

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
SPECIAL SESSION
February 3, 2014

CALL TO ORDER: A special meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Suzanne Brown, Thomas DaCosta Lobo, Serge Demerjian, Gary Marino, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Frank Graziano

EXCUSED: Lou Fusaro

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No. 1

Applicant: North American Eagle

Application: request to subdivide the rear 10 feet off of Block and Lot 7501/16 located in an R1 district, to remove the lot line between Lots 5 and 6, Block 7501, located in a B-3A district and to consolidate all three lots into one lot, to demolish the existing non-conforming structures and building a new three story building having 1,910 square feet of retail stores on grade with a lot cover of 13.4 percent, the remainder of the ground floor area for parking 35 vehicles, which complies with the ordinance for compact cars, a second and third floor having 23 one-bedroom dwelling units with a 78.7 percent lot coverage, building height of 34 feet and a rear yard setback of 20 feet.

Appearances: Thomas DiBiasi, Esq.; Seven Corso, Joseph Staigar, Peter G. Steck, Daren Phil, Todd Hay, Paul Ricci, James Baunbuer, 75 Ravcine Acvneue

Exhibits: A1, 2, 3, 4, 5, 6, 7

Letter of Denial was read by Thomas DaCosta Lobo.

- Chapter 700, Article 5, Section 700-7A of the codes of Nutley prohibits a three-story retail and apartment building in a B-3A and R-1 district.
- Chapter 700, Article 3, Section 700-3B requires a minimum sized parking space of 985 by 19'. Residential site improvement standards permits 9'x18' for residential projects, which supersedes Nutley's ordinance. Compact spaces are not included in the Nutley Zoning ordinance.
- Chapter 700, Article 8, Section 700-46A, Schedule of Regulations as to bulk, height and other requirements. Attachment 3 of the Codes of Nutley requires a rear yard of 30 feet, a maximum height of two stories or 25 feet, and a maximum lot coverage of 70%.
- Chapter 700, Article 13, Section 700-102A does not require a loading space for retail store in a B3A district.

- Chapter 700, Article 13, Section 700-98, where any parking or loading area adjoins a lot in any R district that a landscaped buffer, at least 6 feet in width containing plantings at least three feet high, shall be provided.
- Chapter 700, Article 13, Section 700-94A3C of the Codes of Nutley limits a curb cut 20 feet in length. The proposed curb cut is 24 feet.
- Chapter 700, Article 13, Section 700-96 of the Codes of Nutley requires a minimum setback of off-street parking from a lot line of five feet.
- Chapter 600, Section 600-5B lists the requirements to be included on the site plan plat. The following are deficient: Number 6, zone districts within 400 feet; Number 17, property lines, ponds, streams, etc. within 400 feet of the property; number 18, all driveways and exits to public streets within 400 feet thereof. Waivers may be requested for the above.
- Chapter 630, Article 3, Section 630-16A lists the requirements to be on the major subdivision plat. The following are deficient: 630-16AC, location of driveways and parking areas within 200 feet; 630-16B7, location and description of all monuments.

Mr. DiBiasi addressed the Board saying that this project has been on the drawing board for more than six months. They have had several technical meetings with the township's experts and the applicant's experts. Taking the experts comments and suggestions under advisement, revisions have been made. This work product has been in the pipeline for over one and a half year.

He continued saying that Mr. Meka is under contract to purchase 10 feet of land from Mr. & Mrs. Testa, whose property fronts on Ravine. Unfortunately, the Tests will not sell an additional 25 feet which would allow Mr. Meka to comply with the rear yard setback.

Mr. DiBiasi gave a short history for the building, built in 1928. The lower level was a bowling alley, the upper floor was a dance hall. It was later used for light manufacturing until 1976. The Nahled's moved in and the turntable and then the disco ball were invented there. This operation lasted until 2006. Since then prospective developers came and looked at the property, but it hasn't been used since. Recently, a client of his wanted to convert the space back to a bowling alley, but the neighbors objected and the project was pulled. Now, Mr. Meka has a contract.

