

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, LaValle, Diamond, Lomangino, Battista and Rickert

Absent: Mr. Moafi

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

Mr. Palmieri then read a statement of procedural guidelines.

A motion to adopt the resolution in the matter of Walter John and Angela Gabrysiak was offered by Mr. Diamond and seconded by Mr. Lomangino. A voice vote was unanimous except for Mr. LaValle who was ineligible to vote.

A motion to appoint Brilliant Lewis Environmental Services, LLC as the Board's new environmental consultant was offered by Mr. Diamond and seconded by Mr. Battista.

ROLL CALL

Yes: Messrs. Diamond, Battista, Palmieri, Slayzk, LaValle, Battista, & Rickert

No: None

Abstain: None

UNIVERSITY RADIOLOGY GROUP
48 NO. GILBERT STREET
INTERPRETATION/USE & BULK VARIANCES & AMENDED SITE PLAN

BA 2007 – 20
BLOCK 18 LOT 9

Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the matter of University Radiology Group was offered by Mr. LaValle and seconded by Mr. Diamond. A voice vote in favor was unanimous.

Philip San Filippo, Esq., came forward on behalf of his client.

Mr. San Filippo pointed out seated to his right was **James Giurintano**, from the PMK Group in Cranford, the engineer and planner for the project.

Mr. Hirsch swore in Mr. Giurintano and the Board accepted his credentials as both a professional engineer and a professional planner.

Mr. Giurintano, referring to the site plan his firm put together, last revised October 17, 2007, stated he was proposing to install an uninterrupted power supply (UPS) system for the medical imaging equipment that's currently used onsite. In association with this UPS building will be a six foot high board on board surrounding this unit. That is not labeled on the plan, however, it is indicated. It's indicated by heavy black lines surrounding it. However in future revisions of the plans, we'll be sure to indicate it. The details of that are shown on the right-side side of the plans. We're also proposing to install a 12 X 8 trash enclosure. As part of that installation, we will be removing a section of curb and installing depressed curb and putting a concrete pad so that the dumpsters have a firm place to rest upon and we'll also be enclosing that with a board on board fence. There's one other improvement proposed for this site and that will be to install some traffic striping at the southeast corner of the building near the southernmost parking stall.

Mr. San Filippo asked if in the course of your assignment with the client, were you made aware of the revised ordinances of the Borough.

Mr. Giurintano replied yes.

Mr. San Filippo asked and this property is located in the C-3 Zone, is that correct.

Mr. Giurintano replied yes.

Mr. San Filippo asked are you aware whether offices are permitted in that zone.

Mr. Giurintano answered yes they are.

Mr. San Filippo asked are accessory facilities such as the UPS proposed a permitted accessory use structure.

Mr. Giurintano replied well, the accessory structure section of the Land Development Ordinance does list several items in Sections 1 and 2. However, a UPS is not indicated on that but in Section 40-85 C, Part 3, it provides that "all uses shall be permitted which are normal and incidental accessory uses consistent with the principal use.

Mr. San Filippo asked what's the principal use that's contained within this existing office.

Mr. Giurintano replied medical imaging.

Mr. San Filippo asked and how is that imaging equipment within the building powered for this operation.

Mr. Giurintano answered through a public service, Jersey Central Power and Light.

Mr. San Filippo asked what is the effect upon that diagnostic imaging equipment if the power supply experiences either interruptions and consistencies or has voltage fluctuations.

Mr. Giurintano answered what happens is the image doesn't come as clear. It will be blurred in areas and it will not pick up the level of detail that's really necessary in order to create a correct diagnostic procedure.

Mr. San Filippo asked is it your understanding that that's been a problem for this applicant at this facility.

Mr. Giurintano replied yes.

Mr. San Filippo asked and is that why they're here to essentially smooth out the power to that equipment.

Mr. Giurintano answered yes.

Mr. San Filippo asked and what does exactly the proposed UPS equipment do to produce that specific and clear power to the equipment.

Mr. Giurintano replied just to be clear, this is not going to be hooked up for the entire building. This will only be for the MRI equipment within the building. The lights and other electrical appliances within the building will not be wired through this. What this unit...it's my understanding what this unit actually is it takes the power in from Jersey Central Power and Light and it has batteries and it runs this power through the batteries in order to provide a consistent source of power. If, as you know, there's fluctuation in voltage and current that occur through the delivery of the power and what this unit does is it helps normalize that.

Mr. San Filippo said so that, again, the power will be achieved and the smoothness of the power would be achieved by some type of underground conduit to the UPS unit and then back into the building.

Mr. Giurintano replied yes.

Mr. San Filippo asked what kind of equipment is located in this building where this UPS system is.

Mr. Giurintano replied there's batteries. There's cables, switches that are inside. There's other electronic equipment for support of this structure and there's also an air conditioning unit which is attached to the building.

Mr. San Filippo asked does the UPS unit itself generate any electricity in let's say the same way a generator will.

Mr. Giurintano replied no.

Mr. San Filippo asked is there any fire hazard associated with a UPS system as you know it.

Mr. Giurintano replied no. There's no combustible fuels that are associated with this that you would have with either a natural gas or a diesel powered generator.

Mr. San Filippo asked is there any noise, light, or glare associated with the operation of this building.

Mr. Giurintano replied the batteries and the electronics associated with this...no, there are not. However, there is noise generated through the air conditioning unit that's used to cool the facility.

Mr. San Filippo asked how frequently would that ventilation, or air conditioning equipment be in operation.

Mr. Giurintano replied it's intermittent. There's a number of variables which need to be considered...ambient air temperature, the sun beating directly on the structure, is the door open. You can think of it as just like an air conditioner within your window.

Mr. San Filippo asked is it fair to say that that air conditioning would operate more frequently during the summer months rather than the winter.

Mr. Giurintano answered yes.

Mr. San Filippo asked do you know whether the ventilating equipment has to be operating when the MRI equipment inside the building is operating.

Mr. Giurintano answered no.

Mr. San Filippo said so it's not necessarily contingent upon when the MRI operates. It's just periodically the heat builds up in the unit.

Mr. Giurintano replied correct.

Mr. San Filippo asked do you know the hours of operation of the University Radiology Group at this location in Tinton Falls.

Mr. Giurintano replied yes, Monday, Wednesday and Friday, 7 am to 6 pm...Tuesday and Thursday, 7 am to 8 pm. There's no weekend hours. Through the installation of this UPS system, URG is not looking to extend their hours.

Mr. San Filippo asked so, if, in fact, the Board were to approve this UPS being installed, it would not result, to the best of your knowledge, in an increase in business.

Mr. Giurintano answered no, it would not.

Mr. San Filippo asked so it's strictly to smooth out the power for the MRI equipment.

Mr. Giurintano replied that is correct.

Mr. Palmieri asked obviously the University Radiology Group doesn't own the building. Is it like an owner occupied. Is the owner of the building also a member of the radiology group.

Mr. San Filippo replied we provided a disclosure statement showing that there is an ownership group which in fact owns the business. So there's a separate group that owns the building and then, they in fact...

Mr. Palmieri interrupted saying it's generally the all same people.

Mr. San Filippo replied essentially.

Mr. San Filippo asked is it fair to say that the people who are using this facility and the physicians who are referring their patients there for the diagnostic testing expect that they're going to get a reliable image from the use of this system.

Mr. Giurintano replied yes, that's the purpose of the applicant.

Mr. San Filippo asked is it fair to say that type of diagnostic imaging is essential to the medical and the dental profession to have clear images of their patients' condition.

Mr. Giurintano replied yes, it is.

Mr. San Filippo would it then be fair to say, in your experience, that this particular UPS system is necessary to ensure that they do get a clear and consistent image.

Mr. Giurintano answered yes, because of the diagnostic imaging center services...it's a permitted use within the C-3 Zone and it requires an uninterruptible power system in order to ensure that the diagnostic images are clear and accurate. It seems logical to say

that the UPS becomes an accessory and incidental accessory use, consistent with that principal diagnostic imaging use at the facility.

Mr. San Filippo asked so it's your belief then that in fact this type of system, when coupled with the principal business of the diagnostic imaging makes this a necessary and incidental accessory for the principal.

Mr. Giurintano replied yes, I do.

Mr. San Filippo asked would it be unusual that an accessory use or a facility such as this would be contained within an accessory building outside the confines of the principal building.

Mr. Giurintano replied no, it's not unusual. There's many uses that have an accessory use outside the building. Central air conditioning units are located outside of the building. There's businesses that have emergency generators outside the building that they're typically housed within the structure...24 hour call centers, hospitals, nursing homes. Service stations have outdoor waste oil storage facilities outside the building.

Mr. San Filippo asked in your professional opinion then, as a planner and as an engineer, would the grant of a use variance with a rendering of the interpretation that the applicant has requested here provide basically a normal and incidental accessory use to a diagnostic imaging center...would that advance the purposes of zoning.

Mr. Giurintano replied yes. The purposes are found at NJSA 40:55 d-2 and they're also implemented in the Tinton Falls Land Use regulations at Section 40-1. In this application the promotion of the public health and safety is advanced by the granting of a variance to permit this accessory uninterruptible power system use as a part of the principal diagnostic imaging use permitted in the C-3 Zone in this building.

Mr. San Filippo asked in your opinion, how is the public health and the public safety promoted by this equipment.

Mr. Giurintano replied the medical and hospital professions require and rely upon accurate and undistorted images prepared by diagnostic facilities such as the URG. Those images reflect the internal conditions of the patients whose images are being produced for analysis by physicians and hospitals to determine the course of treatment for their patients. As such, the public health and safety is advanced and promoted by having such images of patients available to the medical, dental, and hospital professions which rely upon the accuracy of these images to prescribe the course of treatment for the patients.

Mr. San Filippo said having determined then, in your capacity as a professional planner and engineer, that the grant of the variance would promote the public health and safety...in your professional opinion, can the grant of the variance or the interpretation be done without detriment to the public good.

Mr. Giurintano answered yes because the public, who would be affected by the location of the accessory use and the accessory building at the location on Gilbert Street would be surrounding offices, industrial uses, commercial properties...and with this essentially office and industrial park area, there are no surrounding residents that would be affected by the facility. In fact, the closest residential community is approximately 500 feet to the west on the former Laurino Farm property.

Mr. San Filippo asked do you believe if this accessory unit is approved by the Board and installed, would it have any negative impact upon the surrounding commercial properties on Gilbert Street.

Mr. Giurintano replied no, the surrounding properties are office, automobile dealerships, construction offices. You have the racquet center, the kennel, Commerce Bank operation center and similar types of commercial and industrial uses. The UPS system will have not detrimental and negative impact upon those properties.

Mr. Palmieri said since you're at the point where you're describing the other businesses around you, can you just go through and just say "Lot 10 Block 18 who's located there." You know, just so we can understand because I know you just ran through all the neighbors and we don't know exactly where they're located.

Mr. Giurintano stated Block 18 Lot 10 is an office use. I think that's Patock. Across the street, Block 18.01 Lot 7.01, which is on the north side of Gilbert Road North, is an office use.

Mr. Palmieri asked do you know what kind of office use. Is it general office or is it...

Mr. Giurintano replied I believe it's medical office. I believe it's the cardiac center. Block 15 Lot 17 is the racquet center. Directly to the west of the site you have Block 18.02 Lot 22, that is the kennel. Adjacent to that on Lot 21 would be the Commerce Bank facility. Going back to Block 18 Lot 11, that is, I believe, an industrial use, a contractor. Those are the directly surrounding properties.

Mr. Palmieri asked and do you know where the closest residence would be, if there is any.

Mr. Giurintano replied it's approximately 500 feet directly to the west.

Mr. San Filippo said the Board might be familiar with at the end of Gilbert Road North, you have what is presently the construction entrance to the development which is ongoing at what used to be the Laurino Farm tract. That's the only residential use around it.

Mr. Slazyk asked when you say 500 feet, 500 feet from the house currently constructed, or 500 feet from what's been approved and will be built.

Mr. Giurintano replied that's an approximate distance to the property line between the two properties.

Mr. San Filippo asked again, in your professional opinion, do you believe this use variance or interpretation, whichever the Board sees fit to grant...if it's granted, can it be done without substantial impairment to the intent and purpose of the zone plan and the zoning ordinance of the Borough of Tinton Falls.

Mr. Giurintano replied yes, it can because the key element is whether the impairment to the intent and purpose of the zone plan and the zoning ordinance is substantial. The principal use is permitted and the UPS proposed by the applicant is a normal and incidental use to ensure the accuracy and clarity of the diagnostic imaging being produced in the building as the principal use in the C-3 Zone. It cannot be said that the impairment to the intent and purpose of the zone plan and the zoning ordinance is substantial.

