

**MINUTES OF REGULAR PLANNING BOARD
MEETING HELD ON THURSDAY, APRIL 21, 2016**

Chairman Lancaster called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice dated April 13th, 2016 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall. All joined in for the pledge of allegiance.

PRESENT: BLEWETT, D'ANTONO, KOLDYK, LANCASTER, MARINO, MOELLER, RUNFELDT, TERRERO (ALT. #1) AND MORREALE (ALT. #2)

ALSO PRESENT: BOORADY, ENGINEER AND NEISS, COUNSEL (FILLING IN FOR DEL VECCHIO)

ABSENT: *KAUFMAN AND WILD

Chairman Lancaster stated the first item on the agenda is approval of the March 17th, 2016 minutes. Joan informs me we have enough people to vote on them.

Ms. Ward mentioned the members that can vote are Lancaster, Marino, Moeller, Terrero, Morreale and Blewett.

Mr. Blewett moved the approval of the minutes.

Ms. Moeller seconds.

Mr. Lancaster asked any comments on the minutes.

Roll call:

Yes: Blewett, Moeller, Lancaster, Marino, Terrero (Alt. #1) and Morreale (Alt. #2)

No: None

Abstain: None

Ms. Ward stated okay they're approved.

Chairman Lancaster stated Item #2 is Minor Site Plan Application #354 and Flood Plain Encroachment and Variance Application #FPE 14-02 by Fra Lincoln Park, LLC, on property known as Block 22, Lot 339.2 on the municipal tax map also known as 3 Borinski Road (carried from the March 17th, 2016 agenda). This is a consideration of a resolution of memorialization.

We did receive a letter from the law office of Park and Caporrino asking to push this off until May so that the applicant's engineer could speak to Mr. Agnoli regarding the calculations. I guess the question is this is a memorialization and do we need to push this off Tom?

Mr. Boorady stated I don't think you need to you could have passed it last month too. I mean legally I don't know the answer to the question and I would defer to Arthur, but the hang up is one item in the resolution and it refers to providing calculations showing that the handicap ramp and the stoop can withstand the buoyant forces when there is a flood coming through. Under the new maps it shows that area being in the floodway so they have an additional calculation for hydrodynamic forces as well, meaning that there is some flow there.

They are resisting that a little bit and I think that is the sole hang up of the resolution that they wanted to meet with the CRS Coordinator for the town even though I explained it to them four times, I think they want to hear it from the CRS Coordinator. So if you want to give them one more month I don't have an objection to it, but I'm not sure if you passed the resolution and they object to that based on the CRS Coordinator what that means.

Mr. Neiss asked what was the basis for their objection, at base what were they really complaining about.

Mr. Boorady stated well there are two maps out right now, the preliminary maps and the effective maps.

We are supposed to use the worse of the two maps when reviewing planning applications and that is the plan for the future. The preliminary maps may become effective in six months or in five years but we don't know. We do know they are coming down essentially in the way that they are prepared now in one form or another, so proper planning tells us that it is in the floodway and we should ask for those calculations and that is why I made that recommendation and that is why we put it in the resolution. I standby that, in fact I had conversations with the CRS Coordinator and that is why that comment is in there. You know they would like to have a direct meeting with him and it is up to the Board's pleasure what you would like to do.

Chairman Lancaster stated well they can have a direct meeting with him and talk about it.

Mr. Boorady stated yeah.

Mr. Blewett mentioned I was just curious about the complexity around the calculations it's really just an engineering thing right?

Mr. Boorady stated yeah you have to figure the velocity of the water at that point in the cross section of the stream.

Mr. Blewett mentioned but that would be dictated by the map right in some respects?

Mr. Boorady stated it is definitely in the floodway. If you read the flood insurance report which is this high, there is velocities for each cross section of a stream and the engineer would have to take that velocity and plug that into his equation and design the foundation and all connections to resist those forces.

Mr. Blewett stated right. Do we put ourselves at risk if we don't use the most aggressive --

Mayor Runfeldt stated absolutely you run the risk of losing points for the CRS program.

Mr. Blewett stated right.

Chairman Lancaster mentioned right the whole idea of the CRS is to benefit the residents with flood insurance and we are not going to change that.

Mr. Blewett stated no.

Mr. Boorady stated no we can't.

Mr. Blewett mentioned my perspective is we can vote on the resolution as is.

Mr. Neiss stated I'm okay with that because you have been extending the time to adopt the resolution out of deference to the applicant so there is no legal requirement that you do so. On the flip side of this, the only thing that I would point out is that there is at least a colorable basis, any good lawyer will say well I'm going to take you to court in which case we would have the possibility of a lawsuit. I think given what you've said Tom and given the nature of the objection that they are posing and it is so narrow and precise, I mean I'm not a predictor of what a lawsuit will do, but it sounds to me like given all the equities here we are probably on the better side of that.

Mr. Boorady stated yeah.

Chairman Lancaster stated okay.

Mr. Boorady mentioned in the resolution by the way I think it is Item #9.

Chairman Lancaster stated it is Item #9.

Mr. Boorady mentioned the verbiage is almost exactly what FEMA has in their handbook.

Mr. Neiss stated I took it from your email.

Mr. Boorady mentioned it is right from FEMA's legislation so those are the rules they want us to follow to participate in the CRS.

Chairman Lancaster stated okay and we want to participate in the CRS. I mean again it is a memorialization because we had approved it and we had talked about this at the applicant's hearing so I mean it is not anything that is brand new.

Mr. Neiss mentioned the time to present evidence in connection with the application has already come and gone so it is really as you say, Mr. Chairman, it is really just a memorialization about what you heard.

Chairman Lancaster stated right.

Mr. Neiss stated so it is entirely up to the Board as to how it wishes to proceed but there is no legal impediment to the Board adopting or not the resolution at this point.

**RESOLUTION OF THE LINCOLN PARK
PLANNING BOARD**

**RE: FRA LINCOLN PARK LLC
MINOR SITE PLAN APPLICATION # 354
FLOOD PLAIN ENCROACHMENT WITH VARIANCES,
APPLICATION # FPE 14-02
ZONING PERMIT #2014-9Z**

**BLOCK 22, LOT 339.2
3 BORINSKI ROAD
LINCOLN PARK, NEW JERSEY**

WHEREAS, FRA LINCOLN PARK LLC (the "Applicant") has applied to the Lincoln Park Planning Board (the "Board") for minor site plan approval and flood plain encroachment approval with certain variances for property located in the I Industrial Zone, commonly known as 3 Borinski Road, and designated as Block 22, Lot 339.2 on the official Tax Map of the Borough of Lincoln Park, Morris County, New Jersey (the "Property"); and

WHEREAS, the Applicant seeks these approvals in order to install: Two (2) pre-cast concrete drive-in ramps; one (1) poured-in-place concrete loading ramp, new pre-cast concrete handicapped entrance ramps and stairs, where these improvements will be below the flood elevation, with certain other improvements; and

WHEREAS, the Board has considered Applicant's development proposal as depicted in the following plans (collectively, the "Plan"1);

1. Architectural site plans, floor plans and elevation plans, prepared by Joseph G. Marra, R.A., P.P., consisting of ten (10) sheets, summarized as follows:
 - a. Sheet T1, dated 2-7-2014, bearing three (3) revisions through 9-24-2015;
 - b. Sheet SP1, dated 2-7-2014, bearing four (4) revisions through 4-15-2015;
 - c. Sheet D1, dated 5-19-2014, bearing two (2) revisions through 9-1-2015;
 - d. Sheet A1, dated 5-19-2014, bearing one (1) revision through 1-5-2016;
 - e. Sheet A1.1, dated 5-19-2014, bearing one (1) revision through 4-15-2015;
 - f. Sheet A2, dated 5-19-2014, bearing two (2) revisions through 9-1-2015;
 - g. Sheet A3, dated 5-19-2014, bearing one (1) revision through 4-15-2015;
 - h. Sheet A4, dated 5-19-2014, bearing one (1) revision through 4-15-2015;
 - i. Sheet A5, dated 5-19-2014, bearing one (1) revision through 4-15-2015; and
 - j. Sheet A6, dated 4-15-2015, bearing one (1) revision through 9-1-2015.

