A motion was made by Mr. Gorman and seconded by Mr. Frank to approve the resolution. The roll was called, and the resolution was approved by the following vote:

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

WHEREAS, Piotr Kowal has applied to the Planning Board, Township of Mine Hill for permission to construct a detached accessory structure requiring variance relief for premises located at 18 Janet Drive and known as Block 504, Lot 9 on the Tax Map of the Township of Mine Hill which premises are in a “SF” 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. The applicant is the owner and occupant of the single-family home located on-site.
2. The applicant was proposing to construct a detached garage – 20’x20’ with a “cut out” of approximately 24 square feet.
3. The applicant submitted the following exhibits:
 - a. Aerial photos showing the location of the proposed garage
 - b. Cross section of garage
 - c. Front elevation (noting garage would have a 10’ overhead door plus a 3’ “Man Door” on the front elevation
 - d. Left elevation showing 1 window
 - e. Right elevation showing 2 windows
 - f. Rear elevation – no windows
4. The applicant stated the structure would have white siding and would be compatible with his existing home.
5. The applicant received a letter of denial from Jennifer Blouse, Zoning Officer, dated 2/24/15.
6. As noted by the Zoning Officer, the applicant needed the following relief:
 - a. Dimensional setback is required to be 25’ from the rear or side yard
 - b. The garage, itself, has to be a minimum of 20’ from other structures on-site
7. As proposed, the garage would have a dimension, at its closest point of 5’, and would taper off to 6’ at its rear. The distance to the main structure, i.e., the house, was less than 20’, the dimension being 12’.
8. The applicant stated the location was dictated by the location of the existing infrastructure and, in particular, the location of the house and the availability of the driveway. The garage, itself, would be a much needed amenity to improve the home and enable covered parking and storage consistent with that of a typical residence.

WHEREAS, the Board has determined that the relief requested by the applicant can 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. The Board finds the location of the existing infrastructure on-site to be a hardship peculiar to the premises. While a side yard of 5’ is not optimum, under the present circumstances, same will have

minimal impact. The area chosen has functioned as a parking area for many years and clearly enables the applicant to re-utilize an existing resource (the driveway) and the most intelligent location for the garage.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Mine Hill on the 4th day of May 2015 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. Garage to be sized and located as depicted on the plans.
3. Side yard setback to be no less than 5' and located as shown on the plans.
4. There shall be no commercial activity in the garage.
5. The only utility service in the garage shall be electric. Same to be solely an accessory use for residents and occupants of the subject premises.

COMPLETENESS REVIEWS

None

Mr. Sauchelli mentioned since the Planning Board Meeting starting time begins at 7:00pm, the Board needs to set a limit on new testimony. The Board agreed to 10:00pm but added whomever is in progress will be allowed to finish.

OLD & NEW BUSINESS

Mr. Curry App 001-15 / Resolution 007-15 / Request For An Extension Letter

Mr. Curry submitted a letter to the Board asking for an extension of the reduction of his shed due to health issues and his May hospitalization. He also mentioned that two weeks prior he was informed he needed and architect's plans for the reduction, which he did not know he needed and for which he is searching for a reasonable one. The Board discussed the matter.

At the conclusion of the discussion, a motion was made by Mr. Heredia and seconded by Mr. Gallerano to extend Mr. Curry's deadline to September 4, 2015. The roll was called and the motion was approved by the following vote:

Ayes: Mr. Frank; Mr. Gallerano; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia;
Mr. Rautenberg; Mr. Sauchelli

Nays: none

Absent: Mr. Morris; Mr. Willis

Abstentions: none

PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

- a. **Application 002-14 Pine Tree Nails & SPA – 271-273 Route 46 – Block 807, Lot 1 – C Zone Applicant seeks to use approximately 14'2" x 72'0" space within an existing strip mall to be renovated for a massage therapy and bodywork use. "D" Use Variance required. Date of Application: 9/5/2014 – Additional materials submitted 3/19/2015 – Deemed Complete 4/6/2015 – Carried from 4/5/2015 meeting due to need for an acceptable interpreter certified by the courts.**

Misha Lee, the attorney for Hong Zi Li and Chengzhe Chen introduced herself and then introduced Fran Yoon, who is a court recognized interpreter and has appeared in Superior and Federal Court and is the interpreter for Ms. Li during her testimony.

