

The meeting was opened by **Ron Palmieri**, Chairman,

Mr. Palmieri read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

Present: Messrs. Palmieri, Slazyk, Battista, Rickert, Porzio, & Roche & Meses. Oltman & Madzin

Absent: None

Also present: Mr. Hirsch, Board Attorney
Mr. Feist, Board Engineer
Mr. Rauch, Board Engineer
Mr. Gleitz, Board Planner
Mr. Gotfredsen, Board Secretary

Mr. Palmieri read a statement of procedural guidelines.

ROBERT JONES	BA 2008 – 27
9 TAYLORS RUN	BLOCK 123.01 LOT 14.05
BUILDING & LOT COVERAGE & REARYARD SETBACK	
CARRIED TO FEBRUARY 5, 2009	

KAY REALTY HOLDINGS	BA 2008 – 21
1989 JUMPING BROOK ROAD	BLOCK 128.03 LOT 35
SITE PLAN APPROVAL	

Stephan Leone, attorney for applicant, came forward.

Mr. Leone advised this was an application for a two two-story office building, each building having 3360 square feet for a total of 6,720 square feet on a .80 acre site. As you know, this application came before this Board back in February for a use variance. It was granted by the Board and it is now here for major preliminary and final site plan approval. Subsequent to the submission of the application, the applicant submitted some supplementary information concerning an existing structure on the site. After consultation with your attorney as well as the comments of the planner, the applicant has decided not to pursue the request for that approval at this time...so that this application will be presented strictly as it was originally filed. We would like, if we have adequate

time to talk about the structure as a separate matter, we will do so. If there's any question on that, please let me know.

Mr. Hirsch advised alright, just we're clear then because there was some correspondence and the notice itself talks a different kind of relief. Essentially what we're left with is the request for site plan approval, preliminary and final site plan approval with some associated variances. When the Board granted the initial use variance as required by statute, it was conditioned on a subsequent approval of the site plan and whatever bulk variances were not granted along with the use variance. There was some talk about coming in for another use variance application to allow the existing home on the site to be used sort of as a Phase I...this is an office building with a site plan for that and then prior approval would ultimately be a Phase II. As indicated by Mr. Leone, I had some conversations with Mr. Doyle and I thought procedurally they would have to move a little bit differently. There would have to be a new application filed. I won't go into all the details...they're outlined in my letter but as Mr. Leone indicates, this is now just being pursued as originally anticipated when the use variance was granted. Now they're here for approval of the site plan and the associated bulk variances. So with that said, I have reviewed the affidavit of publication and proof of service and while the affidavit and while the notice does talk about this other potential Phase I, I think the notice does clearly establish the preliminary and final site plan and the exact bulk variances that are being requested and the fact that they're withdrawing part of what was in that notice I don't think adversely impacts their notice. I think the public was fairly put on notice as to what's being applied for...so I believe the notice is in order as to form.

A motion to accept service in the Kay Realty matter was offered by Mr. Battista and seconded by Mr. Slazyk. A voice vote in favor was unanimous.
--

Mr. Leone said the applicant will be seeking variances for lot area, lot width, lot depth, rear setback, a parking requirement, floor area ratio, a buffer variance and parking lot setback requirement. There'll be testimony with respect to all of those variances. We'll be presenting three witnesses: William Klein, president and owner of Kay Realty Holdings; Beth Strom, the planner and landscape architect from Menlo Engineering and Michael Marinelli, the site engineer, from Menlo Engineering. We prepared to start with Mr. Klein, Mr. Chairman.

William L. Klein, 46 Barbary Drive, Ocean, stated I am the owner of Kay Realty Holdings and the principal user of the property. I have prepared a little packet which has the existing photos of the site and I'll go them. I have one for each Board member.

Mr. Leone asked and if we could mark this as Exhibit A-1 which is a four page document entitled "Temporary offices of Kay"...well, we'll strike that..."Executive summary" which shows the conditions of the existing site...uh, Bill, these aren't the pictures...I'm sorry...is this all in there...we need to take that out.

Mr. Klein replied okay.

Mr. Hirsch said let's make sure we get this clear. I see elevations and then I see some photographs and other pages, so...

Mr. Leone stated there's another package in there. If you would please remove it. It had to do with the original request for temporary offices.

Mr. Hirsch said alright, so the portion in anybody's book put there about temporary offices of Kay Realty Holdings...that should be removed from that. It's not being offered as an exhibit.

Mr. Leone stated and what is being offered is a four page colored photographs of the existing structure on the site...depicting existing conditions...that's A-1.

Mr. Hirsch said okay, so you have four pages of photographs and you also have an elevation...at least in mine.

Mr. Leone replied that will be later. We'll use that later.

Mr. Hirsch asked is that a separate exhibit.

Mr. Leone replied separate exhibit, yes.

Mr. Hirsch said alright, so we're offering as A-1...

Mr. Leone replied photographs of the existing conditions.

A-1 Three pages of photographs of the existing site

Mr. Leone asked Mr. Klein, did you take these photographs.

Mr. Klein replied yes, I did.

Mr. Leone asked and about when did you take them.

Mr. Klein replied yesterday.

Mr. Leone stated please describe what you see there in the photographs.

Mr. Klein said the photos in question are existing conditions (1) are the subject of the property's present improvement which is a two-family side-by-side structure. It has separates, front and back, for each of the occupants. The second photo to your right is a picture of the yard in its present condition. This is looking south from the existing property. On Existing conditions (2), on the left-hand side...this is a photo of the rear of the property looking southeast. Adjoining that on the right side of that page, Existing conditions (2) is another photo of the elevation of the property. Looking south you can see that the rear part of it is a shed type roof and then the main property is a gable type

roof with a vent for the heating unit which is in the basement. You see two electrical services coming into the property in that photo. Under Existing conditions, Page (3), this is looking northwest at the side of the property, showing one of the entrances to the left side of the building. Let me interrupt you on...Page (4)...that, again, should be withdrawn from this exhibit. Again, Existing conditions (3) just shows a slight closeup and a detail of the conditions. It's in bad need of a paint job and possibly needs an extra support or two of part of the roof. That's all that I have to describe the existing property.

Mr. Leone asked Mr. Klein, in the event that this Board acts favorably on the application as presently presented, do you understand that these structures will be demolished and removed from the property.

Mr. Klein replied yes I do.

Mr. Leone asked and you will do that.

Mr. Klein again responded yes I will.

Mr. Leone said now, with respect to the proposed construction of the two 3660 square foot buildings, do you have a grading and floor plans of that building.

Mr. Klein replied yes, I do. That is part of the little package that we just handed out. It's prepared by Nick Tsapatsaris, Architect.

A-2 A colored rendering of the front and rear elevations of the proposed building Dated July 12, 2007 prepared by Nick Tpatatsaris & Associates
--

A-3 Drawing #A1, A2, & A3 Black & white elevations prepared by the same architect prepared on April 9, 2008
--

Mr. Leone asked Mr. Klein, could you please describe the proposed structures.

Mr. Klein replied these two buildings will be integrated into one look by a common roofline over the center of the two which will be an atrium...which we plan to have some landscaping and perhaps a water feature of sorts just for décor. Each one of these buildings is designed to be usable by one tenant per floor or a tenant taking an entire two floors in the building. The design of the building is primarily to allow a small practitioner, whether they be a realtor like myself or an attorney, accountant, some sort of profession, to have about three private offices in the building, a conference room, and a private restroom facility and a walk-up through a central atrium off the front of each of the buildings. The construction is wood framing with a siding and masonry façade on all four sides. Some columns will be constructed. They're fake columns basically to add some vertical elements to the architecture. Railings will also be integrated to add a horizontal feature to the architecture. The drawing that you have, A-2, gives a flavor of the color scheme that we have chosen. As you can see, the bottom is of a reddish color that will be a brick look and above that a siding of some form, whether it be vinyl or

wood to be chosen. The chimneys on both sides will be erected to keep the architectural character of the building and a cupola on the top between the atrium will also give the building some height and identity.

Mr. Leone asked Mr. Klein, you testified that each building will have a separate entrance as shown on the front elevation there. Would you review the floor plan that shows the interior stairways that go to each floor...that's part of A-3. Of A-3, that is Page 3A as you're looking at it.

Mr. Klein replied I might add that these are the identical plans to the ones that were shown to this Board for the use variance. Each building has a common area...a double backed stairway in the front. This will allow for restroom facilities to go in an area which can serve either side of this building. This actually could be split into two tenants with two private restrooms and that would service a very small practitioner. Window walls on three sides. None in the common atrium.

Mr. Leone asked the common atrium is the space between those floor plans.

Mr. Klein replied yes, as shown on A3, it's to the right and the left of each of the buildings.

Mr. Leone asked and what is that distance there. What is the space between those buildings.

Mr. Klein replied 10 feet.

Mr. Leone asked and with respect to the atrium area, is there a floor in that atrium area or is that at ground level.

Mr. Klein replied that is at ground level...no floor, no finish.

Mr. Palmieri asked the atrium is going to be open to the outside. Is that it.

Mr. Klein replied it's just an area between the two buildings.

Mr. Palmieri asked so there's no front door.

Mr. Klein replied nothing's enclosed.

Mr. Palmieri said so the breeze can blow right through it.

Mr. Klein replied that's correct. That's a good description of it. It's a breezeway.

Mr. Leone asked the reason it's roofed is for aesthetic and architectural reasons.

Mr. Klein replied that's correct.

Mr. Gleitz asked is it still your intention, at some later point, to perhaps make that an elevator core.

Mr. Leone replied if there is any future use of that, it would be an application before this Board. Yes...to come back for that purpose. It is designed that if an elevator were to be installed, it could be installed in that area...but there is no present application requesting that use.

Mr. Hirsch said so I'm clear...originally I thought you were indicating you had a maximum possibility of four tenants, one on the first floor and second floor but I thought you were doubling the space...so is there a maximum of 8 potential tenants. Two on each floor instead of one on each floor...in each building.

Mr. Klein replied if you're pushing it, yes, you could.

Mr. Hirsch said it's your case. I thought I heard you say...

Mr. Klein stated I myself am going to take an entire floor. Now there's two possible rooms on this floor and...

Mr. Hirsch said so there's a possibility of 8.

Mr. Klein replied there's a possibility of 8.

Mr. Leone asked is the building going to be sprinklered.

Mr. Klein replied no, it is not.

Mr. Leone asked it will be fire resistant in accordance with building codes. Is that right.

Mr. Klein replied absolutely.

Mr. Leone asked do you have any tenants for these buildings besides your own use.

Mr. Klein replied when we came before this Board in February, we did. We no longer do. So you're looking at the sole tenant right now.

Mr. Leone asked with respect to your operation, would you describe the number of employees and the type of operation you have.

Mr. Klein replied we are a general office. We presently employ five people. Some of them are part-time. There will be at least one person in the office on a daily basis.

Mr. Leone asked with respect to garbage collection, how will that be taken care of...with regard to not only your use but the entire building use.

Mr. Klein replied garbage collection will be done by either a contracted carrier. Probably initially we'll utilize the services that Tinton Falls provides...with appropriate receptacles.

Mr. Palmieri asked will there be just a common area for the garbage.

Mr. Klein replied there will be a trash container area fenced in to take care of each container from each office. Yeah, we'll review that. Initially there will be two...a recyclable and a paper container.

Mr. Hirsch said I guess you can give up whatever background you want but don't you have a site engineer that's really going to cover all that. We don't need to cover it twice so I think when you go through the site plan, you're going to be hitting all that stuff.

Mr. Leone stated you're absolutely right. Thank you. I have no further questions of Mr. Klein. Good. Thank you.

Mr. Palmieri asked do any of the Board members have any questions.

Mr. Battista said last time I think you were before us...I think that a lot of us...we really liked the architectural of it but there was some concern about just the overall size. I might be mistaken but if I recall, you were considering...because I think we had expressed some concern about the overall size...you were going to try to reduce the overall property size.

Mr. Leone replied we did. We went through several revisions. At the final hearing, we not only reduced the size of the building...we started out at 9000 square feet...now we're at 6000. And then at the urging of one of the neighbors, we moved the building from a perpendicular orientation to a parallel orientation to Jumping Brook Road. And, Mr. Battista, I will stipulate that this structure confirms from the use variance granted as to size and...

Mr. Battista said I just wanted to make sure we just got caught up to what happened and how we're here.

Mr. Palmieri asked if any other Board members had questions. There were none.

Mr. Palmieri then opened the floor to the public for questions only.

Leo Waltsak, the owner of the property directly behind the applicant, stated I didn't quite understand what you were saying, Mr. Hirsch. The use of that first building...you're not going to use that.

Mr. Hirsch replied no, it's been withdrawn.

Mr. Waltsak stated alright, thank you.

The next witness came forward. **Elizabeth Strom**, the applicant's planner and landscape architect from Menlo Engineering, Highland Park, was sworn in by Mr. Hirsch.

Mr. Leone reminded the Board Ms. Strom had previously testified during the use variance hearing and that the Board had previously accepted her credentials.

Mr. Leone asked Ms. Strom, could you please describe the site and the surrounding areas.

Ms. Strom said sure. This is an aerial view.

Mr. Leone stated let's have that marked.

A-4 Aerial photo – date of issue 11/6/2008

Ms. Strom said this is an aerial view of the property located along Jumping Brook Road. To the north is Asbury Avenue. Directly across the street from the property is the Children's Center of Monmouth County. It is a facility for children with special needs. Over to the east we have the Neptune residential area. Further south along Jumping Brook Road are various residential properties of a similar nature. It should be noted that this particular property has a two-family house and that is a pre-existing, non-conforming situation. Looking further east on Jumping Brook Road are additional residential properties. And to the rear is a large approximately 5 acre property that is residential but primarily wooded as it is directly behind our property.

