

NUTLEY ZONING BOARD OF ADJUSTMENT

JANUARY 9, 2012 MINUTES

SPECIAL PUBLIC SESSION MEETING

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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. The Sunshine Notice was read and the Roll was called.

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

ABSENT: None

EXCUSED: None

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THE ELECTION OF OFFICERS WAS HELD.

- Nominated and voted for Vice Chairman: Frank Graziano
- Nominated and voted for Secretary: Thomas DaCosta Lobo
- Nominated and voted for Chairman: Paul Scrudato
- Diana McGovern retains her position as Board Attorney and
- Marie Goworek remains as Recording Secretary

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This is a special meeting for 57 East Centre Street; 45 East Centre Street and 49-51 East Centre Street. The Chairman advised the applicant that no new testimony will be heard after 11 p.m.

Ms. McGovern noted that Mr. Graziano was not at the previous meeting and he certifies that he did listen to the CD recording prior to tonight's meeting.

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No. 1 MEKA

Applicant: Kenneth Meka, 57 East Centre Street; 45 East Centre Street and 49-51 East Centre Street Block/Lot/Zone: 9700/1, 2, and 3/B-4 and M-1

Application: preliminary/final site plan and variances to build at the above premises, a three-story structure having 17 one-bedroom dwellings, 23 two-bedroom dwelling units, 9,200 sq. ft. of commercial space, and consolidate by deed, lots 1, 2, and 3.

Appearances: Thomas DiBiasi, Esq.; Steven Corso, Architect; Joseph Staigar, Traffic Engineer; Ken Meka, Applicant/Owner; Todd Hay, Town Expert; Paul Bauman, Planner; Joseph Burgis, Board expert; Steve Rogers, Resident; Carmine Alessio, Resident

Exhibits: A-2 (photos)

The Chairman asked Mr. DiBiasi if the site has been tested for contamination. Mr. DiBiasi was not the closing attorney on this property. Mr. Meka's corporate attorney, Paul Jemas, handled the matter introduced himself to the Board. It is Mr. DiBiasi's understanding that this property was not subject to any trigger mechanisms because it was not a manufacturing facility. They

were office buildings. Phase one was undertaken to prove that and Phase two was not necessary. Mr. Meka has the deed to the property and if the Board does approve the project, he can make it subject to showing environmental approval was not applicable to this site, as it was to the rear site. The Chairman would like to make that a condition and Mr. DiBiasi said they would agree to that.

Mr. DiBiasi said since the last meeting, they have been working very diligently to incorporate in the plans, to the best of their ability, the comments set forth by the members. He noted that the board's experts have been gracious and generous with their time. The construction code officials have also given them a generous amount of time. One comment was to remove the active, working dormers and turn those into cosmetic dormers. There was concern for the safety gate leading to the underground garage; that has been turned into a full up and down, metal mesh gate. Lighting and ventilation in the garage was an issue; ventilation and additional windows have been added. The Board felt that the building was too close to the existing apartments; the building has been moved so that there is now a 20-foot separation on either side. Mr. DiBiasi said that each and every item in Mr. Hay's report has been accepted by the applicants engineer and will comply with Mr. Hay.

The Board will hear from the architect and the traffic expert. He reminded the Board that there were no issues with traffic. He will then bring up his engineering expert and the planners that are working on some issues.

Mr. Corso, the architect, approached the podium. His testimony was choppy. He explained that they have moved the building back. The dormers will be decorative only. He indicated where all the HVAC units will be. They will not be seen in the front or the back of the building; they will be placed at building offsets. Photos were marked as exhibits.

While the photos were being passed around, Mr. Corso explained the new plans for the garage gate. They are going to install open, overhead steel doors so that air and light can get through it. There will be windows on the sides for air and light. Mr. DiBiasi said only tenants to the building (residential and commercial) will have access to the secured parking. Visitors and customers will park on the plaza level. Mr. DiBiasi noted that when this was redesigned, Mr. Corso looked at the letter that came from the Construction Code Department; it was designed so that there is no need for parking variances. There is more parking than required.

Mr. DiBiasi reminded the Board of the Chairman's concern about fire safety issues. He advised the Board that the fire department did send a letter saying that the department was satisfied. Mr. Corso said the height of the opening to allow fire trucks on the site is at 14 feet, more than enough room.

The Chairman questioned Mr. Corso about the vents shown in the pictures. The commercial part of the building will have a different type of vent, but they will all be white. He pointed out on the plans where they will be.

Ms. Brown said she did not have a copy of the new plans for the garage. She noted it would be beneficial if the Board could see that.

Mr. Demerjian asked if the parking has changed since the building got smaller. Mr. Corso said the building above changed, but the parking level did not. He said the roof is the plaza level and that is at grade.

Ms. Brown asked how anyone parking down there gets out. There are three sets of stairs that go up into the other levels of the building. Ms. Brown asked if you would drive over part of the parking area because the building was separated 20 feet. Again, Mr. Corso's testimony was choppy. He said there will be windows on either side of the gate. Ms. Brown asked if there was any more natural light in the garage. There is not. Ms. Brown asked where the generator will be. (Unclear) Mr. Demerjian said intake and exhaust should be described.

Chairman Scrudato asked if the elevators will go to the parking level. Yes, one elevator will go all the way.

Ms. Brown asked if an employee parked there, how would the employee get to the commercial space. The employee would go up the elevator, the stairs, or go outside.

(Mr. DaCosta Lobo's questions and Mr. Corso's answers were not clear).

