

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, Moafi, Battista, Rickert, and Porzio

Absent: Messrs. Slazyk, LaValle, and Lomangino

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

Mr. Palmieri then read a statement of procedural guidelines.

Mr. Palmieri stated for the sake of the meeting record that Matt Diamond, Board member, had chosen to resign for health reasons and there was once again a vacancy on the Board.

KAZ SZULC	BA 2007 – 23
131 AUGUSTA STREET	BLOCK 124.52 LOT 23
SIDEYARD & REARYARD SETBACKS FOR POOL & WALKWAY	

Kaz Szulc, the applicant, came forward.

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 Szulc matter was offered by Mr. Battista and seconded by Mr. Moafi. A voice vote in favor was unanimous.
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Mr. Szulc was sworn in by Mr. Hirsch.

Mr. Palmieri asked Mr. Szulc to explain what brings him in front of the Board.

Mr. Szulc advised he was seeking setback relief as he was looking to install a in-ground pool in his yard. The purpose for asking for the relief was so he could move the pool

away from the corner of the house so it's not so close to the house and also for safety reasons.

Mr. Palmieri stated so the two variances you're looking for are for a sideyard setback and a rear yard setback.

Mr. Gotfredsen advised they were four setbacks required.

Mr. Szulc advised that's correct. There's one to the water's edge and one for the walkway from both the sideyard and the rear yard.

Mr. Palmieri asked if I'm standing on Augusta looking at your house...the house to the left, Lot 24...do you have an approximate idea how far that house is from your common property line.

Mr. Szulc replied from the property to their house would probably be 25 to 30 feet. The closest point which would be the closest point of their house to my property line would be their garage and their deck, a wooden deck.

Mr. Palmieri asked do they have a pool at all.

Mr. Szulc replied no, they do not have pool.

Mr. Palmieri asked going to the rear...I guess there's two lots. I guess we're more concerned with Lot 7, which would adjoin with Lot 24. Is there a house to the rear there.

Mr. Szulc replied yes, there is. Basically my yard splits two properties to the rear. There is a fence between my property and Lot 7. They do not have a pool...and from the corner of my house to their fence is approximately 25 – 26 feet.

Mr. Palmieri said so they have a shallow back yard the same way you do.

Mr. Szulc replied actually their's is probably a little deeper than mine.

Mr. Hirsch asked you said the corner of their house to your fence...

Mr. Szulc replied the furthest outstanding corner of my house to the fence that borders my property and their property is about 25 – 26 feet.

Mr. Battista stated 25.1 according to the survey.

Mr. Palmieri said I was more concerned about the house that's on Lot 7 behind you. How far are they from your common property line.

Mr. Szulc replied they are probably a good 60 – 70 feet. They have a very deep back yard.

Mr. Hirsch asked I'm sorry, I thought you said that house faces your rearyard. The front of their house or is that the back of their house.

Mr. Szulc replied the back of their house. We go back to back.

Mr. Palmieri noted for the record that Board member Mr. Lomangino has arrived.

Mr. Palmieri said looking at the site plan for the pool that you had submitted, there's something, if I'm facing your property, to the right rear adjoining Lots 22 and Lot 8. In the corner it says...

Mr. Szulc replied existing shed.

Mr. Palmieri asked do you happen to know the dimensions of that shed.

Mr. Szulc replied it's 8 X 12.

Mr. Palmieri asked and do you know the distance that is from the side property line and from the rear.

Mr. Szulc replied I want to say it's probably 4 feet from the side and 4 or 5 feet from the back property line.

Mr. Palmieri asked Mr. Gotfredsen to confirm that the setbacks for a shed in that area are 3 feet from the side and 3 feet from the rear. Mr. Gotfredsen confirmed that was the case.

Mr. Palmieri asked we're okay as far as lot coverage goes.

Mr. Szulc replied yes. Lot coverage, when it was calculated...40 percent is permitted, existing is 30.5 and the proposed would be 35.7 percent.

Mr. Palmieri asked and that includes the calculation of this paver patio and the shed...are all part of that calculation.

Mr. Szulc replied yes.

Mr. Palmieri said in looking at your site plan, you have very little backyard and I guess the reason for putting the pool in that area is because that is the biggest part of your backyard.

Mr. Szulc replied exactly...yes...because next to the paver patio, the house butts out there and then to put something between there and there, I'd be not only in violation of the setbacks, but I'd be right on top of the house which for safety reasons, I wouldn't want to do that.

Mr. Palmieri said now the distance from the sideyard where Lot 24 is to where the sidewalk's going to be that goes around the pool...what was that distance.

Mr. Szulc replied from my property line with Lot 24 to the water's edge would be 7 feet and to the walkway then would be 4 feet.

Mr. Palmieri asked just so I get it on the record again...from the rear property line to the water's edge...

Mr. Szulc replied from the rear property line to the water's edge would also be 7 feet at its closest point and 4 feet at its closest point to the edge of the walkway.

Mr. Hirsch stated the record should probably reflect the fact that the irregular shape of the pool and the walkway results in only a relatively small portion at the measurement that the applicant is indicating. At that 4 feet and 7 feet, it's not like the entire side of a pool is violating the setback.

Mr. Palmieri replied yes, that's true. It's a very minimal amount of the pool.

Mr. Szulc stated that's one of the reasons we went with that type of shape pool. If we went with kind of a square pool, it would be all the way across the whole property and both sides would be in violation.

Mr. Palmieri asked on the drawings, there seems to be a fence. Is that a fence that's already erected or will that be erected when the pool gets put in.

Mr. Szulc replied there's an existing fence between my house, Lot 23, and then Lot 22, there's an existing fence that goes the side and then my entire rearyard is fenced.

Mr. Palmieri asked is that fence owned by you.

Mr. Szulc replied no, it's not. Lot 8, which is to the rear of me, they do have a pool and that fence is their's. They do have a built-in pool in their yard but none of the fences that are currently up there are mine.

Mr. Palmieri asked this pool hasn't been put in yet, has it.

Mr. Szulc replied not at all. Not even close. Everything is stopped. When I was denied, I continued through with the variance process and the pool company has been put on hold.

Mr. Hirsch said so you're proposing to put your new fence in running from the front corner of your house and then up your sideline and across the rear and then back to your house.

Mr. Szulc replied yeah, basically, butting against the fences that are existing there and then closing in my property between Lots 23 and 24.

Mr. Hirsch asked that's proposed at 4 feet in height.

Mr. Szulc replied 4 feet in height. Correct.

Mr. Hirsch stated there's regulations you have to meet for the types of fence and the gates...you understand if you get the approval.

Mr. Szulc replied right.

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

Mr. Rickert asked is the pool going to be fenced in by itself or is your whole backyard going to be fenced.

Mr. Szulc replied I'm proposing to fence in my entire yard coming across from each corner of the house and butting up against the fences that are currently there and then fencing in between Lot 24 and myself. That will be a new fence because there's no fence there.

Mr. Rickert asked are you putting a vinyl fence in the front.

Mr. Szulc replied yes, I'm looking to put a 4 foot vinyl fence all the way across.

There were no more questions from the Board.

Mr. Palmieri asked does the public have any questions/comments of the testimony of the applicant thus far. There were none.

Mr. Szulc had nothing further to add.

A motion to close the public portion of the Szulc hearing was offered by Mr. Battista and seconded by Mr. Moafi. A voice vote in favor was unanimous.

A motion to approve the variances as requested by Mr. Szulc was offered by Mr. Battista and seconded by Mr. Rickert.

ROLL CALL

Yes: Messrs. Battista, Rickert, Palmieri, Moafi, and Porzio

No: None

Not eligible: Mr. Lomangino (arrived late)

KAY REALTY LLC 1989 JUMPING BROOK ROAD USE VARIANCE FOR OFFICE BUILDING CARRIED FROM NOVEMBER 1, 2007	BA 2007 – 21 BLOCK 128.03 LOT 35
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Mr. Hirsch stated I would note for the Board that while the Board had obviously accepted jurisdiction and commenced hearings on this application, the applicant has re-noticed the application. I think mostly to highlight a variance related to the floor area ratio or F.A.R. and I think essentially renewing the prior notice and all the other matters. I have reviewed that new notice and I find the affidavit of publication and proof of service acceptable as to form.

A motion to accept the new notice in the matter of Kay Realty was offered by Mr. Moafi and seconded by Mr. Battista. A voice vote in favor was unanimous.