Mr. Wiener swore in Hong Zi Li of 427 Broad Ave, Apt 3F, Palisades Park, NJ 07650.

Ms. Lee provided the following information through questioning Ms. Li:

- ~ Ms. Li and her husband Chengzhe Chen have been the owners and operators of Pine Tree Nails since May 2013. They do not have a formal partnership agreement.
- ~When Pine Tree Nails & SPA Limited Liability Company was created back on April 17, 2013 they intended to operate a SPA next door and for that purpose obtained a lease for that space. (Ms. Li pointed out her landlord in the audience.)
- ~ Both Ms. Li and Mr. Chen have Massage and Bodywork Therapist Licenses from the State of NJ. Ms. Li also has a Beautician License.
- ~ Updated licenses of both Ms. Li and Mr. Chen were submitted and logged in as A1, A2, and A3.

Mr. Heredia asked if both Ms. Li and Mr. Chen were principals in the LLC to which the answer was yes. He additionally asked if when she secured the lease was it for both spaces to which the answer was yes.

- ~ There is nothing going on in the empty space. They are awaiting approval in order to operate a SPA.
- ~ The SPA would provide facials, body massages, foot and chair massages (basically upper body massage).
- ~ Ms. Li is able to provide massages for various needs.
- ~ Ms. Li has provided massages at other locations – she worked for a therapist who provided rehabilitation treatments at rehabilitation center in Englewood Cliffs. She provided acupuncture massages for which she has a license.

Mr. Frank asked Ms. Li what type of training she received in order to get the license. She attended a school for UA Massages which was located in Pallisades Park, but is now located in Fort Lee. How many people will the massage SPA employ? Ms. Li and her husband will provide the massages as they are the only ones licensed as masseuses and four other employees will make up the nail salon. Mr. Frank also asked if there are State regulations to which Mr. Sterbenz responded yes and would explain them after Mr. Heredia asked the following.

Mr. Heredia mentioned he was unfamiliar with the school that Ms. Li attended, but that he knew there are State certified and State sponsored massage therapy schools and he wondered if the one she attended was such a one or was it an independent school. Ms. Li said the school was certified by the State which allowed her to receive her license from the State. Ms. Lee, the attorney explained that Ms. Li cannot be issued the license unless she qualifies for everything they ask for.

Mr. Sterbenz read the New Jersey Administrative Code Title 13 Law and Public Safety Chapter 37A New Jersey Board of Massage and Bodywork Therapy – “13:37A-2.1 APPLICATION FOR LICENSURE a) An applicant for licensure shall qualify for licensure by either: 1) Successfully completing a course of study of at least 500 hours in massage and bodywork therapies; or 2) Successfully passing either: i. An examination offered by NCBTMB; ii. The NCCAOM Asian Bodywork Therapy examination; or iii. The Massage and Bodywork Licensing Examination (MBLEx) offered by the FSMTB.” He also quoted the following passage from the same Code Title, “d) A course of study in massage and bodywork therapy of at least 500 hours shall include: 1) At least 90 hours of anatomy/physiology/pathophysiology; 2) Ethics and Law; 3) Theory and Practice (in-class instruction as to massage and bodywork theory and modalities and in-class demonstration and practice of massage and bodywork modalities); 4) Electives directly related to the practice of massage and bodywork therapy; and 5) At least 100 hours of clinical practice which is supervised by a faculty member who is present on-site while services are being performed and is either a licensed massage and bodywork therapist or is legally authorized to perform massage and bodywork in the state in which the school exists.” He added that continuing education courses are required as well.

