

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
OF DECEMBER 11, 2014**

Following are the Fair Lawn Zoning Board of Adjustment's Meeting Minutes from the Zoning Board Special meeting held on December 11, 2014

Chairman Todd Newman called the Special meeting to order at 7:10 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present: Mr. Gil, Mr. Seibel, Mr. Blecher, Mr. Lowenstein, Mr. Puzio,
Mr. Racenstein, Mr. Naveh & Mr. Newman

Absent: Mr. Sacchinelli, Mr. Pohlman, Mr.Zharnest. (Mr. Pohlman later arrives)

Also in attendance were Bruce Rosenberg, Board Attorney; Candice Galaraza, Court Reporter; Ann Peck, Assistant Zoning Officer & Cathy Bozza, Zoning Assistant.

Board Professionals in Attendance: Board Engineer: Paul Azzolina,
Board Traffic Engineer: Mark Kataryniak
Board Planner: Paul J. Kittner

Pledge of Allegiance is cited.

Commercial Business Carried:

1. Application #2014-15, Varvara Property LLC/Oceanos Oyster Bar and Sea Grill
2-27 Saddle River Toad, Block 1301, Lot 13-15, Zone R-1-2
Proposed expansion to create additional dining room seating. Will create a Dining Room on 1st floor and move all offices to 2nd floor at existing structure located on site currently being used for offices. Will create additional Dining area on first floor of existing storage structure and move storage to second floor. Will remove an existing structure in rear of the property and create additional parking. Restaurant is not a permitted use in the R-1-2 zone which requires a D-2 variance for expansion as per Section 125-57.D.(1)(d)[1]. Would increase the impervious coverage from 86.1% to 87.5% where 35% is permitted as per Section 125-12 Schedule of area yard and building requirements. Required 10' minimum rear and side yard buffer where less than 10' is existing and 1.0' is proposed as per Section 125-42.F. Requires an amendment to existing parking variance. Presently site had 64 parking spaces with expansion site will have 71 spaces where 114 spaces are required. All other variances and/or waivers that may be required for this application.

Mr. Newman (Chairman) announces the passing of one of their esteem Board Members, Mr. Sy Karas. He would like a moment of silence to remember a great Board Member and a great guy.

Moment of Silence.

Fees have been paid and there is proof of service.

Mr. Socrates Lambrinides (Attorney for the Applicant) steps forward to discuss the last meeting where the Architect, Demetrios Kaltsis was testifying. He asks the Board if they have any further questions of him or if the Public does, Mr. Kaltsis is running late this evening, so he would like to call forward, Mr. Rigg (Engineer for the Applicant)

Mr. Newman would like to clarify where they concluded last time with their Architect. Was it still open for the Public to question him?

Mr. Lambrinides explains one of the public members behind him stated she was not finished with her questions of him. To his knowledge, he believed they were done but he does not recall closing the Public portion. If she has a question, he would be happy to have the Architect respond to her.

Mr. Newman notes this and will leave it up to him when he would like to bring him forward.

Mr. Lowenstein (Board Secretary) notes for the record, Mr. Pohlman (Board Member) has arrived.

Mr. Newman swears in: Bruce Rigg
1000 Maple Avenue
Glen Rock, N.J.

Mr. Rigg states he is a Licensed Professional Engineer in the State of New Jersey.

Mr. Newman certifies Mr. Rigg as an Expert in the Field of Engineering without objection from the Board.

Mr. Lambrinides (Attorney for the Applicant) states all Board Members have a copy of Mr. Riggs plans in front of them. He will have Mr. Riggs explain what the plans are and what they intend to do.

Mr. Rigg begins by stating at the last meeting there was a lot of questions about the history of the site and the history of the site's previous approvals. What he has done since that time was compiled the Deeds that date back to the original Mr. Kind purchasing the property, plus the Board of Adjustments approvals from the past. Mr. Rosenberg (Board Attorney) has a copy of it & a supplement to it. He does have a copy for each Board Member & Board Professionals....
(Passes them to Board Members & Professionals.

Mr. Newman clarifies that Mr. Rigg will discuss his sources as well.

Mr. Rigg concurs.

Marked into evidence as: **Exhibit A6**

A6-Resolutions/Deeds from History of Site.

Mr. Rigg explains he will try not to belabor the first regarding Ownership, but he wants to be sure the Board is fully clear on how this property (inaudible) since there seems to be some confusion.

Mr. Newman (Chairman) states he does not want to belabor it either but he believes clarity here is very important since it is continually coming up.

Mr. Rosenberg (Board Attorney) states even though it has been marked collectively as Exhibit A6, he thinks it is vitally important for the record they review and put it to the record as A6 each of the documents that constitutes this package so they all understand the documents he will be referring to in his testimony.

Mr. Rigg concurs.

Mr. Rigg begins his testimony. Refers to a package stating Fair Lawn Board Actions and the other is the Ownership portion. He would like to begin with the ownership portion, he feels this would be the right way to start. The first two pages are a chronology of the ownership that dates back to 1930 when Mr. Kind first purchased the property in pieces. The 2nd is a survey that was prepared by Allan Rigg, December 7, 1971 in which he has highlighted the 3 tracks is how they purchased it.

Testimony continues...this map will show up again, this was actually part of one of the use variance applications when they added something.

Mr. Rigg explains the Deed below this, which is D-book 1713/Pg.130 was a piece of property sold by John Hendricks and Lizzy Hendricks to Nicolas and Anna Kind, this is the first track which is the most northerly which included the two dwellings and the building. It was a 50x200ft. Piece at that point in time.

Mr. Newman (Chairman) notes this was April 2, 1930...

Mr. Rigg continues his testimony. If they look at the survey it is essentially the most northern piece. In the back right corner, it states 1st track, this is because in 1971 the 3 tracks were composed together.

Mr. Newman questions his source being Allan Rigg.

Mr. Rigg explains Allan Rigg did the survey and he received some of the information from the Zoning Office and they also went to the Bergen County Courthouse and pulled the Deeds so they have the full chronology for the Board.

Mr. Rigg continues...the 2nd Deed is listed Sunnyside properties to Nicolas & Anna Kind. This is dated December 2, 1946....Book 2711/Pg. 203 is for the 2nd track shown on the same survey which includes the extra building which is shown as a two story frame stucco building...they were trying to sell them the piece with the barn/building....

Mr. Rigg notes actually there is evidence it wasn't a Barn, it was a Garage.

Mr. Rigg refers to the next Deed, which is Nicolas & Anna Kind. The Kinds Dairy, which is dated January 1, 1954/Book 3510/281 in which he leased the property to Kinds Dairy. He believes he leased it to a corporation he owned but leased it to them...

Mr. Newman clarifies and asks Mr. Rigg if this corresponds with the incorporation of Kinds Dairy or no? Was Kinds Dairy already in existence?

Mr. Rigg testifies he does not know this. He does not know when the incorporation actually took place.

Testimony continues....

Mr. Rigg moves to the next deed. Shown is John G. Lucas & Colette Lucas, to Esterino B. Leon and Hilda Leon to Nicolas Kind which is dated June 14, 1954/Book 3544/Pg. 343 which is the 3rd track shown on the survey, the most southerly portion of the property which essentially created the entire parcel which ends in Mr. Kinds name.

Mr. Rigg refers to the next one he gave them only because it was in the process. It was Kinds Dairy to Prospect Park National Bank dated June 18, 1954. Essentially Mr. Kind had a mortgage with Prospect Park National Bank, Kinds Dairy made sure they were subordinate to the Bank, so the mortgage came first. It does not make a difference to the actual ownership...

Mr. Rigg speaks to the next one, May 16, 1955, Book 3652/pg. 635-Kinds Dairy conveyed back to Nicolas & Anna Kind their rights to the property which essentially was giving up their lease. They conveyed all the rights back to him.

On the same date is the next deed; Book 3652 pg. 638; Nicolas & Anna Kinds, Allan Dupee & Catherine Dupee, which is a 10 year lease on the property for an Ice-Cream & Milk Bar in which the Kinds reserved the right in this Deed to live in the back dwelling and to use a portion of the Garage. They had the rights to use 2 of the 4 parking spaces in the garage and also had rights to share the 2nd story Loft. He believes they had to pay an extra fee of \$5.00 a month and if they used the 2nd floor in the loft, it was another \$5.00 a month to pay for electric and gas.

Mr. Rigg continues...the next deed is 1965, Nicolas Kind, a widower, conveyed the property to Allan Dupee & Catherine Dupee. This is where he sells the property to them, they have already leased it and now purchasing the property from him. It has the 3 tracks and once again reserved the rights to live in the back. A life estate to live in the back building as part of the sale.

Mr. Rigg refers to the next deed. Allan Dupee & Catherine Dupee to Lewis & Ivanette Marcus dated December 10, 1971. Book 5597/pg.421...