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

Mr. Aikins reminded the Board that when they last finished their presentation at the November meeting, the Board had a few questions of us. The Board had asked us to do a number of things. First the Board had asked us to consider possibly reducing the scope of the building and, in addition, moving the building a little bit farther away from the property owner, the residential property and building to the north, and seeing, to the extent to which there was a possibility of acquiring additional property from property owners in any direction...although one of the property owners had indicated on the record that he had no interest in doing that. We wrote to that property owner anyway just to have a written record of that for the Board's consideration. That's where we had left off. Mr. Klein is with me. He's the principal of the applicant. He has copies of the letters that were sent. I think, Mr. Chairman and Mr. Hirsch, he had been under oath as had our other witnesses but if they need to be re-sworn, we're happy to oblige.

Mr. Hirsch asked are you going to recall...

Mr. Aikins said I'll recall William Klein.

Mr. Hirsch stated no. You're still under oath from the prior meeting.

Mr. Aikins said great. Could you take a moment, Mr. Klein, and review with the Board any contact that you had directed or had initiated with the contiguous property owners in connection with this application based on the Board's request at the last meeting.

Mr. Klein replied I personally contacted or tried to contact specifically the owners to the south, which is currently used as the right-of-way for Jersey Central Power and Light property and that's Mr. and Mrs. Smith. Early in December...

Mr. Hirsch interrupted saying I'm sorry...what lot is that.

Mr. Klein stated I'm sorry. That is Lot 36, Block 128.03.

Mr. Hirsch asked and that was the Smiths.

Mr. Klein replied yes, William and Lillian Smith. I sent them a letter. I had not heard from them and then on December 27th requested my brokers, Coldwell Banker, to send certified letters, receipt requested, to each of the three property owners...and I take a moment to read the letter that was sent out. They're all the same. This is to Mr. and Mrs. Smith and it reads as follows: "I am a sales associate with Coldwell Banker Residential Brokerage located in Rumson, New Jersey. I represent a client with specific interest in either purchasing a portion of your property located at Block 128.03 Lot 36, Jumping Brook Road, Tinton Falls, New Jersey 07753, or the entire parcel of property. Please give me a call to discuss whether this may or may not be of interest to you at 908-489-6472 or 732-842-3200 or email BrianGailbreath@cbmoves.com. Your urgent reply is appreciated and I look forward to hearing from you. Sincerely, Brian Gailbreath." Mr. Gailbreath is an associate with Coldwell Banker and was the broker that I had selected to make this contact in addition to my contact. As of today, they have not heard anything from these folks and I still have not heard anything from my personal letter also. We also sent letters to Mr. Leo A. and Claire Waltsak and Mr. Waltsak who testified previously that he was not interested in selling his property at the last meeting. He got the same letter, again, certified mail, return receipt requested, and then Ms. Shirley B. Vitt, 15 Tilton Drive, Ocean, New Jersey 07712. Ms. Vitt is the record owner of the property identified as Lot 34, Block 128.03, 1997 Jumping Brook Road, Tinton Falls. Ms. Vitt is not an occupant of the property. It's my understanding that her brother is to be living in that house. However, he is now in either an assisted living or a nursing home. I'm not sure. Ms. Vitt did reply to Mr. Gailbreath today by phone and said that she had no interest in selling or doing anything with her property. So that covers the three properties nextdoor. Should I deliver this to put into evidence.

Mr. Aikins asked are copies alright, Tom.

Mr. Hirsch marked the letters into evidence.

<p>A-8 Copies of letters sent on December 27, 2007 to three contiguous property owners with a copy of the certified mail receipt on each one</p>

Mr. Aikins stated I would also note for the record that no property owner contacted me on the supplemental notice that we sent out from my office...which went out on or about December 21st.

Mr. Rickert asked these certified letters went out a week ago.

Mr. Aikins replied that's correct.

Mr. Rickert said and our last meeting was what...November 1st. They might not even have had time to get back to you yet.

Mr. Klein answered Ms. Vitt did.

Mr. Rickert said that was two months you had from the last meeting...and you waited until December 27th to get the certified letters out.

Mr. Klein responded I have no answer for that other than that's when the broker got the letter out. I had requested that they get it out earlier.

Mr. Palmieri asked you got the proof of mailing. Did you get the return receipt yet.

Mr. Klein replied they have not yet returned them.

Mr. Palmieri said so you have yet gotten the return receipts to say when they were delivered.

Mr. Klein replied no.

Mr. Aikins asked the only one you have not heard from, if we do it by the process of elimination, with Mr. Waltsak testifying at the last hearing and Ms. Vitt's call today, would then be the Smiths.

Mr. Klein replied that's correct and that contact I did make in the first week of December.

Mr. Aikins stated so you initiated a contact the first week of December and then, as a follow-up, you had the broker send the letters a second time. So you contacted the Smiths twice.

Mr. Klein replied that's correct.

Mr. Aikins said and everyone else we've accounted for.

Mr. Klein replied that's correct.

Mr. Hirsch said I'm sorry...the Smiths...did you testify that you sent them your own letter first earlier on...not just called them.

Mr. Klein stated no. I sent them a letter via DHL.

Mr. Hirsch asked do we have a copy of that to put in evidence, Mark.

Mr. Klein said I did not bring one. I'm sorry.

Mr. Hirsch asked was that similar in nature asking them if they had any interest in selling you properties.

Mr. Klein replied yes, it was. Actually there was a price in that one.

Mr. Hirsch stated it wouldn't hurt if you could submit a copy of that to us subsequently...because as you said, we've heard from two of the property owners. That's the only property owner that you don't have an affirmative response from...and if they had notice early in December plus the notice again on December 27th.

Mr. Klein said not a problem. I'm sorry I didn't bring it with me this evening.

Mr. Aikins stated I have nothing further of Mr. Klein, Mr. Chairman.

Mr. Palmieri said I guess before Mr. Klein runs away...I don't know if the Board members have any questions of what he just recently gave testimony.

There were no questions from the Board. Mr. Klein would remain available in case of any questions from the audience.

Mr. Aikins said we would call back at this time Ms. Beth Strom, the applicant's planner.

Mr. Hirsch advised she was still under oath from the last meeting.

Ms. Strom produced a new piece of evidence for Mr. Hirsch to mark.

A-9 Colorized rendering of the latest site plan revised 1/3/08
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Mr. Aikins asked Ms. Strom, could you take a moment and refresh the Board's recollection about what's proposed for this site and how your firm has come to revise these plans, and then incorporate them, if you would, please into testimony with regard to the criteria that we talked about...positive and negative...associated with a d-3 variance for the conditional use.

Ms. Strom replied sure. To briefly summarize and update the proposal, the site again is the .91 acre site on Jumping Brook Road, 1000 feet southwest of Asbury Avenue. What we have done is reduce the size of the proposal. We now have two two-story professional office buildings, again, non-medical office buildings. They total 6, 720 square feet with a 400 square foot proposed open air atrium in between. As was noted previously, the building has been moved further west to provide for the required 20 foot residential buffer to the east.

As was previously discussed, the western portion of the site is encumbered with 100 foot wide Jersey Central Power & Light easement and our office investigated any additional right-of-way improvements that are slated for Jumping Brook Road and it is our understanding that there are none. In his report, the Planner, Mr. Gleitz, made reference to a re-alignment that had been reference on a prior plan, an old concept plan. That reference was from a survey done in 1980 and the current survey has no such reference. So I just wanted to point out that that has expired. That is no longer valid.

There are no other known environmental constraints to the development of this parcel and this finding was confirmed by the mapping available in the Tinton Falls Master Plan.

Again, just briefly, the context...Jumping Brook Road runs along the boundary of Tinton Falls and Neptune Township and directly along Jumping Brook Road there are approximately half a dozen residential lots on the Tinton Falls side. Across Jumping Brook road on the Neptune side is the large development known as the Children's Center of Monmouth County, which is a facility serving children with special needs including a number of administrative offices. Again, just to refresh the Board's memory, northeast of the Children's Center on the Neptune side is a moderate density residential area, again, in Neptune Township. I brought along all the exhibits from our prior meeting. If anyone needs to refer to these...but since it was already reviewed, I'll just continue. Again, wooded parcels, undeveloped, occur northwest of the site between our site and the commercial development along Asbury Avenue to the north.

In addition to the buildings, we show 31 parking spaces, a portion of which are land banked...9 of these spaces are land banked and the purpose of this was at the direction of the TRC that in case these parking spaces are not needed, that the developed could be staged. This would be, as was discussed prior to this, a low impact development in terms of numbers of users and associated traffic. A relatively low number, between 10 and 20 number of employees, at any given time and then the hours of operation would be from about 9 am to 7 pm.

