

Minutes of the Regular Meeting of the Morris Plains Planning Board held on March 21, 2016 at 7:30 P.M. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Present: Mr. George Coogan, Vice Chair  
Mr. Salvatore Cortese  
Mr. Andre Jensen  
Mrs. Sydney Leach  
Mr. Ralph Lopez, Chair  
Mr. Leo Nichols  
Mr. Hank Sawoski  
Leon Hall, Borough Engineer  
Christopher Falcon, Board Attorney

Absent: Mr. Vincent Novak  
Mayor Frank Druetzler  
William Denzler, Borough Planner

### **PLEDGE OF ALLEGIANCE**

The meeting was called to order by Mr. Lopez. Mr. Lopez made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

### **COMMENTS FROM THE PUBLIC**

Mr. Lopez opened the meeting to the public to speak on matters other than those on the agenda. Seeing no one, he closed this portion of the meeting to the public.

### **APPROVAL OF MINUTES**

Mr. Lopez requested a motion for the approval of the meeting minutes of the Board's Regular Meeting held on February 8, 2016.

The Board Secretary advised there is one correction – Mr. George Coogan is now the Vice Chair, not Mrs. Sydney Leach

Mr. Nichols moved that the minutes as corrected be approved, seconded by Mr. Cortese.

### **Roll Call**

Yeas: Mr. Cortese, Mrs. Leach, Mr. Lopez, Mr. Nichols, Mr. Sawoski,  
Nays: None  
Abstain: Mr. Coogan, Mr. Jensen  
Absent: Mr. Novak, Mayor Druetzler

**Motion carried.**

### **CORRESPONDENCE AND BILLS**

Mr. Nichols read the vouchers for approval.

<b>Phillips Preiss Grygiel LLC</b>	<b>P.O. #100030</b>	<b>\$2,497.50</b>
For Professional Services rendered to the Planning Board, January 2016		
<b>William Denzler &amp; Associates</b>	<b>P. O. #100021</b>	<b>\$ 427.00</b>
For Professional Services rendered to the Planning Board, January 2016		
<b>Clark Caton Hintz</b>	<b>P. O. #100031</b>	<b>\$4,000.00</b>
For Professional Services rendered to the Planning Board, January 2016		
Court-Appointed Master, M & M at Morris Plains, LLC v. Borough of Morris Plains & PB of Morris Plains Docket #MRS-L-296-13		
<b>Clark Caton Hintz</b>	<b>P. O. #100056</b>	<b>\$2,475.00</b>
For Professional Services rendered to the Planning Board, February 2016		
Court-Appointed Master, M & M at Morris Plains, LLC v. Borough of Morris Plains & PB of Morris Plains Docket #MRS-L-296-13		
<b>Anderson &amp; Denzler Associates Inc.</b>	<b>P. O. #100035</b>	<b>\$ 542.50</b>
For Professional services rendered to the Planning Board, February 2016		
<b>Maraziti Falcon LLP</b>	<b>P. O. #100023</b>	<b>\$ 875.00</b>
For Professional Services rendered to the Pl. Bd, Legal Services - Retainer		
<b>Maraziti Falcon LLP</b>	<b>P. O. #100032</b>	<b>\$1,207.50</b>
For Professional Services rendered to the Pl. Bd, Jan. 2016 M & M at Morris Plains v. Borough of Morris Plains, Docket No.: MRS-L- 296-13 PW		
<b>Maraziti Falcon LLP</b>	<b>P. O. #100055</b>	<b>\$ 210.00</b>
For Professional Services rendered to the Planning Board, 900 American Road (Application PB-4-06)		
<b>Maraziti Falcon LLP</b>	<b>P. O. #100054</b>	<b>\$3,395.00</b>
For Professional Services rendered to the Planning Board, General Legal Services – Retainer		
M & M at Morris Plains v. Borough of Morris Plains, Docket No.: MRS-L-296-13 PW		
M & M Soil Disturbance Permit		

Mr. Nichols moved that these vouchers as read be approved, seconded by Mr. Sawoski.