Mr. Demerjian asked about the height of the building. The applicant is asking for 39.9 feet for three stories. This is 14 feet over what is permitted in this zone. Mr. Corso said that has to do with the average grade. Mr. Demerjian said the last time they were here, the architect had agreed to step the building down; instead what he did was lower the soffit height. This does not address the issue of building mass and height. He said the building is a little out of scale; it's a little too tall. The first floor height seems too high. There are floor elevations; there aren't floor-floor heights. Mr. Corso said the height of this building is what is allowed in a B-3 area. Mr. Demerjian said this project is not in a B-3 zone. Mr. Demerjian asked if he was correct that this is not in a B-3 zone. Mr. Corso concurred. Mr. Demerjian said then, that he was making it up. Mr. Corso said it would be explained. Mr. DiBiasi said this has been going back and forth with Mr. Hay; there has been a lot of discussion about this. They don't know where this is going to land. Mr. Demerjian said they still having gotten into the massing, the bulk and the density. Mr. DiBiasi said they took the members' comments from the last meeting and this is the project that they are asking the Board to vote on. It was downsized as much as they believed reasonable under the circumstances. Mr. DiBiasi said he knows from the numbers given to the applicant, the board is looking for a more substantial reduction, but the applicant was not able to accommodate that request. (Further questions by Mr. Demerjian were unclear on the recording). Mr. DiBiasi said to Mr. Corso that he doesn't think that he would be able to satisfy Mr. Demerjian's opinion (it is an opinion that they respect). This is the project that the team put together. He asked, in putting the project together and talking about the height of the building, did Mr. Corso have discussions with the construction code official and made sure that he followed their interpretation and enforcement with how he calculated the height. He did. He explained that a lot of care and time was taken to meet the requirements. He went on to explain the height and the calculations (his testimony was broken up). He followed the framework of the zoning letter. The letter did not say that the plans generated a height variance. (There is a gap where the recording was unclear)

Mr. O'Brien asked what the height relationship is to the existing buildings. Are they higher than the existing or are they somewhat . . . ? Mr. Corso said by definition of the height of the building, these are taller; but since the buildings at the back are a little higher on the grade, they sit up higher. The new project buildings are about 4 feet higher from the foundation. He asked what it was about these buildings that the architect wants it four feet higher than the other buildings. How are they different than the other buildings? Mr. Corso said it has to do with the depth of the building.

Mr. Demerjian wanted to talk about the elevation. (Questions and answers were not picked up). He asked what the commercial floor height was. Mr. Corso said it was about 14 feet. Mr. Demerjian said the biggest objection is to the 14 foot height of the archways to the parking areas. They are out of scale. He asked if Mr. Corso was the architect on the Harrison Avenue project. Driving by that project, you can see that the first floor is out of scale. That is his issue here; that is what he is trying to avoid here. Mr. Corso said the arch can be lowered. Mr. Demerjian said it's not about the arch; it's about the physical wall that is created as a separation between the first and second floor.

Ms. Brown asked Mr. Corso to mark the parking on the elevation so the members could see where it goes under the building. Does it slope with the grade? Not quite as much. Ms. Brown said it would be helpful if they had drawing that actually depicted what the expert was telling them. Mr. DiBiasi said when the engineer comes up to testify, he will be able to help with that.

Ms. Brown said the board really needs to understand the elevations; the drawings are not complete so they cannot determine exactly what the applicant is trying to do here. Mr. DiBiasi said they are listening to the Board's comments; but, he said the drawings were deemed complete by the township's professional staff. He is taking note of the comments.

The Chairman said this could go on forever. Mr. DiBiasi said every time there is a redesign, the applicant will generally accept the conditions set forth by the Board. If the Board wants something lowered 18 inches, the applicant will accept it as a condition and in the final plans make sure that if approved by the professional staff, make sure that it is done.

The Chairman was explaining to Mr. DiBiasi what it was that Ms. Brown wanted to get out of this testimony. Mr. DiBiasi said they thought what they were trying to do was clear enough. He said apparently the testimony is not to Ms. Brown's satisfaction. (Lost comments). If the board were to move on the application to accept those changes as a condition . . . to Mr. Corso he asked if these concerns could be addressed on shown on the plans. Mr. Corso said yes.

Since they do not have a use variance approval, they have not gone onto the construction phase; but if they were to go through that process, it would be the same as they did with the 120 units, that the Board did approve. They would then enter into the construction phase where a professional team would be watching those kinds of changes, before they would even get a building permit.

The Chairman asked if this application was bifurcated. Mr. DiBiasi said it was done in two stages: they did the use variance application first and then they did the site plan. When the site plan was approved, they went into the construction drawing phase.

Ms. Brown said all she was asking for is some basic information that, as an architect, she would have on her drawings so she could give a clear picture. All she is asking for the parking to be dotted under the building; she would like to see the floor-to-floor heights and the overall height of the building. Mr. DiBiasi asked if Mr. Corso could do that while we are on recess or while the other experts testify. Mr. Corso said he can and will do that. Ms. Brown offered Mr. Corso her scale.

(Mr. Demerjian's comments and Mr. Corso's comments were in and out of range and not clear).

Mr. DiBiasi asked Mr. Staigar to come forward. Mr. Staigar was retained as traffic expert on behalf of the applicant. As a result he has done traffic counts and a neighborhood study; he met with the township's engineer office, specifically with the traffic consultant. He prepared a traffic impact analysis, most currently dated November 13, 2011. The report is broken down into three areas:

- Evaluation of existing conditions. They go out, take their traffic counts, inventory the traffic control devices in the area and establish existing conditions.
- Projection of how much traffic the proposal will generate. Here, they analyze and assessing the impact of additional traffic on the roadway network.
- Evaluation of the site plan in terms of access, ingress and egress, internal circulation, as well as parking. During this phase, the traffic engineer and the site engineer work together to be sure they have site plan that will operate safely and efficiently.

Mr. Staigar described the times of day when the studies were taken - early a.m. peak hours and then early afternoon peak hour and then on Saturday mid-day hours. He also did the intersections around the site. The levels of service are in his report. The only approach that was found to have a capacity issue as the east bound approach of Centre Street and Washington Ave. Mr. Staigar continued his presentation about the traffic study.

