

Minutes of the Township of Aberdeen Zoning Board of Adjustment Public Meeting of Wednesday, October 14, 2015.

Present are Mr. Bucco, Mr. Byock, Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Apostolou.

Also present are Marc Leckstein, Esq., Leckstein & Leckstein, Anthony Abbonizio, CME Associates, and Martin Truscott, T&M Associates.

Absent are Mrs. Gotell, who remains on a leave of absence, and Mr. Forgione, who is working.

Continued Business, **V 15-101/Air Plus Trampoline Sports, Inc., Applicant: Air Plus Trampoline Sports, Inc., Property Owner: Hillcrest Development, 111 Highway 35 at County Road, Block 227, Lot 1, Block 231, Lot 1, Variance** request for second façade sign, 117 sq. ft., where one sign is permitted and can be no larger than 75 sq. ft., on building located in the LI (Light Industrial) zone. **This application is carried from the October 14 Public Meeting pending payment of property taxes.**

Mr. Leckstein says he knows the issue of taxes have been resolved, but the applicant has not made payment, so the application needs to be carried.

Mr. Byock moves to carry this application to the October 28 public meeting, seconded by Mr. Falco, and on voice vote all members agree.

Mr. Leckstein notes that no one is present from the public for this application.

Mr. Leckstein notes for the record that Mr. Falco must leave by 9:40 p.m., but the Board will still have a quorum.

New Business, **V15-109/H&D Shah Coffee and Donuts Corporation, Applicant: H&D Shah Coffee and Donuts Corporation, Property Owner: Future Land Investment, Business Name: Dunkin Donuts and Baskin Robbins, 189 Highway 35 Block 226, Lot 1.01, Bifurcated Use Variance** application to utilize former Two Rivers Bank Building with drive thru aisles. Although the use is permitted in the Highway Commercial (HC) zone, the drive thru is not permitted for this type of business. Modifications will be made to the drive thru window to accommodate this business.

Mr. Leckstein, addressing Salvatore Alfieri, Esq., attorney for the applicant, states that his notice states he is going for preliminary and final site plan in addition to the use variance, but Mr. Alfieri says he is bifurcating the application for the use only at this time since no detail was submitted with the original application. If they get the use they will decide what they do next.

Mr. Leckstein marks as Exhibit B-1 is the T&M review letter dated September 30, 2015; marked as Exhibit B-2 is the CME review letter dated October 21, 2015. Marked as Exhibit A-1 is the existing survey of the property dated August, 2009, prepared by Aurora and Associates, revised June 13, 2011; Exhibit A-2 is the same plan only colorized for the site; Exhibit A-3 is an as built for the site prepared by VP Architectural Design, LLC, dated April 30, 2015; Exhibit A-4 are the photo renderings of the site, prepared by Ace Sign, Inc., with no visible date on the renderings.

Mr. Leckstein swears in the Board's professionals, Martin Truscott, T&M Associates, and Anthony Abbonizio, CME Associates.

Mr. Leckstein swears in Hemjmb Shah, a principle of H&D Shah Coffee and donuts Corporation. Under questioning by Mr. Alfieri, Mr. Shah says the property involved in this application is currently an empty bank property. He currently operates a Dunkin Donuts south of this location. He currently owns nine locations. It is his intention to move the Dunkin Donuts/Baskin Robbins from down the street to this proposed new location.

Mr. Alfieri explains to the Board to use is permitted; they are here because the drive thru is not permitted, and that is the only variance. They will come back for site plan if this is approved and will give more detailed information.

Mr. Shah says the drive thru currently has three bays; one of the bays was used for bypass. He intends to use only one drive thru lane, closest to the building, and the second drive thru lane will be used for bypass. Answering Mr. Alfieri, Mr. Shah says if they come back for site plan the plan will show the Board how the drive thru area will be reconfigured. The ordering board will be just before the turn on the left and drive thru board will be adjacent to the highway. The store will open at 4:30 a.m. and the first customer will be served at 5 a.m. The store will close at 11 p.m., with the last customer served at 10:30 p.m. The busy period is 5 a.m. to 8 a.m., three hours. They will have six employees at peak time, then three or four employees as needed.

Donuts are prepared in Freehold and brought to the site. Sandwiches will be made on site. There will be no baking at night time.

Mr. Shah says there will be no more than 16 seats on site. Currently he has 70 seats and no drive thru. The percentage of drive thru business is 70%, and 30% inside.

Mr. Shah says the parking facilities at the bank site are more than enough to accommodate his business.

Answering Mr. Leckstein, Mr. Shah says they anticipate using the entire building except for the additional drive thru lanes. They will clean up the building and meet all building department requirements internally. Outside they will do the landscaping, lighting and signage. All of that information will be presented at site plan.

Answering Mr. Leckstein, Mr. Shah says the bank building has been vacant four years.

Mr. Shah confirms to Mr. Alfieri that the parking lot of the bank building is chained off, they cannot access it.

Answering Mr. Phelps, Mr. Shah says deliveries are at 4 a.m., via a minivan. Answering Mr. Leckstein that employees do not arrive until 4:30 a.m., Mr. Shah says delivery people have a key and just put the delivery inside the door.

Answering Mrs. Friedman, Mr. Shah says there is no ATM machine at the bank building. Mr. Shah says outdoor lighting will be done for safety of customers.

Answering Mr. Abbonizio about food preparation, whether they will be doing the eggs and bacon and those kind of sandwiches on site, Mr. Shah says they all come in frozen. There is no need for a kitchen.

Answering Mr. Bucco, Mr. Shah says no donuts are baked on site, they all come from Freehold. They do not bake at any of their nine locations.