Mr. Rigg realizing he is one ahead of himself, apologizes and goes back to one before that one, which is Allan & Catherine Dupee conveying a 10ft. strip along the frontage to the Borough of Fair Lawn for road widening. This was October 10th, 1968/Book 5259/pg. 391.

From this he goes back to the one of December 10th, 1971/Book 5597/pg.421. The Dupee's sold to it to Lewis & Ivanette Marcus and last but not least on June 12th, 1985 Lewis and Ivanette Marcus conveyed (inaudible) bar/office which would be the present Owner since 1985.

Mr. Rigg explains the only thing this helps with is; Kinds Dairy has been there in one form or another since 1954. He cannot tell them what was there before then but at least at this point in time there was a lease between this Nicolas Kind and the Dairy so they can show it has been a non-conforming use of one sought or another on this property since 1954.

Mr. Rigg moves to the other file provided...He testifies he has 3 use variances. Expansion of non-conforming uses and notes Mr. Rosenberg (Board Attorney) may have one additional...

The 1st one was to Louis & Ivanette Marcus, dated 1983. They applied for a permit to add 6x19ft. one story addition to provide toilet facilities within the building for the customers. It was considered an extension for a non-conforming use which was approved on July 5th, 1983.

Mr. Newman (Chairman) asks if the Document indicates what the use was at that time.

Mr. Rigg reviews and testifies he believes the Zoning appeal does not...it just states; provide toilet facilities for the customers & public and called it a commercial building at this point in time.

Mr. Rigg moves to the 2nd variance. The initial application being April 12, 1987 by the Panteleakis's for a construction of a one story addition to the existing building. This was approved in May of 1988. He has included in the package the site plan that was prepared by Harry Clinton to show this and also a copy of the site plan which was approved by the Bergen County Planning Board showing this was again approved for the expansion of the non-conforming use.

Mr. Rosenberg (Board Attorney) interjects to ask if he may on this particular document...asks Mr. Rigg if he looks at what he has attached, the application is dated April 21st, 1987 and it does say; to permit construction of a 30x23 one story addition and therefore extend a non-conforming use and other bulk variances requested, then the narrative of the April 21, 1987 application talks

to the construction to the addition of the building for the expansion of the non-conforming use but the resolution attached speaks to an application of February 2, 1988?

Mr. Rosenberg asks if the Board members could follow down to the “whereas” clause.....reads aloud: “whereas on this meeting of July 6, 1987, the Zoning Board of Adjustments granted applicants a use variance concerning the within project”. He thinks there is a lapse here and he asked Ms. Peck (Assistant Zoning Officer) whether she has this resolution from 1987 in which he thinks approved the project for the addition to the building, whereas this one in 1988 was for approval having to do with the easterly side, provide a buffer and allow for tandem parking..

Mr. Rosenberg did not consider this 1988 resolution to approve the April, 1987 application itself and ask Ms. Peck if she could find something to fill this gap...

Discussion continues...

Mr. Newman swears in: Ms. Ann Peck
Assistant Zoning Officer to the Borough of Fair Lawn

Ms. Peck testifies she has the minutes of the Zoning Board of Adjustments from 1987 and the page reads: decisions rendered by the Fair Lawn Zoning Board of Adjustments at the meeting of May 4, 1987...this case was continued to June 1st and continued through the book to the end where they grant the approval and it states: “addition to the existing restaurant is an extension of the non-conforming use, the 2nd variance was for a buffer strip on the northerly side, does not conform to the zoning requirements, the buffer strip is not provided on the southerly side of the rear line and 3rd, for tandem parking (inaudible) do not conform...

Ms. Peck clarifies with Mr. Rosenberg if this is the one?

Mr. Rosenberg asks if there is an actual resolution that she was able to find.

Discussion.....Ms. Peck testifies in the minutes it states approved for the 3 items she just spoke to. Explains the “minutes” do not include the resolutions. It memorializes just the resolution and what was granted. The physical resolution that opened in the minutes does say it was granted.

Discussion continues....

Mr. Lowenstein refers to another clause, the 5th “whereas” clause and document that Mr. Rosenberg referred to states; “whereas the meeting on July 6th, 1987 the Zoning Board of Adjustment of the Borough of Fair Lawn granted applicants a use variance concerning the within project.

Discussion continues.....

Mr. Rosenberg explains he asked Ms. Peck to find the Resolution this document is talking about and has not been able to find the actual resolution itself. It goes back to the Chairman’s question

of Mr. Rigg which is; did the Zoning Board of Adjustment when it approved this make any actual findings that textually could help the Board in its determinations of the non-conforming.

Mr. Rigg (Applicant's Engineer) testifies to the Board after speaking with Mr. Rosenberg earlier that day, he looked back to their files because they had done the site plan back in 1987. They were not retained until after the use variance was actually approved. He believes they prepared the application, made sure they received the use variance first and the Board then sent them back to get a site plan approved which they then finished. Mr. Clinton has a site plan but there is no grading on it, there are a lot of things lacking from what the Board would normally request.

Mr. Rigg continues. They came back and did this and received final approval for which he also included in the package by the Bergen County Planning Board which is the final Document of the site plan. It took over a full year for the site plan to be approved. He does not know if the Board thought it would take that long for the site plan approval but that is what took place at that point in time.

Discussion continues....

Mr. Rosenberg speaks to the Supplement Resolution which was found by Ms. Peck earlier.

Mr. Rigg refers to the additional variance in July of 2005 in which Mr. & Mrs. Panteleakis applied for another addition and subsequently another bathroom to expand the non-conforming use which was approved on July 18, 2005 by this Board. It was a pretty straight forward application, it was a small addition onto the back of the building.

Mr. Rigg summarizes his testimony by stating this is the History found and he believes he has worked with Ms. Peck to provide the Board with everything they could so the Board would know where it began and where they think it is today so they can begin from here and propose what it is they plan to do now.

Mr. Rosenberg would just like to follow up with another question of Mr. Rigg. Refers to Exhibit A6- and asks Mr. Rigg about a referral in his testimony to a plan by an Architect named Harry Clinton and this is all in the Board Members packages and dated April 20, 1987.

Mr. Rosenberg would like him to describe this Exhibit into the record.

Mr. Rigg concurs and testifies this exhibit shows the entire property, shows the building pretty much in the same configuration they are in now. It is when they added the building into the rear of the existing structure. The extra room he would have between the garage and next to the outdoor dining area they are proposing. 23x30ft. addition. Before this application, the parking lot was not fully improved, this application included expanding the parking lot so that it was fully paved, there was curbing all in the front change, and the driveway access was changed.

Mr. Rigg continues his testimony. Essentially they are improving the entire site as part of this. Mr. Clinton was the initial one that the board approved and the subsequent one which is in the

packages, the plan their office prepared has the County approval which changed the access and a few other things.

Mr. Rosenberg asks Mr. Rigg if it is fair to say that the Harry Clinton plan of 1987, except for the approval by the zoning board in 2005 is really the way the property exists today in terms of structures.

Mr. Rigg testifies other than refrigeration and a few other things in the back, yes.

Mr. Rosenberg explains he just wanted to get everything into the record so everyone understands at least the history of approvals that the Borough was able to locate and secure.

Mr. Rigg clarifies with the Board they should have two things from his office. The 1st being the topographic survey prepared for Oceanos Oyster Bar & Sea Grill, dated June 14th and revised August 11, 2014 and a preliminary and final site plan, Oceanos Oyster Bar and Sea Grill, again revised August 11, 2014 which consists of 4 sheets.

Marked as A7-Topographic Survey
Marked as A8-Site plan

Mr. Rigg testifies what he is trying to do here is to make sure they have the history of the property or the conditions of the property. He will first go through the location...refers to Exhibit. Block 1301...describes in detail. Lot size, etc...shows it has 5 buildings on the site, the main restaurant, a two story framed building in the front which is currently being used as the Office, a framed building in the back, he believes is being used as storage. To the rear of the site is a One story framed building which shows in the documents presented earlier was in fact the residence the Kinds lived in at the rear of the site. They have a trailer shed in the back and a (inaudible) building directly behind the existing restaurant. There is a paver patio in between the angle framed building/storage building and the restaurant currently has outdoor seating during the warmer weather.

Mr. Rigg describes the driveway in front of the site on the north side which is used for parking. This was approved in 1985 for (4) spaces for employee parking. They have pavement which extends into the County property to the rear, they have a parking lot with one access off of Saddle River road which runs directly into the center of the property to access the restaurant itself. As part of this application his client, first and foremost asked to go through many different concepts for this site. Part of it was going to the DEP to see what they could and couldn't do. They gave them a plan which included other properties beyond this. They came back with a jurisdictional determination giving them the flood hazard elevation for the site.

Mr. Rigg continues. What they plan, if the Board does approve this application is go back to them again for another jurisdictional determination because they believe this new application will not require State approval. It was essentially designed so they did not have to go through the process. This is why they are using the existing buildings in the front. It would become very cumbersome to the client to put on an addition to this building over a certain size, they may

require they tear down the entire building and do it all over again...this is why they are doing it this way versus coming in with a different configuration to the site.