1 The definition of "Plan" also includes any and all additional plans, plan sets, calculations and other materials related to the development that are required by this Resolution to be submitted subsequently by the Applicant and approved by the Board's designee, the Board Engineer.

"Plan" also includes the materials submitted by the Applicant and set forth in items 1-17 of the Board Engineer's July 15, 2015 letter determining the application to be incomplete.

2. Three (3) color photographs, each printed on 8.5" x 5.5" paper, showing a current (i.e., non-Property) installation of the proposed pre-cast concrete ADA ramps and stairs, including railings.
3. A detail, entitled "Proposed H.C. Ramp Anchor Detail," consisting of one (1) page, prepared by Joseph G. Marra, R.A., P.P., dated December 4, 2015; and

WHEREAS, the Board has also considered all testimony, reports, exhibits, and other evidence submitted in connection with the application, including the Board Engineer's February 10, 2016 review letter (the "Engineer's Report"); and

WHEREAS, the application was the subject of a public hearing held on February 18, 2016; and

WHEREAS, the Board has made the following findings and conclusions based upon the evidence submitted:

STANDING

1. Applicant is the owner of the Property and has standing to bring this application before the Board.

EXISTING CONDITIONS

2. The Property is located in the I Industrial Zone.
3. The Property is an irregularly shaped interior lot with frontage on Borinski Road.
4. The Property contains an existing industrial building, along with access driveways, parking areas and loading areas.
5. The Property is located within a flood hazard area.

THE DEVELOPMENT PROPOSAL

6. The building structure is divided into units designated A through F, with Unit A being the northern most unit. On the westerly side of the building, the Applicant proposes prefabricated concrete drive-in ramps for Units B and D.

7. For Unit F and also on the westerly side of the building, the Applicant proposes a poured-in-place concrete ramp for box-truck loading purposes.

8. On the easterly side of the building, for Unit A, the Applicant is proposing a new handicapped ramp and platform; the existing handicapped curb ramp at Unit B will be relocated. For Unit C, the existing handicapped ramp will be removed and rebuilt.

9. For Units D and E, the Applicant proposes to remove the existing handicapped ramp and build a new one, also adding a proposed entrance to Unit D.

10. The pre-cast ramps and stairs noted in the previous paragraph shall be ADA compliant with regard to form and the handrails.

11. The parking lot on the eastern side of the building will be reconfigured and new ADA signage will be installed.

CONCLUSION

12. Subject to the conditions of this resolution, this application meets requirements for the granting of minor site plan approval and flood plain encroachment approval.

NOW, THEREFORE, BE IT RESOLVED that this application by FRA LINCOLN PARK LLC for minor site plan approval and flood plain encroachment approval be and is granted subject to the following conditions:

CONDITIONS

1. Compliance with all applicable Borough, County, State, and Federal laws, ordinances, regulations, and directives.
2. All construction, use and development of the Property shall be in conformity with the Plan approved herein, all findings of fact and terms and conditions of this Resolution and, to the extent not inconsistent with this Resolution, all representations of the Applicant and its witness(es) during the public hearing. Any deviation from the terms or conditions of the approved Plan, or the terms and conditions of this Resolution, shall be deemed a violation of the terms and conditions of site plan approval and a violation of the Borough's Development Review Ordinance.
3. The Applicant shall comply with all requirements and recommendations of the Engineer's Report including but not limited to Zoning Review items 1-3, Flood Development Review items 4, 5, 6 [required independently, below], 7 [required independently, below], 8, 9, Site Plan Review items 10-16 and General Comments 17-20.
4. Prior to the signing of the approved Plan, and prior to the commencement of any construction:
 - (a) Applicant shall submit to the Board Clerk a certification from the Finance Department (i) setting forth the then-current balance in Applicant's escrow account; and (ii) confirming that all charges billed to such account have been or, to the extent known, are capable of being paid in full;
 - (b) The Board Clerk shall determine (after inquiries to the Board's professionals) that there is a sufficient balance in the escrow account to cover all remaining services chargeable to such account;
 - (c) Applicant shall submit to the Board Clerk a certification from the Tax Collector that all real property taxes on the Property have been paid to date;
 - (d) Applicant shall submit to the Borough Engineer a certification from its engineer, architect or attorney confirming that all other necessary governmental approvals have been submitted or obtained. Such authorities shall include to the extent applicable and without limitation the Morris County Planning Board, the Morris County Soil Conservation District, and the New Jersey Department of Environmental Protection. Applicant shall not secure any building, demolition or other permit for this development from the Borough in the absence of proof that all required governmental approvals or waivers have been obtained by the Applicant.
 - (e) Applicant shall post inspection fees if required by Ordinance.
 - (f) Applicant shall arrange for and attend a pre-construction meeting with the Borough Engineer and such other Borough Officials as the Borough Engineer may designate for review of colors of the concrete, coordination of the project and such other matters related to this development as the Borough Engineer may deem appropriate and necessary.
5. Applicant's operations, including all new and/or modified uses, structures and equipment approved in the Plan shall comply with Ordinance performance standards in all respects, including applicable noise standards. Compliance with these standards shall be a continuing requirement for occupancy of the building and structures located and to be located on the Property.
6. Applicant's construction activities shall be limited to those hours permitted by Ordinance.
7. Applicant shall comply with the reasonable requirements of the Construction Official.
8. The Applicant will ensure that any chipping of concrete or color chipping on any of the ramps approved in the Plan shall be promptly remediated.

9. The Applicant shall submit eight (8) sets of additional Plan sheets reflecting (a) that the structures shall have been designed and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and (b) how the ramps shall be affixed to the verticals and to the building. The additional Plan sets shall also describe and sequence out how, and the order in which, each of the ramps will be constructed.

10. Within a reasonable time after the construction of the Plan is completed, the Applicant shall re-landscape.

11. Following the completion of all construction, the Applicant shall submit four (4) as-built drawings.

12. **ALL NOTES INCLUDED IN THE APPROVED PLAN, INCLUDING NOTES AND THE ADDITIONAL PLAN MATERIALS REQUIRED BY THIS RESOLUTION, SHALL BE DEEMED TO BE CONDITIONS OF APPROVAL HAVING THE SAME FORCE AND EFFECT AS CONDITIONS EXPRESSLY SET FORTH HEREIN.**

Mayor Runfeldt made the motion to adopt the resolution as presented.

Chairman Lancaster asked is there a second.

