

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

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 Meeting 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.

ROLL CALL

Present: Messrs. Palmieri, Slazyk, Rauch, LaValle, Diamond, Baldwin, and Mr. Calvert

Absent: Ms. Evangelho

Also present: Mr. Hirsch, Board Attorney
Mr. Staiger, Board Engineer
Mr. Laks, Board Engineer
Ms. Fitzgerald, Board Planner
Ms. Paone, Zoning Officer
Mr. Gottfredsen, Board Secretary

Mr. Palmieri said a statement of procedural guidelines for the public hearing.

DBD, LLC (CLAYTON CONCRETE)	BA 2006 – 36
COMMERCE DRIVE	BLOCK 144 LOTS 5.02, 5.04 & 5.05
APPEAL OF ZONING OFFICER’S DECISION/USE VARIANCE	

SEE THE ATTACHED TRANSCRIPT OF THE DBD, LLC APPLICATION

Following the DBD, LLC hearing the Board took a short recess.

ASBURY AVENUE EAST (TINTON FALLS TOWNE CENTRE)	BA 2007 – 01
ASBURY AVENUE	BLOCK 128.03 LOTS 19.01 & 23.01
REQUEST FOR RE-CONSIDERATION/USE VARIANCE	

Gordon Gemma, Esq., came forward on behalf of his client.

Mr. Gemma advised the Board that this was a request for re-consideration of the Board’s vote of December 7th where there were an insufficient number of votes to affirmatively carry the use variance. There are basically two findings the Board must make. First is

that this is somehow different than the last application and the second one is that if this is significantly different than the last application...

Mr. Hirsch stated hold it, hold it, hold it. Let's get jurisdiction before we start making a record.

Mr. Hirsch continued to review the affidavit of publication and proof of service and then stated the applicant intends to proceed with this as an application before the Board requesting the Board to re-consider its prior action or the applicant may want to proceed with this on the basis that this is a new application, albeit very similar to the prior application but with sufficient changes to constitute a new application.

Mr. Gemma asked how many members tonight are eligible to vote on a re-consideration.

Mr. Hirsch said that would be the people who voted on the prior application.

Mr. Palmieri said you have the original six members.

Mr. Hirsch stated so procedurally this is where we're at. If it's a motion for re-consideration, okay, there are limited circumstances in which a Board may agree to re-consider an action that it previously took...such as the horrible type things like fraud, misrepresentation on the records. The facts that you relied upon, you find out that they're not true. If there's new evidence that you feel is relevant to the case that the applicant didn't have an opportunity to present. It's that concept. Okay, there's no hard and fast litany I can give you but it's that general type of concept that, in your discretion, you would say "alright, we'll re-open this to re-consider our decision. It's not something you want to do normally but, under the right circumstances, you can do it. You first would have to have a vote that you're willing to re-consider the application...so the applicant can certainly make a presentation this is why I want you to re-consider. Yes, we agree to re-consider and then, of course, you've essentially re-opened it and now you're going to vote the same, maybe not...on whatever you hear. The other option is, assuming that's what the applicant requests you to do, even if you found no, you wouldn't re-consider, the applicant could go forward and say "well, I want you to consider this as a new application." That implicates the doctrine of res judicata meaning once you decide a case, you can't hear the same case over again. However, you can hear a case dealing with same property, same use, if, again, in your discretion, you find there's substantial, enough changes either in the circumstances surrounding the application or in the application itself. So, again, based on what was presented to you, you would say "Yes, I think that's a substantial change from what we voted on the first time. Therefore, I do think it's a new application." Even though it's for the same use and everything else. A new application, of course, starts a new record. Okay, so while you may have heard it all before, this is a new application. Therefore, the record that is made and the record, for example, that would go for appeal would only be the record that starts as of now, not what was said before so that the prior record would sort of have to be remade plus with the new evidence, it would be a new application. So that's the two areas. The notice, and why I haven't accepted service yet because I'm not quite clear where we're at, it talks

about a request for re-consideration but says it's based on substantially different circumstances. So it has the flavor of both a re-consideration and sort of like a request for a new application. And this is for the denial of a use variance for retail office and/or medical office use in a 5,400 square foot building on the property. In terms of the notice, if it were a new application, it doesn't specifically indicate that it's requesting site plan approval. It just talks about the use variance because I think the applicant was first looking at this maybe as a re-consideration...because a re-consideration, of course, you would still be going by the prior record...it's the same case, in other words, that record that was already made is part and parcel of what would happen tonight but only those members who voted on the original application could vote on the re-consideration. If it comes in as a new application, it's new. Anybody here can vote at the end of the case.