As was noted previously, the total lot area, exclusive of the dedication, is .8 acres. Regarding the F.A.R., Floor Area Ratio, including the open air atrium, the total square footage would be 7,120 over the .8 acres or approximately...it might be slightly higher than that and that would be resolved in the site plan phase. In other words, at this level of accuracy, it's my opinion that the actual F.A.R. which would be .2043 or it may even be slightly lower than that...2036...that this is, in my opinion, an insignificant digit and in most instances for this level of accuracy, it would simply be rounded down to .2 and is therefore, in my opinion, a de minimus amount. I conclude as a planner, looking at this, that it does, in fact, meet the .2 F.A.R.

The existing zoning, as was previously discussed, is SI or Special Industrial and office development, as was noted, is listed as a conditional use. The conditions are not met. The condition of lot size, the 3 acres required whereas .8 is provided...and the condition of controlled access by a shared driveway or private street also has not been met.

As was already mentioned, the dedication of the right-of-way is shown along the street property line occurring approximately 33 feet from the centerline of Jumping Brook Road. This has a bonus effect of further buffering the development from the street level.

The bulk variances as are noted over here and as you have all, I hope, had a chance to review...that the first being the 3 acres. We have .8 acres as was noted, although I did want to bring to the Board's attention that the Ordinance does indicate .5 acres per principal use. Then the lot width where 200 feet is required, we have 199 feet. The lot

depth whereas 200 feet is required, we have 176 but, again, after dedication. The frontyard setback...65 feet is required...and this plan shows 43 feet frontyard setback, again, after dedication. The sideyard...30 feet is required...whereas we show 20 feet. And as I already noted, the F.A.R., .2 is required and this plan...if you were to simply take the square footage of office would be .9 basing that on the 6, 720 square feet.

Mr. Palmieri asked the dedication portion, it's in front. What's the depth of the dedication because it's not on...

Ms. Strom replied the depth of the dedication is determined from the centerline of the road...so it's 33 feet. I believe the dimension is indicated on the site plan.

Mr. Palmieri stated I see that. I'm just saying from where the curblin would be...because I'm just going by...

Mr. Hirsch said how much of their property...how much are you dedicating.

Ms. Strom replied I have not calculated that amount. It's variable. It ranges from 25 to 35 feet across the width of the property.

Mr. Palmieri stated right because I was going on based on what you're saying about lot depth required to be 200 feet and you're saying it's 176...and going by the site plan at the shortest side which would be adjacent to Lot 34, it's 187. So that would be the shortest dedication would be on that side. Is that correct.

Ms. Strom said actually I believe this is the shortest dedication.

Mr. Palmieri asked along Lot 36.

Ms. Strom replied yes, that's correct.

Mr. Palmieri said and you're saying that shortest distance...that would be 20 or 25 feet of dedication.

Ms. Strom replied it is actually at that point 23 feet. And on the opposite end, it is approximately 28 feet.

Mr. Palmieri stated because I was just trying to come up with your 176. Maybe I'm not adding subtracting correctly here.

Ms. Strom said the 176 is at the centerline of the property.

Mr. Palmieri stated so dead center...say, assuming that the driveway to Jumping Brook, that would be the center of the property so from that area right in the center less the dedication would be approximately 176.

Ms. Strom said that's correct. If I may, I do have the ordinance. I believe it was taken directly from the definition of lot depth...that it is the mean distance between...

Mr. Gleitz added the midpoint between the front and the rear.

Ms. Strom stated that is my understanding.

Mr. Gleitz read "the shortest horizontal distance between the front lot line and the line drawn parallel to the front line through the midpoint of the rear lot line."

Ms. Strom said so that is, in fact, how this was determined.

Mr. Palmieri stated okay. Sounds consistent. Thank you.

Ms. Strom continued by saying again this is the SI Zone under the current zoning. Oh, and I would just also like to emphasize one other point and that is that the lot coverage and the building height and parking space requirements have all been adequately met.

From the Zoning Ordinance, it is the intent of the SI Zone to address that fact that this particular area of Tinton Falls is a transitional area. By its very nature, the zone description recognizes the fact that the existing uses in this designated area warrant revision...or transitioning to and I quote "the gradual conversion to office and industrial use." As stated in the Ordinance, the purpose of this district was to encourage a gradual conversion. In reviewing the newly adopted Tinton Falls Master Plan, this zone would, in fact, be eliminated and replaced with the HCC or Highway Community Commercial Zone. This, of course, is comparable to other commercial zones in Tinton Falls in which office is a permitted use. I would like to emphasize the fact that when the proposed zoning is adopted, commercial development of a much higher intensity will be permitted for this site. I also think that the Board should recognize the fact that it is not a prohibited use and therefore that is significant.

Further I would like the Board to consider the fact that the applicant has made several attempts to provide for lot consolidation which would be necessary to meet both the conditions of lot size and thereby have a larger development to meet the condition of controlled access. I also wanted to point out that the applicant has, from the first submission to the TRC, from our informal discussion with them...originally it was 9,000 square feet and so the applicant has significantly reduced by about 25 percent the actual development that he has proposed for this site.

So regarding the positive criteria with respect to the d-3 variance, special reasons, in my opinion, exist for deviation from these conditions required for the conditional use...office in this case. This is, of course, due to the particular circumstances of the site. As was noted, the applicant has made, in my opinion, reasonable attempts to acquire properties immediately adjacent to the property without success...and proof of this effort is available. The context within this particular lot appear to mitigate the requirement for lot consolidation that would be required for a 3 acre lot and this is because, first and

foremost, it is bounded by this JCP&L easement which does restrict development and would therefore, in my opinion, negate any benefit of lot consolidation on the other side of that easement. Secondly, the lot immediately adjacent to the northeast is only 50 feet wide and despite the fact that the owner is not amenable to selling, this particular lot could not be developed on its own because of its exceptional narrowness. And thirdly, regarding the requirement of controlled access with a street or a shared driveway, because the adjacent property owners are not amenable to selling, the relatively narrow depth, approximately 200 feet as was discussed, makes this, from an engineering standpoint, an untenable requirement from a street...bringing a street into this development.

Additionally the right-of-way along the lot has a restricted speed limit due to its proximity to the Children's Center. If it would be helpful, our engineer can speak to the fact that, from a traffic safety standpoint, this lot's sight distance and based on the low speed limit and narrow road width, a single driveway onto our site would not create a traffic safety issue. And further, the relatively low impact of this non-medical office use compared to the traffic of a commercial development that that would generate supports this deviation from the condition of controlled access at this point along Jumping Brook Road. As I pointed out in describing the context in which the lot exists, there are existing commercial developments larger, but medical and professional office complexes in the area but there is a decided shortage of smaller scale professional office development.

In summary, regarding the positive criteria, although this plan does not meet the conditions of the 3 acre lot and the controlled access, there are special circumstances regarding this particular site that do, first of all, accommodate this proposal...but, in my opinion, this lot is unable to meet these conditions significantly. Regarding the negative criteria, as stated in the adopted Master Plan, Tinton Falls does not have a high concentration of commercial, retail and office use. Within the context of this particular area, smaller scale office developments are in short supply. Additionally the Master Plan states that with regard to development proposed for this newly zoned HCC, Highway Community Commercial, that any development in this newly-zoned area would need to be sensitive to the nearby medium density residential development in Neptune Township as well as to the Children's Center. I submit that this proposal, this non-medical, small scale, low impact office development would fit that bill well in terms of far lower trafficking in the area compared to commercial development and, as such, it would be desirable transition use both to the residential neighborhood and to the Children's Center, even as the balance of the proposed HCC Zone surrounding it were to develop with retail.

Beyond this, the development of the site with office architecture, which is handsomely residential in character...I believe you all received the architectural plan and have had a chance to review those. So beyond the very handsome architecture, which is residential in character, lighting, which would be low level and which would avoid spillage onto adjacent residential properties and with regard to stormwater management, impervious would obviously increase but would be well within the permitted 65 percent, depending on whether you include the land banked parking, it varies between 43 and 48 percent. And we would certainly be following NJDEP best management practices and thereby ensure no post-development degradation of the water quality. From the street, as I noted previously, the development would be set back and densely landscaped around all the

perimeters and would ensure no detrimental effect from the aesthetic standpoint in the neighborhood.