Mr. Leone asked and to the west is a Jersey Central Power & Light easement. Is that correct.

Ms. Strom replied that is correct. Yes. It's a Jersey Central Power & Light easement about 100 feet wide and it runs along the westerly boundary of the property and continues actually right through the Children's Center.

Mr. Leone said alright. Would you please address the variances that are required for this application.

Ms. Strom replied sure.

Mr. Leone said before you do that, would you please address the zoning for the site.

Ms. Strom replied before I do that, I think I will enter this exhibit as well.

A-5 Colorized rendering of the site plan dated 11/6/2008

Ms. Strom said for the record this is the site plan in exhibit form. There is no difference between this and the submitted site plan.

Mr. Leone asked okay. Would you please describe the zoning and the requirements of the zoning.

Ms. Strom replied yes, I will. This is the SI Zone. It is a Special Industrial District and it was created originally as more of a transitional zone between the residential adjoining it leading to the more industrial area to the south and as you heard earlier and was granted as part of the bifurcated application, conditional use approval to build an office facility such as this...and I'd also like to note that the conditional use was in some sense predicated on the discussion of the site plan itself...and this site plan does reflect all the parameters of the design as was discussed during the conditional use approval phase. With respect to the zoning requirements, we are seeking variances and I will itemize those for you. With respect to the lot area, three acres is required with the conditional use for an office facility such as this. We have .91 acres before dedication and .8 acres after dedication. We also are seeking a variance with regard to frontage. Two hundred feet is required and we have 199 feet. And with regard to depth, 200 feet is required and our distance is 175 feet. With respect to these three variances in particular, these are pre-existing conditions. For those of you who were not privy to the bifurcated portion of it, there was a great deal of discussion about these three particular variances because they also were conditions of the conditional use and there was actually quite a bit of effort made on the part of our client to attempt to get a lot consolidation. There were overtures made to adjacent property owners and those overtures were unsuccessful. So, with respect to creating any kind of lot consolidation, that was not possible and therefore, in as much as that was not possible, it does constitute somewhat of a hardship to our client. If I may, before I introduce the other variances, I'd just like to reiterate that there was a great deal of effort made to address these specific variances and minimizing these specific variances. While originally we had a much larger building as was stated, it also had a completely different configuration. The new configurations that we're showing on the site...first of all the buildings are more in conformance with the setbacks of the existing residential properties along Jumping Brook Road. By turning the buildings 90 degrees, which are now facing Jumping Brook Road as opposed to backing up to the adjacent residential properties, we now have a much larger buffer right at the existing properties. This is actually 60 feet from the property line to our proposed structure. So right in the area of the buildings themselves, the buffer is very large.

Mr. Hirsch asked you said 60 feet from the property line, your structure on which property line.

Ms. Strom replied from the property line on the eastern boundary to our proposed structure.

Mr. Hirsch asked can I just clarify one thing...I thought I heard you use the term when you were talking about the three variances...the three acres, the 200 feet of frontage and the 200 feet of depth...that they were conditions. Are you suggesting this was a conditional permitted use and they were conditions.

Ms. Strom replied if you will recall, and I didn't mean to re-introduce the conditional use, but the lot area was certainly a condition of the conditional use which we did not meet.

Mr. Leone said let me clarify that...the use of an office facility...the professional office facility...is a conditional use in the SI Zone. The Board made findings and therefore granted the use variance that the lot area, the lot width and the lot depth were, in fact, hardships and as a matter of res judicata those variances were granted and we can rely on them.

Mr. Hirsch stated well, that's why I wanted to make sure the record was clear on because I don't think it was coming out that clear and the Board might not have understood it that this is a conditionally permitted use and those variances are the conditions that were not met creating the use variance that was already granted.

Ms. Strom replied that's correct.

Mr. Hirsch continued so we're not here for new bulk variances.

Mr. Leone said that's for those three.

Mr. Hirsch stated right, there's others but for those three.

Mr. Leone said exactly. Thank you. Okay. Please continue.

Ms. Strom stated okay, moving on to the next variance which I would like to discuss and this is the floor area ratio. The floor area ratio which has been added is .2. Our structures, including the atrium, are accurately at .2036 which, in my estimation, is a de minimus amount over the floor area ratio permitted and I just wanted to point out that it is because of this rear structure, in other words, it is not actually any inhabitable area within the structure itself.

Mr. Hirsch asked wasn't that addressed at the use variance hearing.

Mr. Leone replied I don't think so, Mr. Hirsch. I think that was subject to the Board approval of that fact. It was certainly discussed and presented but I can't represent that the variance was given for that purpose.

Mr. Hirsch said okay, that would be a use variance also, that's why I'm...

Ms. Strom stated that was correct but I think that at that point in time we did discuss the fact that it was de minimus.

Mr. Leone said if it doesn't exceed 10 percent of the permitted floor area, would that be a use variance or a bulk variance.

Mr. Hirsch stated well, 10 percent is the height. I don't know if that deals with floor area ratio. I thought we address it in the other resolution but it was a long time...

Mr. Leone said well, it certainly was something that was known at the time. I just am not comfortable saying...

Mr. Hirsch stated I understand.

Mr. Leone said okay. If it is de minimus...and there's a question, frankly, whether this is gross floor area or breezeway or...I tried to find a definition in your ordinances and it did not seem to clarify that any further.

Mr. Palmieri stated I think you actually would be the only building in Tinton Falls that has something of a breezeway with two buildings connected with an atrium all open to the outside.

Ms. Strom said, if I may, during the use variance proceedings, I know this was discussed and it was determined that by the strict definition in the ordinance, it is, in fact, part of the floor area. I wanted to point it out because it was actually, in fact, a variance that we are seeking.

Mr. Hirsch stated I understand that. I just thought maybe we had already addressed it.

Mr. Feist said, Mr. Chairman, to our Board Attorney, that is correct. I just pulled the resolution. The resolution included a maximum floor area ratio variance that would allow it to go to .2036. So, they're under the variance that was granted at the use variance hearing.

Mr. Gleitz stated I don't think those variances were granted, per se. I think all bulk variances...further on, if you read on...the bulk variances are deferred for site plan. We simply granted a bifurcated conditional use variance. Part of the testimony about the particular suitability of this site for this use was a long discussion about the numerous bulk variances that would be required for the development to proceed as presented before the Board. So, the only conditional uses and 40-89 d. for the SI Zone...for this use would be a minimum lot size for overall design purposes would be three acres. For a non-residential development there should be controlled access to Asbury Avenue, and Green Grove and Jumping Brook Road...controlled access for a non-residential shall be either from a new interior street or from a shared driveway. These were the type of conditions. The whole idea was the SI Zone was designed to force consolidation of lots and large development sites. So it wasn't necessarily all of the bulk variances that were necessary. Not all the bulk variances.

Mr. Hirsch said no, we understand that they weren't all granted. I don't think anyone is suggesting that.

Mr. Gleitz continued not only that but not all the bulk variances were conditions of the conditional use. Only the size of the site and the means of access. This site plan has direct access from Jumping Brook Road. That was the other condition they did not meet. The discussion of the variances in the resolution and before the Board were just to show that the Board had considered a site plan linked to that conditional use with these types of bulk variances...but the individual bulk variances, I think, aside from the lot area, which is the...

Mr. Hirsch asked what about the frontage and the depth...are they part of the conditions or not.

Mr. Gleitz replied no, they're not part of the conditions. They are simply listed as bulk variances per the ordinance and they were need to be sought again. All of these bulk variances were deferred.

Mr. Hirsch replied yes, I understand that. I think that's why I wanted to get that conditional part cleared up in the beginning...because obviously we granted waivers of the conditions in granting the use variance for the conditional use...so the area of the lot...the three acres...that was one of the variances the Board had to grant in order to grant the conditional use variance but you're saying under the ordinance, the frontage and the depth are not conditions. So they're just regular bulk variances that would be subject to this application now...that's part of the site plan. But before, going back to the floor area ratio, I understand what you said and it's my understanding but I thought we had addressed, in additional to the conditional use variance, I thought we had addressed the floor area ratio...but I don't have the resolution in front of me so...

Mr. Gleitz said I can give you my copy. I don't believe that was addressed.

Mr. Leone stated I do take exception to the issue of whether the Board granted variances for lot depth and lot width. I think the resolution is clear.

Mr. Hirsch said no, depth and frontage.

Mr. Leone corrected himself by stating depth and frontage. I'm sorry. I think the resolution is clear. Those variances were granted as part of the use variance application.

Mr. Gleitz asked where is that citation.

Mr. Leone replied I have it here. I have to give it to you in a minute. Perhaps we can come back to that as Ms. Strom continues.

Mr. Hirsch asked give me a moment because I've almost read this. No, I don't think the other variances were granted. I think Paul's correct. I mean we granted the conditional use variance which included the lot area and the other conditions. There was mention of the various other bulk requirements but I think the resolution's pretty clear that actually only the conditional use variance was actually being approved.

Mr. Leone said I guess maybe I'm being too liberal in my reading but there's a consistent statement by the Board that although they're granting the use variance, the issues concerning setbacks, the issues concerning buffering...on Page #8..."the ultimate location of the building and setbacks of the building, the landscaping, the buffering, the drainage, the lighting, layout of the parking, and potential internal easements for internal roadways or access to other properties will be the subject matter of a subsequent site plan application." The use variance application established the lot depth, the area, and the frontage and it doesn't expressly say it doesn't grant that. It makes very specific reference to the other variances that will be required and that this Board at that time was not granting variances for that and it was the subject of this application. So, maybe I'm reading too much into it but it was before the Board at that time. Those issues were clearly part of the site in terms of its size and I would submit that those variances, although we're here tonight to talk about them again, were granted as part of that use variances.

Mr. Hirsch replied I respect your argument but I don't agree. I don't think those variances were granted. I don't think we should kill ourselves over this. The Board granted variances for lot size...you know, the depth, the frontage, kind of in one sense go along with it...they were clearly bulk variances and when I read the resolution and as I recall what we did...because we didn't have the formal site plan, the Board considered all of those things...the frontage and everything else...in terms of the potential negative impact...whether there'd be any substantial detriment in that vein...and therefore found they could approve the use variance but all of that was reserved for the site plan. So, it's probably just a procedural issue but I don't think those variances have been granted. I think the area has and the other conditions have. I think all the other bulk variances are part of the site plan tonight.

Mr. Leone said alright. Would you just review then the need, the hardship, for the lot depth and the lot width.

Ms. Strom replied sure. Going right to the heart of the matter, starting with the positive criteria used by the Board to address whether, in fact, they should grant these variances, with respect specifically to lot depth and lot frontage, special reasons do exist as to why these variances should be granted.

Mr. Hirsch stated you don't need special reasons. These are bulk variances.

Ms. Strom said okay. I was just stating that, in fact, these special reasons are the fact that our client did actually make attempts at lot consolidation. With regard to the negative criteria, that is part and parcel of the site design itself. If I may, I just want to point out that I think that all of the variances we've attempted to address with a creative site design. With regard to the purposes of zoning, providing sufficient space and appropriate locations for a variety of commercial uses as is our client's right with this property as well as promoting a desirable visual environment through creative development techniques and good civic design. Those are the issues which we made a great effort to address.

Mr. Leone asked what about the discontinuance of a pre-existing, non-conforming use of a two-family structure within a zone that only permits either single family or other office uses.

Mr. Hirsch asked are we still addressing the frontage and depth variances. I don't think we really need to get into the building on that. I mean I think what you want to say is this is an undersized lot.

Ms. Strom replied that's correct.

Mr. Hirsch said that's your hardship and you want to address whatever substantial detriments exist or don't exist.

Ms. Strom replied that is correct...

Mr. Hirsch asked why is there no substantial detriment to the surrounding properties based on the frontage and depth.

Ms. Strom replied there is no substantial detriment to the surrounding properties. To the west we have the JCP&L easement which provides a buffer interim to the residential properties. To the east we have made every attempt to pull the buildings as far as possible away from those adjoining properties and, in fact, the only area where we...

Mr. Leone interrupted stating I think, Ms. Strom, the only issue is the lot depth. Now the adjoining properties are of the same depth.

Ms. Strom said the same depth and, in fact, the buildings are of a consistent setback to many of the existing properties along Jumping Brook Road.

Mr. Leone asked and the property immediately to the east is of much smaller size than the subject property.

Ms. Strom replied yes, it is.

Mr. Leone said okay. So as a result of this property to be uniquely shallow and somewhat narrow, there's a hardship that is being requested...a variance based on hardship.

Ms. Strom replied yes, that's correct.

Mr. Hirsch asked you don't need variances for any sideyard setbacks.

Ms. Strom replied not for sideyard, no.

Mr. Hirsch asked the rearyard setback.

Ms. Strom answered the rearyard setback...yes. And I will address that. Again, with regard to the negative criteria, there is, in my estimation, no substantial detriment. What has, in fact, occurred with our site design is we are, in fact, 20 feet whereas 50 feet is required. However, the decision in balancing both the positive and negative factors with regard to the site design itself...the decision was made to maximize the buffers to the existing properties...to then use what is an existing wooded lot at the rear...and to sort of build on that buffer. The other thing I would like to point out is that currently under the process of adoption is the HCC Zone and in a short time, this will actually not be considered a residential zone anymore. So this will not, in fact, be a factor in terms of providing a residential buffer. So what was done is by turning the building to face this way and by adding the .2 factor which we are permitted (inaudible), we wanted to best maximize the property in terms of gaining enough parking spaces. So, in other words, to do so, we relocated the building in the most advantageous way so that it could build on the existing buffer which exists on the property to the north and then amplify it with additional plantings. So those are the factors that mitigate the fact that we are in a variance situation with the 20 feet.