Mr. Gemma stated I'd ask the Board to do this, Mr. Hirsch. I'd ask the Board to consider the motion as a motion for re-consideration. Take the vote on the motion for re-consideration. If they decide not to do that, then I'll present it as a use variance.

Mr. Hirsch said okay. That may end up requiring some additional notice for relief down the road.

Mr. Gemma stated I understand. It may require additional notice or additional relief down the road but right now, based upon the evidence submitted, I'd like to consider this as a motion for re-consideration. If they vote upon that, then provide the evidence so that they may re-consider it.

Mr. Hirsch said I got you. Let me first indicate that I've reviewed the affidavit of publication and proof of service. I believe they're in order as to their form concerning a request for re-consideration.

A motion to accept service for re-consideration of the Asbury Avenue East matter was offered by Mr. Baldwin and seconded by Mr. Lomangino.

ROLL CALL

Yes: Messrs. Baldwin, Lomangino, Palmieri, Slazyk, LaValle, & Calvert

No: None

Not eligible: Messrs. Rauch & Diamond

Mr. Hirsch stated okay, we've accepted service. At this point, Mr. Gemma, you can present what evidence you have as to why the Board should agree to re-consider the action it has already taken on this application.

Mr. Gemma said there are two items, and they should be part of your package, that were submitted in connection with the application. The first is a letter from your traffic engineer which is in response to our traffic engineer that talks about the impact of the

change from medical office to retail use and it's confirming, in fact, that when they did the original application, they used the shopping center use as a worst case scenario. Mr. Dean submitted that information to your traffic engineer who confirmed, in fact, what they had originally told us the worst case was the worst case.

Mr. Hirsch stated okay, the Harlyn Associates' letter of December 15, 2006, you're referring to.

Mr. Gemma replied yes, sir. And then we have Mr. Dean's letter of December 13th, who's our traffic consultant.

A-1 Letter from Mr. Dean dated December 13, 2006

A-2 Letter from Mr. Yesowitz dated December 15, 2006

Mr. Gemma said last meeting we had discussed and a concern of the Board was even if the traffic was less, there may be A.M. peaks...and the issue was what about a donut shop or a bagel shop, wouldn't that have impacts. We were trying to discuss things we could prohibit and we realized it was vague for the Board. So what we did is we specifically provided for the Board a list of what would we would permit. These are permitted uses to be clear that only these uses could be used in this 5,400 square foot space, trying to address the issue of what is appropriate and doesn't have a substantial impact on the A.M. peak hours. There's a representative of the applicant here tonight if there's questions about that or if you want us to modify it. I think that, in and of itself, by basically being the exact opposite of what we proposed last time, instead of prohibiting the use, saying specifically this is what's permitted. One, that addresses your concerns and two, makes this is a substantially different application than what was before you previously.

Mr. Hirsch stated I'll take an extra copy for myself. There is one in the file that I will mark as an exhibit. Is it your representation here that the applicant is indicating that the retail uses that would be permitted in the retail building would be limited to those listed on this list.

A-3 Proposed list of permitted retail uses

Mr. Gemma replied that is correct. Those, and only those, as set forth on the list.

Mr. Hirsch asked wouldn't it have been easier just to put the ones that were prohibited.

Mr. Gemma replied we tried that. No. The concern was to just put the prohibited ones just...we wanted it to be clear...in response to some of the concerns raised by the Board.

Mr. Palmieri asked these are the lists of the requests that you want.

Mr. Gemma replied that's correct. And, again, I want to be clear that's why we have a representative from the applicant here this evening, if there's concerns about the proposed use, they'd like to modify or change, we'd like to address that concern. Based upon the information provided plus this list, we think this is a substantially different application such that the Board's consideration is appropriate.

Mr. Hirsch said well, not necessarily a substantially different application. Some of the facts were presented. These reports, weren't they part of the first one.