To just briefly address a couple of the comments from Mr. Gleitz in his Planner's report, regarding intensity, F.A.R., in conjunction with lot coverage, is the controlling instrument with regard to intensity. And I submit that the .0043 amount that this proposal exceeds the permitted .2 F.A.R. is, in my opinion, de minimus and our proposal is well under this 65 percent lot coverage. This proposal meets the intensity requirements called for in the Zoning Ordinance, in my opinion. Regarding site access, it would seem to me unreasonable to deny the applicant the right to develop this property in light of the fact that the adjacent landowners seem not to be amenable to selling any property and therefore lot consolidation does not seem to be possible. And lastly, regarding the buffers, it is only to the west that we have not met the required buffer width but again, that is where the JCP&L easement occurs and it would be possible to do additional landscaping to more densely this particular edge. As I pointed out previously, JCP&L has no problem with landscaping as long as it is maintained at a certain height. That and the fact that this easement does restrict development, so, in fact, it provides in a way a natural extension of the buffer.

Regarding the use, it is permitted conditionally in this zone. It is a non-medical low intensity professional office development which would be a clean tax ratable for the township. It would have this low impact, compared to commercial development, on the surrounding uses. Environmental constraints to any development could certainly be mitigated and I would submit that, beyond asking the applicant to attempt to consolidate the adjacent lots and the unwillingness of the adjacent lot owners to sell, that this presents our applicant with a hardship in his ability and right to develop the property within the parameters permitted by the conditional use. Finally the project proposes a handsome architectural product which conforms with the surrounding character of the neighborhood and with high quality use of building materials. And while it would be difficult to argue that a real estate office is an inherently beneficial use, but approval of this application would result in a taxable property that would be economic benefit to the township while at the same time, in my opinion, reconciling well with the adjacent neighborhood.

Finally, reconciling the proposed use variance with the zone plan...this use will not cause, in my opinion, substantial detriment to the public good by changing the character of the neighborhood. The architecture, again, is residential in style. The low impact of users and traffic and, of course, the lack of any industrial activity. The proposal does not impair the intent of the Master Plan and it is in keeping with the surrounding development. So, in my opinion, to sum, the benefits far outweigh any potential detriment to development.

Mr. Palmieri asked Paul, do you have something to say.

Mr. Gleitz replied well, I have a couple questions, I guess, I could start, unless the Board has any questions first.

Mr. Palmieri said I'm kind of curious since she went over your letter a little bit.

Mr. Gletiz stated I think the Board has my revised memo...December 19th. I'll just make a couple comments. The proposal was changed again. It was reduced. There's now a 20 residential buffer along the one side...I guess basically the northerly side. As a planner, I usually round up rather than round down, a half a parking space goes up so the .0043, while it seems small, I thought it did rise to the level, in terms of the F.A.R., additional relief that would be required...based on the fact that we're including the atrium and that will be included. At some point, the proposal before the Board is to turn it into an elevator core, that type of thing, and the fact that there's the matter of road dedication. Again, it's not a very large number but I do think it is appreciable in our discussions. And, again, you'll note all the rest of the bulk variances that go along with this.

In terms of the positive, I still think we know to focus on the fact that it's not a use variance. They're looking for a conditional use variance. So, in the broader sense, the zone plan says offices are okay but only under special circumstances of the 3 acres with special access...those types of things. The Board has to consider what the Master Plan wants to do, what it's tried to do, and what has happened over time in the area. There are some smaller lots. There are some larger lots. I had the same questions you had about mailing the letter on the 27th and then it gets there a couple of days late. No one's around for a couple of days. I don't know. We'll have to see what some of the other correspondence is. I guess Mr. Hirsch will advise us as to whether they've really met their burden...but in terms of the JCP&L access, I think we know you can put parking there. You can shift...you know the fact that there is a JCP&L easement over there doesn't preclude any type of development. It just precludes structures and those types of things. I guess the other...when we're talking about the Master Plan, it talks about it wants to transition from the residential use into this office use through consolidation. This application does not do that. This application has a small lot on its own. So, how do you balance that. I understand your points about this is a smaller scale. It's not an industrial use...but how do you balance the intent of the existing zone plan, in terms of the SI, the need to try and force and try and get property owners to come together and create larger parcels for development with the current proposal to move forward with this very small lot.

Ms. Strom responded I guess, in my opinion, because it seems that the intent of the Master Plan is to provide some transition to the surrounding area. So that is really the crux of my argument as to...you know I think absolutely that Mr. Klein has indicated that if adjacent properties were reasonably acquirable, he would do so. So, I think beyond asking Mr. Klein to do so, to make reasonable attempts to do that lot consolidation, at some point it seems to me that not allowing him to develop his property within the parameters of what is permissible, seems to be, if not a taking of his property, certainly a restrictive attitude towards his right to develop his property in a legitimate way.

Mr. Gleitz said as you look at your...and, again, we have this bifurcated type of application so we're talking about use now but the Board can't divorce its thinking from

the site plan application as to what can and what cannot fit on the site and will be coming...if the applicant were to come and get the use variance now and then come in with a radically different site plan, I think Mr. Hirsch and I would be saying "no, that's not quite what your use variance was based upon...are there ways to develop this site that would better meet the intent by allowing development to the rear and to the side of this property. The question I'm asking is right now you have a single access driveway with two buildings. Are there ways to show the ability to allow access to adjacent properties through this property or in cooperation with this property that better meet the intent of the SI Zone.

Mr. Aikins stated before I answer that...sorry, I might ask Mr. Hirsch whether or not that is a little speculative in nature. I mean it calls for a theoretical answer to a site plan that hasn't been designed nor may ever be designed.

Mr. Hirsch answered well, I think the Planner is just probing as to whether there's been any consideration given or whether your engineer believes that there would be some way to design the site so potentially as other sites develop, somehow there could be, as was initially intended with service roads, a connection between properties.

Mr. Aikins stated that might be a question better asked of the engineer then rather than from the planner.

Mr. Hirsch said yeah, certainly you can defer to your engineer. Absolutely.

Mr. Aikins stated may we. The applicant's engineer approached the microphone.

Michael Marinelli, Menlo Engineering, had been sworn in last time but he was not qualified since he didn't actually testify.

Mr. Aikins asked do you present any licenses from the State of New Jersey.

Mr. Marinelli replied he was a licensed professional engineer in the State of New Jersey, and advised he had given testimony before planning and zoning boards in his career. He further stated he was familiar with the plans before the Board.

Mr. Palmieri asked have you ever testified before either our Board or the Planning Board.

Mr. Marinelli stated no, I haven't.

The Board agreed to accept his credentials as a professional engineer.

Mr. Hirsch said I think he understands the somewhat hypothetical question.

Mr. Marinelli stated yes, I've had an opportunity to review the plan. We've actually done some preliminary site planning on site hoping for a positive vote this evening. In answer

to your hypothetical question...I guess in a perfect world if the driveway was relocated and ran up the property line, hypothetically in conjunction with Lot 32, some kind of common access could be acquired. I don't know...I would have to speak with my client with respect to some sort of access easement across the site. Again, if it were to be a dedication, it would make all the criteria which we're asking for relief from actually worse, obviously, because of the dedication. But, as far as the potential of an access easement to service Lot 32 through the site, it could be feasible.

Mr. Gleitz replied okay. The whole point of the question was the intent is to consolidate properties together. If that can't be accomplished, the fallback to that is to allow for the development of the properties separately but in conjunction with each other. That was the point of my question. So I didn't think I was going too far out on the limb. The idea was to see can we still meet the intent of the zone plan by parcel piece and your answer is it's possible.

Mr. Aikins stated then I would submit to the Board if we're talking about possibilities for site plan, then maybe that's an issue we need to talk about at site plan...because this isn't a site plan approval. You know, this is a conditional use approval.

Mr. Gleitz said it all goes back to suitability. We're discussing the suitability of the site for conditional use. You don't meet some of the conditions. I'm asking you about two of the conditions, the size and the access.

Mr. Palmieri stated I have a quick question. We were talking about Lot 32...or Lot 36 that only has 50 feet in depth to it.

Mr. Marinelli said that was with respect to Lot 34, if I may, to the east of the property. It only has a property width of 50 feet. In gaining...I believe Ms. Strom's testimony was even gaining that wouldn't relieve us of all of the variances we're requiring this evening.

Mr. Palmieri stated and the size of the lot that is to the rear of 32, just to get it back on the record, do you have any idea.