Ms. Lee mentioned that the licenses expire and in order for Ms. Li to maintain her license she has to take continuing education classes and they issue an updated license. Ms. Li added that the number of hours of course study varies each year anywhere from 20 to 40 hours a year. Once she takes a course, she needs to submit the proof of successful completion to the State.

Mr. Heredia added that it is safe to assume that since the State issued the license to Ms. Li, she met all of the administrative requirements Mr. Sterbenz listed to which Mr. Wiener said yes. Mr. Heredia clarified with Mr.

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Wiener that the proper certification and paperwork need to be submitted to the State in order to receive a massage and body work therapy license.

Mr. Sterbenz added “Each applicant for biennial license renewal shall be required to complete during the preceding biennial period 20 credit hours of continuing education related to the practice of massage and bodywork therapy.” These 20 credit hours shall include at least two hours in ethics.

Ms. Goldstein asked for clarification of how many people would be working at the SPA and it was confirmed a total of six with Ms. Li and her husband being floaters providing the massages and working in the nail salon. Ms. Goldstein then asked if they had a formal business plan to which the answer was no. Ms. Li said that if the business does well they will hire more people who are licensed to work in the nail salon and Ms. Li and her husband will work solely in the SPA.

Mr. Gallerano mentioned there are four treatment rooms. Is there a plan to hire more employees since they have the additional rooms? Ms. Li said that eventually that is what she is hoping for that her SPA’s business would pick up and she would need to hire more licensed individuals to accommodate.

Ms. Goldstein asked if full body massages would be provided. Ms. Li answered facial, body massages, chair massages, and foot massages would be provided.

Mr. Frank asked why there is a need to have a shower. Ms. Li said that sometimes customers come in without taking a shower and it leaves odors especially during the summer.

Mr. Heredia asked if lotions and oils would be used to which the answer was yes.

Ms. Goldstein questioned where the placement of the chairs for the chair massages would be in addition to where would the chairs for the foot massages be? She mentioned she goes to a local establishment and both are part of the main floor area as there is no disrobing required. Ms. Li was thinking of putting one chair massage and one foot massage chair in the SPA area where a sofa currently exists by discarding the sofa that is currently there.

Mr. Gallerano questioned what three of the rooms are used for on the plans in the nail salon. Ms. Li answered one of the rooms is used for waxing, the second has a washer and drier, the third is used to eat in and for storage. He also asked if the two locations would be run as two separate businesses since the plans show two separate entrances, and two reception areas. Ms. Li answered she plans on running them as one but if the SPA takes off she would hire a manager for the nail salon and she and her husband would run the SPA as there are two phone lines.

Mr. Heredia questioned whether both entities would come under the same LLC with Ms. Li and her husband as the sole principals. Ms. Lee answered yes and Mr. Wiener added Common Ownership.

Mr. Wiener questioned how long is each appointment in the SPA? Ms. Li answered it varies by customer, but most times it is an hour. He also asked about the hours of operation. Ms. Li explained the hours are 9:30am – 9:00pm for the SPA, 9:30am – 7:00pm for the Nail Salon. She is thinking of opening the SPA until 8:00 on Saturdays and Sundays.

Mr. Gorman questioned on the architects drawings that the proposed renovation of both spaces and the maximum occupancy of the SPA being eleven people.

Mr. Sterbenz clarified that the plans for the interior renovation are specific to the SPA as only the SPA is being renovated and the square footage represents only the SPA. He also pointed out that the plans are signed and sealed by a licensed architect.

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Mr. Sterbenz questioned whether there were any administrative violations associated with the business to which Ms. Li answered no. He asked if their license was in good standing and she answered yes.

Ms. Goldstein asked about Room 4 and if it accommodates two people, two massage tables? The answer was yes. Ms. Li said she was thinking of doing facials on one table and massages on the other, so that two people can be accommodated at once.