Mr. Gemma replied no, sir. The meeting was held December 7th. These were after the meeting.

Mr. Palmieri said these are additional.

Mr. Hirsch stated okay, so at the time of the vote, these were reports not available.

Mr. Gemma replied that's correct.

Mr. Slazyk said but we did have a discussion on this.

Mr. Gemma stated we had discussion but the concern was that your expert hadn't had a chance to review it...or there was no indication whether they did or did not in writing.

Mr. Hirsch said alright, so this refers...the report that was prepared on November 30th...when I say this, I'm sorry...this is A-1, Mr. Dean's letter of December 13, 2006, refers to his report of November 30, 2006.

Mr. Gemma stated that's correct and that was, in fact, part of the record and discussed at the meeting of December 7th.

Mr. Hirsch said so what you're indicating...you're requesting the Board to re-open and re-consider the existing application on the basis that this was critical to the decision of the Board and to your position based on a critical issue relative to traffic generation by the retail uses and that there might have some...as was originally indicated some difference of opinion as to the original presentation of this case. Not the case you're asking for re-consideration, the case preceding that where there were representations that there was testimony about the entire building being used a retail even though the resolution of approval had a different breakdown between the three buildings that were approved. So this is being submitted as clarification of that issue and also you're submitting something new in the terms of the permitted retail uses...I guess, again, on concerns that the Board expressed as to the types of uses that would be allowed, which, obviously, by implication, means certain retail uses would not be allowed. Anything else you want to say, before they vote on whether they will re-consider this.

Mr. Gemma stated really, we weren't trying to re-hash the old issue with the traffic letters. The traffic letters were done really because they were concerns raised by the

Board: #1 – confirming there'd be less traffic and #2 – it would have less of an impact. I'm not trying to go back to the decision that this Board made. I want to just go on forward from there. That really was the intent of the traffic letter.

Mr. Hirsch said alright, so does the Board have any questions, either of Mr. Gemma, or he has a representative of the owner, if you need any clarifications of just this part of the matter before you decide whether you agree to re-consider it, and then, if so, you can subsequent to that, there'd be another vote on whether you approve or deny the application.

Mr. Palmieri stated the question I have is with the list. You said...going through this list... this is a pretty all-inclusive, very large list.

Mr. Gemma said we concede it is because the rationale though, the focus of last meeting, things that would generate A.M. peak traffic and we tried to make sure that none of these things would generate A.M. peak traffic.

Mr. Palmieri asked would you be amenable if the Board was to review this list and say we don't like what you've chose for this one particular...

Mr. Gemma replied we hope the Board will consider this list in its totality but if there's comments, we're certainly willing to listen to them. That's why a representative from the applicant is here.

Mr. Lomangino asked if you could just clarify the last item on the last page. It sounds like you itemized, itemized, itemized, and then #10 was inclusive of everything.

Mr. Gemma replied the last item on the last page.

Mr. Lomangino said yeah.

Mr. Gemma stated basically I'm trying to say...it's like a catch-all, in case I missed a retail product. Our thinking was we weren't concerned about a person who sells widgets, a person who sells tape, that type of store. That wasn't your concern. If you'd like this to be stricken, we'll take it out. If you think it's too broad, certainly we'll consider that but that's why we have some many listed. We're trying to think of those things that weren't a concern...because this is clear that only these items can be used. If it wasn't a concern of the Board, then the applicant still had the right to use it.

Mr. Palmieri said okay. I guess the vote we're going to have to consider right now is for re-consideration.

Mr. Hirsch stated do you believe this evidence justifies a re-consideration.

Ms. Paone said I wanted some input on the uses.

Mr. Hirsch asked did you questions or did you have testimony.

Ms. Paone replied question and then make testimony. My first one is the Board might want to look at some of the uses that are there because it's not just a retail kind of use. Some of it might be a maintenance part of the use...like lawn equipment and that kind of stuff. I'm not saying for this applicant but I just think if the Board is willing to consider that they're going to allow these uses, that the Board, if they so desire, limit it to the interior of the building. Nothing goes onto the outside. The other thing I'd like to call to your attention, in my experience, is sporting goods store. To mind would come, you know, like maybe an Athlete's Alley or something...but when you go "sporting goods" store or "hunting and fishing activities", that has guns. So if the Board is willing to approve that, I want them to understand that that might be there also. Then you have some renovation stores. For example, you may have a store that sells garage doors. The showroom is there to look at the garage doors but, if they run their business from there, the construction stuff comes back to the site. If the Board wanted to grant these uses, I just wanted it to be clear, for the applicant as well as myself, what to expect and what was going to be allowed there.

