

BOROUGH OF SOUTH PLAINFIELD
ZONING BOARD OF ADJUSTMENT MINUTES
October 3, 2017

Gino Leonardis opened the meeting at 7:00 pm.

Please stand for the PLEDGE OF ALLEGIANCE.

This meeting was held in accordance with the Open Public Meeting Act and as such, proper notice of this meeting was published in The Observer and The Courier News and providing same to the Borough Clerk.

It is the policy of the South Plainfield Zoning Board of Adjustments, not to hear any new applications after 10:00 pm and no new witnesses after 10:30 pm.

ROLL CALL:

Present:

Gino Leonardis, Chairman
James Gustafson, Vice Chairman
Ken Bonanno
Maria Campagna
Darlene Cullen, 1st Alternate
Cindy Eichler
Frank Lemos
April Wasnick, 2nd Alternate

Absent:

Robert Hughes

Also attending: Larry Lavender, Esq.; Nicholas Dickerson, PP, AICP; Donna Bullock, PE

MINUTES: September 19, 2017 meeting.

Mrs. Eichler made motion, seconded by Mrs. Cullen to accept the above listed Meeting Minutes. Those in favor: Mr. Bonanno, Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None.

RESOLUTION:

**A. Case #18-17 -- Performance Building Enterprises LLC
Block 43: Lot 11: R-7.5 Zone
125 Rahway Avenue**

Mrs. Eichler made motion, seconded by Mr. Lemos to accept the above listed Resolution. Those in favor: Mrs. Eichler; Mr. Lemos; Mrs. Wasnick and Chairman Leonardis. Those oppose: None

**B. Case #29-17 -- Ed Baksh
Block 105: Lot 7: R-10 Zone
128 Kenwood Avenue**

Mr. Lemos made motion, seconded by Mrs. Campagna to accept the above listed Resolution. Those in favor: Mrs. Campagna; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick and Chairman Leonardis. Those oppose: None

**C. Case #26-17 -- Lisa Gryllis-White
Block 271: Lot 2: R-10 Zone
250 Oakland Avenue**

Mrs. Eichler made motion, seconded by Mrs. Campagna to accept the above listed Resolution. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None

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HEARING(S): (3 residential and 2 commercial applications)

A. Case #31-17 -- David Butrico (Mike Buteas – Representative/Contractor)
Block 407: Lot 41.01: R-10 Zone
153 Somerset Street

The applicant is requesting to construct an Add-A-Level to a pre-existing non-conforming situation. Variance being requested: Lot Width: Existing 75' -- Required 100'.

Mike Buteas – 1260 South 11th Street, South Plainfield, New Jersey – contractor, is sworn in. Proposing an add-a-level over the existing garage. Was denied a zoning permit for the seventy-five foot (75') lot width where the zone requires one hundred feet (100'). All other setbacks are met. The add-a-level would create a master bedroom with a master bathroom.

Chairman Leonardis questions Mr. Buteas:

- Will the garage remain as is? *It is not a full functioning garage. It is more for storage and goes back to the laundry room.*
- Will it remain a garage? *Yes... no changes to the garage.*
- Exterior? *Currently, fiber cement sidewalls. Anything with the fiber cement will be vinyl. Cedar shakes in the front and the sides will be double four dutch lap siding.*
- Roof? *Will tie in. The existing roof is not too old.*
- On the second floor, what will be there? *Master bedroom and master bath.*
- Are you going out the back? *Yes... asking for six feet (6'). The plans call for 5.1'.*
- Variance is just for lot width? *Correct.*

Mr. Lemos asked how many family members are living in the house. There are already four (4) bedrooms and this would be the fifth bedroom.

David Butrico – 153 Somerset Street, South Plainfield, New Jersey – owner, is sworn in. To answer Mr. Lemos's question, he has moved his mother from Florida. Plans to give the existing master bedroom to her so she may have her own bathroom. The new master bedroom and bath would be for his wife and himself. Mr. Lemos asked if the garage will remain a garage. Mr. Butrico stated yes... the garage will stay a garage.

Chairman Leonardis opens the discussion to the public. There are no comments or concerns from the audience.

Chairman Leonardis stated there are no side yard setback variance required. The existing lot is seventy-five feet (75')... pre-existing. Building over the existing house.

Chairman Leonardis calls for a motion of approval. Mrs. Eichler made motion, seconded by Mrs. Cullen. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None

B. Case #32-17 -- Jordon & Veronica Cohen
Block 228: Lot 23: R-7.5 Zone
142 Gubernat Drive

The applicant is requesting bulk variances to construct a rear deck to a pre-existing non-conforming structure. Variances being requested: Lot Width: Existing 65' -- Required 75' -- Variance 10'; Side yard setback: Existing 7.59' -- Required 8' -- Variance .49'.

Jordon & Veronica Cohen – 142 Gubernat Drive, South Plainfield, New Jersey – owners, are sworn in. Would like to construct a rear deck. Chairman Leonardis confirms with Mr. Cohen that the survey before the Board Members is the same survey he is referring to. Mr. Cohen stated where the existing patio exists, would like to put the deck. He

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had 'penned in' the area for the deck. The deck would be flush with the garage and the sun room. It is filling in the gap between the two. It is not breaking the plan of the house.

Mr. Lemos asked if the area of the patio that goes beyond the house will be removed. Mr. Cohen stated yes... would like to plant grass.

Chairman Leonardis questioned Mr. Cohen:

- How will the deck will be constructed? *Trex decking. Picked out the most expensive one. A standard deck. A contractor will build it.*
- Will the deck be flush with the home? *Yes. The idea is the screened in porch and deck will be at the same height.*
- Able to approach the deck from both sides? *Yes.*

Mr. Lemos asked how high the screened in porch / sunroom? Mr. Cohen stated knee high. Mr. Lemos continued... are there stairs from the porch? Mrs. Cohen stated yes... but awful. Mr. Cohen stated the existing stairs are dangerous and need to be removed. Need to fix the steps so let's build a deck instead. It will look nice.

Chairman Leonardis asked will there be stairs off the deck to the rear of the house. Both Mr. & Mrs. Cohen stated yes.

Chairman Leonardis opens the discussion to the public. There are no comments or concerns from the audience.

Chairman Leonardis stated this is a deminimis situation... taking a pre-existing non-conforming condition and extending it back. There is nothing that can be done with the lot width. The lot width in the back is wider. The height is not an issue... it will be the height of the existing.

Chairman Leonardis calls for a motion of approval. Mr. Lemos made motion, seconded by Mr. Bonanno. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None

**C. Case #30-17 -- F&M Equipment Ltd (Komatsu)
Block 476: Lot 6: M-3 Zone
2820 Hamilton Blvd**

The applicant is requesting an *Interpretation*.