Mr. Wiener swore in Planner, Lisa Phillips, whose business address is 19 Blackfoot Trail, Oakland, NJ. She has a Bachelor's degree from Pennsylvania State University in City Planning and has been licensed in NJ since 1992. She started her professional career 28 years ago working as a planner for Bergen County and then started working for Burgis Associates. She also was a Planner and worked for Wharton in the 1990s. She has been on her own for 13 years as a solo consultant after leaving Burgis Associates in 2002. She is a Zoning Officer in Hohokus. She is filling in as a Zoning Board Consultant for Caldwell. Was a planner for 20 years for Cliffside Park. She is a Professional Planner in the State of New Jersey and Nationally Certified since 1992.

Ms. Lee explained that Ms. Phillips is the applicant's expert witness.

Ms. Phillips explained that she has reviewed the floor plans as David Spatz did the original ground work and she is filling in for him, but she is up to speed with the application and has visited the site twice. She explained it is 1,000 square foot space located in an area that is zoned commercial. It is in area that is pretty much developed commercial. The site is developed presently with a one story strip center with several retail and service faces. There is parking along the front of the building and behind. The parking standards are 1 per 200. For this zone and this use it would be 1 per 200 sq. ft. and that would mean 5 parking spaces, which is the same for the other commercial uses permitted in that area. The parking demand may increase but not the parking ratio, so no variance would be needed there.

She went into the special reasons in terms of the proofs, and mentioned that really this is a case where it is not a prohibited use, it is just that the ordinance hasn't addressed that it is a use. Some of these SPAS in the last 15 years have become popular but ordinances don't necessarily keep up with every specific use. Ms. Phillips mentioned assisted living and internet cafes as examples. It is not specifically prohibited but it fits in to the whole character of the beauty area, it is just one more element of that. There have been negative connotations with these types of establishments but with the testimony given about their licenses, they are a couple, no violations, and the location of each site right next to one another which will allow them to have full control over it all. The site has been vacant with black paper over it. It will look nicer to have the SPA working in conjunction with the nail salon. Ms. Phillips mentioned Harvey Moskowitz books, Illustrated Book of Development Definitions and The New Illustrated Book of Development Definitions. She said these are books that Planners use when they don't have a definition on hand. In the book it talks about personal service and the nature of direct physical services which are described as establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. The books use beauty parlors and barber shops as examples. Ms. Phillips made the comparison to a Quest Health Club. She mentioned that the SPA is not something that was strictly prohibited because it has such a negative or detrimental use, it was perhaps just that it was not contemplated and there are also other concerns that arise with massage situations. In this case the negative connotations should have been eliminated with the testimony provided in regards to the proper licensing etc. Keeping the salon and SPA physically connected to the salon and operated by the same owners will also keep things under the owner's control. Allowing the SPA will address municipal land use laws that talk about the provision of sufficient spacing of appropriate spacing for the variety of commercial uses. It will also provide a desirable visual environment. It is also within the character of the other businesses along Route 46. In terms of the negative criteria, it will require the same amount of parking as the tanning salon that was there before which is another similar personal care service and that it is in line with the other businesses. Because of what Ms. Phillips presented, she expressed she felt the variance relief should be granted.

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Mr. Sterbenz asked for the Purposes under Land Use Law that Ms. Phillips addressed and she stated they were “To provide sufficient space in appropriate locations for a variety of commercial uses and to promote a desirable visual environment.”

Mr. Heredia mentioned that he believed the ordinance states it is a specifically prohibited use. The only way it would be acceptable would be if it was related to physical therapy or some type of medical practice.

Mr. Sterbenz mentioned that the Zoning Officer’s Denial letter stated it was denied for “Permitted use is not listed in Mine Hill Township Land Use Ordinance Section 25-10.14.9 Commercial Zone. (C) 25-10.14.9.1 Principal Permitted Uses.” He also mentioned that in some ordinances there is no section that will say anything that is not explicitly listed is a permitted use or is prohibited, but there is nothing like that in the ordinance.