Mr. Gemma said I had a chance to speak to the applicant. Those are all valid concerns and certainly we have no problem conditioning this list of uses. The applicant doesn't intend to have a gun shop. The applicant doesn't intend to have somebody sell their lawn equipment outside. That would kill the whole shopping center. So, certainly those types of reasonable conditions upon this list would make a lot of sense. We'd be more than willing...we don't intend to have a contractor. This is not like a flex space/warehouse where you're going to have your showroom in the back and bring the trucks in or your showroom in the front and then run your trucks out of the back. That's not this use. This is a retail center. That makes sense. If you clarify it like that so you have real specificity, that's fine.

Mr. Rauch asked even though I can't vote, am I allowed to at least ask questions during this.

Mr. Hirsch replied you can ask questions. Just so the record's clear, you're not voting because you were disqualified because of a conflict. Then you couldn't ask questions.

Mr. Rauch stated my concern is dealing with parking. You have a certain amount of parking and you have restaurants on that site. To say a lot of these things may be parking generators in here, I think you kind of may want to eliminate that or do something...because you have a certain amount of parking and I don't want to open it up to high generators. You have restaurants. I don't want to see restaurants in all of those because restaurants are high generators of traffic and parking and you may not have enough parking.

Mr. Gemma replied the constraint on that is we're not seeking nor have we looking to ask for any type of parking variance. Actually the parking generation from the retail use, with the exception of restaurants, is less than the parking requirement for medical office.

So we actually have more parking. However, you're right, if per se, you want to put more restaurants, the constraint on that, either here in this building or the other building, the constraint is the parking. But we're not seeking that variance and we know that we put more space, because of parking, and we're permitted to do that. We'd have to come back and seek variance relief. Just so you know, Mr. Rauch, the testimony on the record was that this generates less parking demand than a medical office and what's there now.

Mr. Hirsch said well, alright, just so I'm clear about that...any retail use here, including the full-service restaurant...you would still have sufficient parking on the site to meet the Ordinance requirements. No matter what you put in here, you would still have sufficient parking.

Mr. Gemma replied that's correct. And, with the caveat, Mr. Hirsch, in case it's all functioning as one retail center...in case they put more restaurants on the other one and then put another one here, you might trigger it. Say, for argument's sake, you put more restaurants there and then a restaurant came here...but we're not seeking that relief. We're not seeking the parking variance.

Mr. Rauch said now, Lori, I have a question for you. When they come and have a new tenant for a store, do you check the parking calcs to make sure and if they exceed it, then you kick them into...

Ms. Paone replied yes, sir.

Mr. Lomangino asked prior to they're leasing.

Ms. Paone replied yes.

Mr. Slazyk said one of the businesses you have there is banking and financial service establishments. You already have a bank. We talked about banking with regards with regards to queuing up, location spots, and everything else. I mean why are we putting another bank in.

Mr. Gemma replied I guess it's almost like if you had...more in terms like a Schwab.

Mr. Slazyk stated if you want to talk about a financial service establishment, that's fine, but why are we saying "bank."

Mr. Gemma asked you want to change that. Financial service establishments, fine.

Mr. Slazyk said I mean I have no problem with Merrill Lynch...

Mr. Gemma stated we have no problem as long as it's broadly based "financial service establishment, that's fine.

Mr. Palmieri said I think this might take a little while but instead of nit-picking ones off the list, would the Board rather just go down the entire list.

Mr. Gemma asked Ron, can I suggest this. Can we make a motion for re-consideration because that gives us then the right to go through this more appropriately.

Mr. Palmieri said I spoke to the Board last time we had this application about another application that came in front of us that we put restrictions on...what kind of retail establishments they're allowed to have there. I just want to also hand that out to all the Board members but I didn't because I didn't know where we were going with this.

Mr. Hirsch stated but remember, that was based on a very tight site with very limited parking.