James F. Clarkin, III – Clarkin & Vignola, PC, 1100 Centennial Avenue, Suite 203, Piscataway, New Jersey – attorney for applicant addressed the Board. A request for two (2) interpretations. Property owned by F&M Equipment Ltd also known as Komatsu which is a nationwide corporation. This is a multi-use facility. They are engaged in sale, leasing, servicing, repair, maintenance, storing and warehousing of heavy construction vehicles and equipment. Will hear testimony that their customer base is contractors not the general public. The letter submitted on July 7, 2017 was unbelievably lengthy and involved. Will simplify the issues and clarify the relief being requested. The property is located in one of the Borough's M-3 zone which is the most permissive zone in your zoning scheming. The zone permits a variety use including manufacturing, warehousing and distribution, limited retail sales and all the uses permitted in the M-1 zone. The M-1 zone permits office buildings, labs and light manufacturing. The Zoning Official issued a denial of continued use regarding the retail component of the business that is operated there. The denial in the Board's packet and listed as Exhibit D. However, the issue goes beyond retail sales. All the uses permitted in the M-3 zone and try to match it them up against the uses that Komatsu is engaged in, there are a variety of uses permitted in the M-3 zone. Two (2) different people have different interpretation. John Pabst issued a zoning letter on December 1, 2015 which he indicated that the property is in conforming with the zone requirements. On January 6, 2016, Mary Frances Hildebrandt stated that she was comfortable to issue a Certificate of Continued Use. Then later retracted a portion of that – the retail sales.

Mr. Clarkin presented to the Board Members:

- Exhibit A-1 – Mr. Pabst's zoning letter dated December 2, 2015.

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- Exhibit A-2 – Ms. Hildebrandt's Certificate of Continued Zoning/Use.

Mr. Clarkin continued... Must deal with Mary France's denial as to the retail aspect. Want a clean slate... that every aspect of the business is permitted. This applicant and the people before them always did the right thing as to the respect of the property. The challenge is that no one can find a resolution of approval from 1970 when the building was first constructed. There is a Certificate of Occupancy that was issued and a copy of the certificate is in the packet. Fortunately, there are drawings and testimony from two (2) of the Binders when it was Binder machinery that can provide us with some history. Will hear testimony and the recollection that there was a public hearing in 1970, there was testimony given and there was an approval. Do not know exactly what was approved and how they went about doing it. Based upon discussions with the Zoning Officer, Mary Frances Hildebrandt, in 1970 when the application was made the applicable Zoning Ordinance was the 1960 Ordinance. It is included in the package. The second to the last page which is the zoning map of the Borough, the properties on Hamilton Boulevard are listed in the M-3 zone. Next task is then to see what the permitted uses in the M-3 zone back then. Page 8 lists all the uses in the M-2 zone is permitted in the M-3 zone. M-2 zone states that all the uses in the M-1 one is permitted. Therefore, the M-3 zone. Page 7 lists the particular uses in the M-1 zone. There is a list - office buildings, labs and light manufacturing. Subsection D states '*In addition to the addition of the above, any business not inconsistent with the above may be conducted in this zone.*' That is the bases in which the Zoning Board or Planning Board agreed that this application back in 1970 was approved. This was automotive and heavy equipment uses. Those uses were not permitted uses that were listed in the M-1 zone. That is what they relied on. Fortunately, Ronald Binder has the plans that were submitted as part of the 1970 application. There are three (3) different plan sheets. Have a set of plans from 1983 when the additional was constructed. Once again, this applicant and its predecessors did everything in the right way. I gave you all the pages from the construction office and you will see that every time they did something they got a permit. In addition, you have copies of four (4) resolutions after 1970 when they did things like put on building additions or some sort of exterior improvement. An approval was granted in 1970 for the uses that are there today and can support that with all of the plans. Those uses include retail sales. Not blaming Mary Frances Hildebrandt. She had anything in front of her in which she could have granted it. It was not until after did some digging. Came to Joanne who looked for plans. Couldn't find anything. She even went into the basement and came up empty. Fortunately, Mr. Binder had the plans and they have been included. Understand Mr. Chairman you have those. Chairman Leonardis stated he is looking at them right now. Chairman Leonardis complemented on the plans... they were hand drawn.

Mr. Lavender asked Mr. Clarkin if these uses have been consistent the entire time. Mr. Clarkin stated they have been consistent the entire time. The plans show the parts area, parts counter and exterior door. Mr. Lavender continued... there is no evidence of any kind of abandonment of those uses. Mr. Clarkin stated no.

Chairman Leonardis asked how did all this came about. Mr. Clarkin stated that Mary Frances Hildebrandt gave a denial that they could not engage in the retail sale of goods, parts, vehicle or equipment. Mr. Leonardis continued... what tipped her off that they were selling parts. Mr. Clarkin stated the Binder Companies sold the property to F&M Equipment. The due diligence of the attorneys made an inquire as to what was permitted.

Alan Binder – 15 Waverly Place, Cranford, New Jersey – is sworn in. Mr. Clarkin questioned Mr. Binder:

- Employed by Komatsu as the Eastern Regional Service Manager.
- Was present when his father built the building in 1970.
- Currently owned by F&M Equipment.
- Prior owner was Binder Realty. Family LLC.
- F&M Equipment purchased the property on December 12, 2016.
- Recalls when the building was constructed.
- Plans that were submitted to the Board are copies of the original plan from 1970.
- Retail sales of parts and equipment has always been present with the building.
- Not aware of any plans to expand the business, the building or goods and services.
- Customer base is general contractors and farmers.
 - Provide sales of new machines and used equipment.
 - Provide service and parts for those machines. Strictly for the construction industry.
 - Does not offer sales to general public.

Chairman Leonardis asked specifically about the retail... what is sold? Mr. Binder stated parts... there is a parts counter. Customers may come in for filters. Purchase filters for their specific machines. Not like a NAPA store...

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does not sell any parts that is not OEM – only sell strictly manufacturers parts. Line is Komatsu. Chairman Leonardis asked to clarify what OEM is. Mr. Binder stated original manufacturers equipment parts.

Mr. Clarkin stated the parts department is used to supply parts for servicing and repairing equipment and vehicles. Mr. Binder stated correct. Mr. Binder continued they are the biggest customer... service departments.

Chairman Leonardis asked if it is common for a customer who is looking for a filter for their home garden tractor to purchase a filter from them. Mr. Binder stated no they would not. This is not a lawn mower shop or anything like that. These are large pieces of equipment – specific parts. We don't sell anything in the aftermarket side. We are a manufacturer's 'house'. It is strictly what is manufactured for that specific equipment. Chairman Leonardis asked what type of equipment. Mr. Binder stated heavy construction equipment. Komatsu is our main product line who owns us. The second largest product line is in milling and paving equipment. Chairman Leonardis stated it's the type of equipment like dozers and excavators. Mr. Binder stated bulldozers, excavators, wheeled loaders... those type of equipment.