He is proposing 23 one-bedroom units and 1900 sq. ft. of retail space. The plans comply with number of parking space required, but the applicant is seeking dimensional variances. He believes his parking expert will provide valid reasons to grant the requested dimensions.

The contacts for the 10 feet and the big parcel will come together if the application is approved. A variance was granted by the DEP for an underground storage tank and the property owners to care of. Mr. DiBiasi has the documentation.

The applicant has been proactive on how to deal with the parking and construction easement, putting up property insurance, etc.

Mr. DiBiasi asked his first expert, Mr. Corso to come up. Mr. Corso referred to one of the rendering and explained the materials that they plan to use. The building is already brick; they will add granite trim; the windows and the door trim would be aluminum.

The apartments will consist of a large living room/dining room combo with a u-shaped kitchen. There will be a master bedroom suite with a semi-private common area and walk-in closets. The apartments will have luxury finishes, granite, and moldings some marble floors and hardwood and high-end appliances.

Referring to the engineer's report, Mr. Corso said that any sign on the premises will conform with the ordinance so that a variance will not be required. The wall between the building and the pizza restaurant next door will be cut with a window to open the space for the customers to view the street. (Exhibit A-3 is a photo of window plans).

On Page eight of the Ricci report, mention was made of the stucco wall and having access for maintenance. The applicant has decided against stucco; brick will be used instead

It was indicated on the plans, though not clearly, that all roof drainage will travel inside the building and connect to an underground drainage system.

Mr. DiBiasi and Mr. Meka met with the fire chief who made recommendations and the applicant will comply. The forester also prepared recommendations that the applicant agrees to comply with.

Ms. Brown is not comfortable with the plans. She would like the code official to comment on the exterior wall space and the percentage of openings allowed. She had other concerns too. There is not enough information on how the building will look and to approve it. She asked if the underground parking area is naturally ventilated. Mr. Corso said it is open all the way around and will show it when they submit the drawings for the permit. Ms. Brown wants to know now. She wants it noted on the plans so the construction official can put that on his plan. How are they heated and cooled? She asked for a roof plan showing the units on the roof. Mr. Corso said they don't conform to zoning issues. Ms. Brown said a building on Franklin is not what this Board approved and she doesn't want to see that happen again. Mr. Corso said the roofline is at 34 feet and the front roof is 37 feet. Ms. Brown requested he dot the condensers in.

The plans do not show a basement; how does the board know there will be one. Mr. Corso said that is what they typically do; it is basically a utility space. Where is the trash and recycling? In the back, noted on the engineer's plan.

Mr. Corso said he understands what the board is looking for and he will request a letter from the construction official outlining how the applicant will comply with Section 7. As a condition, Ms. Brown wants sound testing done at night to make sure the decibel level of the generator meets code.

Mrs. Ryder asked to see a non-typical plan for the one-bedroom unit.

Mr. Demerjian said there is not one dimension on the plans; wanted to see a drawing with the dimensions of the structure. Mr. Corso said the dimensions are there for the proximity to the property line. Mr. Demerjian asked if he had to do the math himself. The building is approximately 90 feet wide. Mr. Corso said he believes it is desirable to fill the property line because this would eliminate alleys. If he made the building narrower as Mr. Demerjian suggests, there would be less space in the apartments. Mr. Demerjian said the apartments are oversized. 20'x20' living rooms are huge; there is a lot of wasted space and they are creating unnecessary massive bulk. Not only that, this is costing the applicant a tremendous amount of money. Mr. Corso said this is what his client wants.

Mr. Demerjian said this is too wide, too far in the back. There is no reason why they cannot comply with a 30 foot setback. This is off the charts. Ms. Brown has seen this building many times. They keep plopping the same building down everywhere. It needs to fit within the context. Mr. Corso said he has this building with three story elements with a horizontal element and a lower scale for this building because it looks like a two story. Ms. Brown said it does not fit in. there are no residential buildings on Franklin avenue. Mr. DiBiasi said that is Ms. Brown's opinion and they respect her opinion.

Mr. Demerjian has a problem with the bulk area. Mr. DiBiasi said this is the application they are presenting to the board, and when appropriate are asking the board to vote on this particular building. The applicant is pleased with the appearance and feel that it meets the needs of the neighborhood. They have gotten both good and some negative comments.