Ms. Moeller seconds.

Chairman Lancaster asked any discussion on the resolution other than what we talked about.

Ms. Ward mentioned the mayor isn't able to vote it's a memorialization. The members that can vote on this would be D'Antono, Kaufman, Lancaster, Marino, Moeller, Wild, Terrero and Morreale.

Ms. Moeller made the motion to move.

Mr. Terrero seconds.

Ms. Ward stated sorry mayor.

Chairman Lancaster stated call the roll Joan.

Ms. Ward mentioned sure.

Mr. Boorady stated Joan will do that.

Ms. Ward mentioned I was remiss in stating who could vote.

Roll call:

Yes: Moeller, Terrero (Alt. #1), D'Antono, Lancaster, Marino and Morreale (Alt. #2)

No: None

Abstain: None

Ms. Ward mentioned that it we've got everyone.

Chairman Lancaster stated Item #3 is a request from Steven Schepis for a one year time extension with reference to Preliminary & Final Major Site Plan and Variance Application #348 and Flood Plain Encroachment Application #FPE 12-05 by Genuine Biofuel of New Jersey, LLC, on property known as Block 3, Lots 7 and 10 on the municipal tax map also known as 425 Beaver Brook Road (carried from the December 17, 2015 and January 21st, 2016 meetings).

We received a letter from Steve Schepis requesting that this be moved to the May 19th meeting. Basically they are still waiting for DCA to approve the architectural plans and they expect to do that soon. Hopefully we'll be able to get on the May 19th meeting so we are going to carry that one.

Chairman Lancaster stated Item #4 is a waiver request by J. Killion, LLC with reference to Minor Site Plan and Variance Application #344 and Flood Plain Encroachment Application #FPE 14-03, on property known as Block 5, Lot 35 on the municipal tax map also known as 4 Beaver Brook Road and these are completeness waivers only.

Mr. Cook stated good evening Mr. Chairman, counsel, ladies and gentlemen, my name is Harold P. Cook, III with offices at 883 Belmont Avenue, North Haledon, New Jersey. I'm here on behalf of the applicant, J. Killion, LLC.

I have Mr. Zepponi from Entec Technical Resources and Engineering, our professional engineer, and I have Mr. Killion who is the principal of J. Killion, LLC.

Chairman Lancaster stated okay. I assume they are going to give some testimony and do we have to swear them in?

Mr. Neiss asked do you want to have witnesses sworn in sir.

Mr. Cook stated this is not the public hearing it is my understanding this is just to go through the waivers.

Chairman Lancaster stated just the waiver requests so okay.

Mr. Cook asked Mr. Zepponi to go through the requests that were set forth in a letter dated March 23rd, 2016 from Joan Ward and from Mr. Darmofalski's office, and I'll have our engineer go through each one.

Mr. Zepponi stated I'm referring to that letter on page 2 of 2 there are 3 items on that page and they are items that are supplemental comments. The first is the floor area of all spaces that need to be quantified to confirm the parking requirements. There was an agreement to take a portion of a residential unit that was on the second floor when you come in the back of the building on the first floor, there was a room there and the applicant has agreed to move that room and combine it with the commercial space in front of it to the front of the building.

Mr. Cook stated for the record if I may interrupt, it was currently be occupied by the residential tenant upstairs. There is not a direct connection between that parking unit and the space downstairs, however, at the Board's request we would merge that with the store currently occupied by the cleaners so it would become part of the square footage for the area for the cleaners. There is direct access between that room and the cleaners.

Mr. Zepponi stated so with regard to the square footage, when we first analyzed the footage in the building to be conservative, we had included that in the commercial space because we added it to the residential and that is based more on bedroom count than it is on space. So it is as it was because we had conservatively included that so that is part of the calculations that are on the drawings.

The second items is basically the fact that a lot of the facilities related to this building are in a right-of-way and the last sentence in this comment is that these encroachments should be reviewed and approved by Lincoln Park and the Governing Body.

Mr. Cook stated if you want I can address that now but I think that is going to be a whole separate issue so why don't we save that to the end and go through everything else.

Chairman Lancaster stated yeah save that until the end.

Mr. Zepponi mentioned the third item is a metal shed that I honestly can't speak to that. At some point over x amount of months somebody put up a metal shed in the backyard.

Mr. Cook stated that was done without the consent of Mr. Killion who told the tenant to remove it or get a permit, or one of the other. He went there tonight to see if they did it and they did not remove it, I think the Board would know whether or not they got a permit. Mr. Marino may but he is going to make sure that they remove the shed.

Mr. Boorady asked which tenant is it a business or a resident.

Mr. Killion stated a resident.

Mr. Boorady stated okay. A shed in the front yard would need to come before the Board. It is Sal's call on zoning but I don't think zoning would allow for a shed in the front yard on McKelvey.

Mr. Marino stated no we wouldn't.

Mr. Cook stated we don't want the shed the tenant put it up without our consent and we will have them remove it.

Chairman Lancaster stated okay.

Mr. Boorady mentioned the March 23rd letter that is before refers back to my June letter and if I can go all the way back to the June 20, 2015. The Board had asked for lighting information that has still not been shown, so that is Item 2U and 2V that is the exterior light which is on page 4 of my memo.

The last meeting we had there were two partial waivers given and what I'm going over now are the waivers that weren't given that are still outstanding so that is exterior lighting.

Item 2DD there is signage and I guess under the cover letter that was submitted by the engineer they are not proposing signage anymore is that correct?

Mr. Zepponi stated I think the applicant's position is that at this point the changes to the outside of the building are being set aside until we can straighten out the parking lot so that comment would fall under the architectural aspect of it, at least that's his position with regard to this comment at this time.

Mr. Boorady asked do you remember if there was a permit ever issued for the S & J Cleaners awning sign.

Mr. Zepponi stated I wouldn't know.

Mr. Marino stated no there wasn't.

Mr. Boorady mentioned okay. So we have signs that are outstanding and again when we were here several months ago that information was going to be provided and it still hasn't.

Then architectural plans the full elevations weren't shown, and I guess what I'm hearing now is they are not doing anything now to the outside of the building, but the interior changes that are proposed on the first floor to connect the residential lobby if you will, to the S & J Cleaner's unit that still has been shown on some sort of a floor plan. So if you are asking for a waiver from architectural plans, it is up to the Board whether they want to grant you the exterior if you are not changing it, but the floor plans are important if you are making interior floor changes.

Mr. Zepponi stated understood.

Chairman Lancaster mentioned because that would actually address the idea of residential it eliminates that comment if they show it on a floor plan being part of the commercial.

Mr. Boorady stated that's right because right now it is part of the residential. If they want to make it part of the commercial, we need to see it on a plan.

Chairman Lancaster asked is that Item 10D on page five.

Mr. Boorady mentioned that's Item 3D and 10D yes.

Chairman Lancaster stated Item 3D and 10D okay.

Ms. Ward asked does the cleaners need to come in for a site plan exemption because they moved in there without a zoning permit or site plan exemption approval and we have no permits on what they did in there either but that's another whole issue.

Mr. Marino stated yeah.

Mr. Boorady mentioned right and that is why they are here the site plan is really an after the fact approval for the S & J unit but also for the site as a whole. When Minit Mart moved in, it was promised by the applicant that he would come back here before a new tenant would move in, unfortunately S & J moved in without the applicant coming back in for those approval so we are here for after the fact approvals right now.