Mr. Wiener mentioned that it does permit barber and beauty shops. He also mentioned we need to be careful and find that section of the ordinance that Mr. Heredia is referring to.

Ms. Phillips explained that a town cannot afford to change an ordinance every time a new use comes up that was never contemplated years ago, like internet cafes. The purpose of this Board is to hear things and say that if something is not detrimental or it addresses the negative criteria then you can grant it. This is one of those uses that has really changed over time. In the past these types of SPAs were not affordable, now they are available to the middle class.

Mr. Frank mentioned that there is a concern that with all the negative that you read in the newspapers that can occur with such a business to which Ms. Phillips said she understands, but that it is an enforcement issue and in this situation you have a husband and wife who are both licensed and have been in business for two years and are well respected by their clients. This type of full service salon is growing.

Mr. Heredia questioned that if the law, the ordinance does not prohibit it, why does the Board have to hear it as a D1 variance. Mr. Wiener said because it is not permitted. It is not a permitted use. It would be a bigger distinction if the ordinance said here is a list of things that are absolutely prohibited that would be a much greater hurdle. We have a list in paragraph a. which lists a barber or beauty shop and the operators need a license similar to the license that is required for the SPA. If the SPA is run the way it is supposed to be run you question what is the difference between a place like this and a beauty or barber shop.

Mr. Sauchelli asked if any relief the Board grants here goes with the property. Mr. Wiener said it goes with the property for this specific use. The use covered by the license in question. Mr. Sauchelli asked if it would survive a change in ownership. Mr. Wiener said that is absolutely true as with any other application, you do not grant or deny simply because someone is very nice or very bad. You are approving or denying Use. That is what is in front of you. You do not want to speculate one way or another. Mr. Sterbenz added it would only be for this particular building space shown in the plan, the space in question. They could not expand to another spot.

Mr. Heredia said that he did not like to speculate at all and wanted to ask the planner directly, based on the law, what Ms. Li’s reasons for relief were specifically and that there are three major areas that you can have for relief under a D1 variance. Ms. Phillips responded that it was not any different from any other personal service that is permitted, it is not going to be a negative in terms of.... Mr. Heredia said he felt that was a speculation. Mr. Heredia said he is going point specific based on the law. He mentioned that the three areas of relief are: 1. The particular piece of property is uniquely suited for this type of business; 2. That type of non- permitted use would be exclusively beneficial to the Town; 3. Not granting the use would be a detriment to the client. Mr. Heredia added that he did not hear anyone testify to those three things.

Ms. Phillips responded that it is particularly suited because it is in a commercial strip center that has an existing personal service establishment in it, this is just really an expansion of that, it is a different type of use, it is just an expansion of that salon nature, salon/spa nature. It is a use that was not contemplated so she felt

there is some leeway with that. It is a traffic that has already been developed so it is not particularly suited for other than commercial, and this is a commercial use.

Mr. Heredia commented it is a non-permitted commercial use. Ms. Phillips responded that based on what other planners have said, who have written a book of what is personal service and what has typically evolved with these spas, it really is no different than what is permitted, it is just another aspect of it.

Mr. Sauchelli said when looking at some of the proofs for D, granting relief. One of the ways it is characterized, it is an inherently beneficial use that promotes the general welfare of the community.

Mr. Wiener mentioned that this is a classic D1 Use. It does not fit any of the other categories. It would have to be uniquely and particularly suited. The pitch that is being made it is an existing nail salon that requires licensing similar to what is required to licensing for a massage spa. There would be synergy between the two locations. That is where the uniquely and particularly suited relates. The second part of it is that no zoning ordinance and is referred to in the Medici case where the Supreme Court pulled back a bit and said that not every use is contemplated. Things evolve and things change, like cell phones. That is something you can take into account and see it that way or not see it that way.

