

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
OF OCTOBER 16, 2014**

Following are the Fair Lawn Zoning Board of Adjustment's Meeting Minutes from the Zoning Board Special meeting held on October 16, 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. Lowenstein, Mr. Puzio, Mr. Blecher,
Mr. Pohlman, Mr. Naveh & Mr. Newman

Absent: Mr. Sacchinelli, Mr. Racenstein

Also in attendance were Bruce Rosenberg, Board Attorney; Laura Carucci, 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: Jennifer Beahm, for Peter Van Den Kooy

Pledge of Allegiance is cited, led by Mr. Seibel.

Commercial New Business:

1. #201422, Mondelez Global, LLC
22-11 Route 208 North, Fair Lawn, NJ, Block 4903, Lot 2
Applicant is seeking Board preliminary and final site plan approval with variances for the following at the property located at 22-11 Route 208 North, Fair Lawn, N.J.
 1. Increase Impervious coverage by 2600 square feet on the 39.26 acre property 1,731,946 square foot Lot. The impervious will remain 71% where 60% is permitted in the I-1 zone.
 2. Height of 40 is permitted in the I-1 zone the following will require a variance as per Section 125-57D(1)(d)(1)
Building addition heights-relative to existing finished floor:
 - a. North elevator addition – 79’8” (91’-4” below existing tower adjacent and 20’ above existing 3rd floor roof)
 - b. Fourth floor addition 84’9” (86’3” below existing tower adjacent and 25’9” above existing 3rd floor roof)
 - c. Sugar grinding penthouse 80’6” (40’ above existing 2nd floor roof and approximately 16’ above existing adjacent penthouse)

- d. Icing kitchen penthouse 61' (same height as existing penthouse adjacent and approximately 22' above adjacent 2nd floor roof)
 - e. Employee entrance (top of elevator penthouse) 51' (11'8" above existing roof adjacent)
Note: the existing Nabisco tower building is 172.5 feet in height.
3. A variance for an accessory roof elevator appendage in excess of 10' in height as per Section 125-35B (1)
 4. A parking variance is sought for parking spaces where 1423 were required as noted in the May 3, 1993, Planning Board resolution and where 859 parking spaces were provided and approved by the Planning Board in 1993. This is a pre-existing deficiency that will not be substantively increased by the application.

Any other variances and/or waivers that may be required for this application.

Mr. Newman (Chairman) defers to Applicant's Attorney...

Attorney for the Applicant steps forward and introduces himself as John Belardo, with the Law firm of McElroy, Deutsch, Mulvaney & Carpenter here on behalf of Mondelez, who was formally Kraft and before this, Nabisco.

Mr Belardo proceeds to thank the Board for the Special Meeting and name his professionals witnesses here this evening, beginning with Bruce Connell, Professional Engineer, Dennis Collins, Licensed Architect in the State of New Jersey and David Karlebach, their Planner. He also has Matthew Murello who will speak to Acoustic effects in respect to noise questions; Gary Dean, their Traffic Expert who submitted a report and although he does not have any intentions to call up and testify, he is certainly here to answer any questions should they arise and lastly, Michael Wallace, the Plant Manager who could answer parking and traffic questions.

Mr. Belardo explains the variances they are here before the Board to seek approval and asks the Board if there are any questions before proceeding...

Mr. Newman (Chairman) defers to Mr. Lowenstein (Board Secretary) for clarification of Fees paid.

Fees have been paid and there is proof of Service.

Mr. Newman notes to Mr. Belardo he was just informed from Board Attorney, Bruce Rosenberg there is a member of the public who would like to make a comment about notice on record before proceeding...

Mr. Newman asks him to please step forward.

Mr. Newman swears in: Mr. Jacob Lee
52 Iris Circle
Glen Rock, N.J.

Mr. Lee explains he is the President of the Condo Association located at 52 Iris Circle and is here before the Board to make a motion to adjourn this meeting because not everyone who is a member of the Association had received notice of this hearing...

Mr. Lee continues. He understands the Attorney for Mondelez only asked for residents that are within 200ft. of Mondelez, yet they have 37 units in the Condo Association and only 19 Residents received notice. There is also an adjacent Condo Association called Indian Rock and no one received notice of this hearing. He believes improper notice was sent out and believes it would be best to adjourn and the public can be represented by an Attorney to be able to express our feelings with a lot of issues. They live right next door to Mondelez.

Mr. Lee continues to state he has a lot of connection to Fair Lawn. His family participates in a lot of activities, he went to Church up until last year in Fair Lawn and has contributed a lot of money, etc....

He believes in all fairness that the public should be heard and asks the Board to please adjourn this matter so the public could be heard.

Mr. Belardo (Applicant's Attorney) speaks to Mr. Chairman and states they have submitted an Affidavit of Publication and Proof of Service. He explains; he requested from Glen Rock a list of Property Owners and Utilities within 200ft. and had served every single Utility & Property Owner that was provided on this list.

Mr. Belardo continues to state under the Municipal Land Use Law, they are entitled to rely on the list provided by Glen Rock and with all due respect to the resident, does not have jurisdiction over the Application. He defers to Mr. Rosenberg. (Board Attorney)

Mr. Rosenberg speaks to Ms. Ann Peck (Assistant Zoning Officer) and clarifies with her the Applicant had in fact provided the Certified Mail List that was submitted by the Tax Assessor in Glen Rock and Fair Lawn and she had verified all parties were noticed with Certified mail.

Ms. Peck states; Correct.

Mr. Rosenberg (Board Attorney) explains the Law is clear under Municipal Land Use, the Applicant before the Board has the right to rely upon the list of Property Owners that is given by the Tax Assessor of each Municipality and if there are parties that are not on the list, the applicant has the right to rely and the Board has the right to rely and proceed with the Application before them.

Mr. Rosenberg states his legal opinion to the Board based on the testimony proffered, the Affidavit submitted, the application procedurally is correct and can proceed this evening.

Mr. Newman asks Mr. Rosenberg; although the residents within the 200ft. were notified but did not include all residents of the Condo Association, is there any case law that supports or doesn't support the argument that the whole association...

Discussion.....

Mr. Rosenberg explains the Law on this is; if they are Townhouses, the 200ft. list is what is required by Law, which he believes they are, and again, more importantly the Assessor creates the list.

Mr. Newman (Chairman) addresses the Resident, Mr. Lee and states; they have two legal opinions from the Applicant and the Board Attorney that do not differ in any way. He understands Mr. Lee would have liked to have the entire Association aware of this but there is no legal obligation for the Applicant to notice anyone outside of the 200ft. range for this application nor any other application before this Board. This Applicant has met their obligation and if perhaps they had not, then there would be something to the argument about adjourning this meeting.

Mr. Lee steps forward and notes he himself is an Attorney and he appreciates the fact that Mondelez has fulfilled the legal obligation but he still feels in the interest of the public a decision will be made that will affect a lot of the residents. They are families with children and this affects their lives so he asks Mr. Newman to consider what is right, not what may be legal, but what is right.

Mr. Newman asks Mr. Lee if he was within the 200ft. notification.

Mr. Lee replies yes.

Mr. Newman clarifies that Mr. Lee is the President of the Condo Association and asks when he received notice.

Mr. Lee replies; maybe two weeks...

Discussion...

Ms. Peck (Assistant Zoning Officer) states the Applicant only needs 10days prior, this is the minimum, so anything more than 10 days...

Mr. Belardo (Attorney for the Applicant) interjects to state; they were well in advance of 10days.

Ms. Peck clarifies the postmark, which appears to be on September 17th.

Discussion continues....

Mr. Newman asks if Mr. Lee could have emailed the residents and let them know of the meeting as he does for Condo meetings to which Mr. Lee replies yes.

Mr. Newman continues. In fairness then, he does not think he has a leg to stand on to ask for any adjournment or postponements of this meeting.

Mr. Lee understands.

Mr. Newman (Chairman) would like to swear in the Board Professionals before proceeding.

Mr. Mark Kataryniak, Board Traffic Engineer.

Mr. Paul Azzolina, Board Engineer.

Ms. Jennifer Beahm, Board Planner (on behalf of Peter Van Den Kooy)

Mr. Newman defers to Mr. Belardo and refers to Mr. Azzolina's comments in his report and their request for a waiver, does he want to address this before proceeding with the meeting?

Mr. Belardo states yes he does. He starts by explaining he had the opportunity with his witness yesterday to review Mr. Azzolina's comments, the Planner's comments and the Traffic Engineer's comments and they are prepared to address all of these as they proceed tonight.

Mr. Belardo continues. There are comments in Mr. Azzolina's letter that Mr. Connell will address that are engineering related, there are comments that are Architectural related and Mr. Collins will address those and there are factual issues that Mr. Wallace will address.

Mr. Newman clarifies if they do they or do not want to move forward to seek a waiver?

Mr. Belardo explains. The Waivers that were outlined in the Planner's report and the Engineer's report, they are seeking and also the waivers that are so noted, whether now at the beginning of the meeting or as part of the approval request at the end of the meeting.

Discussion continues....

Mr. Newman thinks they should do it now.

Mr. Rosenberg (Board Attorney) notes; procedurally the Board historically has tried to get that administrative out of the way. It is normally quick and rapid and rely upon the recommendations of the Board's Engineer for this.

Mr. Rosenberg asks Mr. Belardo if he could review them with Mr. Azzolina.

Mr. Belardo notes he has Mr. Azzolina's report and could answer any questions related to the waivers.

Mr. Azzolina (Board Engineer) refers the Board's attention to page 9 of 15 of his report dated October 13th, 2014. There is a recitation of the items of the checklist that were not provided as part of the application. He assumes the applicant is seeking waivers for each of these items...

Mr. Azzolina proceeds to list the items...

Items: 30, 31, 32, 33, 34, 35, 38, 45, 47 and 48.

Mr. Azzolina feels the plans are adequate for this type of application.

Mr. Newman asks if any Board Member have questions regarding this. Seeing none,

Mr. Newman asks for a motion per Mr. Azzolina's recommendation to grant waivers for items 30, 31, 32, 33, 34, 35, 38, 45, 47 & 48 as detailed in his report dated October 13, 2014.

Mr. Puzio makes a motion to accept the waivers as noted.

Mr. Seibel seconds the motion.

VOTE: All Present: **AYE.**

Mr. Newman defers to Mr. Belardo. (Applicant's Attorney)

Mr. Belardo (Applicant's Attorney) calls his 1st witness, Mr. Connell.

Mr. Newman swears in: Mr. Bruce Connell (Professional Engineer for the Applicant)
Partner Engineering and Science Incorporated
611 Industrial Way West
Eatontown, N.J.

Mr. Newman certifies Mr. Connell as an Expert in the field of Engineering with no objections from the Board.

Mr. Belardo begins his questioning of Mr. Connell.

Mr. Connell testifies he is the Engineer that was hired by the applicant to prepare the site plan. Refers to the colorized version of the site plan before them.

Site Plan to be marked into evidence as A-1.

Exhibit A1--Preliminary and Final Site plan, colorized version for Mondelez Plant Expansion. Dated August 12, 2014.

Mr. Belardo asks Mr. Connell to provide the Board with an overview,

Mr. Connell begins his testimony describing the Location and Exhibit details....moves to sheet 2.

Mr. Connell states this is also the site plan, showing the site conditions with the proposed improvements for the site.

Marked as Exhibit A-2, Site Plan conditions with proposed improvements.