Mr. Demerjian said they are going over the same things with this application: bulk height regulations, overcrowding, too much density, and his kids still have classes in a trailer. Mr. DiBiasi said this has nothing to do with this project on Franklin ave. his comment is not based on fact. He has presented projects to the board that have had conflicting vision and philosophy. Projects have been built and have been successful. They have gotten tenants from upper Bergen county and from New York. The applicant feels there is a need for more. There will be disagreements; they will listen and they will respect it. He asked the members to do the same. Mr. Demerjian is concerned that the neighborhoods and characteristics are changing. In his opinion it's getting a lot more densified. He asked that the applicant just tone it down.

The chairman asked about the garage. Mr. Corso said it would be open to the public during retail hours and then locked and accessible via remote control for the tenants after hours.

Ms. Brown asked if the applicant would consider moving the garage door. It is a residential door on a commercial building. It doesn't fit in. Mr. Corso said that the applicant likes that look and that is the choice he is making. Mrs. Ryder thinks it looks classy, but was worried for safety reason that one couldn't see behind it. Mr., Corso said it can be made to be seen through. Mr. DiBiasi said that will be accepted as a recommendation.

Mr., Demerjian ask what is the purpose of the wall on the south side. Mr., Corso said it is for visual purposes. The wall continues all the way around the back of the property and it is right on the property line. There is a wall on the north side, but in the very back corner. There will be fence on top of the existing wall, six feet high total. Mr. Demerjian asked why this isn't on the drawings submitted so that the members could see it. Mr. Corso said it is on there.

Mr. Baunhuer testified that he welcomed the idea of the residential/retail building. This is nicer than something with constant incoming and outgoing traffic. This would be quiet and welcomed in the neighborhood. As far as gthe issue with the schools and trailers, he doesn't think that one-bedroom apartments will be drawing parents with children.

Ms. Brown asked how he feels about the privacy. He said it is a concern, but buying a home backing up against Franklin you have to be cognizant of certain things that may happen. He sees cleaning people in the office building, he sees the nuns . . . it is what it is he's rather not have that, but upscale, residential apartments with professional people is a plus.

Mr. Demerjian said if it was his backyard, he wouldn't want a three-story structure 20 feet from his property. Mr. Baunhuer said for the last seven years he has been staring at a monstrosity piece-of-garbage building. He rather look at a nice structure. He likes the rendering and believes it blends in nicely with the area.

Mr. Baunbuer thinks Ms. Brown is splitting hairs asking if he would rather the building be 30 feet away instead of 20. She disagreed and said he could use that 10 feet for plantings and allow for some privacy.

The chairman asked Mr. DiBiasi if the properties behind this building that were subdivided are non-compliant. Mr. DiBiasi said the one they are subdividing is not noncompliant. The engineer and planner will testify that they will have more than enough room.

Mr. Demerjian cannot accept the garage entrance. He asked to see the scheme where the roof goes all the way across making it look like a two story building.

The chairman wanted to know how close to Franklin Avenue is the garage entrance. It is 22 feet off the sidewalk and then eight to 10 feet to the street. The traffic expert can explain further.

Mr. DiBiasi asked Mr. Staigar to come up and render his report. He explained the ITE's trip generation rates for a building of this size (number of units) and retail space. There is a small retail space which will not entail many deliveries or tractor trailers. This is a low trip generator. The intersection of Franklin and Centre was done in 2007. He is going to update the counts and make modifications relative to the size of the property so they improve on that intersection so it operates more efficiently.

The garage door has a setback of 22 feet from the front building façade which is on the property line. There is eight feet of sidewalk. The travel lane of Franklin avenue to the building doorway is 38 feet.

The area is not intended for deliveries. There gate will be opened with a remote. Tenants do not have to be in front of the gate to open it. He discussed the safety of the doors. He then spoke about how the 24 foot aisles are consistent with surface parking. There is a detrimental effect of losing parking for buffers. Deliveries for the retail area will most likely be by vans. Clearance would be 10'6. "No Parking" for a half day would be assigned to two parking spaces in the front for moving trucks. Garbage collection will be private. A small ruck will pull onto the site and empty the dumpster in the rear corner.