Mr. San Filippo asked is there any detriment in your mind to having this accessory use on what otherwise would be the front lawn adjacent to Gilbert Street West as shown.

Mr. Giurintano replied no. Section 40-77 A which governs the accessory buildings and uses stipulates that where the accessory building is located at least five feet from the principal building, it is not considered part of the principal building and therefore does not have to meet the principal building setback. Additionally where an accessory building is ten feet or less in height, and less than a 1,000 square feet in floor area, it's considered a detached accessory building. Under that same section, Item #3, a detached accessory building setback is one-half the setback of the principal building from the front and rear lot lines.

Mr. San Filippo said now with reference to the plan before the Board, can you just provide testimony as to the setback proposed for the facility, the accessory use facility, from Gilbert Street West and also the southerly property line of the Grimmer adjoining property.

Mr. Giurintano stated from Gilbert Street West the unit is set back 62.59 feet where 40 feet is required or one half of the frontyard requirement. With regard to the property line for Lot 11, we're providing 70.76 feet where 30 feet is required, or half of the rearyard setback requirement.

Mr. San Filippo asked are you aware that the applicant has also requested a design waiver to permit this building to emit a sound pressure level of 70 dba for the air conditioning and the cooling system to be built.

Mr. Giurintano replied yes, on an intermittent basis.

Mr. San Filippo asked can you tell the Board what the State standard is for a continuous dba airborne sound level.

Mr. Giurintano replied well the allowable continuous airborne level for commercial facilities is 65 dba at the property line. In this application the sound emitting by the air conditioning and ventilation equipment is not continuous but is rather intermittent and it only emits a sound when the air conditioning unit is on.

Mr. San Filippo asked is it your opinion that this air conditioning unit would sound like any other central air conditioning unit that might be installed on this building or any adjacent building.

Mr. Guirintano replied yes and we're providing a fence to help mitigate any sound effects.

Mr. San Filippo asked is that shown on the plan that's before the Board...the fence.

Mr. Giurintano replied yes, it is.

Mr. San Filippo said and that is basically the line with the X that's around the facility on Sheet #2.

Mr. Giurintano stated correct, on the north and west sides of the UPS.

Mr. Palmieri asked what the unit be running after hours or is it just going to be running...you're saying "intermittent" but I guess, under strain or use, it would start to kick in. Is that how it works.

Mr. Giurintano answered there would be a thermostat inside the unit and once the interior temperature reached a certain level, the air conditioning would kick on, just like a central air conditioning unit in a house or a window unit. Once a specific temperature is reached, it would turn on. It would run until it hits...until it lowers the temperature to a sufficient lower amount and then stop.

Mr. Palmieri asked so that would be any 24 hour period 7 days a week, just depending on the temperature of itself.

Mr. Slazyk asked what do other facilities that have MRIs do.

Mr. Giurintano asked in return with the UPS.

Mr. Slazyk asked do they need the UPS.

Mr. Giurintano replied my understanding is the reason why this is needed is because there is a degradation in image quality because of the fluctuations in the power.

Mr. Slazyk said I understand that but I mean other facilities, do they also need this UPS equipment.

Mr. Giurintano replied I would assume they would. I do not have a direct answer for you on that.

Mr. Slazyk said you're not familiar. I mean like hospitals, they have MRIs. Do they have these units. Where do they have these units. You know how this unit can't be designed to be put inside the building. You know.

Mr. Giurintano stated I can't speak from an architectural basis as to if it can be placed inside the building or not. I'm not sure what the interior space allocation is.

Mr. Slazyk asked have you considered putting this in the interior to eliminate any type of variance.

Mr. Giurintano answered I would have to defer that. I could not answer that for you.

Mr. Slazyk asked does anybody have that answer.

Mr. San Filippo replied I don't think they did because I think initially they looked at that. Our architect is here. I could have him sworn and he could attempt to address that.

Mr. Slazyk said great. Super.

Mr. Hirsch stated hold it. Let's finish with him. Don't jump around.

Mr. Slazyk said I don't need it right this second. I can wait.

Mr. San Filippo said just a couple more questions. Do you know if this application requires Monmouth County Planning Board approval.

Mr. Giurintano replied it does not affect a County road or drainage structure so I do not believe it does.

Mr. San Filippo asked and do you know if the application would require Freehold Soil Conservation District approval.

Mr. Giurintano answered no. The proposed development will disturb less than 5,000 square feet. Therefore certification is not required.

Mr. Slazyk asked with regards to this unit, do you know if it creates any type of radioactive emission.

Mr. Giurintano replied to my knowledge, it does not. The architect might be able to answer that a little bit better.

Mr. Slazyk asked does this need any type of secondary containment to stop anything from getting into the soil...even though you have a concrete pad. I mean is there any spillage or any of that that could possibly happen with this.

Mr. Giurintano replied again I'll defer that to the architect. I'm not sure as to the interior content of it.

Mr. Slazyk said that's fine. Thank you.

Mr. San Filippo asked would you like Mr. Giurintano to address the municipal agency reports.

Mr. Palmieri said before we jump to that, I was going to see if any of the Board members have any questions of the testimony.

Mr. Hirsch stated I just have one question. I'm not clear, Mr. San Filippo, on the notice it appears that you're requesting a design waiver for the noise emissions. I'm not clear. The only testimony I heard it sounded as though it was your position that you were not violating the State noise code because while it exceeded the 65 dba, it was a continuous emission of sound and it seemed to me your argument was you're not violating the State code...so is there something in our Borough ordinance that...I mean we can't grant variances from State codes.

Mr. San Filippo said that's very interesting...Ms. Paone, in her denial letter indicating that she did not think that it was a normal and incidental accessory use and therefore, it would require a use variance approval, also opined that it may well be that it violates the State standard for continuous dba at the State level. So the thought was we would ask for some type of design waiver since it's not continuous, it's merely intermittent but Mr. Giurintano has testified we would surround this facility with a board on board fence and we believe that will mitigate any noise that might be emanating from this unit and might get to the property line at 65 dba. We're not entirely convinced that it would. His testimony was at the source, it's 70 dba.

Mr. Hirsch stated I'm just not clear what relief the Board can grant. I mean, if it doesn't meet the definition under the State code, so be it. If it does, I don't know that a zoning board can tell you you can violate the State code. It's not part of our zoning ordinance. We can only grant relief from the zoning ordinance or the design standards to the extent they're applicable on a site plan so...you know what I mean...I'm just not sure what we can do about that. I mean it may or may not be...I think that's something you would have to work out with Code Enforcement. If they say it's in violation of a State noise ordinance that is adopted by the town, that's not part of the zoning ordinance, I don't know that we could help you even if we wanted to.

Mr. San Filippo said I'm inclined to agree but on an exercise of caution, I asked for the waiver...and I do think that #1 – it should be brought to the Board's attention and #2 –

the applicant has made an offer to do certain things which we believe would either contain or mitigate that sound so that it would not be annoying. It would not be...I think your ordinance speaks to noise, light, glare...so in that context, if in fact there's a noise and there's a potential for the noise to be annoying to an adjoining property owner, we call it to your attention. We tell you that we don't think that we exceed the State level and we're taking steps to mitigate the possibility that the noise would be annoying to Purr 'n' Pooch or the Commerce Bank operations center or the racquet center or Grimmer's industrial office or Jay Patock's construction office.

Mr. Hirsch stated I understand that. I'm not saying it's irrelevant. This is a use variance. Clearly a potential substantial detrimental impact could be noise. I'm not saying the testimony's irrelevant. I wasn't suggesting that at all. I was only indicating while the Board can make determinations whether the overall operation...and certainly you're right to bring up the noise issue...has a substantial detriment on surrounding properties. They can make that evaluation as a zoning board on the use variance. All that I'm saying is if you are violating the State code, we can't say "go ahead." We can say, as far as the Board is concerned, there are grounds to grant a use variance and, from a zoning perspective, it will not have a substantial detriment. I just want to make that distinction clear so somebody doesn't come back and say "well, they told us we could violate the law."

Mr. Palmieri said I guess the only way around that would be to have a sound expert...if you wanted to go that distance to just say that you met the requirements at the State level.

Mr. Hirsch stated but understand again, so the Board's not getting confused what I'm saying...if you want more testimony, certainly you're free to ask for it. Don't get me wrong but the applicant is suggesting because of the nature of the uses around him...okay, and the fencing and the type of equipment and when it comes on and so on and so forth...that based on that evidence, you can make a determination on that evidence that that is not a substantial detriment to the surrounding properties, even if it occasionally violated the State law. This is a zoning issue for you. So you could make that determination. If you think you need more information, that's up to you. I'm not telling you what you need or don't need. So you could make that determination. All I'm saying is even if you did, and subsequently it was determined it violated a State law, they couldn't go back and say "yeah but we got a use variance." That's a separate issue because we don't control that...but you still could make your own determination we don't any substantial detriment from a zoning perspective. Okay.

Mr. San Filippo said and you may also find, quite frankly, that as a site plan element, what we've done to try and mitigate that sound, is at least within the context of your ordinance, a reasonable way to deal with the possibility that noise may have some impact on these surrounding commercial properties.

Mr. Palmieri asked again do any Board members have any questions so far.

Mr. Battista said just from a dampening perspective, is board-on-board, in your professional opinion, the optimal option aesthetically and noise-wise in terms of dampening...I mean I don't know if there would be another way to provide coverage that might dampen the noise more.

Mr. Feist responded if I may, Mr. Chairman, maybe to answer the question...I did a little research this afternoon in regard to noise absorption walls as opposed to reflective surfaces. There are certainly several products out there. I brought some printouts of one that I found available. That can attenuate the sound generated by some 15 to 20 decibels which would, in this case, bring it below the State standard. I would point out also that in the application, there was a statement of variance prepared by the applicant's attorney. In that, he indicated that the noise level was anticipated to be 78 dba as opposed to 70. Again, in any case, the State standard, 65 dba...if we can attenuate by 13, which I believe sound absorbing materials are available and they're modular and they're easy to construct and they're typically used in this type of application. So the answer is there is a better way to do it.

Mr. Battista said thank you.

Mr. San Filippo stated maybe the Engineer could provide us with the source of that material. Certainly we'll look into it.

Mr. Hirsch stated sure. I don't know that you're willing to indicate at this point that you're willing to do that but you're certainly entitled to see the information and make an evaluation.

Mr. Lomangino said for Mr. Hirsch, that's not really our concern, right.

Mr. San Filippo replied what it comes down to is if we need to comply with a State standard at the property line, we'll have to do what we have to do. I'm not so sure that other than saying to the Board the board-on-board fence that we requested and you approved is fine but we now have to add some sound-deadening materials inside the fence to make it effective and comply with the State code.

Mr. Hirsch stated well, you're right. You might not be in violation of a State standard...but as I said before, the Board has the right to consider whether the noise level for this use variance is a substantial detriment. Certainly whether you violate the law is one of the considerations in determining whether it's a detriment.

Mr. Battista said assuming, and again I don't know but having been in recording studios, it's a pretty easy modular based thing...assuming it's not something that's prohibitively expensive...that we're not talking \$30,000 to put this in and it's just a couple of panels...I mean I think it would just be something that would be helpful. At the end of the day, I understand the use of this and I understand it's an exclusive use for MRI imaging which is great but at the end of the day, we don't know what this is going to

sound like until it's there and once it's there...I mean the more we can account for that, I just think it would be better.

Mr. San Filippo stated I understand that but I also, on behalf of the client must say, we don't really install and I don't think you want it either...some type of turnpike sound barrier way...

Mr. Battista said I don't think that's what we're suggesting...my understanding is we're talking about a panel piece...

Mr. Feist stated they're polyethylene panels that are inserted between...

Mr. Battista asked maybe about an inch thick, two inches thick.

Mr. Feist answered it probably varies on application but from the literature I looked at today, it looks like it's several inches thick. It looks very much like a white vinyl fence, to be honest.

Mr. Battista said okay.

Mr. Palmieri stated I guess at this point, we were alluding to the Engineer's report...since we were heading in that direction anyway.

Mr. San Filippo said we were making reference to the Engineer's report which I believe is dated October 29th. Starting with Page #2, the items indicated basically are pre-existing conditions, are they not.

Mr. Giurintano replied yes.

Mr. San Filippo asked and this application doesn't propose to change any of those pre-existing conditions as it relates to lot size or lot width or that sort of thing.