Mr. Palmieri said I agree with you but just so the Board can see the result of what had occurred with the restrictions that were put on...what kind of restrictions were put on that particular site which happened to be up on Shrewsbury and Newman Springs Road. Mr. Hirsch is right. We have to go to the point of are we going to accept the applicant for re-consideration first before we go any further.

Mr. Hirsch stated I think you're heard that. Then you can get into the merits of this and whether you would then voting again on the application which your votes may change or they may not...but at least I think you've heard the grounds for the re-consideration, even though you already voted on this. You have to get over that hurdle to agree you're going to re-consider it...before we then get into any merits.

Mr. Palmieri said so we need a motion to either deny the re-consideration or to grant the re-consideration. Now deny it for grant it – it just means you're re-considering it. It doesn't mean you've approved it or denied it again. It just means you've agreed to re-consider it.

A motion to re-consider the Asbury Avenue East application was offered by Mr. Lomangino and seconded by Mr. Baldwin.

ROLL CALL

Yes: Messrs. Lomangino, Baldwin, Palmieri, Slayzk, LaValle, & Calvert

No: None

Not eligible: Mr. Rauch

Mr. Gemma stated what I would propose is that we go through the list of permitted retail uses and if there's any concerns or questions as suggested by the Chair, so that we can be clear as to exactly what's proposed, if it's relatively simple. What I'd like to do is just go a page at a time and anyone has any problems with any page, please let me know.

Mr. Palmieri said the one thing I'm going to request of the Board and I got the resolutions from a application and I would like the Board members to hold this and look at it unless Mr. Gemma objects to it.

Mr. Gemma replied I have no objection to the use of a prior resolution. I'd like to look at them myself.

Mr. Palmieri passed out the prior resolution to Investors Holding Group, LLC, BA 2003-21, which was located at 404 Shrewsbury Avenue.

Mr. Gemma pointed out that that application was based on the testimony of the Planner at the time.

Mr. Palmieri said just to give you an idea because we've done it before with retail establishments.

Mr. Hirsch stated keep that in mind that it's a different site. It doesn't necessarily mean that those uses would have to be the same ones here. I mean that site had certain constraints to it; size, parking, things like that. The concept is the same but just the two lists don't necessarily make sense for this site.

Mr. Palmieri said alright, so now we have got the permitted retail uses list that the applicant has provided. So I guess we start at Page #1 and just work our way down.

Mr. Gemma stated there are thirteen uses listed on Page #1 and we believe that none of these generate A.M. peak generation uses but we want to make clear we understand the concerns by Ms. Paone. Certainly we would agree that as a condition of any use, there can't be an outside display of any goods...and also understand that the sale and service of hardware, heating, plumbing, a/c, other household/office sales, if there's some minor service like a place like vacuum cleaner repair, but not have people dispatched...

Mr. Palmieri said I'm going to ask the professionals to chime in at any point where we're looking at any of these retail uses.

Mr. Paone asked would the applicant be willing to state there will be no X-rated uses.

Mr. Palmieri said adult book stores, things like that. No, we don't intend to have that.

Mr. Paone stated well, I already had that problem with the previous application that they approved so I bought it to mind.

Mr. Palmieri said it's not on Page #1.

Mr. Gemma read "sale of books, periodicals, magazines"...there you go. This will not be of adult nature.

Mr. Hirsch stated I am not clear about what limitation you are suggesting under “the sales and service of hardware, heating, plumbing, air conditioning.”

Mr. Gemma replied this is not going to be a contractor’s supply shop. This is going to nothing where you’re dispatching men and materials from the site to service outside as a contractor would. This is meant as a retail use where someone wants to come and fix a vacuum cleaner, that’s one thing. It’s quite another thing to be half of a showroom and send out guys to put in flooring or put in somebody’s garage door.

Mr. Diamond said a hardware store.

Mr. Gemma repeated right, a hardware store.

Mr. LaValle asked then there’s no heating and plumbing.

Mr. Gemma replied no, no, no. It could be heating and plumbing and air conditioning. It could be if you want to sell like plumbing valves or plumbing supplies...like a hardware store. If someone wants to come in and get something fixed but you’re not going to send people out to someone’s house to install like a furnace.

Mr. Hirsch said it’s all related to sales. See, it was the service part that was causing concern.