One public parking space will be lost on Franklin ave. This project can accommodate an additional parking space. It will impair visibility at the driveway. Regarding the parking spaces, they do have a variance on size of the spaces. Ordinance calls for 9'x19'; they have 9'x18'. 32 spaces are regular and three are compact (8.5'x15'). the retails space is less than 20,000 sq. ft. so on-street parking is not required. Retailers would use the parking garage; it may or may not be open to the public depending on the need. Tenants would have non-designated slips except those with compact cars.

The chairman asked how deliveries would be made in the day if the door is operated by remote. Mr. Staigar said the garage will most like be open during the day, perhaps 7 a.m. to 7 p.m. The chairman asked if a delivery truck could not make it through the garage door, would there be parking on Franklin? Mr. Staigar said the clearance is over 10 feet – a UPS truck could get it, but yes, there is parking available.

Ms. Brown said in an emergency situation the is as stairway in the parking lot. People come down that stairs need to get to Franklin Avenue on foot, they are locked in because there are walls all around them. Mr. Staigar said there will be an activation button inside on the wall to open the door. He earlier testified that the door would be open during the day.

Mr. Demerjian doesn't think this is an engineering question – it's a code compliance. 50 percent of the occupants would be discharged into the parking area without a legal means of the public right of way. Mr. Staigar said it will be made compliant.

Mrs. Ryder asked if a "no left turn" could be implemented. Mr. Staigar said they can do that as there are alternatives.

Mr. Demerjian asked if the design can be flipped so that entry would be made from the south side. Mr. Staigar said on the southbound side, across the street there is no parking. If you make a left hand turn into the driveway, cars behind can get around and continue southbound. Mr. DiBiasi said they did talk about that, but the neighbor asked that it be designed that was so they would have the opening as opposed to a wall. Mr. Demerjian said he can appreciate that, but there aren't any protectors and this does not comply to code. Mr. Demerjian believes there is a code issue with that window right up against the property line. Mr. DiBiasi said he believes the upstairs windows are definitely a code issue.

The chairman disagreed with Mr. Staiger's statement that there is no parking on the one side of Franklin Avenue. Mr. Staigar said there is no parking across from the proposed driveway. The Chairman said that a left hand would be encumbered. It could be a nightmare if someone wanted to go southbound. Mr. Staigar said that was resolved with a "right turn only," to which the applicant would agree.

Mr. Hay said that there was discussion about issues from prior applications. With respect to the traffic, there is a timing issue at the signal and adjustments were made – more green and less red time on the north and southbound approaches. He does not have an issue with the operations outside the driveway – 24 foot width is appropriate for a two-way driveway. He hopes the Board will condition that there will be proper documentation through the ITE book that will show the 8.5'x15' parking space is appropriate. He has not witnessed a space of those dimensions, but if the information would be provided, he would gladly accept it.

He is concerned about the driveway being too close to the municipal lot, south of the building. That is the only thing he is looking for, to see if there would be any restrictions. If the applicant is willing to make the switch, it would not interfere with the operation of the driveway entrance for the municipal lot. There were concerns about it being kept free in terms of access and this application will not impact that driveway.

Mr. Demerjian said when you have multiple retail stores in a row, there is a pedestrian environment as a succession of stores; to interrupt that with a 24-foot traffic aisle is not ideal. His thought is that the retail stores should be put together and then the driveways should be together on the south side. There is 25 feet between them and the municipal lot is not used. One of the goals of this project is to create life on the street.

Mr. Hay said his concern is from an operational standpoint and it does meet code. He does not have an issue with the driveway being close to a driveway that is close to a 24-foot aisle. Sometimes when you have the same use and there are driveways, there is a thing called "driveway separation." They are a minimum of 25 feet and those spaces are less than 18 feet. The proposed driveway is less than

25 feet and he questions whether it is appropriate, he will work with the applicant to be sure it meets code. Ms. Brown asked Mr. Hay if he could check the distant to the driveway to that distance so they could compare the two.