Mr. Hirsch said excuse me for a second. Paul, is that, under the proposed zoning ordinance, the area to the rear...what's that going to be zoned.

Ms. Strom answered HCC...is the current proposal...

Mr. Gleitz replied he wasn't sure.

Mr. Hirsch said alright, we'll move on. Go ahead.

Mr. Leone asked Ms. Strom, the structures to the east, what are their setbacks from the rear property line. They're certainly less than 20 feet, aren't

Ms. Strom replied significantly less. They are approximately 4 feet and this one would be closer to 8 – 10 feet.

Mr. Leone said so that these structures would be greater in setback than the adjoining residential structures to the east.

Ms. Strom replied that's correct.

Mr. Hirsch stated to the rear is what you mentioned is a 5 acre piece or something.

Ms. Strom replied it is approximately 5 acres and again heavily wooded.

Mr. Hirsch said currently zoned residential.

Ms. Strom replied currently zoned SI. Yes.

Mr. Gleitz stated well, yeah...the zoning will be changing into HCC. Under the Master Plan and the new proposed ordinance, the zoning will go to HCC, Highway Community Commercial. It was zoned as SI prior to this. The reason why we're discussing residential buffers is that under the buffering ordinance, the requirement is for a residential zone or a use...so what you have are these pre-existing, non-conforming residential structures and the buffering is required on those sides. There is no buffer requirement at this time along the rear property line. What they're deficient in is not the buffering itself but the rearyard setback.

Mr. Hirsch said right...so that would be changed HCC.

Ms. Strom stated and I certainly don't mean to say that our buffer mitigates that completely but it's just one more factor unique to this particular piece of property where it is bounded by the easement, by the existing residential properties, and by this large wooded parcel to the north.

Mr. Hirsch asked I'm sorry. Did we say that would be a 20 foot setback as an HCC...well, no, this wouldn't change this setback. It's still going to be a setback variance regardless of what's back there.

Mr. Gleitz replied yeah...a setback is a setback. It's a property line. It's not a buffering issue.

Ms. Strom said so with regards to the negative criteria with respect simply to the rearyard setback, we need to establish that there will not be substantial detriment. And the rearyard setback can be granted, in my estimation, because it is adequately buffered. We looked at the site design on balance and decided that that wasn't, in fact, the best location to maximize the parking as well as to be sensitive to the adjoining residential properties to the east.

Mr. Hirsch asked if you met the rearyard setback...if you were to meet it, what would that do...I don't know maybe this is your engineer's question but...if you want him to handle it, fine...but what would that do to the ability of the site plan and the parking and the site to work.

Ms. Strom replied well, our engineer will address that but if we were to adhere to the 50 foot setback, we would certainly not be able to be anyway near our parking requirements for this particular .2036 FAR of the buildings proposed.

Mr. Hirsch said that's part of your hardship you're claiming.

Ms. Strom replied yes.

Mr. Leone asked would you address the buffer requirements in the zone.

Ms. Strom stated with respect to the buffer requirement, again, it is part and parcel of the overall site design. As we stated earlier, we re-designed the property to make the buildings less intense from the original. We pulled the buildings as far as possible away from the existing residential structures. As we said, it's 60 feet adjoining the existing properties. Now where we are deficient, there was, again, as part providing enough parking for this particular site design and in order to do that, we are infringing upon the buffer in just this area along the east for a total of five parking spaces which are nine feet wide.

Mr. Leone asked what is the buffer requirement.

Ms. Strom replied the buffer requirement...

Mr. Leone said is 40 feet.

Ms. Strom stated the buffer requirement is 40 feet on each side and we do not meet it.

Mr. Leone said so with respect to this site plan as it relates to the location of the buildings, you exceed it but as it relates to the parking where 40 feet would be required on the easterly property line, the applicant is providing 20 feet.

Ms. Strom replied that is correct.

Mr. Leone asked what about landscaping. Is that increase there in order to...

Ms. Strom replied yes. We have a heavy buffer of large evergreen trees and we will address it later on but the landscape architect has, in fact, made a recommendation that we increase that planting depth with a variety of plant materials...so both of those factors mitigate the fact that this buffer is deficient.

Mr. Leone asked now with respect to the west side, you have the same requirement of 40 feet. What are the consequences of the 20 foot there.

Ms. Strom replied well, the consequences here are less because, again, we are adjacent to the 100 foot wide Jersey Central Power & Light easement which does not, obviously, have any residences. The intent of the buffering is to shield the adjoining residences from our property. In that regard, we are helped a great deal by the 100 foot wide easement.

Mr. Leone asked is this a hardship that justifies the granting of these buffer variances because of the exceptional narrowness of the property.

Ms. Strom replied yes, in my estimation, it is, especially given the fact that our client has made considerable effort to do lot consolidation as we stated earlier.

Mr. Leone said now there's another variance that the applicant seeks as it relates to the parking lot setback. Would you review what the requirement is and what is the proposal.

Ms. Strom replied sure. The parking setback is 25 feet and right in this area along Jumping Brook Road, we have a one-way driveway that was designed to best provide adequate circulation on the site and, again, our engineer will address this further but, in my estimation, that is a reason for granting this because in order to provide adequate civic design onsite, we moved the driveway which does impinge on the buffer requirement. It should be noted, however, that this is a drive aisle and yes, it is not permitted. It needs to be in the buffer per ordinance. However, it is not going to be parked so that's another factor that mitigates the fact that we do not meet the parking setback in this particular area.

Mr. Leone asked and once again, as a result of the particular shallowness of the property, it's a hardship that justifies the granting of the variance.

Ms. Strom replied yes, in my estimation, it does.

Mr. Leone asked because the parking could not be...

Ms. Strom replied no, the parking could be reconfigured. However, if it were reconfigured, the circulation would be greatly impacted, in my estimation.

Mr. Palmieri said Mr. Leone, I just want to remind you, we have another application. I spoke to you earlier. Just so you're conscious of what the time is. I'm assuming somewhere...it's a little after 9...so I'm sure the Board wants to break for a couple of minutes at that point. Not that I'm putting any pressure on you...

Mr. Hirsch said let me just ask Ms. Strom a question. It sounded like your testimony was drifting into a C-2 variance, not just a C-1 variance.

Ms. Strom replied yes and I would like to address the fact that it is, in my estimation, also a C-2 and the reason is that the benefits outweigh the detriments, in my estimation. We have taken all of these factors into account. This is a somewhat unique situation in that our design was done up front as part of the bifurcated application...but it was our feeling and our reading of the resolution that the Board seemed to feel that a design such as this was a factor in their granting the conditional use variance to begin with. We were being very sensitive to that. And, in my estimation, it does not constitute substantial detriment to the zone plan.

Mr. Leone said okay. I think we're at a point where we can address the planner's review letter.

Mr. Gleitz asked were we done with the discussion of the FAR.

Mr. Leone replied I think we've submitted our testimony on that matter. Yes.

Ms. Strom stated if I could just make one statement. It is, in my estimation, a de minimus amount and that is my feeling.

Mr. Gleitz said okay because my question goes back to the original conversation we had about what were the original variances granted and how does that relate to the application before us. If the only variance granted in the previous application was for lot area, since it was one of the conditions, and other variances were in terms of access and driveways and those types of things...the internal circulation. The question I have is if they are over the FAR, does that not kick it into a d-4 variance.

Mr. Hirsch stated I mentioned that about an hour ago. The question was raised whether the FAR was only a use variance if it was exceeded by more than 10 percent...I said that's under the height requirement but I thought any FAR was a use variance.

Mr. Gleitz said that's how I read the statute of the MLUL...so I don't know if we've gotten to that point or not or if we're going to go back to that.

Mr. Leone stated well, I think it's within the discretion of the Board to make a finding on that issue. I think there's substantial question as to whether this should be included in the FAR in the first place. So it is so de minimus that I would suggest to the Board that it's within their discretion to accept it as presented.

Mr. Hirsch said as I understand it, it's .2 and this is .2036.

Mr. Palmieri stated Paul, I know why you guys are talking about it but...

Mr. Gleitz said I'm used to the term "de minimus" in terms of your testimony for "c" variances, your testimony for waiver requests...when it comes to the "d" variances, it's pretty clear. It simply states "an increase in the permitted floor area ratio as defined in Section 3.1." Now we've had some discussion back and forth about what does and does not qualify as floor area ratio...whether it counts before or after dedication. Those are all arguments to be made. I don't know if we've heard all those arguments but we can grant de minimus exceptions to RSIS standards, the parking, and other kinds of things. I don't know if FAR necessarily...and I'll let Tom weigh in on this...I don't know if there's any case law or not where you can consider a slight...you know...a couple hundreds of a percentage point over on FAR. Is that de minimus or not.

Mr. Hirsch stated well, I'm not sure that's how it's being argued. I think they're arguing because of the...to use the word "de minimus"...whatever...the small nature of it is one of the reasons why it can be granted. I think really they're not saying "because it's de minimus, it's not a variance." I think it's still a variance. If you're over, you're over. I think part of the argument is it is such a small variance that's related to essentially an open area with a roof...they're throwing that to the Board and saying for those reasons, you're not going to have a substantial detriment or frustrate the zoning plan...and the special reason is I guess the unique nature of this particular variance. You're free to say whatever you want. This is your record. That's what I've heard so far.

Mr. Leone said yeah and as a practical matter, if the applicant removed the roof structure, it would detract from the aesthetics of the building.

Mr. Hirsch stated you might want your witness to give that testimony.

Mr. Gleitz said my only question is what column...if it's over...what column and what type of variance is it.

Mr. Hirsch replied well, I think it's a use variance. That's what I suggested earlier on. Unless somebody can point to the Municipal Law Use Act that says FAR is some percentage...I thought anything over the FAR is a d-4.

Mr. Leone said I'm not prepared to address that.

Mr. Hirsch stated well, I'm pretty sure that's correct. You have the statute there. It just says a FAR. It doesn't say any percentage. Ten feet in height...10 feet or 10 percent.

Mr. Gleitz said that's a "d-6".

Mr. Leone stated I thought I had examined cases that dealt with FAR as well but I can't cite that for you right now.

Mr. Hirsch said the case law, I think, on the FAR says that it should be treated similar to a conditional use variance. In other words, where in a conditional use variance under the case law, because the use is essentially permitted, you're looking at the conditions and can the site still appropriately function despite not meeting those conditions...and I think there's case law that says when you're looking at a FAR use variance, that is the standard you should use more than the typical use variance standard for a non-permitted use...but I don't think the percent by which it exceeds the permitted floor area ratio is an issue in terms of whether it is or is not a use variance. So, I think it is a use variance. I think the standard is similar to the conditional use standard that we would have to follow...the Board would have to follow in determining to grant it.

Mr. Palmieri asked are you looking for us to take care of that issue first before we go forward or just...

Mr. Hirsch replied no, no, I think you've got to hear the whole case. You haven't heard the site plan. I mean you've got to hear everything. You're not going to start ruling on issues...

Mr. Palmieri said one at a time.

Mr. Leone stated so we would be prepared now to review Mr. Gleitz's letter of September 16th, 2008, and address the comments therein that we have not covered so far. Do you have a copy of that.

Ms. Strom replied I do.

Mr. Leone said anything prior to Page 3 is fact and we are now on Page #3 dealing with the comments that say “additionally the application will also require the following variances.” The buffer variance...I think the applicant has addressed that issue. The location of parking areas...the engineer will address that issue. The number of parking spaces...the engineer will address that issue. “Additionally the application will require the following waivers...”

Mr. Hirsch stated you know...the way we like to do these, Mr. Leone...there’s no point in reading us the report we have in front of us. We understand what the requests are so to speed things along, we really just ask you to go through the comments to the extent you’re saying...if it’s a requirement, that you can comply...or will comply...or if you’re not, then you would need to give us some details as to why...but if you’re going to comply with any request. Fine. If it’s informational, we can see the information.

Mr. Leone replied I appreciate that. The one issue there that I think we need to take exception to or clarification of is the amount of distance to street intersection...50 feet required, 0 provided. We do not believe that we’re in violation of that requirement in that... Ms. Strom, how far is this site from an intersection.

Ms. Strom replied it’s 200 feet to the nearest intersection of a right-of-way or street.

Mr. Gleitz said I had a question...if I can...on Page 4, Item #5 of the waivers...I kind of defer to the engineer on this one. I had a question as to whether this access drive across the street serves as a road or not. I didn’t think it was a big issue but I wanted it to be brought up that when you look at the aerial and when you look at the tax map, there’s this...it’s larger than a driveway because it provides access...because what they’ve done is lined up a major access drive under the right-of-way to provide access to a number of buildings along the back.

Mr. Leone stated well, your ordinance defines “street”. It’s not a street. It’s not an intersection so we’re not required to have a distance from that. That’s our position on that.

Ms. Strom said if I may interject, it is a private road. In reviewing the site, I actually pulled into this driveway and was told in no uncertain terms to turn around. So it is a private drive.

Mr. Hirsch asked is it a private road or is it a driveway.

Mr. Leone and Ms. Strom both said it’s a driveway.

Mr. Gleitz said well if it’s not a formal waiver, I would ask the engineer at some point in his testimony to give some testimony as to off-set driveways and any kind of safety issues.

Mr. Leone replied sure, we'll do that.