Mr. Marinelli said Lot 32 to the rear...looking at a really unclear picture of the tax map, it seems to be approximately...I'm sorry it's illegible. Judging from scale, our lot being approximately one acre, I would say it's approximately 5 acres....but I do not know for sure. And I believe that lot has frontage on Green Grove.

Mr. Palmieri stated I was just following up Paul's question about the possibility of an easement road to the adjacent property to see if it fits the whole idea of the new Master Plan with the re-zoning with the HCC and how would you develop that back lot and one access to feed all...

Mr. Marinelli said unfortunately without the benefit of doing the analysis and laying it out, in my opinion, it probably is a detriment to our site in bringing a common access drive because what you in effect have to do is, as a safety concern, is separate that

common traffic from your onsite traffic...so you would have to introduce additional islands and additional grass areas and I'm not sure, without having done the analysis, whether we would be able to meet the Ordinance with respect to parking and land coverage. Those are just things to keep in mind. If that is done, again, theoretically, yes, an easement can be done across the lot but that has ramifications on how our site lays out and may have a negative impact on the development. Again, we're only dealing with, after right-of-way dedication, .8 acres of the site total. That access road could be another .2 acres. Now we're limiting our development to .6 acres.

Mr. Hirsch asked just so I'm clear, Lot 32 is landlocked. Is there any access.

Mr. Marinelli replied I believe it has access off of Green Grove.

Ms. Strom said there's a small frontage on Green Grove.

Mr. Marinelli stated a small neck that goes to Green Grove.

Mr. Gleitz said it narrows but it does touch.

Mr. Marinelli stated if it helps, we do have a rendering marked as Exhibit A-3, the lot in question is Lot 32, which is this large triangular lot to the rear of our site. Ours is the one designated in pink and it does in fact have frontage along Green Grove.

Mr. Hirsch replied okay.

Mr. Gleitz stated so we were discussing that the current application is in the SI Zone. In the new Master Plan, it will be HCC. It's your contention that if the...I just want to make sure I understand...that if you move forward with this application with the office use, it would be less of an impact on the surrounding uses and it would be more...what was the word you used with the existing uses in the area.

Ms. Strom said in my opinion it would be a good transitional use to any adjacent commercial development as the balance of the HCC Zone develops.

Mr. Gleitz asked if this property were to be developed as an office use, do you think it would have any negative impact on the future development of the whole zone as an HCC.

Ms. Strom replied no, I do not. I think it would be very compatible and I would certainly anticipate...although I haven't had any access to what the new HCC Zone would indicate...I would assume that office would certainly be a part of that mix of uses.

Mr. Gletiz said those are all the questions I have.

Mr. Aikins stated one of the difficulties that we have is to reconcile today's desired growth with the realities of what's out there and short of some sort of comprehensive redevelopment scheme or plan for redevelopment...in essence you have smaller

undersized lots that may develop faster than other permitted lots and that's the situation that's before the Board. We'd love to connect to someone else's road. That would be great but it's not there to connect to...so what do we do in the meanwhile. If we can't get an approval, then effectively you've said the property's made not useful...and that's not a direction any of us wants to go in, obviously.

Mr. Hirsch asked is it the applicant's position, Mr. Aikins, that this lot can't be developed for a permitted use without variances, if not all the variances requested here.

Mr. Aikins replied I think what you're left with is the two-family use which has essentially been abandoned.

Mr. Hirsch said no, no, I'm talking about uses permitted in the Zoning Ordinance as it exists today, not what was on the site.

Mr. Aikins stated well, I think any of the permitted uses require a 3 acre minimum lot so the answer is yes. It's a classic undersized lot case.

Mr. Hirsch said so whether we make the office building smaller would not change the vast bulk of the variances other than perhaps the floor area ratio.

Mr. Aikins stated I think the key indicators, Mr. Hirsch, are the ones that we wrestled with last time and those were making sure we were not over on building coverage and making sure we met the F.A.R. and at this point, if my math is right, we're within 43 ten thousandths of a percent of meeting the F.A.R., which I personally consider de minimus...and I think those indicators are very good indicators of the intensity of development on a given property, whether it's 8/10s of an acre or whether it's 8 acres or whether it's 80 acres. What those numbers are telling you is for a given lot, the intensity of development is appropriate and those numbers this applicant meets. It's the reality of the application.

Mr. Gleitz said yeah, any non-residential use would require 3 acres. Not just office, any...non-residential use.

Mr. Hirsch asked and residential use is not a permitted use here.

Mr. Gleitz replied no, residential use...is under the R-2 requirements. Yes.

Mr. Palmieri asked under the proposed HCC, it would be permitted also, wouldn't it.

Mr. Gleitz replied under the proposed HCC, there'd probably been more uses allowed, more retail uses allowed.

Mr. Palmieri said right but there'd be no residential under the HCC.

Mr. Gleitz replied no, we'd be removing the residential from the HCC. It would be a straight commercial zone.

Mr. Hirsch asked currently the SI Zones allows residential under the R-2 standards.

Mr. Gleitz replied yes.

Mr. Hirsch stated and that Master Plan proposes to remove that residential use.

Mr. Gleitz added and looking at the locations, it has decided to make the entire area the HCC. Any existing homes would be pre-existing, non-conforming.

Mr. Hirsch said well, yeah. So residential would not be consistent with the current Master Plan.

Mr. Gleitz stated no, it would not.

Mr. Aikins said and at this point, I would think, even if it were inconsistent, that use, as I understand it, has essentially been abandoned at the property.

Mr. Klein stated that's correct.

Mr. Palmieri said I think we have another quirk in the whole thing going on this evening because originally we had said we had five original members...and then Mr. Gotfredsen has just informed that Mr. Moafi was not here on the November 1st meeting and he has not listened to the tape on that meeting date...so we're back to five. We still have enough Board members...

Mr. Aikins stated but I thought everyone had listened to the tape.

Mr. Palmieri said I was under that assumption also.

Mr. Aikins stated so we need to listen to the tapes.

Mr. Hirsch said one member...that's sitting up here. I didn't know that either.

Mr. Aikins asked may I have just a moment to confer with my client.

Mr. Hirsch replied yeah, well, obviously we're going to give the public a chance to ask questions.

Mr. Aikins approached the microphone again and said I think what we'd like to do, Mr. Chairman and Board members, with everybody's permission...the neighbors are here. Perhaps we could hear their concerns and then, perhaps, we could also give Mr. Moafi...I recognize it would cost the applicant another month but, in the interest of making a comprehensive record and having Mr. Moafi's consideration of the entire record...we

would ask that the matter be continued at that point, subject to his review. I think there was additional documentation that one of the Board members was looking for...we could supply that and then that would be able to wrap things up at your next meeting.

Mr. Hirsch said okay, we can get to that. Let's finish what we're doing here and then we'll decide where we're going to carry it to. So if the Board members have no questions, we can open it to the public for questions.

Mr. Palmieri asked do we want to address the Engineer's letter at this time.

Mr. Hirsch replied well, no. I would just see if there's any questions of this witness right now and then go into that.

Mr. Palmieri opened the floor to the public asking for any questions of the testimony given by the planner or the engineer at this time.

Karen Wood, 2000 Jumping Brook Road, Neptune, stated she was thinking about the size of the building, bringing it down, and asked you said you did adjust the sizes.

Ms. Strom replied yes, I did.

Ms. Wood asked that worked with the size of the building and the Master Plan because hypothetically...I'm trying to find out about the size of the building and the access right now.

Ms. Strom replied well, at this point in time, the HCC Zone has not been formally adopted so unfortunately we do not have those bulk requirements or standards for the HCC.

Ms. Wood asked you're trying to build your building based on the SI.

Ms. Strom replied right, which is the current legal zoning for this particular property.

Ms. Wood said which is confusing me because it sounded like you were actually planning your area for HCC.

Ms. Strom stated well, I guess what I'm doing is I'm anticipating the fact that the Master Plan has been adopted and, to my knowledge, the HCC Zone has been identified for this particular area and it is my absolute, almost certain assumption that this will be adopted. Is that correct.

Mr. Gleitz said the Master Plan has been adopted. We're now in the process of drafting a new ordinance as some of the members are well aware, we've been working...every couple weeks we get together and we work on the process. We have identified all the uses. We're now working on the bulk standards for each of these new zones. So in the future, this will be an HCC Zone and there will be bulk standards that go along with it that are designed to help control the size and density of the development. They will most

likely be within the standards that are already existing for those types of uses...so the Borough already has existing standards for retail, existing standards for office, size, floor area ratio, impervious coverage. So we're not looking to radically change any of those types of things. However, the one thing that will be changing is that this SI District that has this requirement of controlled access and those types of things, that will not be present in the HCC Zone. So, in fact, there would be a larger number of retail-type uses as well these office type uses which would be permitted within the HCC Zone.