Mr. DaCosta Lobo asked if they are flipped, does the proposed right-hand turn only mitigate that somewhat. Mr. Hay said it could, but it is an interpretation of the ordinance. He believes there is a requirement for driveway separations for two exact uses. He will look into it.

Mr. Demerjian asked if Mr. Hay does not get the documentation that he is looking for from the ITE book, what would his recommendation be. Mr., Hay said the they would have to look at the size and meet technical need Mr., Demerjian asked then is he would get rid of the three spaces and turn it east/west so they would get two less parking spaces. He responded "yes."

Mr. DiBiasi asked Mr. Staigar, if within the framework of sound traffic engineering principles, would he enter an opinion as to the traffic patterns attributed to this project will not negatively impact the plan? Mr. Staigar said he believes so. He agrees with some of the recommendations the Board has made and concurs with them.

Peter Steck has been retained by the applicant and has attended the technical review meetings. He also reviewed the report by Mr. Ricci. He presented the board with Exhibit A-7, three pages consisting of an aerial photograph on which he superimposed zoning lines of the B-3A zones; outlining the subject property and a photograph of Franklin Ave. showing the northbound side. He went on to explain the exhibits. He described the property and the plans for the 23 apartment units. He stated that the building had non-conforming uses for many years.

He described the area as a predominately commercial corridor, but stating that there are public uses such as the public parking lot. There are also mixed uses in the area, a number of buildings have three stories, there are three-story office buildings as well as buildings with two stories with residential over commercial.

This is situated in two zones, the bulk of the property being in the B3A that permits mixed uses but not residential use. So they require a D variance; technically they need a use variance in the R1 zone that they are subdividing off of because the parking will be used for multi-family use and commercial use. The Master Plan, 2012 noted that there is a high degree of non-conformity in the D3A zone. The goal of the Master Plan is to revitalize the downtown. It looks at mixed residential/commercial uses as an important component. The Plan also talks about the importance of good architecture, recommending design standards that will enhance the architecture.

He noted the variances that are required: D1 for multi-family use in the front zone and the multi-family and commercial parking in the rear R1 zone; a D6 height variance for 34 feet which exceeds the 25 foot maximum, along with the fact that there are three stories combined with two. Other variances which are

less severe, C variances: 18 feet parking stall; three space measuring in at 15 feet; rear yard of 20 feet; impervious coverage of 70% maximum; a curb cut of 24 feet (20 feet max.) a wall along the rear and side property lines in lieu of a five-foot parking setback (essentially the width of the wall); in lieu of a six-foot landscaping strip, they are proposing a six-foot wall. Mr. Steck discussed the proofs arising from the variances.

At the conclusion of his testimony, Mr. DiBiasi asked Mr. Steck if he agreed with the conclusions of Mr. Ricci's report. He said he did and further stated that Mr. Ricci spent some very detailed time looking at the Master Plan, which is unusually supportive of this project.

Mr. Steck said he did look for ordinances for parking stall sizes and there seems to be a trend to have one-size-fits-all because that is the nature of car sizes now. The proposed stalls do accommodate smaller cars and they can be reserved spaces for a specific tenant with a specific car and they abut, on both sides, a 24 foot aisle. With only three spaces being compact, it is highly likely that the applicant can separate out tenants that have small cars that can easily fit within those dimensions.

The Chairman asked if a variance is granted to a piece of property and it is not used for over a year, does the variance go away? Mr. Steck said it is his understanding that the variance travels with the land, item for item unless the ordinance has a sunset clause that says if a permit is not drawn, it vaporizes within a year. Mr. DiBiasi said the Governor has held all these time periods due to the economic downturn. Mr. Steck said that is the Permit Extension Act that supersedes all these acts and approvals.

Mr. DaCosta Lobo said the 23 units in this mixed use are roughly 1,000 feet compared to 2,000 feet of retail. Isn't this the tail wagging the dog to some degree. Mr. Steck said it is important in any building in the downtown setting to have some commercial interest on the first-floor window that you can look into. Planners promote this form-based zoning where retail is always downstairs and residential upstairs. This form of a building cannot be economic if you think the people that are going to buy things are the people upstairs. In many cases downtowns do not survive because they were built at a time when it was the only way you could shop. There is an overabundance of retail on this project but it will also benefit other retail that is in walking distance. One could say the downtown area is way out of whack. There is very little residential. The project overspeaks on the residential, but in terms so this larger area, he feels they are deficient in terms of a healthy downtown.