Ronald Binder – 1880 Black River Road, Far Hills, New Jersey – is sworn in and excepted as a Professional Architect. Mr. Clarkin questioned Mr. R. Binder:

- Licensed architect for thirty-four (34) years... since 1983.
- Previously before this Board.
- Remembers the initial construction of the building in 1970. Was a draftsman at the time.
- Worked for the project engineer at that time and for his father who was the contractor that built the building which were approved by the Borough.
- Had conversations with his father about the approval.
 - Had a public meeting.
 - Got the approval.
- Has maintained the file of all the drawings of the property.
- Examined his file for the documents for this case.
 - Site Plan drawing prepared by Joseph Corvasce, PE dated April 4, 1970 before the Board. Worked on these plans as a draftsman
 - Drawing labeled as A1.
 - Shows office, warehouse, parking area, semi-circle in the front, customer parking on west side.
 - Drawing labeled as A3.
 - Shows office floor plan.
 - Shows service department, warehouse, office, customer entrance, parts counter, sales office, machine shop, welding shop, tool shop, inventory control area.
 - Drawings labeled 'Proposed Office Addition to Binder Machinery Co' – revised October 13, 1983 – signed by Ronald Binder, Architect – A-3.
 - Addition - Parts sales and office in front expanded. Shows parts office, parts pick-up counter, separate entrance to parts pick-up area.

Chairman Leonardis asked in 1970 was the business Binder. Mr. R. Binder stated back in 1970 it was New Construction Inc. owned by his dad. His dad's brother, Walter Binder owned Binder Machinery. His dad built the building for his brother. Chairman Leonardis asked what was sold out of this building in 1970. Mr. R. Binder stated the same things as being sold now... machinery, construction heavy equipment sales, services and parts. It has not changed in fifty (50) years. There has always been a parts counter.

Mr. Clarkin stated that unfortunately, when you go back to 1970, almost fifty (50) years, like many other towns, items do not exist. In 1983 the board adopted a resolution that mention a prior resolution. That is the resolution that seems to be missing. Asking to interpret and fill in the gap... that the 1960 ordinance is in effect, that it permitted the uses as the best as we can tell, applied for and were utilized when the building was constructed. There are plans that demonstrate that there were always retail sales... particular parts. There would not be a counter, a supply room or a separate entrance on the side if you did not have the sale of retail parts. In the front are all the executive offices.

Mr. Lemos asked Mr. R. Binder if the plans before them are the original plans. Mr. R. Binder stated it is a copy of the original tracing. He has the original tracings. Mr. Clarkin stated that he made copies of the original drawings.

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Vice Chairman Gustafson asked along with the interpretation, would they be inclined to include that any alterations to the building would require a return to the Board. Mr. Clarkin stated if we were to alter the uses in which the building has we would have to come back to the Board. Mr. Clarkin asked Mr. R. Binder if you walked through the side door, are there isles and isles of products that you can walk through and see to purchase. Mr. R. Binder stated no. Mr. Clarkin continued... is everything behind the counter. Mr. R. Binder stated you have to seek the assistance of an employee of Binder Machinery to purchase something. It is not like going into a Home Depot. Vice Chairman Gustafson would like to make sure all is correct. He believes in 1960 that there was services and parts sales. What if you acquire a new brand? Mr. Clarkin stated would submit a Zoning Permit and let the Zoning Officer decide if it is significant enough to come to the board. Has no problem with not having a retail sales area in front of the counter... all the parts are behind the counter. There are no isles in which the public can pick and choose.

Mr. Lavender stated that if isles are to be set up they would have to return to the board.

Chairman Leonardis suggest that the retail should be OEM type of items. Do not want people stopping by to buy a shovel, gloves, safety vest etc. and have it turn into a contractor store in competition with Home Depot - that type of store.

With no further questions from the Board Members, Chairman Leonardis opens the discussion to the audience. No comments or concerns from the audience.

Chairman Leonardis stated that with regards to the interpretation, it is clear that since 1970 there was a counter and parts section. Between 1970, 1983 and today, it is the same industry... same type of equipment. Does not think that the retail use has changed from what it was originally through today. If it is limited to OEM parts and material it is in line with what they have been doing all along.

Chairman Leonardis calls for a motion to approve the interpretation to continue on with the retail sales as is with OEM type of parts and material along with sales, leasing, servicing, repairs and storing and warehousing of the heavy construction equipment.

Vice Chairman Gustafson stated that the Certificate of Occupancy from 1971 has missing language and would like to make sure that the wording today is specific to the retail sales. Mr. Lavender stated he can clarify that and will circulate the wording to Mr. Clarkin.

Chairman Leonardis calls for a motion of approval for the interpretation. Mrs. Campagna made motion, seconded by Mr. Lemos. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Mrs. Wasnick; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None

D. Case #04-16 -- Robert Cusick
Block 311: Lot 9: R-10 Zone
1055 New Market Avenue

The applicant is requesting a Preliminary and Final Minor Site Plan with Use & Bulk Variances.
Continued from January 17, 2017 hearing.

Walter Abrams, Esq. - 2201 South Clinton Avenue, South Plainfield, New Jersey – attorney for applicant. Mr. Abrams asked to have Richard Lapinski sworn in.

Richard Lapinski – 554 Compton Avenue, Perth Amboy, New Jersey – is accepted as a Professional Planner and is sworn in.

Mr. Abrams stated that this is an application that was filed earlier in the year... spring 2017. There was another attorney representing Mr. Cusick at that time. There was not a planner that was prepared to testify at that point in time. Since that point, Mr. Abrams has been representing the applicant. The case has been carried a few times. The last two (2) times it was carried due to the severe back problems Mr. Abrams had encountered. Mr. Cusick did testify at the last hearing. Presently, there are two (2) apartments on the second floor. The first floor is one large area – one unit. Sometime in the past it was some type of general store. It has been vacant for many years. There

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is a notation that was made in the building department records that the use of that floor was abandoned. Not sure who made that interpretation. It was not done by the Zoning Officer. Did not find any records showing that the Zoning Officer had done so. However, it appears that the Borough's interpretation is that that use has been abandoned. Seeking the approval of the Board to turn the first floor into one apartment. Two (2) apartments on the second floor – one (1) large apartment on the first floor.