Mr. Gemma stated but just to be fair, in case someone says “can I put in a vacuum cleaner repair store. That’s servicing of a product.

Mr. Lomangino said or shoe repair.

Mr. Gemma repeated or shoe repair...and that’s why, that’s not the intent. That would be an ancillary use, primary being sales. It’s again a retail sales.

Mr. Rauch said one of the things I have a question on...

Mr. Palmieri stated I don’t want to jumping around.

Mr. Hirsch suggested anyone who’s got an objection to any one item, raise their hand and then tell me what your objections are.

Mr. Rauch said on the first page, “sales of hardware, heating, plumbing, air conditioning” where you’re going to have a delivery. I don’t want see storage of delivery trucks where they’re going to deliver...somebody like furniture...they go and buy the furniture in the store and store delivers it. So are you going to have storage of delivery trucks.

Mr. Gemma stated I think that’s the intent. I mean there might be things that come from third parties. Might one of the retail stores deliver something. It might but it’s not the

general use. Basically, if you're selling something like a refrigerator, you can't carry it. You'd probably have it delivered.

Mr. Rauch said yeah but then you're probably going to end up having storage of vehicles overnight on the property.

Mr. Gemma replied but that's permitted on a retail...again, this is a retail shopping center.

Mr. Slazyk said you currently do.

Mr. Gemma stated yeah, if that's permitted, it would probably happen. If it's not permitted, it won't.

Mr. Diamond said The Taste of Italy has that.

Mr. Slazyk stated yeah, you currently do.

Mr. Rauch said "sale of autos, motorcycles, mopeds, bikes."

Mr. Palmieri stated I don't like that one at all – sale of auto.

Mr. Gemma said this is supplies, parts and accessories. This is not an automobile dealership.

Mr. Lomangino stated you mean like Auto Zone. Not Sansone Auto Mall.

Mr. Hirsch asked not for sale of motorcycles or mopeds. This is just parts and accessories.

Mr. Gemma replied parts and accessories. You know what. I take that back. There might be a bicycle shop.

Mr. Hirsch said that's very different.

Mr. Staiger asked would the parts and accessories for the autos and motorcycles, would you prohibit repairs on premises.

Mr. Gemma replied yes. Except for bikes.

Mr. Hirsch said bicycle shops, you can do repairs but for the auto, motorcycle, moped, there will be sales of parts and accessories and no repairs.

Mr. Gemma replied yes.

Mr. LaValle asked on this “hardware, plumbing and heating,” I want to go back to that. Are there going to be appliances involved in that. Is it an appliance store.

Mr. Gemma replied I mean it might be. But I can’t imagine...

Mr. LaValle stated a lot of appliance stores will take back the old appliances. Where are you going to put them.

Mr. Gemma replied we can’t store them outside. I mean they’d be prohibited. Whatever storage they might have, they’d have to get rid of it. We’ve agreed to no outside storage of any materials.

Mr. Palmieri asked are we good with Page #1. Yeah. Let’s go to Page #2.

Mr. LaValle stated I have a problem with the bar and tavern. “Full service restaurants”, the second one down. That’s probably going to generate more parking spaces and stuff, I would think.

Mr. Gemma said again, that may be correct, sir, but we’re constrained by the overall parking. We’re not seeking any variances and basically you’re allowed a bar, a tavern, a restaurant...and really this saying you can have one there. In case one goes out in the other building, you can put another one there. It constrains parking.

Mr. Lomangino stated in other words, if one more opens there, then maybe one has to leave somewhere else.

Mr. Gemma said as long as it’s providing them flexibility. Which building do you want to have them in.

Mr. Palmieri stated yeah, but you could also have somebody that doesn’t have a liquor license. If they do get a liquor license from the town, you’ll have two establishments in the same location.

Mr. Hirsch responded so.

Mr. Palmieri stated you’re right. We know the parking is there. It’s just the traffic that this is going to be generating. So I know you keep going back about the parking, the parking, and the parking. I got the parking part of it. It’s just the idea...when we originally said all this stuff, it was about the traffic it’s going to generate because, obviously, we’ve got Palumbo’s across the street. A person that goes there almost every morning now because of Dunkin Donuts and the ability to try to get out of that driveway in the morning...when sometimes I make the right and cut through Palumbo’s to get back onto the Parkway, I’m looking for stuff that’s not going to generate traffic.