Mr. Giurintano replied no, it does not.

Mr. San Filippo said by the way, I would mention to the Board, one of items that we attached to the application was the resolution in PB 78-35 in which the Planning Board granted the lot area, lot size, lot depth, and setback variances.

Mr. Hirsch stated I don't think you have to address those in the Engineer's report. I think they're just there for informational purposes. I think you probably just want to look at the design waiver and then the engineering review paragraphs.

Mr. San Filippo said well, C-1, I guess we've addressed to some degree. D-1, D-2.

Mr. Giurintano stated D-1 we just discussed that we would not go any further on. D-2, we will comply. D-3, with regards to review of the drawings, with regard to the 1978

plan, URG occupied the site in 1996. I cannot tell you why those improvements were not constructed in accordance with the '78 plan prior to that. There are some minor changes compared to 2002 existing conditions plan and the existing conditions plan shown in our plan set right now. Those changes were made. They constructed some curbing along the rear side of the building. They re-stripped an area and removed a portion of an island for a handicapped ramp and remove the fence. The fence that was removed is on the southwest corner of the building. The curbing that was constructed is along the rear of the building at the southeast corner. There's curbing on the south side of the building that terminated. What happened was the curbing is now extended to wrap around to meet the east side of the curbing and the island that is shown on the '78 plan, or on I'm sorry the 2002 existing conditions plan, is no longer there. That has been removed. That is how we were able to provide 7 parking stalls onsite. I can tell you that those changes to the site from 2002 until now have not had an adverse impact on vehicular circulation, pedestrian conflicts nor from a stormwater management perspective because all those areas were impervious to start off with.

Mr. Slazyk said so it has no impact but you had requirements, based on 2002, that were not met.

Mr. Giurintano stated excuse me. Let me back up. The 2002 plan was approved. However, due to business considerations, no building permits were pulled for the construction of the 2002 plan. That approval has since lapsed. It's been 5 years since that approval. So with regard to the Planning Board approval from 2002, that approval is no longer valid.

Mr. Slazyk said so we throw out everything with that.

Mr. Giurintano replied yes, that is correct. I apologize for not making that clear.

Mr. San Filippo asked and to the best of your knowledge, those things that occurred prior to the client buying the property, we really don't have any explanation as to how that happened.

Mr. Giurintano replied correct.

Mr. Palmieri said it's been the same continuous owner since '78 with the building.

Mr. San Filippo replied oh, no, it has not. They acquired it in '96. In 1978, it was a group of doctors, a chest and cardiovascular group.

Mr. Palmieri said that's what I'm saying, those doctors are not these doctors. These are a different group of doctors that bought it. Okay.

Mr. San Filippo stated we have no idea what happened between '78 and '96 but what you see is what you get when we bought this property in 1996. We don't know how those things changed.

Mr. Giurintano said with regard to D-4, D-4 discusses providing testimony as to the parking requirements onsite. A medical diagnostic facility is not specifically enumerated within the Land Development ordinance. A traditional medical office will require a total of 22 parking stalls onsite where the requirement is 6 stalls per 1,000 square feet. If you go and look at an experimental and testing facility, it's one stall per 800 square feet which yields 5 stalls. This facility does fall somewhere in between those two numbers. At the peak time onsite, there are 10 employees. They have 3 imaging areas where patients would be. So if you consider each one of those "stations", that's 3 cars. Each one of the employees, that's 10, that's 13 cars. That is in excess of 4 stalls. I have discussed with the applicant if they'd require additional parking onsite. I have been advised that in the time that they have occupied recently, they have seen a decrease of people coming in to actually receive service.

Mr. Hirsch asked sir, how many spaces do you have.

Mr. Giurintano replied there are a total of 17 parking spaces onsite.

Mr. Palmieri said I'm looking at your plan here...maybe the Engineer...I didn't get the whole thing here...you know, just striping where the spaces...

Mr. Giurintano interrupted saying one of the comments that we'll comply with. There's existing striping out there. We will go out and measure the locations of each of them.

Mr. San Filippo said we'd also note that again the approval in 1978, there were 15 parking spaces required on a 1 per 250 professional office standard. We didn't comply with that standard. Now, clearly, the standard has changed since 1978.

Mr. Slazyk asked what's the requirement now for a medical facility.

Mr. Giurintano replied 6 per 1,000 for traditional medical office.

Mr. San Filippo said we honestly believe that we fall somewhere between the test facility and the pediatric facility.

Mr. Slazyk stated but the problem is...say if your client decided to pick up and leave...okay...and now we don't have what's required based on they change the facility to a medical office...so then we don't have the required spots that required based on a medical facility vs...

Mr. Giurintano said the 1978 approval approved the parking at 15 stalls.

Mr. Palmieri stated right and you're here now.

Mr. Slazyk said we're forgetting about 1978. It's done and over with. Now we're here for a variance and you don't meet the parking requirements.

Mr. San Filippo stated well, we're not entirely convinced we're a medical office in the sense that if we had a group of doctors or a group of dentists. We have a group of technicians and we have diagnostic equipment. So we think we may fall somewhere in between.

Mr. Slazyk said I understand that but two years from now you may sell the building. Okay, then we're sitting here or the tenant that purchases that is sitting there with the problem that maybe we should at that given the 24 parking stalls vs the 17.

Mr. Palmieri stated you just said you're somewhere a test facility and a medical. I don't think our ordinance has a thing that says give us an in-between. It's either you're one or the other.

Mr. Giurintano said you can't apply strict application of the ordinance to this type of use. The ordinance doesn't address this type of us and the testimony that I provided is there's 10 employees onsite with 3 stations for imaging.

Mr. Palmieri stated so it's a medical facility. What Mr. Slazyk is saying they don't stay there forever.

Mr. Slazyk said let's change it. Let's just say it's an office facility. Okay, now you guys move and now it becomes an office facility. What's the required spots based on an office facility.

Mr. San Filippo answered 15. If it was a bunch of doctors, a bunch of lawyers, a bunch of real estate brokers...it would comply.

Mr. Palmieri said I've got a question then because on the plan...because we ran into this problem once before about labeling what a building is and we had our zoning officer came back and deny somebody from renting a space. My question, I guess, to our professionals is when we get this thing back, it's not going to say "medical facility" here. On the plan we want it to say "office" so it meets the requirements for office parking. Is that where we're going with this.

Mr. Gleitz said I think it should say exactly what it is, medical imaging, and then if they come in and change it to an office, then they have to come in and get a change of use and then Lori can review it again at that time to see if it's compliant or not.

Mr. Hirsch stated I agree with Paul. That's the direction you should go in. Remember, they're not expanding the building here. This is an accessory use...you know, the imaging.

Mr. Slazyk said that's what I was trying to do. That was my whole intention.

Mr. Hirsch stated so if somebody else...this is what it is...state what it is and if something else comes in that's different, then they have to come back with site plans for

that. I mean they didn't get a use variance for this when they got it and they had sufficient parking at the time and now they're not doing anything to really increase the need for parking of this use.

Mr. Slazyk said I'm okay with it.

Mr. San Filippo stated we talked about D-5 basically. D-6.

Mr. Giurintano said we discussed D-6 – to look into the acoustical material.

Mr. San Filippo stated D-7, we said we will comply. D-8, would you address the scavenger movement.

Mr. Giurintano said based upon the circulation provided onsite, waste vehicles and refuse vehicles would enter the site from Gilbert Road West and traverse that one-way driveway behind the rear of the building, where they would put straight into the proposed area for the dumpster enclosure, front load, dump straight into the truck and then back up and proceed out to the Gilbert Road North driveway. It's fairly a straightforward circulation where the truck would be able to pull straight in, pick up the garbage, back up so that they can back up away from the dumpster enclosure and then make the left-hand turn.

Mr. San Filippo asked #9.

Mr. Giurintano replied we will comply with #9 and we will comply to #10 to update the A.D.A. placards onsite. #11 – we will comply to the best of the information that we can ascertain with regard to underground utilities.

Mr. San Filippo asked Mr. Kniesler's report dated October 29th. We're really looking at the #4, the Plan Review Comments, beginning with #A.

Mr. Giurintano replied between the parking lot there is a small area that can be planted. However, that side is required...we did wrap the fence around to help screen the UPS system from the parking area. If you look on the southern side of the UPS system, you'll see a small return for the fence to get it beyond the curb. We could slide the unit further to the north to try and put 1 or 2 trees in but we're going to need to maintain that open area on the southern side of the unit for access for maintenance.

Mr. San Filippo asked could you then at 4-B use the landscaping effectively on the north and the west sides to maybe achieve what Mr. Kniesler's looking for.

Mr. Giurintano replied yes and yes to 4-C as well.

Mr. Hirsch said I'm sorry, Mr. San Filippo, you've got to get that microphone a little closer.

Mr. San Filippo stated ok, so 4-B, the columnar evergreens, yes, we'll do that and then on the north and the west side there, and then on 4-C, his answer was yes, we'll do the evergreens at 6 feet. And yes on 4-D, if there's a guarantee required, that's fine. I'm assuming that's like a maintenance guarantee.

Mr. Giurintano replied yes.

Mr. San Filippo said and then 4-E, if you can comment.

Mr. Giurintano stated I believe 4-E was with regard to the 2002 approval which was never implemented.

Mr. Hirsch asked what about the 1978 site plan, was there a landscape plan. Do you know. I'm not sure what the comment's referring to.

Mr. Giurintano replied landscaping that's 20 years old.

Mr. Hirsch said I think they just want to make sure that the site has all the landscaping that was on the plan. I realize this is a new plan. I mean, this is going to supercede the 1978 plan. So, quite frankly, I'm not sure what Mr. Kniesler was concerned about in '78, he should just be indicating what landscaping he wants on this plan.

Mr. Giurintano stated like I said, he may have been looking at the 2002 plan also which, as I stated, was never implemented.

Mr. Hirsch said but he may be assuming that the landscaping shown on the 2002 plan might have been in place, so assuming that was in place, he's only asking for what he's asking for here. I mean, I'm not trying to read minds here but...in other words, if you had more landscaping shown on that plan, he might be thinking that "yes", that's what he would have recommended on this plan, if it's not already there.

Mr. Giurintano stated there was a significant amount of landscaping proposed on the 2002 plan.

Mr. Hirsch said it's not now proposed.

Mr. Giurintano replied that's correct because we were proposing to install additional parking stalls along the frontage of the site, a stormwater detention basin...

Mr. Hirsch said I understand. I'm just trying to get it clear. Maybe we should, assuming if the Board wants to move forward and vote on this tonight and assuming it gets some kind of favorable vote...I probably would put some comment in the resolution that you might want to clarify this landscaping with the landscape architect. What he had in mind. Okay. Just to be safe because I'm not sure what he's after...whether he thinks all that landscaping is there so he didn't make other recommendations that he might have made. Do you follow me.

Mr. Giurintano replied right.

Mr. San Filippo asked is he here.

Mr. Palmieri said no, that's the problem. I guess if he was here, he would have said something by now.

Mr. Hirsch stated that's why I said "I'm reading minds here." I don't have him here. Can you just go back a second. On 4-A, I wasn't quite clear. I was listening to the testimony but I wasn't quite clear how we resolved that. Are we moving the building and planting additional trees.

Mr. Giurintano replied no.

Mr. Hirsch said we're not moving the building. You're proposing not to move the building and add any additional plantings. So the Board understands that. So you're looking for a waiver in a sense. He asked you to consider it, not requiring it. So I just want to be clear that the Board is not going to require that, if it ends up voting on this in some fashion. Alright.

Mr. Guirintano stated Mr. Hirsch, if I may, just provide some clarification on that. We have agreed to install the evergreen material around the structure.

Mr. Hirsch said that's on B.

Mr. Guirintano stated right and the testimony presented with regard to A was we've wrapped the fence around the back but we still need to maintain an open area for maintenance of the structure.

Mr. Palmieri asked that open area will be facing the building though. Is that correct.

Mr. Guirintano replied it will be facing the rear of the building.

Mr. Gleitz said the comment was to provide a landscaped area in front of those 4 spaces. Correct. Four parking lot spaces.

Mr. San Filippo replied just between the parking lot and the proposed structure. So it sounds like he wants some landscaping right on the corner of that. All we're saying is on the south side of that facility, there's a fence return. We need access on that side to get at the unit if, in fact, it requires maintenance or service but we'll screen the west side towards Gilbert Street West and we'll screen the north side towards Gilbert Street North so what the public is going to see is landscaping...and that's essentially what 4-B and 4-C are. If that's acceptable to you.