Mr. Abrams asked Mr. Lapinski to describe the area:

- Use the unoccupied ground floor of a two (2) story existing building for a three (3) bedroom apartment.
- Building built approximately 1930.
- From the photographs in the Borough's Planners review letter looks like the reminiscence of a small store front on the façade facing New Market Avenue.
- At some time, there was a commercial use of the ground floor.
- Proposing to utilize the entire ground floor for a three (3) bedroom apartment.
- The existing building contains two (2) two (2) bedroom apartments on the second floor.
- Three (3) family homes are not permitted in the zone... D1 – Use Variance is required as well as a D5 – Density Variance. Also listed in Planner's report dated January 18, 2017.
- Corner lot... roughly triangle shape.
- Residential zone on Highland Avenue.
- New Market Avenue is the boundary between Residential and Industrial zone.
- Land uses are mostly single family. A few scattered two (2) family dwellings.
- Across New Market Avenue, a scattering of multi-family residential, commercial and light industrial uses.
- Justification... the property giving the existing non-conformity nature of the aspects of the property it is particular suited of the proposed use because of its size and shape.
 - Existing building.
 - Existing off-street parking can be expanded to conform to the off-street requirements.
- Ground floor may have been used as an apartment at some time. Was abandoned.
- No determination as to what the ground floor can be used for. Hardship.
 - Exists as vacant space.
- Public good would serve by the advancement of 40:55D-2m – coordination of public and private aspects of land development to determine and result of efficient use of the property.
 - The efficient use of this property is to have the ground floor as a residential use more preferable.
- Density relief – purpose of that act is to prevent the neighborhood character be drastically affected by a new development.
 - The requirement only applies to three (3) families and above. As well as subdivisions.
 - Building exists, property exists, off-street parking can be acquired, all the amenities required of a three (3) family use can be provided on the property. The property is not changing. The character of the neighborhood would not substantial be altered by this grant. Therefore, the grant can be achieved.
- It can be achieved without detriment to the public good.
- Properties in the vicinity have no off-street parking.
- Negative impact on the Master Plan and Zoning Ordinance.
- The general characteristics are in the Master Plan... Adopted by the Master Plan... almost always includes uses which do not conform to the land use requirements of the Master Plan.
- When Master Plan adopted in 2000, the building existed with at least as a two (2) family dwelling. Not a single a family residence and never was from the appearance of the building.
- Does not think this is a substantial detriment to the Master Plan.
- The conditions of the property pre-existed the Zoning Ordinance.
- Glass windows and front door appear to be retail / commercial activity.
- Building would not have been built as is if not used for commercial at some time.
- Utilization of one half of the floor area that meets the criteria for three (3) family will not have a substantial impact on the Zoning Ordinance.
- Reconcile this relief that the Governing Body did not include three (3) family dwellings in this zone.
 - The Zoning Ordinance is the framework upon which land use can be permitted.
 - When zones are established, almost always include non-conforming properties, uses and structures.
 - Commercial / residential building existed on this property for probably eighty (80) years.

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- o Use of half of the building for a three (3) bedroom apartment is a reasonable use of a property. Efficient use of the property. The grant would no way frustrate the Governing Body's use and intensions. Nor would it affect the character of the neighborhood.

Chairman Leonardis asked Mr. Lapinski, in his opinion, when the structure was first built what was it used for. Mr. Lapinski stated it appears that one point in time this was commercial space. Heard various stories that it was a small general store. Heard it may have had a fuel pump. This building is older than most of the surrounding buildings. A relative unique situation. It also appears that in fact it may have been a residential apartment at one point of time.

Chairman Leonardis reads an excerpt from the Variance Application... *'the first floor is now vacant. Historically it was once occupied as a residence and later a retail general store. The historical use as a general store does not make economic sense given the nature of the area and how the retail store or convenience stores are operated in this day and age.'* If we go under the assumption the first floor is vacant, it looks like it was once occupied by a residence and later a general store. Mr. Lapinski stated you are reading something I have never seen. Mr. Abrams stated he believes whomever completed the application inverted the statement.... It was a general store and later used as an apartment with the two (2) apartment upstairs. There is no issue with the Zoning Official with the upstairs. Matter of fact, Mary Frances was there within the last couple of days.

Mr. Dickerson asked to confirm... the two (2) apartments upstairs were approved. Mr. Abrams stated they have always been approved. Mr. Dickerson continued.... Is there evidence? Do we know it was always two (2) families? Mr. Abrams stated all the records... tax records and building department records have always shown two (2) apartment upstairs. There was a commercial use on the first floor. Someone made a handwritten notation that the use was abandoned.

Chairman Leonardis asked if there is any evidence that says two (2) apartments upstairs or evidence of a two (2) family house? There is a big difference between a two (2) family house and two (2) apartments upstairs.

Mr. Lavender stated the R-10 zone does not permit two (2) or three (3) apartments. Is there evidence to suggest if the two (2) apartments are legal? Mr. Abrams stated there are two (2) Certificate of Municipal Compliance for the units – one issued on June 2014 (Exhibit A-2) and one issued on August 2016 (Exhibit A-1). The Board reviewed the Exhibits.

Chairman Leonardis re-iterates the excerpt from the Variance Application... *'Historically it was once occupied as a residence and later a retail general store.'* After reading that, one would believe a two (2) family. There is nothing that indicates two (2) apartments. It's stating it was a two (2) family... no indication if it was up and down. Mr. Abrams stated the Certificate of Municipal Compliance states two (2) apartments. The application is referring to the first floor, not the building. The application was completed by Paul Sica. Mr. Abrams stated that that is the prior council and he has the information inverted.

Robert Cusick, owner, who is still sworn in from the previous hearing, stated it is indicated that in the 1960's when the building card first were established as a 2 family three (3) car garage, store and miscellanies. In November 11, 2002, is it indicated as abandoned. On this document from the tax department it says three family. Mr. Abrams stated he is referring to the third page of the OPERA request. The Board confirms that the information is in their packet. Mr. Cusick stated is was a store first. Chairman Leonardis stated no... what we know is that in 1960 what it was. We do not know what it was before that. It could have been a two (2) family house – first floor and second floor. Then they said build two apartment upstairs and make some money on the first floor. In 1961, it states a two (2) family... probably trying to say two (2) apartments with merchandise on the first floor. The house was built back in 1930. Mr. Cusick stated there is only a toilet on the first floor. Chairman Leonardis stated that suggests that it was only a residential living on the floor near the toilet. Mr. Cusick stated just a toilet is the mere fact it was a store. Mr. Abrams stated there is not too many stores that would not have a toilet. Chairman Leonardis stated back in the 30's stores would not have toilets... a residence would. Mr. Abrams stated if you look at the first floor, it does not look like an apartment. It looks like a classic store. Chairman Leonardis asked based on what? Mr. Abrams stated looking at the windows. Mr. Abrams continued... I do not know what had taken place at the last meeting. I have certain assumptions. My assumptions are since Zoning Officer issued two (2) Certificate of Municipal Compliance for the two (2) apartments upstairs are lawful. The Zoning Officer was in the building today. They are lawful uses. We are dealing with the first floor... which is vacant.