Chairman Lancaster stated okay.

Mr. Boorady mentioned page 5 of my report there were some prior fill that they had available to use and I don't have any information on that fill that is available for some of the work that they are doing out front, building the ADA ramps and adjusting the elevations in the sidewalk. I'm pretty sure that covers it because we already talked about the architectural plans and lighting.

Mr. Zepponi mentioned I have your resolution Lincoln Park, Application #268 that indicates that they recognize that he had a net cut of 144 cubic feet. I don't know if you want me to pass that around or if you just what one?

Mr. Boorady mentioned you can submit it if it wasn't submitted before.

Mr. Zepponi stated we believe it was but we have no problem making extra copies. I believe it was submitted as part of the package.

Mr. Boorady asked him to submit it to Joan.

Mr. Cook mentioned with respect to the lighting, my client has advised that he has owned the building for about 30 years and nothing has changed with respect to the lighting other than changing light bulbs and so forth. What does the Board want? I mean it is our position it is an existing nonconformity. If you look at the structure it has been there for many years before my client bought it, so what we are proposing here has nothing to do with the lighting so if the Board can give us some direction.

Chairman Lancaster okay so I'm going to have to go to Mr. Boorady for Item 2U & 2V I assume?

Mr. Boorady stated 2U and 2V on the minor site plan and then also it is redundant but it is on the flood plain encroachment checklist as well.

Mr. Cook stated we are amending our application to withdraw any requests for any work to the exterior of the building other than the ramps and the parking area so that the lighting doesn't affect anything that we are doing it existed, so I guess the request would be for a waiver from that requirement as shown on the site plan.

Mr. Blewett asked so you are replacing the ramps.

Mr. Zepponi stated no right now there is I believe two ways to get into the cleaners.

Mr. Blewett stated okay.

Mr. Zepponi stated what we've done is elongated the sidewalk and kept the slope of the sidewalk below that which would require a ramp so we are making it accessible without putting a ramp in and to minimize the fill.

Mr. Blewett asked okay does it require lighting.

Mr. Zepponi mentioned it is where the sidewalk is right in front of the building it is covered by the existing lighting. If there were steps there now, it would be a ramp that certainly wasn't a tripper and when I say a ramp, it is maybe twelve feet long at a mild slope to get to those two risers.

Mr. Cook mentioned as far as the structure itself there will be no changes whatsoever on the exterior.

Chairman Lancaster asked Tom, again the last one is talking about a reason why a checklist waiver but if they are not changing anything on there, would a checklist waiver be reasonable.

Mr. Boorady stated the parking areas are changing a little bit in the back and in the front. I'm not really sure if the lighting is adequate in those areas.

Mr. Blewett mentioned I was just curious are there any standards for the handicap for a ramp like that?

Mr. Boorady stated well there should be a light at the front door. I would think that the front door has a light but I'm not sure into the parking lot how far that spills over. There are some flood lights on the building but again I just don't know if they are bright enough, if they are directed downward and you know they look like old fashion flood lights. I know nothing about the lighting. If the Board is asking the question to the applicant is there enough lighting in the parking lot, I'm not sure how they are going to answer that.

Chairman Lancaster stated other than it is what it is.

Mr. Boorady mentioned it is what it is.

Chairman Lancaster mentioned that's kind of what their answer is right now.

Mr. Boorady stated right.

Chairman Lancaster mentioned I mean it seems to me that we need to understand what the lighting is there you know because who knows what the spillover is on McKelvey.

Mr. Boorady stated I can tell you several months ago when we met we found it important to have the lighting be shown and I'd like to think that we are still interested in making sure the parking areas have enough lighting.

Mr. Neiss asked Tom if you were coming before the Board for actual site plan review, does the ordinance reflect lumens, for example, coverage. Does the ordinance reach down into the lighting and an applicant would have to comply with or at a minimum provide a lighting plan as part of site plan review?

Mr. Boorady mentioned well that's the checklist in both the minor site plan and the flood development checklist they both ask for lighting.

Mr. Neiss stated which is why you pointed that out in your report.

Mr. Boorady stated right.

Mr. Neiss mentioned and counsel you are saying there has been no change in these many years yet you are coming before the Board for some form of review at some point on that.

Mr. Cook stated we are coming before the Board because as a condition of the tenancy the Board wanted a site plan and we were told they wanted a site plan so they had a benchmark in the future for future tenants knowing what is there. We made no changes to the exterior of the building; there was no additions, no deletions.

Mr. Neiss mentioned but there are changes to the parking lot. There have been certain changes that have been made.

Mr. Cook stated they requested certain handicap parking. This is existed as it did for years and as a result of a new tenant going in they conditioned it, when I say they, the Board conditioned it on site plan approval. So it is my understanding that the intention was not to get an approved site plan to current standards it was to get a site plan so that going forward the Zoning Department/Building Department would know what the square footage of the building is, how many parking spaces there are, what the specific uses are so that when you have new tenants going in and new tenants going out, you know how much parking you have and a new tenant going in should be similar and not more onerous in use as the tenant that is going out.

Chairman Lancaster mentioned the only other thing is the whole idea of a site plan exemption waiver is to make sure whatever business is going in there whether the change doesn't violate parking.

Mayor Runfeldt stated among other things.

Mr. Cook stated you are right on point.

Chairman Lancaster stated right now we don't have a basis for that and your parking may violate it.

Mayor Runfeldt mentioned and we had a subsequent tenant move in that we were expecting to get site plan waiver from which we did not.

Chairman Lancaster mentioned getting a site plan waiver which we did not. So it is a little bit more than developing a baseline because it is understanding whether the parking today meets our specs. We can't let somebody come in there and put something in that doesn't meet the parking specs so it is a little bit more than a baseline.

Mr. Cook stated I understand that.

Chairman Lancaster stated so I wanted to correct you on that.

Mr. Cook stated but the square footage hasn't changed.

Mr. Neiss stated but that's not the issue, whether the square footage has changed or not is really not the issue at least that's what I'm hearing from the Board. The fact is that current conditions would mandate that you would have to present something to the Board on which it could make a decision currently as to site plan review for parking, for lighting, for the other criteria under the site plan ordinance.

Mr. Cook stated it is my understanding that the purpose of the site plan is to have a benchmark for new tenants going in versus old tenants going out.

Chairman Lancaster stated you had a tenant move in there that did not do a site plan exemption waiver and the site plan exemption is to say is the zoning correct, do you have enough parking spaces? We don't know that. So we are asking for the parking not as a baseline but to find out if it is correct and meets our zoning requirements, so it is a little bit more than baseline. I know you are saying baseline but I don't think that's what it is.

Ms. Ward mentioned the previous minor site plan that they filed when Minit Mart went in there they never satisfied the condition and never gave us a new site plan for that, so that is an open issue in the other file.

Ms. D'Antono asked are you deficient on the cleaners and the Minit Mart.

Mr. Cook stated yes.

Ms. Ward mentioned yes.

Chairman Lancaster stated yeah.

Ms. D'Antono asked why. The last time when I was chairwoman we went through this exercise to say. I think I told Mr. Killion to give Mr. Boorady, our engineer, what he needs to complete the application. I remember it wasn't too long ago so I don't know why we are having this conversation around, around and around again.