Mr. Gemma said the concern, Mr. Chairman, I think was the A.M. peak generators and these, hopefully, are not peak generators. And, again, as for traffic generation, that’s why

we have Mr. Dean's and Mr. Yesowitz's letters. By using it a a retail/regional mall, that was the worst case scenario.

Mr. Diamond stated Mr. Chairman, in most places the lessor, the owner of the property, has the right to say "I'm only having one liquor store in here", not competing with the other one, in other words. I doubt very much...you have a Chinese restaurant and an American restaurant...you're not going to have two Chinese restaurants in there.

Mr. Gemma said right and obviously for liquor stores, the town has got to approve any place to place or person to person transfer.

Mr. Staiger stated you may want to consider for "the pet store, sale of accessory pet products", just take into consideration animal waste and dead animals that may be associates with pet stores.

Mr. Palmieri said and I know there's concern about probably each one of these things and I just want to make sure that we stay on focus about traffic. We're not saying that that's not a good suggestion but we're looking at traffic out the front.

Mr. Lomangino added especially in the morning.

Mr. Gemma said I think that was the concern.

Mr. Palmieri stated "showroom" – it's too broad a term.

Mr. Gemma said we're taking it out.

Mr. Palmieri replied okay.

Mr. Rauch stated since we're talking about traffic, on the first page "martial arts, dance, gymnastics, gyms, arcades and game rooms and stuff like that, would they be considered like a high traffic operation. What do you think, Jeff or Colleen.

Ms. Fitzgerald replied probably not peak.

Mr. Staiger said the only one that would probably come to mind talking about peak would be possibly the physical fitness. People might try and go there in the morning or at the end of the day.

Ms. Fitzgerald stated most martial arts, that's all usually after hours, after school's out.

Mr. Rauch said so if we remove gyms or fitness centers where people would be going in the morning during peak hours, and also in the afternoon in the peak hours.

Mr. Gemma stated actually while they have early and afternoon, they're probably prior to both peaks and again, I ask you, Mr. Rauch, that we took this into account in our traffic

testimony, that's the report from Mr. Yesowitz, saying we used the worst case traffic generation scenario humanly possible by calling it a regional mall and Mr. Yesowitz agrees with that. Actually, 5,400 square foot probably makes...all of the uses here...probably make a good health club. Out of all the uses I could think, it probably make sense because it's enough square footage to put in a health club...like W.O.W.

Mr. Palmieri replied it's not big enough for W.O.W. Curves maybe.

Mr. LaValle asked what about a Perkin's restaurant. One of those breakfast type restaurants.

Mr. Lomangino said they already agreed to no more breakfast type places...

Mr. Gemma replied we can add that as a caveat, Mr. LaValle. It's clear it's not a breakfast type of restaurant. A non-Perkins without being discriminatory. Again, both on Page #2 and #3, any sporting type stores will not contain a gun store. We already agreed.

Mr. Palmieri said on Page #3, I'm just going to ask about post office. Do you mean like a UPS...

Ms. Fitzgerald stated they have that under "printing, packing and mobile office stores.

Mr. Gemma said we would agree to cross out "post offices."

Mr. Slazyk stated I want to leave that in. We may get a post office.

Mr. Gemma said alright, we'll leave it in.

Mr. Palmieri stated I think we have to be a little more specific about "food stores." Are you talking about 7-11 style stores.

Mr. Gemma said no, we're talking like a Korean grocer, specialty food store.

Mr. Palmieri asked then can we put a specialty food store.

Mr. Gemma replied we can put a specialty food store.

Ms. Fitzgerald asked what is "sale of general merchandise not otherwise set forth above.

Mr. Palmieri said that's all coming out. It's like a catch-all thing.

Mr. Gemma stated I'm just making sure of clothing here.

Ms. Paone said yeah, you have lingerie, shoes.

Mr. Staiger stated also on Page #1 you have “sale of men’s, women’s and children’s apparel.

Mr. Gemma replied fine, fine. We’ll take it out. Next page.

Mr. Slazyk said you want “medical”. You’re killing me.