Mr. DiBiasi asked Mr. Staigar within the framework of sound traffic engineering principles, based on his data, could he recommend approval of this project concerning the internal and

external circulation of the project. Mr. Staigar said yes, he believes this site would have a minimal and negligible impact on the surrounding roadway network and operation of that network.

Mr. Graziano asked if the park area was taken into consideration. Softball and football are played there; a lot of people go to the park for that. Is there any street parking? Mr. Staigar said he feels the site has more than adequate parking to accommodate its own needs. It is self-sufficient parking. Not only does the parking area exceed the town ordinance requirements, but the shared use of some of the parking between the retail and the residential even decreased peak demand, itself. He does not think there will be a need for parking outside the complex itself.

Ms. Brown asked if there was going to be on-street parking on the complex side of the street. Yes, as there is now. Ms. Brown said that a lot of spaces will be lost because there are four driveways going into and out of the premises. Ms. Brown asked if it were possible to eliminate two of the driveways. Mr. Staigar said he doesn't think so. Ms. Brown asked if he was telling her that there is on-street parking on that side of the street and four driveways on this project site. She said there is a lot of conflict -- there is a park, there are kids . . . it's a recipe for disaster. Mr. Staigar said he doesn't believe that to be so. He has analyzed and looked at it. There is great sight visibility, relatively light activity that will be generated by this site. He has figured 60 to 70 vehicles per peak hour, in or out. Ms. Brown asked if she was correct that this is just this project and not the building in the back. Mr. Staigar said they are there today; that is just what is being proposed.

Mr. Demerjian asked Mr. Staigar if he only analyzed this building with regard to traffic and not as part of the whole site with the other two buildings. Ms. Brown asked why it wasn't the whole site. Mr. Staigar said when he took the traffic counts, he didn't analyze the site and how the existing site would operate. The traffic counts included the traffic that is being generated by the existing portion of this site. It was taken in account.

Ms. Brown said there are only 60 people leaving at peak times. Mr. Staigar corrected her; that is the number at peak *hour*. This peak hour could be over a three-hour period. The volumes he presented are peak hourly volumes. Some people leave at 6:30; some may not leave until 9:30; some may even work at home. Those hourly volumes are within a 2½ - 3 hour period. Sixty trips in or out an hour, it may be in the order of 150 vehicles during that time period, including the retail. Ms. Brown asked if they took counts coming out of the existing site. They did not take counts at the existing residential. Mr. Staigar went into more detail about the counts taken at the intersections. The bottom line is that the levels of service at the intersections and the site are As and Bs (satisfactory).

The Chairman asked if the traffic count was taken at River Road and Washington Ave. that would not take into consideration the new development on the north side of East Centre St. because they can exist right onto River Road. (Correct). He asked if the school traffic on Washington. Mr. Staigar said when the traffic counts were done in the morning peak hours, coincidental to school arrivals. School dismissal is prior to the p.m. residential peak hours. The Chairman inquired as to the study included the traffic at the bridge. It did not. He asked since there are commercial activities on East Centre, have commercial delivery vehicles been taken into consideration? Mr. Staigar said yes. There is light retail use on this site; there will be no tractor trailer vehicles making deliveries. There may be vans and box trucks. The site has will accommodate garbage trucks and emergency vehicles (the fire trucks).

Mr. Graziano asked if the total amount of curb cuts will be increased or decreased in front of this project or will it remain the same. Mr. Staigar said it will be increased with the two proposed curb cuts. Mr. DaCosta Lobo said the existing building has curb cuts, so will there be more or less than what's there? While Mr. Staigar looked at the survey, Mr. DiBiasi clarified an answer to a previous question about the occupancy rate of the 120 units already on the site -- yes it is 100% occupied. There is a low occupancy in the building in front, which if this building is

approved, will be demolished. Mr. Staigar's comments about the curb cutting were not picked up.

Mr. O'Brien asked about the survey taken at the intersection of eastbound-Centre St. and Washington – is the issue on Washington as traffic is turning onto Centre street or when traffic is on Centre street turning onto Washington Avenue? So, that would be west-bound onto Centre Street? Turning left onto Washington from eastbound Centre Street (not to be confused with East Centre Street) is, as Mr. Staigar puts it, "the bad maneuver." This intersection was found to be at capacity now.

Mr. Demerjian said Mr. Staigar talked about the mingling of parking for retail personnel and residents under the building. The area on the street level – is that for residents or is it for patrons of the retail? Mr. Staigar's response was that he thinks will be primarily retail use, but there may be some overflow use of retail use on the lower level because the 34 parking spaces does not fully accommodate the parking demand per the ordinance for the full retail. The full retail, he believes, requires 46 parking spaces, only 34 are up above. Some of the employees may be designated parking down below. Yes, there will be some co-mingling of the residential and the retail. Mr. Demerjian said that as a patron, he wouldn't know that there were others spaces below the building and how would he get there? Mr. Staigar said patrons would go there. Mr. Demerjian said there were 34 spaces at the street level, so they don't need the ordinance required for patrons. Mr. Staigar said, no, the ordinance does not differentiate between retail patrons and retail employees. The ordinance says you need 46 spaces and they have 37 at street level. Mr. Demerjian asked then, by how many are they deficient. Mr. Staigar said they aren't deficient; they are deficient by zero. They have 47 spaces designated for retail. Mr. Demerjian said as a patron he can't get there. As a patron, he can't park there (underground) but as an employee, he can. Mr. Demerjian asked if the current curb cut (on the east) is a one or two-way? It is a two-way, and it will be a two-way in the future.

Mr. Demerjian said there is 9200 square feet of retail space, was the high volume of turn-around taken into consideration? Mr. Staigar said this is not going to be high volume, high turnover retail, because that type of retail needs to be on a main drag. It needs to be on Washington Avenue where there is a high volume of traffic. There will most likely be specialty retail . . . a boutique, a hair salon, maybe a spa. He cannot see it operating a 7-Eleven that will be drawing traffic on and off Washington, on and off River Road.