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Chairman Leonardis stated years ago, it was very common to have your store and live on top of the store. When times got bad, you split upstairs into two (2) apartments and the store goes away. Today, we are trying to bring a third rental unit into a building. Someone has to prove to me that there is evidence that it was some sort of residence.

Mr. Abrams stated on this paper from the tax department stated it is a three (3) to four (4) family.

Mr. Lavender stated that the zone says one thing... that none of these are permissible. What we do know is the two (2) upstairs are permissible. The question is downstairs... it could have been anything. The point is the zone says no.

Mr. Abrams stated the problem is the two (2) apartments are lawful. Mr. Lavender stated that is not the issue.

Mr. Abrams stated the problem is what are we to do with the downstairs. Mr. Lavender stated the Board can't zone something inutility. It may be problematic for the applicant that you may or may not have someone live there. The Board does not use that as the standard. Mr. Abrams stated that the downstairs cannot be used as anything else. Mr. Lavender stated what the Board is saying... let someone live upstairs and someone live downstairs. Mr. Abrams stated and abandon a living space upstairs? Mr. Lavender stated no...open up the walls and make upstairs one (1) family and one (1) family downstairs. That is probably not economical for the applicant and that is not what the Board will do... it's just a consideration. Mr. Abrams stated that would be improper for the Board to tell the applicant to re-build the upstairs. Mr. Lavender stated if the Board does not approve the first floor, it would be up to the applicant as to what he would like to do with the property.

Mr. Dickerson stated that he is trying to understand what is being done to bring this more into compliance? This is a single family residential district. You are proposing to take an existing non-conforming two (2) family unit and turn it into three (3). What is being done to bring this into conformity? Mr. Lapinski stated use variance does not bring it closer to conformity of the zoning ordinance. This is an existing building with two (2) units and vacant space. Yes... you can redesign the entire building. The second floor exists and is structured as two (2) two (2) bedroom apartments. The downstairs is the question mark. Obviously, the Board can do what it will. I believe it is more efficient to utilize the ground floor as residential. It is not reasonable to put it back to any type of commercial activity. The property could not handle office use or any commercial activity.

Mrs. Wasnick asked what is the building currently zoned for? Mr. Lavender stated one (1) family. Mr. Abrams stated the building is not zoned for one (1) family. Mr. Lavender stated the two (2) upstairs are permissible. The discussion is about the first floor.

Mr. Dickerson stated to clarify... they are permissible because they are existing non-conforming.

Mr. Lemos stated according to Dr. Temple, that is in a 100-year flood zone. Ms. Bullock stated without the topography, we do not know the elevation of the flood zone. Yes... it is in a flood zone. We would have to get topography to see what the height of the flood zone is. Mr. Lemos addressing Mr. Lapinski - without that knowledge you just said that you recommend that we allow this to go through in your negative criteria. Mr. Lapinski stated that the physical changes to the property is relative minor. Yes, there is some additional pavement in the area of New Market and there are some smaller areas of existing pavement on Highland. From a physical perspective I do not see an issue.

Mr. Lavender asked Mr. Lapinski to repeat the special reasons... the criteria. Mr. Lapinski stated there are two (2). The property is particularly suited for this use because it can easily accommodate the use. The building exists, all the alterations will be internal. There are no expansions to the building proposed. The physical changes to the property... the expansion of the parking areas, parking lot that fronts on New Market and the one that fronts Highland - the addition of the sitting area in the back – landscaping. Mr. Lavender stated that from the last meeting there were parking issues.

Vice Chairman Gustafson stated that there was neighbor testimony regarding parking. The reconciliation with the parking requirement using the garage that crosses sidewalks wouldn't be permissible or acceptable. There are areas of on-street parking allowed but there are distance requirements to the Stop sign and corner. Mr. Abrams stated there were additional parking added.

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Mr. Lapinski stated he has a second reason. That is the advancement of that purpose of the land use law is the efficient use of the property. Mr. Lavender stated that by adding another family would be efficient use of the property. Mr. Lapinski stated by taking a vacant space or space that is not sanctioned by the Municipality for any use as it exists today and utilize it as another apartment is an efficient use of the property. Mr. Lavender asked have you tried any commercial. Has a realtor come forth and ask can we put a professional in there? Mr. Lapinski stated any commercial use including a professional office is not permitted. Any commercial activity would require another use variance. Any commercial use by this property would require more off-street parking. That is why I did not consider commercial use or think it is appropriate. Mr. Lavender asked would efficient use of the property be having one (1) family upstairs and one (1) family downstairs... understanding the Board cannot make you do so. Mr. Lapinski stated that would be no change from the property as it exists today. It is an argument of preference. You can make it into a very large one (1) family house. It would be efficient and conforming to the Zoning Ordinance.

Mr. Abrams stated how does having one (1) family upstairs and one (1) family downstairs not require a use variance. That is an expansion of a non-conforming use. Mr. Lavender stated that he is correct. Mr. Abrams continued... the Board cannot state use this variance or that variance. Mr. Lavender stated that is correct but the Board does not have to give you what you are looking for. We are just having a discussion to see if there are other options.

Mr. Abrams continued... this is not the matter of this being a two (2) family house. The present use of the building is two (2) apartments on the second floor. The application before is to use the first floor as a residence. It is not the matter of changing the use that is permitted upstairs. We are asking to be permitted to use the first floor. That is what the application is. Mr. Lavender stated he agrees and understand... but the Board can ask the questions. Mr. Abrams stated he would like the clarification that this is not a two (2) family. Mr. Lavender stated there are two (2) apartments upstairs which the Borough has approved.

Vice Chairman Gustafson stated there was a reference to increase parking. Was at the last meeting and does not recall a site plan showing ten (10) spots. Testimony from the Planner stipulated that asking for a three (3) bedroom first floor. The application is asking for one (1) bedroom. Are you stipulating it is a three (3) room first floor apartment? Or a three (3) bedroom first floor apartment? Mr. Lapinski stated he did not prepare what is in front of the Board. His understanding is a three (3) bedroom apartment on the first floor. Vice Chairman Gustafson stated the application states one (1) bedroom. We have to talk about the density the detriment and parking. There is no site plan on how it's going to work. There is a topical view showing the delineation from the garage going to the neighbor's house to the right. There is also a second stockade fence across the rear of the property. How is this all going to work. Parking in front of the garage, is not acceptable because of the sidewalk. There is plenty of property to the left of the house... New Market. Has not seen the proof that the good out ways the bad. On-street parking will not work.