**Roll Call**

Yeas: Mr. Coogan, Mr. Cortese, Mr. Jensen, Mrs. Leach, Mr. Lopez,  
Mr. Nichols, Mr. Sawoski,  
Nays: None  
Abstain: None  
Absent: Mr. Novak, Mayor Druetzler

**Motion carried.**

**APPLICATIONS**

**PB-1-16 Morris Plains Holdings UE LLC – Blocks: 161, 161.05 Lots: 1, 3, 3.01  
1701-1705-1711 Route 10 East & Littleton Road**

Mr. Lopez stated that this matter is on the agenda for completeness and public hearing. **Completeness** - Mr. Remo A. Caputo, Esq. introduced himself as the attorney for the Applicant and provided a very brief summation of the intent of this application. He commented that an issue of ownership was raised by Mr. Hall. Block 161.05, Lot 3.01 apparently applies only to the lot on which the gas station is located. Since this property is in the name of Vornado Realty Trust, he had requested a letter from the Tax Assessor's office by March 21 confirming the name has been changed from Vornado Realty Trust to Morris Plains Holdings UE LLC. According to an e-mail dated March 21, 2016, this action has been taken by the Borough's Tax Assessor. He added that he had brought in deeds to show that the owner name is Morris Plains VF LLC (d/b/a Morris Plains Holdings UE LLC). He believes this issue is resolved.

Cross discussion between Mr. Hall and Mr. Caputo in connection with the process done in connection with the ownership issue(s).

Mr. Hall recommended that the subject tract (Block 161.05, Lot 3.01) be removed from the application and other appropriate documents relating to this application.

Mr. Lopez requested that Mr. Hall review his March 14, 2016 report.

Mr. Hall reviewed the various checklists contained in his report. This included commentary relating to various waiver requests, including one relating to the fact that there are no riparian zones on the property. He stated he finds the application(s) complete.

Mr. Caputo made reference to parking spaces. Basically, the application will be for a variance and a total of 902 parking spaces, the existing 905 parking spaces, minus three parking spaces for the dumpster. The ordinance would require 954 parking spaces and the Applicant will be providing 902 spaces. He referred to his letter of March 9, 2016 in which he advised that the Applicant was withdrawing that portion of the application in which it was proposing to add 18 parallel parking spaces along the rear access drive.

Mr. Hall commented on an earlier possibility of revising the entire application and still being able to resubmit it in time. He also talked about restriping the driveway. He also made reference to Mr. Caputo's March 9, 2016 letter.

Mr. Caputo discussed the initial rationale for adding the 18 parking spaces (those withdrawn in his March 9, 2016 letter). He also spoke about proposed renovations and improvements they are working on for the entire shopping center, and, as a result, will no doubt be back before this Board on at least some of these enhancements and most likely with a major site plan.

Mr. Lopez requested a motion for completeness.

Mrs. Leach moved that this application be deemed complete and granting the waivers (Nos. 13, 21, 22, 23, and Checklist Item #9 for ownership disclosure) as recommended, seconded by Mr. Coogan.

**Roll Call**

Yeas: Mr. Coogan, Mr. Cortese, Mr. Jensen, Mrs. Leach, Mr. Lopez,  
Mr. Nichols, Mr. Sawoski,  
Nays: None  
Abstain: None  
Absent: Mr. Novak, Mayor Druetzler

**Motion carried.**

**Public Hearing** - Mr. Caputo provided a description of the subject property: the site is approximately 29.33 acres, is a 177,540 SF building, and the property is mostly in the R-3 Zone with a small portion in the R-2 Zone. In 1984 when the shopping center application was first approved, there was a resolution that indicated that there should be no restaurant or food preparation business located in the Phase 1 portion of the shopping center. He provided information regarding their application that this resolution be modified and that this application was approved as to a modification relating to the former the Marty's Shoes location within the shopping center and also relied on testimony presented that addressed the issue of showing evidence that the odors that could be a health concern and that this evidence would need to be presented before the application could be mitigated. Mr. Caputo stated that this application is to bring in a Chipolte Mexican Grille as a new business within the shopping center that would be located in the former Marty's Shoes storefront. The storefront is a 3,171 SF commercial unit. He will first ask Mr. Aanen Olsen, the Project Manager for the site, to provide a brief summary. He advised he will be calling Lori Pellegrino (Chipolte), Paul Baham (Chipolte), Robert James Warshefski, Jr., Scott Adams (CaptiveAire), Aanen Olsen (Morris Plains Holdings UE LLC), and Michael J. Pessolano, Planner.