Mr. Demerjian asked about the loading area for the retail space. Mr. Staigar said typically it would consist of step vans and/or box trucks. The store owner of retail would have to coordinate the loading and unloading during non-peak hours.

Mr. Demerjian asked about the refuse storage and collection. He cannot respond, but one of the other experts will. In response to the chairman's comment, Mr. DiBiasi said they can accept as a condition to have a private carrier that will picking up any refuse from this project.

Ms. Brown asked that someone go into detail about the proposed fire lane and its location. (This whole explanation was not picked up on the recording). She said recent testimony was that the building is to be as high as it is to get a fire truck underneath the building, but there is not fire lane under the building. Ms. Brown stated that she is having a hard time understanding why they would be getting a fire truck under the building. Mr. Staigar said he doesn't know who said they would put a fire truck under the building, but he's never heard of a fire truck going under a burning building. Ms. Brown asked then why they are making the first floor to floor height so high. (blank)

Mr. Graziano asked about a car fire. A fire truck still would not go in; a hose would be run in to extinguish the fire with foam. He is not a fireman, he never put out fires, and he never designed a building, especially a small one like this, for a fire truck to get inside. Mr. DiBiasi said these plans were given to the fire department for review and each member should have a letter stating

that the fire department reviewed the plans and find them acceptable for the purposes of fighting a fire. The chairman asked if the fire department review the current or the previous plans. Mr. DiBiasi said it was the previous set of plans. The current plans lessened the size of the building so he does not expect that the board will get a second letter from the fire department. The chairman said it may also be necessary to get an emergency vehicle below the building in the parking area. Mr. DiBiasi said that is one reason why they made sure the entrance was higher. It was designed that was for this reason.

Mr. Staigar said the parking area will have a sprinkler system installed, as well. The ceiling height is only 10 feet, so this will not allow a truck to get in there, certainly not a fire truck. He doesn't know who said that it was designed to have fire trucks go in there. The Chairman said there is a code for underground parking. Mr. Staigar said they will definitely abide by that code.

The Chairman called for a five-minute recess.

Mr. DiBiasi asked Mr. Hay to come up. Mr. Hay agreed with the report given by Mr. Staigar. Ms. McGovern said the most recent report was revised January 6, 2012. It is one report and all the Board members should have it and it will be made a part of the record. Mr. Hay said the report is reflective of several plans the town engineer received during the course of this application. The first one being a detailed layout dimension plan – is a revision of the buildings in terms of the setbacks of the buildings. Also, there is storm water analysis plan which he required the applicant to revise, not just to encompass this particular area of interest that they are talking about, but also the existing 75 units in the two rear buildings. His report didn't change much; there are just a few housekeeping issues. Mr. Staigar was asked back in November to provide additional calculations and back up in his traffic report – that was done. Mr. Hay does not have any issues with the report. He had mentioned that he would have like the applicant to work with the township, to get some assistance with the DOT to reduce some of the timing and the timing box at the intersection of Washington and Centre Street (two seconds was taken off the traffic light). Referring back to his report regarding the storm water – the runoff water is *di minimous*; as a matter of fact, based on the application, it has been decreased. He believes they have come to some kind of agreement, unofficially, that the township may be coming to a shared agreement with the applicant in terms of repaving the entire area. Another issue was the developer's fee. They do have an off track improvement ordinance as well as a developer fee ordinance that he has asked the applicant to look into. It is up to the Board, but he thinks this should be made a condition if there is approval. Mr. Hay said sheet 5 and 10 in the site plans clarify the underground parking in relation to the buildings. That plan was not provided to him with the revision as to how smaller the building is; that should actually be provided to everyone. If there is another hearing, hopefully it will be provided for everyone before that; if the Board decides tonight, he would want to make that a condition of the approval.

Mr. DiBiasi restated the representations that were made corroborating Mr. Hay's statements. He said it is true that they have worked out a shared agreement with the township. The applicant is, voluntarily, going to pick up 50% of the costs of repaving East Centre Street, assuming that this project is approved. They will be following the specifications from the township attorney. He stated that the township attorney is asking the applicant to re-mill the street, to start from scratch, and the applicant has agreed to that.

Mr. DiBiasi said Mr. Corso is now ready to answer some of the questions Ms. Brown had. Mr. Corso started his testimony explaining where the trash would be located. Using the exhibit, he noted, by using "P" for plastic and "G" for garbage, where containers would be placed. Mr. Demerjian said the placement of the containers on the east side, by the loading area, is impractical; it doesn't work there. He said a dumpster cannot be put there; it's not going to fit. There is not enough space to load and unload at that berth. And on top of that, the residents are going to have to walk a significant distance to put out trash and recycling. Mr. DiBiasi wanted to make one thing clear that, as to the recycling and the refuge, the applicant will do whatever

the Department of Public Works wants him to do and of course will also accept any conditions the Board would have in that area. The chairman asked if there will be a garbage compactor. Mr. Corso said they did not plan on that, but they could put one in there. Mr. DiBiasi said the developer would accept that as a condition. There will also be garbage disposals in each kitchen.

Ms. Brown said it would be really helpful if Mr. Corso could draw the pad for the dumpster and the location. We all know there are different size dumpsters, so she would like to see where they are going to go, because where he is showing the dumpsters, it is going to be very tight. (Some of Mr. Corso's testimony was not picked up, but he was heard to say it can be very accessible at the east, behind the commercial building.)