Mr. Demerjian disagreed; he thinks there is a lot of residential in the downtown. What happens when you put a real large structure in this place and you have an existing structure that's one and a half stories and you are changing that to three and it's very close to the lot line. It changes the character, when you look at the building across the street, you could say that is a bad example of what not to do. It is very tall; it is right up against the property line . . . that is why he is suggesting that they make this proposed project smaller. What drives the

dimension is the layouts, the architecture does not do that. You're just throwing something at the wall and wait to see what sticks there is no effort to make the units efficient. He finds this offensive.

Mr. Steck thinks the architect has done a good job in terms of the two-and-a-half story appearance. Granted, there is an element over the driveway that could be altered to make it more consistent. Regardless of his opinion of the office across the street, it is there. The land use plan treats this the same as the B3 zoen and it does allow residential use above. The distinction between B3A and B3 zone is that its supposed to be up at the front of the property line because that is the core of the business district.

He thinks it is neat that these are not tiny one-bedroom apartments and that is because people need space. He is looking at the quality of a living environment. You can always make a project smaller, but it is his job to look at it and say, "Can you meet the negative criteria," and I think this project does.

Mr. Demerjian said they do not want to create another element like the building across the street and he appreciates the fact that the architect did not do that,. He thinks the bulk and the mass in the back is too big.

Mr. Steck said it is three feet. The back wall is closer to Franklin that the current wall. What is unusual is the residential lots are very deep; they are multiple times the square footage. They are hundred foot rear yards instead of 30. That is an automatic compensation for that.

Paul Ricci said he is here for the Board. He said he listened very closely to Mr., Steck's testimony and found it to be credible, especially regarding the Master Plan.

He asked the Board if they are concerned about the setback of the building of 20 feet in addition to the parking or just the building. Mr. Demerjian said for his, it is just the building. Ms. Brown has an issue with the parking.

Mr. Ricci said Mr. Steck testified that the bulk variances are subsumed. He does not know if that is automatically assumed for all variance application. That is something he will put to the Board's consideration. In his report he raised questions about the circulation of the garage so the board could hear testimony about it. He noted in the report the driveway and the limited parking spaces. He referenced other aspects of his report that he felt needed the Board's consideration. He agreed with Mr., Steck that the Master Plan is generally supportive of this concept.

Ms. Brown asked Mr. Ricci to elaborate on the fencing with garden apartments and senior living. He explained that there are three garden apartment districts. Its permits one-acre lots. It is not completely comparable. It is a density of 20 units per acre. The B3 is silent regarding a density requirement. B3A where residential is not permitted is silent in that regard as well. In the ordinance, there is a mixed-use section that discusses mixed-use buildings. It is for the B3

district and several other districts, and it does have further restrictions for mixed uses, but it does not apply to this site. Mr. Demerjian questions Mr. Ricci about the parking area and the buffer.

Ms. McGovern asked Mr. Ricci if he agrees with Mr. Steck's opinion that having residential above will help the foot traffic in the area. He does agree with that. There were a couple of things that were not mentioned in previous testimony. Driving up and down the street, he notices that there are vacancies in the area; he doesn't have a feel for how many residential uses there are. He knows the office market is not good. He thinks the proposal is an interesting concept and he considers the retail to be the line. He sees this project largely as residential building. He likes the fact it is lined with a commercial floor. Regarding the architecture, if this was an all residential building and it had the open garage, he thinks there would be a lot of architectural problems of its own. They are looking to dress up the south facing area and in the backside is open air. The area is facing the rear of the parking lot. It is not as exposed to the public right of way. He thinks that is why they proposed that as being open air. He understands that they are trying to reduce the mass of the building with dormers on the third floor. It makes sense.