Mr. Hirsch asked Ernie, do you have any to add on that...in terms of whether it acts as a street as opposed to a driveway.

Mr. Feist replied I would agree that it acts as a driveway under the definition. It's not a right-of-way.

Mr. Leone said thank you. Okay. The other comment is "will the applicant provide sidewalks" and the applicant will provide sidewalks...although none are set forth on the plan, the applicant is stipulating that he will provide sidewalks. I think the rest of the comments there will be complied with or have been addressed and will be addressed by the engineer...and that concludes the review of the planner's report. There is a report issued by your landscape consultant dated September 29, 2008, and Ms. Strom, will the applicant comply with all the requirements there.

Ms. Strom replied yes, they will.

Mr. Leone stated then we've concluded Ms. Strom's testimony.

Mr. Hirsch said Paul, let me swear you in in case you're going to go from questions to testimony. He then swore in Paul Gleitz, the Board's planner.

Mr. Gleitz stated I have some questions about some of the testimony about some of the variances...as to the rearyard, we've had some discussion back and forth about what the eventual zoning will be and what the future use of the rear would be...do you think it makes sense to add some additional landscaping in that rearyard area. Typically we hear the planner after the engineer. I would have hit him with all these questions. I'll ask the planner.

Ms. Strom replied that certainly could be done and was considered. However this is actually a drainage swale and we will have our engineer address that further. It would not preclude planting completely. However the nature of the planting would not be a terribly effective buffer, in my estimation.

Mr. Gleitz said my only concern is that we don't know what the future use of that rear property will be, Lot 32. Right now it's wooded but they don't control the property so there's nothing saying that it will remain wooded and we have a 20 foot setback with a two and half story building 20 feet from the property line.

Mr. Hirsch asked did the landscape architect, the Board's landscape architect, make any mention of increased buffering back there. You said you were going to comply with the report.

Ms. Strom replied no, they did not and...

Mr. Gleitz interrupted saying no, this is more in relation to the actual variance sought.

Mr. Hirsch stated yeah, I understand, to offset the variance.

Mr. Gleitz said yeah, of the rearyard...so there might be something you should consider because it is a two and half story building about 20 feet off the property line and we don't know what the future use might be.

Mr. Hirsch stated alright, so maybe when they get to their engineer. They said there's a swale there. He can address what they can and can't do and the Board will evaluate it then.

Ms. Strom said if I may, I'd like to interject we could use somewhat larger plant material then we have shown here.

Mr. Leone stated the applicant would certainly consider whatever recommendations the Board has as it relates to approval of the applicaton so as to additional planting in the rear setback.

Mr. Gleitz said the question I have is about the parking and circulation area. We have a variance required for the parking setback, the drive aisle specifically. We made a couple of comments within our memo that I assume the engineer is going to address.

Mr. Leone replied yes, the engineer will address those.

Mr. Gleitz asked so then, will the planner be able to answer further questions after the engineer is done with his testimony.

Mr. Leone replied sure.

Mr. Gleitz said okay, then I'll defer back to them...because we had some questions about the site circulation and the necessity for further relief. Everything else I have, I think, is for the engineer at this time. Thank you, Mr. Chairman.

Mr. Palmieri stated alright, before we go further, do any of the Board members have any questions of anything you've heard so far from the planner. There were none.

Mr. Palmieri then opened the floor to the public for questions.

Philip San Filippo, attorney, said he represents Shirley Vitt, the owner of Lot 34, the lot that was referred to by Mr. Strom as the lot to the east, adjacent to the buffer that she was describing earlier. Ms. Strom, you mentioned that there was considerable effort made at lot consolidation by Kay Realty.

Ms. Strom replied that's correct.

Mr. San Fillipo asked were you aware that on at least two occasions prior to this evening that my office wrote to Mark Aikins who previously represented Kay Realty and also to Mr. Doyle of Mr. Leone's office, that Ms. Vitt was willing to sell her property to Kay Realty.

Ms. Strom replied I was not aware of that. No.

Mr. San Fillipo said okay. Can you tell the Board exactly from your plan how large Lot 34 is.

Ms. Strom's answer was indistinguishable.

Mr. San Fillipo asked would it surprise you if I told you that you're substantially correct that the frontage is roughly 47 feet and the lot is just over 9,000 square feet. Would that sound reasonable to you.

Ms. Strom replied yes, it would.

Mr. San Fillipo said okay. Now if that property was acquired by Kay Realty, wouldn't that then eliminate the lot frontage variance of 199 feet that they're asking the Board to grant.

Mr. Leone stated I have to object to the question at this point. The issue of the lot area has been the subject of a hearing before this Board...I believe...I don't know this for a fact, Mr. San Fillipo, if you were here for that hearing...

Mr. San Fillipo replied I was not but I read the minutes.

Mr. Leone continued represented your client or your client was represented at that hearing and this Board make a determination that the lot area was qualified for a use variance so I would say these questions are res judicata, that the Board has acted, granted the variance and anything that would relate to the acquisition of additional property in order to either mitigate some of the variances would be not relevant.

Mr. San Fillipo said I have to disagree with that and I have to put my reasoning on the record. I would disagree with that because I'm not here suggesting that the Board should re-open the discussion of a lot area variance considered and granted. What I'm here to do is talk about the other variances that are requested by this applicant that may, in fact, be eliminated altogether by an acquisition of this adjoining property which, in fact, has been made known to counsel on two separate occasions that it is available. And there are other variances which go to the suitability of this lot for the use proposed. So I think it's a fair question to ask of the planner.

Mr. Hirsch stated let me delve a little bit further into that. I have a recollection at the first hearing that there was ample discussion about the question of an undersized lot and purchasing additional land and whether this is commercial and residential and whether

that was or was not necessary; that there were letters sent out to adjoining property owners. I think, in fact, as I recall, I suggested some additional effort in that regard to Mr. Aikins and his client which I believe complied with. Was your client back then sent a notice about the availability or the willingness to sell her land or the availability to purchase.

Mr. San Fillipo answered yes, she was.

Mr. Hirsch stated okay and at that point she had no interest.

Mr. San Fillipo said at that point she indicated a unwillingness to sell the property because she believed rightfully or wrongfully that she had a moral commitment to offer the property to adjoining neighbors who had expressed interest over the years. There was no legal obligation. She felt it was a moral obligation.

Mr. Hirsch asked I'm not sure, Mr. San Fillipo, did she testify...I think she was at the hearing.

Mr. San Fillipo replied yes, I believe she was.

Mr. Hirsch said she was actually here. It wasn't just we had a letter. She was actually at the hearing. Wasn't she.

Mr. San Fillipo replied I believe she was.

Mr. Hirsch stated I'm just trying to put it together.

Mr. San Fillipo said I was not present.

Mr. Hirsch replied I know you weren't. You weren't involved. Well, as I understand the question, it's whether or not the purchase...which is obviously self-evident...whether the purchase of the additional land would do away with the lot frontage variance. So, for that purpose, if there's going to be an argument...which I don't think Mr. San Fillipo is going to make based on what he just said...similar to the isolated undersized lot cases, you know, there should be an attempt made by the applicant to purchase adjoining land. I haven't heard that that's the legal position. I would agree that the area has already been resolved. Whether it would be applicable anyway on a commercial as opposed to residential, I don't think matters because the lot area, essentially the Board found, there were grounds to grant that so whether purchasing other land would do away with the lot frontage...I think you can ask that question. What legal impact that has or what other impact that has to the Board...that's going to be up to the Board to decide. I think it's a simple answer so why don't you answer that question.

Ms. Strom replied the answer is yes.

Mr. San Filippo said okay and similarly if that Lot 34 was acquired, isn't it possible that the parking that's shown on that plan could be shifted farther to the east and potentially the building moved closer to the front line so as to minimize the amount of non-conformity for the rearyard setback asked for 20 feet.

Ms. Strom replied without looking at it, it's difficult to say. I'm not really sure that the building position would move. You know, it's possible that the parking configuration could change. I would not be prepared to testify that yes, in fact, the building could move.

Mr. San Filippo said now this applicant is also seeking a parking variance. Is that right.

Ms. Strom replied that's correct...for one car.

Mr. San Filippo asked now, again, if Lot 34 was acquired by Kay Realty, isn't it possible that the parking variance could be eliminated as well because that lot area would be available to this applicant to create additional parking.

Ms. Strom answered again, without studying it, it's difficult to say but you know, it is possible.

Mr. San Filippo said also, since we've established by your calculation that that lot is approximately 46 feet wide, wouldn't you also be able to eliminate the buffer non-conformity to the parking if, in fact, the additional land area was acquired.

Ms. Strom replied yes.

Mr. San Filippo said okay, so the acquisition of that property would, in fact, result in a more conforming site plan being presented to this Board. Would it not.

Ms. Strom replied it possibly would. Yes.

Mr. San Filippo said I believe that one of the variances requested is from the setback from the westerly property line...and there's a certain bit of parking that encroaches into that easement area.

Ms. Strom replied yes, that's correct.

Mr. San Filippo asked do you know if JCP&L, who I believe owns this area, has consented to the encroachment.

Ms. Strom answered yes, they have...and, in fact, we have an approval from them.

Mr. San Filippo said okay. In your professional opinion as a planner, would it make this lot more suitable for the SI Zone and the office building that's being proposed here if, in

fact, there was additional lot frontage and the possibility that the parking could be made to be conforming without a variance.

Ms. Strom answered you know, questions of suitability...I'm not prepared to say that that, in fact, would be the case.

Mr. San Filippo asked are you aware of sections of the Tinton Falls ordinance that talk about suitability of lots for development.

Ms. Strom replied yes, I am.

Mr. San Filippo said in those sections, and I'm referring specifically to Section 40-34 C...have you had a chance to review that.

Ms. Strom answered yes, I have.

Mr. San Filippo asked did you note some of the standards which the Board would have to consider in determining whether a lot was suitable for a development in the Borough of Tinton Falls.

Ms. Strom replied yes.

Mr. San Filippo asked did you notice that among them are lot dimensions, building setbacks and insufficient parking or loading.

Ms. Strom replied yes, I see what you're referring to.

Mr. San Filippo said so all of those potential non-conformities could be eliminated by the acquisition of Lot 34 by your client. Wouldn't that be something that the Board would have to take into consideration in determining whether this lot was suitable for the development of the proposal before them this evening.

Ms Strom replied that is really not an issue that I can speak to as a planner...to be perfectly honest.

Mr. San Filippo asked planners don't deal with suitability of lots.

Ms.Strom replied yes but I do not assume to, as part of a bifurcated application, make a decision before the Board in that regard.

Mr. San Filippo said and yet you testified as to the various reasons, hardships in some cases under "c-1" and flexible "c" standards under "c-2" as to why the size of this lot and the non-availability of adjoining property, in fact, have an impact upon the applicant being able to comply with the ordinance standards. Did you not.

Ms. Strom replied yes, I did.

Mr. San Fillipo said thank you. I have nothing further.

Mr. Palmieri stated I have a question. On the first application in determining for the use of the property, the applicant had made the effort to go ahead and ask adjoining property owners if there was property for them to purchase. He made the additional effort and had no positive results for it. Now for the second half, the site plan, is it up to the applicant again to do that same procedure again...to say "well, we've met our requirements for the use and now a dissenter presented by Mr. San Fillipo"...now all of a sudden we have a new application in front of us, the applicant has to make that effort again to minimize any kind of additional variances or anything to the property...they have to go back and again approach his neighbors and say "do you want to sell it to me" again...after he did it once before.

Mr. Hirsch said I was going to address this to the Board at the point when I thought everybody had made all their arguments and presented their positions. That's why I didn't want to jump on anything until we've heard all the arguments on that. I mean I would be more than happy to provide the Board with my position on it. I think you touch on certainly the legitimate issues which I will instruct the Board to and which the Board will make decisions on and why I asked the questions I did earlier...whether...and I haven't heard Mr. San Fillipo's full case or his arguments and I don't want to foreclose anything he may want to argue with the intent of making a full record...but applicant's don't normally, even on an isolated undersized lot case...I mean there's a limit to when properties have to be offered and even if somebody is interested in selling a lot, it doesn't mean that even if that's so, the Board would have to deny the application. It's a consideration to determine whether an applicant has a hardship. So legally you're dealing with undersized lots in the context of hardship. Bulk variances...a use variance has already been granted which includes the size of the lot. Now what comes with the size of the lot is the frontage, the depth, and all the other measurements, even though we are treating those as separate bulk variances tonight. So, I think it's certainly a very relevant consideration and the client that Mr. San Fillipo represents was given a prior opportunity when we were discussing the undersized nature of the lot and discussing the potential adverse impacts of a use variance...whether or not she was interested in selling her land at that point and was not for whatever reasons...and I'm not critical in any sense. She just was not, at that point, willing to do it. The Board explored that...gave everyone a fair opportunity to make that determination at the time. So the applicant now has expended time, money and effort to go forward with the second part of the application. So I think it certainly is a fair consideration as to...even if there were some legal requirement...which I will advise the Board on when we get down the road a little bit further...I'm not suggesting there is...but even if there were some legal requirement for the applicant to still, at this stage, make some requests to see neighboring owner would be willing to sell land, the Board could take into account that they already had one opportunity to do that...and whether it would be fair or equitable at this time to give them another opportunity. So that's all I'll say about that now. I think it's a perfectly legitimate question under consideration after all counsels have had their chance to state their positions, then I will provide whatever legal guidance I think the Board needs at that point.

Mr. Leone stated we are prepared to go to our...