Mr. Corso was talking about the floor heights, but he was in and out of range of the microphone. Mr. Marino asked what the height of the building is at the peak. The response and further testimony was not picked up. Ms. Brown said there has to be a creative way to bring that down. Mr. Corso said there is not; Ms. Brown countered with, "there is." (Blank) Mr. Corso said when you come from the elevator which is above the center commercial section, the area where the 20 feet height is (floor to floor) it's about 12½ feet from the opening and there's a planter in there, so it's not like there is a big vacant space. Ms. Brown said that by no means is she giving him ideas how to design it but a double-sided elevator can be done to stop at different levels. Mr. Corso said you would still have to have steps in between. He pointed to the plans where the steps need to be. Mr. DiBiasi advised that Board that Mr. Meka can do a double-sided elevator.

Mr. Demerjian said there is no value to the retailer higher than 10 feet. They are not gaining any value, nor additional rent. The fireman should need 10 feet. Mr. Corso said that is not an issue. Mr. Demerjian said the floor does not need to be 20 feet. Mr. Corso said it really could not be done. He pointed to two sections on the exhibit and said that they would be too close to the ground; but he does think they can come down to 16 feet. Mr. Demerjian said it is out of scale; out of proportion. He said the building has to respond to the site and the slope of the site. He said it is not doing that. Mr. Corso said he believes it is. Mr. DiBiasi, being respectful of the Board's time, notes that there is a disagreement of opinions between the Board and Mr. Corso. He asked Mr. Corso where he could accommodate this and then he would just have to say this is the applications that they want to present to the Board for a vote (there was a gap of about 45 seconds). Mr. DiBiasi thinks what his client and the architect is saying they have made changes and this is the project they are presenting to the Board. It is obvious that the Board would have designed it differently; both architects have said it on the record. This is the way the applicant's architect has designed it. They have taken as many of the Board's comments as they (the applicant) believe they can take and this is the project they now have. He asked Mr. Corso if there was anything else he could do within the schematic of his project. He said they would have to make a level change (he mentioned the elevator and handicap - but this was unclear). Mr. DiBiasi asked Mr. Corso if the Board approved this project, would he agree to the changes that were put on the record just like the last time they made changes to the ventilation, and the door, and the lighting and the distance and the dormers. Yes. And also the two-sided elevator door.

Mr. Corso showed on the exhibit where the changes would be. The footprint of the building would stay the same.

Mr. Demerjian is still trying to understand the size of the building 300'x100'. He doesn't understand the room sizes and why the building needs to be 100 feet wide and 50 feet on each side. The sample room has a bedroom of 11'6"x30'. The bedroom is 30 feet long? The living room is 11'6"x20" and the dining area is 12 feet. Something is off with scale here and he doesn't know what it is. He asked if the architect could not narrow these rooms up so the building isn't 100 feet wide? He said it seems excessive that bedrooms are this large. Mr. Corso said this is the way the applicant wants them built. Extra space is never usually a problem. Ms. Brown said he is not creating quality space. He is creating long narrow spaces where light is not going to penetrate. They will not be cheerful; they will be dismal. Mr. Corso said they have had apartments like this before. Mr. Demerjian said the applicant is seeking a variance on bulk and

size and massing. They are creating something that is perpetuating the inherent size of the building. He said the architect has an opportunity to shrink the size of the building, to narrow it down, to make it more appealing to the site and to the surrounding buildings and by what is poor quality space. Mr. Corso said it was narrowed, but what variance is he referring to? Bulk.

Ms. Brown said they are going for a front yard setback which could easily cut 10 feet off the front of the building; get the 20-foot setback and not compromise any of the apartments. Mr. Demerjian said they could still achieve that 30-foot separation between the buildings to the rear. He can take 10 feet off both sides and not feel a thing and it would be more appropriate to the site.

Mr. DiBiasi said he spoke with his client and, most respectfully, this is the project he would like the Board to vote on. He feels comfortable with it; he's had success in this township and other townships with this type of design. It works. Making it very difficult on this Board, said the Chairman.

At the request of the Chairman, Mr. Meka approached the podium. The Chairman said that the Board has suggested that he take 10 feet off the front of the building. He asked Mr. Meka why that cannot be done. Mr. Meka said he has spent so much time on this project, trying to make it fit and frame that area. He believes that this building fits that area so well. It will make that area so attractive. He wants to be sure the building is close enough to the street for one reason – so that when you are passing on River you will be able to see the shops (ironically, Mr. Meka spoke too close to the microphone and was difficult to understand). The Chairman said then, what Mr. Meka was trying to say is that the line-of-sight would be better 10 feet closer to East Centre Street for the view from River Road.

Mr. DiBiasi said, not that they made anyone happy, but they have completed their architectural presentation. The Engineering and traffic testimony has also been completed. The only expert witness left is Paul Bauman, the planner.

This is D-1 Use variance and a D-6 height variance. There are incidental C variances. The character of the neighborhood is mixed uses between residential and commercial; there is no retail. There has already been a change in zone; about four or five years ago, the Planning Board approved a 70 some unit that has access from both East Centre Street and River Road. To the east of this project there are multi-family homes. There is a 120 unit complex that this Board approved back in 2002-2003. This is a blended neighborhood; it is not pristine as to what the zoning ordinance permits in either B-4 or the M-1 zone. This project is seeking the same thing – to make a mixed use. However, retail is not specifically permitted in a B-4 zone in combination with the residence.

Mr. Bauman said this use is less intense than some of the uses that are already permitted in the B-4 zone. They have tried to make this project look like a B-3 zone, which permits a mixed use. That is why they designed consistently with regard to set backs and height. The only issue is the use – that is the key to the project. Given the fact that there is a change in the nature and character of the zone as it exists between Washington Avenue and River Road, now, the applicant is asking the Board to agree with this.