Mr. Rigg explains the elevation as shown on this plan shows the Flood Plain elevation at 50.5 and the Flood Hazard Elevation is 52.3. The 1st floor of the restaurant is at 50.4/50.5 so it meets the current flood elevation but design would be required by the State of New Jersey to be 1ft. above the 52.3 which they are doing with the building in the front but would require the entire restaurant to be brought up and it wouldn't function for his client. This is why they are doing the current configuration and thought it was important for the Board to understand this...

Mr. Rigg testifies they also went as part of a previous application before the State of New Jersey for a fresh water wetlands letter of interpretation...this was showing property all the way to the North and to the back at this point in time, there was a small isolated parcel on the County property that was off of this site in the rear. That letter of interpretation is over 5 years old and he does not know if they have actually obtained it, it would have expired anyhow. They will be confirming back to the Board and the Professionals. He has already received a letter from their Environmental Consultant this freshwater wetlands is no longer there....he is not sure what happened to it....

Testimony continues....

Mr. Rigg testifies one of the Professionals mentioned this in his report so he wanted to be sure to cover this.

Mr. Rigg moves to the Site Plan/Sheet #1/Sheet #2 is the proposed additions to the building. Notes, in keeping on the same subject of the DEP, as part of their requirements, if constructing within a Flood Hazard Area, it is permitted to construct 300sf of additional footprint, by a permit by rule, so 300sf can be added to any building in a flood plain. Once it is used up, it's done.

Mr. Rigg continues...this proposed construction on sheet 2 which is the addition to the building on the front of the site and the walkway between the angled building which used to be the garage which will become part of the restaurant, the two of these add up to less than the 300sf. they are permitted to do.

Mr. Rigg describes the additions that are shown. There is a walkway in which he believes the Architect already spoke to, there is a 46sf addition running from the restaurant into the building in the rear. They have a 250sf addition to the front which is connecting the building to the main restaurant and the building which was the old dwelling is gone, the trailer shed in the back is being eliminated as part of this. There were 5 buildings on the site and when they are done, it will be one building connected. The office will be run from the front but it will not be used for any other use and will not be rented to anyone else, it will be part of the function of the restaurant.

Mr. Rigg notes they have listed the Zoning requirements for the R-1-2 zone because this is where they are located. Speaks to the pre-existing non-conforming conditions...Front yard setback, side yard setback, rear yard setback and building height.

Mr. Rigg moves to the parking calculations... 1 space per two seats, with 189 seats, 94 ½, 20 employees, making a total of 115 spaces required. They are providing 67 spaces so they are asking for a parking variance. They are proposing outdoor seating which has exceeded 20 in the past. His client will keep this at 20 which is permitted without additional parking using the Fair Lawn Ordinances....

Mr. Newman (Chairman) questions the notation stating; no spaces required for the additional 20 seats, why?

Mr. Rigg explains they are considering it outdoor café seating, Section 125-43.C. (5) they are asking for a variance because they are asking that the outdoor café be between the buildings instead of out on Saddle River Rd...

Mr. Newman clarifies with Mr. Rigg asking him if Section 125-43.C. (5) does not require additional parking spaces.

Mr. Rigg testifies for the first 20 seats of outdoor seating, no.

Mr. Rigg explains they have taken some of the parking where spaces were deficient in the rear, spaces 48-58 needed to be cleared and add some additional pavement to be sure they were at the proper depth. They were approved originally as compact spaces. Spaces 53, 53 & 54 will now only be compact spaces. They have added a row of parking spaces in the rear of the building with a fully accessible driveway behind them with a 24ft. aisle.

In the back rear which would be the northeast corner, they are adding a proposed refuse and recycling area enclosed with a 6ft. fence which believes will be a variance.

Mr. Newman asks how many current parking spaces there are.

Mr. Rigg testifies existing outside is 62 and proposing 67.

Mr. Newman asks how much the seating will be increased by.

Mr. Rigg refers back to his client for an answer to this....

Discussion....

Mr. Lambrinides (Attorney for the Client) defers to his client. Total seats will be 189.

Mr. Newman asks what the current amount of seating is.

Mr. Newman asks the Applicant to please step forward and reminds him he is still under Oath.

Mr. Nicolas Panteleakis (Applicant) testifies the current occupancy is 135, seating is less, which includes the Bar seats.

Mr. Newman clarifies it would be 189 with the Bar seating that is proposed.

Mr. Panteleakis testifies yes. Inside.

Discussion continues...

Mr. Newman notes that currently there is one parking space for every 2.2 seats?

Mr. Lambrinides testifies he believes it's every 2 seats. He believes there is an ordinance pending which would increase it to 3 seats but he does not know if it has passed as of yet.

Ms. Peck (Assistant Zoning Officer) interjects to clarify this statement, there is no Ordinance, there is a recommendation in the existing Master Plan but the Council has not taken any action on it.

Discussion continues.....

Mr. Newman notes he would like it on record what the difference is going to be from a ration standpoint, not just a pure numbers standpoint. He thinks potentially it could present a difference in operation and functionally of the parking onsite.

Mr. Rigg (Applicant's Engineer) notes they will hear testimony in the near future noting they will be going from 15 employees to 20 employees and reiterates the seating is 135 to 189.

Mr. Newman so notes Mr. Rigg's reference to the Applicant's Traffic Engineer and how he will speak to this...apologizes for interrupting his testimony and lets him continue...

Mr. Rigg notes most importantly at this point he is trying to get through all the variances he has listed and he believes the Board Professionals noted a few additional ones...to be sure all is correct.

Mr. Rigg speaks to the impervious existing at 85.9%-proposal is 88.6/ explains there is a slight increase because of the impervious in the rear of the site and of course the additions...

Mr. Rigg notes they also are applying for 125-17.A. The Restaurant not listed as a permitted use.

Mr. Rigg continues testimony referencing variances below....

Section 125-4.A. (2) 115 Parking spaces required/67 proposed.

Section 125-42.F. a 10ft. minimum buffer butting a residential district where 0' is existing, and 1ft. is proposed. Explains to the Board so they understand, this is the additional parking they are installing in the rear of the building, they are going to a 1ft. offset to the pavement. The pavement in the front of the building is approximately 2inches off the line of 0.

Mr. Rigg moves to Section 125-43.B. (1) required outdoor café is supposed to be located in the front of the building where the outdoor seating is proposed in the center of the building or in the rear.

Section 125-48 .C. is required parking spaces have direct access where spaces 1-6 which are the spaces in the front of the site. They will be employees only, and will be marked as such.

Section 125-48.C. (1) a. is required turn-around at the end of parking aisles where none are existing are proposed. He does agree with this, the only thing he would mention was this was on the 1985 plan in this exact configuration & was approved in this fashion.

Section 125-48.C. (3) required parking areas that curb where no curbing exists along the southerly and easterly pavement. Explains they are not adding any proposed curbing in these areas which exists without curbing now and this is how they were originally approved.

Mr. Rigg explains essentially how the site is graded to the rear so the run off is a sheet flow to the rear of the property instead of collected in storm drains. To install curbs would change this.

Mr. Rigg moves to 125-47.C. (7) required driveway to be 1ft off property line where 0.3 is existing. He explains this is where he referred to earlier. This is the front area where the employee parking is, there is as small piece of pavement that runs to the adjoining property.

Section 125-48.B. & D. required one loading space where there is no designated loading space existing or proposed.

Mr. Rigg explains his client's intention here is for the loading and unloading to be done on off hours and will all be in the rear of the building. Their objective is to get all them around the back of the building when there are no vehicles onsite.

Mr. Rigg moves to the additional waivers they are asking for. One is adding additional (inaudible) 200ft. beyond the site and a Landscape plan that details where they have (inaudible) Other than the rear of the site which is owned by the Panteleakis's, they are adding the curbing and pavement at this location and are taking down a tree but are supplementing it. Any area that is open will be landscaped as part of this...there are areas that are landscaped now and areas they will supplement. He didn't believe it was necessary to bring another plan unless the Board sees reason to do this.

Mr. Rigg continues...he believes there are additional variances listed in one of the Professionals reports...the CMA report and also Mr. Azzolina's.

Mr. Newman (Chairman) swears in the Board Professionals.

Mr. Paul Azzolina (Board Engineer)
Paul J. Kittner, Jr. (Board Planner)
Mark Kataryniak (Board Traffic Engineer)

Mr. Azzolina notes one minor correction on Mr. Rigg's testimony regarding impervious coverage/a slight calculation where the impervious coverage actually does not change. Points out the discrepancy...referencing the discussion that took place a month or so ago regarding this.

Discussion...

Mr. Newman (Chairman) states he thinks it is important because it is more than just a numerical, it is a difference between an existing non-conforming and an increase in the existing non-conformity.....