Mr. Belardo (Applicant's Attorney) states to Mr. Connell; it is his understanding he is going to provide an overview of the project and then Mr. Collins, the Architect will go into greater detail with respect to the height and the building additions proposed, Correct?

Mr. Connell replies; correct.

Mr. Connell proceeds to describe how there will be two locations of the building where it will be expanded and create additional impervious coverage. Speaks to the Elevator addition that is proposed, (Points to location on Exhibit) near the Glen Rock Municipal border and also a new Employee entrance added with a walkway going out into the parking area and another walkway to a doorway immediately adjacent to this new employee entrance. There is an existing tank that will be removed and they could see this on the existing conditions plan, explains....

Mr. Newman (Chairman) interjects testimony to ask; what kind of tank?

Mr. Connell (Applicant's Engineer) explains it is an above ground tank. He believes it was Fuel Oil and hasn't been used for many years. They weren't able to determine exactly what it was used for. Refers to a picture of the tank and passes it along to the Board.

Exhibit A-3-Photograph of Tank.

Discussion continues.

Mr. Newman questions the fact that no one knows what was in this tank?

Mr. Connell reiterates, they believe it was fuel oil.

Mr. Newman asks if it will be removed by a Specialist.

Mr. Connell testifies it is an above ground tank, a little different than a UST underground storage tank. Explains there is a wall around it so anything that would escape the tank goes into the cofferdam, this is the preferred method for oil storage these days but they are going to get rid of this altogether and he is sure they will use a qualified contractor to remove the tank and dispose of it properly.

Mr. Connell speaks to the increase in impervious coverage being the minimum impact on the site in terms of storm water and any type of run off that may be in the area.

Discussion.....

Mr. Connell continues. There will be no changes to the site with respect to front setback, side setback, rear setback for this building and these improvements will not have any impact on the current existing setbacks for the building.

There are height variances which he believes the Architect will address because there are two improvements that actually extend out beyond the building but there are three other additions located within the roof area that add to the size of the structure and the height but don't extend out to create additional impervious.

Mr. Belardo (Applicant's Attorney) refers back to Mr. Azzolina's Report (Board Engineer) and asks if Mr. Connell would go through some of the comments on Page 6.

Discussion regarding the impervious square footage of 470 which they are going 12ft. above so the total number should be 482.

Testimony continues with respect to changes at the site. Proposed building heights, calculations and addition of a fourth floor.

Discussion on the newly proposed plans for the Sugar Grinding Penthouse and the Icing kitchen addition in which he points out there are actually towers and structures much higher than these on the existing facility.

Discussion continues with respect to Mr. Azzolina's report regarding an Engineering issue. Mr. Azzolina's report notes it requires plan revisions...

Mr. Connell (Applicant's Engineer) testifies he concurs with Mr. Azzolina's comments and agrees to follow these particular recommendations.

Mr. Belardo (Applicant's Attorney) refers to #4, general note 12 indicating the proposed expansion will require a modification to the current air quality permit. He speaks of in-house Counsel, Ms. Katherine O'Holleran, based out of Illinois who is handling the processing of this particular permit that is required and they will share with the Board any of the information, He asks the Board for a condition of approval, if the Board is so inclined. Mondelez has no objection to this condition.

Mr. Newman (Chairman) defers to Mr. Rosenberg (Board Attorney) and asks if they could make this a condition of approval.

Mr. Rosenberg believes they can.

Mr. Newman states they will make this a condition of approval.

Mr. Connell (Applicant's Engineer) continues his testimony in reference to Mr. Azzolina's report. Corrections needed on plan regarding sidewalk widths which is actually a 4ft. sidewalk, not a 5.7". Elevations for the sanitary sewer depicted on the site plan and locations of roof area additions, etc..

Mr. Belardo defers to Mr. Azzolina (Board Engineer) for questions of Mr. Connell.

Mr. Azzolina (Board Engineer) has no questions of the witness.

Mr. Belardo speaks to Pg. 11, of Mr. Azzolina's notes. Air Quality Impacts, the history of any violations relative to the terms and conditions of the existing Title V Permit and if any of the proposed process equipment shall enhance the air quality at this particular site.

Mr. Belardo states; he has inquired with in-house Counsel and has provided a brief list of issues with respect to air emissions, noting it is not a major history. A few minor ones that have been clarified without penalty and otherwise a pretty good bill of health and not adverse as a condition of approval to supply any information the Board may require.

Mr. Belardo moves to the subject of noise impact on Pg. 12 and notes Mr. Murello from Lewis Goodfriend & Associates will go through in this issue in detail realizing this may be a concern and they are prepared to address this.

Mr. Belardo states this is all he has on Mr. Azzolina's report for Mr. Connell and notes the Board Planner (Ms. Beahm) had some comments relating to Engineering issues and he (Mr. Connell) is prepared to address these at this time.

Mr. Belardo addresses the Board Planner's report dated October 8, 2014 that was revised on October 10, 2014. Refers to items 6G, 7A & 7B.

Mr. Belardo defers to Mr. Connell to address these comments and begins with G-the Storm water Management of the Site and if this particular application would have any impact on the current storm water management?

Mr. Connell (Applicant's Engineer) begins his testimony in relation to this subject explaining the area of this particular expansion is very limited. It is 482sf. and it will not rise to the level of requiring a soil erosion sediment control permit for this particular improvement. States most of the work is being done within the building and there will not be any impact on the site with respect to the storm water.

Mr. Connell states he will include the location of rooftop equipment in addition to the locations of the rooftop structures, along with the improvements on the site, the expansions of the building within the footprint of the building on the site as well.

Mr. Belardo (Applicant's Attorney) asks Mr. Connell if he will provide sign details, including the dimensions. He so notes to the Board they were before the Planning Board in July and obtained approval for the 3 draft signs fronting along 208 that will be slightly modified to reflect the name Mondelez and are in the process of complying with the Resolution and should see the signs within a short period of time.

Mr. Connell explains the locations of the existing site signs will most likely be moved from where they currently exist. The new locations to be approved to meet their requirements in the Resolution.

Ms. Beahm (Board's Planner) interjects to ask if she could request that once the matter is resolved with the Planning Board, if they could submit to her what was ultimately resolved to keep the package complete along with the Resolution and the location of the signs.

Mr. Connell has no issues with this and will certainly comply with Ms. Beahm's request.

Discussion moves to Item GF, the sidewalk perimeters of the site...

Mr. Connell states one of the intents for this project is to create a better access for the employees going into the building, so they are improving the entrance. There are a lot more changes going on inside the building with respect to how their circulation and facilities are provided for the employees as they enter and exit the building, but the sidewalks currently here are adequate...

Mr. Belardo has no further questions for this witness.

Mr. Newman (Chairman) before opening up for questions to the Board for Mr. Connell, would like to inform Mr. Belardo the Board will not hear any new testimony after 10:00pm. so pace his witnesses as necessary...

Mr. Belardo understands & agrees to move as quickly as possible.

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

Mr. Puzio (Vice-Chairman) has a question regarding the current maximum height of 172.05. Asks Mr. Connell if every modification they are going to make to the building will be under this envelope.

Mr. Connell replies yes.

Mr. Lowenstein (Board Member) questions testimony of Mr. Connell regarding a cofferdam surrounding the Storage Tank. He believes they have been used for oil, does he have any sense as to what is at the base of this tank?

Mr. Connell testifies the base of the tank is a concrete slab, a masonry wall to insure if there was a leak it would be contained within this structure. There are several ways to protect against leaks from above ground storage tanks, explains several types...

Mr. Connell notes this tank is an older tank and has been there for a while, utilized masonry wall and floor so they could see if there was any oil in there and then pump it out. It does not get into the ground and doesn't contaminate the soil.

Mr. Connell reiterates they are removing the whole thing. They do not use it anymore.

Mr. Belardo (Applicant's Attorney) interjects to state they would have no problem should this be approved, as a condition of approval, the tank would be removed and decommissioned in accordance with the NJEP standards and such documentation will be supplied to the Borough.

Mr. Lowenstein asks if they intend to do any soil testing to see if there is any contamination of the soil. He did say it was an older tank and it would not be inconceivable...

Mr. Belardo states this witness probably doesn't have any of this knowledge, but the Plant Manager will be testifying later and he could address any of these questions.

Mr. Lowenstein agrees to hold his question.

Mr. Lowenstein's next question refers to Air Quality. He has heard no testimony as to the volume of ammonia emissions from the plant. Is there any information on this?

Mr. Connell states he does not have any information on this subject.

Mr. Belardo reiterates they do not have any information on this but as he said this would be part of the process of obtaining the Title Five Permit from a Federal Agency. This is something they routinely have to do at the Plant with respect to Air Emissions. It's monitored on an annual basis and this would certainly be something they would comply with. It is a Federal requirement.

Discussion continues....

Mr. Lowenstein has questions & concerns with this topic and asks if the Plant Manager would be able to answer some of the questions he has.

Mr. Belardo states; to the extent he has the knowledge, he can.

Mr. Lowenstein has no further questions.

Mr. Newman (Chairman) asks if anyone else from the Board has questions for Mr. Connell. Seeing none,

Mr. Newman opens the witness up to Residents living within 200ft. of the Applicant for questions or comments.

Mr. Newman for clarification purposes states; Questions only for Mr. Connell on his testimony. Specific questions on topics testified to.

Mr. Newman swears in: Martin Hayes
29 Highland Circle
Glen Rock, N.J.

Mr. Hayes begins by stating; he believes that in defense of the motion made earlier in the evening, it was pointed out that notification was made in the Bergen Record...

Mr. Newman interjects to state this has been addressed already and reminds him questions only for Mr. Connell.

Mr. Hayes would like to continue on a comment made by Mr. Lowenstein (Board Member) in reference to the ammonia amounts being released by the Applicant and the Applicant being the largest polluter in Bergen County...

Mr. Belardo (Applicant's Attorney) objects.

Mr. Newman asks Mr. Hayes to please sit down. Mr. Connell cannot answer this.

Mr. Newman asks if there are any other Residents living within 200ft. of the Applicant for questions or comments. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens for questions from Members of the General Public. Seeing none,

Mr. Newman closes this portion.

Mr. Newman (Chairman) wants to make a comment to the Public. He tries very hard to run these meetings in the way they need to be run. There will never be a time where a member of the Public does not have a full opportunity to speak their mind and to address anything they would like to address, but this time comes at the end of the application when we open it up to the General Public for comments and anything you would like to say can be heard.

Mr. Newman continues. In order to run the meeting in a reasonable manner and get through the meeting, he has to follow a certain guideline and he will ask for everyone's cooperation until this time comes. Please do not come to the Podium and bring up everything they would like to bring up. It just slows down the meeting and it is not useful in any way.

Mr. Newman proceeds with the meeting.

Mr. Newman swears in: Mr. Ron Mills
26 Iris Circle
Glen Rock, N.J.

Mr. Mills would just like to ask a procedural question of Mr. Newman. Based on the fact that there will be no more testimony after 10:00pm, how much time will be given to ask questions?

Mr. Newman explains. There would be no "new" testimony given after 10:00pm, meaning if they start testimony before 10:00, we will hear it as long as it doesn't last till 2am. Then open it up to the public. The doors don't shut at 10:00pm but around 10:00 if they still have 3-4 witnesses left, then we would talk about scheduling another meeting in which you (the Public) would have the opportunity for comments....

Mr. Mills understands.