Chairman Leonardis stated he did not see any architectural plans. Do not know what the first floor layout will be. Mr. Cusick stated that the drawings were submitted. How many bedrooms on the first floor? Mr. Cusick stated he is proposing to put three (3) . You did not publicly notify looking for three (3). The application is what we noted on. We did not tell the public we are doing a three (3) bedroom apartment. We told the public we are doing one (1) bedroom apartment.

Mrs. Campagna asked Mr. Cusick you stated it is a one (1) bedroom apartment downstairs. Mr. Cusick stated no... there is one (1) room – storage room. It can be used as a bedroom. Looking for a total of three (3) bedrooms. It is the same square footage downstairs as the two (2) two (2) bedroom apartments upstairs. Mrs. Campagna stated she was not at the previous meeting however did listen to the recording. What is the square footage of the building? Mr. Cusick stated it is almost four thousand (4,000) square foot. Mrs. Campagna continued.... Are you able to tell me the length and width? Mr. Cusick stated he does not know. However, the two (2) apartment upstairs are nine hundred fifty (950) square feet each. The downstairs is the whole size of the two (2) apartments upstairs. Mrs. Campagna continued... what is upstairs? Mr. Cusick stated two (2) bedroom apartments... two (2) bedrooms, kitchen and living room. Mrs. Campagna asked downstairs will have three (3) bedrooms and what else? Mr. Cusick stated a kitchen, living room, bath and dining area.

After reviewing the entire file, the drawings of the proposed first floor have been located and being reviewed by the Board Members.

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Vice Chairman Gustafson asked Joanne, the Board Secretary, if there is a site plan. Joanne stated there is a version of a site plan. It is in the packet but shrunk down to fit. Chairman Leonardis asked if it is a site plan or engineers drawings. Joanne stated the plan says minor site plan.

Mrs. Campagna questioned Mr. Cusick:

- On the plans, there are steps. Where do they go? *Upstairs. There are two (2) doors. Then you go up the stairs. There is a common area where you can go to the first floor. There are four (4) entrances to the first floor.*
- If I am living in the first floor apartment, there are stairs that go upstairs? *There are walls that go around it.*
 - Mr. Lavender stated it is an interior stairway that does not access the first floor. Mr. Cusick stated yes it does. There is a hallway. Mr. Lavender corrected himself... that those who are accessing the second floor aren't going through the first floor rooms to access the stairs. Mr. Cusick continued... there are four (4) entrances to the first floor.
- There are four (4) entrances to their apartment from the outside? *Three (3) from the outside and one (1) from the inside. One (1) is from New Market, one (1) is the opposite side from New Market, one (1) off the patio that goes to the storage room and one (1) from the hallway that goes to the stairs.*
- How does the people upstairs enter their apartments? By the stairway? *Yes.*
 - Mr. Lemos asked if there are any other egress. Mr. Cusick stated no.
- Is there a fire escape? *It is pre-existing. What he understands is that a third floor would need a fire escape.*
- Who drew the plans? *His brother-in-law.*
- There is a gigantic bedroom and it says there is an existing kitchen? *Yes. There is an existing kitchen on the first floor and toilet.*
- Is anyone is currently living there? *No there is not.*
- The kitchen was there when you purchased the house? *Yes.*
 - Mr. Lemos asked the bedroom? Mr. Cusick stated he calls it a bedroom, it was a storage room. Is proposing to use that as a bedroom. The other that two (2) bedrooms – 9.5 x 12.5 – ok size living room, then kitchen, then gigantic bedroom in the back
- Are the steps enclosed? *The steps are enclosed. The door in the bedroom goes to the common area of the stairs. There is another door in the kitchen area.*
- Is there a door that you can go upstairs? *Yes. It has a separate entrance... all closed in. There is a big old glass door way that goes from the back of the store to the front of the store.*

Chairman Leonardis asked Mr. Abrams if he would like to go through the professional's review letter. Mr. Abrams stated it is his understanding they are there for a use variance not a site plan. Chairman Leonardis repeated... would Mr. Abrams like to go through the professional's review letters. Mr. Abrams stated again, my understanding is we are here for a use variance not site plan. That is why I do not have an engineer.

Mrs. Campagna stated she listened to the tapes and read the minutes. On the first page of the minutes, it says *'in 1977 there were three (3) families living in the building. To Mr. Cusick's knowledge, the Scalera family lived on the first floor.'* In 1977 someone was living there? Do you know when they stopped living there? Mr. Cusick stated no he does not. Mr. Campagna continued... how do you know someone was living there in 1977. Mr. Cusick stated he was told the Scalera family owned the house. Fire Chief Scalera told him all about it. Mario Abruzzesse knows all about it. Dominic, code enforcement, is familiar with the house also. Mrs. Campagna asked if the three (3) families came from them. Mr. Cusick stated no. I have an official paper that says there were three (3) families living there. That came from the tax office. Board Members said they have it.

Mrs. Campagna continued... on the second page of the minutes it says... *'Chairman Leonardis states that tax records only state what the taxes are based on. It is determined that the taxes are based on two (2) units – two (2) families. Mr. Leonardis asked Mr. Cusick are there two (2) separate utilities. Mr. Cusick states there are three (3) utilities and there is space four (4).'*... A fourth what? A fourth apartment? Mr. Cusick stated no. A fourth utility – a fourth meter pad. Mrs. Campagna asked how does that work? Mr. Cusick stated that was there prior to purchasing the house. One (1) meter is for the first floor and two (2) other apartments have separate meters. If an apartment goes into the first floor you would need a meter for the common area. Tenants cannot be asked to pay for electricity in the common area. That is how it was installed prior to purchasing it. When he purchased the house, the previous owner, Mike Black who is related to the Scalera's, gave him plans for two (2) two (2) bedroom apartments on the first floor. Did not want to ask for two (2) apartments... making it into a four (4) family.

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Mrs. Cullen asked Mr. Cusick when he purchased it was it just the two (2) apartments upstairs? Mike Black wasn't renting the downstairs? Mr. Cusick stated correct.

Mr. Lavender asked did he live there. Both Mr. Cusick and Mrs. Cullen stated no... he lived next door. Mr. Cusick continued... it was his wife's grandmother's house that they purchased. The grandmother was a Scalera. Mike Black married a Scalera, Denise. Mr. Lemos asked if Mr. Cusick lives in Mike's house. Mr. Cusick stated no. Mike Black lived next door. Mrs. Cullen confirmed.