Mr. Palmieri interrupted saying well, what we want to do because obviously I said we had another application. We're at almost a quarter after (9 pm) and to be fair to the next applicant...I know we have some people in the public but I know you're represented by counsel too. Is that true. No. I guess at this point...I'll let her come up because I know we're going to end up carrying this application anyway and I'm sure she wants to say something. I have no problem with her coming up.

Karen Woods, 2000 Jumping Brook Road, Neptune, came forward to ask a question. She stated after everything he's done, the two years that we've been here, he was aware of the offers and after everything he's done for us to move the building...

Mr. Hirsch asked is this going to be a question, maam. If you're going to make a statement, you'll have to be under oath later.

Ms. Woods stated he understands where I'm going and now, do you really need that piece of property at this point in time knowing what's going on and it's just now a price war. Do you understand what's happening with that piece of property now.

Mr. Palmieri asked are you asking Mr. Klein.

Mr. Hirsch stated no, the only witness under oath is the planner.

Ms. Woods said same question then. It's basically a price war.

Mr. Palmieri stated hold it, hold it, you've got to let him answer the question.

Mr. Hirsch asked is the question "does the applicant think that they need the other piece to develop the property." Is that what your question is.

Ms. Woods said after all the changes that they have done over the last two years that we've been here. The questions were asked "Was the property for sale."

Mr. Hirsch interrupted saying maam, you just have to ask a question. You're making an argument.

Ms. Strom replied no, we do not need that piece of property.

Ms. Woods stated thank you.

At this time the Board and the applicant agreed to carry the application to the February 5, 2009 meeting.

The Board then took a brief recess.

DEBORAH FALCO (PRECISION PAVING) 3334 SHAFTO ROAD	BA 2008 – 10 BLOCK 145 LOTS 10.01, 10.02 & 11 USE VARIANCE CARRIED FROM SEPTEMBER 4, 2008
--	---

Peter S. Falvo, Jr., attorney for the applicant, came forward.

Mr. Falvo related at the last meeting we had finished the engineer's basic presentation of the site and this is a bifurcated application. We're going for the use variance first and then we'll come in with the site plan. Some questions were raised at the last hearing as to whether or not we could adequately park this site if, instead of a flex space, it was entirely office. And there was a question raised as far as the driveways that were proposed on the site. What I'd like to do is relating to the original site plan which is already in evidence. I'd like to call Mr. Henry Ney to the stand who is our traffic expert.

Henry Ney, 241 Hunt Road, Freehold, was sworn in by Mr. Hirsch and his credentials as a traffic expert were accepted by the Board.

Mr. Falvo asked now, Mr. Ney, at the request of the applicant, have you analyzed the use site plan application that has been submitted relative to adequacy of maneuverability, traffic, and overall site conditions.

Mr. Ney replied yes, I did.

Mr. Falvo said and with regard to that, could you please give the Board the scope of your investigation and study and the conclusions you've come to.

Mr. Ney answered certainly. The basic purpose of my study was to...realizing that this was a use variance...to look at the impact of that traffic would have on the surrounding street system and also to look at the site plan from the same point of access and parking to see if there were any negative impacts which might impact upon the zone plan and the zone scheme or create any safety or traffic issues on the surrounding streets. In doing so, I visited the site during heavy traffic hours as well as off-peak hours, had traffic counts conducted of Shafto Road as well as the site driveways during the morning and evening peak hours. And then utilizing the site plan as prepared and as proposed which contains basically a flex space facility...I used 12,500 square feet for the basic area of the building. I prepared estimates of traffic that would be generated by the facility. I then assigned that traffic to the street system and the driveways and I analyzed the capacity of the driveways to accommodate the additional traffic. I also looked at the sight distance. I looked at the access. I also discussed the access with the County Planning Board traffic engineer. This was not a formal application. This was on an informal basis and ultimately I prepared a report summarizing my findings and conclusions and a number of recommendations.

Mr. Feist asked has that report been submitted.

Mr. Falvo replied I don't believe the report has been submitted.

Mr. Ney said but since it's a variance we really didn't need to. I happen to have 15 copies.

Mr. Hirsch stated alright. We have a traffic engineer's report.

A-10 Traffic report prepared by Henry Ney Associates dated 9/3/08

Mr. Ney said I'm sure the Board and the professional staff is familiar with the site but just by way locating it, the existing Precision Paving is located at the north end of the site. To the north of the project is the Mazza recycling complex where recently the roadway was widened to provide left turn lanes and those left turn lanes kind of taper out across the frontage of Precision Paving. There's an existing residence on the property. The driveway that is shown in white on this plan is existing and the parcel beyond that residence is wooded and vacant. In that area of Wyckoff Road is four lanes of moving traffic. At every major driveway, the County is requiring left turn lanes. So wherever there are driveways that generate any significant traffic, the roadway widens to five lanes by eliminating the shoulders. The speed limit in this area is 50 miles per hour. There are no curbs and sidewalks in the area and of course immediately across the street from the site is the Monmouth County Landfill. The area is fairly straight...the roadway in this area somewhat rolling and as I measured sight distance, it measured 800 feet in each direction from the center of the property. In terms of traffic volumes, traffic counts were conducted the end of August and the beginning of September of this year. During the morning peak hour, we found approximately 1250 vehicles travelling in both directions on Wyckoff Road and during the evening peak hour, 1172 vehicles. The predominant movement in the morning is northbound and southbound in the evening. And it's a fairly well-travelled roadway and a fairly high speed roadway in this area. In terms of the proposed project in preparing traffic estimates, we used a breakdown of office of 2500 square feet and 10,000 square foot of warehouse. That's based upon...the Institute of Transportation Engineers publishes a large volume called Trip Generation and it has various land uses in there and multipliers which enable you to estimate the amount of traffic based on the size of the project in terms of square footage generally. There is no "flex space" specifically in that textbook and it's difficult to develop a specific number for flex space because it will vary based upon how much office space compared to how much warehousing or storage there is. So when there's an office, we use the office and when there's a warehouse, we use the ware trip generation rates. Based on those rates, we would estimate the morning peak hour to be in the range of 20 vehicles and the evening peak hour 22 vehicles.

Mr. Hirsch stated slow up there. Say that again.

Mr. Ney repeated 20 vehicles in the morning peak hour of which 17 would entering the site and 3 would be exiting the site...and 22 vehicles in the evening peak hour of which 19 would be exiting the site and 3 would be entering the site. By way of comparison in looking at the building totally as office, the numbers would be fairly similar. There

would not be a significant difference. I think the number goes up from 26 to 28 trips if it was all office because of the relatively small size of the building. In order to determine the impact of traffic, we have to know how many cars would be turning left into and out of the site as opposed to right turns. Looking at the existing traffic distribution along Shafto Road and the existing site, we feel that approximately 60 percent of the traffic would be oriented to and from the north and 40 percent from the south. Using those numbers we then expanded the existing traffic on Shafto Road to what we call a "design year" when we anticipate when the project would be finished. What we're trying to do is provide a measurement of what traffic conditions would be when the project is open as a result of the project. We're not looking 20 years in the future because there're be many other developments which might have a more significant impact than the project, so the idea is to try and isolate the specific impacts of the development. In doing so you pick a year when you anticipate the project to be completed and you look at the traffic in that year. In order to determine the traffic volumes which tend to grow on an annual basis, we consulted the New Jersey Department of Transportation's figures which provide an overall annual background growth rate throughout New Jersey on a county-by-county basis and by a road type basis, for example, arterials, collector roadways, etc., have different growth rates. The growth rate we found for this area was 2.25 percent per year and we expanded the base numbers that we counted in 2008 to that 2010 year and a lot of the numbers are shown in the appendices of the report and listed in the figures. So Figure 4 shows the no build volume, which is the existing volumes. Figure 5 shows the build volumes with the additional growth that's anticipated. Once we had established the traffic volumes, we looked at unsignalized intersections. We analyzed the conflicting movements and the conflicting movements would be the left turn into the site and left and right turns out of the site. It's anticipated that there would be no impact to the thru movements or no impact to right turn movements into the site. So, we established, based on the existing traffic volumes or the projected traffic volumes and anticipated turns, what's called the level of service and delay analysis. In other words, depending on how long it takes you to make a left turn into the site or a left turn out of the site, that delay establishes what we call the "level of service." The longer the delay, the poorer the level of service. Levels of service, and I'm sure the Board has heard this term runs from A to E, with A being relatively free-flowing traffic with little delay and E being slower traffic, higher delays. In the case of unsignalized intersections, delays in the range of 45 seconds would be an E level of service. The existing driveway operates at A and B levels of service and when we consider the additional traffic, effectively there's no change in those levels of service. It's still A and B levels of service to the entry and exit maneuvers. The overall delay increases by a couple of tenths of a second at the main driveway. Based on comments that were in the review letters of your engineer, the plan shows two two-way driveways. If you look at my report, I recommended that the southerly driveway be one way out. I feel that the driveways...the left turn movements would be too close in this area. I'm sure that the County is going to require left turn lanes as they did for Mazza and these two movements would be too close to provide adequate left turn lanes. So I analysed it with all the traffic entering the northerly driveway and the exiting split between the northerly and southerly driveways. In the engineer's comments there was some concern as to whether this driveway should be here at all. So I did an analysis which is not in my report but I would be glad to capacity calculations...assigning all

movements to one driveway. The overall levels of service remain approximately the same. Actually the levels of service are the same. Some delays would increase slightly but you would still have overall levels of service which are excellent and we'd indicate that if the Board approves this project, there would not be a significant or negative impact on traffic. Just to finish the access comment, I then met with the County Planning Board traffic engineer on an informal basis. There's no question they will not approve two two-way driveways. The left turn conflicts are such that they want to minimize the number of left turn lanes and they want to make sure that they are evenly distributed. So I would anticipate that the plan will developed either with a single flow movement driveway or as I have indicated, and I would recommend, with a two-way driveway at the northerly end with a one-way egress at the southerly end. The reason I've done that is the way the site splits, even if you modify the internal driveway area, you're going to have a lot of conflicting movements right in this area in a relatively short area. So it's easier to egress the traffic from the new section via the southerly driveway and avoid some conflicts within the driveway area and there's adequate capacity and sight distance to do that...so I would anticipate that would be a positive methodology of handling traffic. I would also comment...

Mr. Palmieri interrupted by saying I know you're moving along very good. With the southern driveway, you're saying make it a one-way driveway egressing. Would that also mean that you would make the width of the driveway smaller.

Mr. Ney replied I recommended that it could go down to 18 feet.

Mr. Palmieri asked would the turn out of there only be a right hand turn or...

Mr. Ney replied that would be up to the Board at site plan time. I would like that it could be right turn only, that you could limit left turn movements to a single driveway. I think the Board...at this time we're speaking in general concepts because we're not at the site plan issue...but the answer is yes, you could restrict that to right turn movements. I think it's easy to make left turns out of there but if it's the Board's and their staff's recommendation, we can do that.

Mr. Palmieri asked what would be the possibility of having one ingress and one egress.

Mr. Ney replied there are a couple of problems with that. If there's one ingress and egress, it has to be here.

Mr. Palmieri said um-hum. I would say if you had the two driveways, one would be in and one...

Mr. Ney stated oh, we could do that. You could do a one-way couple. The problem is you're sending everyone around here to exit here...but the answer is you can do that. You could have one being inbound and you could have another being the outbound. I think the Board at site plan time has the flexibility to consider these options in detail and decide ultimately whether they want a one-way coupled, a one-way pair or whether you

want two-way and one-way. Obviously if you made it one-way in at this location and one-way out here, you'd have to change some of the driveway configuration in this area so you could facilitate the movement across the back of the property. This was a comment I'd just like to leave with the Board concerning driveways and that was to have a single driveway in the center of the tract. That was in, I think, the most recent report that I read. The problem with that is that this building turns and because of engineering issues, you have a detention basin area and a septic system area...if you turn this building, there are regulations as to how close a septic system can go to the property line. And you still have to have detention. So I'm not sure it really works and this way, depending on the facade of the building, you can, you know, hide the operation that takes place in here. There's an outdoor storage area, some material areas, some vehicles that would be stored...you can kind of hide that operation. When you look at the operation today, it's kind of open where they store the vehicles and you can see them as you drive past the site. So, it's more of a planning aspect but from an engineering end, it may create difficulty in providing a single point because it really has to be towards the center...to put it in the center of the tract, it kind of turns everything here and runs into the mechanical engineering parts that have to take care of this and by that I mean stormwater detention and septic system design. So that may be more of an engineering issue than it is of a circulation issue.

Mr. Falvo asked with regard to the northerly driveway being both ingress and egress, would you necessarily have to close off that first left hand turn, so to speak, as you come in.

Mr. Ney replied well, if this is maintained two-way, then if you had two-way in this area, then I'd prefer to close this and open back here because you've got some conflicts in here that get kind of close to the intersection. So, if that's the case, I'd close this and I'd basically have those movements take place to the rear portion of the lot. So it's away from the intersection and leaves room for storage of vehicles waiting to exit. The only other aspect...the parking as shown on the plan for flex space, I believe, is adequate. The plan was submitted...I think there's a requirement in the ordinance that says what if it's all office building...a plan was submitted that shows where you can put the parking that would conform to office requirements on the site. I don't think that's for consideration. It's just...I guess...a requirement that it be shown. I have not reviewed that plan from a circulation or traffic impact situation.

So, basically, in summary, based on the study we've done, I don't perceive that if the Board should grant a variance, there would be any traffic issues either on site or off site that would have a negative impact to the Borough or to the traffic on Shafto Road.