Ms. Wood said they're trying to get something in right now under SI. When does this HCC Master Plan take because of that easement. Like one needs and one doesn't need it.

Mr. Gleitz replied we're drafting it now. I'm hoping to have a draft before the committee this spring...you know, May, June, that type of thing. They're probably be adopted by early summer. That's the intent. That's my marching orders to get that work done. So, I guess what I'm trying to say is I don't believe...and the applicant has to kind of address both. They're caught in a weird spot in time where they have to develop under the current zoning ordinance but they also have to anticipate what the Master Plan says. Nine times out of ten your Master Plan and your zoning match and you have to address why you may or may not be in agreement with the...this is an odd circumstance where the zoning is one thing...the Master Plan is recommending a change. They're coming in with an application because they have to...because that's the law this Board has to hear the application under under the existing zoning but they also have to be aware and responsive to what the new zoning will be. So that's where a lot of my questions were coming from.

Ms. Wood said well, the easement is what I was interested in...when they were talking about Lot 34 being their easement...they wanted acquire that for their easement...you said that at the last meeting...

Mr. Aikins stated acquire it to add to the property because the property is undersized.

Mr. Palmieri said I think what they were doing was they were talking about an easement on their property currently...so if there was any further development to the rear, on Lot 34, there would be one access road and they were going into the effect that if they gave away this easement, it made .2 acres, it would reduce their property, increase their...

Ms. Wood asked without Lot 34.

Mr. Palmieri stated without Lot 34...just saying now we've got a new easement on their property...so once they give away that easement, they can't use that easement as part of their calculations...what they need for floor area ratio, parking, setbacks...

Ms. Wood asked that's not considered a paper street in their numbers.

Mr. Palmieri replied they can't, right.

Ms. Wood said that was in reference to that section, the unusable section...

Mr. Gleitz stated no, that was in reference to the JCP&L...

Ms. Wood said no, actually they use the word here..."the property is unusable". They talked about Lot 34...they said useless except to them. They mentioned 34 and I wrote it down.

Mr. Hirsch stated well, no. They were talking about the fact that that is, I believe, a 50 foot wide lot. Therefore, there's no way to develop it. It's so small so therefore...

Ms. Wood interrupted saying that would go under my statement later. I don't want to get into that because there is...

Mr. Hirsch said well, I'm just trying to clarify what they were testifying to. That was what you were asking, so...

Ms. Wood mumbled and then said oh, about the size of the building...somebody said it...about relocating the building and moving it over and you said it over 20 feet.

Ms. Strom stated just to respond directly to your question...we moved it...not 20 feet but we moved it...I don't have the old plan in front of me...if I may, we are now 20 feet from the property line...so we, in fact, meet the residential buffer requirement...by moving the building to the west.

Mr. Marinelli said just for the record the previous setback applied for was a sideyard setback of 17 feet. That was to the east. We've since increased that setback to 20 feet to get the building out of the required 20 foot residential buffer.

Ms. Wood asked front and back because it was on an angle.

Ms. Strom replied in fact it's 20 feet at the back at the minimum and it's greater than that at the front of the building.

Ms. Wood said yeah, that was scaled down. That's what somebody said. It was scaled down and that was part of my question...like there's no way of relocating it, like moving the building. Putting the parking lot around it instead of being right up against the residence.

Ms. Strom replied there really isn't access in order to do that. This is, in fact, a very economical use of the property and it also has the entire perimeter in buffers. So that's actually a more, a preferable way to develop this property...particularly with thinking about the adjacent residents.

Ms. Wood asked what about the two next to it. The two properties right to the right of the building. 34 and 32.

Ms. Strom replied yeah, well, I do understand your concern if you do happen to be that property owner. However, that is within the parameters of the zoning ordinance. We developed them within these parameters.

Ms. Wood said well, that's what I was wondering...how do you figure out how to put the two properties on the end...instead of in the middle. Why does it end up right next to the building when you have the whole property. How does that work.

Mr. Marinelli stated if I may, one of the things that you'll find in laying out an undersized lot similar to this is, and to answer your question directly, to relocate the building to the center of the site and incorporate traffic around, actually increases the amount of impervious coverage onsite. So it's actually a detriment to this site...not specifically to this resident who happens to be near or adjacent to the building...the only other option would be to flip it to the opposite side, although on that side we're restricted by this 100 foot wide JCP&L that encompasses a portion of this site, and renders this site...we wouldn't be allowed to do that either. So this is both the most efficient and economic way to lay out this site, in my opinion.

Ms. Wood said there's only one more question about the size of the building compared to the 3870...what is it now per building.

Ms. Strom replied 3360 per building.

Mr. Marinelli stated which is a total of 6720 which is a reduction of approximately 1300 square feet from our previous application.

Ms. Wood said that was for those questions about the SI, the HCC, and the positioning of the building. That was the rest of my first part.

Mr. Palmieri asked does anybody have any questions.

Leo Waltsak, owner of Lot 32, said yeah, several questions about my property – it's 3.3 acres. My frontage on Green Grove Road is 117 feet.

Mr. Hirsch interrupted Mr. Waltsak saying I appreciate that but this is just questions right now. We're going to give you a chance to provide that evidence. I'll swear you in in a minute but this is just to ask questions.

Mr. Waltsak replied okay. I know you offered Mrs. Smith some money there...but have you ever thought about putting that community road down the power lines like they do across the street through all the industrial over there. It's an easement but it doesn't say you can't put a road on it.

Mr. Gleitz stated the Engineer and I were just having that discussion that if you were to provide common access for this area as was envisioned, the most likely area would be to start it under the power lines, under their easement, just like it was done on the other

erside of the road because then that's something that JCP&L would allow to occur under there and it gives you a certain amount of depth into the site and then you would turn to the north to connect up with either Asbury or up in that area.

Mr. Waltsak said well, let me ask you a technical question. You know JCP&L has easements across our properties. I own the property directly behind the Smiths too. So they would have to get that permission from me also. Right. Not JCP&L. They have an easement across my property. I still own the property.

Mr. Gleitz stated I'm not sure what the question is.

Mr. Waltsak said putting a road back that way...it's not JCP&L that makes that decision. It's the landowners plus JCP&L.

Mr. Gleitz stated oh, sure, we're not saying that JCP&L would have the controlling interest but that would be a use they would allow under there...so if the 2 or 3 property owners in the area wanted to develop either together or individually under the intention of the SI Zone, that would probably be the most likely area to put your common access road. You'd all have to come in under certain agreements, whether access agreements or development agreements or whatever they would be to develop the properties in common.

Mr. Waltsak said I have another question. I know the rules of the town have probably changed quite a bit but when I added my garage behind my house, I had to have a 35 foot setback and I have a residential property. Right. Now why on their piece of property it's only 20 feet.

Mr. Gleitz asked was it a sideyard or a rearyard you put your garage.

Mr. Waltsak replied the garage is behind my house but from my neighboring property, it had to be 35 feet off the property line. I did this probably within the last 20 years but I don't think it's changed that much.

Mr. Gleitz stated give me a moment here. Yeah, the 20 feet is just for the buffer to residential. They still would require variance relief for the sideyard and more specifically to your question...in the R-2 Zone which is where this would be and under the accessory uses, the garage under the current ordinance as I read it now, it's 20 feet sideyard and rearyard lot line for a garage.

Mr. Waltsak said now they can put a 6,000 foot building within 20 feet, on two sides...the righthand side and my side.

Mr. Gleitz stated that is their proposal. That would require further variance relief.

Mr. Hirsch said I think he's asking what is the side and rearyard setback requirement for this site, for the applicant.

Mr. Marinelli stated ours is 30 feet.

Mr. Gleitz said right and 50 feet for the rearyard.

Mr. Hirsch stated it's a 50 foot rearyard setback and a 30 foot sideyard.

Mr. Palmieri said that's what it says on the plans.

Mr. Hirsch stated okay. That's what's required.

Mr. Waltsak said I have a house. I have a larger requirement than he does for a building. It doesn't make sense.

Mr. Hirsch stated well, we can't argue that. That's the Ordinance.

Mr. Aikins said but we're not seeking those variances tonight.