Mr. Newman defers back to Mr. Belardo for his next witness.

Mr. Newman swears in: Mr. Dennis Collins (Professional Architect for the Applicant)
701 Emerson Road, Suite 500
St. Louis, Missouri

Mr. Newman certifies Mr. Collins as an Expert in the Field of Architecture with no objections from the Board.

Mr. Belardo begins his questioning of the witness. Asks Mr. Collins if he is the primary Architect and designer for these particular additions to the building.

Mr. Collins replies yes. He has submitted Architectural Plans and elevations to the Board for their review.

Mr. Belardo asks Mr. Collins to please review with the Board the additions and height issues.

Mr. Collins (Architect for the Applicant) speaks to an Exhibit posted, which they call A-4

Mr. Rosenberg (Board Attorney) interjects to clarify the Architectural elevations, noting there were almost 15 of them. Which one is this, so we all know what you are testifying to?

Mr. Collins apologizes and reviews what he has submitted.

Mr. Belardo (Applicant's Attorney) explains what they did was rather than go through all 15, they are utilizing this particular exhibit, it's colored to show the location of the (4) additions.

Discussion.....

Mr. Collins notes it would be Sheet 1 of 8.

Exhibit A4-Elevations.

Mr. Collins addresses Mr. Azzolina's (Board Engineer) Report, Pg. 5, Item 3A – Elevator Addition. Points & marks location & states; it happens at the North end of the building, to the East of the existing tower that is on the highest portion of the building. The height of this addition is 77'4". All of the heights were based off of the finished floor of the building relative to 75ft.

Mr. Collins does note they do have a few minor revisions to heights as they went through the final and have been continuing to work the project and brings attention to the fact this height was noted in the report as 79'8" and reiterates this height is 77'4" but regardless they still need a D-6 variance.

Testimony continues....speaks to elevator and how it had to be increased 15sf. slightly to the east due to the addition of an extra beam that had to be there to support the elevator equipment.

Mr. Collins moves to the next addition, the 4th floor addition. It is being added to the building. This is strictly above an existing roof line. It's above the 3rd floor and is being added as a point for grind grease...

Mr. Belardo (Applicant's Attorney) clarifies this is listed as 3C in Mr. Azzolina's report.

Mr. Collins continues with his testimony....this occurs on the east side of the exiting tower of the building and the height of this is 86'6", square footage is 6, 151square feet.

Testimony continues....

Mr. Collins speaks to the Employee Entrance addition which will occur to the rear/middle of building. This is a new Employee entrance, the furthest south addition they will be doing. Explains, in the original packet that was provided they have an addition that provides a new vestibule to the building and a new employee elevator that takes them to the second floor which is where the new locker rooms will occur...

Mr. Collins refers to a Canopy that was identified, and it covered the entrance walkway, it was a detached canopy covering the walkway. It has been determined this will be eliminated.

Mr. Belardo (Applicant’s Attorney) asks Mr. Collins to speak to Item 3D of Mr. Azzolina’s report. The addition to the existing Sugar Grinding Penthouse.

Mr. Collins (Applicant’s Architect) explains in the center of the building now there are equipment penthouses, here they are adding a new Sugar Grinding Penthouse that is on the North edge of this existing structure. This will be 1,108sf and its overall height is 86’4”. This is also noted in the report as being 84’9”....

Mr. Collins clarifies this is on the North elevation of the existing roof penthouse.

Mr. Collins moves to Item 3E of Mr. Azzolina’s report- The Icing Kitchen addition. Explains the Icing kitchen addition is again, adjacent to the existing penthouse. It is on the east side of that penthouse. Square footage is 2,542sf and its elevation was noted as being 136ft or 61ft relative to the 71ft. Plant floor elevation.

Testimony continues.....

Mr. Collins is asked to move to Exhibits he has prepared to show what these particular additions will look like by photos.

Mr. Collins explains these were not included in the Board Packages. He prepared some rendering exhibits to show examples of what the building would look like.

Discussion.

Exhibits to be marked in evidence..

- A-5-Photo Rendering
- A-6-Photo Rendering
- A-7-Photo Rendering
- A-8-Collection of Photos

Mr. Collins walks through the Exhibits with the Board detailing A-5 is the north elevation of the building. The Elevator penthouse is adjacent to the existing high-rise that has an existing service elevator. An elevator addition is being added so that they could upgrade the existing freight later which has been in service for many years...

Mr. Newman (Chairman) asks Mr. Collins if this is the view the Residents see from the Condominium Complex.

Mr. Collins replies the northern face of the building, they would probably catch a glimpse of the eastern elevation of that tower...

Discussion.....

Mr. Collins states; the additions were designed to blend with each of the existing buildings.

Testimony continues on the design and materials being proposed.

Mr. Collins (Applicant’s Architect) moves to Exhibit A-6.

Mr. Seibel would like to clarify this rendering’s location from Route 208.

Mr. Collins explains this would be the exit off of 208...

Discussion & clarification of Exhibits.....

Mr. Collins is asked to move to Exhibit A-6 which is a view that is head on from 208 looking at the front entrance of the building. Points to the existing visitor entrance of the building and what they are seeing in A-6 is the representation of the Icing Kitchen, the new Icing Kitchen is approximately 15ft. taller than the existing penthouse...

Discussion...

Testimony continues....detailing each photo with the additions and views. A-7, A-8...

Mr. Collins testimony carries to the comments of the Board’s Planner...potential safety hazards associated with the height of the proposed rooftop additions compared to distance from rooftops edge.

Mr. Collin states; in regards to this point on all of the new additions, there is no rooftop equipment on any of our new additions. There are access ladders for roof inspections or roof repair. Reiterates there will be no new equipment on the roofs of the additions. All equipment is internal to the building.

Mr. Belardo (Applicant’s Attorney) has no further questions of this witness.

Mr. Newman (Chairman) defers to the Board Professionals for questions or comments.

Mr. Azzolina (Board Engineer) has no questions at this time.

Ms. Beahm (Board Planner) has a question. She asks why the additions are going where they are going because the applicant requires waiver relief for where these rooftop additions are being located proximate to the edge of the roof...

Mr. Collins reviews with Ms. Beahm a detailed & lengthy explanation as to why they are proposing these additions in the locations shown.

Ms. Beahm is satisfied with his testimony.

Mr. Azzolina (Board Engineer) asks how many floors are in the tower.

Mr. Collins replies; eight (8) and notes these floors are the part of the silos that hold the dry ingredients, so the upper floors are basically large silos..

Mr. Newman (Chairman) asks if there are any other questions from Board Professionals or Board Members for this witness.

Mr. Seibel (Board Member) where are the Offices located?

Mr. Collins testifies actually there is very little office spaces. Points to area on Exhibit and explains the front visitor entrance on the west side of the building which is where an Administrative office, a nurse's office, some meeting rooms but it's limited as far as administrative...

It is 95% or more manufacturing.

Discussion continues...

Mr. Newman (Chairman) asks if there are any more questions from the Board. Seeing none,

Mr. Newman opens to Residents who live within 200ft of the Applicant for questions only regarding his testimony.

Mr. Martin Hayes steps up to the Podium.

Mr. Newman reminds him he has been previously sworn.

Mr. Hayes states he will defer to Mr. Belardo if it's appropriate at this time, will the industrial specific terms bridging or rat holing be appropriate for this witness?

Mr. Newman reminds Mr. Hayes his questions have to be regarding testimony that has just been proffered. Does he have questions regarding anything Mr. Collins has testified to?

Mr. Hayes states to Mr. Newman, he understands that the terms bridging and rat holing may have to do with their process as far as the Sugar Grinder, so he is asking if this is the appropriate time or witness to ask or should he discuss this later.

Mr. Newman states he did not hear any testimony regarding this but he will give the applicant the opportunity to answer.

Mr. Belardo (Applicant's Attorney) states he is not sure what the witness's question is.

Mr. Hayes asks if he is familiar with the terms bridging and rat holing.

Discussion....

Mr. Collins (Applicant's Architect) replies no.

Mr. Hayes has no further questions.

Mr. Newman asks if there are any other questions for this witness from Residents living within 200ft. of the applicant.

Mr. Jacob Lee steps to the Podium. (Previously sworn)

Mr. Lee asks Mr. Collins if he would point out on the Exhibit where the location of the Sugar Grinding Penthouse is.

Mr. Collins refers to the Exhibit and states; the Sugar Grinding Penthouse is basically in the center of the building.

Discussion.....

Mr. Lee asks if he has a photo of this.

Mr. Collins refers to Exhibit 6 and discussion continues...

Mr. Lee asks if the structure of the new building going to be strong enough to hold the weight.

Mr. Collins testifies yes and explains...

Mr. Lee has concerns with the weight of the equipment...

Mr. Collins addresses these issues and explains how they will reinforce all the additions with columns...

Mr. Belardo (Applicant's Attorney) interjects to note he will represent under the Uniform Construction code of New Jersey all the data has to be submitted to the Construction Official before they could pull any Permits, including the Safety of the Structure and any other issues, and they will do this.

So noted.

Mr. Lee has no further questions.

Mr. Newman swears in: Mr. Carlo Orlando
28 Iris Circle
Glen Rock, N.J.

Mr. Orlando asks Mr. Collins for clarification if there is an additional Sugar Grinding mill that is being added.

Mr. Collins replies yes.

Mr. Orlando asks will the exterior of the structure be properly insulated to avoid noise pollution coming out of this piece of equipment.

Mr. Collins testifies yes. Their Acoustic Engineer has reviewed and analyzed this for them.

Mr. Orlando has no further questions.

Mr. Newman asks if there are any other questions from Residents living within 200ft. Seeing none, Mr. Newman closes this portion.

Mr. Newman asks Mr. Belardo for his next witness.

Mr. Belardo (Applicant's Attorney) calls Mr. Mattrew Murello, who is with Lewis Goodfriend & Associates.

Mr. Newman (Chairman) calls for a 5 minute Recess before proceeding.

5 MINUTE RECESS.

Mr. Newman calls the meeting back to order.

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

Mr. Newman (Chairman) swears in: Mr. Mattrew Murello, (Acoustic Engineer)
w/ Louis S. Goodfriend & Associates
760 Route 10 West
Whippany, N.J.

Mr. Newman asks Mr. Murello is he will be testifying as an Expert in Acoustics and what his expertise is, and licensure, etc...

Mr. Newman certifies Mr. Murello as an Expert in the Field of Acoustic with no objections from the Board.

Mr. Belardo (Applicant's Attorney) begins his cross by asking Mr. Murello if he was retained by the Applicant with the specific admission to ensure the noise in part was contained and will not disturb the neighbors.

Mr. Murello testifies yes and he was asked to prepare a report to determine the existing and potential future noise limits based on the proposed additions and equipment. His report was submitted on September 2, 2014 by Mr. Collins which was submitted to the Board.

Mr. Belardo asks Mr. Murello to please explain what he did in order to prepare this report.

Mr. Murello explains in order to evaluate the potential noise on the adjacent property lines, they visited the site on August 11, 2014. They performed measurements at the four closest property lines, north, south and east which are the site of the highway. (Points to Exhibit A-2).

Mr. Murello continues. They visited the site during the daytime hours and performed existing sound pressure level measurements along the closest property lines. They again returned to the site during the same evening of August 11 and performed measurements again at the (4) adjacent property lines, north, south, east & west...approximately 10minutes per location.