Mr. Sauchelli mentioned that since this is a strip mall, the actual store/space itself was designed for multiple purposes, any one could use or rent that store for various uses. Mr. Sauchelli asked Ms. Phillips if what she was saying is that the actual store itself was not uniquely suited for the SPA use but because it is located next store to the nail salon it relates to that use to which she agreed.

Mr. Heredia asked what makes that use so uniquely suited.

Mr. Wiener said they heard the testimony of the applicant. There is no contradiction as to what the business plan is, what the operation will entail. The planner's function is, her testimony is, to take that and translate it and present it to the Board and make the argument she made that with this particular confirmed use and it is very attuned to its current use and that there is clearly a boundary, it is not permitted, but it is close to its current use it is like its current use, please if the Board would consider it. Plus they are saying look at the synergy here. You have to make the ultimate decision.

Mr. Heredia stated what he is getting hung up on is the term unique, uniquely suited.

Mr. Wiener said as Mr. Sauchelli mentioned and also the planner would say there are any number of uses that could rectify that particular space.

Ms. Goldstein said within the realm of services, typical to what is there, it is currently a nail salon.

Mr. Sauchelli asked with this case, this specific application there is an existing business with the client, if this were to be approved and used as a precedent then conceptually could an applicant come before the Board with a stand-alone massage operation?

Mr. Wiener said any time there is a zoning ordinance, it is not necessarily precedential. What it does is it lets the mayor and council know that they may want to look to see if all of the uses have caught up to the ordinances.

Mr. Sterbenz quoted the Cox 2015 Edition of the New Jersey and Zoning & Land use Administration, "In the context of positive criteria, site suitability is not concerned with ordinance zoning criteria but is instead focused on (1) why the location of the site within the municipality or region is particularly suited to the use despite the zoning and/or (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use."

The Board took a break at 8:30pm and resumed at 8:39pm.

Mr. Heredia mentioned that he had said earlier he would hear testimony from the applicant, Ms. Li. Ms. Lee, the attorney, explained that her client wanted to tell the Board what she did to get to this point and why she wants to open the SPA. Ms. Li explained that she came to the US 10 years ago. She worked hard to open the nail salon. She worked at other salons and a pain clinic. Her dream was to open both a nail salon and spa. She studied hard to get her license and learn English. She found a great spot in Mine Hill two years ago and has been working hard. She loves the people and Town, it is a nice quiet Town. She wanted to tell the Board what she wanted to achieve and what her dream was. She wants to do it legally and have a legal business. She pleads with the Board to help her achieve her dream and give her the opportunity to prove herself.

Mr. Heredia asked, what are the specific reasons she is asking for relief?

Mr. Gallerano said that is really the planner's responsibility to explain the relief in regards to the Land Use to which Mr. Wiener agreed.

It was clarified that the applicant has been paying rent for the past two years on both adjoining properties.

THE FLOOR WAS OPEN TO THE PUBLIC

Bruce G. Kreeger of 47 Wehrli Road in Long Valley, NJ who is the managing member of Casino Kreeger Partnership which owns the strip mall was sworn in.

~ Tenant has tried to follow every proper protocol to try and to seek approval for original use of both a nail salon and spa.

~ What makes the property unique? It is the only commercial property that sits at the corner of a controlled intersection with a traffic light. It has single dual access and single egress.

~ It is a place where people bank, eat, and also offers a day care center.

~ The spot used to have a tanning salon with no complaints.

~ The spot used to be a therapist's office.

~ The spot has a history of therapeutic entities.

~ Tenant follows the rules of the strip mall.

~ Good tenants with an American dream.

~ Would like to see something similar to a DePasquales.

Mr. Wiener asked if Mr. Kreeger has had trouble renting out this location to which he answered yes it is.

Caryn Battaglia of 36 Scrub Oaks Road in Mine Hill, NJ was sworn in.