Mr. Waltsak stated I understand. When I'm asked about the distances, I can tell you the distance from my road to his property. Would you need that.

Mr. Hirsch said we're going to let you testify in a minute. We just want to make sure all the questions are asked and then you can come back and give all those facts.

Mr. Waltsak replied okay.

Nancy Uddin, 2001 Jumping Brook Road, said I had a question about how many other variances are they going to need to put up a building in this area or the building that they're proposing now.

Mr. Hirsch answered well, they've listed them on their plans. They testified to them at the last meeting. They've gone through all the variances that are required. I mean we can ask the planner to recap them but I don't want to go through the testimony all over again that we've heard on the variances. They are a bunch.

Mr. Gleitz said there's at least 7 bulk variances and some design waivers.

Ms. Strom stated but that's not what we're discussing today.

Mr. Gleitz said no. They're simply asking for the use.

Ms. Uddin stated okay. Thank you.

Mr. Hirsch said and then if they get that, they have to come back...and the use variances, if it was granted, would be conditioned on the subsequent approval of all the other variances so...and the site plan...so if that didn't pass, the use variance would go away. You can't have one without the other...but by law, they're allowed to ask for this

right now, to see if it's worth their while to spend more money and effort on the expensive site plan. They want to know that they can at least get these before they go forward.

Mr. Palmieri asked are there any other additional questions. There were none.

Mr. Palmieri stated I've got one of our planner real quick. You brought this Lot 34 that's a narrow lot...that possibly that might be the access road.

Mr. Gleitz said I didn't bring that up.

Mr. Palmieri stated we were talking about developing because of the narrowness of this lot...Lot 34.

Mr. Gleitz said I don't think I brought that up. My understanding of the conversation about Lot 34 was simply that it is an existing narrow lot developed with residential and that if they were to acquire that lot, it still wouldn't remedy most of their deficiencies for the lot...and that the real focus of their acquisition should be on Lot 36 or 32.

Mr. Palmieri stated I'm on the wrong side then. Jersey Central Power & Light's property, the easement, sorry, on Lot 36.

Mr. Gleitz said the easement on 36 and portions of 32 and 33.

Mr. Palmieri stated so if anything was to possibly...that would be some place for an easement as far as allowing an access road through there.

Mr. Gleitz replied from our quick analysis, looking at this and looking at the area, that makes the most sense...that it would go from that side and follow the easement as far back as necessary to provide additional access, the rear portions of those additional lots and then proceed north.

Mr. Palmieri asked they just have an easement. They don't ask Lot 36.

Mr. Gleitz replied no, JCP&L simply has the rights to march their towers across all those properties...and to cut down all the vegetation behind them.

There were no further questions.

Mr. Hirsch asked before we get to the public, do you have anything else you want to add, Mr. Aikins.

Mr. Aikins replied nothing further.

Mr. Hirsch stated I understand you don't want to vote tonight but so perhaps you can open it up to the public for comments.

Mr. Palmieri opened the floor to the public for any comments.

Karen Wood, 2000 Jumping Brook Road, Neptune, was sworn in by Mr. Hirsch.

Ms. Wood said the first thing was I heard somebody say the building was going to be used for non-medical.

Ms. Strom replied that is correct.

Ms. Wood asked what will the other building, the other unit...how do you do that.

Ms. Hirsch stated ma'am, I thought you were done with your questions. You were going to testify now. They don't know what the other uses are going to be. They're going to be non-medical office uses.

Ms. Wood said my problem here is the building on Lot 34. Somebody said they spoke to Ms. Vitt, Shirley...and she said about her brother using the house...34 not being wide enough to use. That's my problem. We're not talking about somebody who's not here who's involved with 34. I'm involved with 34. I'm going to need to do things with 34.

Mr. Hirsch asked what do you mean you're involved with 34.

Ms. Wood replied I'm buying that property and it's been decided that I was going to buy that property a year ago. So I'm going to have this building literally 15 feet from my window or actually from my mother's window because I'm going to put her in it.

Mr. Aikins said no contract on the record, Mr. Chairman.

Ms. Wood stated this is between her father who's in the hospital, the daughter and I.

Ms. Aikins said ma'am, any contract under New Jersey law, to be enforceable under the statute of frauds, has to be in writing so...

Ms. Wood asked why does there have to be a discussion with you involved if I'm purchasing a property.

Mr. Hirsch said hold it, hold it. Mr. Aikins, hold on. Calm down. Mr. Aikins is just making a legal point. That's why he's addressing the record and the Board, not trying to have a discussion with you about the contract. Whatever your intent in buying that property is not necessarily relevant to the Board. What's relevant to the Board is this development and its impacts on surrounding properties and on the zone plan and the zoning ordinance...so any evidence or testimony you have us, give it to us. Telling us that someday you're going to own that property, even though you don't have a contract today, doesn't mean a whole lot...but if you want to talk about impacts of what you perceive on this property, then go ahead.

Ms. Wood stated there is an impact because of how close...I was speaking to Mr. Gotfredsen when I was in for something else, checking out for the border line...that property is literally 5 feet because it's an old grandfather...so everybody's saying 20 feet...your house is here and the property line's over here...but it's close. It's less than 5 foot from the property line.

Mr. Palmieri asked what, the house that's on Lot 34.

Ms. Wood replied the house that's on Lot 34, because it's an old grandfathered home. So when you build this house, it's not 20 feet to the property line and then another 15 foot...it's right there.

Mr. Palmieri said well, they're just saying that the building is going to be 20 feet from the common property line. That's what their plans are showing right now. The adjacent property line is 20 feet and you're saying that Lot 34 is 5 feet. So it's a total of 25 feet between the two buildings, the proposed building and where the house.

Mr. Hirsch stated so the Board understands that. What else do you have.

Ms. Wood said so that was my purpose and I remember Mr. Klein saying he wanted it to be his home base and something very nice and he wanted to run his business out of it and that was the neighborhood's concern. We're not saying nobody can build on it. We can't say that. We welcome progress. It's just a more realistic, acceptable type of building. To us, it comes off almost like bullying because he's made...not you personally because you're not speaking...but they've multiple times said the building there is useless. The lot's this...they diminish the value of Lot 34 to make excuses for their building being this monster right on the property line.

Mr. Palmieri interrupted saying I was just going to make this point. They're not right on the property line. They're close. We just stated they're 20 feet from the property. The current house based on what you're telling me is 5 feet from the common property line. They are 25 feet away and I understand what you're saying. I guess I have a question for you also. With this piece of property, how it exists currently, if I'm not mistaken, the house has been there since the '50s and it's been abandoned for quite a while.

Ms. Wood stated it's been abandoned for 2 years.

Mr. Palmieri continued now, the idea is, going forward, they're looking to develop this piece of property and obviously they're looking for the use. Mr. Hirsch said it before, if we get through this stage of it and then we go to site plan and it just falls apart at that point, it all goes back to Square 1. And I understand what your concern is about where the location is and I'm sure you'll come back. The idea is to give the Board an idea about what may be occurring here. But this is the use they're looking for because they have some bulk problems, variances that they're asking relief for, so we're trying to get to the idea "is this an okay use." And that would be my question to you is this an okay use. How do you feel about it. What do you feel.

Ms. Wood replied too much traffic.

Mr. Palmieri asked on what.

Ms. Wood replied on Jumping Brook Road.

Mr. Palmieri said that we can't control.

Ms. Wood stated no, it would bring more traffic. His driveway would be right across from us.

Mr. Palmieri said right and the thing we've got to remember is with Tinton Falls going through its Master Plan re-zoning and all that and the HCC and the idea behind that. We understand that. That's why it's converting slowly and it's going to take a long time...that this is going to change to more of a commercial retail location as opposed...if somebody came in here today and you had this lot and you wanted to build a nice house here, it doesn't fit. This is the idea of what they're trying to get to.

Ms. Wood stated you just said a house though.

Mr. Palmieri said no, no. To build a brand new one. You have something that is pre-existing. There's nothing you can do about that. That happens. That house is here. That house is not going away. 34. Your house is not going away. There might be at some time in the future where that might be turned into office too. But for right now, we have to deal with the use and that's why we're going through all this exercise right now.

Ms. Wood stated well, that's part of what we were all discussing. If my husband wasn't working, we thought that's part of it. He wanted a whole new business. If it was more of a home like a doctor's office that puts a Victorian house, something that fits smaller scale to the piece of property. If you need 3 acres for any business, well, doesn't it make sense that if you're undersized to begin with, why would you put such a monster, 3,000 square foot per building, it's still 2 big buildings with an atrium between them. It's not like one of those little doctor's offices across the street from Dunkin Donuts on 66. It would look like a ranch house. You know what I mean.