Mr. Murello states these sound levels were summarized in their report and they ranged during the daytime hours, which was approximately, 10am to 11am from 54 to 56 dBA on the east side and on the west side of 208 it was 71 dBA. This is an average sound level over a 10 minute period. When a large truck or car went by the sound levels were slightly higher and when there was a dip in traffic, the sound levels were slightly lower. These levels are average sound levels during this period of time.

Mr. Murello explains when they returned during the nighttime hours with less traffic on Rt. 208, the sound levels ranged from approximately 52 dBA to 55 dBA. At all the property lines with the exception of the north, the dominant source of noise was 208 exclusively from air traffic and things like this.

Mr. Murello continues. On the north property line there was influence from the Mondelez property, but reiterates to the Board the dominant source was out on Route 208.

Their next piece they were asked to do was to evaluate the potential for future noise with the existing process equipment, referring to the sugar grinder, the blowers that were proposed inside of the Penthouse additions...and to calculate what the future sound levels would be, they used Manufacturer's public sound data, explains....

They publish sound level data, so they used this data from the manufacturer and calculated what the levels would be at the four closest property lines. They took this data and added all of the future equipment up, in addition to the fact they recommended some noise control recommendations for the ventilation openings...he will discuss that at a later point.

Testimony continues...

Mr. Murello testifies in the penthouse addition where there is going to be blowers, there will be ventilation openings, louvers where air can get in to the process blowers. They are recommending the acoustical treatment be placed on these blowers, on the ventilation which are silencers. With the addition of this noise control on the louvers, they calculated the sound level at all of the property lines will remain below the limits of the code.

Mr. Murello would like to take a step back and note; as this Board is well aware, the noise regulation in the State of New Jersey and also in the County is the same which is 7:29 and basically has two determining factors. One, what is the use of the residential or the receiving property line...

Mr. Murello continues...in this case all of the receiving property lines with the exception of the north are residential. In those cases commercial or residential properties-a requirement of 65 decibels on an A-weighted scale or dBA, 24 hours a day, that's the code.

Mr. Murello continues...on the residential receiving property line to the north the code becomes more stringent at night after 10pm to 7am-to be 50 dBA. All of the existing sound levels due to Mondelez are below this code. They are below 65 to the south, east and north and although we measured approximately 53 to 53 dBA on the North property line, the vast majority of that sound is due to Route 208 and it is very difficult to separate out Mondelez.

As Mr. Belardo has stated, they have been doing measurements on this site now for the better part of 10 years and the levels have not changed since 1995 when they did their first study.

Mr. Murello moves to the proposed new equipment which had been discussed already in addition to the noise control that they recommended, the sound levels at the northern property line are calculated to be 47 dBA- just the new equipment. The existing sound level being about 53 dBA, mostly due to traffic. They do not expect the sound levels to increase at all at the northern residential property line and the same holds true for the commercial property lines to the south, west and east.

Mr. Belardo (Applicant's Attorney) on cross asks Mr. Murello if he is going to continue to work with the Applicant with respect to further discussion on any Louvers and other sound mitigating devices based on the review of Mr. Azzolina's, the Board Engineer's comments.

Mr. Murello testifies yes.

Mr. Belardo refers to Mr. Azzolina's letter of October 13th and asks if Mr. Murello had the opportunity to review it and the comments on page 12 with respect to noise impacts.

Mr. Murello testifies he did and refers to the 1st comment...speaks to the comment-"13 displacement blowers shall be installed in the proposed 4th floor addition." To which he notes this is an accurate statement.

Review of all Mr. Azzolina's comments and recommendations...installation of acoustical louvers or acoustical silencers on the vents located on the east facing wall of the 4th floor addition., etc...

Testimony continues....

Mr. Murello testifies that as of today they have determined there will be 3 louvers in this area, one facing east & one facing south. The applicant has agreed to put acoustical louvers or silencers, depending on what is more logistically possible, but they will both provide the same amount of attenuation on all three..

Testimony continues in reference to the request for confirmation of the exact number of displacement blower units and maximum number of louvers that will be installed along the east building elevation to which they agree to.

Testimony continues....

Discussion & questioning on the Proposed Sugar Grinding equipment...

Mr. Murello (Acoustic Engineer) testifies there is no additional attenuation on the sugar grinding that they require to meet the limits of the code.

Mr. Belardo has no further questions for this witness and will defer to questions from the Board and its Professionals.

Mr. Newman (Chairman) asks if any Board Professional have questions for Mr. Murello.

Mr. Azzolina (Board Engineer) does have one question regarding the 13 Blower units but only 3 louver locations...does this infer the other ones are discharging back into the building?

Mr. Murello replies no. All 13 Blowers are process blowers, but they are within the penthouse, so these louvers only get fresh air into the penthouse, they are not directly dumped to.

Mr. Azzolina has no other questions.

Mr. Newman asks if there are any questions from the Board Members.

Mr. Puzio (Vice-Chairman) has a quick question. He clarifies with Mr. Murello his testimony was they have been doing sound studies here for 10 years. Have the results shown the decibel levels at any point in time have exceeded what they were in the latest survey?

Mr. Murello testifies no.

Questions continue....

Mr. Lowenstein (Board Member) clarifies with Mr. Murello that the northern end of the property is basically the part that faces the Residential?

Mr. Murello testifies correct and explains- refers to Exhibit A-2.

Discussion on the dBA's readings for clarification...

Mr. Murello reiterates the dBA during the evening is 52 and 54 dBA during the daytime. An average of 54 dBA.

Discussion continues in length regarding the dBA's....

Mr. Murello reviews all given testimony of sound studies done in detail.

Mr. Lowenstein clarifies the hours of operation. (24/7 operation) and asks if it operates pretty much at the same level of intensity all day & night.

Mr. Murello defers this question to Mike Wallace who is the Plant Manager, and states; he would have more knowledge of this.

Discussion continues....

Mr. Seibel (Board Member) asks Mr. Murello if the 50dBA along the residential line is the maximum.

Mr. Murello testifies this would be the standard-the State noise regulation.

Discussion continues on all locations of the dba's levels...

Mr. Newman (Chairman) notes in Mr. Murello's testimony he states most of the noise is coming from Route 208? Doesn't the building block some of this noise from the residents of 208?

Mr. Murello replies on the north side, not really. On the commercial properties and on the properties furthest to the northeast, yes.

Discussion continues....

Mr. Newman asks if there are any other questions from Board Members for Mr. Murello. Seeing none,

Mr. Newman closes this portion.

Mr. Newman opens to Residents living within 200ft. of the Applicant for questions only for Mr. Murello.

Mr. Jacob Lee steps forward. (Previously sworn)

Mr. Lee begins by stating; he lives the closest to Nabisco, and he does not believe that Mr. Murello put the sound devices where he put them because the law requires this and when noise from an Industrial plant effects the residential area, the readings have to be made at the point of the boundary line. He is maybe 30ft. away from Nabisco and he does not have any readings but he can tell the Board, Mr. Murello is not telling the truth because when he gets up in the morning...

Mr. Belardo (Applicant's Attorney) interjects to state Mr. Lee is getting into testimony which he is entitled to but at the conclusion of the hearing...

Mr. Lee states he has a question.

Discussion...

Mr. Newman reminds Mr. Lee to please keep it to questions only.

Mr. Lee moves to his question. He would like to be shown by Mr. Murello the locations of where these sound devices were put on the Exhibit Board.

Mr. Murello points to the location of the Borough line, between Glen Rock on the left and Fair Lawn on the right. The 1st measurement is on their (Mondelez) residential property line right across shipping and receiving on the chain link fence side, not behind the wooden screen...

Mr. Lee reiterates he would like to know where the sound devices were placed.

Discussion continues....

Mr. Lee asks if they were properly calibrated.

Mr. Murello testifies yes they were.

Discussion continues....

Mr. Murello states all sound devices calibrate at 93.9. He would be more than happy to provide the Board and the Board Professionals with their calibration certificates which are done externally from their office annually and in accordance with State Regulations.

Discussion continues...

Mr. Lee questions the time of day and evening they placed these devices...

Mr. Murello testifies between 1:45 pm and approximately 4pm. The evening measurements were done around 10pm to 11:45pm.

Mr. Murello clarifies the locations where the sound devices were put again for Mr. Lee and marks these locations on the Exhibit.

Mr. Belardo (Applicant's Attorney) interjects to state Mr. Lee is not asking questions.

Mr. Newman (Chairman) tells Mr. Lee he cannot testify, he has to ask questions and if he has a question that has not already been answered, please ask it.

Mr. Lee has no further questions.

Mr. Newman opens for questions for Mr. Murello from residents within 200ft. of the Applicant.

Mr. Carlos Orlando steps to the Podium. (Previously sworn)

Mr. Orlando asks Mr. Murello at the time he was there, was there any loading or unloading going on at the Plant.

Mr. Murello testifies no.

Mr. Orlando then asks Mr. Murello if he is aware that when there is loading and unloading going on, there is an unreasonable amount of noise going on.

Mr. Belardo objects to this question. The characterization of the noise as unreasonable, is testimony and not a question for this witness.

Mr. Orlando rephrases his question...

Mr. Murello (Acoustic Engineer) testifies at the time the measurements were done, there was no loading and unloading going on.

Mr. Orlando (Resident) asks Mr. Murello if they would be willing to come back at a time when they are unloading and reloading and take measurements.

Mr. Murello replies there is no proposed change of that as part of this application.

Mr. Orlando continues...asking Mr. Murello if he is aware when they unload from the tank cars, a rubber mallet is used to strike the sides of the cars to cause noise.

Mr. Murello again testifies he was not aware.

Mr. Orlando makes a suggestion to Mr. Murello to come back and take measurements & readings of the noise level at this time because this is what the Residents are concerned with.

Mr. Belardo (Applicant's Attorney) objects because this witness has been called to testify with the respect to the current application and not existing conditions as indicated.

Discussion....

Mr. Orlando asks what guarantee do they have that the current application will not increase. Since they are increasing the Plant's capacity, they will be receiving more goods and shipping more goods causing more noise...

Mr. Murello testifies what they evaluated is the process. The mechanical equipment that is proposed, The Blowers, the new Chipper/Grinders, this is what they evaluated, what is proposed in the application. They are not proposing an increase in deliveries as part of this application.

Mr. Belardo (Applicant's Attorney) asks Mr. Murello if he is aware of any noise violations given by either local or state officials pertaining to this property.

Mr. Murello states it has not been brought to his attention, no.

Discussion continues.....

Mr. Orlando asks if he was aware a resident from Iris Circle did go to the Municipal Authorities, the Police in Fair Lawn to complain of the excessive noise.

Mr. Murello reiterates he was never made aware of any noise violations.

Mr. Orlando again states to Mr. Murello that based on his study, there is no guarantee that the existing noise will be extinguished and are led to believe it will increase...

Mr. Belardo objects, stating his witness Mr. Murello has offered testimony within a reasonable degree of professional Acoustic engineering to the Board, certainly this particular Plant expansion and proposed additions will comply with the NJAC 7:29. There is no testimony on record concerning this. The Objectives can offer testimony, they can bring an Acoustic expert in to characterize the noise or somehow violates the state regulations.

Mr. Newman (Chairman) so notes the objections but makes a suggestion to the resident, Mr. Orlando. Suggests if he has concerns regarding operations which may change due to the improvements, he thinks it would be something he could ask the Plant Manager when he comes forward to testify.