This project, even though it has evoked some criticism from the board about its bulk and size, conforms with the ordinances as if it were a B-3 zone. True, it is not a B-3 zone, but it is a B-4 zone and based on the Master Plan and the possibility that there could be changes to the Master Plan recommendations and the zoning ordinance, this project certainly would be a fully compliant project if it were located in a B-3 zone. It complies with all the other bulk requirements, except for the front yard and the height (being a separate B variance). The project fills in the lot efficiently. It does not over build on the land. In concert with the 120 units that are to the south of it, it compliments that type of a situation. When you add the projects of what the neighborhood consists of, there are over a thousand units along river Road and the

beginning of East Center Street that provide commercial and retail will certainly enhance a lot of people's convenience. It will make this a little village, which is Mr. Meka's design vision. It brings convenience to that neighborhood, which it doesn't already have; it eliminates trips to regional malls that would otherwise have to occur to get some of the retail use that could be located in this facility.

Mr. Bauman now presented his negative criteria. The present Master Plan does not have retail in it for this particular zone. The Master Plan goes back to 1974 and is under review now and could be replaced with an overall general revision. He cannot speak factually, but the Township is recognizing that the development that has occurred along this corridor needs to be addressed in both the Master Plan and the zoning ordinance. If this does transpire, this will certainly be a benefit to the neighborhood, if the Board chooses to grant the use variance for it. This project wouldn't be a new, unheard of development here. It would incorporate two uses that are already along that street and make it into a blended, mixed use location.

He summarized what they board heard from the previous experts – the traffic, the school etc. Mr. Meka has filled all 120 units in the existing building. He already has a waiting list for this project if it is approved. It is not speculative about the residential portion, but it is somewhat speculative about the retail portion, because he doesn't know yet who his tenants will be. Since there is a waiting list, this proves that there is a demand for this in this neighborhood. This will fulfill that demand, at least in part. The fact that the neighborhood has changed, you can see the point they are trying to make is that this project merits the Board's favorable consideration.

As to the height variance, the applicant is proposing three stories where two stories are permitted. Twenty-five feet is permitted in this zone; they are proposing less than 40 feet in this B-4. To justify this height, the project, from street level, will not be overshadowing the apartments behind it. The elevation grade changes from the north to the south and increase as it goes deeper into the lot behind it. Those existing units will not be screened and will have no negative impact because of the new building. The windows in the apartments that are closest to East Center Street are blacked out. They have no impact on the interior of the building. They are in the halls or in closets. He testified further that there is another building in the area that is higher and that Mr. Meka has purchased other smaller buildings that will be razed, meaning that this proposed building will not impact negatively on the nearest neighbor on any three sides nor the streetscape. For these reasons, he believes the height variance is grantable.

He explained why a 10-foot setback in the front would be more beneficial than a 20-foot setback. The building is very attractive and it will bring this to the forefront; it will complement and enhance the quality of the visual viewing along East Center Street. It will also preclude front yard parking.

There is a variance before the Board for three curb cuts, at 33 feet wide, as opposed to the one at 20 feet that is permitted. The entire lot, as it now exists, has four driveways along that frontage. There are two existing in buildings that are coming down. The fifth driveway cannot be counted because the building has already been razed. Two were approved by variance. The number of driveways won't change, just the size, to allow safer passage to and from the site.

Mr. DiBiasi asked Mr. Bauman, in the framework of sound planning principles, could he recommend that the Board grant the variances that he just addressed, without negatively impacting the zone plan or the intent of the ordinance? Yes. He said he tried to demonstrate how they are complying with the master plan and the ordinance by providing for positives that were outlined earlier. The fact that there are no substantial negatives that were confirmed to this Board by its own internal township departments, the fact that the nature of the neighborhood is that it is already mixed, they are merely asking for a specific use for the retail that doesn't exist in this area. Therefore, it will be the convenience that it will provide to the neighborhood, in general, and the vicinity, that is lacking in this neighborhood. He believes for these reasons, the Board could grant the variances that are sought.

The chairman asked Mr. Bauman to comment on the density. Mr. Bauman said the density is not a regulated item in a B-4 zone; it is regulated in and granted approval for the garden apartments. There are many examples within 200 feet that are high densities, although not to the point of this. But, what has to be looked at is: will this be a detriment to the public good? They cannot find any detriments.

The Chairman asked Mr. Bauman if he would recommend that the project density be downgraded. He responded that he didn't think that could happen. The residential units would have to be canceled entirely to do that.

The Chairman asked Mr. DiBiasi has the underground parking was going to be controlled. Mr. DiBiasi said his client listened very seriously to the Board's requests (the Chairman corrected him . . . "observations") and he has decided to take 10 feet off the entire width of the building. The Chairman asked Mr. Bauman if, building a sidewalk in the 10-foot corridor along East Centre Street, would pose a greater danger than the setback for pedestrians walking along. Mr. Bauman said he didn't think so. There is only a three-foot setback and a sidewalk in the downtown area. This does not pose a hazard to the public good there. Mr. Demerjian said there are more driveways here. The discussion of the impact on the school systems was discussed again. The applicant inquired to the Board of Education. There are 14 students enrolled from the 120 units. The applicant's records show there are nine students enrolled and there will be an investigation to see about the other five, because there is a situation going on in Nutley where people are using addresses and not actually living there. They will be assisting the BOE on this. For purposes of this meeting tonight, they are using the number 14. This statistics will become a part of this record. The Chairman said he sat in the audience at a BOE meeting and member of the BOE said they really don't know how many are going to be enrolled in the system. Any numbers will be an educated guess by the school board. Mr. DiBiasi said until something happens, he is right, it is an educated estimate.

Mr. Demerjian asked if there are density guidelines for B3 zones. Mr. Bauman said he doesn't think so.