Mr. Hirsch said so on A, you're going to extend the fence from what's on the plan.

Mr. Gleitz stated he can't comply with A because the fence extends into that area. That's what they're saying.

Mr. Hirsch said well, what I'm trying to get at is you're not changing anything. A- you're just not going to address...for the reasons you give. You're not going to change the fence on the plan. You're not going to do anything. You're not going to plant the trees. You're asking the Board to say "for the reasons stated, you're not going to do anything on that."

Mr. San Filippo stated for A-strictly on the...

Mr. Hirsch interrupted saying A. I understand. That was my only question. We can save a lot of time.

Mr. San Filippo said you're right.

Mr. Hirsch said we're not doing anything on A so the Board understands that. Somebody can tell me when I make a resolution. Thank you.

Mr. Palmieri stated I think we've addressed B, C, and D.

Mr. San Filippo said E – we'll have Mr. Giurintano speak to Mr. Kneisler to see if we can figure exactly what he was looking for.

Mr. Palmieri stated right and that will be part of the resolution that you're going to work out – hopefully.

Mr. San Filippo said I think that was it. I didn't have any other municipal agency reports other than those two.

Mr. Hirsch stated you've got the Planner's report. Heyer and Gruel.

Mr. San Filippo said that goes back a ways if I remember correctly. Alright, if you would, address Mr. Gleitz's report of October 24th...to the extent you haven't already done so.

Mr. Gleitz stated we can skip the discussion about the variances. We talked about the inconsistencies. We've heard testimony that the 2002 plan is null and void. I made comment to that, that this is a new amended, what's approved tonight is the site plan for the site. In terms of the board-on-board fencing, there's something else. We've had some testimony about that. If I could just add a comment. If the applicant explores this dampening material of some kind, this composite board, if there's an option with a stucco finish...since the building itself is stucco...that might be the best solution. If it's not cost prohibitive, it would probably make the best sense on the site...to use a stucco finish, if it's pre-cast already.

Mr. Lomangino said stucco is cheap.

Mr. Gleitz stated yeah and since it's already stucco, it might really dress the site up quite nicely and offset the landscaping quite well. We had some general comments about the landscaping on the site, that it was kind of sparse. That might be part of what Mr. Kneisler was getting at. We had thought there could be some additional landscaping. Just a large front area with a couple of trees. If there was some way to put additional landscaping around the parking areas, that would be helpful. And we were please to see that they have, in fact, included a dumpster enclosure.

Mr. Hirsch asked so the response on additional landscaping in the parking areas is what.

Mr. Hirsch asked all the parking areas...I mean, essentially there's lawn adjacent to those. So all the parking areas. Is that what you're saying, Mr. Gleitz. Throughout the site.

Mr. Gleitz replied what I'm saying is that it's an older landscaping design. There's broad open lawn in the front with a couple of street trees. There really are no foundation plantings and there are no parking area plantings at all. I believe the 2002 plan, when they anticipated a new parking area, they anticipated new landscaping and that's what Mr. Kneisler was speaking to. Our comment was the same...that if they're going to re-visit the site, they're going to be doing an installation and seeking a variance for this power supply and putting fencing in and additional landscaping, it might make sense at that time to update the landscaping as well. Providing some landscaping, particularly those 4 spaces that are closer to the terminal road west...if there was a way to dress that up, with a few other plantings of some kind...nothing dramatic. I don't need \$10,000 worth of landscaping but a few extra bushes while they're out there doing the installation would be helpful with the site. It was a suggestion. It's not a requirement under any kind of...

Mr. Giurintano stated the applicant has indicated that we can comply with that.

Mr. Gleitz replied excellent. Aside from my notes on our use variance, that's all I had. Thank you, Mr. Chairman.

Mr. San Filippo said we'd like to address the Brilliant-Lewis report. Let us take a minute to review it, if you don't mind.

Mr. Hirsch stated there's only pruning of a tree or something.

Mr. Giurintano said Mr. Hirsch, based upon his report, he reviewed an older submission of the plan where the UPS was pushed further back on the site. We'll no longer need to disturb that tree.

Mr. Palmieri stated okay. That takes care of that. Do any of the Board members have any questions of the testimony so far. Seeing none, I'm going to open it up to the public. Does the public have any questions of the testimony.

There was no response from the audience.

Mr. San Filippo called up the applicant's architect.

Les Tribble, Kenilworth, NJ, was sworn in by Mr. Hirsch. He advised he was a registered architect in New Jersey. He further advised he had appeared before multiple boards throughout the State and his credentials were accepted by the Board.

Mr. San Filippo said you were probably in the audience and you heard some questions about the facility, exactly what's inside this building and why it's necessary for the MRI imaging that is done in the building.

Mr. Tribble brought up an exhibit to be marked.

A-1 Elevations and floor plans

Mr. Tribble stated the structure you see in A-1 is a pre-manufactured metal building that houses basically a rack of batteries with various and sundry switches in order to what they call "smooth out" the power, to condition the power. The power comes in to the main building and is then routed to the box, the box with underground conduits to this unit. The power is run through the batteries and then back out to the MRI machine in underground conduits. What happens with the MRI imaging machine is that if there are spikes in the power when they are doing the imaging, it clouds the image and makes the image much harder to read and they literally have to read the images several times. So what this basically is are batteries similar to what's in your car and they sit on a rack and the power's run through them with various switches.

Mr. Palmieri said I guess the big question that was asked before was the containment of it, if the batteries spill, and now obviously now you're bringing up things about car batteries. How often do they get changed. How do they get disposed of once the batteries meet their useful lives.

Mr. Tribble replied the batteries would be disposed of in a legal manner. This is something that GE, who manufactures this piece of equipment and supplies the batteries and the switches and everything else, would be monitoring as part of their service agreement.

Mr. Slazyk asked as far as these other facilities such as hospitals or other xray places that have these MRIs, do they have this type of equipment.

Mr. Tribble replied they have equipment very much like this, if not this exactly and it's housed usually in a fire-rated room inside the building and other than the required fire rating, there's no special requirements for the room at all.

Mr. Slazyk asked the MRI that's currently operating, it's going to improve the MRI. Correct.

Mr. Tribble answered it's going to improve the images coming from the MRI definitely. The MRI currently is operating without this piece of equipment. Other facilities that University Radiology Group uses has battery packs like this to condition the power so they get a good image out of the machine.

Mr. San Filippo asked and in those facilities is the UPS or power smoothing unit put outside.

Mr. Tribble replied no.

Mr. San Filippo said so this facility is outside because...

Mr. Tribble stated this facility is outside because we have very limited room inside. Nearly every square inch is being used.

Mr. San Filippo asked and there's no basement, I take it, where you could put this unit.

Mr. Tribble replied no basement and being that this is pretty heavy...you've lifted batteries before...they're not light...and then you have several of them here. It's very difficult to put these up overhead and I'm sure that I'd want them up overhead with all that weight on a bracket over my head. So they're set on a concrete slab on the ground.

Mr. LaValle asked is this equipment needed to update the previous equipment in there already. Is that what this is used for.

Mr. Tribble replied this is something that helps the equipment work. The actual MRI won't be changed with the addition of this piece of equipment but the images coming from it will be.

Mr. LaValle asked but is the equipment that's in there now, can it be replaced with newer equipment that you won't need stuff like that.

Mr. Tribble replied no. To my knowledge there is not a manufacturer that has power conditioning as part of the piece of equipment. As far as I know, it's always an add-on.

Mr. Palmieri stated so they've been operating since '96 without the need for this thing and just recently they've come to the conclusion that...

Mr. Tribble said over time they've found that the power fluctuates off and on, more or less. There are certain facilities where it's more important. It all depends on the power being supplied. And also with the newer computer technology that's being applied to the MRIs and the imaging, they're trying to get a better image, trying to improve what they're able to put out and helping people.

Mr. San Filippo stated and the power supply is critical to that. Right.

Mr. Tribble replied absolutely.

Mr. San Filippo stated and the clarity...

Mr. Tribble said the clarity is what's the whole thing's about. I mean you're taking an image of someone looking for cancer or whatever...

Mr. Hirsch asked is this technology relatively new technology, this type of building, this equipment, meant to improve MRIs.

Mr. Tribble replied no.

Mr. Hirsch asked did they have this 10 years ago to improve MRI imaging.

Mr. Tribble replied as far as 10 years ago, I do not know. We finished the facility a year ago for University Radiology and put in the power conditioning in that new facility. They were moving to a different facility, location.

Mr. Hirsch asked well, has it been around just for the last few years.

Mr. Tribble replied I have no idea how long it's been around.

Mr. Hirsch stated okay.

Mr. San Filippo said the one question that's still on my mind is obviously the sound levels generated by the air conditioning unit.

Mr. Tribble stated the air conditioning unit is located on the side of the building. You'll see the box "a/c" here. It's set in a sleeve in the machine. As was testified earlier, it kicks on with the thermostat. Turns back off. When the MRI's using power that's run through this, obviously the batteries are being used. I do not know for certain but my assumption would be that when the MRI is not being used, there would be no reason to feed power through this...and so you wouldn't have the flow of power and therefore, my assumption would be you wouldn't generate the heat. Therefore the air conditioning wouldn't be needed.

Mr. San Filippo said so then do you assume then that if the hours of operation are as testified by Mr. Giurintano essentially a Monday through Friday operation, essentially

this unit would not have to have the ventilating equipment operating overnight or on weekends.

Mr. Tribble stated that would be my assumption but still based on that thermostat to kick on.

Mr. San Filippo said okay because the batteries essentially weren't being used overnight or on weekends.

Mr. Tribble stated correct – based on temperature.

Mr. Feist said and the indication that 78 db is going to be generated by this.

Mr. Tribble stated 78 db is going to be generated at the equipment. The sound would obviously not be that at the property line. I do not know what the number would be.

Mr. Palmieri asked any other questions.

Mr. Feist replied no other questions...but it still leaves us with unresolved question as to whether or not the proposed fence will be replaced with a sound absorbing type structure. In the alternative, post-construction testing of the sound levels can be done at the property line and a determination can be made at that point whether or not we're exceeding the allowed 65.

Mr. San Filippo said what I'd like to suggest is that if you're inclined to approve this, give us an approval subject to testing to be done to determine whether or not it exceeds...and again we get back to "is it a continuous, is it intermittent. If it's only intermittent, do we have to comply with the 65 dba. Somebody from the State is going to make that determination and we then would get a certification for the Board.

Mr. Palmieri asked so how about that we just leave it at that, that you got us a certification...that you met the State requirements. Is that good.

Mr. San Filippo stated and that we would do the board-on-board fencing. We would provide the sound barriers if in fact we needed to achieve that at the property line.

Mr. Palmieri said sounds good.

Mr. Slazyk stated let me ask a question. Before we go with that, we were talking about possibly matching up the actual building with the actual enclosure. I mean that's something we discussed or the Planner discussed...and you know, I mean, if we come up with something like that, I mean, it's really not that much more money to basically put up something that's going to match the existing building than to put up a board-on-board fence in an enclosure where you have a building.

Mr. San Filippo said Mr. Giurintano, do you want to respond to that.

Mr. Giurintano stated I was just going to offer we've conceded to installing 6 foot tall evergreens in front of this enclosure. So, the benefit of putting...my only logic to it is if we're going to be putting these evergreens up to screen the enclosure...do we really need to go through the expense of putting the stucco on the front of it if it's going to be screened by the evergreens.

Mr. Palmieri said well, they're going to have to meet the sound...I would say meet the sound requirement. Make sure it's screened.

Mr. Slazyk stated we've had a lot of people saying they're screening things and all of a sudden, you go out there and you look at it and you're looking at, you know, probably something that somebody picked up at Home Depot for \$29 and it's called "screening."

Mr. Giurintano said but we've conceded to install 6 foot tall evergreen material on the record...which was the recommendation of the Board's Landscape Consultant.

Mr. Palmieri stated alright.

Mr. Gleitz said I think as long as they can meet the sound requirements, fencing, no matter what...if they can't meet the sound requirements, they have to start doing buffering, some type of baffling or other kind of sound attenuation, they should seriously consider something that has a stucco finish to tie it into the building...but if they do the right kind of fencing and landscaping, I think it will be fine.

Mr. Hirsch said okay.

Mr. Palmieri asked any other questions of the architect by the Board. There were none.

Mr. Palmieri then opened the floor to the public for questions. Again, there were none.

Mr. Palmieri asked any closing remarks.

Mr. San Filippo said I'll waive summation. I'll just ask you to approve it subject to the conditions that we've discussed and we agreed to on the record.