She has been a customer since they opened. She feels they have a nice business, are nice people and deserve a chance. It would be nice to have something like the SPA in the Town so people would not have to travel to a place like Depasquale. She mentioned that she feels having a successful business in the Town would help the Town. She felt that a nail salon and spa usually go together that is what makes it unique.

SEEING NO ADDITIONAL MEMBERS OF THE PUBLIC WISHING TO BE HEARD, THE FLOOR WAS CLOSED TO THE PUBLIC.

Ms. Lee gave her summary saying in addition to what Mr. Kreeger mentioned, it would be beneficial to have such a business close by and it would make foot massages and other massages affordable to residents and they will enjoy them.

Mr. Gallerano asked if the applicant could be held to the specific hours that they testified to which the answer was yes.

Mr. Gonsalves wanted more clarification in regards to the restricted uses.

Mr. Heredia said that his construction has been that the legislative intent of the governing body was that this would be a non-permitted use except in conjunction with a medical practice (doctor, chiropractor or physical therapist). Not a standalone or connected with a

Mr. Wiener said that there is no doubt that this use is a not a permitted use. You mentioned that this particular use is a not-permitted use.

Mr. Gallerano clarified that this is a use variance application and that it does not really change the nature of the application. Either way it is not permitted. We are here for a D1 variance. They have to meet the same burden of proof either way.

Ms. Goldstein asked when we say particularly suited, we are saying particularly suited for this business as compared to a business to which the answer was yes.

Mr. Heredia asked if the uniqueness has to be within this municipality or does it encompass the surrounding areas. He was thinking why open it up here where it is not a permitted use. Why not open up in a town where it is permitted. What worries him the most is that the Board has to consider the approval goes with the property and what is going to happen if they do expand and move out? What happens if Mr. Kreeger sells the strip mall and they are not as intrepid in regards to who they rent to. What happens 10 to 20 years from now?

Mr. Gallerano mentioned if someone else were to move in would they have to continue with a full service salon and Mr. Wiener said they could continue with anything within what they are licensed for.

Mr. Heredia questioned whether there would be patronage for such a thing in Mine Hill.

Ms. Goldstein mentioned she partakes in such services in neighboring towns and she does feels people would patronize the SPA.

Mr. Sauchelli mentioned that a lot of the premise or support of this variance is based on the current ownership which can be transient. To what extent can we build into the variance ways to control various aspects? We don't want to create a variance where there are enforcement issues later on.

Mr. Wiener said controls can be built into the variance and resolution.

Mr. Heredia mentioned he was concerned because the use would go with the property for infinity. It would violate the spirit of the legislative intent to prevent problems in the community down the road in the future. The Town has had issues in the past that led to the passage of the ordinance. Mr. Heredia mentioned from reading the criterion he did not feel the planner satisfied specifically the reason for relief under the rules of a D1 variance. Ms. Goldstein said she tended to agree, that the proof had not been established.

A motion was made by Mr. Heredia and seconded by Ms. Goldstein to deny Application 002-15 based upon the applicants failure to demonstrate specific relief under the ordinance. The roll was called, and the motion was denied by the following vote:

Ayes: Ms. Goldstein; Mr. Heredia

Nays: Mr. Frank; Mr. Gallerano; Mr. Gonsalves; Mr. Gorman; Mr. Sauchelli

Absent: Mr. Morris; Mr. Willis

Abstentions: none

Mr. Frank voted no as he felt they deserved a chance.

Mr. Gallerano voted no based on the testimony of the planner and applicant, he felt it would be a positive thing for the Town.

Ms. Goldstein voted yes because of the phrase “Uses that may be attractive because they provide jobs, services, products, and recreation (she mentioned she considers this recreational) are usually not deemed inherently beneficial.”

Mr. Gonsalves voted no because of the particularly suited location.

Mr. Gorman voted no for the same reasons that have been stated and its location next to a nail salon and they kind of go together.

