

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on February 27, 2012 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza
Mrs. Rosemary Lopez
Mr. Martin Reilly
Ms. Joan Scaccia
Mr. Robert Webster
Mr. David Schulz, Chairman
Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mrs. Ruth Mills
Mr. John Scagnelli
Mr. Roy Stewart

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Schulz. Mr. Schulz 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."

APPROVAL OF MINUTES

The Board Secretary advised of revisions on Page 89, concerning the resolution change Planning Board to Board of Adjustment.

Mr. Bozza moved that the minutes of the January 23, 2012 Reorganization Meeting be approved as corrected seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Ms. Scaccia, Mr. Schulz
Abstain: Mr. Webster
Nays: None
Absent: Mrs. Mills, Mr. Scagnelli, Mr. Stewart

Motion carried.

COMMENTS FROM THE PUBLIC

Mr. Schulz opened the meeting to the public to speak on matters other than those on the agenda. Hearing none, he closed this portion of the meeting to the public.

BA-5-11–Kelido,Inc. (Dunkin Donuts)–246 Littleton Rd./Block:161 Lot: 2.04

Mr. Schulz stated this application is being reviewed for completeness and there will be a public hearing once the application is deemed complete and proper notice to the public has been verified at tonight's meeting.

Mr. Allen Hantman, of Morris & Hantman, the attorney for the Applicant introduced himself to the Board and Professionals.

Mr. Hall referred to their February 17, 2012 report and advised that all outstanding items from their previous report have been satisfied, and they find the application complete from an engineering perspective.

Referring to their February 15, 2012 memorandum, they recommend that the application be deemed complete as there are no outstanding items.

Mr. Bozza asked Mr. Hall a question about item (c) on their report.

Mr. Hall provided information regarding roadway dedications as set forth in the Master Plan. It is an application comment versus a completeness issue. It

involved wording about “to the center line of the road.” He will double check to be certain he is using the correct citation.

Mr. Reilly moved that this application be deemed complete based on the Professionals’ recommendations, seconded by Mr. Bozza.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Ms. Scaccia, Mr. Webster,
Mr. Schulz

Nays: None

Absent: Mrs. Mills, Mr. Scagnelli, Mr. Stewart

Motion carried.

The Board Secretary advised that the Applicant has provided proof of proper notice of hearing and that all fees are in order.

Mr. Sullivan swore in the Board’s Professionals.

Mr. Sullivan advised he spoke with Mr. Hantman concerning the fact that there are six Board members present at this meeting. The application includes a “D” variance that will require five affirmative votes to receive approval. Five yes votes will be needed from the six members present versus the usual seven members. He listed the three options the Applicant could take in light of this situation.

Mr. Hantman stated he will reserve decision on options 2 and 3 for now. He will decide at the end of the testimony whether to go forward with a vote. He advised that the Applicant’s planner, engineer, architect, and the owner of the business are available to provide testimony tonight. He provided a summary of what work the application proposes. Overall, the primary reason for the application is to modernize the existing structure, including the loading dock. There are three variances. One involves the property layout, the second involves parking issues, and third involves proximity to Littleton Road.

Mr. Michael Tobia, the applicant’s planner, 4 John Glenn Road, Morristown, New Jersey. He provided his professional credentials for the Board members and the Professionals. He advised he has appeared before this Board on several previous occasions.

Mr. Tobia was accepted as an expert witness.

Mr. Tobia provided details as to his work in connection with this application. He has visited the site several times, prepared a zoning analysis, a land use study, reviewed the Professionals’ reports, took photographs among other tasks. He displayed an item that was marked as Exhibit A-1. This exhibit is photographs taken in January by him that show the site as it now exists. This business has been at this site since the mid 1990’s. It is about 900 SF. Bottle King has 9,927 SF. He reviewed each photograph that is a part of this exhibit. He provided information concerning the proposed addition. The goal is to improve operational efficiencies. He also provided information on the Bottle King portion of this application. Mr. Tobia stated that parking will remain unchanged. There are now 49 parking spaces and there will be 49 parking spaces at the end. He displayed a second item that was marked Exhibit A-2. He also dated both exhibits. He provided information about Exhibit A-2. He reviewed additional documentation in connection with the application, including the loading dock/loading area. This business is a 24/7 operation; Bottle King opens at 9:00 a.m. and closes at 10:00 p.m. except for Sunday when they open at 10:00 a.m. and close at 6:00 p.m. Dunkin Donuts typically busiest time is when Bottle King is closed, 6:00 a.m. to 10:00 a.m. Dunkin Donuts has approximately seven employees in the morning shift, three in the afternoon shift and in the evening/nighttime there is one employee.

Mr. Tobia next commented on the variances being sought. First, he gave commentary relating to the Floor Area Ratio, the first variance. He then discussed issues relating to existing parking and other available parking spaces/areas, particularly stalls at the back of the building adjacent to the jug handle. He explained that the total parking spaces required is 74, but by counting the spaces near the jug handle, there would be 75 parking spaces if needed, even though only 49 parking spaces are currently available for use. The variance for parking is the second variance. There is also a front yard setback variance. He provided details relating to this variance, including setback information for other commercial sites in the Borough, information about vegetation, and that he believes what they are seeking with regard to the front yard setback is reasonable and that it would be a hardship to not grant it. This is a case that has common sense benefits to the public which he listed. He does not anticipate any substantial detriment to the public or the Borough if this application is granted. He provided additional information in connection with a question from Mr. Denzler to do with certain numbers not adding up.