Discussion continues...

Mr. Orlando has real concerns with this issue...

Mr. Newman explains the Board does not have jurisdiction over Enforcement issues on the site. They have jurisdiction over whether or not the variances will be granted based on the testimony provided by the experts and conversation with the experts....

Mr. Azzolina (Board Engineer) interjects to state for clarification that part of the application, the Traffic report and the Operations statement was a statement by the applicant that the proposed additions would increase Truck traffic to the site by approximately 35 Vehicles a week. He thinks the appropriate questions to ask the Applicant's Professional who is currently testifying is whether or not the addition of these 35 Vehicles would have a measurable effect on the noise emanating from this site.

Mr. Murello (Acoustic Engineer) testifies he did not evaluate this so he really can't give his opinion on what increased truck traffic would do. He would have to find out what time of day, what type of truck, etc...

Discussion continues....

Mr. Orlando (Resident) has another question for Mr. Murello. He stated earlier there is no meaningful way to separate the noise from other sources than what is coming from the factory. What is the basis of this opinion?

Mr. Murello testifies on the northern property line, they have a direct line of sight to Route 208 being out at the property line, it is the dominant noise source that is out there. There are no deliveries to the property. This is what they observed. Short of turning the Plant or the Equipment off and getting an ambient measurement or going into the community and making a measurement at some similar distance, they are not going to leave their property without permission from the Community to get a measurement at some similar distance. This would be the only two ways to do this and they didn't have access or the ability to do so.

Mr. Orlando follow ups with this testimony and states; so it is accurate to say that they have not done a screening of the baseline....

Mr. Murello disagrees with this statement and reiterates what he has are the actual unadjusted sound levels out there. The Mondelez property sound-the contribution from Mondelez will certainly be lower than this. It cannot be any higher than 53 because that is what they measured during the nighttime hours.

Mr. Murello corrects the number to 52.

Discussion continues....

Mr. Murello states in his opinion and contrary to his statement, the property does not exceed the nighttime noise regulations nor will it in the future, even though they did not adjust for this, the Mondelez property sound levels are going to be lower than this.

Mr. Orlando (resident) comments on Mr. Murello's testimony by stating to the Board; you heard, they have not adjusted the sound levels, so he does not feel there should be validity to his testimony.

Mr. Orlando has no further questions.

Mr. Newman (Chairman) swears in: Ms. Thalya Hayes
29 Iris Circle
Glen Rock, N.J.

Ms. Hayes asks Mr. Murello what time he went in the daytime. She believes his testimony was 10-11am....but then he testified to 1:45pm. Can he clarify this?

Mr. Murello apologizes if he misspoke during testimony. He did misspeak and say it was 10:am. The daytime measurement were done between 1:45 and 4:00p.m.

Ms. Hayes asks when he was at the site, did he see any trains coming in.

Mr. Murello testifies the measurements were done by someone, an associate in his office and he did not indicate any trains on site.

Discussion continues....

Ms. Hayes refers to the silencers and asks if they are in place right now.

Mr. Murello states what he testified to would be silencers on the proposed addition. That not being constructed yet, no. There is other noise controls, he would imagine on the site from place to place, but no the silencers are not there yet.

Discussion continues...

Ms. Hayes questions the cleaning of the Silos. Were they there while this was going on?

Mr. Murello again testifies the person who did he study at the site did not note that.

Discussion continues.....

Ms. Hayes refers to Air Puffing? Did the person who did the study mention this?

Mr. Murello testifies yes. During the nighttime measurements, he did hear discharges from dust collectors that were part of – puffing. This was included in their measurements.

Discussion continues....

Ms. Hayes asks Mr. Murello to please review the nighttime measurements again for clarification.

Mr. Murello does so. The nighttime measurement was 52 dBA on the Residential Property line-Location 1 in his report and these were between 10:00pm and 11:45pm on Monday, August 11th.

Testimony continues.....

Ms. Hayes asks if their only visit was Monday, August 11th.

Mr. Murello testifies yes.

Ms. Hayes has no further questions, but would like to state she is very concerned about the current noise and the future noise and this is why she is asking these questions.

Mr. Carlos Orlando (Resident) previously sworn has another question for Mr. Murello.

Mr. Orlando asks Mr. Murello if he could describe what 52 decibels sounds like in layman's terms.

Mr. Murello testifies the best description he can give is what exists out there now during the nighttime hours. What they are hearing...

Discussion.....

Mr. Orlando asks Mr. Murello the level he is talking about right now is 52 decibels.

Mr. Murello states he can give several examples of anything that sounds like 50, 52 decibels but the problem is there is a quality inside. A vacuum cleaner, an idling truck or a musical instrument, a crying baby....

Mr. Murello continues. What exists out there is currently 52 dBA and the dominant source of noise is the highway. What they are hearing is cars, trucks, airplanes and some process equipment, air handlers, air conditioners and other people's residences as well as the Mondelez property. What 52 is, the best way he can describe is, what exists on the property line on their side of the picket fence. On the backside of the picket fence it may be something quieter than this because that's acting as a noise barrier...

Mr. Orlando asks what Mr. Murello is saying, to best understand what 52 is, would be to go out there when they are not cleaning the silos, not banging the tank cars when they are being unloaded and wait for a quiet moment so to speak...

Discussion continues....

Mr. Belardo (Applicant's Attorney) interjects to state; with all due respect, he thinks they are getting repetitive here.

Mr. Newman (Chairman) agrees.

Mr. Orlando continues. He was told that a normal conversation between two people takes place at 60-65 decibels. Can he clarify this?

Mr. Murello answers no. He believes elevated speech is 65-70 decibels.

Discussion.....65-70 decibels of elevated speech would sound like someone yelling over a football game on the score.

Mr. Newman (Chairman) has a question for Mr. Murello. The residents from their testimony, keep stating concerns about specific events, loud episodes, banging, cleaning, etc...but the regulations that need to be met with regard to noise related to this site are based on averages, are they not?

Mr. Murello testifies they are based upon two pieces. There is continuous noise, it is whatever runs continuously on or off or in some stage in between, the sound level during that "on" period cannot exceed, so it's not necessarily an average. It is whatever the sound level is during the operation.

Mr. Murello continues with his testimony explaining the how they evaluate sound whether it is running or not, the average over time...they could also present the maximum and the minimum. They can present any statistic in between. In the sixty some odd years of the company's existence, this is the methodology they have used.

Mr. Murello moves to explain how an enforcement officer would measure sound. The Officer would take the maximum background sound level, adjust for that, and then subtract from that the minimum sound level of just the Mondelez site. They do not do this. They look at the average sound level of everything and don't adjust for it, this is why he is fairly confident that Mondelez is well below the 50 dBA requirement.

Mr. Murello also notes this is why Mondelez, Nabisco d/b/a previous names have never been cited on any of the properties.

Mr. Jacob Lee (Resident) steps to the Podium and states he has a few more questions.

Mr. Newman (Chairman) asks if it is a question that has already been answered because his patience is running thin with any attempts to stretch out this hearing...

Mr. Lee would like a few clarifications. Refers to the August 11th date in which he had stated he was there just this one day, correct?

Mr. Murello replies yes.

Mr. Newman notes this has already been answered. If his next question is a question that already has been answered, he will ask Mr. Lee to sit down.

Mr. Lee understands and sits down but notes he also is running out of patience.

Mr. Newman opens up for questions for Mr. Murello from members of the General Public. Seeing none,

Mr. Newman closes this portion.

Mr. Newman asks Mr. Belardo for his next witness.

Mr. Belardo (Applicant's Attorney) would like to clarify something before calling Mr. Wallace, his next witness up. He refers to French & Parrello's report regarding the property falling under the jurisdiction of the DOT because of the access to Route 208, the proposed improvements will result in some increase in traffic at the site. Mr. Kataryniak (Board Traffic Engineer) requested the applicant agree to submit an application to the DOT for a letter of no interest and provide a copy to the Board. They are agreeable to doing this.

Mr. Belardo continues. He tells the Board he is not intending to call Gary Dean who is their Traffic Expert tonight, unless the Board Professionals have questions. He does not intend to call for any further testimony from Mr. Dean but he would like this noted for the record.

Mr. Kataryniak (Board Traffic Engineer) notes to Mr. Newman, this is acceptable.

Mr. Belardo calls his next witness, Mr. Michael Wallace, the Plant Manager at Mondelez.

Mr. Newman swears in: Mr. Michael Wallace (Plant Manager)
22-11 Route 208
Fair Lawn, N.J.

Mr. Wallace testifies he has worked for the bakery for 3 ½ years and has been with the Company for up to 4 ½ years at this point.

Mr. Belardo begins his cross examination, asking Mr. Wallace if he is primarily responsible for seeing this expansion implemented and has he been working with the Professionals who have testified tonight?

Mr. Wallace testifies this is correct.

Mr. Belardo (Applicant's Attorney) states; then he is aware there are a number of questions raised in the review letters regarding additional truck traffic and air emissions and parking at the facility.

Mr. Wallace testifies yes.

Mr. Belardo refers to a comment from Jennifer Beahm, (Board Planner) if they had assured compliance with all prior resolutions of approval and prior to the application, presented 8 resolutions of approval from the Borough dating back to March of 1989 and continuing to 2002 that were provided. One of the issues the Board faces is the need for a parking variance...

Mr. Belardo continues with the historical background of the Resolutions. He then asks Mr. Wallace to go back and determine from 1992 to the present if parking was an issue back then or a non-issue for the number of employees that have worked at the site and was he able to investigate and determine the amount of employees at the site?

Mr. Wallace begins his testimony by stating he did look back and confirmed that as of 1996 they had 900 employees or 890 employees. Asking to estimate 92'-93', it would have been this number or higher. He is comfortable saying they had at least 900 employees in the early 90's when this particular variance was approved.

Mr. Belardo asks what the present amount of employees are today, October 2014.

Mr. Wallace testifies 500 Employees.

Mr. Belardo clarifies, so there are approximately 400 less employees that park at this site?

Mr. Wallace states yes.

Discussion moves to the Azzolina Report. Mr. Belardo reads from Page 10, where Mr. Azzolina would like confirmation regarding the Zoning approvals with respect to the 159 Parking spaces on this site. 159 Spaces are leased to an adjoining owner, Jack Daniels, is this correct?

Mr. Wallace testifies yes and shows the location on the site. He is using this area to park new vehicles, additional vehicles...

Mr. Belardo asks if the lease they have with Jack Daniels extends only through July of 2015.

Mr. Wallace states the lease was established in 2013 and goes through 2015, this is correct.

Discussion continues on the parking...

Mr. Wallace describes in detail the number of spots, the shift changes and the maximum they utilize all these spots is 70%. He states they have more than adequate parking spaces for the entire site, primarily the employees and the operators. There is basically parking for the front office area as well.

Mr. Belardo asks Mr. Wallace; whoever entered into the lease with Jack Daniels did not obtain any approvals for these spots, is this correct?

Mr. Wallace explains they basically had approached this & they go to Corporate to deal with everything, Jack Daniels did not get this done.

Mr. Belardo (Applicant’s Attorney) notes they are willing to take any guidance that the Board may have with respect to the Jack Daniels spots as a condition of approval including if the Board feels that they cannot lease these spots and are needed for parking, either terminating the lease in July 2015 or providing the requisite 41days notice. Mr. Wallace’s testimony is, they have sufficient parking, notwithstanding the lease to Jack Daniels.