Mr. Hirsch stated so you're clear, the applicant also requested first, an interpretation that he really doesn't need a use variance because the use is accessory. The Zoning Officer's opinion was a use variance was required, that this was not a typical accessory structure that would be permitted under the ordinance. So, if you agree that the use variance is required, then you go into the second part of the case, that Mr. San Filippo and his witnesses testified to as the reasons why you can grant the use variance...and also, of course, the site plan.

<p>A motion to close the public portion of the University Radiology Group hearing was offered by Mr. Lomangino and seconded by Mr. Slazyk. A voice vote in favor was unanimous.</p>

A motion that a use variance is required in the case of University Radiology was offered by Mr. LaValle and seconded by Lomangino.

ROLL CALL

Yes: Messrs. LaValle, Lomangino, Palmieri, Slazyk, Diamond, Battista, and Rickert
No: None
Abstain: None

A motion to approve the use variance for the UPS structure requested by University Radiology was offered by Mr. LaValle and seconded by Mr. Slazyk.

ROLL CALL

Yes: Messrs. LaValle, Lomangino, Palmieri, Slazyk, Diamond, Battista, and Rickert
No: None
Abstain: None

A motion to approve site plan with the conditions as previously stipulated for University Radiology was offered by Mr. LaValle and seconded by Mr. Diamond.

ROLL CALL

Yes: Messrs. LaValle, Diamond, Palmieri, Slazyk, Lomangino, Battista and Rickert
No: None
Abstain: None

At this time the Board took a short recess.

KAY REALTY LLC	BA 2007 -19
1989 JUMPING BROOK ROAD	BLOCK 128.03 LOT 35
USE VARIANCE FOR OFFICE BUILDING	

Mark R. Aikins, Esq., attorney for the applicant, came forward on behalf of his client.

Mr. Hirsch swore in William L. Klein, Ocean, NJ, owner of Kay Realty; Elizabeth Strom, Menlo Engineering, Highland Park, NJ, a professional architect and planner; and Michael Marinelli, Menlo Engineering, also Highland Park, a professional engineer.

Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

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

Mr. Aikins called upon Mr. Klein to explain his relationship to the firm and what he would like to do. He reminded the Board that the application was being bifurcated, seeking a use variance this evening and come back later with a site plan and the requested bulk variances if the use variance is successful.

Mr. Klein advised I am the contract purchaser for this property. My company is called Kay Realty Services. We are real estate investors. We started in 1994. About three years ago, my wife and I decided to move to Monmouth County and decided to bring our business with it as most of our real estate holdings are in Monmouth, Ocean, and Atlantic Counties. We are in the business of purchasing commercial properties of fairly medium to large size and operating them for the long term hold and we are currently located in a rented space in Ocean Township. I'm really not happy with the space. I'm not happy with the maintenance in the building and everything that goes with it and have decided that I would like to own a building of my own to run our business. In addition to it, as we've been doing this for close to 35 years, we know how to build a building so I came to the conclusion that it was time to do it. I found this piece of property on Jumping Brook Road. It seemed to be a property that was well-located. Good access to the Parkway for us. Close to home and we're looking for a new place to plant our flag. We came up with a design that we think is a good one. It's one that is designed around the concept of us occupying, for the time being, one floor and leasing out the other three spaces which are essentially a floor apiece. We are talking to some lawyers right now. We're talking to accountants about the other space. The reason that it was built with the design that you will see is to allow us to phase it. We don't want to get into anything that we can't handle. So the first building will be our occupancy and one other tenant. When we find two tenants for the next building, we'll build the next building but we will do all the site work and everything else right up front so it will not be detriment to the overall look of the property...put all the landscaping and whatever else is needed.

Mr. Aikins stated very good. Mr. Chairman and Board members, I just wanted to have Mr. Klein give that brief introduction as to his relationship to the property and I think if there are questions now, I have no further questions of Mr. Klein on direct at this time.

Mr. Palmieri asked if any of the Board members had any questions at this time. There were none.

Mr. Palmieri opened the floor to the public for any questions of the testimony.

Karen Woods, 2000 Jumping Brook Road, Neptune, across the street from the subject property, asked his business is a real estate business, right.

Mr. Klein replied we are real estate brokers. We're not residential real estate. We are real estate investors, therefore, what we do is we manage our properties and we don't have sales people. We don't have what you would normally think of a s real estate office.

Ms. Woods asked only one car that would come in and that would be it.

Mr. Klein replied well, we have four employees so right now there'd be four cars that come in in the morning.

Ms. Woods asked the Chairman so how much can I ask him to get to each stage...with the plans and everything, it's two stories and it's too close to the property line...so I don't know what to ask.

Mr. Hirsch said understand, this was some introductory testimony so you can ask questions on what he said. They're going to have an engineer testify. They're going to have a planner testify that are going to get into more details about the physical structures and the size of the buildings and what have you. But certainly a question about the nature of his business, which you asked, was appropriate. Obviously, he had indicated they were planning to occupy only one floor so there would be other users...so there would be more than four cars. Okay. But you don't want to get too far afield about how the site is set up because other witnesses are going to testify about that.

Ms. Woods stated okay but we know what he's doing now.

Mr. Palmieri said Mr. Klein, I guess I have a question. Currently you say there's four employees with you and your wife and two other people...or is it yourself plus four.

Mr. Klein replied we have my wife, myself, and two other employees right now.

Mr. Palmieri asked when you move to this site, obviously you want to occupy one floor which would be somewhere...

Mr. Klein interrupted saying 1935 square feet.

Mr. Palmieri asked are you looking to expand the number of employees that you're going to have in your business.

Mr. Klein replied we do expect to grow our business. Yes. We currently have about 1,000 square feet in Ocean Township and we need some more space.

Mr. Palmieri asked you need more space to hire more people or to handle...

Mr. Klein replied that is correct. We need more property managers. We need more more analysts.

Mr. Palmieri asked what would be your optimum increase in business. Where do you see yourself going say within 5 or 10 years from now...the size of your business, the number of employees.

Mr. Klein replied hopefully we can occupy two floors of the building.

Mr. Palmieri said and I guess going forward, if your business got to that point that you would end up occupying both buildings totally...say if you grew fast.

Mr. Klein replied that's certainly a potential. We'd love to get there.

Mr. Palmieri stated so based on the plans that we have in front of us, if you occupied all 7300 square feet or thereabouts, both buildings...and the total number of employees you would anticipate would be...I'm trying to come up with the scenario for you.

Mr. Klein said I understand. I preliminarily laid out a typical suite and tried to see how many private offices and how many desks you could effectively put in it...and we came up with somewheres around 4 private offices, a conference room, a break room, some general office area, file rooms and that really accommodates one of the floors. Could you put more people in. Sure...you know, depending on the individual layout. One of the beauties of this is that we are flexible and when we talk to potential users of the space, we can lay it out completely for their needs. We're certainly restricted by occupancy and parking but whatever the code requires, that's what we will have to go with.

Mr. Palmieri stated okay. Any other additional questions of the witness from the public.

Leo Waltsak, Lot 32, the property directly behind the applicant's property, said in your business, you've been in business 35 years...we have experience with people across the street on Green Grove Road where builders have come in and had an undersized lot, build a house, got a variance because they were going to stay in the building, stay one year and then sold it. Right. In your last 35 years, you're renting a piece of property down in Ocean Township, how many of these types of properties have you brought, got variances for, lived in it for a year or so, and then sold them. Now you're a real estate investor.

Mr. Palmieri interrupted saying you've got to let him answer the question.

Mr. Klein replied first of all, the term "live in" does not mean we're going to sleep there.

Mr. Waltsak said oh, I understand that.

Mr. Klein stated although there have been that we've come close...but my business is one of buying properties and holding onto them. That's not to say that somebody comes along and offers me a wonderful price for a piece of property and, you know, I'll sell it.

Certainly that's the American way. I am not in the business of developing and flipping properties. That's not what I do for a living. I buy existing properties. I don't normally build from the ground up. I have in the past. I have built for other people and myself but that's not what I'm looking to do here...but I'm not going to guarantee you that 2 or 3 or 5 years from now, you know, I may decide to go to Florida. Who knows.

Mr. Waltsak said I think that's all our plans. Thank you.

There were no more questions from the audience.

Mr. Aikins stated thank you, Mr. Klein. Can we call Ms. Strum now, Mr. Chairman.

Mr. Aikins asked Ms. Strum do you possess any licenses from the State of New Jersey.

Ms. Strom replied yes, I am a licensed landscape architect as well as a licensed professional planner as well as a licensed landscape architect in the State of New York.

Mr. Aikins asked have you given testimony before planning and zoning boards in the State of New Jersey previously.

Ms. Strom answered yes, I have.

Mr. Palmieri asked how about our boards. In Tinton Falls.

Ms. Strom replied interestingly, a number of years ago, I was the landscape architect for Tinton Falls, working for Sheehan Consulting Group.

Mr. Palmieri said I guess that kind of qualifies you right there.

Mr. Aikins stated thank you, Mr. Chairman. Thank you, Board members. Ms. Strom, are you familiar with the application that has been filed by Kay Realty and Mr. Klein.

Ms. Strom replied yes, I am.

Mr. Aikins asked have you been retained by Kay Realty with regard to retaining a planning analysis toward the goal of meeting the burden of proof in connection with the application for the use variance to this Board.

Ms. Strom replied yes.

Mr. Aikins said why don't you take a moment, if you would, Ms. Strom, and just review with the Board the respective criteria, both positive and negative, in connection with this application and also why don't we start with the fact that the property is presently in the SI or the Special Industrial Zoning District and then work through some of the criteria that are relative to that SI district please.

Ms. Strom replied sure. If it would be helpful I would actually like to enter exhibits into evidence.

A-1 Conceptual site plan

A-2 Aerial view of the area

A-3 Current zoning & tax map

A-4 Photo board with 4 photos of surrounding area w/captions

A-5 Photo board with 4 more photos of surrounding area w/captions

A-6 Architectural elevations

Ms. Strom said if I may, back to your question. You asked about the Special Industrial District in which this is currently zoned where offices are a conditional use. The purpose of the Special Industrial District is to permit residential uses to continue but to encourage the gradual conversion to industrial and office use. The Borough's Land Development Use Ordinance states that "development of this area into non-residential uses is intended to provide an interior street system that will have controlled access to major streets. No driveways or individual lots are intended either onto Green Grove or Asbury Avenue." So that is the intent of this zone and, in fact, what we are proposing is a conditional use and the fact that we do not meet the conditions of this proposed use puts us in the position of being a d-3 use variance. In order to satisfy the requirements of getting a d-3 use variance in this case, we have to address criteria that shows that the site would accommodate the problems associated with this proposal despite the fact that it does not meet all the conditions that the ordinance establishes. In addition, we've agreed to provide evidence about the negative criteria that in order to satisfy this, we must demonstrate the use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and ordinance.

Mr. Aikins asked Ms. Strom, can you take a moment and just locate the property and the surrounding properties in the neighborhood for the Board's benefit on Jumping Brook Road please.

Ms. Strom replied sure, referring to Exhibit A-3, the zoning and tax map. The scale is small. However, I'm speaking in general terms. The site is known as Lot 128.03 Lot 35 and it is located along Jumping Brook Road on the western side about 1,000 feet southwest of the intersection with Asbury Avenue and 205 feet south of the intersection with Green Grove Road. It's a rectangular lot, approximately 212 feet deep, with 199 feet of frontage along Jumping Brook Road. The existing use is residential. A single

story wood frame house in fair condition is on the property. The western side of the property is encumbered with a Jersey Central Power & Light utility easement and the Board should note that based on discussions that our office had with a Mr. Espinoza of the Real Estate Division of JCP&L, what would be permitted in this easement would be pavement, in order to accommodate parking; plantings, although no taller than 10 feet; and no stormwater management structures and naturally no buildings would be permitted within that easement. We also investigated along Jumping Brook Road if there were further right-of-way improvements slated and it is our understanding that there are none.

Mr. Aikins stated okay. And now referring to A-3, if you could just again trace some of the surrounding properties and those uses.

Ms. Strom said our site is located along the western side of Jumping Brook Road (which is identified in red on the exhibit). There are about half a dozen residences along this area. Directly across from the site, on the eastern side...it runs along the boundary with Neptune Township and there is a facility known as the Children's Center of Monmouth County directly across...which is a facility to service the needs of special needs children. It's a very large facility and it also includes a number of administrative offices. A-2 shows that the site, which is on the western side of Jumping Brook Road, is located in a corridor between two commercial corridors: the first being Asbury Avenue and the second being Route 66. Along Asbury Avenue there are two commercial developments right at this intersection, the Tinton Center and The Shops at Tinton. There's also a medical facility right at the intersection and directly across from that along with a gas station right on the corner is a small scale office development. To continue further down Jumping Brook Road, there's a much larger scale office park in Neptune Township on the western side and then further down along Route 66, there's of course, as you may be familiar, there's the Wal-Mart facility and an industrial park on the western side in Tinton Falls.