Mr. Cook stated he had changed engineers and that's why we are here.

Ms. D'Antono stated okay.

Chairman Lancaster stated okay. Well I don't think the Board's request for information has changed. The reason for the information hasn't changed.

Mr. Cook stated with respect to lighting we will depict exiting lighting conditions.

Chairman Lancaster asked what are the fixtures for the outside parking and lighting.

Ms. D'Antono mentioned Mr. Cook even more importantly can you help Ms. Ward complete her file for the other open issues so we can clean that up too.

Mr. Cook stated absolutely that's why we are here.

Chairman Lancaster stated so we can finish it.

Ms. D'Antono asked where are we now.

Chairman Lancaster stated yeah that's what I'm trying to figure out.

Mr. Boorady mentioned it sounds like they are giving us some lighting.

Chairman Lancaster stated right.

Mr. Cook stated yes.

Mr. Boorady mentioned if there are no proposed changes to the lighting, then you might want to entertain a waiver for not showing proposed lighting, however, we don't know whether there are any proposed changes because we don't know if the existing is adequate so it is up to the applicant to tell us whether they want a waiver from showing proposed as well.

Mr. Blewett asked what determines adequate in this case.

Mr. Boorady stated you need at least a half a foot candle in the parking lot to illuminate.

Mr. Blewett stated I guess that's my point there are some standards they should consider when they present this to us.

Mr. Boorady mentioned yeah there is the intensity and then you want to make sure it doesn't spillover into either street, and you want to make sure it is not shining out and you are staring at a lightbulb either. So I'm not sure that the existing fixtures will meet that but again it is really hard to tell when you don't even have a baseline of what is there now.

Mr. Cook stated the word baseline came up again.

Mr. Boorady stated I'm sorry I didn't mean to use that word, I apologize.

Mr. Blewett mentioned it would be nice to know what is there.

Mr. Boorady stated yeah right okay.

Mr. Cook mentioned that's what I meant by baseline.

Ms. D'Antono stated why don't we use the word existing and let's move on.

Chairman Lancaster stated yes.

Mr. Boorady mentioned aside from lighting it is the architectural, I guess they are asking for a waiver from the elevations and the floor plans, at a minimum you need the floor plan.

Mr. Cook stated we are not asking for a waiver of the floor plan we will supply the floor plan to show the modification of that room behind the cleaner.

Chairman Lancaster mentioned okay.

Mr. Boorady stated they were essentially done last year you just needed to make that one little change but the architectural plans were essentially done.

Mr. Cook stated correct.

Mr. Boorady stated okay.

Mr. Blewett asked does that include the first floor elevation or not.

Mr. Cook stated no the interior floor plan.

Mr. Zepponi stated from the exterior there will still be a door that is how the person gets upstairs, so exterior wise there won't be any change. I'm not the architect but I can tell you from exiting the building.

Mr. Blewett asked is there anywhere on this plan there's an elevation noted.

Mr. Boorady mentioned the front and the right side.

Mr. Blewett asked the first floor elevation.

Mr. Boorady mentioned the front and right side elevations from the outside have been shown but they didn't show the left and back. That back door is where the residential change over to commercial is and we don't have that elevation that is the McKelvey elevation if you will. It is up to the Board if you want to see that elevation, it provides access to the second floor residential and it may affect the parking changes that are proposed around McKelvey.

Chairman Lancaster asked the question is how hard is it to get that one elevation.

Mr. Boorady stated well they've already done two of the sides and they've submitted them so they are just missing McKelvey and the left side.

Chairman Lancaster asked and that is where any parking changes are going to go on.

Mr. Boorady stated on McKelvey there are some parking changes yeah.

Chairman Lancaster stated I would think that we would need something there based on what you are saying.

Mr. Boorady stated it would be my recommendation yeah.

Chairman Lancaster stated okay so that means that Item 3D we wouldn't do a checklist waiver for. The awning is there and nothing is being changed other than what was changed for well it was already changed for S & J right so we need that information.

Mr. Boorady stated yeah I think the front elevations that we have right now show changes being made and now they are not making those.

Chairman Lancaster stated so whatever changes they made for S & J were done but they are not doing anything beyond that.

Mr. Boorady stated right.

Mr. Blewett mentioned but we don't have any approvals for the awning.

Chairman Lancaster stated right so we need at least the information on that.

Mr. Blewett stated right.

Chairman Lancaster mentioned so that is not a checklist waiver.

Mr. Boorady stated no.

Chairman Lancaster mentioned so that 2DD.

Item 2U and 2V are the lighting and we are not doing a checklist waiver for that.

Item 10D are the elevations and we are not doing a waiver for that.

The fill the applicant said he is going to provide from 268, whatever it was he'll provide that so you don't need a checklist waiver for that.

Item 1 and this is going to the March 23rd report withdrawing the exterior plans but we are going to need architectural, the floor plan and something for S & J Cleaners so that is not a waiver.

The metal shed is going to be gone, at least that's what they've said so we shouldn't need a waiver for that one.

Mr. Boorady stated right.

Chairman Lancaster mentioned the only thing left is #2 which is the parking sign and everything in the right-of-way which is the last one.

Mr. Cook stated correct.

Chairman Lancaster stated we don't have any additional waivers we just have to talk about that one.

Mr. Cook mentioned let me fill the Board in. I did not make an appearance last time someone from my office did, but following that I went to the tax assessor's office to see in fact if that parcel of land where these encroachments are located was owned or assessed to the Borough of Lincoln Park. There is no separate tax lot and block for that parcel and the tax assessor confirmed it with me.

Based upon the feedback we got here it appears to be the position of Mr. Darmofalski's office that it is the right-of-way. There was a lease generated between the Borough of Lincoln Park and the prior owner renting that parcel of space for a term of one year. My client when he purchased the building was completely unaware of it and that lease was never reported and my client never made any payments pursuant to that lease from the time he purchased the building. No claims for payment were made by the Borough of Lincoln Park to my client for paying rent under that.

In researching this, a municipality cannot rent a part of a right-of-way it is for right-of-way purposes; utilities, for the public access and the public has certain rights to it and you can't lease part of a right-of-way for purposes that aren't consistent with a right-of-way having utilities, having drainage and that type of thing.

In reviewing the lease there is no representation as to ownership of the Borough of Lincoln Park. That being said we have been in contact with the County and we have a detail to present to the Board tonight and it appears that that's actually a County right-of-way and that full intersection is under the jurisdiction of the Morris County so Lincoln Park, and I'm not saying this in a flippant way, but really doesn't have anything to say and doesn't have any jurisdiction over it. We made copies that we can circulate to the Board that we just obtained this week.

Mr. Boorady asked is there enough for everybody.

Mr. Zepponi stated there are 10 there.

Chairman Lancaster mentioned so I guess the question is there are multiple -- now is this only for the pylon sign or for the parking and everything else?

Mr. Cook stated it is all existing conditions that have been there.

Chairman Lancaster stated it doesn't mean they are right.

Mr. Cook mentioned no it doesn't mean they are right but it doesn't mean Lincoln Park has jurisdiction over them.

Mr. Blewett asked the signage for the stores or what signage are we talking about.

Mr. Cook stated the pylon sign not the signage for the stores.

Mr. Blewett mentioned the pylon sign.

Mr. Cook stated existing in the right-of-way.