Marc Leber is sworn in by Mr. Leckstein, and states he is employed by Eastpoint Engineering, Eatontown, NJ, and is a licensed professional engineer and planner in the State of New Jersey, as well as a certified municipal engineer.

Mr. Alfieri says he is only presenting testimony tonight as a planner; if they get approved, he will come back with testimony for site plan.

Under questioning by Mr. Alfieri Mr. Leber says he has reviewed the Township Ordinance and the existing site. He understands they are here for a "d" variance because of the proposed drive thru.

Mr. Leber says in the Ordinance, Chapter 25-4.6, what is permitted in the HC (Highway Commercial) zone and although it permits eating establishments, it does not allow a drive thru associated with that use. In the letter from Marty Truscott, he stated what the proofs are.

Mr. Leber hands out some photographs, which Mr. Leckstein marks the series of four photographs as Exhibit A-5.

Describing the property, Mr. Leber says it is located on the southbound side of Route 35, about 500 ft. north of Cliffwood Avenue. It is Block 226, Lot 1.01, 189 Highway 35. It is an irregularly shaped property with 285 ft. of frontage, and the lot area is about an acre. There was a bank on the property; the building is about 2300 sq. ft. There are three drive thru windows and parking on site for 20 cars.

Referring to the photos in Exhibit A-5, the top left photo shows the Home Surplus Store directly across the highway; the second photo on the top right is the view of the back of the property. To the south you see the three drive thru lanes that were part of the bank operation. The first photo in the second row shows the former bank sign and the bank building; the next photo shows a black truck indicating where the driveway is located coming off the highway. The first photo in the bottom row is looking south towards the WaWa gas station. Continuing south you see a free standing Bank of America ATM, and the next photo shows the deli on Cliffwood Avenue, and beyond that the strip mall (A&P Shopping Center), which is where the current Dunkin Donuts location is.

What's proposed is a Dunkin Donuts/Baskin Robbins, with hours 4:30 a.m. to 11 p.m. Mr. Alfieri says the hours are from 5 a.m. when they start to 10:30 when the last customer is served.

Mr. Leber says what is permitted in this zone are retail sales of goods and services, restaurants, bars, taverns and nightclubs, banks, including drive thru facilities, office and office buildings, theaters, department stores, shopping centers, bowling alleys, car sales, public purpose uses, and some conditional uses, car washes, public utilities, cell towers.

There are two points his client needs to address the positive criteria; (1) that the site will work for this use and (2) special reasons that allow departure from the zoning regulations. Specific to the site, there is an existing building that already has a drive thru and is vacant. This type of use is typical on a highway; across the street you have a 24 hour McDonalds with a drive thru as well as a Wendy's with a drive thru.

Looking at the departure from the zoning regulations, he falls back on the purposes of zoning, which are to promote the health, safety and general welfare.

The first objective would be the critical areas; there is an existing building, vacant for a number of years. They are not asking for a new building that would address tree removal, flood plains, stream corridors.

Another objective is to provide special space in a variety of locations for specific uses that include residential and commercial and industrial uses. This use seems to be appropriate. It is an existing building, zoned commercial, the actual use is permitted for the food, and it is an appropriate location in the commercial zone where there are similar uses.

One of the goals is to provide for a balanced economic base and source of employment for the utilization of nonresidential areas, which this is. The use is nonresidential and it using an existing building. It does create future employment opportunities.

This type of use is not protected under the law as an inherently beneficial use, which would apply to a school or hospital. We have to reconcile the fact that this use was omitted from the Ordinance ; not specially allowed to have a drive thru. He finds the use a little unusual because this building does have a drive thru, and it is well fitted for what the applicant wants to do.

With the uses permitted in the zone, with the exception of an office building, it is not practical to convert the building into a night club, movie theater or department store, and not enough room for a shopping center, nor a garden center, car dealership or bowling alley. Even with the office space, it would be deficient in parking. As to what is permitted in the zone and what is being proposed, it is not a detriment to the zone; the area is well suited.

Looking at the negative of the variance, you have to convince the Board there is no substantial detriment to the public good. He find this is not impairing the zone plan or Ordinance in any way. The impact in the change of use is minor given the proximity to the Highway.

Answering Mrs. Friedman's question about a house shown in the picture, Mr. Leber says that is a two family house on Angel Street.

Answering Mr. Falco about removing some of the canopy for the drive thru, Mr. Leber says a site plan will be submitted if the Board is favorable that will show one drive thru lane. Mr. Alfieri says that will be the one closest to the building; Mr. Leber says it may be the middle one that remains. They have to rectify that with the architect.

Answering Mr. Bucco about the entrance from Route 35 and exit to Cliffwood Avenue, Mr. Leber says that is under the jurisdiction of the State. The circulation will not change.

Answering Mr. Truscott if you can still enter from Angel Street, Mr. Leber says that is correct.

Answering Mr. Abbonizio, Mr. Leber says the entrance form Highway 35 is ingress only.

Mr. Apostolou, Mr. Shah says they would expect, during peak times, to have 100 cars in three hours. There should be no more than nine cars on line at peak times. Mr. Apostolou asks how far around the building those cars would wrap, potentially causing a back up at the entrance on Route 35, there will be five or six employees so there should be no back up at the entrance. Mr. Leber says the cars could wrap about 220 ft. plus or minus, and that equates to 9 or 10 cars.

Answering Mr. Phelps about a pass thru lane, Mr. Leber says there will be a pass thru lane.

Mr. Alfieri, answering Mr. Leckstein, says site plan will show how it will work.

Answering Mr. Truscott about adequate parking on the site, Mr. Leber says it meets the Ordinance, and he spoke with the applicant, there are 19 or 20 spaces, are adequate for the size of a Dunkin Donuts. That includes handicap parking spaces. Mr. Truscott does not have an issue with the parking.