Mr. Falcon swore in all those who will provide testimony during this public hearing

Mr. Olsen stated he is with Urban Edge Properties and is the Vice President of Development and Construction in charge of development and construction and design efforts on behalf of Urban Edge Properties. He provided information about the shopping center site and also about the specific storefront that Chipolte Mexican Grille will occupy. He also commented on parking spaces and the three parking spaces where the dumpster will be located. He stated he is unaware of any parking problem issues in the past. He stated that currently there are three vacant storefronts within the shopping center (the former Joyce Leslie, Marty's Shoes and Shop-Rite). He agreed with Mr. Caputo's statement that a goal is to revitalize the shopping center.

Mr. Hall asked about who will be paying the water and sewer costs. Will garbage pick-up be included in the rent or will the tenant be responsible.

Mr. Olsen replied that the tenant will pay these costs. The tenant will contract directly with the garbage pick-up company for services.

Mr. Lopez opened this portion of the meeting to questions of this witness from the public. Seeing no one, he closed this portion of the meeting to the public.

Mr. Caputo next called Ms. Lori Pellegrino.

Ms. Pellegrino advised she is a Real Estate Manager with Chipolte and has worked with Chipolte for eight years and has been in the real estate industry for 30 years. She is responsible for locating potential restaurant sites; she provided additional details as to what her actual work responsibilities are. The restaurant proposed for this shopping center will be corporately owned and operated, not a franchise. In fact, all Chipolte restaurants are corporately owned and operated. The hours of operation will be 11:00 a.m. to 10:00 p.m., seven days a week, except for major holidays. Peak hours would be lunch time and dinner time, approximately between 12:00 Noon and 2:00 p.m. and again between 5:00 p.m. and 7:30 p.m. The total number of employees will range between 35 to 40 employees and will be a mix of full-time and part-time employees; about 75% of the employees are full time and the remaining 25% are part-time employees. During peak hours roughly 12 to 15 employees would be on site. Adequate parking for a typical Chipolte restaurant site would be 30 to 35 parking spaces. She anticipates that approximately 40% to 50% of their business will be take-out, especially since there are many corporate offices in the vicinity. Two parking spaces will be allocated to FAX and online pick-up orders only. Others parking in these parking spaces would not be ticketed, however, since this designation is not enforceable; it is a matter of convenience. Ms. Pellegrino provided information on how deliveries are made to the restaurant. She expects deliveries will be made three to four times a week, but generally the number is three times. Deliveries will come in through the front and will be delivered in the morning before the restaurant opens at 11:00 a.m. Deliveries are made by tractor trailers. She stated they would most likely park in front of the store, but could park in the back and come through the back. She believes the deliveries would be made between 6:00 a.m. and 8:00 a.m. Most deliveries can be completed in about 10 to 15 minutes.

Mr. Caputo stated that since most of the shopping center stores do not open until about 10:00 a.m., there should not be any issue of the tractor trailer delivery truck causing any parking or traffic movement problems.

Mr. Hall stated there are residential land uses to the west with there being only about 70' to 80' separating the two zones. He referred to the beeping noise that is made when most trucks back up and recommended that it would be better if deliveries were not made before 7:00 a.m. Would this be a problem? Parking in the front of the store at 7:00 a.m. or 8:00 a.m. should not be a problem since the parking lot basically would be empty.

Ms. Pellegrino replied that a condition of no deliveries before 7:00 a.m. should not be a problem for Chipolte. She provided information on the food ordering process for the

restaurant. All food that requires cooking is cooked on the premises. All food is prepared fresh every day in the restaurant.

Mr. Coogan asked about how many gallons of water would be used at the site each day.

Ms. Pellegrino stated she was not sure and would need to provide that information in the future.

A Board member asked what would happen if the restaurant ran out of a certain needed supply item between deliveries.

Ms. Pellegrino responded that she has never been aware of something like this happening. If necessary, she stated a restaurant employee would travel to another Chipolte restaurant and take from their supply, but a tractor trailer would not be bringing a new supply in the middle of the afternoon. If there is a patio area in front of a store, it would have a trash barrel, otherwise the trash barrel(s) are located right by the front door inside the restaurant. Store employees will monitor and remove any debris generated by the restaurant outside the restaurant.

After brief cross discussion, it was agreed that there would be a trash barrel located at the front of the restaurant outside.

Mr. Caputo next called Mr. Paul Baham who stated he is the Construction Manager for Chipolte and has been with the company for ten years and is responsible for this area of New Jersey and New York/Long Island. He will be in charge of the construction of this proposed Chipolte site.