Mr. Heredia voted yes for the reason Ms. Goldstein stated and because he does not feel the applicant proved their reasons for relief under D1 and he also feels to do so violates the legislative intent of the Governing Body in regards to this non-permitted use.

Mr. Sauchelli voted no but stated he is always hesitant to vote on variances based on things that may be transient, but also feels that if the proper controls are in place that are based on hours of operation and licensing, that will help avoid the issues that may occur with this type establishment.

A motion was made by Mr. Gallerano and seconded by Mr. Gorman to approve Application 002-15, Pine Tree Nails, with the stipulations that they maintain all proper licensing, that the hours of operation are limited to what they testified to, and that premises must remain common ownership, must remain as a nail salon and spa or massage establishment, both uses must be maintained together. Mr. Frank added that the Town must be given current licenses. Mr. Wiener added he will incorporate all of the other stipulations in conjunction with recommendations from Mr. Sterbenz. The roll was called, and the motion was approved by the following vote:

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

It was discussed that if proper licensing is not maintained the State could shut them down.

The Board took a break at 9:25 and resumed at 9:30.

b. Application 004-15 Kade Madsen/Madsen Auto Restoration – 153 Route 46 – Block 1207, Lot 8 – C Zone - Applicant seeks Non-Conforming Use Certification NJSA 40:55D-68

Mr. Hefele, the attorney for Mr. Madsen asked that the hearing and notice be carried to the August 3, 2015 meeting as one of his witnesses did not appear. The Board gave its approval.

OLD & NEW BUSINESS

2015 Master Plan Re-examination Report

It was noted that Mr. Frank recused himself from this matter due to the section relating to the zoning of his business's location.

Mr. Sterbenz reviewed the final draft of the Re-examination of the Master Plan Report with the Board and answered any questions that arose. The Board agreed with the findings and recommendations of the report.

At the conclusion of the discussion, a motion was made by Mr. Gallerano and seconded by Mr. Gorman to approve the 2015 Master Plan Re-examination Report presented by Mr. Sterbenz and forward it onto the Town Council. The roll was called and the motion was approved by the following vote:

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia;
Mr. Rautenberg; Mr. Sauchelli
Nays: none
Absent: Mr. Morris; Mr. Willis

Abstentions: none

COAH

Mr. Sterbenz explained that because COAH failed to promulgate its revised Third Round fair housing rules by the November 2014 deadline, the Supreme Court made a ruling on March 10, 2015, that allows for judicial review for constitutional compliance. “The ruling allows low and moderate income families and their advocates to challenge exclusionary zoning in court, rather than having to wait for COAH to issue rules that may never come. It also will provide a municipality that had sought to use the FHA’s (Fair Housing Act) mechanisms the opportunity to demonstrate constitutional compliance to a court’s satisfaction before being declared noncompliant and then being subjected to the remedies available through exclusionary zoning litigation, including a builder’s remedy.

The Court’s implementing order will not take effect for 90 days to allow the courts to set up a system for the cases. During the first 30 days following the effective date, judges will take applications only from towns seeking protection from lawsuits by demonstrating compliance with COAH’s guidelines. After that, judges can begin hearing lawsuits from developers seeking to build at higher densities than normally allowed to provide for more affordable housing.”

In Summary Mr. Sterbenz explained that the Townships filing a declaratory judgement to maintain its immunity and to try and prove to the Court that it is constitutionally compliant. Down the road the Planning Board will need to revisit and update the Housing Element and Fair Share Plan.

THE FLOOR WAS OPEN TO THE PUBLIC

Seeing no public present, the floor was closed to the public.

CLOSED SESSION

None

ADJOURNMENT

There being no further business, a motion was made by Mr. Heredia and seconded by Mr. Gorman to adjourn the meeting at 10:15 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan
Planning Board Administrator / Recording Clerk

Approved on this _____ day of _____, 20____

Planning Board Chairman