Mr. O'Brien asked about the report from Burgess, specifically 2C on page two: The applicant should provide testimony to support the proposed 30.8 units per acre in light of the current Master Plan's recommendation for 20 units per acre density for multi-family development. There is a density that the applicant is proposing here and that he feels comfortable with; yet the Master Plan recommends 20 units per acre. How is this development appropriate in light of the Master Plan's suggestion or 20 units? Mr. Bauman said the Master Plan regarding the 20 units has to do with the M-1 zone; it does not have to do with the B4 zone. If you look at the zoning ordinance, there is no regulation for density in B-4. The zoning regulation in M-1 is something that hasn't really been regulated, *per se*, in the ordinance to the extent that it's valid today. There is a numeric value, but it is inconsistent when you look at one part of the ordinance versus another. What the applicant is proposing is over that, but it is justifiable based on the fact that it is not going to overburden the site; they are not cramming in more than what is reasonable capacitated by the site. So, the factor of the mathematics works against this project because it is a small site for B-4 purposes, but it's a large site in an M-1. If it was regulated according to M-1 standards, then they would be overboard by 10 units per acre. If it was regulated by the B-4 or B-3 zone, they are on the mark because there is no regulation for density in those zones. Mr. O'Brien asked if he understands this correctly – that this neighborhood supports this density. Mr. Bauman said he believes so, because of what is embedded in it already. It does not generate more than it can accommodate based on the size of the tract and the combined residents and business aspects together form the mixed use. There is more than sufficient parking on the site to accommodate that density.

Mr. O'Brien said in that same report on page three, 4A, "the area cannot support additional multi-family housing." How is it that Mr. Bauman thinks the area *can* support additional multi-family housing? Or why is he saying it can't or is this not a fair . . .? Mr. Bauman said with all

due respect to his colleague in the same profession, one always seeks a second opinion. He can look at the same project that Mr. Price is looking at and both can see different aspects to justify an opinion that they will render. The facts are still the same, but maybe one will put more emphasis on one factor than the other. Mr. Bauman said you have to take what comes after that paragraph 4A in the report in context with 4B. The report is only in draft, so one can't say those are the final opinions of the Master Plan because it hasn't been formulated. That is why he specifically did not want to get into that area in his presentation. He doesn't know if it will be implemented. He is trying to justify based on today's Master Plan (1974) and how he applies it to the zoning ordinance that is in effect today. He is trying to draw the parallels what they are trying to implement here, why it benefits the community and why it won't be a detriment to it. Mr. O'Brien recognizes so many of the benefits that were pointed out. He was particularly interested that the testimony addressed parking and traffic and dealing with the height issue and the setbacks and the other struggles that are going on. But in general, when a professional has an opinion that an area cannot support, what does that mean? That there are too many people in the area or won't be comfortable? Mr. Bauman said he doesn't know from where Mr. Price gets his opinion, so he cannot justify it to him. He said what the Board has heard from professionals giving them opinions about traffic and the non-degradation of service and the possibility of even doing an improvement on service levels at that intersection of Centre Street and Washington Avenue, if this project goes forward to completion. Depending on whether you view traffic as being more important than something else in your position as planner or if you view demand vs. the vision, his opinion is that there is a demand that exceeds capacity right now. So, for him to justify Mr. Price's view plan, he can't. He knows that there is a demand in this neighborhood because there is a waiting list to get into the 120 unit; that means that the demand hasn't been satisfied there. Mr. O'Brien thanked Mr. Bauman.

The Chairman asked Mr. DiBiasi to clarify the underground parking for him. Mr. DiBiasi explained that the underground parking is for the owners of the retail business, the employees of the retail business and the residents. Access will be allowed with a card which will be provided to the residents, the owners of the retail stores and the employees of the retail stores. Mr. DiBiasi stated that Mr. Meka has accepted the suggestion and will cut the depth of the building by 10 feet along the entire back length of the building.

Mr. Burgis focused on the Master Plan. The Master Plan entity designation cited in the report regards the M-1 zone because there is no density regulation or recommendation for the B-4 portion of the site. It was put in his report just to be as comprehensive as possible so the Board would understand what the Master Plan was speaking about. The Master Plan designates whether 120 units or industrial and residential development. The proposed project is in the B-4 zoning designation. This permits a variety of business and commercial uses, not retail commercial and it does not permit any residential.

The Master Plan identifies a number of specific goals and objectives. There are only three that relate to this application. One of the goals talks about encouraging good design. You've had a lot of discussion about that tonight. He does not need to add to it.

The second goal talks about providing housing for a variety of income levels in the community and the third talks about a goal to provide a safe and efficient movement of traffic to and from properties and in the general surrounding street network. This is the Master Plan designation goals that the Board should be focusing on when they evaluate the application.

He said at the last meeting, the Chairman specifically asked him to reach out to Mr. Price, the planner who is working with the Planning Board in preparing a new Master Plan for the municipality to find out what is presently being considered. At the last meeting, the applicant indicated that the last draft they had seen included a specific recommendation that this property be designated for multi-family use as well as retail. In speaking with him on Friday, Mr. Price indicated that the Board, at the present time, has done a 180° turn with the issue and is now recommending that no multi-family development be provided on site. Having said that, he

suggests that the Board NOT give that any sufficient weight. It does not represent the planning policy of the municipality. There was a 2009 document that made a recommendation for multi-family – that has changed; and now a new document about to be formally presented at least for work session purchase, says something else. This should also change over the next several months before they get to a final document before a public hearing and voted up. This is why he suggests they limit the discussion to what the current, adopted Master Plan says. Unfortunately that Master Plan is 37 years old. Within the context of case law, that means it is a very outdated document and it minimizes the overall weight that we can issue (blank).

Mr. Burgis wanted to talk about use and building height. When it comes to the issue of use, one of the things planners typically look at is the manner in which the proposed use fits, establishing a development pattern. Everyone knows the surrounding development pattern and the number of multi-family developments. The 120 units that are now a part of this development were originally approved at 24 units to the acre; there are other multi-family developments in the area that have similar and slightly higher densities. The proposal, the 120 units plus this project comes out to 30.8 units per acre. As to the issue of the building height – what needs to be done is to step back and look at the slow evolution of municipal land use law and how it has treated all the different types of D variances. The Municipal Land Use Law requires that special reasons be identified and set forth and the negative criteria have to be addressed.