Mr. Blewett asked so has the County approved that in the right-of-way.

Mr. Cook stated this is subject to County approval.

Mr. Blewett stated I'm asking has the County approved your sign.

Mr. Cook stated we haven't applied to the County yet.

Mr. Blewett mentioned okay so it is a proposed sign.

Mr. Cook stated no it is an existing sign that has been there.

Mr. Blewett stated okay so my question was has the County in the past in that it is under their jurisdiction approved the pylon sign in their right-of-way?

Mr. Cook stated I don't know this because this is the first time Mr. Killion is filing for a site plan application.

Inaudible – side conversations.

Mr. Boorady stated Beaver Brook Road is a Lincoln Park Road.

Chairman Lancaster asked McKelvey is a --

Mr. Boorady stated a Lincoln Park Road too.

Ms. D'Antono stated Main Street is a County Road.

Mayor Runfeldt stated and it won't be next year.

Chairman Lancaster mentioned right because when they redo it the County --

Mayor Runfeldt stated Main Street as well.

Ms. D'Antono asked hasn't the sign been there for a dog age.

Unidentified person stated yes.

Ms. D'Antono asked so why are we spinning our wheels.

Mayor Runfeldt stated I have no idea.

(Inaudible – side conversations by the Board and applicant's professionals).

Mayor Runfeldt stated Mr. Chairman, if they are talking about improvements in our right-of-way, I think we want to know what the improvements are being done.

Chairman Lancaster stated okay.

Mayor Runfeldt stated I don't recommend we give a waiver for that, whatever improvements they want to make whether it is parking or sign, whatever it is just we need to know about it.

Chairman Lancaster stated yeah. McKelvey and Beaver Brook Road are Lincoln Park roads and not the County.

Mayor Runfeldt stated correct.

Chairman Lancaster mentioned and like you said Main Street won't be County in a year. and I think we need to know and show where everything is and to me it is not very clear as far as where the right-of-ways are.

Mr. Zepponi stated this is a map we got from the County. On the site plan itself everything is clearly marked.

Chairman Lancaster stated shown and marked.

Mr. Zepponi stated right.

Mr. Boorady stated but if you are saying this is right, then your site plan is wrong isn't it?

Mr. Zepponi stated no it is not.

Mr. Boorady asked which one is right because this is not the same thing.

Mr. Cook stated this is existing conditions that is the County's plan they are installing the new intersection later this year.

Mr. Boorady mentioned the point of this exercise is to determine whose right-of-way line is correct is it not?

Mr. Cook stated it is the County because it is their intersection this is what we were told.

Chairman Lancaster stated well it is not. It is partly their intersection but it is partly our intersection because Beaver Brook and McKelvey Street are Lincoln Park roads they are not County roads. Yes they are planning to do this but that doesn't mean it is their property, their right-of-way it is our right-of-way.

Mr. Cook stated we will find out. The encroachments don't exist on McKelvey it is my understanding they encroach on 202 and Main.

Mr. Boorady mentioned the back corner of the building is in the right-of-way of McKelvey.

Mr. Cook stated that's not.

Mr. Boorady mentioned you are saying that McKelvey is not Lincoln Parks it is the County?

Mr. Cook stated I'm saying McKelvey is Lincoln Park, I'm talking about the encroachments in the parking lot.

Mr. Boorady stated the applicant is rearranging the parking on McKelvey.

Mr. Cook stated right.

Mr. Boorady mentioned okay.

Chairman Lancaster stated that's Lincoln Park that's not the County road.

Mr. Cook stated I was talking about the encroachments in the front where the pylon sign was and the parking.

Ms. D'Antono mentioned let's try to stay in the moment here are we talking about the front of the building. I'm getting confused.

Mr. Cook stated I was speaking about the front of the building.

Ms. D'Antono stated okay we are jumping all over the place let's try to focus on one thing.

Chairman Lancaster stated but they are also doing work on the back.

Mayor Runfeldt stated I don't think a waiver should be given to either of them.

Chairman Lancaster mentioned I'm not sure what the waiver would be because you need to show all the encroachments. Again if you have it on the site plan, they are there so what's the discussion?

Mr. Zepponi stated right.

Mr. Boorady mentioned the discussion is that they are widening two of the driveway aprons.

Mr. Zepponi stated that's in the front.

Mr. Boorady mentioned they are reconfiguring the parking areas and that is all located in Lincoln Park's right-of-way. The recommendation on the table from me is if you are going to continue to intensify your use of the Borough's right-of-way, approach the Mayor and Council and obtain their blessing.

Chairman Lancaster stated okay so it is not a waiver it might be a condition of approval it is part of the hearing.

Mr. Boorady stated it is my understanding the right-of-ways are under the jurisdiction of the Mayor and Council not the Planning Board and the use of them.

Chairman Lancaster: Right.

Mr. Boorady stated so now we are looking at a plan that intensifies the use. The pavement is going to be expanded and you know every time someone comes in for a site plan we are legalizing all of those encroachments and I don't think this Board has, and I'm not a lawyer, the legal authority to allow that but the Mayor and Council do.

Chairman Lancaster stated right.

Mr. Neiss asked is that a fair statement though what Tom said you are intensifying what is going on in Borough's right-of-way.

Mr. Zepponi stated that would apply if you didn't know anything else if we were adding stalls or –

Mr. Neiss stated no, no, no I don't think that's what Tom is saying.

Mr. Zepponi mentioned under existing conditions right now there are stalls there that are inconsistent among themselves, all of them are substandard I believe not meeting town code. The entryways are substandard they are more narrow than you would want them to be.

Mr. Neiss asked the curb cuts you mean.

Mr. Zepponi stated the curb cuts are already in there and they are very wide they are like 30 feet, but when you get to the drive portion they might be eighteen feet. So what we did and it wasn't part of anything associated with anything else other than what I saw what was there, if I add a foot of asphalt here and on the other side where they are currently driving over the plants if I put the asphalt there I can make two conforming entry and exists.

Mr. Neiss stated beautiful but is that in the Borough's right-of-way that is the question?

Mr. Zepponi stated it is in the right-of-way, whether it is the Borough's or not I'm not the surveyor.

Mr. Cook mentioned but every curb cut is in the Borough's right-of-way.

Mr. Neiss stated right. But it seems to me that if there is an intensification of the applicant's intensifying it use into a Borough or County right-of-way that is not something this Board has jurisdiction over Tom is absolutely correct.

Mr. Cook stated first off what is the intensification.

Mr. Zepponi stated I was going to ask that same question. If you take undersized and nonconforming and make them conforming is that intensification?

Mr. Neiss stated yes when you are talking about yes it is the Borough's property, it is the Borough's right-of-way then it is an intensification.

Mr. Zepponi stated okay.

Mr. Neiss stated you don't have the right to do that.

Mr. Cook mentioned with all due respect if you have a vacant piece of property and you are putting in a new building, you have a curb cut off a Borough right-of-way that is intensifying the use of that property you don't go to the Mayor and Council.

Mr. Neiss stated but I don't think Tom you are talking about the property I think you are talking about the area within the right-of-way.

Mr. Boorady stated yes there is a new loading area that is going to be there, there is some parking reconfiguration and the same thing happens on McKelvey, the tail end of the cars are in the town's right-of-way of McKelvey it is not just Beaver Brook Road.