Answering Mr. Truscott about landscaping and screening being adequate to adjacent residents, Mr. Leber says there was a comment about the proximity of the house, but this property sits lower than the house, and there is a wall and some trees above the wall, which are evergreens as shown in the second picture. The landscape out there today reflects what was approved on the landscape plan when the bank was before the Board. The same with the lighting.

Mr. Abbonizio, saying the difference in the bank hours vs. Dunkin Donuts being open til 10:30, with the lighting, if the Board were so inclined to grant the use variance, he is wondering if at this use variance hearing, before it goes any further, would the applicant be agreeable to removing the existing pass thru and island in the third drive thru in order to increase the buffer to provide additional screening. It means removing the asphalt, the curbing and the island in the third drive thru. Mr. Alfieri says if the use is approved, when they come back for site plan they will revise the plan to show the exact dimensions of the drive thru area and all they are removing will supplement the plantings in the area of the drive thru. That is wasted space anyway, not to be used for any other use, so that will help.

Answering Mr. Falco, Mr. Alfieri says his client will live with the hours represented.

Answering Mr. Phelps, Mr. Abbonizio says if the use is granted, the applicant would have to come in for site plan with their engineer and a plan for a drainage and utilities. They would have to comply with all the issues. Mr. Alfieri says the applicant is agreeable to this.

Mr. Leber, answering Mr. Phelps question whether or not there is shrubbery come down the south bound side of Highway 35, Mr. Leber says there is a hedge. It can be seen well in the bottom left picture. Mr. Alfieri says the existing landscaping will remain and they may supplement in addition to what the Board's engineer has suggested.

Mr. Falco moves to approve the use variance application, seconded by Mrs. Friedman.

Yes: Mr. Bucco, Mr. Byock, Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Apostolou.

No: None

Abstain: None

Mr. Alfieri says he noticed for both use variance and site plan for tonight; the applicant is anxious to get going, since they are paying rent on the building now. The application will be scheduled for December 9 public meeting, and it is announced it will be carried with no further notice to the Public Meeting of December 9. Mr. Falco moves, seconded by Mrs. Friedman, to carry the application.

Yes: Mr. Bucco, Mr. Byock, Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Apostolou

No: None

Abstain:

Answering Mr. Leckstein, Mr. Alfieri say it doesn't matter if they do a separate resolution or combine the use variance and site plan approvals, he doesn't think there will be an appeal. It is decided there will be one resolution addressing the use variance and site plan.

After a short break all Board members return except for Mr. Apostolou, who has left the meeting.

Continued Business, **SP14-503 (Rev [4])/241 Cliffwood Properties, Applicant and Property Owner: 241 Cliffwood Properties, 255 Cliffwood Avenue, Block 183, Lot 11.01**, Applicant seeks revised **Site Plan** approval with **Variiances**, to construct six (6) multifamily buildings containing a total of 60 dwelling units, of which 10 will be COAH units, and 50 will be market ratable units, on the above captioned property, located in both the R100 single family residential and Neighborhood Commercial (NC) zones. The existing home, business and accessory structures will be demolished. In addition to the townhomes and COAH rentals, the applicant proposes parking facilities, landscaping, site lighting, stormwater management facilities and utilities. Use Variance approval was granted by the Zoning Board in November, 2014, subject to site plan approval.

**Variiances** required using the R 100 zone for this development are (1) Minimum Side Yard Setback 72 ft. required, 66.5 ft. proposed; (2) Building Coverage 20% permitted, 23.8% proposed, (3) Freestanding Sign Setback 50 ft. required, 5.7 ft. proposed; Minimum setback from Street Right of Way 50 ft. required, 43.2 ft. proposed. Using the APT/TH zone requirements, **Variiances** required for (1) Tract size 5 acres required, 4.46 acres proposed; (2) Setback from Railroad Right of Way 100 ft. required, 38.5 ft. proposed; (3) Setback from property lines 25 ft. required, 14.5 ft. proposed; (4) Building Spacing Window Wall to Window Wall 60 ft. required, 56.2 ft. proposed; (5) Building Space to Parking Area 15 ft. required, 10 ft. proposed; (6) Recreational Area 12,000 sq. ft. required, 10,488 sq. ft. proposed; Density 301 townhomes permitted, 60 proposed.

**This application is carried from the July 22, 2015 Public Meeting to the October 14, 2015 Public Meeting for additional testimony and information to be supplied.**

Mr. Leckstein marks as Exhibit A-32, a revised proposed Multifamily Residential Development, Preliminary and Final Site Plan, dated November 18, 2014, revised July 6, 2015, prepared by Noel Barnett.

Marked as Exhibit A-33 are the revised architectural plans dated October 27, 2015.

Marked as Exhibit A-34 is a Supplemental Traffic Data Report dated July 10, 2015, prepared by Charles E. Olivo, Stonefield Engineering.

Marked as Exhibit A-35 is the Preliminary and Final Major Site Plan Review Letter prepared by CME associates, Anthony Abbonizio, dated July 21, 2015.

Marked as Exhibit A-36 is the Fiscal Impact Analysis, dated October 2, 2015, prepared by John McDonough, LA, AICP, PP, of John McDonough Associates, LLC.

Marked as Exhibit A-37 is the Planning Analysis dated October 2, 2015, prepared by John McDonough, LA, AICP, PP, of John McDonough Associates, LLC.

Mr. Alfieri has marked as Exhibit A-38, a T&M report dated July 20, 2015.

Mr. Alfieri, representing the applicant, states his client was last here in May. This is a bifurcated application, originally approved at the use variance stage for 66 units. The most recent plan is for 60 units, a reduction of six units.