Mr. Baham opened his testimony by providing information about the dumpster(s), garbage pick-up and recycling. He expects that garbage pick-ups will occur three times a week. Recycling will include glass, plastic, and cardboard; this is typical for this area. Their contractor is River Road, and they will subcontract out the work to haulers. Generally, they will look to the whoever is currently servicing this shopping center and hire them to be responsible for Chipolte, too. Chipolte has an ownership program in which the employees actually take ownership of the restaurant. Under this arrangement the employees perform minor maintenance. Chipolte's Facilities Department staff visit all the restaurants to maintain equipment and anything that a store employee is unable to address. He provided information concerning food preparation safety and sanitation issues related to food preparation. He referred to the various issues that arose in a number of their restaurants in Oregon, Washington State, Michigan, and Boston. Operating procedures have been changed since these incidents. These procedural changes include hand washing, the way in which the food is prepared (raw meats will be prepared only after the restaurant closes and allowed to marinate overnight), and all vegetables are now blanched. These changes represent a higher standard than what the industry recommends. No source was identified for the e-coli and norovirus

outbreaks and no employees who ate at the restaurants became ill. He commented on the corporate fallout that occurred in connection with these outbreak issues.

Mr. Caputo asked if the restaurant will have grease traps. How will maintenance of the ventilation system to be installed be handled?

Mr. Baham responded it will and it will be designed to meet the local requirements. The Facilities Department will assign the maintenance of the ventilation system to a regularly-scheduled maintenance program similar to the that for the HVAC equipment. Duct cleanings and HVAC maintenance is done on a quarterly basis; depending on sales this basis will be adjusted to do it more frequently or less frequently. Grease trap cleanings will be done on an as-needed basis depending on the build-up. The filters that are used are multi-stage filters. With this kind of filter, it is in the company's best interest to change these filters on a regular, as-needed basis. Responsibility for this work is contracted out and maintained regularly. Right now there is one company that does this work for all Chipolte restaurants in New Jersey. He described the process of duct cleaning as performed by Chipolte, usually done after closing at night. The contractor determines when this work needs to be done.

Mr. Coogan asked what is actually being cooked in the restaurant.

Mr. Baham replied chicken, steak, the fajitas vegetables, chips and taco shells, rice, and beans. Several other items are made in an off-site commercial kitchen and re-heated at the restaurant. There is significant food preparation involved in the operation of a Chipolte restaurant.

A question was asked as to what happens to unused food.

Mr. Baham responded it depends on "where we are and what the amount is". He provided information on what he knows about what another restaurant business (Panera) does about this. He does not know much about what happens or could happen with unused food. He sets up restaurants for business, but he is not involved with them on a day-to-day basis. In some areas – like New York City – organizations such as Meals on Wheels or Harvest will pick up food. In New Jersey, pick-up of such food is more difficult due to a lack of partners to help; however, if someone did reach out to Chipolte for pick-up of unused food they could handle it since they have done it in the past. There are no microwaves or freezers on site at their restaurants.

Mrs. Leach asked a question about double doors near the service entry of the proposed Chipolte storefront. What is the notation relating to a compost toter? Do they anticipate a problem with rodents and will there be rodent control? She asked about the dumpster enclosure. During what hours will garbage and recycling be picked up?

Mr. Baham this area is an electrical room and serves the main building. In many areas, they compost; it is not allowed in this area so the area showing a toter would be empty space with the dumpsters moved back. Chipolte does have rodent control and he is

not anticipating any rodent problem. He was advised by their person in charge of waste for this area that there would be three dumpsters – two for recyclables and one for trash. Recycling and garbage pick-ups would happen three times a week based on what is done at their stores currently. If more pick-ups are needed, the store Manager will make that determination and will contact a Chipolte Property staff member and pick-ups would be increased by the hauler. He advised he could not say the time when garbage and recycling would be picked up; there is a range of hours.

Mr. Hall commented that it is important to know what time the garbage and recyclables will be picked up due of the restaurant's proximity to the residential area.

The comment was made that there will be additional testimony addressing the fact that the dumpster somewhat angles into the driving aisle.

Mr. Cortese asked about vehicular lights beaming into the residential area.