Mr. Belardo states if the Board decides they should either seek an additional approval for Jack Daniels, terminate or make these spots available for additional parking, they will do so.

Mr. Newman defers to Mr. Kataryniak (Board Traffic Engineer) and asks what his opinion would be. Based on their testimony, they have more than enough of parking for the Board to waive the parking requirement...and he does not know if they should get involved with any legal—

Discussion....

Mr. Kataryniak (Board Traffic Engineer) concurs with the testimony regarding the adequacy of the parking based on the Employee count. He would recommend just to keep the record clear and complete—it is a variance situation associated with the parking based on the Ordinance requirements and that variance be determined as an existing variance that we carried through with this.

Mr. Belardo moves to Page 12 of the report. There are questions in Section F regarding off-street loading spaces. One of the comments is that testimony should be elicited that the existing loading facilities are sufficient to accommodate the additional number of truck trips to and from the site.

Discussion on the additional number of truck trips estimated would be 35 additional trips each way running during the week, seven days, 5X a day. Concerns over whether there is sufficient parking for trucks on the site with respect to the additional truck trips.

Discussion continues to address the loading facilities, whether they are adequate for the additional trucks...

Mr. Wallace (Plant Manager) describes all operations in detail. Flour comes in by rail. The majority of everything else by Truck. They did consult with a Warehouse and Distribution Consultant to help them with the study, not only for the Truck traffic coming in but the handling of it inside the warehouse to be sure the space internally was adequate.

Currently they do about 39 trucks per week and they will be jumping up to about 51, this is a 2-3 per day increase. All of their inbounds are done primarily Monday through Friday. They do some on Saturday, but that is an exception more than the norm. On the outbound, they currently have about 106 finished good products going out. Truck count will jump to around 29 more, so around 137 trucks.

Mr. Wallace notes the 29 out bounds is a 7 day operation. They go out on Monday through Sunday. So the 29 over 7 days is approximately 4-5x per day.

Mr. Wallace gives testimony on Operational hours. 1st Shift- 7:30am-3:30pm
2nd Shift –if needed, typically not past 7:30pm

Mr. Wallace states; never past 10:00pm, which is the Ordinance so we have to be sure never to go past that.

Mr. Wallace uses the Exhibit to show and explain the direction of flow with the Trucks during operations and parking of trailers. He states that only about 60% to 70% is utilized...

Mr. Belardo (Applicant's Attorney) asks Mr. Wallace based on his testimony, in his opinion as Plant Manager based on his experience, they do not need 2 additional off-street loading spaces, they have more than sufficient loading spaces at the site?

Mr. Wallace testifies this is correct.

Testimony moves to solid waste inside the facilities. Mr. Azzolina's report questions the existing solid waste disposal and recycling facilities and if they are adequately sized and serviced and are able to accommodate any expected increase in the line of waste or recyclables attributable to the proposed additions...

Mr. Wallace (Plant Manager) testifies the Company is a landfill free facility, so there is no waste from the facility going into a landfill. They do recycling internally and segregate it internally. It is managed in terms of pulling away from the facility by Sunoco. They have product feed that is waste which goes to farms and everything else is recycled...

Mr. Wallace testifies they will continue to do this and do not anticipate any type of increased production or anything causing issues with this.

Mr. Belardo refers back to the French & Perrello report, page 2. There was a request as to whether there would be modifications to the total number of employees, a maximum amount of employees per shift. Asks Mr. Wallace if he anticipates such modifications with employees or hours of operations?

Mr. Wallace testifies; he does not. They will roughly have the same amount of employees and no changes to the hours of operations. They are a 24/7 operation from a Manufacturing point of view.

Testimony continues on explanation of operations.

Discussion on Mr. Lowenstein (Board Member) question earlier in the evening regarding Air Ammonia Emission.

Mr. Wallace states it is a State Regulation and this is where the Title V permit comes in...explains they have experts in the facility that manage this, but he is knowledgeable enough to answer some questions about this, but wouldn't call himself an emissions expert. They comply on an annual basis with the State requirement. They are listed as one of the high end producers but they are always within the permit limits.

Mr. Wallace states the application for the Title V permit has been submitted and is in the process of being reviewed now.

Testimony continues on the plans for Mondelez as a company in the future...

Mr. Belardo has no further questions of Mr. Wallace, he defers to the Board and the Board Professionals for questions.

Mr. Newman (Chairman) asks if any of the Board Professionals have questions.

Mr. Kataryniak (Board Traffic Engineer) refers to a comment in his report. If the Board recalls, on other applications in the Industrial area, there was always some confusion as to what the total parking would be. He would just ask the applicant to agree to inventory the parking on the plan. On his count, He came up with less than 859. This is what the prior approvals have.

Mr. Kataryniak continues...explaining some of the areas do not have parking per se, but they are areas where parking occurs. He would ask the Plan be revised to inventory that parking and that a summary be provided on a plan so that the exact amount of relief that's being memorialized by the variance be recorded.

Mr. Belardo replies this is acceptable to the applicant and they will agree to do this.

Ms. Beahm (Board Planner) has a comment. Notes they briefly touched on the comment in her letter regarding conditions of prior approvals and she appreciates the testimony with respect to the traffic and the parking, but she would just like some testimony put on the record that there is no outstanding conditions on their prior approvals that would preclude moving forward. That all the conditions of their prior approvals have been met and therefore we're not starting from a negative place. They are starting at zero and moving forward.

Discussion....

Mr. Belardo explains he did have discussions with Mr. Walker pertaining to this comment the Planner had and we attempted to determine if there were any outstanding conditions of compliance that they had not adhered to and were unable, upon review of these resolutions to determine any such conditions...however, if there are any such conditions of compliance that are later discovered, it is their intention, to certainly do so...

Mr. Walker (Plant Manager) concurs with all statements.

Mr. Azzolina (Board Engineer) has no questions of this witness and believes they have properly addressed all concerns expressed in his report.

Mr. Newman (Chairman) asks if there are any questions from the Board.

Mr. Lowenstein (Board Member) refers to the times of Truck traffic, stating testimony was normally between 7:30 and 3:30...questions the Rail cars, are these typically during the weekdays or weekends?

Mr. Wallace clarifies the Inbound Warehousing Truck traffic is between 7:30am & 3:30pm. Rail cars are inbound during the weekdays and they have usually 1 to 3 in a day. They are primarily done 1st shift, but they will go into 2nd shift....

Testimony continues on operations

Mr. Wallace testifies it is a pretty set schedule.

Mr. Seibel (Board Member) questions the age of the building.

Mr. Wallace testifies it was put together in 1958-59. They opened in 1959.

Testimony continues. Clarification of the height of the tower is made.

Mr. Seibel has no further questions of this witness.

Mr. Newman (Chairman) asks if any other Board Members have questions. Seeing none, Mr. Newman closes this portion.

Mr. Newman opens for questions from Residents living within 200ft. of the Applicant.

Mr. Carlos Orlando steps forth. (Repeats name)

Mr. Orlando asks Mr. Wallace a question regarding his testimony on the time of receiving goods, stating 7:30am, and that it may go into a 2nd shift...when does the positioning of the Rail cars take place?

Mr. Wallace testifies it is possible that the positioning of the Rail cars or the Trailers takes place prior to 7:30 am. He is not 100% certain. It could be 7:00 or 6:30am. He is not sure when the first ones are received in.

Mr. Orlando notes, as a Resident, he can tell you that there are Rail cars coming in in the middle of the night.

Mr. Orlando asks Mr. Wallace if there is any way their people can alleviate this problem.

Mr. Belardo (Applicant's Attorney) objects to the statement & notes it is testimony and with all due respect to the Residents, this Plant was there long before the Condos facilities, so to suggest that we have to temper all the manufacturing applications or stop rail deliveries or adjust to the residents....

Mr. Belardo continues. If they buy a condo that is next to an existing Plant, they have to expect there will be some type of noise or operational impact from a plant that has been there since before the 1960's.

Discussion continues....

Ms. Thala Hayes steps forward. (Repeats name)

Ms. Hayes asks I the parking lay out and the traffic pattern going to be modified during the construction?

Mr. Wallace (Plant Manager) discusses the changes that will occur using the Site Exhibit.

Testimony continues. Mr. Wallace notes other than the one area discussed, the traffic pattern will not change.

Discussion....

Ms. Hayes notes she could not see during the two hours sitting so she would him or someone to point out where Iris Circle is in relation to the Construction site & parking changes.

Discussion.....

Mr. Wallace is not familiar with the Iris Circle location on the Exhibit, defers to Mr. Connell, (Applicant's Professional Engineer)

Mr. Connell steps forwards and reviews the Site Exhibit with Ms. Hayes as to the location of the Construction site with regards to Iris Circle. Pointing to the northerly property line that abuts Glen Rock. Speaks to the fences, both chain link & board.

Ms. Hayes has one more question. Asks what the Route will be for the Trucks coming into the property and for all the demolition equipment.

Discussion and clarification on the operations during construction. Dumpsters, etc...

Mr. Wallace (Plant Manager) testifies that he will work with the Construction company through this...he is not really 100% certain yet on how many dumpsters there will be.

Ms. Hayes has no further questions for Mr. Wallace.

Mr. Newman asks if there are any other residents within 200ft. of the applicant with questions for this witness.

Mr. Orlando steps back to the Podium for one more question. Referring to the new Sugar Grinders that will be put on the roof. Is this one piece of machinery? Is it going to be deployed by a crane or will it be assembled on the roof?

Mr. Wallace testifies he is not really sure. He believes they could lift it up to the roof with a crane, but he would have to check to clarify this. There will be crane activity going on. With the type of construction they are going to have, they will need the crane not only for the Construction but also some lifting of equipment. He will need the Engineers to determine the safest location for the crane.

Discussion....

Mr. Orlando has no further questions for Mr. Wallace.

Mr. Newman swears in: Mr. Peter Mathews.
Iris Circle
Glen Rock, N.J.

Mr. Mathews would like to know the hours of operations for the Construction site.

Mr. Wallace testifies the external construction will be during the 1st shift and will not go into the nighttime. Internal construction will most likely be during the 1st shift and will go into the 2nd shift if the need is there to maintain a schedule but there is no intention to do so at this time.

Discussion continues on this matter.

Noise due to the Construction is discussed....

Mr. Wallace testifies they will not be dealing with jackhammering and noise like this. It is moving equipment that is relatively quiet. When the crane is lifting, there may be some engine noise, but that is about it and if any issues come up with noise during construction, they will address it.

Mr. Mathews has no further questions for Mr. Wallace.

Mr. Newman (Chairman) asks Mr. Wallace, based on his testimony, how available will he be or is he the appropriate person to represent Mondelez during this construction to residents who may have concerns about what may or may not be going on at the site.

Mr. Wallace (Plant Manager) testifies he will hear any concerns they may have and is fully available at any time...he has no problem making himself available to anyone who has a concern.

Mr. Newman asks if there are any other questions for Mr. Wallace at this time. Seeing none, Mr. Newman closes this portion.

Mr. Newman defers to Mr. Belardo, (Applicant's Attorney)

Mr. Belardo states he has one more witness. Mr. David Karlebach.

Mr. Newman swears in: Mr. David Karlebach (Professional Planner)
38 East Ridgewood Ave;
Ridgewood, N.J.

Mr. Newman certifies Mr. Karlebach as an Expert in the Field of Planning with no objections from the Board.