Mr. Alfieri says something raised two meetings ago was the residents to the rear asked if the applicant would consider increasing the height of the proposed fence from 6 ft. to 8 ft. The applicant did not respond at the time, nor have they since, but they are telling the Board tonight the applicant has agreed to increase the height of the fence, if the Board wants that, to address the neighbors concerns.

Charles Olivo, Stonefield Engineering and Design, previously sworn, states he believes the fence is along the southerly property line, where the residences in the rear are located.

Under questioning by Mr. Alfieri, Mr. Olivo, referring to the site plan sheet prepared by Stonefield Engineering and Design, last revised July 6, 2015, marked as Exhibit A-32. The last hearing in May, and now over a year since we started the application, the use variance phase was in July of last year, and this is the fourth public hearing on the site plan. There have been a number of comments from the Board, the Board's experts, from the public, and they have done their best to address the comments with the current revisions. The plans were submitted in July; the changes had to do with the comments made in regard to the size of the apartment units. On Page 7 of Mr. Truscott's letter is a summary of the changes made, the proposed floor area of the units and, in addition, there was some discussion about the width of the units being in compliance with the design standards stated in the *Land Use Ordinance*. Referring to Page 7 and running into Page 8, the applicant is now in compliance with the width, there have been changes to the buildings to create undulation or rhythm to the building facades. Previously they had relatively flat walls, now they have incorporated a number of design principles that are in compliance with the code.

Mr. Olivo says the last hearing the Board asked for technical back up relative to the traffic study prepared and the testimony information he provided.

Mr. Olivo says looking at the plan itself, and Mr. Alfieri has spoken about it, they went from 66 to 62 and now 60 units, as per the comments of the Board. They increased the size of the units to be in compliance, increased the width of the units to be in compliance,

they ended up losing a unit at Buildings 1 and 5. Building 1 is located to the northerly end of the property and Building 5 to the west. This was done by changes to the building footprint in size, and attempting to keep building coverage, industry standards, parking dimensions, circulation aisles, none of which have changed,. They have maintained ten affordable units with 50 market rate units.

Mr. Alfieri said at the use variance approval they were told they could not have less than ten affordable units, that's why they have maintained that number throughout.

Mr. Olivo says the building coverage has gone up in a di minimus manner, and they are seeking a variance for the change of 23.8% where they were previously at 23.7%.

What is on the site is what was shown at the May hearing but with the changes made based on the comments.

Parking stall counts have gone down because the number of units have been reduced, but they are still in compliance with RSIS, another condition of the use variance, they are at 137 parking stalls.

Mr. Olivo says the variances being requested are due to the changes. Going thru the CME letter with its technical comments, they should be able to comply with. Mr. Alfieri says there are technical comments in the T&M letter as well, and Mr. Olivo says they will address those as well by the planner present tonight.

Answering Mr. Alfieri about Mr. Olivo contacting the school board regarding school bus pickup at the site, Mr. Olivo says the question was whether the bus would have to stop on Cliffwood or in the development. He spoke with Doug Schwagler, the head of the Transportation District. They discussed the plan, the circulation aisle and the ability for a bus to navigate the site. He said as the head of transportation, they wait until after approval before they comment, but he does not see any reason why the bus would have to stop on Cliffwood Avenue rather than within the site. We will work with the school but have no control over what they decide.

Answering Mr. Alfieri, Mr. Olivo says they will work with the Board's professionals to address all the comments in the review letters.

Answering Mr. Leckstein, Mr. Olivo says the existing variances are side yard setback and coverage. He is referring to Mr. Truscott's letter Page 3, minimum side yard setback requirement combined 78 ft. in the R 100 zone, A portion of the site towards north is in the NC zone, and the site in the back is in the R100 zone. The requirement is 10 ft. single and 78 ft. combined, they are at 14.5 ft. and 31 ft. The maximum principal building coverage is 20% in the R 100 and 30% in the NC zone, and they are at 23%. They are slightly above the required R 100 zone. There is a sign variance, which sign they want for identification purposes. The requirement is 15 ft. in the NC zone and they are at 5.7 ft. No sign is permitted in the R 100 zone. They are looking to put the sign closer to Cliffwood Avenue. They have also included for reference purposes the comparison to the APT/TH zone, which zone they are not in.

Along the rail line they are proposing an opaque solid fence along that line, buffering from that area. There are a number of requirements in the APT/TH zone, and he will leave it to the planner to decide if they are variances.

Answering Mr. Byock, who says there are possible 60 residences, two or three residents to a unit, with parties at the same time. Where are people going to park if there is an extra 40 cars coming into the development for a party or an event. Mr. Olivo says the RSIS considers the parking ratio for different types of units. The actual ratio is 1.8 for one bedroom and 2.3, 2.4, a small percentage for visitors. You have driveways and garages, and areas of more conventional lined parking stalls. If there were a block party, you don't design parking for that. But they would utilize the majority of stalls on site and overflow parking in parking stalls. Answering Mr. Alfieri, Mr. Olivo says the parking count meets the RSIS standards as a requirement of the use variance approval condition.

Answering Mr. Leckstein about the reduced parking spaces, Mr. Olivo says they reduced the unit count so the required number of parking stalls is reduced. They lost two, two bedroom units, and he believes those units have garage driveways within the RSIS allows you to take the credit for those stalls. There may have been one or two surface spaces lost as well because of the change of the size of the footprint. He is referring to Exhibit A-26, where there was an increased amount of parking stalls to the east of Building 6 that had two reduced. Mr. Leckstein says no units were removed in Building 6, which Mr. Olivo agrees. Mr. Olivo says you have to image they expanded and then were shifted.

Answering Mr. Byock, Mr. Olivo says there are 37 line spots; he asks if the driveways are single car driveways, and Mr. Olivo says you can fit one car in the driveway and one car in the garage.