Mr. Aikins stated very good. Can you now provide some testimony as to the use variance aspect that we're seeking, given the fact this is a permitted use but because essentially the lot is undersized and doesn't meet some of the other criteria that are set forth in the ordinance. That takes us into the realm of the d-3 variance.

Ms. Strom replied speaking first to Exhibit A-3, the site is located in the SI, Special Industrial Zone and a condition for an office in this zone mandates that we have a driveway that does not an (inaudible) off Jumping Brook Road. We have rather a shared driveway situation where we consolidate the lots and have a private street. I'd like to turn now to A-6, the architectural elevations, conceptually what the applicant has in mind in terms of what he would like to have on the site. The character of the architecture is residential in nature and would fit very well with the surrounding residential character of this particular area. It's very high quality in terms of materials and the architecture. It's a very handsome structure and the client plans to do a very first-class architectural development on this property.

Mr. Aikins said so in other words, there's extensive use of fenestration. I see that there are typical double hung windows. There's some Palladium elements. There are transoms on the first floor so those are more representative of a residential or a transition area use rather than a typical Class A large office building. Is that a fair characterization.

Ms. Strom replied that is a fair characterization. It is not what you would first assume a standard office building architecture to be.

Mr. Aikins said thank you.

Mr. Palmieri said before you take that down. Is the elevation on the top the front and elevation on the bottom the rear of the building.

Ms. Strom replied actually I'm not the architect for the building and I'm just seeing this for the first time.

Mr. Aikins said maybe Mr. Klein can answer that. We had submitted four elevations, Mr. Chairman. I was just going to look for that. Mr. Klein probably has that right at his fingertips...as do I.

Mr. Hirsch stated well, the question simply is in that exhibit, what elevations are shown.

Mr. Klein said this is the front elevation right here, the top one is the front elevation and the bottom one is the rear elevation.

Mr. Battista asked so in terms of a phased architecture build, you're suggesting, because there is that sort of middle connector to those buildings, your first build would be what.

Mr. Klein replied would be the one closest to the road.

Mr. Battista said okay, ending at that...

Mr. Klein stated the right side of the building, on the street side, would be Phase I. To the middle portion of the building which is indicated by a glass wall fenestration. That will contain the elevator and stairwells to access both sides. I'm thinking about building the center core with the Phase I building.

Mr. Palmieri asked is that like an atrium kind of thing.

Mr. Klein replied it will be an atrium...and the access will be from the parking lot.

Mr. Aikins said I was also going to say, Mr. Chairman and Board members, that the full set of four elevations were submitted with the application.

There appeared to be some confusion at this point because the set of elevations was submitted with the conceptual plan that was reviewed some time earlier in a technical review board meeting but was not re-submitted with the application for the use variance.

At this point, **Mr. Aikins** asked that the board containing the elevations be marked in evidence.

A-7 Board containing four sketches of different elevations dated 7/12/07
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Mr. Hirsch marked them with the proviso that they weren't filed 10 days ahead of time for the public to review.

Mr. Aikins said this is informational. Again these types of details specifically would be reviewed in connection with the site plan but we're trying to indicate to the Board the quality of the structure that's contemplated here without necessarily designing it, even though in essence it's been designed and we don't yet have the site plan before the Board for your consideration.

Mr. Palmieri stated I know we discussed that before about the bifurcation and then we start talking about what it's going to look like, where things are going to be placed and those are site plan issues as opposed to use issues but...

Mr. Aikins said Mr. Klein's charge to me has been to try and get as much information in connection with this use application out and for your consideration and frankly for the neighbors' consideration as well. We don't want this to be a guessing game. He's going to make a very substantial investment here and we want you to see what he's proposing to do...so thank you for working with us on these points.

Ms. Strom stated if I may continue, I would like to refer to Exhibit A-1 which is the colored rendered version of the conceptual site plan for the use variance. The proposed plan shows, as has been discussed, two two-story office buildings which are 3,870 square feet each and an elevator tower, as has been discussed, in the center. I would like the Board to consider the fact that we did in fact discuss this with the TRC and that based on the discussion, the client decided to reduce the building square footage. Originally what was discussed was 4,500 square foot per building and he has reduced that significantly to 3,870 each.

Mr. Palmieri asked the atrium that's in the middle, does that count as part of the 3,870.

Ms. Strom replied it is not.

Mr. Palmieri said on the site plan, it says 7,740.

Ms. Strom stated that refers to the habitable square footage. It does not refer to the tower in between. If I may continue, in addition, what was discussed at the TRC was that we would show a portion of the parking as land banked. That is to be possibly built at a

later date. As the client has already indicated, it is possibly his intention to phase this development or build one building at a time and, in fact, that that parking may not be needed. So we are talking about just this row of parking over here, 9 spaces which actually occur, in part, in the JCP&L.

Mr. Hirsch said and that's to the front of the site, you're now pointing.

Ms. Strom stated I'm pointing to the western boundary.

Mr. Aikins said north is toward the top of the plan. Can you show the 9 spaces again, Ms. Strom.

Ms. Strom stated sure. They're 9 spaces, actually shown as grass on the exhibit which may be the confusing thing here...because they are shown as land banked which would mean, in fact, they would be grass for the present...for the purposes of this concept.

Mr. Hirsch asked so they're actually all in the easement area.

Ms. Strom replied not entirely but almost entirely, yes.

Mr. Aikins said maybe all but one is in the easement area, from my observation.

Ms. Strom stated JCP&L has already indicated to our office that that would be permitted.

Mr. Palmieri said I have another quick question. I guess it's an engineering question. With the easement going through the property and the calculation of the total square footage of the property, do you have to take the easement portion out of the calculation.

Mr. Feist replied it hasn't been taken out of the calculation although what does have to taken out of the calculation and hasn't been done is the right-of-way dedication along Jumping Brook Road. There's about 5,000 square feet of right-of-way that would be required. I don't believe that that's been taken out of the 39,725 square feet. That's important from a coverage standpoint.

Mr. Palmieri said and that's related to site plan....as opposed to use. Right.

Mr. Feist replied correct.

Mr. Aikins stated Mr. Chairman and gentlemen, our thinking would be...we agree with that assessment under the Borough's ordinance...our thinking would be, again, we'd roll up our sleeves on site plan with regard to that aspect of it which I think also has the potential to affect F.A.R.

Ms. Strom said absolutely and I intend to address that as my testimony continues. If I may, I'd just like to finish addressing the site plan and then get to that point, which is certainly pertinent. Okay, regarding the existing zoning, SI, sorry, I'm jumping around

between the questions, I just wanted to make sure that I did indicate the development does have a total of 31 parking spaces, 9 of which are shown as land banked and there is landscaping on all perimeters. As we previously noted, there are a number of bulk variances which I will address.

Regarding the SI zoning, office development is listed as a conditional use...and one of the conditions of that is that 3 acres are, in fact, required, whereas in this particular case, we are providing significantly less than that. It should be noted, however, that the ordinance does indicate .5 acres per principal use within the restrictions of the bulk variance requirements. The nature of the bulk variances all stem from the fact this lot is undersized in relationship to the bulk items...and we have certainly recognized that fact and, in fact, obviously we're here to address those issues. The intent of the SI zone was to address the fact that this area is, in fact, transitional. By its very nature, this zone's description recognizes the fact that the existing uses in this designated area warrant revision. Transitioning to and I'm quoting the ordinance here "the gradual conversion to office and industrial use." As is stated there, the purpose of this district was encourage this gradual conversion. In the recently adopted Master Plan, this area would be replaced by the HCC or Highway Community Commercial Zone which is comparable to existing commercial zones in which office is a permitted use.

In the Municipal Land Use Law, it defines conditional use as a use permitted in a particular zoning district only upon showing such use in a specified location would comply with the conditions and standards. As the current zoning stated, the minimum lot size was established, normally this lot size would require consolidation but there are no other existing lots in this zone. I'd like the Board to consider the fact that the applicant has made an attempt to achieve this lot consolidation by approaching property owners adjacent and to no avail.

I would like to address the question that was brought up regarding the dedication.

Mr. Aikins asked and when we say "dedication", we talking about the issue between the center line of Jumping Brook Road to the edge of the property line.

Ms. Strom said yes, as Mr. Aikins indicated dedication of the right-of-way is shown along here. In other words what has been determined by our office is that what would be required is a rather significant dedication to the Township of 43 feet from the center line of the road, in other words, moving the property line back from Jumping Brook Road back to this point which is 33 feet from the center line of the road. It's a significant portion of property.

The bulk variances which are listed in the Planner's report add some adjustments here. We did recognize that after this dedication, we are looking at a different lot area. We are looking at .8 as opposed to .9. The lot width remains the same – that's 199 feet. The lot depth, which is shown correctly, is 176 feet after dedication. The frontyard bulk variance of 41 feet stands and the sideyard variances is 17 feet. However, as was already noted, one significant factor that does change is the F.A.R. Whereas what we were showing

before as .2 based on the lot area before our dedication, does in fact become .23 which does exceed what's permitted by the ordinance in this particular zone.

Mr. Aikins stated now I note that the Planner's report, and I'm referring to the memorandum from Mr. Gleitz dated September 25, 2007 in relating to this matter, notes with regard to the maximum floor area ratio a total of 7,940 square feet which would appear to include...I think there had been a question before "does the 7,740 include the elevator." The answer is, I think your testimony was, no so it would appear that the 7,940 would include that elevator shaft.

Ms. Strom replied yes, our understanding was that the architecture...it would be open air other than the elevator shaft in speaking about the big portion in between the two buildings.

Mr. Aikins said why don't we talk a little bit about some of the positive criteria that... I'm sorry. I beg your pardon.

Mr. Gleitz asked if the F.A.R. then is .23, that's another variance because it raises the level of a d-4 or...I don't have a Cox book.

Mr. Hirsch said another use variance.

Mr. Gleitz stated yeah. If it's another increase in the affirmative F.A.R., then we have another "d" variance on top of the conditional...the d-3 is a conditional use variance. I believe a d-4 is the F.A.R.

Ms. Strom said you're correct.

Mr. Gleitz stated thank you.

Mr. Aikins said we would agree that because of that dedication, technically then, that would reduce the size of the lot and therefore affect the ratio...kick the ratio up by 3/100s of a percent. Is my math right on that.

Ms. Strom replied that's right.

Mr. Aikins said yeah, so we therefore would need that variance as well to comply with the requirement of the dedication of the right-of-way.

Mr. Palmieri asked with the reduction of the lot area, the .81, what would that square feet work out to. We're at 39,725. We're going to end up with...

Ms. Strom replied actually 34,500. Excuse me. I have it here. Here being the zone data table on which there is a revised portion on here. It is 34,957 square feet.

Mr. Palmieri stated you previously said the other numbers: frontage, depth, setbacks, none of those numbers would change.

Ms. Strom said none of those numbers have changed. What has changed is the lot cover and I was just going to get to that. The total lot cover, excluding land-banked parking, would be 47 total, after the dedication is removed from the figures and then including the land-banked parking, a grand total of 52 percent.

Mr. Aikins asked and what is the standard in the ordinance.

Ms. Strom answered the standard in the ordinance is 65 percent.

Mr. Aikins asked and no variance would be necessary for the lot coverage.

Ms. Strom replied that is correct.

Mr. Gleitz stated I do have a follow-up question for that. The reason why we're whispering here feverishly at the professional's table is that under the lot coverage definition, as we have in many definitions in our ordinance, we have these exclusion areas...so the end of it reads "maximum lot coverage for residential zones"... no, that's residential zones...

Ms. Strom said I was just going to point that out. I also read the definition.

Mr. Gleitz stated I went through that twice. So your calculations would include the easement but that's because the easement area is only for residential areas.

Ms. Strom said that's correct.

Mr. Gleitz stated okay.

Mr. Palmieri said so that's why I brought that up before...it's not part of this calculation.

Mr. Aikins stated so it sounds like we're in agreement on that one, Mr. Chairman.

Mr. Hirsch said so in other words, they're allowed to include that.

Mr. Gleitz added they're allowed to include it in non-residential areas.