Mr. Rigg testifies he will have to check the numbers again and if need be, he will confirm them back to the Board. He believes he did go through the numbers again and eliminated impervious as part of this project which is shown, most of impervious was off site so the impervious coverage may be the same but now it is on the property where before it was on County property.

Mr. Azzolina concurs by stating this could very well be...

Discussion continues...

Mr. Rigg reviews the site with the Board....testifies technically Mr. Azzolina is correct, they do not have an increase in impervious but do have an increase in impervious on the property because they have added it here and taken it there...

Discussion continues...

Mr. Azzolina points out another issue in his report which was relative to the outdoor seating area. Whether these seats should be included as part of the total seating for the restaurant for the fair weather months of the year. He does agree there is a section of the Ordinance that speaks to outdoor cafes but he is not certain their type of seating is the same as what the ordinance speaks of. It is an interpretation issue, so it would be something for the Board to decide. His reading of this is more for a different type of use/a Café would have a shorter duration as opposed to Fine Dining where customers will be there for a couple of hours. This may factor into this and there is certainly some interpretation involved whether outdoor seating can be excluded from parking...

Mr. Rosenberg (Board Attorney) has a question in light of what Mr. Azzolina has asked. Directs his question to Mr. Rigg and asks since they agreed that Mr. Clinton's 1987 site plan is as the site currently exists today with the exception of the 2005 amendment to allow for additional changes to the back end, he noticed the 1987 plan does not show any outdoor seating?

Mr. Rosenberg continues...the question then, to follow up with Mr. Azzolina is; if he or his client can explain to the board how the outdoor seating came to be. What permits or applications were made to the Building Department or maybe Ms. Peck knows how this came to be? For the record, he thinks this is important in light of Mr. Azzolina's comments.

Ms. Peck (Assistant Zoning Officer) testifies the Outdoor Café licenses are controlled by the Zoning Department. Under the Outdoor Café (inaudible) with Mr. Azzolina's definition. Ms. Peck reads from the Ordinance....

Ms. Peck states an Outdoor Café permit was issued to Oceanos. They pay a yearly fee and put their chairs in during the winter months and take them out like everyone else...

Mr. Newman asks Ms. Peck if it would be her interpretation they meet with the Borough's parking requirements.

Ms. Peck testifies the determination was made when the request for the Outdoor Café was made.

Mr. Newman would like to jump back a minute because it was unresolved. He agrees with Mr. Azzolina there is a number discrepancy here which would not require an increase in the impervious coverage....it does come to 32,141, not 33,141, correct? The existing is at 32,156sf which is actually a very slight decrease in impervious rather than any increase.

Mr. Rigg reiterates he would have to check the numbers again...

Discussion continues...

Mr. Newman (Chairman) notes he would like the numbers before the end of the night. He would like the record clear and they know what the Board is considering.

Mr. Rigg concurs and moves to continue with the other variances...

Pg. 5/125-40.A. (1) They cited outdoor storage..

Mr. Newman clarifies with Mr. Rigg he is speaking to the CME report.

Mr. Rigg testifies yes...reads from the report and notes what he is stating is; the refuse storage is not permitted. He does not necessarily agree but will ask for it if necessary. He thinks Trash storage outside is required on every property and every residence.

Mr. Kittner (Board Planner) he thinks the reason this was sited was, obviously residential uses have outdoor storage on a temporary basis of trash receptacles as opposed to trash container. This is not permitted in the zone and this was the reason for the variance request.

Discussion on past approvals....

Mr. Kittner testifies he does not know if relief was provided in the past. They saw the information today and has not had a chance to review the materials, but if it were granted in the past then certainly the applicant could demonstrate this and vindicate this to the board.

Discussion continues....

Mr. Newman clarifies what Mr. Kittner is saying; if it were not specifically granted in the past, the board should specifically grant it now.

Mr. Kittner agrees.

Discussion continues....

Mr. Rigg has no issues with requesting this variance...

Mr. Rigg refers to 125-47.J. (6) Trash Enclosure shall be constructed on 3 sides of masonry at least 6 ft. high and their proposed trash enclosure (points to exhibit and shows location) states it is enclosed with a 6ft. Stockade fence instead. They are asking relief for a standard trash enclosure they would normally install....if the board sees fit to think of a better way to enclose it, they will do so.

Mr. Newman asks being it is a stockade fence, has there been any problems with any vermin or things of this nature.

Mr. Panteleakus (Applicant) steps up to the podium and testifies he has no problems at all. They have extermination inside and around the property...

Discussion...

Mr. Newman states this would probably be the Board's only concern and if the Professionals don't have anything to suggest about the current enclosure in anyway and it is not close enough to anyone where odor could be a problem, the only thing he would be concerned with is the pests' situation.

Mr. Panteleakis testifies there are heavy covers on the bins.

Mr. Rigg (Applicant's Engineer) continues with his testimony noting as he reviews the variances, the next 3 have been addressed.

He then moves to 125-38.B. (4) All fences must be erected within the property lines. He explains the Panteleakis's own the property to the north, the stockade fence is actually on the north side. To the south, there are two fences, one being on their property and one on the adjoining property...he cannot tell them about the 2nd fence but he knows there is a fence on their side and in the rear, they are relocating the fence back to their property line. As they are removing the impervious, they are also removing the fence and they will be sure the fence is no longer on the county property.

Testimony continues...he notes he does not know if the fence to the north requires a variance but if it does, we will be asking for it. His client will be maintaining it in either location.

Mr. Newman asks Ms. Peck or Mr. Kittner if they see any need for a variance relief there.

Mr. Kittner (Board Planner) testifies he believes the Applicant has agreed to relocate the fence onsite and if this is done, he does not believe other variance relief would be required.

Mr. Rigg refers to Pg. 6 125-47. 10/11- Landscape (inaudible) parking should have islands at the end. Again, this is a pre-existing condition which was approved previously. They do not have islands at the end and propose not to install them at this point in time and would like to maintain the parking lot as it is today.

Mr. Rigg ends his testimony and believes these are all the variances.

Mr. Kittner (Board Planner) would just like to digress back to the last (inaudible) and the fence... The fence on the north is actually off the property line and he believes they are going to relocate the section that was in the County portion so the Board should be aware the fence is not on their property but his understanding is they may own this parcel adjoining this restaurant use so as long as the County does not object to this. He still thinks a variance is technically required for this because it is not located within the property line...

Discussion.....

Mr. Rosenberg (Board Attorney) notes they will need to relocate this fence onto their property on the north side because quite frankly they could sell this parcel in the future...

Mr. Newman (Chairman) reiterates for clarification, all fencing will be on this parcel.

Mr. Rigg testifies all the fences on this property will be contained on this parcel.

Mr. Rigg speaks to space 10 in the front. There is an existing Tree in the front that is shown on the Clinton plan. His client has kept it, preserved it and does not want to take it out, still healthy at the moment but space 10 is not an ideal space. His client really does not want to take the tree down but if we have to preserve this space the tree will have to come down essentially. The whole front of the building is shaded by this tree and they would like to keep it.

Discussion....

Mr. Newman asks Mr. Rigg if Space 10 is unusable.

Mr. Rigg testifies it is usable, but it is just not easily accessible. If someone pulls into it, they may have to back out. Instead of straight back they would have to back out to one side or another.

Discussion continues...

Mr. Newman asks Mr. Kataryniak (Board Traffic Engineer) if he thinks Space 10 should be designated a Compact space?

Mr. Kataryniak testifies it would provide some additional room, a compact would (inaudible)

Mr. Kataryniak states the applicant had originally proposed this space as a Handicap parking space, which he thought would be problematic and revised it back to a standard space so, a compact would be advisable....

Mr. Rigg agrees to this change.

Mr. Rigg speaks to two Evergreens that are next to the current office. They were planted most likely in 1985 and as with the nature of the plant they are overriding the building and will not be saved during this.

Mr. Rigg speaks to the other tree removals on the property but they will replace 5 trees per Fair Lawn's ordinance which are shown on the plan. 3 in the back and 2 in the front.

Discussion continues with the types of trees they will be replacing...

Mr. Rigg moves to Sheet 3, explains there was a drainage pipe that was coming to the back of the site, one of the roof connections, and it will be eliminated as part of the application because Mr. Azzolina asked for this. In addition, they have added a seepage pit in the back. It will take all the runoff from the freezer building in the back and the addition...where ever those pipes come from they will be put into the seepage pit in the back to maintain and reduce the runoff from the site.

Mr. Rigg states other than this, they have tried to keep the site as is. The building they are trying to make it all connect properly, meet all the State requirement so there are no issues with the DEP and also have something that will flow for his client's restaurant at the same time.

Mr. Rigg moves to Solid Waste Disposal and points to Exhibit, shows location and reiterates how his client maintains the different types of containers which provide for all the different types of materials from the restaurant use and it will be easy for the waste management companies to be able to get to it.