Mr. Hall explained the impact of vehicular lights stating he is not too concerned about the lights especially if the pick-ups occur after 7:00 a.m. He asked if there will be any cooking of food after 10:00 p.m.? He asked if when the ducts are cleaned – is the power generation outside or inside the building and does it make noise? He stated that noise levels cannot exceed 50 decibels at night at the property line. He suggested Chipolte check with their contractor regarding noise levels. If there is damage to the dumpster enclosure, who is responsible for repairing it? Will the existing HVAC equipment be upgraded?

Mr. Baham stated there would not be any cooking; the staff would be marinating after 10:00 p.m., but no cooking. When the ducts are cleaned, the power generation will be inside the building, and he explained how it would take place based on having seen the process once or twice. He believes this process would make some noise, but has no idea how much. This operation must happen at night, after the restaurant is closed. He can check with the contractor in connection with the noise level. This cleaning process is done from the roof down and typically done four times a year. The waste is collected by the contractor and taken off site. Chipolte is responsible for the maintenance of the dumpster enclosure. Yes, the existing HVAC will be replaced with new units.

Continued cross discussion about the duct cleaning process, system piping (stainless steel or welded black iron), and any required inspections.

Mr. Caputo next called Mr. Scott Adams who is from CaptiveAire Systems and is a Regional Manager for the company in northern New Jersey and southern New York. CaptiveAire is a manufacturer of commercial kitchen ventilation systems. He is involved in the design, sale, and service of these systems. He stated he has almost 12 years of experience in this line of work and has a Bachelor of Science in mechanical engineering.

Mr. Hall asked if he was licensed in the State of New Jersey; this could be a factor depending on the scope of the testimony.

Mr. Adams referred to a depiction of an exhaust hood that would be above the cooking appliances and is made of stainless steel. Additional depictions provided more information about how the exhaust hood would work to control cooking odors; he explained how the various filters that are part of the system will operate. In the end clean air will be exhausted out onto the roof.

Documentation was distributed to the Board members.

Mr. Adams next provided information about fans that are part of the system. He also spoke about decibels; in particular an exhaust fan that is at the end of a certain control unit is 75 decibels at 5' away. The building is 100' off the property line therefore most likely the decibel level at the roof will be below 50 decibels.

Mr. Cortese would like to know from an engineer that at 100' it would not be causing a problem.

Mr. Caputo stated he knows that whatever is put up there must meet the ordinance.

Mrs. Leach asked about accumulated noise if there are two fans working.

Mr. Adams stated he is not an acoustical engineer and cannot adequately address this concern. Mr. Hall stated the same.

Mr. Falcon explained that the Board appears to want to know beforehand the information concerning decibel levels, particularly levels at 100'.

Cross discussion about decibel levels, including that there are methods of buffering sound that could be used if this becomes necessary, that Mr. Adams can provide a calculation for what the noise dissipation is at 100', and ambient noise issues,

Mrs. Leach explained that the concern is that since there will be more than one units operating on the roof all making noise, the Board wants to know up front what the cumulative amount of noise is and what the effect of this noise will be on the nearby residential neighborhood. It would be better to know everything necessary before the business opens than having to make adjustments after the restaurant opens.

Mr. Lopez asked how long the proposed pollution control unit (PCU) has been in production.

Mr. Adams stated he believes this unit has been in production for at least 12 years with no major changes to it.

Mr. Lopez stated that due to this, the unit appears to be a proven product.

Mr. Adams stated this unit is typically used in mixed-use facilities such as a restaurant on the first floor and then residential units on the floors above. They are quite commonly used in New York City, Jersey City, and throughout northern New Jersey. This unit would not generally be used in a single story strip mall application, so they are going above and beyond to make sure they are removing as much out of the air stream as they possibly can so as to not affect the nearby residential area residents. He provided additional information as to precisely how this system will work. This system generally needs servicing every four to six months, and the kitchen staff are alerted when servicing is required even if it is earlier than four months. Turnaround on servicing requests is typically 24 hours or sooner depending on the situation. Servicing requests will be handled by Chipolte staff who are located in New Jersey.

Mr. Adams commented on his prior use of acoustic screening, and he is familiar with the different types, different sizes, and different amounts that are needed. In his experience it works very well.

It was stated that as a condition of approval that the building permit not be issued unless it can be demonstrated to the Borough Engineer that the decibel level at the property line complies with the code and that if acoustic screening is needed to achieve a compliant level, then it must be installed.

Cross discussion about how any issues about the decibel levels can be rectified and that Mr. Adams has no doubt that any problem(s) can be resolved. Some HVAC models do come with third-party acoustic blankets. These blankets would be another option if needed.