Answering Mr. Phelps, who questions Mr. Olivo's reference to the APT/TH zone as far as setbacks go, Mr. Olivo says he listed them for reference, and the planner will talk to that. There are some setbacks that have not been resolved.

Answering Mr. Truscott about a reduction in the size of the recreation area by about a thousand sq. ft., Mr. Olivo says to sacrifice area on the site and balancing going on enlarging the units, the recreation area from 11,478 sq. ft. to 10,488 sq. ft.

Mr. Leckstein asks if they could maintain the recreation area if they lost of unit in Building 6, making it 11 units; Mr. Olivo does not know. Why would they provide extra parking... Mr. Leckstein says first the recreation area was at 11,478 sq. ft. and now it is 10,488 sq. ft., which Mr. Olivo says is correct. Mr. Leckstein says they have expanded the width of the units. Why would they do that and offset the parking spaces by two after doing that, even though it meets the RSIS. If they got rid of one unit in Building 6 they could possibly maintain the original recreation area. Mr. Alfieri says he does not know if they are deficient in the recreation area; Mr. Leckstein says they are. They are required to have 12,400 sq. ft., and you are offering 10,488. Mr. Olivo says in his opinion the change in the size of the recreation area does not change the utility of the recreation area. It is still able to be used for recreation, does not change any of the fixtures, or anything they are proposing to have there. Mr. Leckstein says they are deficient from the beginning and now more deficient by over 500 ft. Reviewing the recreation area on C-4, A-27, and reviewing the recreation area on the most recent site plan, they are in the same area with a slight decrease in size. Mr. Leckstein asks if they consider over 2,000 sq. ft. to be a slight decrease. Mr. Olivo says it is a passive recreation area, not changing what they proposed out there, landscaping, furniture, etc., he would. Mr. Leckstein asks why have any recreation area, why not get rid of it, why provide any recreation area if it is not important. Mr. Olivo says he never said that and would like the record to be clear that they provided the recreation area from the very beginning, and they have designed that recreation area to be used by everyone in the development. He did not say it

was unimportant, he said there is a slight reduction but does not necessarily change the utility of the area. Mr. Leckstein says over 2,000 sq. ft., and Mr. Olivo says it does not change the use of the area. Mr. Leckstein says Mr. Olivo used the words “slight reduction,” so in his opinion, and Mr. Leckstein understands it does not change the utility of the area, but he used the word “slight reduction,” so in Mr. Olivo’s opinion, over 2,000 sq. ft. of recreation is slight. Mr. Olivo believes he has answered it prior, but that is the justification for why he said slight, because when he reviews something as an engineer in terms of utility, that the utility of that area has not necessarily changed as a result of the change, so he stands by what he said.

Answering Mrs. Friedman about setbacks from property lines, as shown on Page 4 of the T&M review letter, Mr. Olivo says with regard to the comparison to the APT/TH zone, the planner is discussing variances with regard to where they are vs. the reference table, but the planner will provide information for the comparison.

Mr. Leckstein asks if they reduce the number of units in Building 6, could they not maintain the recreation space that was there before or actually increase it. He is not asking for his opinion, he is asking straight forward if he did reduce the number of units in Building 6 would they not be able to maintain what was previously offered in recreation area; Mr. Olivo says he believes square footage wise.

Mr. Truscott, addressing Mr. Olivo, to clarify the dimensions of the area, it is basically 135 in length to the west of Building 6, and then roughly 78 ft. in the north/south direction, so the area in green, the recreation area of 10,488 sq. ft. would include not only the green area but the buffer vegetated area; Mr. Olivo says it would include the wooded area. Mr. Truscott wants the Board to be aware it is an area of active recreation but also includes the wooded area which may or may not have recreational potential. You could put up benches. Mr. Olivo says they want to keep that a low area because that’s where the neighbors brought concerns, so they want to wrap the whole side in the buffer, but they want passive recreation. Answering Mr. Phelps question as to the actual size, Mr. Olivo says you can utilize the entire area. Mr. Phelps asks how you can utilize it with the trees. Mr. Leckstein asks if they will be climbing trees; Mr. Olivo says “no.” You can walk thru the trees, it is a passive recreation area. Architects utilize trees and other areas all the time.

Answering Mr. Phelps for Mr. Olivo’s definition of passive, Mr. Olivo says walking, reading a book, any number of things.

Mr. Byock says kids will be in the neighborhood, who will be running around. You can call it passive but if it is an open area you will have kids running and playing. Mr. Olivo says if there are small children they can play in a small area, regardless of what is there.

Mr. Falco, addressing Mr. Truscott, asks if he normally sees the buffer zone as part of a recreation area. Mr. Truscott replies it would normally be more of the active area. He does not know if there is a definition in terms of the Ordinance, but it would be the active area. You can have a passive open space area but that would have to be defined as that. Typically when you talk about recreation areas you talk about the areas where there are play facilities and more seating, but you could possibly have some passive areas under the trees. He wants the Board to take note of the actual shown on the plan, which Mr. Olivo says open space is somewhere around 9,000 sq. ft. roughly. The area is 135 by 7195 if you took out the entire buffer. The Ordinance says 12000, according to Mr.

Leckstein, required for a recreational area. We are down to 9,000 sq. ft. approximately of open space. Mr. Truscott says the APT/TH zone says 200 sq. ft. per dwelling unit shall be set aside on the site plan and improved by the developer as active recreational area for use by the residents of the development. Since the Ordinance say active, it would not include the treed areas. Mr. Leckstein says if we follow the Ordinance the applicant is looking at a recreation area of 7,000 sq. ft. from the required 12,000.