Mr. Belardo begins his cross examination of Mr. Karlebach.

Mr. Belardo clarifies Mr. Karlebach past associations with the Borough and various applications... Asks Mr. Karlebach to go through the variances they are seeking and address in length, the Planner's report and issues that have been raised.

Mr. Karlebach begins his testimony referring to the Board Planner’s memo which described the site and the surrounding areas accurately so there is no need to go over this again with the Board. He begins with the Zoning of the property and that the manufacture of baked goods is a permitted use in the zone.

Mr. Karlebach reviews the variances being sought. Explains he will go through each of the additions but that the Board should be cognizant of the fact, it is much lower than the existing height.

Discusses the different variances...accessory, roof, elevator or appendages in excess of 10ft. in height...

Reviews Azzolina & Feury’s report, noting the suggestion the height limitations or height deviations may be subsumed by the (d) variance so they could be construed as rooftop appendages or building additions, but as the Board is well aware, it does not exceed the 10ft. height requirement.

Mr. Karlebach reviews the impervious areas, noting 71% is both existing and proposed. Allowable is 60%. There is an increase of 482square feet but that over a 39 acre site is not enough to even take off that 71% even a fraction.

Reviews parking requirements. The minimum parking requirement; 1,423 spaces were required as per a May 3rd, 1993 Planning Board Resolution. They have 859 existing and 862 spaces are proposed. The final number will be adjusted as per the requirement of the Board Engineers to accurately reflect this, including the spaces leased to Jack Daniels.

Mr. Karlebach continues with his testimony, stating two non-conforming conditions will be continued. “Industrial uses abutting a residential zone shall have a fully landscaped 5ft. wide buffer strip in the rear and side yards”

Discussion...

Speaks to Iris Circle noting the mature white pine trees which have lost some of their lower branches but still feels it is a very effective screening combination with the wood stockade fence.

Discussion continues...

Mr. Karlebach speaks to the other non-conforming condition which is the “Accessory Building height which shall not exceed 20ft. in the I-1 zone” Explains 20ft. is permitted, 24.5ft. is both existing and proposed. It is a Garage facility and there is no proposed change to this facility.

Refers to Mr. Azzolina’s report, pages 4 & 5, referring to the particular variances or design waivers. Page 4-Building heights in the I zone shall not exceed 40ft, states this is the D-6 variance they are seeking and the second item, Manufacturing uses are required to provide 1 parking space for every 4ft. of net building floor area...

Mr. Karlebach notes they are using as a baseline the previous approvals and are not going to go back and recalculate the entire square footage of the building and is something that is impossible to derive accurately anyway.

Parking variance is discussed...speaking to the history of the site. Noting in 1959/1960 when it was constructed, they envisioned having 1400 employees at the site and per Mr. Wallace's testimony, The number is down to 500 employees.

Mr. Karlebach testifies he himself has gone down to the site during times of shift overlap, between 3:00 & 3:30 in the afternoon and found parking to be plentiful. He estimates only 70-80% of the parking was utilized during peak hours.

Mr. Karlebach moves to the next item, "Industrial uses abutting a residential zone shall provide a buffer, notes he has spoken to this. Accessory building height not to exceed 20ft, which is an existing nonconforming addition which will be continued..."

Testimony continues on the continuing variances...impervious coverage shall not exceed 60%-notes he had spoken to this earlier and is really a de minimis variance, very little amount of additional paved area.

Mr. Karlebach refers to a section on the bottom of page 4. "No rooftop appurtenances shall exceed 10ft. in height," notes he has discussed this and really thinks the application applies more to elevator or stairwell penthouses or bulkheads, not so much what is being proposed which is more in line with a building addition, so it does not fall into this category per se.

Testimony continues...reviews pg. 5 of Mr. Azzolina's report- design waivers. Sidewalks, building setbacks regarding sign setbacks. Explains the signage was the subject of a previous application that has been resolved and they will provide the Board with the necessary documentation showing a variance granted for this signage.

Mr. Karlebach reviews the final issue. The distance between rooftop equipment and the edge of the roof shall not be less than the height of the equipment. After he discussed this item with the Architect, they don't believe that a Design waiver is required because there is no equipment sitting on the roof of the building, it is all enclosed so no railings are necessary. It does not have to meet any OSHA requirements for outdoor equipment storage or installation so they can just cross this off the sheet.

Mr. Karlebach moves to the Planner's report for requested testimony to support the grant of the variances they are seeking...Reviews the D-6 height which is different than a D-variance...explains...

Reviews the planning justifications or rationale for the D-6 variance. As he stated the proposed improvements result in no increase in height of the existing structure and in fact, the building additions are significantly lower than the 172ft. high structure. The Residents are already acclimated to the presence of a very tall building at this location, so these small additions are not going to change their perception of the site and will not alter the visual quality of the site.

Mr. Karlebach continues with the proofs of positive criteria, explaining the building is situated a sufficient distance from properties so that the additional height does not interfere with penetration of light, air, etc...and is not disruptive to any important views or view sheds.

Testimony continues...Speaks to the Municipal Land Use Law. The site characteristics represent an opportunity for better planning and zoning alternative at the site.

Testimony continues...Mr. Karlebach believes the variances do advance the purposes of the Municipal Land Use Law specifically with regards to the parking variance. Explains....

Moves to the rooftop appurtenances. (Height variance) The building additions are located in a manner which allows for the safe and efficient operation of this manufacturing process. They are configured and considered in a location of existing internal site functions...

Mr. Karlbach testifies this deviation of the ordinance also advances the very same purpose of the Land Use Law to encourage activity shaping land development with lessening the cost of such development to the more efficient use of land.

Reviews Environmental factors and visual impact with regards to the impervious coverage variance.

Testimony continues....

Mr. Karlebach reviews negative criteria. Traffic and Parking. They have concluded the facility will operate with no detriment traffic impact on the surrounding area and this was the report that was previously submitted to the Board. The Board's Traffic Engineer, Mr. Kataryniak agrees with this assessment and they have written that the increase in traffic activity at the site is de minimis from an operational standpoint.

Testimony has stated the proposal will result in no additional employment at the site and that parking is plentiful even during times of peak point shift changes.

Visual impact as it relates to height. Look at the schematics that have been provided, he thinks this speak volumes. See the size and scale of these additions relative to the overall 39-acre site and they are very small relative to what the site can accommodate.

Testimony continues.....

Other potential community impacts that were discussed relates to air quality impacts and he believes Mr. Wallace (Plant Manager) has already addressed whatever State permits are required the Applicant will seek these permits and the Board is going to make this a condition of approval if they act favorably on this application.

Mr. Karlebach notes there is no excessive noise as presented by the Acoustics Expert. Any sound that emanates from this facility will and is going to have to comply with NJDEP guidelines. If it doesn't, then the applicant has to be held accountable.

There are no other identifiable impacts that he can see. The Borough has already contemplated the effects of this facility at this location and has found it a suitable locations, the Engineer stated there is no decrease in building setbacks proposed which is also significant. He did review the Master Plan and as the Board's Planner notes that the northeasterly portion of this site has been designated for future affordable housing and also states in her memo to the Board, the application is generally consistent with the Borough's Master Plan he does not see why this site shouldn't continue to operate at this location for many years to come.

Mr. Karlebach speaks to the State Development and Redevelopment Plan, noting Fair Lawn is within a key A-1 or Planning area one designation...the State plan actually encourages development to occur in areas of existing infrastructure and reduce suburban sprawl. This is exactly what is being done here, they are concentrating the development on this site that is well equipped to handle this additional development and not sprawling out, this is a planning benefit as well.

Mr. Karlebach concludes by saying there are many planning benefits that are conferred by this application. Achieved increased productivity and efficiency which is achieved through modernization of the existing facility. Improved overall sanitation practices, a retention of a longstanding industrial tenant which he understands is the number one employer in Fair Lawn, improvement of air quality control measures, noise abatement measures that should address any concerns as far as the decibel level at the residential property lines and the modest expansion of a facility on a site that is well equipped to accommodate these improvements.

Mr. Karlebach sees no substantial detriments and reminds the Board that's the test. It has to be substantial detriment....and he does not see this here.

He suggests to the Board the public benefits that are derived far outweigh any perceived detriment and thinks under the law this Board may grant the D-6 variance, all of the C variances that are being sought and the design waivers.

Mr. Belardo (Applicant's Attorney) has no further questions for this witness.

Mr. Newman (Chairman) asks Ms. Beahm (Board Planner) if she has any questions for Mr. Karlebach, to which she replies; she does not, she thinks he was very thorough in his testimony.

Mr. Newman asks the other Board Professionals if they have any questions of this witness.

Mr. Azzolina (Board Engineer) has no questions.

Mr. Newman asks if any Board Members have questions. Seeing none.

Mr. Newman asks if any residents living within 200ft. of the Applicant has any questions for Mr. Karlebach.

Ms. Thalya Hayes steps to the Podium.

Ms. Hayes asks Mr. Karlebach what the height of the existing fence was he spoke of.

Mr. Karleback introduces an Exhibit.

Marked as Exhibit A-9 (Photograph) Stockade fence

Mr. Karlebach explains he took this photograph and was not sure of the street he was on. Clarifies it was not Iris Circle but east of it. Opono Court? This shows the Stockade fence being as he describes as at least 6ft. in height. It shows mature white Pine Trees and a soil berm which he estimates to be 2ft. in height. (Passes this photo to the Board for review)

Ms. Hayes (Resident) believes this picture on the street that he is talking about is not from their site.

Discussion....

The Stockade fence is the same height in both locations, Indian Rock and Iris Circle.

Trees are discussed...Ms. Hayes asks if the trees and bushes are the same in Indian Rock and Iris Circle.

Mr. Karlebach testifies they are. All mature white Pine trees. Height being he would guesstimate 40ft. in height. Notes the lower branches have disappeared which happens with trees when they shade each other out...

Mr. Newman asks Ms. Hayes if there are any other questions.

Ms. Hayes replies no.

Mr. Newman asks if there are any other residents within 200ft. of the Applicant with questions for Mr. Karlebach. Seeing none,

Mr. Newman closes this portion and opens questions for Mr. Karlebach from the General Public. Seeing none,

Mr. Newman closes this portion.

Mr. Newman asks Mr. Belardo (Applicant's Attorney) if he would like to sum up.

Mr. Rosenberg (Board Attorney) asks Mr. Newman if he would like him (Mr. Belardo) to sum up now or after Public comment.

Mr. Newman leaves it up to Mr. Belardo.

Mr. Belardo chooses to sum up after Public comment.

Mr. Newman (Chairman) opens the segment for Public Comment.

Mr. Lee steps forward. States full name, Jacob Lee.

Mr. Lee would first like to thank the Board for giving them the opportunity to come in and voice their concerns. Apologizes for the tension earlier but if they were in the same situation, they would probably be saying the same thing. A lot of things that have been said tonight he totally disagrees with being someone that lives right next door to Nabisco. The evidence the Applicant presented tonight with respect to the noise is totally untrue.

Mr. Lee notes the 2nd witness (cannot recall the name) who spoke about parking. He stated by empirical evidence he knew there was ample parking inside the facility. Empirical evidence is ample evidence based on the evidence of what has been living in the Condo association for 10 years. It's ample evidence that the noise that emanates from Mondelez exceeds the allowable Municipal Law.

Mr. Lee continues. He has spoken with the County Inspector, Noise Inspector and asked him....(cut off from continuing...)