Mr. Hall stated he is satisfied with the information presented and requested that it be provided to him as soon as possible/in a timely manner; that is, do not wait until the restaurant is about to open.

Mr. Caputo stated that if this application is approved, the Applicant would like to submit the paperwork for a building permit before the memorializing of the Resolution. He believes that if the information about decibels/noise is provided quickly, the Board will not disagree with this.

Mr. Falcon advised that the Applicant can discuss submitting the permit paperwork prior to the memorializing of the Resolution with the Building Inspector. The Board does not direct the Building Inspector one way or another.

Mr. Hall asked about Mr. Adams relationship to CaptiveAire Systems and the engineering firm. Did a structural engineer analyze the roof to ensure it can hold all the proposed equipment?

Mr. Adams stated he works for CaptiveAire Systems, a manufacturing company; he does not work for the engineering firm. He stated that some of the mechanical drawings

(the ones with the CaptiveAire title block on them) were prepared by CaptiveAire Systems and signed and sealed by a New Jersey professional engineer. He does not know if a structural engineer analyzed the roof.

Cross discussion about the issue of whether the roof is sufficient to hold the weight of the proposed equipment to be installed.

Mr. Robert Warshefski introduced himself to the Board members and stated he is an architect employed by Greenberg Farrow and has been with them since 1998. He obtained his New Jersey license in 2006. He has a Bachelor of Architecture from the New Jersey Institute of Technology. He prepared the architectural plans submitted with the application. He advised the proposed exterior modifications to the front would be the installation of a Chipolte sign and storefront replacement. He provided more details as to what the front modifications would entail. The signage is to be placed on the existing facade and is a red and white beamed internally illuminated sign just under 27SF. The interior lighting is LED light. It is his understanding that the exterior lighting will be "tied in" to the clock that controls the shopping center signs.

Mr. Hall asked how far the HVAC and filtration system equipment is set back from either the front or rear wall. Has the roof been analyzed to see if it is structurally capable of holding the proposed equipment?

Mr. Warshefski stated he does not know. He has not analyzed the roof, however, a structural engineer who is contracted with them has. The result is that some reinforcing will be required, but not too much. He provided additional information concerning the work typically done by their structural engineer. This is not work that an architect does.

Mr. Hall stated he has no issue with this. Has the restaurant considered an emergency back-up generator.

Mr. Warshefski advised that Chipolte generally does not provide emergency power back-up. There is no external nor internal generator being proposed as part of this application. He understands that the grease exhaust and pollution control ventilation unit will discharge from the side that is facing away from the residential area and toward the parking area/toward the east.

Mr. Caputo next called Mr. Michael J. Pessolano who stated he is a licensed Professional Planner in the State of New Jersey and is a member of the American Institute of Certified Planners. He has practiced professional planning since 1984, more than 30 years. He provided additional personal work background, stating a significant amount of this work has been at the municipal level oriented to land use and zoning. In 2000 he founded his own planning firm called MJP Land Use & Planning LLC. During his years of work, he has reviewed a great number of applications.

Mr. Pessolano stated he is familiar with the plans submitted for this application, and he has evaluated it from a planning perspective. He reviewed the Borough's zoning

ordinances and Master Plan. He has visited the site several times and has consulted with the Applicant's team members. The variance being sought concerns a *de minimis* parking shortfall. The site currently has 905 parking spaces; the proposed dumpster area will take away three of these spaces leaving a total of 902 spaces. The Borough's ordinance for parking standards calls for parking of 954 spaces. The Applicant has a different parking ratio per square foot than Marty's Shoes. Retail and service uses generally require one space per 200 SF which applies to most of the shopping center. Restaurants are required to have one space per 75 SF – a very stringent requirement for parking in his experience. When the difference between the former retail in the same square footage is netted back from what the restaurant requirement is in the same square footage, the shortfall is 30 spaces. This is the relief the Applicant is seeking. With the number of parking spaces spread over the entire shopping center lot, a shortfall of 30 spaces is really quite *de minimis* in its impact, a minor technical deficiency based on his observations.

Mr. Caputo asked about the earlier question of whether or not the dumpster possibly is encroaching upon the lane that a truck would need to use.