Mr. Feist said and I verified the revised lot coverage for both banked parking and with the non-banked parking. It's 47 percent and 52 percent. I was just confirming the testimony.

Ms. Strom stated just to finish...the final number that I haven't talked about is the parking but I guess I briefly referred to it. We did have a total of 31 spaces which in fact,

given the total of habitable square footage, meets the ordinance requirement of one space for 250 square feet.

Mr. Palmieri said I'm going to go back to Paul for a second. You brought up the thing about the d-4 variance.

Mr. Gleitz stated yes. If an applicant wants to exceed the F.A.R. with a density higher than what the F.A.R. allowed...

Mr. Palmieri said well, my question to get rid of that variance, would they make the building smaller.

Mr. Gleitz replied to get rid of a lot of variances, they could make the building smaller.

Mr. Palmieri said well, I understand that but...

Mr. Hirsch stated it has to function though. The size of the building and the size of the lot.

Mr. Gleitz said we're all here talking about the scale of development on an undersized lot.

Mr. Aikins stated and one of the measure that we also take a look at is the building and lot coverage as well. I mean those are the criteria that this Board has to reconcile along with the F.A.R.

Mr. Hirsch asked did you give us the building coverage.

Ms. Strom replied we did not list the building coverage. In certain instances, as in this case, the F.A.R. functions as not in place of but rather along with the total lot coverage and the F.A.R....my understanding is the intensity of this particular zone is measured by those instruments.

Mr. Hirsch asked there's no building coverage requirement in that zone.

Ms. Strom answered not to my knowledge, no.

Mr. Aikins added because they're essentially two identical rectangles, the building coverage is going to be about half of the floor area.

Mr. Feist said it's exactly 11.7 percent.

Mr. Hirsch stated 11.7, that's building coverage. That's what I was getting at. I just wanted to get a percentage of how much of the lot...

Mr. Aikins said I wasn't sure if you meant square footage...percentage, square footage...it's the same math.

Mr. Hirsch stated I had the square footage. I just wanted to see how it calculated on the lot.

Mr. Aikins said right. Okay. So that fairly well outlines the, if you will, the bulk and lot criteria that had been covered in the Planner's review letter. Is that a fair statement, Ms. Strom.

Ms. Strom replied that's correct.

Mr. Aikins said great. Why don't we take a moment now and revisit or turn to the criteria for the positive and negative aspects of the respective d variances that we are now seeking.

Ms. Strom stated sure. I would like the Board to consider the fact that the applicant has made attempts to provide the lot consolidation which would be necessary to meet the conditions of lot size. And, then, by having a larger development, which would also meet the conditions by virtue of providing a larger development, it would help meet the conditions of controlled access by virtue of a shared driveway or a private street. I also would like the Board to note that the fact that this is not a prohibited use is a significant factor in this consideration. Regarding the positive criteria with respect to the d-3 variance, special reasons for deviation from the conditions required for the conditional use, office in this case, are as follows. This is, of course, due to the particular circumstances of the site. It should be note that the applicant has, as I have already stated, made measurable attempts to acquire properties without success. And proof of this is available upon request. The context within the lot occurs...this particular lot...further mitigates the requirement for lot consolidation that would be required to achieve this 3 acre lot area. First and foremost, the lot is bounded by this JCP&L easement on the western boundary, which restricts any building and would therefore negate the benefit of lot consolidation on the other side of this easement. Secondly, immediately adjacent to the northeast is only 50 feet wide...and despite that fact and the fact that we were not able to acquire that property, it could not be developed on its own because of its exceptional narrowness. Third, regarding the requirement of controlled access from a street or shared driveway, because the adjacent property owners are not amenable to selling and the relatively narrow depth of our property, approximately 200 feet, this makes the concept of an interior street untenable from an engineering standpoint. Additionally, the right-of-way along that lot has a restricted speed limit...25 miles per hour...in part, I believe, because of the Children's Center which occurs directly across Jumping Brook Road in Neptune Township. Our engineer, who's here tonight, may speak to the fact that from a traffic safety standpoint of view, this lot's required sight distance, based on the low speed limit and narrow road width at this particular point, that a single driveway onto our site would certainly not a safety traffic issue. Further, the relative low impact of this non-medical office development compared to the traffic a commercial development would generate, supports the deviation from this position of

controlled access at this point along Jumping Brook Road. And as I pointed out in describing the context in which this lot exists, there are a lot of existing commercial developments up along Asbury Avenue as well as along Route 66 to the south. They are larger and professional office complexes. However, there is a decided shortage of smaller scale professional office developments. So, although our plan does not meet the conditions of the 3 acre lot area and controlled access, the special circumstances of this site can in fact accommodate the proposal, in my view.

Continuing on to the negative criteria, as per NJS 40-55-d70, as stated in the adopted Master Plan, Tinton Falls does not have a high concentration of commercial, retail and office uses. Within the context of this particular area, smaller scale office developments are in short supply. Additionally the Master Plan states that with regard to any development proposed for this newly zoned HCC, Highway Community Commercial, which in fact this zone becomes upon adoption of the new zoning ordinance, that any development in this zone would need to be sensitive to the nearby medium density residential zone in Neptune...and if I may, I would like to put back A-2, the aerial, and show what I'm talking about here. Here is the Children's Center directly across from our site and this is the medium density residential development that the Master Plan refers to.

I suggest that this proposed non-medical small scale office development would actually fit that bill well in terms of far lower trafficking of this area compared to commercial and as such, it would be a desirable transitional use close to the residential neighborhood and to the Children's Center. And even if the balance of this HCC commercial zone, were it to develop with retail, that would still be the case. Balancing the development of this site with office architecture which is handsomely residential in character, as has been noted, lighting would be low level and would avoid spillage onto adjacent properties. With regard to stormwater management, the site would be designed with New Jersey Department of Environmental Protection's best management practices to ensure no cross development degradation of water quality. Finally, the fact that this development must be set back, both by the parking setback and the dedication setback and it will be densely landscaped around the perimeters and would ensure no detrimental effects from an aesthetic standpoint. In fact, the handsome architecture would improve the aesthetics.

So, to summarize, the proposed development is in fact a clean tax ratable which would have a low impact as compared to commercial development on the surrounding uses and no environmental constraints exist for this development which could not be mitigated. I would submit that beyond asking the applicant to make the attempt to consolidate the adjacent lots...that the unwillingness of the adjacent lot owners to sell presents this applicant with a hardship in his ability and right to develop this property within the parameters of the conditional use. The ongoing re-examination of the Master Plan and associated zone ordinances has recognized a further need for revision of the zoning for this area. Where it proposed under this new zoning, this Highway/Community Commercial does permit office as a permitted use, to the best of our knowledge and that any conditions and bulk standards, which haven't been published, could obviously not be compared at this point. Part of the MLUL required to grant a conditional use variance from the zoning ordinance is to make both the positive and negative criteria. The focus is

that it would not impair the intent and purpose of the zone plan and I would submit that the proofs that both the proposed and current zoning for this property permits offices that speak to that criteria. Therefore, knowing about the conditions of the use variance which are a function of this undersized lot and bulk criteria present a hardship.

The MLUL does in fact address that the conditions required by the conditional use be fair and reasonable and I would also like the Board to consider what (inaudible) to allow development of this property to be based solely on a somewhat arbitrary decision of being able to consolidate adjacent lots to do so. To forward the objectives of this Master Plan that has already been adopted, as stated in the Master Plan, it would encourage a balanced development pattern, limit any large scale residential development, support the upgrading of substandard properties in the Borough through such means as ordinance amendments and this proposal would not cause damage to the character of the neighborhood. It will not cause any detriment to the public good in this area. It is, from a planning standard, well-fitted to the particular location. As I already stated, it is a clean tax ratable. It is not, in my opinion, inconsistent with the Master Plan. It will promote a desirable visual environment. And it is not, in my opinion, a substantial deviation from the zone plan. Finally, I feel that the benefits in this case far outweigh any potential detriments.

Mr. Battista asked in terms of attempts to consolidate the property, there's this 50...I guess it's to the east...there's this 50 foot piece of property with a 50 foot frontage...that is a residential. Is that a house. I'm looking here at the aerial.

Ms. Strom answered it currently is residential. Yes.

Mr. Battista said so basically where you proposing to put those offices would be pretty much right...pretty close to his frontyard. It's not an empty piece of property. It's a residential house there that has a long driveway.

Ms. Strom replied yes, that's correct.

Mr. LaValle asked that's Lot 34. Correct.

Ms. Strom replied yes, it is.

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

Mr. LaValle asked can you just tell us what's on Lot 32...if you don't mind.

Mr. Aikins stated Mr. Chairman and Board members, I'd just like to offer Mr. Klein to provide a little bit of extra information as to his specific efforts to acquire those properties.

Mr. Hirsch said yeah, we're going to need some proof on that.

Mr. Klein came forward.

Mr. Aikins asked could you take a moment, Mr. Klein, to just review with the Board your efforts to acquire any available contiguous properties...I guess, excluding the property on the west which is affected by the JCP&L easement obviously. We all agree that that's not going to do anything for us.

Mr. Gleitz said I disagree. You stated that the easement was available for parking, for landscaping, for other types of minimal development on the site. If you were to purchase the adjacent property, the entirety of your parking area could be within that and the entirety of the development of the office structures could be moved to the east without being encumbered. Is that not correct.

Mr. Klein asked you're talking about the JCP&L property.

Mr. Gleitz replied yes.

Mr. Klein said the easement stretches on our property. Our property is already encumbered by the easement from JCP&L and to use the property immediately adjacent...to purchase the right-of-way from JCP&L, I think is almost an impossibility.

Mr. Palmieri asked who owns the property.

Mr. Klein replied JCP&L.

Mr. Palmieri stated they own Lot 36. Is that correct.

Mr. Klein replied yes, it is.

Mr. Gleitz said that's not what the plan is indicating.

Mr. Klein stated I know nothing other than the fact that JCP&L owns that property.

Mr. Palmieri said okay. Well, we'll let them find the paperwork on that.

Mr. Gleitz stated my only point being is that ask you can see from the plans, there's a 100 foot right-of-way that cuts through the area including portions of the subject property. You would assume that if they have the right to develop limited development...parking and such, landscaping...on their portion of the right-of-way. I don't know what encumbers the adjacent property owner...unless it's owned by JCP&L...which it might be. I don't know if that's the case. If it's not owned by them, again, the entire parking lot could fall under the easement area.

Mr. Klein said I believe that the property is owned by JCP&L. That's the knowledge that I've been given.

Mr. Gleitz asked do we have the 200 foot search. Do we have the list of the property owners within 200 feet. Do we know from the list who's the owner of Lot 36.

Mr. Gotfredsen said it's in the file. We're talking Block 128.03 Lot 36.

Mr. Gleitz stated I believe.

Mr. Palmieri, reading from the 200 foot list, said William and Lillian Smith. They live on Ortley Avenue in Lavalette. Looking at all the other ones that were sent out, there's nothing referenced here of JCP&L. It looks like they're all private owners...except for Seabrook Village.

Mr. Hirsch said so you're going to have to make some effort to check on the availability of that property, I would think.

Mr. Aikins stated the only thought that I would have is that we've indicated that the current lot has adequate parking. It's not that there's an inadequacy of parking.

Mr. Gleitz said it's not about the parking. It's about the inadequacy of the size of the lot and with the undersized lot, you have to show proof that you tried your best to acquire property around or offer your property to surrounding landowners to rectify the undersized nature of the lot.

Mr. Aikins stated well, why don't we go through the efforts that we have undertaken.

Mr. Hirsch said alright.

Mr. Klein said yes, I engaged the services of Coldwell Banker Residential Brokerage who is the selling broker on this property...and I asked them to contact property in the rear which is Lot 42 and the owner of Lot 34. I have an email that I received today which I'd like to read to the Board and follow up on that. This is from Brian Galbraith, a sales associates of Coldwell Banker Residential Brokerage. It's dated 9/22/07 which is the original transmission. It says "Dear Mr. Klein. Please note that the letter from the listing agent regarding contacting owners of the adjacent parcel. No luck yet. I have also not had a response from the letter I sent to neighbors behind your proposed property." And then it goes down to copying a another memo from J. Torinelli, also of Coldwell Banker. It says " Brian, as requested, I am writing to advise you and your client of attempts to contact the owner of the single family adjacent to 1989 Jumping Brook. After various messages over the last 6 months, I have not received any response. My client has also contact and to my knowledge, has not received a response."...the client being the seller of the property to me...as to the intent of the owners to sell their property at this time. If you need further information, please contact me. After further discussions with the broker, I am led to believe that the owner of Lot 34 is quite ill and not willing to discuss anything at this particular point in time. So in summing it up, Lot 36, which we believed was owned by Jersey Central, we will not confirm that and find out exactly what it is but that land would not be useable for anything. Lot 32, we're already under that the

impression that there is not a willing seller there and Lot 36...and I might add on Lot 32...our engineers told us that there are severe wetlands on that property which really wouldn't help this development. Lot 34, as we said, we have an infirmed owner who does not appear to be willing to sell.