Mr. Leckstein says the issue is they are not in the APT/TH zone where the size is a requirement. They are in an R 100 and a commercial zone where there is no requirement. The only thing we can defer to is the APT/TH zone. Answering Mrs. Friedman, Mr. Leckstein says there is nothing that precludes us from applying the APT/TH zone. In his opinion the Board has to deal with what the town has said for this type of use; this is what the town thinks is appropriate. Mr. Alfieri says they provided this because somewhere along the line the Board asked for it; they did not design it based on the Ordinance. The concept plan approved with the densities did not have the recreational details, but in terms of the layout and where the buildings are situated, is substantially similar, if not identical.

Mr. Leckstein says when the use variance was approved we did not talk about the concept of a building, but you said to give you a chance, trust you, it all fits on the site. That's what the Board did, give you a chance, but we weren't dealing with the specifics of would there be or not be a recreation area or the layout of the building, whatever was shown at that time, the Board was not approving a use variance with that site plan in mind. Mr. Alfieri agrees somewhat and hopes there is never a full debate on that issue, but clearly they never provided recreation details at the use variance stage, that would require more detail than they had at that stage. Mr. Leckstein believes everyone agreed they would eventually show a recreation area, and Mr. Alfieri agrees.

Mr. Olivo refers to Exhibit A-29, the concept site plan that was part of the use variance. Mr. Leckstein says a condition of the use variance approval refers to the approval of a site plan application that would include a recreational area in the community. That was obviously on the Board's mind at the time of the use variance. Although he does not have it in front of him, Mr. Leckstein says apparently the conceptual did not show an actual area; Mr. Olivo says it was discussed during the hearing but did not show an actual area.

Mr. Leckstein tells the Board they have to consider whether or not the area shown is an appropriate recreational area.

Answering Mrs. Friedman about the railway, and short of removing one of the buildings there is nothing the applicant can do to be in compliance with the setbacks, Mr. Olivo says at 100 ft. either to the building or parking setback would dramatically change the plan. In his opinion as an engineer, he has laid the plan out in accordance with good engineering guidelines. The planner can speak to whether it is a requirement or shown on the plan for reference. Mrs. Friedman says in the APT/TH zone the requirement is 100 ft., which Mr. Olivo concurs, the reference on the exhibit is 20 ft. in front of Building 5, (Exhibit A-32), so Mrs. Friedman says that entire building is in noncompliance with the setbacks. Mr. Olivo says the only part he disagrees with is the noncompliance or variance. He leaves it up to the planner. Mr. Alfieri confirms the building is within 100 ft. of the property line. Mr. Olivo says whether they are compliant or not in the zones they are in is being left to the planner.

Answering Mr. Falco, Mr. Truscott explains how he got the number 12,000 sq. ft. for the recreation area, which is 60 units times 200 sq. ft. per unit.

Answering Mrs. Friedman about Page 4 setbacks to the neighboring houses, is that where they were going to build the wall/fence, which is 14.5 ft., Mr. Olivo says the 14.5 ft. is basically where the property line takes the "L" turn, the setback from the property line., behind the building fronting on Cliffwood. Mr. Olivo says there is a 10 ft. side yard setback shown on the west side of the site, they are in excess, and on the east side of the site, Building 2, the side yard setback could be zoned that way. Go back 14.5 to the northeast corner of Building 2.

Answering Mr. Phelps about the applicant purchasing any additional property, Mr. Alfieri says they testified previously; it is the same family, and the testimony was they tried to acquire and could not.

No one from the public questioned the testimony of Mr. Olivo.

John McDonough is sworn in by Mr. Leckstein, and states he is a licensed professional planner in the State of New Jersey and holds a landscape architect license as well. Landscaping will come into play with regard to setbacks.

Mr. Falco asks if Mr. McDonough works for the city of East Orange; he does. Mr. Leckstein does not feel this is a conflict for Mr. Falco, who also works for the city as a building inspector. Both gentlemen state they do not work in the same departments nor have they discussed this application. Mr. Leckstein states they have no business dealings together. Mr. McDonough says he is just a consultant on this application.

Under questioning by Mr. Alfieri, Mr. McDonough confirms that he prepared two reports marked in as exhibits. Using Exhibit A-37 as a road map, it outlines how their analysis is structured. Playing off Mr. Truscott's report, they are dealing with an application that has evolved to the extent they are dealing with two bulk variances with respect to the R 100 district, the use issue has been bedded, anything related to "D" is not is not before the Board right now, but specially they agree with the report issued by the Board's planner with regard to the side yard setback relief and the coverage relief associated with the rear portion or residential of the property. This is a split zone piece of property. From a planning standpoint and zoning standpoint, generally split zone conditions on a single piece of property are generally safer but cause confusion. Pulling this into a single use, a nice comprehensively planned development, pulls us into a more unified planning goal and advancing the overall zoning intent to provide for a unified zone on a single piece of property as opposed to two particular zones.

Recapping the relief the applicant needs, for combined side yard setback in the R 100 zone, and the coverage variance, and they agree with the Board's planner. They offer for comparison the comments put forth with respect to the townhouse apartment zone. There is case law that reminds you whenever you have a use pulled into a nonpermitted zone, it becomes a conflict right off the bat in terms of how you deal with the 'c' level variances. He advises the Board there is a court case that dealt with this matter, known as the Palao case in 2005. Pulling right from the court... ***generally applications for 'c' variance and a 'd' variance cannot coexist. If the application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use. For example, an application for a gasoline station in a residential zone should not be held***

***to the bulk requirements of the residential zone. Lot area requirements, front and side yard setbacks for residences not contemplated can be made applicable to a service station. A zoning board considering a use variance must consider the overall site design. In essence the 'c' variances are subsumed in the context of the 'd.'***

They are still holding forth the overall bulk related to the R 100 zone, but they offer that the association with the APT/TH district is simply for comparison purpose. There were good questions by the Board and he will hit them as he goes thru the planning analysis.