Mr. Belardo (Applicant's Attorney) objects. He states this is hearsay. He knows the rules of evidence are somewhat relaxed when before Land use boards as opposed to Court. He notes he did not have the opportunity to ask questions of the County noise Inspector so this is complete hearsay. There is no substantiation beyond the available testimony that this witness has offered.

Mr. Lee replies to Mr. Belardo; he would think he would have the discretion, Counsel, this is not a formal trial and the rules of...he is trying to give a final comment.

Mr. Newman notes to Mr. Belardo, he can make a comment.

Mr. Belardo states his objection still stands for the record.

So noted.

Mr. Lee continues. He explains he spoke with the County Inspector. His name is Joe McDolan and he asked him what does 65 decibels sound like? He stated it was having two people having a casual conversation 3ft. away..

Mr. Lee stated he told Mr. McDolan if he came to their Complex, he would find the noise coming from Mondelez far exceeds 65 decibels, even at night. The reason why he is here tonight is because for the past 6 months he has woken up at least 6 times during the night with the noise.

Mr. Newman (Chairman) stops Mr. Lee to make a few important points. Explains to him although everything he is stating may be well founded, the Board has absolutely no jurisdiction over any of it. What the Board does have jurisdiction over is whether or not to grant the particular variances this Applicant is seeking based on the testimony given.

Mr. Newman continues...other noise issues on the site and other things pertaining to the current operation of the site are beyond the purview of this board. It would be arbitrary and capricious for this board to deny an application based on other things that are a concern to adjoining residents that have nothing to do with the application.

Mr. Lee asks if this process here is any different than filing for a permit to do construction on a home and the Town says you have to fix the problem before we issue a permit.

Mr. Newman replies; yes, it is very different.

Discussion continues....

Mr. Lee notes there is a problem with noise and he would think Mondelez would have to fix the problem before the Board grants a variance.

Mr. Newman reiterates, they have no jurisdiction.

Mr. Belardo (Applicant's Attorney) interjects to state for the record that he (Mr. Lee) offered no expert testimony there is a problem with noise.

Discussion continues...

Mr. Newman notes to Mr. Lee he is allowed to make his comments but again the issues he is bringing before the board are not something they have jurisdiction over.

Mr. Lee asks what is the point then of having a hearing.

Mr. Newman explains the point of having this hearing is whether or not the applicant meets the legal proofs that are required for the granting of the variance they are seeking. The point of every Zoning Board meeting.

Mr. Rosenberg (Board Attorney) explains to Mr. Lee, the purpose of the hearing is to determine whether or not the applicant has met the burden for a D-6 height variance. If the applicant had come to this board for a "use" variance, a D-1 variance, then he would agree and counsel would agree that the criteria the board would have to look at and consider would be much broader and greater and could include issues, such as whether or not there are problems faced by adjoining residents for a use variance....

Mr. Rosenberg continues. As the Planner properly noted, this Board is guided by the Coventry case. This is a D-6 variance. It is a much relaxed and lower standard the Board has jurisdictional authority to consider...The Chairman is absolutely correct and it would be arbitrary and capricious and unreasonable for the Board to apply a D-1 "use" variance to a D-6 "height" variance.

Mr. Lee has no further comment.

Ms. Hayes (Resident) steps to the Podium. (Repeats her name) Thalya Hayes.

Ms. Hayes asks how long the Construction is going to last.

Mr. Newman (Chairman) notes this question was not asked, and would they be able to answer this question?

Mr. Belardo brings Mr. Wallace (Plant Manager) back up as a witness to answer.

Mr. Newman states; obviously whatever Mr. Wallace will say is only a projection.

Mr. Wallace (Plant Manager) concurs with this statement and states the bulk of the Construction will start pending proper approval here by the end of November, and should be completed (Penthouse addition) by the February timeframe. They will continue installing the equipment internally and start to wind down in the May or June timeframe.

Mr. Wallace continues...again, there are a couple of lines they are putting in so external construction that would be seen from the outside is primarily from November to February.

Mr. Belardo (Applicant's Attorney) reiterates "this is again a projection".

Ms. Hayes (Resident) has another question regarding construction. She would like to know what time the 1st shift is, how many days of the week is this going to be. Will it be 7days like the normal operation?

Mr. Wallace testifies the Construction would deviate between the construction and the equipment installation. The majority of it will be Monday through Friday but they could be going to weekends. One of the things they will be trying to do through all this is try to maintain their production, so that forces them to do some work during the weekend rather than during the week because this is when some of the lines (existing Production lines) are down. The majority will be during the week but yes, it will go into the weekends.

Mr. Wallace continues to testify how the operations of Construction will work. Reviews the hours of operations during peak hours but states it will most **not** go past 6:00pm.

Ms. Hayes has no further questions.

Mr. Newman asks if there are any other comments from Residents living within 200ft. of the Applicant. Seeing none,

Mr. Newman opens to the General Public for comments.

Mr. Newman swears in: Craig Miller
5 Ramapo Terrace
Fair Lawn, N.J.

Mr. Miller begins by stating he is a little confused. Are they talking about a building height or are they talking about parking lots?

Discussion...

Mr. Rosenberg (Board Attorney) explains to Mr. Miller, as part of the application, the applicant has asked to continue a prior parking variance that was granted. It is a technical aspect of the application to allow them to continue to use the site for a parking variance granted by the Planning Board in the 1990's.

Mr. Miller moves to a general comment. He states he is hearing from residents that live near this facility. He passes it 5 days a week, 2X-10X a day. He has no complaints with the building but he is not close to it at all. From what he has heard, it sounds to him what is being said is; "we were here first, so we can do what we want."

Mr. Miller continues...if the residents that live near this place have an issue with sound or loud noises in the middle of the night, what he has heard from the Board is; it's not your job, so it leaves the residents saying, where do they go? Who is in control? It's not the Planning Board, it's not the Zoning Board? It sounds like; oh well, big business is here, you wash your hands of it. Is this what is being said?

Mr. Newman (Chairman) replies; it is Municipal & County Officials that have jurisdiction over this, not these Boards.

Discussion...

Mr. Miller begs to differ. He is a resident and a good neighbor, he is hearing complaints of the residents and the noise they have no control over. The boards can say no deliveries between 10:00pm and 6:00am.

Mr. Newman states; As Mr. Rosenberg already explained, this Board cannot...

Mr. Miller understands...

Mr. Newman continues...his opinion can differ from that of the Law, but the Law is the Law and it is what this Board must abide by.

Mr. Miller has no further comments.

Mr. Newman asks if there are any other comments from the General Public. Seeing none, Mr. Newman closes this portion.

Mr. Belardo (Applicant's Attorney) moves to summarize. He thanks the Board for the Special meeting and the accommodations the Board Professionals have made. Thanks Ann Peck (Assistant Zoning Officer) who has been courteous and helpful throughout.

Mr. Belardo notes Mondelez has made a commitment to this site to expand and invest in resources in this site...heard the variances they are seeking from the experts with respect to height, the D-6, existing variances...speaks to Mr. Karlebach's testimony.

Mr. Belardo continues his summary...he agrees there is no substantial detriment, he thinks they presented sufficient proofs. They are willing to agree to the conditions the Board has requested tonight in order to grant an approval.

Mr. Belardo speaks of the residents and the Condominiums in Glen Rock, the physical plant was there long before the buildings were built and they try to be a good neighbor and will continue to be a good neighbor. Mr. Wallace (Plant Manager) did state in his testimony he is available to field any questions. Noise will always be an issue with the residents there. Mondelez retained Matthew Murello (Acoustics Expert) to work with us so as not to increase any of this. He recommended various louvers and other things, sound mitigating devices and we will implement them as part of the condition of an approval. All of this is going to result in an improvement to this particular site and will clean up a number of things.

The additions will be aesthetically pleasing from an Architectural standpoint and that the board take all of their witnesses' testimony into consideration and grant the variances and waivers sought and the site plan in general.

Mr. Newman (Chairman) before asking for a motion would ask one favor of the Planner, and that is to clarify the height corrections made during testimony. They differ from the numbers before him and there were also corrections on those corrections...in order to give an approval, we will need the exact numbers.

Mr. Belardo acknowledges this and asks Mr. Collins (Applicant's Planner) to step fought. Reiterates this is all subject to the approval of the Board's Engineer.

Mr. Collins testifies before putting anything on the record, he would like to be sure everyone is on the same page. He thinks there were two different standards that were used. One was the height above the finished floor elevation of the building and one was as calculated by Mr. Azzolina which related to the median grade within 50ft. of the building.

Mr. Azzolina (Board Engineer) concurs. What he did in that respect is what is presented on pg. 7 of his report.

Discussion....

In reference to the 4th floor addition-there was a typographical error in his report. He corrected this error and gave it to the Board secretary. The actual correction relative to the 4th floor based on the numbers shown on the plans submitted for review changed by a foot, 18inches based on testimony tonight. The height would be 89.75ft.

Mr. Azzolina continues...the calculated height elevation will probably change by a foot or two depending on what the final numbers are and he can provide them to the board for any inclusion in the resolution...

Mr. Collins agrees.

Mr. Newman notes for the record,

The north elevator addition would be 84-foot-six-seven.

Employee entrance addition would be 55.0.

4th floor addition-89.75

Sugar Grinding penthouse addition-88.75

Icing Kitchen addition -65.0

Mr. Azzolina concurs.

Mr. Newman asks when a motion is made, to please include these numbers.

Discussion.....

Mr. Newman after further discussion, asks motion be made with the word approximately in front of the numbers.

Mr. Seibel (Board Member) makes a motion to approve the application with all conditions noted. (Correction noted-Elevator, 3rd floor increase from 173 to 188sf. for a total of 482-not 470)

Conditions: Obtain proper permits for air quality as per the State of New Jersey.

Proper width of the sidewalk plans for 4ft.

Remove Oil tank through proper and professional remediation as needed.

Install acoustical louvers or silences to all 3 vents as proposed.

Inventory parking areas and summarize on the plan.

Ms. Beahm (Board Planner) has one more request. They submit the information regarding the approvals and the location of the signs and the resolution.

Discussion...

Mr. Puzio (Vice-Chairman) asks if the maker of the motion would accept a few amendments and corrections.

Discussion...

Mr. Puzio has an inquiry on the survey. It indicates the acreage of 39.79 whereas the reciting in the application is 39.26. He would like clarification on this and also to the square footage. The Survey recites 1,733,344.5 sf. whereas the application recites 1,731,946sf.

Mr. Connell steps forward. Clarifies the number should be 1,733.344.5sf. The acreage should be 39.79 acres.

Mr. Seibel accepts these corrections and amendments with his motion.

Mr. Puzio seconds the motion.

VOTE: Mr. Gil, Mr. Seibel, Mr. Blecher, Mr. Lowenstein, Mr. Puzio, Mr. Pohlman,
Mr. Newman, **YES.**

(Mr. Blecher & Mr. Lowenstein both urge the Applicant to be sympathetic to the neighbors and do everything reasonable to minimize the impact on the neighbors in terms of daily operational noise, delivery, unloading and things of this nature.)

**MOTION CARRIES.
APPLICATION APPROVED.**

Adjourn:

Mr. Puzio makes a motion to adjourn and Mr. Pohlman seconded the motion.

All Present: AYE
Time: 11:00 P.M.

Respectfully submitted,

Cathy F. Bozza
Zoning Board Clerk