Mr. Feist stated Mr. Chairman, I certainly can't comment on the report that was just distributed tonight although I don't...briefly looking through it, I don't see anything in there that raises a red flag and I do tend to agree with the evaluation that Mr. Ney gave us this evening, particularly, at the minimum, the recommendation and I kind of thought the County would say this, eliminate one of those left turning motions off of Shafto Road. You can accomplish that one of two ways. The suggestion of Mr. Ney which is to take

the southerly driveway and make it a one-way driveway out or to eliminate that and make the northerly driveway a fully functioning two-way driveway into the site...and I do agree that you would have to modify the layout that's shown on this plan. I wouldn't work very well with this layout. That's a given...but it's true, we can certainly take those issues up at site plan and I just wanted to get it on the record...I don't want the applicant coming back at site plan saying "well, we had this configuration on our use variance sketch. The Board gave up our use variance" implies that we liked that configuration. I think that it certainly needs to be taken up again at site plan.

Mr. Ney said what I'd like to leave the Board with the feeling is comfort in that you use any of those options and from a traffic standpoint, the project still works. So it ultimately will be a decision as to how the Board feels will be the best way to operate. I gave you my recommendations but, you know...the only feeling I specifically like it is it frees up the cross traffic issue but that's one consideration. I'm sure there are others that the Board will do and deliberate on when they actually have a formal site plan.

Mr. Falvo asked when you say "the cross traffic issue", that would assume that everybody who would use the existing Precision Paving would have to travel south in order to exit the site.

Mr. Ney replied yes, you would have to travel through the site but the other point, I think they've got to free this up even if you leave this as two-way. I don't think you want to leave this design this way. I think you want to pull back and give some more room in this area for this cross movement into the site...but with a left turn into the Precision site. What I like about this exit driveway, it takes all of the traffic from this area out of the tightest area on the site and I think from an operations standpoint...just look at the size of the building, the relative volume...you'll have more volume generated by the lower end because there's more building area. So, it takes those movements out of here and brings them out on the highway if you maintain the two-way traffic. That's the way I like it but I'm sure that there are other reasons that someone may not like it.

Mr. Battista asked in terms of flex space...of the 12,500 square feet that's proposed here...they're saying 2,500 would be office so to speak and the rest would be sort of a maintenance area. What I just want to get an idea of...because then you also say from a traffic generation standpoint that even if it was 100 percent office, there wouldn't be any difference in size.

Mr. Ney replied no, there's an increase in traffic but in terms of numbers, it's not significant.

Mr. Battista said and again, this comes from my ignorance on flex space but when I think about 12,500 square feet of space, I got to think that there's more than 20 people can work in something if that was 100 percent. In terms of that type of facility, can that type of facility, in theory, have a part of it that handles a lot more of the dense population within it.

Mr. Feist stated I think our concern at the first hearing was more related to the number of parking spaces that the site could accommodate if for some reason we went beyond the stated amount of office. I don't think that there's any traffic issues in terms of getting into and out of the site if it goes to 100 percent office. The report that Mr. Ney prepared pretty much addresses that. Again, I went through it rather quickly but my gut instinct is that that would not create a problem at the driveway with Shafto Road. I think the bigger concern was whether or not you could accommodate additional parking spaces for all those workers.

Mr. Ney said I also think that one of the questions that was asked in one of the reports is a breakdown of actually a floor plan and I think when you see the floor plan, that will give you a better idea as to how much is flex space and what's intended to use. That obviously will impact on how many people can fit into an office area.

Mr. Palmieri asked if any other Board members had any questions. There were none.

Mr. Palmieri said I would open it up to the public but I think all the public belongs to you.

Mr. Falvo called the architect forward.

Mr. Hirsch swore in Carmine Cerminara of Hillsborough, NJ. Mr. Cerminara's credentials as an architect were accepted by the Board.

A-11 4 pages of architectural plans

Mr. Falvo asked Mr. Cerminara, could you please relate to the Board the type of architecture that you're proposing and also specify the height of the building.

Mr. Cerminara replied we're proposing two flex buildings, obviously two different sizes. The small one, Building A, and Building B. What was just marked as A-11, Drawing A-1 is the larger of the two buildings. The materials between the two buildings are exactly the same. They are tilt-up concrete panels. They will be poured in place on site. They will have various score marks to help create the panels to break down the scale of the large flat building. The roof height is going to be at 25 feet and we have a parapet which exceeds it by 1 foot 4 inches at the street side although the parapet itself is at 25 feet...26 feet 4 inches. To answer the question before about what the individual flex space looks like, the buildings are designed to be used in 1500 square foot modules and each module will receive an overhead door and a small storefront leading into the office function and a toilet behind it. You can see the overhead door and the recessed door for a little bit of protection. This is the 250 square feet and this is the 1,250 square feet of each individual unit and that totals up to the 12,500 that we've been talking about.

Mr. Falvo asked with regard to the...what type of materials...

Mr. Cerminara replied it will be pre-cast concrete or tilt-up concrete. So it will be concrete that's poured in place flat, lifted up, cleaned and then painted.

Mr. Falvo asked and with regard to the proposed colors that you're going to be using on this site, what have you anticipated.

Mr. Cerminara answered we have proposed to use three tones of gray...as you can see among the elevations. I have the extra color chips if you would like to take a look at them.

Mr. Falvo asked and with regard to the existing Precision Paving building, that building...can you in some fashion, if necessary, make that building match, so to speak, the others.

Mr. Cerminara replied yes. It would be easy enough. We would be using concrete panels. We would be using some sort of an artificial stucco beneath this system but we could give it the same color and the same look without too much trouble.

Mr. Hirsch said well, you were asking can he do it...are you saying that you are going to do that.

Mr. Falvo stated if the Board would like it done, we can do it.

Mr. Hirsch said alright, so you're leaving it up to the Board to make that recommendation.

Mr. Falvo replied right. It's a relatively new building but if you want it to blend...

Mr. Palmieri asked would that fall under the site plan stuff too.

Mr. Hirsch replied well, you could make it a condition of approval of the use variance, if you're to grant the use variance or you could say you'll leave those types of architectural issues to site plan. You could do it either way.

Mr. Falvo said and with regard to the office space, etc....will the entire space be air conditioned or just the office space.

Mr. Cerminara stated in this type of building, generally speaking, the office portion will be air conditioned and the warehouse of the flex space will probably receive a space heater but it will not be air conditioned.

Mr. Falvo said and with regard to this building, this is...how should I say...it's designed Specifically for flex space.

Mr. Cerminara replied that's correct. Someone could, in theory, either occupy two units in which they might have the ability to double the size of their office space to 500 square feet or, what we find, based on our experience more often than not, that that 250

square feet is more than adequate and someone rents the second space for the warehouse portion of it so that they can go ahead and increase their production.

Mr. Falvo stated this building, as you proposed it...if it were, hypothetically, converted to all office, it would require considerable retrofitting, wouldn't it.

Mr. Cerminara replied yes. Generally speaking, we would probably look to eliminate the overhead doors to provide a little bit more glass. We have already, in order to kind of create light into the buildings, created windows along the rear of the building which is really facing the highway. So it can be done.

Mr. Falvo said but the way it is designed now, the way the utilities will be serviced, the size of the septic system and everything else is designed to handle it as a flex space building 250 square feet of office per cubicle or per space and a bathroom per space.

Mr. Cerminara replied that's correct.

Mr. Falvo said I have no further questions of this witness.

Mr. Palmieri asked do any of the Board members have any questions. There were none.

Mr. Gleitz stated as I was looking at this and looking at the colored renderings, I understand the concept of the tilt-up panels and everything else. Are there other ways of scoring and painting these panels to look less...this looks more like warehouse from like Exit 8A. And this is a smaller site. There's some different types of uses along that drive. There are some industrial but there are some non-industrial uses along Shafto. Would there be a way...using the same technology but different scoring patterns and different buckets of paint...to have a different type of look, to be more like block construction or brick construction or other types of things.

Mr. Cerminara replied there are methods where the forms can be lined with either a brick look or perhaps a stone look, so yes. There are options to the simple painted and scored panels.

Mr. Gleitz asked is that something you think the applicant would consider either now or at site plan to kind of soften the look of this 8A...I hate to keep using that term but it looks like a large warehouse one. These really aren't very large buildings and they might do better with a different type of look.

Mr. Palmieri asked are you talking like when they do a stamped concrete kind of thing.

Mr. Gleitz replied well, with these concrete panels, depending on the form, you can do all different kinds of looks. They can make them look like blocks. Make them look like bricks. I mean you just heard the testimony about stone. I don't know if we need to have a Swiss chalet flex space but I think maybe we can kind of look for a brick or a block type of look rather than these large kind of panels...but that's again, a concern for the

aesthetics...at least on the front building. The rear building I'm far less concerned about but for the front building along the frontage on Shafto, it might make more sense to do...at least for a couple of these elevations...make it a little dressier.

Mr. Falvo said the answer to your question, Mr. Gleitz, is yes, the owner would be willing to do something like that. Yes.

Mr. Gleitz replied okay.

Mr. Hirsch said maybe you could...if the Board's going to carry that portion of its decision to site plan...assuming you get a use variance...that you could provide some samples, examples, to the Board so they can get some visual sense of what their options would be.

Mr. Cerminara replied we could bring some photographs of other buildings that are made of the same kind of panel and have different textures on them. Absolutely.

Mr. Hirsch asked Paul, were you done.

Mr. Gleitz replied that was my only concern. Thank you.

Mr. Palmieri said the Board members having none...the public is all the applicant's people.

Mr. Falvo stated at this time I'd like to call the planner, please.

Mr. Hirsch swore in the planner, Roy DeBoer, with French & Parrello Associates. The Board agreed to accept his credentials as a planner.

Mr. Falvo asked Mr. DeBoer, with regard to this site that is presently before the Board...did you on behalf of the applicant and myself undertake an examination of the site and the area to determine the suitability of this site or its ability to fit. And did you also undertake an analysis of the various variances requested as a result of the design.

Mr. DeBoer replied yes, I did.

Mr. Falvo asked could you please give the Board the benefit of your investigation in this area and also the conclusions that you came to with regard to the site and the variances requested.

Mr. DeBoer stated A-3 gives you some context for where the property sits along Shafto Road. The property has been highlighted in yellow in the exhibit. It's a very unique parcel in where it is located and the surrounding uses and the conditions that it all creates from a zoning standpoint. The uses to the north are generally MFG uses. There's Becker's Landscaping and then moving further north, you have Mazza Construction but to the south you transition to the R-1 Zone in which a portion of the property currently is

located...but the area that's shaded in green here are areas which are prohibited from development for a number of reasons: the first being the Monmouth County Reclamation facility which is what it is in terms of being owned by the County; some additional County property as you move down closer to Shark River Road; and then the green property which is indicated behind the subject property as Mr. French had addressed at the first hearing...is wetland encumbered. It's a C-1 stream and there's very substantial buffer areas associated with those wetlands and the stream that runs behind the property. So you end up with a very unique situation of a really completely isolated island of R-1 surrounded by MFG or permanent buffers by reason of ownership or environmental constraints.

There's some interesting history on the property. I'm going to go to another exhibit which has also been marked previously...it's Exhibit #A-4. This is an enlargement that zooms in on that little R-1 island. Lot 10.03 which is adjacent to the property and .01 and .02 which are part of the subject property and then Lot 11, the current Precision Paving site. About 1997 when the original Precision Paving came in, Lots 10.01 and 10.02 as well as 10.03 were all in the MFG Zone. The existing residence on Lot 10.03 was effectively an existing non-conforming use at that point in time. The use variance was granted for Precision Paving and the single family home, which, by resolution, encouraged to be of a nature which would allow it to be converted to office...there was some anticipation for an eventual commercial type of use...was granted approval and around 2001 occupied and completed. In those 8 years or so, a re-zoning occurred and the lot line which I'm tracing in yellow with my finger, which runs along the southerly most border of Lot 10.03 was shifted so it splits the applicant's property right in half. It basically follows the common property line of Lot 11 and 10.01, the edge of Precision Paving, the active part. What that has basically done is create additional non-conformities and now that's basically the reason for the use variance here is that because of the zone change, the applicant's current proposal to expand the business that was previously blessed under a use variance is now no longer permitted in that pocket.

The Master Plan...I looked at a whole series of summaries but one of the key things that it mentioned as a real need is to consolidate the R-1 Zone. I really think that when this was shifted, they did something that was contrary to what the Master Plan goal was. They created an isolated pocket that wasn't previously there. The Master Plan talks about making sure there's adequate buffers and consolidated areas in R-1. This is neither. I actually think that the applicant's proposal is more consistent with the goals of the Master Plan than the maps. The maps show this as being inconsistent. It's shown to be R-1 but in terms of the stated intent and the purpose of what they were trying to get at...I think that the current proposal actually makes more sense from a land use standpoint...surrounding patterns and the unique situation of this property than the current plan.

Mr. Falvo asked with reference to the exhibit that you have on...you have the proposed Precision Paving, the existing Precision Paving building, and you have 10.01 and 10.02 which are sought to be made flex space. Then you have Lot 10.03 which is the other

residence and then from that point to the most viable residential development in an R-1 Zone, how far are you.

Mr. DeBoer answered the nearest residential zone is almost a quarter of a mile. It's 1348 feet. In fact there is an approval for a 12 lot subdivision which accesses off of Shark River Road which has not yet been built. The nearest lot line, not structure, is about 1300 to 1400 feet. Now, moving to the south, it's about 600 feet of natural buffer because of...rather to the east...of natural buffer because of the environmental constraints.