The chairman wanted to wrap this up, and asked Mr. DiBiasi to sum up or did he have additional testimony. Mr. DiBiasi said he would like his engineer to testify and said it would take only a few minutes. Ms. McGovern said there is a regular meeting scheduled for the 10th. What is his availability. The Chairman asked if he could finish up at that time. Mr. DiBiasi said once his engineer testifies, they are done with testimony. The chairman asked the members their thoughts . . . if they wanted to continue tonight or continue testimony at the next meeting. All the members wanted to continue.

Mr. Phil said from the time they started the plans for this project there have been many revisions, many comments. He referred to the preliminary site plan and major subdivision application. He showed the board the zoning data charts; the depiction of the area; the existing conditions; the site layout plan; the proposed street trees; a proposed street light in the middle of the lot to match the existing lighting on Franklin; storage for recycling and trash. He went into detail about the wall in the back. He discussed the site Grading and Utility Plan, the lighting and landscape plans.'

The Chairman asked if the area for garbage and recycling is accessible from outside the building. It is not there is a wall and there is a fence and screening.

Mr. Pastore asked if there is an elevator in the building. There is an old one in the front section in the lobby. It is noted on the architect's plans.

Mr. Demerjian asked if there is a storm water retention system. Mr. Phil said there is not. He said the existing site was fully developed and covered with impervious coverage and they turn around and just provided conveyance to the roof leaders instead of having them flow out. They are not collecting water and leading it out of the property; they are not discharging any more water.

Mr. Demerjian said they are taxing the entire system. Why would they not use a storm water management system? Mr. Phil said by ordinance – they are not a major development by the state ordinance, which requires over a half acre of impervious coverage over an acre of development. This project is on a third of an acre. Mr. Demerjian wondered if that is good engineering practice given the storm water difficulties in this town. Mr. Phil said by the town ordinance, they can match what is existing. Mr. Demerjian asked if it is possible to put in a storm water system. Mr. Phil said it is and Mr. Demerjian said that is what he wants. He addressed Mr. DiBiasi and asked if he had an understanding of the storm water problems in the parks. This is an opportunity to fix the property. Mr. Phil said it would be simple. Mr. DiBiasi said that would be accepted as a condition.

Mr. DaCosta Lobo asked where the added rear egress that goes out of the parking area, does it come out onto the subject property or someone else's property. Mr. Phil said it was requested that it go to the municipal lot.

Mr. Demerjian said the town has to accept that. How do we do that? Mr. DiBiasi said Mr., Hay can address that.

The Chairman said that we are of the opinion that the board cannot vote tonight on the application because additional information is required. Specifically, the traffic and another sign to be placed at the exist of the garage; a letter from the building code official with respect to the adjacent site and a comment from the building official with respect to the ventilation of the garage; the roof plan, the basement plan; the plan for each of the apartment layouts and a letter from Mr. Staiger that Mr. Hay needs regarding compact car size.

Mr. DiBiasi said that Mr. Hay wanted to address the board. The chairman said the application will be continued at the next regular meeting when they will vote. Ms. McGovern noted that Mr. Hay is here as the expert for the Board and he wanted to comment on the engineer's testimony. She asked Mr. Hay, since it was almost 11 p.m., would he be able to come back on Monday, February 10. He said he is.

Ms. McGovern said the only problem with that is, the engineer is here now and may not be here on the 10th. This is the problem that the board members are faced with, so do they want Mr. Hay to say what he has to say now.

Mr. Hay said he just wanted to answer a couple of questions that the board members have and comment with respect to some earlier comments about the driveway and clearances. The code for driveway happens to be 25 feet in Section 600 and it says the minimum driveway to each edge is 25 feet. Flipping the building is probably impractical because you would have to gain an additional five feet offset off the driveway and that would not meet what the building would be. With respect to one of the comments concerning the agreement, yes, the DPW was involved and maintained that property where the parking lot was involved and they would ask the board to put a condition on any agreement that would be between the township and the applicant. In terms of gaining access to the secondary door, this has been done in the past with Holy Family with respect

to access to their back parking lot through the lot. That is something they can examine.

Mr. Demerjian asked if it wouldn't create a problem for the township if they wanted to sell the land. Mr., Hay said no. They had the same issue with Holy Family where they had an agreement with respect to gaining access in the rear of the property. They had no access. It is very similar; it can be done.