Mr. Zepponi stated just as they would be on any of the capes back there if the person doesn't pull more than 10 feet into their driveway, every one of those tail ends of those cars are in your right-of-way technically. With all of this, I believe we testified before, as in back there I was going to say on McKelvey we can stripe it the way it is and leave it, even the front we can leave it the way it is, nobody asked us to do this, nobody made us do this, we did it because we saw the opportunity to bring things up to standards just like you want to do with the lights.

Mayor Runfeldt stated I don't think anybody is giving you a hard time about doing it, we are saying we are not the ones that can give you the permission to do it. If it is in the right-of-way, it has to be something that comes before the Governing Body. I don't think anybody is giving you a hard time about making things better I think we are just saying we can't give you that approval.

Mr. Cook stated with all due respect it is not the Governing Body it is the Zoning Board of Adjustment that has the jurisdiction if it is within a right-of-way.

Mr. Neiss asked over a Borough right-of-way.

Mr. Cook stated yes I can give you the statute.

Mayor Runfeldt stated either way it is not this Board.

Mr. Neiss stated I don't know whether the Zoning Board has jurisdiction either. I think this issue is a Mayor and Council issue.

Mr. Cook stated I'll give you the site. If you want to continue on, in the meantime I'll look it up.

Mr. Zepponi stated that was basically it.

Chairman Lancaster stated that was basically it.

Mr. Neiss asked do you want to email it to me because this will require some follow-up.

Mr. Cook stated I was looking at it before.

Chairman Lancaster stated I think you know our position and I think counsel needs to work it out. I mean we are not going to do any waivers from it from here.

Mr. Boorady mentioned I was going to ask is there any harm in them proceeding with getting all of the things that have been incomplete for two years now and proceeding and if there is a condition of approval that the Mayor and Council give their blessings to these changes, then approach it that way. If it is needed,

it is needed and if it is not, it is not.

Chairman Lancaster stated I mean I would think so I think we should be able to go ahead.

Mr. Boorady stated I'd like to proceed and we can get this thing heard.

Mr. Neiss stated you can certainly do that but that puts the onus on the applicant that if the Mayor and Council determine not to "intensify your use of the right-of-way", then you are taking a chance it seems to me but that's within the applicant's purview, but certainly Tom a resolution could be drafted making it conditional upon approval by the Mayor and Council.

Mr. Cook stated it is actually Section 9.1 in Cox.

Mr. Neiss asked 9.1.

Mr. Cook stated yeah. Do you want it?

Mr. Neiss stated I have my own copy.

Chairman Lancaster stated well it seems to me that we don't have to solve that right here from a waiver standpoint.

Mr. Neiss mentioned certainly not.

Chairman Lancaster stated so why don't we move forward because there are no waivers that I see that we are granting.

Mr. Boorady mentioned maybe the two attorneys can talk between now and whenever the next meeting is and we'll have a resolution.

Mr. Neiss stated sure. 9.1 40:55D-9?

Mr. Cook stated no.

Mr. Neiss mentioned oh 9.1 of the book, land variance. Yes that's Section 35 and 36. It is not numbered the same way in the new book.

Ms. D'Antono stated he's in the 14 and you are in the 16 that's why.

Mr. Neiss stated the law changed you are out.

(Laughter)

Chairman Lancaster stated again I think right now there is nothing for us to do, so the lawyers need to talk and we can go forward with it as Mr. Boorady said.

Mr. Cook stated we'll make the changes to the plans and I'll speak to Mr. Neiss.

Chairman Lancaster stated okay so that's it for now there is no need for any waivers and we go forward and we get this stuff that we've been looking for for a couple of years now.

Mr. Cook thanked the Board.

Chairman Lancaster thanked them.

Next item is waiver request by Michael Sarao with reference to Flood Plain Encroachment Application #FPE 15-03, on property known as Block 9, Lot 27 on the municipal tax map also known as 17 Ellice Street.

Ms. D'Antono stated Ellis.

Chairman Lancaster stated Ellis okay.

Ms. Ward mentioned well it is Ellis and Ellice Street.

Mr. Shirkey stated well there are two different signs.

Ms. Ward mentioned there are two signs. The street is named after the family Ellis but in the tax program it says Ellice Street.

Chairman Lancaster mentioned I assume you've gotten the letters talking about two things; one of which is the escrow account is in arrears, and the others are the waiver requests where it is deemed incomplete and you are asking for waiver requests.

Tom do you want to go over the items with us?

Mr. Boorady mentioned the items are from the checklist for flood plain encroachment.

Ms. D'Antono asked are you referring to the April 5th, 2016 memo.

Mr. Boorady stated yes from Joan and she attached the checklists.

Ms. D'Antono stated right.

Ms. Ward mentioned to make it simple Tom did not do a report, we marked the waivers on here so that you would see what they were asking for and Tom would address it with you.

Ms. D'Antono stated cool.

Mr. Boorady mentioned the reason this application is here if this property wasn't in the flood plain they could just go and see Sal and build the garage, but they had to obtain NJDEP approvals because they are in the New Jersey Flood Hazard Area and they are also within the hundred year flood plain. So our Borough ordinances which have been around for quite a long time require all flood plain development to come before the Board and that's why we are looking at the checklist for flood plain development. The first page everything has been given; Items 1, 2, 3, 4, 5 and 6.

Six M the applicant is requesting a waiver from providing the locations of existing utilities. It is a detached garage and there is a note on the plan stating that the only utility being modified is the electrical service to bring it from the house to the garage which I think based on the architectural plans will be done above ground. None of the other utilities are changing so they are looking for waivers from existing and proposed utilities other than electrical.

Chairman Lancaster stated that sound to me like that's a reasonable request for completeness.

Mr. Boorady mentioned I have no engineering objection to it.

Chairman Lancaster stated okay.

Mr. Boorady mentioned going on to 6FF which is page 76 of this checklist, right-of-way improvements I don't have an engineering objection of showing the right-of-way improvements. A lot of that information is water line, sewer lines, storm drains and they are not working anywhere near that area and they are not changing their curb drop so I don't have an engineer objection to not showing that, as well with culverts, drainage systems on the next page, so no objection to 6FF.

Chairman Lancaster stated i and v.

Mr. Boorady stated yes F i and v.

Item #11 exterior samples, other finishes. The architectural plan notes the type of materials that are going to be used and you don't have a physical sample of siding or roofing. I don't know that you would typically want that for a residential application and I don't have an objection to it. I think the notes on the architectural plan are sufficient and those are the waivers that are being requested, so I have no engineering

objection to any of those waivers.

Chairman Lancaster stated okay. I don't see any objections to it at all. I guess the biggest issue is the fact that there are arrears in the escrow account right?

Mr. Shirkey stated Mr. Chairman I'll address that issue. For the record my name is Kenneth Shirkey and I am Mr. Sarao's general contractor. I had a conversation yesterday with Mr. Boorady about this and after our conversation I had reviewed Ms. Ward's letter and it seems as if in my office there was a miscalculation of the current arrears. Mr. Sarao had made a \$750 initial escrow deposit and Ms. Ward mentioned she was unable to pay an additional \$375. The calculation in our office was eleven twenty-five which is incorrect she is actually short \$25 in the initial escrow, so Mr. Boorady was looking for payment on \$775 worth of escrow.