Mr. Rigg speaks to Off Street Loading. It will be in the back of the building.

Speaks to the lighting, Mr. Rigg testifies they do not propose to change any of the lighting at the existing parking area, however they did add one light to the back because they added parking back here (shows location on Exhibit) a light directly in the back corner to light the parking area in the back so it will not be dark in the evening.

Mr. Kittner (Board Planner) asks Mr. Rigg if it is his testimony that the existing lighting in addition with the proposed lighting offers and provides suitable and safe lighting in the parking area.

Mr. Rigg testifies he believes it does. He should note though that one of the lights is attached to the large tree in the front, so if in fact the Tree does have to come down, they would have to add a light fixture in the front.

Mr. Newman (Chairman) would like to clarify Mr. Rigg's testimony. He feels like he is missing something because he has mentioned it numerous times and asks Mr. Rigg if any report or anything suggested that this tree has to come down?

Discussion....

Mr. Rigg testifies he believes the comment was regarding the parking space being blocked by this tree but other than this...

Mr. Newman notes that issue was resolved so there are no other issues?

Mr. Rigg replies correct.

Mr. Lowenstein (Board Member) asks if the seepage pits he spoke of are shown on the site layout.

Mr. Rigg testifies it is shown on Page 3/backhand corner....

Discussion.....

Mr. Rigg completes his testimony.

Mr. Newman asks the Board Professionals if they have any questions for Mr. Rigg.

Mr. Azzolina (Board Engineer) has one other question regarding the Grease-trap facilities. Are there any (inaudible)...

Mr. Rigg notes he is pretty sure it is within the requirements. Defers this question to Mr. Panteleakis.

Mr. Panteleakis steps up to the podium and testifies they have an indoor/above ground Grease trap.

Mr. Azzolina questions the exterior to the building, there is the waste cooking oil (inaudible)

Mr. Panteleakis testifies there is an outside company they hire, called Darling International. They have their own canister where the oil is poured and they come and take it away.

Discussion continues.....

Mr. Azzolina noted when he did his inspection in the summertime, it looked like there was some (inaudible) with a Tarp over it...

Mr. Panteleakis testifies everything is corrected now.

Mr. Azzolina testifies he believes Mr. Rigg's testimony on the revised plan addresses all his comments that were set forth in his report. There were some conflicts relative to storage but all these issues have been resolved...relative to the tree, he agrees everything should be done to try to save the tree, etc....in regards to the impervious discussion, the variances required, etc. he believes Mr. Rigg has addressed all his questions.

Mr. Kittner (Board Planner) testifies Mr. Rigg addressed the waivers and variances that were outlined in their report with the exception of the use variance. He would defer parking to our Traffic Engineer but he does have one question regarding this matter, which is; overflow parking? Obviously the use is being intensified, where would overflow parking go in this case?

Mr. Rigg (Engineer for the Applicant) testifies this would not be a site plan issue, this would be a business issue in which Mr. Perliouos could speak to or the Traffic Consultant.

Mr. Panteleakis (Applicant) steps forward and testifies all parking will be contained on the property. Employee parking will also be on the property and his Traffic Engineer will elaborate on how their valet system works to control the parking.

Discussion...

Mr. Lambrinides (Attorney for the Applicant) asks him to clarify how many of the Kitchen help employees drive.

Mr. Panteleakis testifies none. Corrects his testimony and states 2 drive, the rest take public transportation and use bicycles.

Mr. Newman (Chairman) asks the Applicant if he would have any objection if this Board sees fit to grant the variance relief he is seeking to a condition in the Resolution which will restrict any off-site parking, including offsite parking by valet.

Mr. Panteleakis replies he has no objection. None at all.

Mr. Lambrinides notes the only thing he could tell the Board is his client's family own the house next door and there is a driveway....

Mr. Newman states parking on a private parcel is not this Board's concern, but street parking done by a Valet service and employed by the restaurant is what he is referring to.

Mr. Panteleakis testifies Valet Parking does not park on the street.

Mr. Kittner (Board Planner) moves to his next question. He asks Mr. Rigg's about the Office use in the front building, second floor. His testimony was the first floor being restaurant, the back of the 2nd floor was also storage?

Mr. Rigg replies yes.

Mr. Kittner states he does not believe they are proposing any Landscaping and asks Mr. Rigg if this is correct?

Mr. Rigg testifies they are not elaborating on the plan, his client will be filling in all the areas that are disturbed and the (inaudible) pavement will again be landscaped onsite.

Mr. Kittner would just like to raise the issue with the Board because there are surrounding residential uses, they are intensifying the use so some consideration should be made towards trying to soften the intensification.

Mr. Newman asks Mr. Kittner if he has any specific landscape buffering suggestions...

Discussion....

Mr. Kittner states in terms of landscape buffering, evergreens species provide year round buffering which are preferred. Obviously they would want to buffer the intensification/ the use from the residential dwellings which to his understanding is opposite the Saddle River Road primarily. Unfortunately there is not a tremendous amount of road with the way the parking is configured to actually propose landscaping so the applicant may want to consider alternate means of a buffer.

Discussion continues....

Mr. Kitter states for example; one concern would be headlight glare in the residential dwellings so maybe a small fence to buffer the headlight glare may be an option. He is not sure if residents complained about the glare, but it is an option the Board could consider.

Discussion continues....

Mr. Rigg testifies after speaking with his client, he is willing to fill this area with some type of landscaping or fencing if needed to a 30inch height. They do not want to pass this because it will become a site distance issue but it will help block some of the light. They will do this along the front of the parking area.

Mr. Newman asks if they would consider small plantings, like small evergreens such as boxwoods that will also handle the light glare and improve the landscaping....

Mr. Rigg concurs...

Discussion continues....

Mr. Newman asks Mr. Kittner (Board Planner) if he has any other questions.

Mr. Kittner states the rest of his questions will be for the Planner.

Mr. Kataryniak (Board Traffic Engineer) speaks to his comments in his report, site/onsite circulation have been adequately addressed by Mr. Rigg. The only other question he would have would be in the area of the northeast portion of the property where the existing (inaudible) is going to be removed to provide additional parking.

Mr. Kataryniak asks Mr. Rigg if the intent is to use this as general customer parking.

Mr. Rigg testifies it is, but this area is probably only going to be used during Valet parking time periods. It could be used, anyone could park back there and have sufficient turn around.

Mr. Kataryniak suggests considering some sort of signage indicating to patrons of the restaurant there is parking back there, but due to the lack of full circulation, he would not really encourage a lot of circulation back there so it may be best left to the best kept secret parking..

Mr. Kataryniak speaks to the Light poles in this area on the adjacent property to the north. Does it have light shine on this property?

Discussion and clarification on location.

Mr. Rigg testifies if there is, he would not consider this part of their application because if they are there, they shouldn't be if there are utility poles. He believes they are his client's light posts on the residential property.

Discussion...Mr. Kataryniak states the plan does not indicate they are utilizing this lighting...

Mr. Rigg states it is not their intention to use this. They are proposing a new light to illuminate the back area.

Mr. Kataryniak continues...similar fashion to the fencing issues in correcting the fencing with respect to the adjacent property....in case the property is sold...

Discussion.

Mr. Newman (Chairman) would like it noted for the record, in addition to relocating all of the fencing to the property, they will remove any lighting that is being currently utilized for the restaurant that may be on the residential piece to the north. All lighting will be moved & on this property.

Mr. Azzolina (Board Engineer) interjects to refer to the relocation of the fence onto the property line, notes if this were to be done in the area they are talking about, parking spaces 61 thru 67, the curb line is on the property line. Asks Mr. Rigg if he will shift everything back a ft. or two in order to allow this fence to be set on this property?

Mr. Rigg testifies if they have to. If they have sufficient room, they will, if they don't, they will have to install sleeves into the curbing.

Discussion....

Mr. Rigg testifies if they have to take another foot out of the seating area to do what they need to do.

Mr. Lambrinides (Applicant's Attorney) would like to question his client on lighting. Asks if any lights from the resident's shine into the lot of the restaurant.

Mr. Panteleakis (Applicant) testifies they do not, they shine into the swimming pool and basketball court.

Mr. Newman asks if any of the Board Members have questions for Mr. Rigg.

Mr. Rosenberg (Board Attorney) has a question for Mr. Rigg referring back to the site layout 2 of 4. He would just like to make it clear based upon his testimony he proffered in the record that has been submitted with A-6 documentation, the framed building located to the east, known as the Barn structure has always been used for accessory storage only?

Mr. Rigg testifies yes.

Mr. Rosenberg moves to his second question for clarification, the two story building along Saddle River Road, although his applicant has said it is used for an office for the restaurant, would he agree on record, there is no record in the Borough of Fair Lawn and no approval from the Borough of Fair Lawn this was approved to be used as Accessory/Restaurant Office space and therefore the expansion area for the non-conforming use includes both the Barn as well as the entirety of the two story dwelling.