Mr. McDonough, reviewing what is on the ground now, the property is in the Cliffwood section, in the western section of the Township, near the border of Old Bridge, referring to the appendix with the site location map. The property has a nice uniform geometry to it, in an area that has a nice mix of land uses that have manifested comingles, proof positive that a variety of land uses can coexist at this particular location.

The site is 4-1/2 acres, that is a dilapidated eye sore, not doing anything to bring up the neighborhood surrounding it. It is a good candidate for redevelopment, and he highlighted in his report that the taxation valuation has a ratio of one to one, essentially meaning the value of the building is the same as the land. That is a strong indicator of the need for redevelopment. Development of this property is inevitable; something is going to happen on this property, something is going to change on the property that goes back to the 1920's for commercial purposes and a variety of uses, including a liquor store, food market, hotel.

The property also has the influence of the train in the area, the influence of industry in the area, and in response to that, this plan has gone thru some vetting with the Board over the course of four meetings. The site plan before the Board in terms of what is presented in terms of the overall use, remains in conformance. The applicant has not changed the overall form, the overall mix of the units, the look and feel of the development. They have buildings, fewer units, he has seen the overall unit count go down twice, from 66 to 62 to 60. The applicant has held its affordable housing obligation of ten units, they have 50 on the market side, which equates to approximately 16-1/2 to 17% in terms of the overall affordable component mix. In that regard he sees that as contributing to what he calls the urgency for affordable housing in light of the Supreme Court decision handed down in March.

In terms of the zoning, they are looking at property that is split zoned; NC (Neighborhood Commercial) in the front and R100 in the rear. Use relief was granted by the Board last year, and the applicant did submit a plan that was substantially in conformance with what is before the Board.

The overall plan from a planning standpoint has a nice feel, nice balance, nice symmetry. The four buildings align in the interior, and two buildings on the end provide a nice square effect. There are pockets of open space; we talked about, the one in the southwest corner of the property, but there are other pockets of open space.

Referring to Exhibit A-27, Mr. McDonough says the applicant has provided a nice edge, a nice green belt with the development before the Board. This helps frame the overall development, blend the built environment with the natural environment, which is really the planning goal of setback and coverage controls, to maintain adequate light, air and open space, to maintain compatibility with surrounding land uses, and to achieve a nice transition from the built environment to the natural environment.

Mr. McDonough says this is a site that is going to blend with the landscape and, importantly, they are looking at a green belt that is going to provide for hundreds of hard wood plantings, and thousands of softwood plantings along the edge. In certain pockets there are buffers that are three levels deep in terms of the conifers proposed. That is more than what would be required under a permitted, conforming use, either in a commercial or residential setting. Bear in mind this is a single family residential zone that does bring its own nuisance factors. There are things that happen in single family backyards that aren't necessarily screened. What we see as being nice and attractive with multifamily development is that it does have a nice well defined edge, you don't see the "creep" effect that you may see in a single family development. That gives the neighbors the benefit of the elimination of the unknown, what could be; what we have is a nice wooded backyard.

You also see a nice transition between the commercial land use and the industrial land use to the north, and the lower density residential to the south, as talked about in his report as being progressive planning or sequential zoning, where you go from nonresidential development to higher density residential development and then to lower density residential development, consistent with traditional planning models, and something he typically see.

At this particular site and location, we know the use makes sense, that has already been vetted. The intensity of use is also appropriate. When you look at the overall intensity of use, the factors they look at are related to parking and traffic and circulation You have now had 3-1/2 hearings dealing with that. This site will function safely and efficient, line of sight, within the property, movements in, movements out, all again advancing the planning goals of safety and efficiency.

The applicant is also meeting the planning goals to provide for adequate open space and separation; there is open space on the property that falls short of the comparable with the APT/TH zones, and the numbers landed at are approximately open space of 7,000 sq. ft. The buffer should count towards that since the definition in the Ordinance talks about natural openness of land, which is exactly what the applicant is providing. He agrees with Mr. Olivo they are looking at an area that could be actively or passively used. There are actually nice pockets throughout the interior of the development that provides green space. There is usable outdoor space, promotes a healthy environment, promotes a healthy community, if you want to get people outside, and there is plenty of opportunity for people to get outside in this development.

There is also a recreational component to the extent this is a very walkable neighborhood. There are opportunities for interior circulation, which you see people often doing that in developments of this type that are nicely contained and nicely self sufficient. There is a park that is only a couple of hundred feet away, a three or four minute walk away from the development that provides an added recreation amenity that it adds to the particular suitability of the site and the attractiveness of the site. The residents have access to the public facility; he did a quick calculation of the fields associated with the area, and it is approximately 2,000 sq. ft., not counting parking areas and the like. To the extent there is a recreational component built into the area, putting more recreational area on the subject property is redundant. The applicant has given an adequate amount on the property, and when they look to the APT/TH zone, they look at that for comparison, not relief per se. They don't have to go thru the balancing of the benefits and the detriments.

Mr. McDonough believes the planning intent is to provide for active and passive areas with proximity to this site are met not only by the site conditions but by the site context as well.

Tying relief to this statutory requirement in terms of the bulk relief, first with respect to side yard setbacks, the justification under the statute falls under the flexible “c” balancing test whereby you look at the benefits of the application as a whole, and you outweigh them against the detriments, not to be confused with the Paleo case, we have the Colan case, which reminds us to focus on the application as whole when you apply the flexible “c” balancing. The application lays out certain purposes of zoning under the *Municipal Land Use Law*, including purpose “a” the promotion of the public welfare. With new housing that is market driven, we know the multifamily sector remains by far the strongest sector in the residential real estate market, if not the entire real estate market. It has been an economic engine as far as that component of real estate is concerned.