Mr. Pessolano stated that the extreme front corner of the dumpster area where the gate hinges to the post is only at the front edge of the parking spaces/the line of parking spaces. It does not protrude at all into the "traveled way" adjacent to and giving access to the parking spaces and the other dumpster(s). Only an open gate would occupy travel way space, otherwise there is no obstruction. He explained how he would expect the truck serving the dumpster area would travel to and from the dumpster area.

Cross discussion about the matter of the dumpster area gates and trucks needing to access the dumpster area, including that one of the Board members talked about a restaurant his daughter has and they have no problems with the garbage pick-up and the access gates which are open only when garbage is being picked up and the Applicant offered to revise the plans to show the dumpster area with the gates closed.

Mr. Caputo stated the Borough Engineer would like to see an increase to 43". There has been discussion and the Applicant will honor this request. He mentioned there are two dumpsters behind the Verizon store that are missing closure doors and the Applicant has agreed to put those doors on.

Mr. Coogan advised that a trash dumpster at Verizon has no cover on it and this should be taken care of, too.

Mr. Caputo advised the Applicant will handle this as well.

Mr. Caputo asked Mr. Pessolano to address the positive and negative criteria for the variance being requested.

Mr. Pessolano referred to the issues relating to the parking spaces and the difference between what is required for retail versus what is required for a restaurant. He believes

the parking relief is justified by the C-2 portion of the statute in that the benefits substantially outweigh the detriments. Under C-1 there is some hardship also, but the C-2 analysis addresses the situation most directly. This shopping center is currently about 34% vacant and having greater occupancy is much better than having less occupancy. Chipolte will add fresh appeal to the shopping center. "Good planning makes good sense." It is necessary to keep this shopping center vital and as well as occupied as possible and occupancy should be encouraged by the municipal leaders. A well-occupied shopping center is a substantial public benefit for the owner, the customers and the municipality and promotes the general welfare and is an efficient use of land. There is significant parking available at this shopping center.

Mr. Pessolano next spoke about the negative criteria side of the application. The loss of the three spaces for the dumpster enclosure will not cause any congestion on the adjacent roadways nor on the site as a whole. He also commented on his observations of parking availability during his visits to the shopping center, stating he never saw a lack of available parking. He believes the total of 902 spaces can more than accommodate people who currently need to park at this shopping center. Internet sales have also affected the brick-and-mortar establishments; there would appear to be no diminishment in this practice and is working to reduce the amount of parking required in many shopping centers. The parking at the shopping center will be 94.5% compliant to what is required if this application is approved.

Mr. Caputo asked about being able to receive an approval with a condition that specifically says that a building permit cannot be issued until the Building Inspector has been shown that the Applicant is compliant with the sound ordinance and that if it should not be in compliance at the property line that acoustic screening be required and installed. He is attempting to address any Board concerns or the Borough Engineer might have.

Mr. Hall stated that this is just one condition relating to prior issuance of building permits. There are other issues/conditions that will have to be formalized in the Resolution if this application is approved.

Mr. Falcon advised that the conditions he has noted concern no deliveries before 7:00 a.m., delivery in front, park the truck in the nearby parking area, place a trash barrel at the front of the store, no garbage or recycling pick-up before 7:00 a.m., no cooking after 10:00 p.m., operations at site not to exceed 50 decibels at night, and no building permit until this standard is met. He commented on the issue of odor control and measures to eliminate this as a problem. What measure or design standard does the Board want to use to address this issue of odor? This was a critical concern of the approval of the application submitted by this same Applicant and approved at the Board's December 7, 2015 meeting.

Mr. Pessolano advised that from the research he has done in this regard, he has not found that there is an "objective standard for odor". The equipment to be installed is state of the art. In the past he and Mr. Denzler talked about the restaurant Five Guys

whose application was approved in Denville when Mr. Denzler served as the municipality's Planner. Mr. Denzler stated that there had been no significant odor complaints in connection with the cooking at Five Guys. Mr. Scott has informed him that the proposed odor control system for Chipolte is superior to that installed at Five Guys.

Mr. Adams commented that he attended a similar hearing to this at the Township of West Caldwell and he remembers one of the Board members telling him that with the restaurant to be located about 100' outside his window, he did not want to smell the restaurant when he is in his office. He has never received a telephone call from this Board member. The same CaptiveAire PCU system was installed at this restaurant. He also stated "There is no quantified way that it [odor] can be measured." Mr. Adams believes that the best practices they are using address this issue. There is no test standard for odor remediation in the industry. In their experience they have had very good results with their equipment.