Mr. Rigg testifies he would agree they found nothing and he would agree the expansion would be for the entire building.

Mr. Newman (Chairman) calls for a short recess and if there are any questions from the Board they will reopen with this.

RECESS:

Mr. Newman calls Order.

ROLL CALL: Mr. Gil, Mr. Blecher, Mr. Lowenstein, Mr. Puzio, Mr. Racenstein, Mr. Pohlman, Mr. Naveh, Mr. Seibel & Mr. Newman. Present.

Mr. Newman asks if there are any Board Members with questions for Mr. Rigg.

Mr. Rigg (Applicant's Engineer) would like to make the correction on the calculations with Mr. Azzolina, who is correct. Their proposed # will be 32,141 which will be 15sf. less than what they have today.

Mr. Newman thanks Mr. Azzolina for picking this up and notes this is an important distinction.

Mr. Racenstein (Board Member) clarifies if the 186 total seats are including the 20 seats outside?

Mr. Newman corrects Mr. Racenstein's total seating number to 189..

Mr. Rigg testifies it does not include the outdoor seating.

Mr. Puzio (Vice Chairman) would like clarification on the size of the seepage pit.

Mr. Rigg refers to Sheet 4. It is a 7ft. diameter by 6ft. deep.

Discussion...

Mr. Riggs testifies it would handle the runoff amount.

Mr. Lowenstein (Board Member) directs his question to Mr. Kataryniak on prior testimony as to the number of seats and Mr. Chairman has calculated a ratio of 2.8 per people proposed parking spaces. He would like to know if he thinks this would be adequate for this operation as proposed.

Mr. Kataryniak (Board Traffic Engineer) states a lot of it has to do with the operation. He thinks we should first hear testimony from the Applicant's Traffic Engineer regarding some of the issues....it is a loaded question because the Ordinance does take into account a number of spaces per seats plus it doesn't count for employee parking spaces.

Mr. Newman (Chairman) interjects Mr. Kataryniak's testimony with an apology but notes the time and states they will have to open to the Public for the Engineer and no matter what his answer is, it will probably open up more questions to parking and as he rightfully stated, they have not heard from their Traffic Engineer yet so, asks if he does not mind, including Mr. Lowenstein, can they hold conversation on this subject until then and address it all then...

Agreed to by both Mr. Kataryniak & Mr. Lowenstein.

Mr. Newman asks if there are any other questions by Board Members.
Seeing none,

Mr. Newman opens up to questions only of Mr. Rigg only from residents living within 200ft. of the applicant.

Mr. Newman swears in: Bernice Katz
2-22 Saddle River Road
Fair Lawn, N.J.

Ms. Katz's first question is regarding the additional drainage from the roof and refrigeration into the rear of the County property. It is already a marsh flood land. The worst in the Flood zone and

she has with her for everyone pictures of what happens after a normal rain or storm she would like to distribute to the Board Members..

Mr. Newman stops Ms. Katz and states she cannot distribute this.

Mr. Newman explains to Ms. Katz at the time for Public comment at the end of the application when they are allowed to make sworn testimony, she can do this and if she would like to present this as evidence at that time, she can do this but right now the time is for questions only of Mr. Rigg and not submit evidence of any kind.

Ms. Katz states it is just fact it will worsen...her question is; The Clinton plan from 1987, it stated there was a 2nd story put on. Where was this put on? She does not see it.

Mr. Rigg explains there was not a 2nd story added. There was an addition to the back of the building seating area for the restaurant.

Ms. Katz asks if this is where the open area is.

Mr. Rigg testifies it is next to the open area.

Ms. Katz clarifies what Mr. Rigg stated in his testimony regarding the parking lot. Was the parking lot increased at this time?

Mr. Rigg testifies the parking lot was improved to its current configuration as part of the 1987/88 approval.

Ms. Katz continues with her question. Was this where it went from 35% which was the requirement to 87% impervious coverage that causes the flooding in the area?

Mr. Rigg testifies this is when the impervious was added. He does not know the cause of the flooding.

Ms. Katz states it is the cause of the flooding because....

Mr. Newman interjects to stop Ms. Katz. (Questions only).

Ms. Katz continues. Asks Mr. Rigg about the DEP and the elevation for the building. Refers to the 50ft. & 52ft. that he testified to stating it does not exactly meet the DEP standards for elevation to prevent flooding and if they were to fix the problem because the building is at the wrong elevation, they would have to destroy it or rebuild it or reconstruct it?

Mr. Rigg explains what his testimony was. The actual 1st floor of the existing restaurant is within an inch of the flood elevation. The State of New Jersey has two different standards. There is the 100 year where now 1% chance of flooding, which is what their 1st floor meets. The now has a design standard considered a flood hazard elevation which is at elevation 52.3, which is higher than the existing building. For his client to put a new addition on the building, it would have to

meet this standard. If they put any addition on, it would have two different levels for the rest of the restaurant, so what they decided to do was use the existing building, use the existing garage/barn building which are at this elevation. He is permitted to use them.

Ms. Katz clarifies what he is saying is; what exists now is 1inch below the level and they could not use it without adding on the addition? Is it below the required level of the DEP?

Mr. Rigg testifies in his opinion, he is at the elevation. He is not sure how he should answer on this... Explains, if Mr. Panteleakis wanted to put on a substantial addition to this building he would have to make the entire building at a different elevation which would cause him to demolish and reconstruct the building.

Discussion continues.....

Mr. Rigg explains it is called a substantial rent improvement to a building if you do more than 50% of the value of the building.

Mr. Newman (Chairman) explains to Ms. Katz, the standard does not apply to an existing building, it applies to a new addition...

Ms. Katz next question refers to all the lightening, drainage, signage, traffic...according to page 34 of the New Master Plan, it calls for studies which they haven't seen and also calls for a deceleration lane or a turn off lane because of the traffic coming off Rt.4. There are a tone of accidents.

Mr. Newman notes to Ms. Katz she is not asking a question.

Ms. Katz states her point is; they didn't meet the standards. She did not see anything on or a discussion where any of these studies were done, especially meeting the New Master Plan requirements.

Mr. Newman asks Ms. Peck (Assistant Zoning Officer) to address this.

Ms. Peck testifies the recommendations in the Master Plan are just that. Recommendations by the Planning Board. The Council must act on them in order for them to become Ordinances requiring an applicant to meet them, so at this point they are only recommendations.

Ms. Katz asks if any of these recommendations are being taken into consideration.

Mr. Newman states he does not know if they are or not. I think there are a lot of opinions right now, but now is the time for questions...

Ms. Katz states her question is that consideration was not done.

Mr. Newman states this is not a question.

Ms. Katz rephrases her statement. Why did he not consider a deceleration lane?

Mr. Rigg testifies he believes the initial question had to do with traffic and he will defer this to the Traffic Consultant to speak to the need or the lack of need for the deceleration lane.

Ms. Katz moves to parking on the street. As far as this goes...

Mr. Newman (Chairman) states he has already addressed this. It's done. If this Board grants approval, there will be a condition in the Resolution. They will not be allowed to park cars offsite. Period.

Discussion...

Ms. Katz continues...is he talking about Valet or people who want to go to the restaurant can park on the street.

Mr. Newman explains people who want to go to the Restaurant can park wherever they want. There is no law against this.

Discussion continues....

Ms. Katz clarifies that the Valet cannot use the streets to park cars.

Mr. Newman states this is the way it will be if there is a resolution.

Ms. Katz moves to her next question. Seating. There is a designation for a 2nd Bar in the Barn area, first it was supposed to be the whole width of the barn, now she sees it is in a corner, standing only. This is the 2nd revision to the original plans. She would like to know if the people who come and go for a drink, are they included in the parking count along with the people who are in the regular restaurant who are there to eat. Single people coming in?

Mr. Newman reminds Ms. Katz there will be a lot more testimony when their Traffic Consultant testifies so why don't they reserve these questions for him.

Ms. Katz continues with the issue. She does not believe the 189 is accurate.

Mr. Newman reiterates they will table this question of the parking for the Traffic Engineer. He is not going to ask Mr. Rigg to answer it, so she does not have to ask it.

Ms. Katz's other question she was considering was, because this is not Broadway or the Radburn area, this is a Commercial property, a major site plan and more suitable for a business are, not a residential area...why is it...

Mr. Newman notes this would be a question for their Planner...

Ms. Katz states she will wait then for the Planner.

Mr. Newman calls any other residents with questions within 200ft.

Mr. Newman hears an issue out in the Public seating and explains he will address the audience as a whole. He will not go back & forth...