Mr. Falvo said and in that regard, Lots 10.01 and 10.02 also have some wetlands on them...or wetlands area...as part of this application an application is being made to DEP for the shifting of some of that area.

Mr. DeBoer replied yes, there is. Now referring to Exhibit A-1, the main site plan exhibit, the red line which moves up and down on the sheet is the limit of the C-1 buffer...and basically the eastern end of the property is within a wetland area. This was marked as A-2 from the first hearing...this very clearly shows the configuration of the wetlands the bold green line and the lighter green being the limit of the buffer. One of the concerns was the setback to Building B and the setback being from the edge of the buffer transition area and we do have that. What's shown here is yellow is the 40 foot setback from the transition area so that there is no variance there. That was one of the questions that was brought up in the Planner's report. I don't believe it's an issue. I believe we comply with that concern.

If I may briefly just run through some of the bulk standards. The relief that we're requesting is relative to the R-1 Zone because we're in the R-1 Zone. The design standard which has been utilized in terms of the sketch that was prepared was to make it more like the MFG Zone...so the two aren't to be confused. Basically, all the front setbacks for both buildings...60 exists and 75 are proposed for the new building. The way the code works, it's 3 times the height...so that 75 feet is required for the setback and that's been provided. There's a requirement for a 50 foot buffer along Lot 10.03 because that remains as a residential use. That has been provided. All the transition areas and the setbacks relative to the wetlands buffers and environmental constraints have been fully satisfied as well as all the other front and side setbacks. The item of relief has to be do with the overall impervious coverage which has been done more of a MFG standard...the R-1 permits 15 to 18 percent of total coverage. We're at approximately 59 percent total coverage, 59.4 in the new configuration.

Mr. Falvo said and the 59.4 is less than what is permitted in the Manufacturing Zone.

Mr. DeBoer replied yes.

Mr. Falvo stated with regards to these variances that you've highlighted, could you please give your opinion as to why these variances can be granted and also discuss any potential negative impacts...if any exist.

Mr. DeBoer said under the Municipal Land Use Law, encouraging appropriate use and the general welfare through appropriate land development is key. I believe this achieves that based on the character of the surrounding uses and the very unique situation with such an isolated pocket of R-1. There are a couple of single family homes with existing flex space type uses already adjacent and surrounding the property. From Mr. Ney's testimony with respect to some of the negative criteria there are, there are no safety issues, traffic issues. I believe that the applicant's proposal compared to the current...Precision Paving has outdoor storage and whatnot totally visible from Shafto Road. As configured here, all the storage goes back behind the building so...the buildings themselves will be an aesthetic improvement and then the location of all the outdoor storage being appropriately screened and blocked either by buildings or landscaping is also a tremendous aesthetic improvement to the community and the immediate area. I believe any minor detriments which would be caused by the relief being requested are significantly outweighed by the benefits of the project.

Mr. Falvo asked with regard to the impervious coverage...we're going to be at...

Mr. Palmieri interrupted saying Mr. Falvo, before you go any farther...can you go back to the exhibit...is that A-3 up there now...the one that shows more of the surrounding area.

Mr. DeBoer asked the overall surrounding area.

Mr. Palmieri replied yeah. It shows the zone...the larger one. I was just trying to figure where...oh, yeah...that one there.

Mr. DeBoer said the first one, that sliver, that's Lot 10.03...that's an existing single family home. It's an out parcel. The yellow is the subject property. The tree service and Becker's Landscaping is Lot 12 immediately adjacent. A portion of that is actually in the wetlands buffer. And then there are two additional...I believe there are two flex space buildings under construction currently just to the north of that on Lot 13.01 and then you move closer to the Mazza Construction and the other commercial uses.

Mr. Palmieri stated hey, Paul, with the new Master Plan coming and all that...I was just trying to look at what's going to happen to that area. Is the zone line going to stay the same or...

Mr. Gleitz replied the zone line has been set by the Master Plan. That's what I believe matches the current configuration as you see there. There was no change in that area specifically to the zone line boundary. It's shown as...

Mr. Palmieri asked it's still going to stay an R-1 Zone.

Mr. Gleitz replied that piece up there. Again, what I believe the thoughts were was that you had the subdivision coming in off of Shark River Road and you have the existing single family houses. So when you look at a land use map, those properties were all

coded as residential land use...so it was decided to maintain that existing zone boundary that I guess was changed maybe 10 years ago or so or more. I wasn't here for that...but under the current land use plan...which has not been changed under the new ordinance in terms of the zoning map, it was decided to leave that line where it was. It wasn't recognized as an isolated pocket. It was recognized as residential land use...existing residential land use adjacent to proposed residential land use.

Mr. Hirsch asked I'm sorry...you probably testified to this...but it's late. Between the site and the proposed subdivision which you said was 1348 feet away...what's between the two.

Mr. DeBoer replied woodlands mainly.

Mr. Hirsch asked is it wet...I mean undevelopable area. Was that one of the environmentally constrained areas.

Mr. DeBoer replied the vast majority of that 1348 feet...like more than 1200 feet of it...is to be a formal conservation easement as a result of that site plan approval.

Mr. Gleitz stated I believe that's correct. It's under a conservation easement. Is that the one where we made them put the fence line up to mark...I believe it was a subdivision and the Planning Board went so far as to make them put up a post and rail fence along that boundary so that the property owners in the subdivision would know not to intrude into the conservation area.

Mr. DeBoer said it appears that what the Board had done with the subdivision was the new homes are built in the open agricultural field and the rest of it is woodlands...all going to be conservation easement.

Mr. Hirsch stated I just wanted to clarify something...you said that...the question was asked "what was the closest viable residential parcel" and you identified the 1348 feet...that subdivision. And you went to the south and there was a 600 foot conservation easement.

Mr. DeBoer replied there is a 300 foot buffer from the existing stream to either side of the center line of the stream...so it's a 600 foot band...

Mr. Hirsch asked and then what...then residential.

Mr. DeBoer replied I believe it is...yeah, it is. It's MFG on the far side. It's commercial.

Mr. Hirsch said I'm sorry.

Mr. DeBoer stated it's light industrial...commercial zone.

Mr. Hirsch said it's light industrial. Alright, so the closest...when you said 600...I thought you were going to another residential.

Mr. DeBoer replied I'm sorry. It's just to the south.

Mr. Hirsch stated so the 600 is to a commercial use. A commercial zone.

Mr. DeBoer replied yes.

Mr. Gleitz asked where does the boundary line come in for the R-3 there...the Fox Chase and as you begin to see the paper lots come in there.

Mr. DeBoer said right there.

Mr. Falvo stated the paper lots are part of the Borough Property's application...which is the Mazza application.

Mr. DeBoer said that's the lower grid you see down here...on the very bottom center of the sheet. That's the beginning of it.

Mr. Gleitz asked what's the current use on 10.03

Mr. Falvo replied it's a single family home.

Mr. Gleitz said then that would be the most approximate residential use then.

Mr. DeBoer replied yes.

Mr. Falvo stated as we said at the first hearing...when the applicant first purchased this property, it was zoned MFG. And when their house sustained a fire...they had to get a variance for the single family home because they were making it larger, because it was still in the MFG Zone. Sometime after that, they moved the zone line...and my client wasn't aware of it until the new Master Plan was adopted...and I think their first knowledge of it was when Becker went in...because Mr. Becker was required to maintain a certain setback because he abutted a residential zone...and my client say "No, it's a manufacturing zone and that's when they found out it was also residential.

Mr. Hirsch asked is part of your argument from a planning perspective on the use variance is that the site is not reasonably developable for the permitted residential use and therefore, there is a hardship rising to the level of special reasons...or are you just arguing particular suitability and promotion of the general welfare. What exactly is the special reason.

Mr. DeBoer replied it's a little bit of both. There is some particular suitability because of the surrounding land use pattern, the fact of how isolated it is. I also think that given the nature and character of Shafto Road, the type of truck traffic and the types of other

uses that are being serviced, the adjacent commercial uses...I believe it's somewhat inappropriate for residential use. There really is...you know the Master Plan is looking for really good buffers between residential uses and more commercial uses and I believe it doesn't exist here in its present condition and it's very difficult to provide going forward. So, in answer to your question, it's not ideal. It's not particularly suited for residential purposes but it is particularly suited for an expansion of the MFG.

Mr. Falvo asked Mr. DeBoer, I mean the reality of the situation is the owner of the home was asked to develop the same so that it could be converted to an office building. And it was developed in that fashion and at that time, it was an MFG Zone and they got an MFG use which they placed on the adjacent property...and now they just want to extend that MFG Zone...or that MFG use into where the residence is and demolish the residence and put up the flex space.

Mr. DeBoer replied correct.

Mr. Falvo continued so given its proximity to other MFG uses and the environmental constraints surrounding around it, would it be fair to say that this property is uniquely and particularly suited for this particular use given the fact that Precision Paving is nextdoor.

Mr. DeBoer replied exactly. With the existing land use pattern, the existing uses which are immediately adjacent...it's not an ideal place to live as a residence and it's almost...it's very difficult to do substantial buffering. I think it's unfortunate that the zone line ever got moved but it did.

Mr. Falvo stated and it's immediately across the street from the Monmouth County Landfill.

Mr. DeBoer replied yes.

Mr. Falvo said and as far as the remainder of the surrounding area, you have environmental constraints and beyond the environmental...

Mr. DeBoer stated nothing can happen with the County's properties, with the land itself...

Mr. Falvo said right but beyond that, outside of the environmental constraints immediately to the east of the building, the other uses in that area are all manufacturing.

Mr. DeBoer replied yes.

Mr. Falvo said are all uses permitted in the manufacturing zone.

Mr. DeBoer replied concrete batch plants, all kinds of things.

Mr. Hirsch asked if the Board didn't grant the variance...the residential area that's left there...how many residential lots could be developed on that lot. Any idea.

Mr. DeBoer replied I haven't done a layout study.

Mr. Hirsch said I was just wondering, based on the manufacturing use across the way...Precision Paving and how it's laid out. How many lots you might have been able to actually get. Yeah, how big are the lots in that zone.

Mr. Palmieri replied 60,000 square feet required...minimum for an R-1.

Mr. DeBoer stated based on the lot width...that's what I'm just looking at...the Lots .01 and .02 are about 270 some feet wide...you have the depth requirement. If you ran a cul-de-sac back, you might get two or three lots in there.

Mr. Palmieri said if it's septic, actually 60,000 if there's sewer. With septic, you have to go to 80,000 I think.

Mr. Falvo stated no, 60,000.

Mr. Gleitz said no, I thought 60,000 was the number on that. You could go down to 40 if you had septic.

Mr. Palmieri corrected Mr. Gleitz saying if you had sewer.

Mr. Gleitz said right, you could go down to 40. With septic, it's 60.

Mr. DeBoer stated it's one, perhaps two, under that scenario.

Mr. Hirsch said yeah. I just wanted to give the Board some sense of what they're trading off.

Mr. DeBoer replied it goes back to the fact that it's not ideally suited to be subdivided.

Mr. Gleitz said the other testimony aside, what are the impacts going to be on 10.03.

Mr. DeBoer answered what they've done, 10.03...first of all is somewhat of a grade break. It's about four or five feet below...so there really is some separation in terms of the site feels, one to the next. It makes some sense to do some supplemental landscaping but there is a full 50 wooded buffer that will be preserved...and it's been designed in such a manner that those trees will actually remain. It may make sense to add a fence or to add some supplemental landscaping at the time of site plan, just to make sure that they're adequately buffered but what's there is pretty dense. I've been on the property.

Mr. Gleitz stated we've had some back and forth. We know that this is a bifurcated application. There's been some discussion and it looks as if, under the current

configuration, the dumpster area and the outdoor storage area, the two uses right along the residential property line. Do you think that's going to have some negative impacts. A couple of dumpsters for some flex space buildings with some outside storage.

Mr. DeBoer replied if it's properly screened and maintained, it should be fine. It's something the Board could consider and deliberate further. There's not a lot of organic refuse that comes out of a place like this. It's mostly just clean debris...construction debris and that kind of stuff.

Mr. Falvo said the storage area as indicated, as was testified to by Mr. French, is mostly for outdoor forms, extra concrete, things of that nature.

Mr. DeBoer stated a couple other real quick things, with respect to parking, the required parking is 23. There are 26 spaces shown. There were some comments about loading spaces not being provided...that there were three required. As a practical matter, each individual space here has an 18 foot loading space...so there's really one for every tenant in the facility.

Mr. Falvo said and with regard to the question as to whether or not you could get sufficient parking on this site, if whoever converted to all office, were you able to make that determination.

Mr. DeBoer replied yes, I did a very rough freehand overlay on the 5th of September, right after our last meeting...and if you take the 14,000 some square feet.

Mr. Falvo interrupted we can mark that into evidence. That was submitted to the Board. I think you have the concept plan submitted.

A-12 Concept plan

Mr. DeBoer said at the Board's suggestion, there was some concern over the theoretical event of the whole place becoming office. You take the 14,000 square feet and you divide it by the office ratio of one space per every 250 feet. The required parking on this project would be 60 cars. It's possible to accommodate 82 in the area which will be cleared and stabilized as part of the project of storage and parking. It's not the applicant's intent to do this. The question came up from Mr. Feist's office...is there room to accommodate enough cars, should it ever happen, and the answer is yes. We're actually overparked by about 20 percent.

Mr. Gleitz stated Mr. Chairman, I had a few follow-up questions.

Mr. Palmieri replied sure.

Mr. Gleitz asked does any of your planning testimony change in terms of suitability if...considering the idea of moving Precision Paving onto 10.01 and 10.02...into the one flex space building.