Mr. Palmieri replied by the Home Depot.

Ms Wood said a little further down by the car dealerships. There's cape cods and there's a dentist. They look like they fit along there for the size of the property. They didn't put something bigger because that was the size of the property. Now if it fit the property, it wouldn't be such a monster the way you look at it. Undersized by 2/3s. There's a reason it's undersized. When you say scale down, then that means one building, not 2 buildings. That's a lot of our argument...and the traffic...where the street will be. The school comes and goes twice a day. It's morning and afternoon. So, if the driveway wasn't right across the street and it was further down from that bend...that bend is extremely

dangerous. Anybody who drives that bend, should know what that bend is like...to have somebody pulling in and out on that bend, it's dangerous.

Mr. Hirsch stated those issues would be addressed if they get the use variance and come back, it's site plan. Traffic engineers we would hear from at that time about that issue.

Ms. Wood said okay. So I guess most of this would have to be pretty much...we're not saying nobody can build. Everybody deserves the right to build. It's just realistically and not feel like you're being bullied.

Mr. Hirsch stated alright, anything else.

Ms. Wood replied no, I guess most of it would have to be for site plan then. I guess most of it would be for later.

Mr. Hirsch stated well, if they get through this.

Ms. Wood said I wish somebody had just built a house and put a pool and had 3 kids.

Mr. Palmieri stated not on that road.

Ms. Wood said we're a small neighborhood with 7 houses.

Mr. Hirsch asked okay, no other statements right now. There were none.

Mr. Hirsch said so where we're at is we've concluded, I think, all the testimony in the case and all the evidence, assuming the Board members have nothing else. Yes, Mr. Aikins.

Mr. Aikins stated subject to that one document.

Mr. Hirsch said well, you wanted to submit the document on the proof of mailing.

Mr. Aikins stated that was the early December letter. With the Board's permission, I could submit it directly to Mr. Gotfredsen.

Mr. Hirsch said that's fine but I think that's also...that whole issue is going to be muted out somewhat by carrying this to another meeting because some of the concerns that were raised about the letter only being sent out a week ago to the other property owners...you're now going to have a whole month or whatever, whenever you get on again...and at that point we would expect...and I don't necessarily need a witness...I can accept your representation, Mr. Aikins, as to whether there were any responses received to those letters of any kind.

Mr. Aikins stated we'll have 5 weeks under our belt at that point for everything, which would be hard for anybody to quibble with.

Mr. Hirsch said right. At that point everybody has had clearly a fair amount of time to respond to the letters about purchasing property. So, other than that, you're rested.

Mr. Aikins agreed saying we're rested. Yes. I don't think we have any other affirmative effort.

Mr. Hirsch stated alright so that way I think you can vote to close the public portion of the hearing tonight, if you choose, subject to the receipt of the one document...but and then just carry it for a vote only at the next meeting. If the Board thinks it wants to keep the public hearing open, that it might think of some more questions or something like that, that it might want to ask at the next meeting, then I would say just carry it without closing the public portion. So, I think you can do it either way but the applicant is requesting that, although the case is complete, that we not take a vote tonight to give the other member a chance to listen to the tape so they can get as many votes available as possible when the vote is taken.

Mr. Aikins said that's correct.

Mr. Palmieri stated I'm going to suggest to the Board that because we have two members that are going to hear tonight's tape. Sayed is going to hear the November 1st and I was looking at our calendar here. What Doug just said to me is it looks like February 7th is the next available date...and I feel maybe hold off closing the public portion because of the other two members that are not here...just in case they have any questions. We'll ask them if they have any questions and at that time, if they have none, we can close the public portion.

Mr. Hirsch said sure, whatever you think, Mr. Chairman. Let me just be clear on one thing...Paul Gleitz, our planner, of course, had questions tonight and had an updated report. Right. Dated December 19, 2007. Was there an updated Engineer's report, Mr. Feist.

Mr. Feist stated there is an updated report dated December 26th.

Mr. Hirsch said well, that wasn't discussed tonight.

Mr. Feist stated I would just say with regard to the updated Engineer's report, it really was an update of bulk requirements. There were no new engineering comments or requests.

Mr. Hirsch said alright, so, for the record, why don't we indicate though so we're clear that the Board will put into evidence the Board's exhibits.

B-1 Board Planners report of September 25, 2007

B-2 Board Planner's report of December 19, 2007

B-3 Board Engineer's report of October 26, 2007

B-4 Board Engineer's report of December 26, 2007

Mr. Battista said I just want to put out a small discrepancy between the Planner's report and the actual site plan. It's listed as 3350 square feet in the Planner's report whereas the square footage between each two-story office was 3360. The final math there is fine but there's a small difference there. I don't know if that needs to be noted for the record.

Mr. Gleitz stated it should state "3360"...the first sentence under project description in the December 19th memo.

Mr. Hirsch said okay. Thank you. Alright, folks, so we're not going to close the public hearing per the Chairman's comments. The applicant has requested that the matter be carried for a vote. If, for some reason, the Board members who have had an opportunity to listen to the tape have questions, they'll have the chance to ask them...but essentially we believe hopefully we're done with the presentation on all the evidence on this portion of the use variance case. So, Mr. Chairman, this is being carried to...

Mr. Palmieri said yes, this is being carried to February 7th with no further notice necessary. What I'm going to do is tell Doug since hopefully it will be short, we'll make it first on the list.

Mr. Aikins stated that would be great, Mr. Chairman. I would expect we would have absolutely minimal input on that perspective.

The Kay Realty LLC hearing was adjourned.

Mr. Palmieri stated that since the Borough's requests for proposals for professionals went out late, we're asking that the professionals stay in place until the new contracts can be awarded.

Mr. Hirsch pointed out that forever the appointments were for a year and they used to be when the Board reorganized on July 1st or the first meeting after June 30th. Then two years ago, at that point, they said well, we want to get the professionals on a calendar year so they're only going to be appointed for 6 month. And then at the beginning of the year, there would appointments for the calendar year, 12 months. Get back to the yearly appointments. Well, that was two years ago. They didn't do it and when January came, they ended up reappointing them for six months and then we got back to July and then they said we want to get back to the calendar year again. So again it went to six months, saying now this January they would finally get back on this calendar year...and for some reason now, they're doing professional appointments on the beginning of January or the end of December but they didn't change the date of the reorganization of the Board.

Mr. Palmieri said normally when we do this stuff, we go into executive session...

Mr. Hirsch stated well, the RFPs...the Borough Council certainly is free to look at those but it would seem to me that RFPs seeking Zoning Board positions, i.e. planner, engineer, attorney, copies should be sent to the Zoning Board members. RFPs seeking Planning Board positions...copies of the RFPs should be sent to the Planning Board because they're the boards that actually are supposed to make the appointments but anything I think there should be some discussion with the Mayor and Council as to what they're doing with RFPs and what responsibility the boards will or will not have in determining the appointments of the professionals.

Mr. Palmieri said well, I'm going to be a little on the bold side here and go ahead and obviously Mr. Hirsch has been with us for a long time and also Paul's been with us for a while and Mr. Feist has been with us for a short amount of time. I've been overly impressed with everybody doing a great job. I don't see any need for change. I assume I know how the rest of the members feel so I guess we can put in the record for the Board that we're happy with our...if I'm talking for the Board as a whole...that we're happy with our professionals the way they currently are...we're appointing our own but the length of time is determined by us or by Council.

Mr. Hirsch replied Council controls the budget, okay, ultimately how people get paid. The law simply says that they will provide a sufficient budget for the Boards to conduct their business. So, I'm only suggesting that there may be some coordinaton. You might want to contact the Mayor and Council to say we need to appoint our professionals and where are we at...what input is the Board going to have, if any. You just want to get clear where it's going.

Mr. Palmieri said I'm sure once we get the RFPs forwarded to us through Council, we'll have no problem reappointing everybody for the term, I'm assuming, for one year.

Mr. Hirsch stated that's what the Council indicated they wanted to do. Traditionally that's what you had. Six month terms make no sense. The only point of the six months was to get to the calendar year so you could get the year on a calendar year basis and twice now they missed that. Whatever, I just wanted to point that out because you can't keep going without contracts.

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

Respectfully submitted,

Doug Gottfredsen
Secretary