“As he has explained before at previous hearings, they follow a set of rules to get through a fair hearing to everyone, and every one of them will have a chance to say whatever it is they want to say, he just ask they say it at an appropriate time. He has asked repeatedly. It is the way these hearings function and always have functioned and will continue to function and there is nothing different about this hearing than any other hearing. This is a time where they have the opportunity to ask questions of the witness based on that witnesses’ testimony, and that’s it. If they have statements and testimony of their own they would like to introduce, they will have the opportunity but now is not the time. He understands it requires patience and understands it is frustrating but if they don’t follow the guideline, they will never get through a hearing like this. It will turn into a circus and they would not be able to perform the function of this Board. This is why they do this, not to be mean, not to be partial to anyone, but to be fair to everyone including the volunteers on this board, to get through a hearing in an organized manner. He will ask for this cooperation from everyone that comes up to the podium and if he has to remind them a couple of times to redirect and ask a question and not make a statement, this is fine but after a couple of times it gets old so he is making it clear this is a time for questions only.”

Mr. Newman swears in: Kenneth Maat
40-14 Brookside Ave
Fair Lawn, N.J.

Mr. Maat asks Mr. Rigg why he went through such a long presentation of the Restaurant, through its evolution of this and that... Why did he do this?

Mr. Rigg testifies the reason behind this was because the questions arose at a previous meeting. They wanted to be sure they showed it was a Restaurant for a substantial amount of time and it is not a new application. They are asking for an expansion of a use that has been permitted as a non-conforming use for, he believes has been around 60 years...

Mr. Maat understands, he thought Mr. Rigg was making an argument for expanding it when there really is no argument for expanding it, it only proves it has been there for a long time and it should stay, it has a right to stay but it does not give it any right to be expanded.

Mr. Maat refers to the impervious coverage which came up a lot this evening and whether it will be 1% more, 5% less, either way... personally he does not think it matters because they are already two and a half times over the minimum...

Mr. Newman (Chairman) reminds Mr. Maat he is making statements and not asking questions.

Mr. Newman although would like to clarify this. There will not be any increase in the impervious coverage...

Mr. Maat explains he was referring to the discussion this evening regarding the clarification of the numbers for the impervious.

Mr. Newman explains it was important only from the record keeping standpoint.

Mr. Maat speaks to the footprint of the restaurant where they are saying the square footage is changing very little. As he understands they are illegally using a residential building as a Commercial building, as an office. He is using this to state his argument that the property is already being used as a business type purpose, so he is not changing the square footage. Asks Mr. Rigg if this is correct.

Mr. Rigg testifies no. What he stated this evening is there was a residence in the front of the building, in the back of the property. Whether it be a residence or an office, his client is asking for an expansion of this building into a Restaurant on the 1st floor and the 2nd floor to be offices to be used for the restaurant only.

Mr. Maat would like to clarify this; so this will be converted from a residential building to a commercial building?

Mr. Rigg replies yes.

Mr. Maat asks...so the foot print of the restaurant will be changed?

Mr. Rigg testifies the footprint of the restaurant itself will get larger. This is what is proposed, this is what is on the plan....

Mr. Maat continues... Mr. Rigg also stated there would be very little impact to the area. The restaurant now is more or less set back from the road. The way the proposal is, this is going to be a showplace and he is sure it will be a very nice place...but it does not belong here. It is in a residential area. The building as it is now, sits back, nice plants, etc.

Mr. Newman (Chairman) interjects and reminds Mr. Maat to keep to questions.

Mr. Maat asks how they actually intend to make this building. How will it blend in?

Mr. Rigg explains the Architect went through this at the last meeting. He explained how it was going to work by re-facing the building, how he was going to blend the three buildings together into one.

Mr. Maat clarifies he cannot ask questions regarding parking.

Mr. Newman states he would ask he reserve questions for parking for the Traffic Engineer because they will hear a lot more testimony about the parking that may answer a lot of the questions.

Mr. Maat notes in the past the restaurant started out as a small luncheonette and grew over time with the different variances. How many variances are they going to want? They keep going and going...

Mr. Newman interjects to state this is not a fair question for the Engineer? It is a fair question, but not for the Engineer.

Mr. Maat asks Mr. Newman if at any point they can make statements.

Mr. Newman (Chairman) states absolutely. As he has stated repeatedly, at the end of the application they open it up for Public comment and he can say anything and ask anything he likes.

Mr. Maat asks Mr. Rigg his next question. He has stated the additional 20 seats for the outdoor restaurant should not be considered or is not mandatory to be considered. Does he not agree it should be considered by the Zoning Board because there will be 20 extra seats? These people will have to park somewhere....

Mr. Rigg testifies they have stated on the record there will be 20 seasonal seats outside. They are licensed currently by the Borough of Fair Lawn to permit the seats now and they are only continuing what is in place. The ordinance at this point in time does not require the counting of those 20 seats.

Mr. Maat clarifies...so these customers with the additional seats will have to park elsewhere?

Mr. Rigg testifies no.

Mr. Maat clarifies; they are going from 135 to 189 patrons and only 70 parking spaces?

Mr. Rigg reiterates this should go to the Traffic Consultant but he believes the Borough of Fair Lawn...

Mr. Newman interjects testimony to tell Mr. Rigg he does not have to go on.

Mr. Maat refers to the shielding for the residents on Saddle River Road. A lot of cars now have the high intensity discharge lights. Does he know of any way this could be stopped from the parking over there?

Mr. Newman interjects again to tell Mr. Maat they discussed this earlier...

Mr. Maat understands, he heard about the foliage, but unless they are talking about a thick row of bamboo, it's tough.

Mr. Rigg explains they will not be adding any landscape higher than 30inches, otherwise it becomes a site distance issue for the driveways, however they will do their best to screen the lights within the parking areas which will be better than it is today so they can shield the headlights as much as they can.

Mr. Maat has no further questions for Mr. Rigg but notes he also has pictures...knows he cannot give them now but would like to know if there is an e-mail address they could send them to?

Mr. Newman reiterates they can be presented during public comment.

Mr. Newman states he would like to say one more thing to the Public. It may appear to them they are being put off until the end, and they are, but they are not being put off, they are being put on to the end. If they think about this logically, they are the very last thing the Board hears on this application. The last information the Board considers, which means it will be the freshest on our minds to consider in the deliberations. It is not a put off, a shove off and it does not make their comments any less important. It puts them in a place where they are most useful and helpful to the Board in their deliberations and keeps the hearings organized. Please do not be offended by this and try to understand why it is the way it is and we will get through this hearing.

Mr. Maat appreciates what he is saying and it is understandable but they come prepared with their questions and viewpoints and then we can't express them.

Discussion.....

Mr. Newman asks if anyone within 200ft. of the applicant has a question for Mr. Rigg. Seeing none, Mr. Newman closes this portion.

Mr. Newman opens to the General Public for questions of Mr. Rigg.

Mr. Newman swears in: Sylvia Vasloff
9 Maltese Drive
Fair Lawn, N

Ms. Vasloff is asking this question because of noise. Her question for Mr. Rigg is; in-house sound of car doors slams is something she knows a lot about now. Is he the one to address this?

Mr. Rigg (Applicant's Engineer) states definitely not.

Ms. Vasloff asks if there is someone who can address noise issues and in house sound from car door slams?

Mr. Newman states to his knowledge they are not presenting an Expert in noise but perhaps their Traffic Engineer can speak to this or their Planner and also our Traffic Engineer or Planner at an appropriate time...

Ms. Vasloff has no further questions.

Mr. Newman asks if there is anyone else from the General Public with questions for Mr. Rigg. Seeing none, Mr. Newman closes this portion.

Mr. Newman speaks to Mr. Lambrinides (Applicant's Attorney) regarding new testimony. Reminds him no new testimony after 10:00pm, so how would he like to proceed.

Mr. Lambrinides states there was a question from one of members of the audience at the last hearing for our Architect. She asked that we call him back and he agreed to do so...

Mr. Newman directs his statement to Mr. Maat (previous resident) and tells him if he would like to come back up and ask the Architect about what he is doing to make it more conforming to the neighborhood, this would be a good time to do so.

Mr. Newman reminds the Applicant's Architect he was previously sworn for this application but would he please state his name for the record.

Demetrios Kaltsis, (Architect for the Applicant)

Mr. Kaltsis begins his testimony by stating one of the questions that was asked was to take a look at the standards for non-residential design, the zoning Ordinance to see how they conform to this. He refers to a sheet in which he printed and highlighted some notes from the Zoning...explains.

Mr. Kaltsis speaks to zoning Ordinance under "non-residential design."

1. Item 6/Section B. -Building entrance to be clearly identified, which it clearly is.
2. Section C.- Colors of the building, pavement, awnings, signage, site amenities and other structures should be warm and muted tones. As seen from his illustrations (points to Exhibit) it does.
3. Speaks to having a varied and interesting façade. Use of texture and window variations is encouraged.
4. Other items it as far as the Entrance is concerned, having a recessed entrance or some sort of Canopy in which they have. (Shows Exhibit)
5. Having overhead doors and loading areas located to the rear portion of the building which they clearly have.
6. Section F –Roofs. It speaks to avoiding a box like shape on the roof. He refers to the Exhibit and states they can see the varied configuration in the roof lines they have. This is clearly not the case.
7. Architectural Embellishments- one of which is a masonry chimney which is clearly identified on the main roadway.
8. In Item 8, there are 3 recommendations for roof design and they comply with all 3.