Mr. DeBoer replied no, other than it resolves a problem of outdoor storage by getting it into the back. I think it improves some of the conditions on the site by getting some of the...what's been perceived as things people don't like looking at parked along Shafto Road...will be properly screened behind the building. So I think to that extent it's an aesthetic improvement and in support of the application. In terms of use, it's really the same. They're all going to be flex space. It may be three different buildings but it's fundamentally one use. It's sort of like having a retail mall with two or three outdoor pads. It can all still be retail. One is a drug store and one is a shoe store. They may be in different buildings but it's all on the same site and they still function as one overall project.

Mr. Gleitz said Mr. Falvo, correct me...did we settle last time that this is going to be one property, one lot.

Board member Erick Rickert left the meeting at this time.

Mr. Falvo replied yes.

Mr. Gleitz said okay. Are we going to be discussing the outdoor storage and the outdoor equipment storage as a non-permitted use within the R-1.

Mr. DeBoer replied it is a non-permitted use within the R-1 but it is...

Mr. Falvo stated what gave rise to the application is that there was differences of opinion between the applicant and the Zoning Officer as to the use of the existing Precision Paving site with the equipment on it. While it didn't work, the equipment is generally off the site. In the winter months the equipment comes back to the site. So Mr. Falvo started storing the equipment behind the house so it won't be visible when you drove down Shafto Road and that gave rise to the fact that "well, you're now parking equipment in the residential zone. So one of the reasons this design has been put in its present configuration is to put the equipment behind the new flex space so it's out of sight when it's on the property.

Mr. Gleitz said I understand the reasons for the design and we've heard the testimony about improved aesthetics and buildings acting as buffers and everything else but I still think it's a separate ordinance section that controls that type of use and I still think it makes sense to seek relief under that.

Mr. Falvo replied absolutely.

Mr. Gleitz continued aside from the Precision Paving, you also have a designated outdoor storage area of 3,500 square feet to be used by the rest of the flex space for any number of concrete forms and other types of things you've just discussed.

Mr. DeBoer replied the outdoor storage type activities which are clearly not permitted in the R-1 Zone are typical ancillary accessory activities to an MFG flex space use which is contemplated so it kind of runs hand-in-hand with the granting of the variance.

Mr. Gleitz asked so we're kind of lumping the 40-79 B under the overall use variance.

Mr. Falvo replied right.

Mr. Gleitz said thank you, Mr. Chairman.

Mr. Palmieri said that zone line causes a lot of problems, doesn't it.

Mr. Gleitz replied a lot of zone lines cause a lot of problems.

Mr. Palmieri continued especially with this application the way it cuts it right in half.

Mr. Falvo stated if we were to consolidate the lots now, we'd have a split lot situation. I mean it's being serviced by the same driveway and everything else.

Mr. Gleitz said we always try to avoid split lot situations but you're dealing with an entire borough, entire township, large areas...it's hard to know exactly how the zone lines are going to fall for each individual property sometimes. Before, like I said, one of the reasons why this zone line was maintained this way was because whether it was granted under a use variance or not, there was an existing residence on this property, an existing residence on 10.03 and, you know, minus the conservation area, the rest of the remaining properties along Shafto south of the site were all designated as residential and there's active applications on that property. It so happens...

Mr. Falvo asked what property.

Mr. Gleitz replied the subdivision we just discussed...the 12 lot subdivision. So when you're looking at it from a tax lot land use situation, from that type of analysis, all of these lots were either presently developed as or future development as residential zones. It just so happens when you look at it with the conservation easement and everything else on top, it kind of does create this piece but you still have a residence and someone lives there on 10.03. They're still part of that zone. They're the conforming use on this map.

Mr. Falvo stated I agree with Mr. Gleitz is saying but I also feel that had the Planning Board had the benefit of the history of this property when they adopted the Master Plan. Whether they would have or not, they should have shifted the zone line back to where it was.

Mr. Palmieri said they would have left it alone.

Mr. Falvo stated the whole reason that Mr. and Mrs. Falco's home is there and in the configuration that it's in...if you went through the home, you would not design a home in this fashion. It was designed for convertability to an office structure.

Mr. Palmieri said I remember, I was here for that.

Mr. Falvo replied yes, you were.

Mr. Rauch stated in regards to the Planning Board...when the Planning Board had looked at that...we had looked at that. We had looked at each one of those individual lots and the reason why the Board kept that zone there was because you had the two residences...and they didn't want to turn those two residences into non-conforming use. It didn't make sense to shift the zone back to manufacturing and then the resident that was going to be on the one lot would have been non-conforming. The Planning Board had looked at it. I was on the Planning Board at that time we did the Master Plan re-evaluation...and we had looked at it and it was decided to keep it residential and not shift it because you had two residences there...and we didn't want to convert them to non-conforming uses.

Mr. Falvo said it would be interesting to find out why it was changed to begin with. I mean, given the fact that when the second home was built, the newer home was built, it required a use variance.

Mr. Palmieri asked are there any other questions of the planner. Again, the public is all on your side. Now it's 20 minutes to eleven...Mr. Falvo, where are we at.

Mr. Falvo replied we're done with the presentation of our case on the use variance.

Mr. Palmieri asked alright. Mr. Falvo, do you have any closing remarks.

Mr. Falvo replied yeah. By way of closing remarks, first of all, on behalf of my client, we'd like to thank the Board for the time that they put in in listening to the testimony in this case. Is everybody eligible.

Mr. Palmieri replied yes, everybody's eligible.

Mr. Falvo said they listened to the tapes or read the transcripts. Thank you. And Mr. Rickert left...I noticed that. Not to rehash the whole thing...the property had always been used as an integrated site. It was Precision Paving and they lived nextdoor. When they first had to go build a new house as a result of a fire, they had to go for a use variance and they were asked to construct this home in such a fashion that it could be converted to an office. Unbeknownst to the individuals whose property was affected, at some point in time the zone line was moved so that the home...or Lots 10.01 and 10.02...are now in a residential zone...and the Falcos are sort of in a Catch 22 or someplace between a rock and a hard spot, however you want to look at it. Their business is growing. They need a place to put their equipment. On their property, they

want to put a flex space operation in. They're cognizant of the home on 10.03. They've maintained the buffer. They know they've got to go to DEP for their exchanging of properties. They're going to put the equipment storage so it's totally out of sight. It will be screened by the building that parallels Shafto Road. They're willing to take the existing Precision Paving building and make that flex space and also have it designed, or re-fitted or re-finished in such a fashion that it's compatible with the other site. If the variances are granted for the impervious coverage and for the other items required on the list, we'll come back with a full engineer's site plan and show how this can work. One of the comments that was made at the last meeting in regard to the heavy storage and what would happen if we had some leaks and we've looked at some ways by which we can protect against ground soil contamination and we'll save that and we'll bring it back for site plan. At this point in time, I think that through the testimony of the owner, the architect, the traffic engineer and the planner, we've shown that we've satisfied the positive criteria. We've satisfied the reasons for granting a use variance. There's no negative impact from either noise, odors, traffic, or things of that nature. It's an aesthetic improvement to the area. It's compatible with the area. And we would request that the Board act favorably on the use variance and the other bulk variances subject, of course, to site plan approval.

Mr. Hirsch stated well, I don't know that we can deal with the bulk variances without having a site plan.

Mr. Falvo said okay.

Mr. Hirsch continued by saying unless you want to identify which ones you figure we can deal with without that.

Mr. Falvo stated the lot coverage.

Mr. Hirsch said hold on. We've got to see the site plan before we do lot coverage.

Mr. Falvo stated well, alright. We'll defer those...

Mr. Hirsch said I mean that could change. I mean your percentages could change. Who knows...

Mr. Falvo stated right. So, we'll just go with the use variance and reserve everything else for...

Mr. Hirsch said so we're clear...exactly what is the use variance that you're asking the Board to approve.

Mr. Falvo replied we're asking for a use variance to permit flex space in an R-1 Zone on Lots 10.01 and 10.02 and we're asking for a use variance to have equipment storage and material storage in conjunction with those on Lots 10.01 and 10.02.

Mr. Palmieri stated that are in the R-1 Zone.

Mr. Hirsch asked are we just talking about flex space or are we talking about how many square feet of flex space are you seeking the use variance for. I mean, isn't that part of the use variance. I mean if we just say it's flex space...we could leave it open, I suppose...and say the amount of square footage will be subject to the site plan but...

Mr. Falvo said I believe it's 12,500 square feet of flex space.

Mr. Palmieri asked isn't that the total of all three buildings we're talking about.

Mr. Hirsch stated well, but they're dealing with the use variance. Okay. The existing building is not part of the use variance.

Mr. Falvo replied correct. The existing building is permitted.

Mr. Hirsch said that's sitting in a manufacturing zone. So, they're asking for a use variance to construct two buildings...

Mr. Gleitz stated one's 7,500. The other is 5,000 for a total of 12,500.

Mr. Hirsch continued for flex space, which is a combination of office and warehouse...and we're talking about 1,500 square foot units...250 square foot office space.

Mr. Falvo said I believe it would be 20 percent office space throughout the site.

Mr. Hirsch continued and 12,500 warehouse...20 percent office space total. Alright, so that's actually the use variance that you're requesting.

Mr. Falvo replied correct.

Mr. Gleitz said there is a second.

Mr. Hirsch stated storage of equipment which they mentioned. We could indicate that you're granting a variance to allow 3,500 square foot area to be designated as outdoor storage or simply that you're going to permit outside storage subject...the area to be determined based on the site plan.

Mr. Palmeiri asked the outside storage...are we talking material or equipment.

Mr. Falvo replied both.

Mr. Gleitz stated there's a 3,500 square foot compound type of a situation for the outdoor storage of materials. Then there is a larger gravel, perhaps other type of paving

of some kind, for the vehicle storage in the rear. We could probably scale it out pretty quickly.

Mr. Hirsch asked I mean, are you guys locked into those areas or might they change when you lay out the site plan. That's what I'm trying to get to.

Mr. Falvo replied we're sort of locked in because of the presence of the wetlands buffer. You have the 300 foot buffer from the stream and then you have the buffer from the edge of the wetlands so that basically controls...

Mr. Hirsch asked might it be less.

Mr. Gleitz said in round numbers it's 90 X 120...the outdoor parking area.

Mr. Palmieri stated that's why I asked the question...outside storage. That's the equipment and all that. Is it raw material.

Mr. Gleitz said it's about 3,600 square feet of outdoor storage for materials and a little over, maybe about 11,100 square feet outdoor storage for vehicles and machinery as presented in the use variance.

Mr. Hirsch asked now is the Board comfortable with dealing with that at this juncture or do you feel you need to see the site plan. Not that you don't have...obviously, you have a partial site plan. You're not approving that plan.

Mr. Palmieri asked do we have any feelings from the Board...would you rather wait to see the site plan on the outside storage in more detail.

Mr. Hirsch asked is it fair to say the Board...they don't have to indicate...but that the concept of the outside storage of equipment and materials and of vehicles that would be behind the proposed building...is the concept acceptable to the Board. Would you rather wait to see a site plan to define the scope of it. Is that what we're saying. Just so the applicant has some idea that he's not going to come back and we're going to say "No, we don't want any outside storage." I'm trying to make it fair, at least, so you know what you've got ahead of you.

Mr. Falvo said right. We need the storage. It's crucial to the job.

Mr. Palmieri stated we understand that. We're not saying that there's no outside storage.

Mr. Hirsch said we just want to see the layout...how you're going to park it...storage and all that.

Mr. Falvo stated we'll show the screening...how it's going to be screened...the whole nine yards.

Mr. Hirsch asked so you want to hold off on the storage concept or...

Mr. Palmieri said I would say hold off on it.

Mr. Hirsch stated until you see the site plan.

Mr. Palmieri said we know there's going to be storage.

Mr. Falvo stated well, we're getting a use variance. We're either going to be granted or denied for the storage. The amount of the storage we'll be waiting until the site plan...but the overall concept would be approved.

Mr. Hirsch said so you want...I mean, the option I gave you before. You could vote to approve the use variance to allow outside storage with the caveat that the area and the square footage to be devoted to that will be determined at the time of site plan. Paul, do you have a concern with that.

A motion to close the public portion of the Falco (Precision Paving) hearing was offered by Mr. Porzio and seconded by Mr. Battista. A voice vote in favor was unanimous.

A motion to approve the two use variances for Falco: the flex space with the conditions that were already outlined and the concept of outside storage with the caveat that the area and the size of that would be determined at the site plan hearing was offered by Ms. Madzin and seconded by Mr. Roche.

ROLL CALL

Yes: Ms. Madzin, Messrs. Roche, Palmieri, Battista & Porzio, and Ms. Oltman

No: None

Abstain: None

A motion to approve the meeting minutes of July 17, 2008, was offered by Mr. Battista and seconded by Ms. Madzin. A voice vote in favor was unanimous.

A motion to approve the meeting minutes of August 7, 2008, was offered by Mr. Battista and seconded by Ms. Madzin. A voice vote in favor was unanimous.

A motion to approve the meeting minutes of August 21, 2008, was offered by Mr. Battista and seconded by Ms. Madzin. A voice vote in favor was unanimous.

A motion to approve the meeting minutes of September 18, 2008, was offered by Mr. Roche and seconded by Mr. Slazyk. A voice vote in favor was unanimous.

A motion to approve the meeting minutes of October 2, 2008, was offered by Ms. Madzin and seconded by Mr. Battista. A voice vote in favor was unanimous.

A motion to adjourn the meeting was offered by Mr. Battista and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Board Secretary