Mr. Demerjian asked if the township sold the property in 10 years, what is going to happen. Mr. DaCosta Lobo said the owner would take subject to the easement. It is only for emergency egress from the property. It might constrain the development of that property, but it is minimal. Mr. Demerjian said of the new owner of the land does not want that there . . . Mr. DaCosta Lobo said the new owner would buy it knowing that it was there or not buy it. Mr. Hay said that is language that would go in and protect the township. The DPW has very stringent language.

Continuing with his testimony, Mr. Hay said the basic layout would be the streetscape issues making sure it was continued on the frontage. He asked for a condition that the applicant abide by the street standards. Mr. DiBiasi agreed and knows that the sidewalk lighting has to be a certain length too.

Mr. Hay said with respect to the layout of the parking he did a review on that. One of the things that happens with the fire officials is they are allowed to reduce the lanes within the building from 24 feet to 22 feet. To be able to accommodate those three spots, the applicant may be able to seek the relief through the fire official to reduce it and be able to create the other 18 stalls. He is giving that to the applicant for review. His preference is 24 feet, but 22 feet can be allowed.

He does not have an issue with grading or storm water. Currently, there is all clean runoff from the roof. 90% of the lot is creating roof runoff. It is clean water; however, there is a storm water control ordinance that is very clear that any type pre-element should be equal to post development. Usually a major development is kicking in where there are D regulations or whether there is a quarter acre of impervious. There is a continuation that the Board could see; the applicant said they can provide that.

He has no issue with landscaping and lighting; he just wants to be sure the lights are not too bright. With regard to the utilities, a lot of them will have to go to the council for approval; water and sewer departments will have to approve. He asked the board that that would be a condition of the approval of the variances and site plan and he would also ask that the board consider the improvement fees and well as the development fees.

The chairman asked if Franklin is a county Road. Mr. Hay said it is, so the applicant has to get all permits.

Ms. McGovern asked who figures out the off-track improvement. Mr., Hay said that is a burden placed on the applicant. They must show that they will comply

with the ordinance. The applicant's engineer calculates it. She asked Mr. Hay if he had an opinion of the pre-construction meeting. What happens is, once certain requirements are met and approved, they do a pre-construction meeting with the applicant and town officials and the town engineer. She inquired as to the demolition permit. Mr. Hay said they can do that as well. Mr. DiBiasi said that system has worked well.

The chairman thanked Mr. Hay. Ms. McGovern said the next meeting is February 10. Mr. DiBiasi will have no more witnesses. He is finished and he will talk with her about the laundry list. Ms. McGovern said the board cannot bring the applicant back on Monday. She asked if the Board is prepared to have another special meeting on March 10 or would they want one sooner than that? Mr. DiBiasi said based on the list, he doesn't see how they are going to be able to turn plans around in one week. He will put staff on it, but will have to waive the 10-day rule. How many applications does the Board have on March 3? Ms. McGovern said she didn't know. Would he prefer March 3? The chairman announced that March 3 is a special meeting. Mr. DiBiasi will get the transcript to the members that are absent tonight.

The chairman asked for a motion to have a special meeting on March 3. Motion made by Mrs. Ryder; seconded by Mr. Pastore. All approved. No further notice is required by the applicant. The town will advertise in the paper.

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BUSINESS: Requirements of the IRS and other codes, a resolution is required to hire Mr. Ricci as the planner of record for the Board of Adjustment for the year 2014, at the rate of \$100 per hour.

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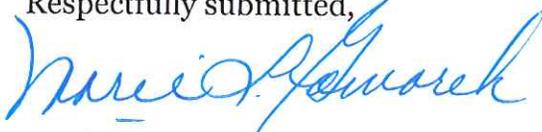
RESOLUTIONS; MINUTES: Approved.
Moscara, 165 Franklin Avenue, Block / Lot /Zone: 7604-21-B3A
The minutes of June 17, November 18, and December 16, 2013 were approved.

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INVOICES, LITIGATED MATTERS: None

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Respectfully submitted,



Marie L. Goworek