The second part of that or the subsequent request for an additional \$2,000 did not sit well with Mr. Sarao as he is looking to construct this 24 x 24 detached garage. In doing so he first made a presentation of an application to the Land Use Office in January 2015. Subsequently that was denied for the prior approval from the NJDEP. He sought that flood plain hazard permit received back in October to the expense of about \$9,000 which is quite considerable for a detached garage.

When we then had the additional conversation that the township was looking for an escrow of \$3,000 to do site plan flood plain encroachment on an already approved DEP permit I think Mr. Sarao was a little upset, understandably so when the permitting process to begin is in excess of \$1,100/\$1,200.

Since then I had a conversation with Mr. Sarao that the township has consumed the \$750 escrow not \$1,100 but given consideration that I believe Mr. Boorady would be in agreement we've already gone through most of the process but for our next presentation here before the Board. Mr. Sarao would be happy to make that additional \$25.00 deposit plus I think a \$1,000 would be sufficient to cover our final meeting and the resolution. I don't know if Mr. Boorady is in agreement with that because we didn't have a conversation about that today but I believe that is where Mr. Sarao is.

Mr. Boorady mentioned first of all I'm not the only one who would draw from the escrow, the resolution is going to have to be written up and I think the attorney draws a little bit of money from that. The escrow is also to take us through construction; there is regrading in the backyard, seepage pits being installed, and the driveway is going to be expanded and I have to do a final inspection and a project completion report review. There is going to have to be an as-built survey at the end of the project as well, so some additional surveying expenses. So the idea of the escrow is to not having to keep going back ten times to ask for \$50 here or \$100 there, the idea of the escrow is to have enough in place and then whatever is leftover be returned.

It is sometimes hard to estimate because some projects have to go out ten times because things have to be done ten times over. Sometimes I can show up once or twice and everything is done so well I don't have to worry about it. Sometimes I have to review as-built surveys twice and sometimes it is a lot more work but it is hard for me to guesstimate that today.

Based on Joan's experience and the amount of money that is going to have to be spent to do the report for next month, for the resolution and the follow-up inspections, you know somewhere between \$1,500 and \$2,000 is sufficient. I don't think \$1,000 is sufficient.

Ms. Ward stated it won't cover the report, the resolution and everything else that is why \$2,000 was being asked for.

Mr. Boorady mentioned Joan is pretty good at forecasting what needs to be done.

Ms. Ward mentioned we had an outstanding bill for \$375 that we couldn't pay because we only had \$350 left in the escrow so we have a \$25 deficit today. But we will need a report to the Board, the resolution, we will need the as-builts and the project completion report for the CRS program that we participate in so are guesstimate for engineer and attorney we figures \$2,000 hopefully should cover everything.

Tom had to do a completeness review several time on this application because the paperwork was so

incomplete when it submitted and that's why the bill is the way it is. Sometimes we get an application the f and it is just about complete, maybe one or two items are missing but in this case it wasn't and that is why the review fees were a little bit more.

Mr. Shirkey stated Ms. Ward that is correct there were a number of correspondence back and forth between Mr. Boorady's office, our engineer and the architect. A great number of those elements had to deal with in what is my opinion elements that are beyond Mr. Boorady's review purview.

Mr. Neiss stated I'm sorry I have to weigh in here and I just want to cut right to the chase.

Mr. Shirkey stated sure.

Mr. Neiss stated the Municipal Land Use Law provides that an applicant before a Land Use Board must post escrows in order for the professionals of the Board to be compensated for the work that they do on the application. There is a procedure in the MLUL that permits an applicant to challenge those after the application has been concluded. The applicant can challenge that to ask the Board and to get into, and forgive me I don't mean you or Mr. Sarao any disrespect, I know that he has spent a lot of money on the permitting process, however, to get into nickel and diming about whether it is going to take me an hour versus two hours/versus five hours to write a resolution, or to ask Tom to cut back on his work or to not do work that he thinks is appropriate in connection with the application, I don't think that is fair of the applicant to do. So I just want to cut right to the heart of the matter and say that the Board under the law requires the posting of escrows in order for the professionals to be compensated. If the applicant wishes to challenge that later on, there is an absolute procedure for it to be able to do that.

Mr. Shirkey stated I'm fully aware of the MLUL and that process and it is akin to trying to put the genie back in the box. I recognize it is there and it was just a question.

Mr. Neiss stated it is there.

Mr. Shirkey stated counsel, if you are of the mindset that \$2,000 is appropriate, Mr. Sarao would be happy to make that escrow payment.

Mr. Neiss stated it is not me.

Mr. Shirkey stated he is very much aware of at \$125 an hour the 16 hours that would be allotted for that reconciliation.

Mr. Neiss stated I'm sorry I have no idea what the resolution of this application is going to say, there may be a number of interesting and unusual conditions I don't want to get into that and it is not fair to put that on me even before the Board has heard the application. So I just come back to the main point there is a procedure in the MLUL, and I know it is the genie out of the bottle, and Mr. Sarao I know you've spend a lot of money, I'm just hearing what your contractor has said and I know it has been uncomfortable however that is not the concern of the Board.

Mr. Shirkey stated thank you.

Chairman Lancaster stated okay.

Mr. Shirkey stated so in light of that Ms. Ward you'll have \$25 shortfall in that escrow account and Mr. Sarao will post the additional \$2,000 with you tomorrow.

Ms. Ward thanked him.

Chairman Lancaster mentioned okay. I guess the Board needs to act on the waivers as discussed by Mr. Boorady. Do I have a motion to do that?

Ms. D'Antono made the motion.

Mr. Koldyk seconds.

Chairman Lancaster mentioned those are completeness waivers we went over on the checklist.

Ms. Ward stated right. Tom will mark up the checklist and then we'll send it out.

Roll call:

Yes: D'Antono, Koldyk, Blewett, Kaufman, Lancaster, Marino, Moeller, Runfeldt and Terrero
(Alt. #1)

No: None

Abstain: None

Chairman Lancaster stated okay. Thank you.

Mr. Shirkey stated ladies and gentlemen thank you.

Chairman Lancaster mentioned the last item is ordinances. Sal do you have anything?

Mr. Marino mentioned we met with the committee before our meeting tonight and we spoke with Arthur and Arthur will be getting involved in trying to prepare some kind of ordinance pertaining to this particular problem that we are having with gas stations in town.

We have pictures that go back to December indicating the amount of vehicles on the property, the parking outside on the street, the blocking of the driveway for entrance into the gas station and we just need to come up with something where is it is going to be appropriate for all gas stations in town at least to control the amount of vehicles on that particular property and also avoid the use of them selling cars on the property as well.

Mr. Blewett stated and avoid the use of them occupying public parking spaces when it is associated with their business.

Chairman Lancaster stated okay so it looks like it is something going forward that we will be seeing down the road.

Mr. Marino stated yes.

Chairman Lancaster mentioned and that's the only one we've addressed so far.

Mr. Marino mentioned yes we started with that one yeah.

Chairman Lancaster stated that was a pretty big one.

Any other business?

Ms. Ward stated I don't have anything.

Chairman Lancaster stated seeing none.

Mr. Koldyk made the motion to adjourn.

Ms. D'Antono seconds.

Meeting adjourned 9:15 A.M.

Respectfully submitted:

Joan Ward, Secretary

Kevin Lancaster, Chairman