Mr. Dickerson stated he has a few items regarding the negative criteria. One item that was brought up is that there is no planned drastic impact to the outside. What is being done to demonstrate that? I'm looking at the plans and there seems to be parking lot on one side of the property and another on the other side. Would you not agree that that is an impact to the outside of the building because you are required to have a lot more parking going from a single family to a multi-family structure? Mr. Lapinski stated I am not sure we are going from a single family to a multi-family structure. We are going from two (2) units to three (3) units. Mr. Dickerson stated by the definition in the code, anything over a two (2) unit is a multi-family. Mr. Lapinski stated he understand... he read Mr. Slachetka's report. Mr. Lapinski continued... It is his understanding that it is seven (7) parking spaces proposed. Four (4) of which is the expansion of the parking lot across New Market in the very large front yard - side yard area and the addition of the space next to the three (3) car garage along Highland. The expansion of the pavement on New Market to me is not a substantial change nor is the addition of the space along Highland Avenue with the addition of some buffer landscaping along that common lot line and the lot line further east. My point was that with their respect to the building itself... yes, the parking is being expanded. With respect to the building itself you would not know there is an addition. Mr. Dickerson stated therefore, you are referring to the building itself. Mr. Lapinski stated essentially, but I do still consider whatever expansion that is proposed and there is some for parking, the parking requirements are not substantial.

Mr. Dickerson stated that one of the arguments that was made for both positive and negative was across the street is M-3 industrial and the area has many sites of multifamily, commercial industrial uses. Does not think the Board can use that as a justification unless the Board has evidence of approval, what the particular arguments for those sites, when were they approved, what was the zoning at the time. There needs to be more evidence to present to the board. Mr. Lapinski stated that his point in stating that is to establish the character of the neighborhood. This is not purely single family. That there are apparently other two-three family uses in the close vicinity aside from the commercial activity across New Market. Chairman Leonardis asked Mr. Lapinski how many two-three family houses are within a few hundred feet from there. How many three (3) families are there? Mr. Lapinski stated on New Market Avenue... 1203... three (3) electrical meters. Can only assume that is a three (3) family. Highland Avenue... 428... appears to be a two (2) family. 1044 New Market has two (2) meters. 1210 New Market and 1216 New Market more than one (1) meter. Did not do an analysis on how they were approved. Giving the Board benefit of the character of the neighborhood. It is not purely single family. Understands the Planners concerns. All of this merely established the character of the neighborhood. My reason is for recommending or supporting of this application predominately applied to the conditions on this property... its size, shape and characteristics.

Mr. Dickerson asked has this apparent inconsistency been noted in the 2000 Master Plan, 2006 re-examination and 2014 re-examination. Mr. Lapinski stated he has never seen a Master Plan list consistency within a zone kept the same... no. Mr. Dickerson asked there are a number of non-conforming uses was there a re-examination that indicated this area should be rezoned? Mr. Lapinski stated no. I have not seen that here. I have not seen it in this circumstance. If the Master Plan goes as far as to see there is too many inconsistencies that the zone should be changed, that's a substantial finding. No, I did not see that.

Chairman Leonardis asked how was this noticed. Vice Chairman Gustafson stated it was noticed as a conversation of a two (2) family to three (3). Mr. Abrams reiterated... two (2) units to three (3)... two (2) family to three (3). Chairman Leonardis asked did it mention the number of rooms. Mr. Abrams stated no. Mr. Lavender stated Mr. Abrams did not do the notice. Mr. Lavender asked if there is a clip out from the paper. Mr. Cusick stated he has a copy with the raise seal which he handed to Mr. Lavender. Mr. Lavender read *'An appeal has been filed by Robert Cusick Sr. requesting a variance from the Zoning Board to permit the conversion from a two family home to a three family home and any other variances that may be required.'* This is consistent with the letter.

Mrs. Campagna asked Mr. Cusick when I drove by the site it looks like it was a store at some point. I know this is not a site plan. What are you going to do to the front so it does not look like store front... a three (3) family. Mr. Cusick stated he placed some shrubbery. Ms. Bullock stated... you mean to the exterior. Mr. Lavender stated in fairness,

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you can ask any question you want but as they pointed out they are asking for the use. Mrs. Campagna stated that is fine.

Mr. Abrams stated so there is no misunderstanding, it is a lawful two (2) apartment on the second floor. Right now, nothing can go into the first which is why we are asking to turn this into a three (3) units. Mr. Lavender stated, not to be combative, this is simply my advice to the Board. He is correct, it is a lawful two (2) units on the second floor. Nothing on the first floor... is not true. They can use the building what it is zoned for. I know that does not make any business sense to the applicant. But from the Board's perspective that is how they have to look at it.

Chairman Leonardis asked why the use on the first floor was abandoned? Mr. Abrams stated the applicant does not know... he does not know. Times have changed. He does not believe it was abandoned by the legal definition. It is clear it has not been used for many years as a commercial use. If it was abandoned, is something different.

Mrs. Cullen asked Mr. Abrams why Mr. Black purchased it. Mr. Cusick stated no... He believes he bought as an investment because it was his wife's grandmothers house. He bought out the rest of the siblings. He was actually using the yard and the garage. That is why he bought the property. That is why he put that fence on top of the hill. If you go down Highland Avenue, and look at the landscaping at the house next to the garages, the landscaping looks like it belongs to the house on Highland Avenue where Mr. Black lived. Actual there is only ten feet of property off of that house. The front yard of that house is all my property. He had a pool in the back yard. He was using the property.

Vice Chairman Gustafson asked Mr. Cusick if the pool still exists. Mr. Cusick stated it does not. Vice Chairman Gustafson continued... the fence still transverses across both properties? Mr. Cusick stated yes... but the pool was taken down. Vice Chairman Gustafson asked the items between the stockade fence and the white fence belong to whom? Mr. Cusick stated him. Vice Chairman Gustafson asked how do you get those items in and out. Mr. Cusick stated by the garage. There is a gate that opens up.

Mrs. Cullen asked Mr. Cusick when he bought the property from Mr. Black he was buying a two (2) apartment house. Mr. Cusick stated yes. He showed me the plans he had drawn up by Cornerstone. He had plans drawn up for two (2) apartments downstairs. Mrs. Cullen asked if he said he had any approval's. Mr. Cusick stated he did not say. He gave me the plans as part of the purchase of the house. He gave them to Mr. Lanza who forwarded them to me.

Mrs. Eichler asked Mr. Cusick when you purchased it, it was two (2) apartments and an empty first floor. Mr. Cusick stated from the pictures in the appraisal, he had it set up as a store with price tags on items. Does not know if it was a consignment shop. Mrs. Eichler asked when did he purchase the house. Mr. Cusick stated 2014. Mrs. Eichler continued... it was not a bedroom. Mr. Cusick state no... I called it a bedroom. Mrs. Eichler stated the existing kitchen was there. Mr. Cusick stated yes, the kitchen was there. Mrs. Eichler asked the kitchen was there with items hanging. Mr. Cusick stated there were tables of items with price tags. In the front room and throughout the rooms on the first floor.