Cross discussion about the proposed discharge equipment that will be installed at the restaurant to address issues relating to grease and odor, including that two filters will contain charcoal, a known odor remediator that is used in many different ways and in many different industries. The odor issue is being addressed by these filters.

Mrs. Leach commented that much of the issue of odor control will depend on proper maintenance of the equipment.

Mr. Adams stated this is correct. Odor filters should be replaced every four to six months. There are sensors in the system that alert the restaurant staff that there is a problem or that service is required. The system also provides other built-in ways that the staff is able to use to troubleshoot.

Mr. Hall commented that the size of the unit would be based on how much cubic feet of air will be moved across it.

Mr. Adams stated this is correct and provided a few details as to why this is the case.

Continued cross discussion as to how does anyone really know that the equipment is actually doing the job it was installed to do, including that Mr. Adams tried once again to present a way of explaining this that everyone would be able to fully understand and accept and issues relating to how it is determined how much charcoal is needed and actually in each filter.

Mr. Adams stated that filters are unable to be cleaned and reused. Once the charcoal has done its job, the filter is thrown out.

Mr. Caputo asked if there have been any issues with these PCU's.

Mr. Baham stated that at one New York City restaurant there were odor control issues; it occurred about seven years ago. The problem was that the PCU was an older version and did not have the alert sensors in it relating to the need to change filters or that service was needed. This restaurant was directly below an office. There are other PCU manufacturers, but Chipolte has determined that CaptiveAire manufactures the best product.

Mr. Adams stated the other PCU's on the market differ only in how they filter the grease. The only way to reduce odor is through a chemical filter such as charcoal.

Mrs. Leach stated she believes there should be a condition in the Resolution that addresses the issue of laxity with the maintenance of this equipment or lack of proper maintenance that has a consequence to the Applicant.

Mr. Baham reminded that the Health Department would be performing regular inspections and would likely uncover any problematic issues at the restaurant. He stated that the Applicant is trying to everything – most over and above – of what is required by ordinance and/or the Board. All their plans are state of the art.

Mr. Coogan pointed out that if an odor problem surfaced, it is likely the Zoning Officer would be notified. The Zoning Officer has summons power.

More cross discussion about the potential of an odor problem, including that the statement was made by Mr. Coogan, "What more do we want? I'm satisfied with the fact that we're getting what we want. Amen."

Mr. Falcon advised that the additional condition will state that there be a permanent maintenance contract in force.

Mr. Caputo stated that in his speaking with Mayor Druetzler, the Mayor indicated that there can be no odor/cooking problems with the nearby residents.

There was a reminder that the lifting of the earlier prohibition regarding restaurants being located in this portion of the shopping center relates to only this one storefront that was formerly a Marty's Shoes.

Another condition was added that the site plan would need to be revised to eliminate certain spaces and removing Lot 3.01 from the site plan.

Mr. Hall mentioned several items such as striping, the concrete footing being extended, and the two gates on the existing dumpster(s) behind Verizon as well as a top.

Mr. Coogan moved approval of this application as based on the Board's Attorney list of conditions, seconded by Mr. Nichols.

Mr. Falcon offered two directions as to how to proceed at this time: (1) that approval that is being granted now at this meeting with all the listed conditions or (2) carrying the public hearing to the Board's next meeting and adopt the Resolution at this meeting. If everyone is finished now, then there is no need to carry the public hearing. If the application is approved at this meeting, then at the next meeting he will be bringing the memorializing Resolution.

### **Roll Call**

Yeas: Mr. Coogan, Mr. Cortese, Mr. Jensen, Mrs. Leach, Mr. Lopez,  
Mr. Nichols, Mr. Sawoski,  
Nays: None  
Abstain: None  
Absent: Mr. Novak, Mayor Druetzler

**Motion carried.**

Mr. Lopez congratulated the Applicant on approval of the application.

### **COMMITTEE REPORTS**

#### **Minor Site Plan Committee**

No report was presented at this meeting.

#### **Master Plan Review Committee**

No report was presented at this meeting.

### **NEW BUSINESS**

None.

### **OLD BUSINESS**

None.

### **EXECUTIVE SESSION**

None.

### **ADJOURNMENT**

Mr. Jensen moved that the Meeting be adjourned, seconded by Mr. Nichols. Voice Vote. All in Favor. **Motion carried.**

Karen M. Coffey  
Commission Secretary

Maureen Sullivan  
Recording Secretary