Explains...

(1) Flat roof conceals rooftop equipment and the flat roof itself- (2) Encourage overhanging eaves and sloping roofs that do not exceed the average height of the supporting walls and (3) having 3 or more roof slope planes which they clearly have as seen on the rendering.

Mr. Kaltsis reviews all which in accordance.

The Façade. The recommendation is having some sort of textured stone or brick, which they have in multiple areas. Decorative Trim or Carved Wood which they clearly have...
Colors: Earth tone colors and Architectural accents, which they clearly have...accented with the Canopy and Copper Roof over the main entrance. The suggestion is the façade or the roof be completely continued and visible around the entire site or on the exposed side of the building which is clearly done. Preventing large expansion of blank walls, which they do not have large walls with no detail. A repeating pattern on the façade with changes of colors and texture and an expression of an Architectural/Instructional Bay which they clearly have...

Mr. Kaltsis continues...they suggest facades articulated with vertical divisions to reduce scale, which he thinks they have successfully done.

Building materials suggested: textured masonry unit, which they have, and non- reflective glass, in which they also have. Some materials they suggest not to be used, is a smooth face concrete block, a tilt up panel and a prefabricated steel panel which they do not. Taking all these into consideration, he feels they comply with the recommendations of the Zoning Ordinance with regards to general design standards.

Mr. Kaltsis continues, the other question was the HVAC unit locations...refers to the Exhibit and points to the location in the center area. Explains it will be behind a (inaudible) wall and will be concealed and not be visible from the street.

Mr. Newman asks if there are any questions from Residents within 200ft. for the Architect.

Bernice Katz steps to the Podium. (Previously sworn)
2-22 Saddle River Road

Ms. Katz has a question regarding the last testimony. She asks Mr. Kaltsis if he had modified the plans from the last time he displayed it in terms of the seating and the location of the bar and the storage room he had in the barn area.

Mr. Kaltsis testifies he did not.

Ms. Katz states when she looked at the Exhibit last time, there were round tables and this time they are square. When she asked him last time the diameter of the tables, he said they were 36inch round. There are no longer 36inch round on the latest Architectural plan.

Mr. Kaltsis reiterates no additional revised plans have been submitted to this Board. These are the same plans...

Discussion continues...

Ms. Katz asks if there is round seating on the addition to the Barn area, because she asked him at the last hearing and he measured it with a ruler and told her they were 36inch round.

Mr. Kaltsis does not recall.

Ms. Katz insists they were round, so these are modified again.

Mr. Newman (Chairman) interjects to ask Mr. Kaltsis if they are round or square.

Mr. Kaltsis testifies these are depicted as square in the barn area.

Ms. Katz insists in his testimony, if they go back in the notes, they will see that he said the diameter of the tables were round.

Mr. Newman states he would be more than happy to consider the possibility that he stated round when he should not have, but these are certainly not different plans....

Ms. Katz explains he measured them with a ruler and reviewed it for 5minutes according to the square footage...

Mr. Newman explains to Ms. Katz all he do is tell her what the plans depict, but what is the point to the question.

Ms. Katz states it means the number of persons to be seated changes the number of patrons the restaurant can support.

Discussion continues....

Ms. Katz explains more patrons can be seated at certain size tables than the 36inch round which they were using as a guide to measure the number of patrons...

Mr. Newman asks Mr. Kaltsis to please tell them what size these tables are.

Mr. Kaltsis measures the size of the tables on the current Exhibit.

Mr. Rosenberg (Board Attorney) ask for the record to please identify the plan Mr. Kaltsis will be referring to since it has already been marked as an Exhibit.

Mr. Kaltsis testifies it will be Exhibit A-2.

Discussion continues....

Mr. Newman clarifies the tables in the Barn are square and asks Mr. Kaltsis how big they are.

Mr. Kaltsis testifies they are 3ft. by 3ft. (36inch)

Mr. Newman (Chairman) clarifies they are 36inch square tables, not round tables, and how many do they seat.

Mr. Kaltsis testifies they will seat 4 (four) and a total of six tables in this space.

Mr. Newman asks Mr. Kaltsis if more than 4 people can be seated at a 36inch square table.

Mr. Kaltsis testifies no.

Ms. Katz states the point she is making is; the plans have been altered according to what she originally have and what she sees....

Discussion continues....Mr. Newman states to Ms. Katz he does not know what she has, but to their knowledge the plans have not been altered.

Discussion continues.....

Ms. Katz continues.....the plans that she saw had a Bar that went across the whole width of the back of the Barn, because the number of square footage was how much the Fire Department allows for standing and sitting and they cut down the size of the Barn by saying there was a big storage room and a Bar in front of it and it changed the square footage of the allowed number of Patrons. This one has a little Bar in the corner and no real storage and enlarges the square footage which enlarges the number of patrons.

Mr. Newman reiterates these are the plans that have been submitted to the Board, he does not know what other plans she is referring to but these are the plans...

Discussion continues....

Mr. Newman states these are the plans that have been submitted to the Board, these are the plans they are looking at and the plans the application is based on. The seating calculations are based on these...they are asking for a variance for a certain number of seats, if it is granted, this is what they will get.

Ms. Katz explains what they were asking for was based on the square footage on where the patrons could sit and they blocked off parts for storage and for a Bar which doesn't exist, enlarging the space to get in more patrons and she does not believe 189 is accurate. This is what she is trying to say.

Mr. Newman states he is allowing her to make statements when he really shouldn't be but he thinks the question was answered.

Ms. Katz understands but still feels like there is something wrong.

Ms. Katz has no further questions.

Mr. Rosenberg (Board Attorney) interjects to state to Mr. Kaltsis, Exhibit A2 does show round tables but not in the Barn area conversion, correct? It is in the house area conversion. Correct?

Mr. Kaltsis replies; he is correct.

Mr. Newman notes, perhaps this is the confusion.

Mr. Maat steps forward to ask; the seating that is allowed will be done by the Fire Department, correct?

Mr. Newman is not sure what he means.

Mr. Maat continues...states basically the Fire Department does square footage, the number of exits, etc...

Mr. Newman clarifies there will be a Fire Code calculation they would have to abide by, yes. It is not a direct reflection of their seating. That is how many occupants are allowed in the building. He does not know if this reflects the number of seats.

Discussion continues.....

Mr. Newman explains they will be limited by two things. How many seats the Board says they can have and how many occupants the Fire Department says are allowed in the building. They have to comply with both.

Mr. Rosenberg (Board Attorney) for verification purposes states; these plans are the record of the proceeding and they have 189 seats and as the Chairman said, they cannot sneak in more tables or seats, more chairs that would violate the approval if they did receive an approval. It would be a violation of their Certificate of Occupancy.

Mr. Newman asks if there are any other questions for the Architect from residents living within 200ft. or the General Public. Seeing none,

Mr. Newman closes this portion.

Mr. Newman asks if any Board Members have questions for the Architect. Seeing none, Mr. Newman closes this portion.

Mr. Newman asks Mr. Lambrinides how he would like to proceed.

Mr. Lambrinides (Attorney for the Applicant) states due to continuity they would like to adjourn until the next hearing..

Dates are discussed....

Special Meeting dates are discussed.

Ms. Peck (Assistant Zoning Officer) recommends the application be carried to December 22, 2014 so they can set a date and be announced.

Discussion continues....

Mr. Newman suggests the carrying of the Application to January 26, 2015 (Re-Organization meeting) because if there are significant changes or makeup, there is going to have to be a lot of listening to CD's, etc.....

Ms. Peck concurs. They will carry it to January 26, 2015 and announce a date for a Special Meeting at that time.

Mr. Lowenstein (Board Member) asks Mr. Lambrinides how many more witnesses he will have to testify.

Mr. Lambrinides states he will have Mr. Luglio, the Traffic Engineer and also Mr. Kauker who is the Planner...

Discussion continues.....

Mr. Newman announces to the Public for their information, they will not re-notice. The next hearing will be January 26, 2015 but it is only to pick a date for the next Special Meeting.

APPLICATION CARRIED TO JANUARY 26, 2015

Mr. Newman moves to Order of Business:

Resolutions:

Mr. Puzio makes a motion to memorialize the Resolution authorizing the solicitation of requests for qualifications for Professional Contract positions. (RFO's) and Mr. Gil seconds the motion.

All Present: AYE.

Adjourn:

Mr. Puzio makes a motion to adjourn and Mr. Racenstein seconds the motion.

All Present: AYE

Time: 9:40p.m.

Respectfully submitted,

Cathy F. Bozza
Zoning Board Clerk