Chairman Leonardis stated what is known is that there are two (2) apartments approved on the second floor. Do not understand or know if it was residential or a store on the first floor. Not one hundred percent (100%) convinced that the intentions of a two (2) family meant upstairs and downstairs. We know that there was residential on the first floor at one point. That is what the application said. We also know that the applicant is requesting three (3) bedrooms when the application stated one (1) bedroom. Completely different from the application. Concerned about parking and the intensity of the parking with a three (3) bedroom. Can potentially have three (3) – four (4) cars if you have two adults and 2 adult children. Does not think without having any other uses or other ideas for this property that this use he would look favorably on. Therefore, looking for an approval for a denial of the application.

Mrs. Campagna stated often times when we have an application that someone is saying they cannot use something for the use it was intended they have something to back it up. They might have a real estate person testify or show they tried to advertise the space for a store or something and be unsuccessful with several attempts. This is not the case. Other than to say you really cannot use it for anything else other than an apartment. There is nothing to back that up. It is just your word. Of course, you cannot put a small grocery store because of parking. But there could be other things it can be used for other than an apartment. I think it is too much for the zone. I have lived in this town for a long time but you look at things differently when you care coming to a Zoning Board. So, I went down Highland Avenue and there are some nice one (1) family homes... mostly. I did not check meters like Mr. Lapinski. I could be wrong, but they look like one (1) family homes. So, it is unfair to the people in the neighborhood to put in a three (3)

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family - multiple family home. I am not casting dispersions on anyone but from what I read and I was not hear that maybe they are thinking of putting a fourth apartment... four small apartments. That is not the testimony. I am just saying that it was in part of the minutes and discussed when I was not here. I think I cannot support a third apartment.

Chairman Leonardis opens the discussion to the audience. No comments or concerns.

Chairman calls for a motion of **approval for denial**. Mrs. Eichler makes motion, seconded by Mr. Bonano. For clarification... yes means deny. Those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos; Vice Chairman Gustafson and Chairman Leonardis. Those oppose: None

**A. Case #29-14 -- JSM Holdings
Block 535: Lot 9 & 16: M-1 & OPA-1 Zone
2901 Hamilton Boulevard**

The applicant is requesting an Interpretation.

Mr. Lavender addressed the Board. Earlier in the day he spoke with Doug Wolfson, Esq., the attorney for JSM Holdings – 2901 Hamilton Boulevard. Mr. Lavender reads from an email he received earlier in the day from Mr. Wolfson.

- *'Per our discussions this week, I understand that South Plainfield's officials are reluctant to issue a "CO" to JSM for its existing and recently refurbished office building (for which building permits were properly issued), based on a 2016 ZBA resolution that tied CO's to the completion of certain improvements to the rear portion of the site. As you are aware, we disagree that the resolution referred to or related in any way to our existing office building, but rather related to the additional office that was proposed as part of that site plan application. This is especially so since the resolution does not refer to multiple offices, but only identifies one office – indisputably, the one being proposed in that site plan application. Without being too presumptuous, I suspect that if you were asked by your clients if tying the continued use of an existing office building to an approval of other structures and improvements was lawful under the MLUL, your advice would likely be consistent with my own view that such a condition would be illegal on its face. Nonetheless, I understand that a contention has surfaced among township personnel that we "voluntarily" agreed to and accepted just such a condition as part and parcel of our requested site plan approval. As you know, we strenuously dispute that we did, or ever would have voluntarily abandoned the use of our existing office building until improvements required by the 2016 site plan were completed. Nonetheless, we understand that until a transcript has been obtained that clarifies – one way or the other—what, if anything was agreed to by the applicant at that meeting, the So. Plainfield is reluctant to issue a CO to JSM.*
- *As I explained to you previously, our inability to obtain the CO and move our personnel into our refurbished office building is causing us serious, possibly irreparable, hardships. Under the circumstances, I would respectfully offer a compromise solution – one which I think reasonably serves both the Town's and JSM's needs and interests. The Township signs off on a TEMPORARY CO, while we await the retrieval and access to the relevant transcript, and if the transcript reveals that JSM voluntarily abandoned its right to use its existing office building in conjunction with its efforts to obtain the recent site plan approval, we will immediately apply to the ZBA for relief from the condition, or will, within a time certain, begin making such improvements as may be required by the Board's professionals per that prior resolution. Hopefully you will find this proposal to be fair and balanced, and worthy of your support when you meet with the Board this evening.'*

Mr. Lavender continued.... prior to the meeting, Cindy Eichler, Chairman Leonardis and Joanne found proof that substantiates the discussions made earlier in the week with some Board Members and Professional's that they did in fact make such representation to the Board.

Chairman Leonardis stated that a copy of the minutes from that meeting should be submitted to JSM Holdings.

Vice Chairman Gustafson stated there is one more contention that has not been addressed. The building they are referencing was vacant. They were never using the building. Chairman Leonardis stated is it the one story building

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in the rear of the property. Vice Chairman Gustafson continued... in their letter they state they would have never abandoned an existing office building. It was abandoned when they bought it. Mrs. Cullen asked is that their existing office building. Vice Chairman Gustafson stated that the site we are referring to is not their existing office building. They purchased it. They were not using it as an office building at the presentation of their case. He recalls that they were using the site to store heavy machinery and using the garage or some large area for repairs which was not allowed. Going back three (3) years... 2015. Mr. Lavender stated August 2015. Vice Chairman Gustafson continued... like most JSM projects, they are over a number of years. We have our recollection, the minutes and Cindy's notes. Mr. Lavender stated the only thing they may say is they would like to hear the transcript themselves which they have the right to do.

Mr. Lavender stated with the Board permission, he will send the minutes and notes to JSM Holdings. They will either concede or demand to hear the tapes.

Mr. Lemos asked if they demand the transcript, do they have to pay for it. Mr. Lavender stated that they can receive a courtesy copy of the recording. If they want an official transcript, that is on them to send it out and pay for it.

Chairman Leonardis stated that the application on the West End - lot 16 – had a lot of work promised. Mr. Lavender stated he brought that up in conversation. They came in to combine the two (2) lots. Vice Chairman Gustafson stated it is clearly listed on the Finding of the Facts that there were willing to do site work first.

INFORMAL HEARINGS: None

OLD BUSINESS: None

NEW BUSINESS: None

CORRESPONDANCE: None

EXECUTIVE SESSION: None

ADJOURNMENT: 9:43 PM

Respectfully Submitted,
Joanne Broderick
Recording Secretary