Mr. Palmieri stated “sales of lawnmowers” but no repairs.

Mr. Gemma replied fine. No repairs.

Mr. Rauch asked with “auto rental”, are you talking like an Enterprise, Hertz type of thing. There again, you’ve got storage.

Mr. Palmieri said and it’s not permitted.

Mr. Gemma stated we’ll take it out.

Mr. LaValle asked “child care”.

Mr. Palmieri said I don’t think child care would be allowed.

Ms. Paone stated it’s not. I was waiting for somebody else to mention that.

Mr. Gemma said it’s not allowed here in this zone. Okay, then we’re not seeking that. It’s not allowed in retail.

Ms. Paone stated I think it is allowed but you have come in because there has to be a drop-off area.

Mr. Gemma said we’ll take it out. We’re taking out the last two.

Mr. Hirsch asked there is anything you want to present.

Mr. Gemma replied based upon the amended list of retail uses, we would ask that the Board consider this as the basis for re-consideration and I ask for an affirmative vote of 5 or more people.

Mr. Hirsch pointed out you only have 6 votes.

Mr. Gemma replied I understand that.

Mr. Hirsch said alright, so you’re requesting that the Board vote on the re-consider...no, they’ve already agreed to re-consider, now to vote again on the application based on this new evidence that you submitted.

Mr. Palmieri asked Mr. Diamond listened to the tapes. Does that make him eligible to vote on this now since he wasn't here for the original vote. Or that doesn't count.

Mr. Hirsch replied no, if he's listened to all the tapes, if he's familiar with the entire record, that would make him eligible to vote. He's heard the evidence tonight. If he's listened to the record on all the other...

Mr. Slazyk asked under the re-consideration. Re-considering...

Mr. Hirsch replied it doesn't matter. Well, I don't know. Should we limit to the people who only voted last time.

Mr. Gemma said I would proffer that if he listened to it, he's eligible to vote on this because, in fact, the re-consideration is re-opening up the underlying vote.

Mr. Hirsch stated you know, I don't see any reason why he shouldn't be able to vote on it. I mean he's heard the entire record. You know, you're voting again on the case. Re-open it and vote again. Obviously if he hadn't heard any part of the other case, then he shouldn't do it.

Mr. Palmieri opened the floor to the public for question or comment. There was no longer any public.

Mr. Gemma declined to make any further statements

A motion to close the public portion of the Asbury Avenue East matter was offered by Mr. Lomangino and seconded by Mr. Baldwin. A voice vote in favor was unanimous.
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Mr. Hirsch advised that there should now be a motion to vote on the initial application that you heard, that you previously vote on. You're re-voting on that application. Exactly as it was presented with this additional evidence in front of you. Alright so it's a motion for the use variance for the retail use of the building. I wasn't even here for that vote. Was there also an amended site plan.

Mr. Gemma replied no, it was just for the use.

Mr. Hirsch said alright, so that's what you're voting on now with the limitation that the retail uses would be limited to this list submitted as amended based on your findings. That's what you'd be voting on.

A motion to approve the use variance in the Asbury Avenue East matter was offered by Mr. Baldwin and seconded by Mr. Lomangino.

ROLL CALL

Yes: Messrs. Baldwin, Lomangino, Palmieri, LaValle, Diamond, & Calvert

No: Mr. Slazyk

Not eligible: Mr. Rauch

Mr. Palmieri announced that he had spoken to both Mayor Maclearie and Joel Davies, Chairman of Planning Board, and it was decided that each Board would select a committee to review the professionals' new contracts. Mr. Palmieri asked for volunteers for that committee and Mr. Slazyk volunteered.

A motion to adopt the Patricia Farro resolution was offered by Mr. Baldwin and seconded by Mr. Slazyk. Messrs. Rauch, Diamond, & Calvert were not eligible to vote. A voice vote was unanimous from the eligible members.

A motion to accept the October 19, 2006 meeting minutes was offered by Mr. Baldwin and seconded by Mr. LaValle. Not eligible was Messrs. Rauch & Diamond. A voice vote was unanimous from the remaining members.

A motion to go into executive session was offered by Mr. LaValle and seconded by Mr. Lomangino. A voice vote in favor was unanimous.

A motion to adjourn was offered by Mr. Lomangino and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Board Secretary