You also look into the advancement of purpose “g” to provide for a variety of uses according to need. The use will blend well with the mixed nature of the area, and that goes back to the overall site context.

Mr. McDonough also sees the advancement of purpose “i” the promotion of a desirable visual environment. He thinks the architectural plans entered as exhibits speak for themselves. They are going to be beautiful, attractive buildings, adding to the aesthetics of the area, to include thousands of plantings pulled onto this property. They are replacing a glaring eyesore along a prominent corridor of the community. The site is suitable for this land use by virtue it is generally clear, flat and ideally suited for this type of development, unconstrained. Toward the positive criteria, purpose “a” promotion of the general welfare, we have an affordable component, based on the Supreme Court decision takes on a certain element of urgency, and the applicant has not moved off its ten unit commitment. In effect, the community is getting an obligation towards its affordable housing obligation for free; an applicant ready, willing and able to contribute at their own expense.

They also see the advance of purpose “m,” which is the efficient use of land, efficient form of the development, a nice, compact development, economies of sale with the shared walls, lessening of costs, sharing of utilities, and more efficient than a sprawling subdivision. This is where the State plan is looking to focus, on more compact development.

All of the above are on the positive side of the application. You counter that with the impacts, lack of full setbacks, bearing in mind the individual setbacks both comply with the Ordinance requirements. It is a combination of the two that is not met.

In that regard there are no substantial detriments from a public safety standpoint, no substantial detriments in terms of public health, air or water pollution, overall waste. This is something looked at in terms of nuisance impact on the neighbors, and as stated, the neighbors will get a more reinforced buffer adjacent to their properties with this nonconforming development than they would with a conforming development in terms of the overall vertical massing of the buffer. The lack of horizontal buffering is offset by the enhanced vertical buffering.

There is no substantial detriment in terms of community impact. He has gone thru the fiscal reports in Exhibit A-36, which are consistent with his findings. For this type of multifamily development, this is going to be a substantial net positive from a fiscal standpoint, there will be no drain on community resources; a load generator of school aged children, with essentially a two bedroom development, with ones and threes sprinkled in, which are related to the affordable component, but for the most part this remains a two bedroom development, which is essentially non families or families with smaller children, empty nesters, or those who, as the family grows, move out to the single family house.

There is no substantial detriment in terms of the Zone Plan and Ordinance, and this advances the planning goals to provide for smaller, moderately priced housing units, moving away from scattered commercial uses, such as existed on the property, promoting the purpose of the Housing Plan Element in the Fair Share Plan to provide for affordable housing, and the enhanced tests provided in the use variance but certainly an approach to affordable housing vs. a nice inclusionary zone is also advanced.

Mr. Leckstein interrupts Mr. McDonough stating that Board Member George Falco has to leave at 9:40. Mr. Alfieri says he will have to stop the testimony. Mr. Alfieri asks to carry to meeting to December 9.

Mr. Leckstein notes no one is here from the public tonight.

Mr. Byock moves to carry the application to December 9 with no further noticing, seconded by Mr. Phillips, and on voice vote all members agree.

Note that Mr. Falco has left the meeting.

Memorialization of Resolution **V15-110/Halpin, Applicant and Property Owner: Cheryl Halpin, 30 Dogwood Court, Block 183, Lot 5, Variance** to install 14 ft. x 28 ft. in ground pool, with proposed rear yard and side yard set back 6 ft. each, where 10 ft. for each is required, in single family home in the R 100 zone is summarized into the record by Mr. Leckstein. Mrs. Friedman moves to memorialize, seconded by Mr. Byock.

Yes: Mr. Bucco, Mr. Byock, Mrs. Friedman, Mr. Phelps

No: None

Abstain: None

Memorialization of Resolution **V15-105/Panzer, Applicant and Property Owner: Anthony Panzer, 131 Grove Street, Block 181, Lot 3, Use Variance** for expansion of a nonconforming use. Applicant was previously granted a Certificate of Nonconformity for three (3) residential structures existing on the property prior to adoption of the Zoning Ordinance. Applicant proposes to construct a 28 ft. x 34 ft. x 19 ft. high garage, where the maximum height for an accessory structure is 10 ft., constituting a further expansion. This property is located in the R 100, single family residential zone, is summarized into the record by Mr. Leckstein. Mr. Bucco moves to memorialize, seconded by Mrs. Friedman.

Yes: Mr Bucco, Mr. Byock, Mrs. Friedman, Mr. Phillips, Mr. Phelps

No: None

Abstain: None

Memorialization of Resolution, **V15-107/Vivian's Tarot Card Center, Applicant: Vivian's Tarot Card Center, Property Owner: Peter Raymond, 144 Lower Main Street, Block 254, Lot 6, Use Variance** to permit Vivian's Tarot Card Center to occupy the home as a tenant and run the tarot card center from a portion of the first floor of the home, in the "NC" (Neighborhood Commercial) Zone. Single family homes are not a permitted use in this zone. In addition, this property received site plan approval in 1987 for commercial use only. This application was scheduled for the July 22 public meeting, which was canceled, is summarized into the record by Mr. Leckstein. Mrs. Friedman moves to memorialize, seconded by Mr. Byock.

Yes: Mr. Bucco, Mr. Byock, Mrs. Friedman, Mr. Phillips, Mr. Phelps

No: None

Abstain: None

Mr. Philips moves to accept the minutes of August 12, 2015, seconded by Mr. Byock, and on voice vote all members approve.

Meeting adjourned.