For the past 25 years, the concept of what has to be proved for these types of D variances has been modified. The Supreme Court concluded that in certain circumstances, the D variances do not have to meet the magnitude of a use variance (known as Coventry Criteria). The Court concluded in Grosso v. Spring Lakes, for a height variance, Coventry Criteria should apply to height variances. Consequently, the board should be evaluating this height variance, but in the context of the question: does this site function well, irrespective of not meeting the height requirements. The Grosso court took it one step further saying one could simply argue a variance that aesthetic considerations can represent special reasons. For this kind of application, there is a slightly watered down version of the process. The Board heard the argument about the manner in which the proposed building height fits in with the established development pattern.

The Medici Test is a requirement of all these variances. You have to show that you are not inconsistent with intent of the Master Plan. This project represents or encourages good design; housing for a variety of income levels; provides safe and sufficient movement of traffic to and from the complex. It appears that the project is designed well within the (blank). (blank) circulation to and from the property.

Mr. Burgis' oral report was in an out of range.

Mr. Burgis' company has done its own studies of school impact throughout northern New Jersey. This kind of project, this rule of thumb is using a standard of one public school child for every nine or 10 units. Their study consisted of over 10,000 units they looked at to gather school statistics. The above statistic seems to be fairly consistent throughout Northern New Jersey. That would suggest they should end up with about five public school attendees.

Mr. Burgis said inconsideration of the goals of the Master Plan, this project (blank).

Mr. Demerjian asked what the appropriate density is for this project. Mr. Burgis said the ordinance doesn't provide for an appropriate density. Mr. Demerjian asked for his opinion. He replied that for this kind of development where there are three residential floors and above/at grade retail, this is the high end, you typically find projects of this type at 25-30 an acre. The Nutley ordinance does not apply a specific density to this kind of building. The ordinance only has densities related to townhouse and garden apartments. Mr. Demerjian said it's always 20; there's nothing over 20. The ordinance provides 20 units per acre for garden apartments and 16 units per acre for townhouse, but this project is not a garden apartment. This is something

different than that. That's why with this kind of building type, there will typically be an ordinance that provides for slightly higher density.

Mr. DaCosta Lobo asked if Mr. Burgis could speculate as to why a suggestion may have been made, are there reasons that he could identify that may have suggested not having any further multi-family development here? Mr. Burgis doesn't like to speculate on someone else's reports, especially when they are in draft. In his conversation with the gentleman, he had the sense that it just came out more of a general discussion with the Master Plan Committee. Being that there are a number of multi-family developments in the area, they are trying to make a determination as to whether or not enough is enough. He would also suggest that he does not believe a final determination has been made. There is consideration to allow more retail in this area, but that is to be determined by the Master Plan.

Mr. DiBiasi asked Mr. Meka to come to the podium. Mr. Meka told the Board that he will go along with the Board's recommendation to reduce the building by 10 feet.

Steven Rogers was here as a private citizen. On behalf of the School Board, he apologized to Ms. McGovern. He said she is right and he will make a phone call tomorrow to try to rectify that matter.

Mr. Rogers said he got quite an education tonight. He really appreciates the work that is done. One of the things he noted in all the discussions about engineering and the components of putting a project like this together, and all the work that everyone does, there is one thing missing – a discussion about crime. Based on his experience working as a police officer for nearly 40 years, he has been in that area, night and day and over the years he has seen drug problems. He has walked through there and seen hypodermic needles, condoms. There was arson down there. He remembers telling his partner that he wished someone would come in here, buy it up and do something significant with it. He wasn't talking about all the good things we heard tonight – he was talking about quality of life. The people who live in the neighborhood had to put up with a lot and he was thankful they are there. They are a part of the neighborhood watch. They would give the police a heads up. He hopes the board would approve this project here and anywhere else in the town where there is deterioration. They would be doing a great service in helping prevent an ever creeping crime problem that is coming this way. That is the area where it will begin. Something significant needs to be done to change the quality of life down there. Since the 120 unit has been built there, hypodermic needles and abandoned cars have disappeared. The officers working that beat no longer see the problems that Mr. Rogers had seen creeping into that area. He would encourage the Board to think about this while they decide whether or not to approve this application.

Mr. Alessio had an issue with the certified letter he received over a week after the scheduled meeting in November. The chairman said this issue was discussed at the last meeting with the attorney. Ms. McGovern had a signed affidavit of service from the applicant's attorney that all property owners were serviced on November 8, 2011. Mr. Alessio's family has lived in that area for 70 years. He wants something done there but feels this is a rush to judgment project that he doesn't believe is good for the community. Mr. Alessio expressed his displeasure of this project.

The chairman said there is another meeting on February 13. Ms. McGovern said if Mr. Alessio feels there is mail fraud, he should take this to the police. Mr. Alessio wants another letter sent to everyone. Ms. McGovern said they can only go by what the statute says. He doesn't want to hear all these rules.

Mr. DiBiasi will have updated drawing provided to the Board members before the next regular meeting on February 13, 2012. The new drawing will have the suggestions and commitments incorporated into it.

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INVOICES

- Pennoni Associates – Site Plan review (\$606) 304 Hillside Avenue – approved
- Pennoni Associates - \$2,020 – Meka – Approved

RESOLUTIONS:

- 4 Stockton Place – Approved
- 50 Passaic Avenue – Approved
- 39 Wilson Street – Approved
- 304 Hillside Avenue – Approved
- 21 Freeman Place – Approved
- 189 Walnut Street – Approved
- 39 William Street – Approved

BUSINESS – None

LITIGATED MATTERS – None

MINUTES – None

Respectfully submitted,

Marie L. Goworek