Mr. Hirsch stated you know, we're going to have to address this a little bit differently. I mean I know it's an administrative hearing. We got a lot of hearsay. We got a lot of attempts made. It doesn't really define what those attempts are...whether they were phone calls, drive bys. Normally, Mark, we get a letter, a certified letter to the property owners giving them the opportunity to buy land or sell land and either they don't respond or they respond negatively. Now we have something directly from the property owner that we know that. So you're going to have to investigate this other lot but I would request that...I mean this is not even in an affidavit form, much less...even that would be hearsay. Look, I don't mind testimony. I understand...

Mr. Aikins said the information is within his personal knowledge so it's not a hearsay situation.

Mr. Hirsch stated well, no, it's not in his personal knowledge. He's referring to an email of realtors telling him what they did or didn't do. He says he believes somebody may be ill. He believes that may be the case. That's not quite enough. I mean I appreciate the good faith effort. I'm not trying to suggest there's anything but that. I'm just suggesting that I think for this record to be complete, for everybody's protection, you're going to have to have a little more definitive letters or affidavits or something or bring in the realtor and testify. Normally just showing here, I sent letters to the property owners and they didn't respond or they responded negatively. At least the Board knows, well, they had notice that somebody was interested in buying their land for purpose of expanding their lot to do away with variances. I mean your planner has given quite a bit of testimony about the basis of the hardship and all these efforts and it's not available.and I realize your client is trying to address that.

Mr. Aikins said she's had these conversations with Mr. Klein so we're trying to substantiate that but if the Board is looking for documentary evidence, obviously...

Mr. Hirsch interrupted I'm sorry...Mr. Klein had conversations with whom.

Mr. Aikins stated Mr. Klein had conversations with the planner and also with the broker with regard to instructing the broker to undertake those efforts on his behalf.

Mr. Klein said I engaged the broker to...

Mr. Hirsch interrupted again saying I understand you engaged him but you're relying on an email that's telling you what efforts he did...my attempts, my efforts. We don't know what they are. I haven't heard from them. I mean how do I know they ever got a letter. I never was able to get in touch with them because they never answered the phone. Maybe

people see phone numbers...you know like caller I.D. so they don't pick up the phone. Well, a certified letter addresses that.

Mr. Aikins stated if we need to bring the broker in and have the broker produce his documentary evidence, that sounds like what we should do.

Mr. Hirsch said well, but if you do that, make sure his documentary evidence is going to include some type of written notification of these people. Not just "well, gee, I called them 6 times and I never got an answer." I mean you know where I'd headed.

Mr. Gleitz stated if I could also add...with other Boards I work with and we have an undersized lot case and we have this discussion about offers and trying to acquire land. Typically a one sentence letter saying "can I buy your property" we haven't found that to be enough. There has to be something behind it in terms of some proffer of offer of some sort of amount in terms of price per acre.

Mr. Hirsch said I don't agree. I don't agree. I would not require them to do that. I think the first step is to say "do you have any interest in selling any of your property to me" or if the question is "or buying my lot." You know...if we have that situation. The first issue is does somebody have an interest. I don't think you have to start picking numbers out of the thin air...because then it gets down to...without even knowing there's an interest...well, are you interested in selling it. I'm only going to pay you \$100. So does that letter, because we put a number in it, make sense. Then somebody's going to have to determine "is that fair and reasonable." I'm not going to get into a fair market value hearing unless I know there's at least an interest.

Mr. Aikins stated you know there's another aspect of it too which apropos your point, Mr. Hirsch...which is that you know when you have essentially a monopolistic condition and you write to an adjoining property owner and say "gee, I would like to buy your property." All of a sudden that property owner says "well, gee, why does he need to buy it." Well, the answer is to satisfy the criteria. They worry about the abuses of whether or not it is a fair market value so I agree, the initial inquiry should be "are you interested in buying our property" or "are you interested in selling some of yours."

Mr. Hirsch said "are you interested in selling any portion of your property or all to me. If you are, please advise." You know, then we might have to get into a fair market value...because even if someone says "yeah, I'm willing to buy", it doesn't mean that you have to buy...in order to get a variance. Someone says "well, I'll sell it to you for \$1,000,000 and it's worth \$1,000.

Mr. Aikins stated right.

Mr. Hirsch said so, it's always going to be a sense of reasonableness but initially, we have to find out do people have any interest in selling at some price or buying at some price and then get into the next stage if we get an affirmative response to any of that to try and determine fair values.

Mr. Aikins stated and we will provide that documentary evidence and if we can produce the broker as well, we have him or her present.

Mr. Hirsch said yeah but we just want to be clear that these property owners definitely have notice of the interest. Okay. And then we can determine whether if they're non-responsive, so be it.

Mr. Battista asked can I ask a question, and I'm not sure...obviously, I understand the need for documentation but my understanding is really at this point understood to be two properties in the area that were considered for consolidation...JCP&L aside, right, whether that's owned or not. One of them is actually here. I'm not sure if possible, to get some of that testimony, whether that would be more hearsay but we're talking about people...one of which is actually here.

Mr. Hirsch replied certainly the adjoining property owners can testify. If they're here and they testify "I have no interest in selling my lot.", that answers the question.

Mr. Battista said right.

Mr. Hirsch continued then you don't need a letter if they're going to actually appear at the meeting and tell us whether they're interested. That would do away with that requirement. If they answer "no, I don't want to sell you any land", then fine. You're done.

Mr. Aikins asked we can all agree that that burden has been met.

Mr. Hirsch replied if somebody's here. I don't know who's going to testify and who's here and who's not. These are technical evidence issues to me to make sure the record's clear. I don't know where it's all going to go from there. Okay. You were, I believe, done with your testimony in covering the efforts you tried to make through Coldwell Banker to notify property owners in the area to see what interest they might have in selling land.

Mr. Klein said yeah, I just wanted to clarify the one part of the note that I read where it said "my client has also attempted to contact and to my knowledge has not received a response." That means this woman's client is the owner of the property that I'm purchasing and I believe that they are related and they have not been able to talk to them. So, I just wanted to clarify what that was.

Mr. Palmieri stated it's getting pretty late.

Mr. Aikins said I think it's probably a logical point for us to break it off at this hour...because I see it's about 10:35 or so...and we have some additional proofs that we're going to have to come back with, Mr. Chairman and Board members, based on the commentary.

Mr. Palmieri stated I know Mr. Battista brought up a point about the property owners being here, not that I'm going to tell anybody to come forward and help clarify that evidence.

Mr. Aikins said well, what I might suggest if there are any members of the public who want to ask Mr. Klein some questions on his recent testimony, that might help answer our current situation.

Mr. Hirsch stated if you want to get to that issue...are there any...obviously there's people here interested in the application. Are any of you residents that own property immediately contiguous to this property here. Mr. Waltsak, you own property contiguous to this site.

A voice from the audience began to speak.

Mr. Hirsch stated alright, I'll give you a second. I just wanted to get an idea. You, anybody else own property contiguous. Alright, so Mr. Waltsak owns one of the properties, right.

Mr. Aikins answered Lot 32.

Mr. Hirsch called Mr. Waltsak forward.

Mr. Hirsch stated you heard the conversation that we just had with counsel and the applicant. Because a couple of the variances are associated with the size of this lot, that it's smaller than the zoning ordinance anticipates. So one of the things the Board considers is whether or not the applicant has any reasonable opportunity to purchase any land that would be contiguous to this lot to increase the size of the lot to maybe reduce or do away with certain variances. So I don't know what efforts Coldwell Banker or anybody else may have made with you but you're here and I'd like to ask you a couple of questions about that, if you don't mind.

Mr. Waltsak said go ahead, sir.

At this point Mr. Hirsch swore in **Leo Waltsak**.

Mr. Hirsch asked you own which lot.

Mr. Waltsak replied Lot 32 directly behind the applicant.

Mr. Hirsch asked do you have any interest whatsoever in selling any portion of your property to this applicant. Forget about a price. That would come next. Do you have any interest in selling under any circumstance.

Mr. Waltsak replied I have more than one person interested in my property.

Mr. Hirsch asked you're not interested in selling your property.

Mr. Waltsak replied I have people who have been contacting me for the last 20 years. I'll give you a name.

Mr. Hirsch said no, no. I don't care about other people. I want to know if you are interested in selling your property or any portion of your property at this time.

Mr. Waltsak stated I can't give you an answer at this time.

Mr. Hirsch said I don't mean you have to sell it tonight.

Mr. Waltsak stated I understand that. I'll tell you exactly what I did get. I got a letter from Coldwell. I've got letters from many people requesting that I sell my property including Sitar Realty. Right. Sitar's been in touch with me for the last 20 years. I got this letter which said would I be interested in selling part or all my property. That was the end of that.

Mr. Hirsch said that's right. So the question this Board wants to know...do you have any current interest in doing that. If you say "I'm not interested in selling it currently." I don't mean we make the deal tonight. Then fine, we don't have to worry about anything else. If you say "yes", you would sell this property currently to this applicant then we have to go to a different stage in evaluation.

Mr. Waltsak stated right now, I'm not interested in selling at this time.

Mr. Hirsch said thank you. I appreciate that. Mr. Aikins, do you have any questions.

Mr. Aikins responded no further questions. Thank you.

Mr. Hirsch asked do the Board members have any questions of Mr. Waltsak.

Mr. Lomangino said I have a question of Mr. Hirsch. In this hearing here tonight and I know we're going through this and we like to have as much information as we can going forward...but because they chose to bifurcate this application and just ask if that use...all these issues are variances that they're looking for...isn't that kind of putting the cart in front of the horse. I thought we were here just to determine whether that type office use is...

Mr. Hirsch replied no, it's not putting the cart before the horse for this reason. There are certain bulk variances which they've mentioned only because they want to give the Board a fair sense of being able to evaluate the potential adverse impact if you grant the use variance. But, even more importantly, this question about the size of the lot...okay...is really the whole crux of the use variance case. Okay. The fact that this lot is not 3 acres, it fails to meet one of the conditions. The fact that it is so small is the argument as to why they can't have the internal road system. Now, we discussed tonight, because of the road

dedication, there's a F.A.R., floor area ratio, variance which is a use variance. All of that relates to the size of the lot. So all this testimony about what land can you get, what can you have, is directly relevant to the use variance, and not only on the positive side but also on the negative side as to any potential adverse impact. So, it's not getting the cart ahead of the horse.

Mr. Gleitz said I have a question, just so I understand, we know you bifurcated on the d-3, the conditional use. Are you also seeking, at this time with this application, the F.A.R. or is that deferred for a later time.

Mr. Aikins replied well, I think the idea is that we would go forward with that F.A.R. too. There's no point in having kind of two use variances. I think that would be counterintuitive.

Mr. Gleitz stated so then that goes directly to the size of the lot.

Mr. Aikins replied right. Everything goes to the size of the lot.

Mr. Hirsch said you may want, seeing as how you're going to carry this, double-check your notice to include that floor area ratio.

Mr. Aikins stated well, that came up with the planner's letter and the determination of the right-of-way issue.

Mr. Hirsch said I know but you have time now to take care of that.

Mr. Aikins stated well, we had catch all language.

Mr. Hirsch said yeah, but you can't tack on use variances with catch all language usually. It's kind of risky, I think...and I realize it was something that you didn't pick up before. That happens. Anyway, so we know kind of where we're headed.

Mr. Palmieri stated all that good stuff being said, obviously we're not getting done with this application this evening. We're going to be carrying it, after speaking with Doug and looking at our very overloaded schedule...the next available date is January 3, 2008.

Mr. Aikins indicated there was a contractual concern with the applicant and some discussion took place concerning scheduling a special meeting. The Board left it with the Board Secretary to research that possibility but in the meantime the matter was carried until January 3, 2008.

Mr. Palmieri asked for a motion for adjournment.

Mr. Lomangino offered the motion to adjourn and it was seconded unanimously.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT

REGULAR MEETING
NOVEMBER 1, 2007

Respectfully submitted,

Doug Gotfredsen
Board Secretary