Mr. Denzler asked about the off-street parking requesting information documenting that there is an easement.

Mr. Tobia stated he would provide this documentation. It is a lengthy document, but they can produce it.

Mr. Sullivan asked if Mr. Tobia could identify this document by referring to a Resolution that is part of this application. If so, perhaps it can be identified for the record.

Mr. Hantman advised the identification is contained in the 1992 Resolution, Section 2(c) on the bottom of the first page of the Resolution.

Mr. Sullivan stated this is a Planning Board Resolution adopted on October 19, 1992, Paragraph 2(c): "The Applicant shall be permitted to develop the parking areas to be sited on the bases of 58 spaces rather than 72 spaces provided that the current cross access agreement between the Applicant and the Morris Plains Leasing Corporation dated January 3, 1984 remains in effect and further provided the Applicant install a handicapped parking space."

Cross discussion about the issue of parking spaces decreasing from 58 to the current 49 spaces and parking issues on the site in general.

Responding to a parking issue question from Mr. Hall, Mr. Tobia stated that "what really works for Dunkin Donuts" are the 20 parking spaces located between the building and Littleton Road. Under different circumstances, he would have sent a counter to the site, but the overall site area (east and south of the building) has so much available parking that it did not seem necessary to do so. He was uncertain whether there was any agreement for parking overflow onto Lot 3.

Mr. Hall asked about ADA access throughout the site and whether or not it might be a good idea to provide a handicapped access ramp and dropped curbing.

Mr. Tobia replied their engineer will provide this answer.

Mr. Schulz opened this portion of the meeting to questions of this witness from the public. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan swore in Stephen Bolio who provided an address of 180 Main Street, Chester, New Jersey.

Mr. Bolio provided his professional credentials for the Board and Professionals, including his history of other Board appearances. He provided information in connection with his work involving the site plan as well as the area that is changing on the site (the shaded area is the proposed Dunkin Donuts addition).

He advised they are they will be installing an ADA accessible ramp along the northerly side of the building. Several parking spaces along the north side will be reconstructed. He displayed his first exhibit, and it was marked Exhibit A-5 and dated February 27, 2012.

Cross discussion as to the previous exhibits. They are Exhibits A-1 and A-2 showed the existing conditions, Exhibit A-3 was the aerial photograph dated June 18, 2011, and Exhibit A-4 was the photograph of the parking and setback.

Mr. Bolio provided information as to the content of Exhibit A-5. On the site plan, he identified where the changed parking spaces will be. He provided specific information as to entry to the building, including for handicapped accessibility. He identified the location of the proposed loading area. He advised they will be contacting Mr. Hall in connection with a certain modification(s).

Mr. Hall asked about the additional solid waste generated by the proposed building additions, specifically the eight new seats (III-B). He asked for comment on Item F (chain link fence around dumpster). He also asked for thoughts on Item G, ADA Accessible Improvements on a Sitewide Basis.

Mr. Bolio stated the purpose of the addition is to expand an existing area, and it is not anticipated that any additional solid waste will result even with the eight additional seats. He replied he did not have the exact history of this fencing and dumpster area. However, it is an existing condition, and he believes the site functions well with it as it is and does not see any difficulty for cars passing nor is it a safety issue. He provided details on what he believes they are proposing in connection with ADA accessibility – the ramp, striping and the like.

Mr. Sullivan stated the Applicant indicated there are certain restraints with regard to the ownership and so forth. The comments made by Mr. Hall should be addressed as deemed fit.

Cross discussion regarding Bottle King's owner consenting to the application with the stipulation that he pays nothing, including that Dunkin Donuts had to finance Bottle King's 47 SF.

Mr. Hall asked a question based on a site inspection last week, specifically the main driveway and the first radius where it appears that trucks have "popped" the curbing. He suggested enlarging the radius to allow trucks easier access to Dunkin Donuts and to Bottle King. This will make it more functional and safer.

Mr. Hantman stated he will make this request to the owner, not to the Applicant. Between this meeting and the Board's March meeting he will contact the owner about this request.

Cross discussion concerning ADA improvements and safety issues, including that Mr. Sullivan recommended an educated discussion with the property owner about these matters.

Mr. Denzler asked about the proposed No Parking zone next to the entryway. He also asked about the proposed new loading dock that appears to have a parking space in front of it. Is it appropriate to park directly against the building?

Mr. Bolio replied it was labeled a Fire Zone. The parking space shown in front of the loading dock will need to be changed. He provided additional details concerning parking spaces.

Cross discussion about pedestrian access and safety issues, parking spaces and general parking and access issues.

Mr. Schulz opened this portion of the meeting to questions of this witness from the public. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan swore in Subhash Sapra who provided an address of 466 Old Hood Road, Suite 7, Emerson, New Jersey.

Mr. Sapra, the Applicant's architect, provided his professional credentials for the Board and the Professionals and history of appearances before other Boards. He stated the architectural plans for this project were prepared under his supervision. He provided a description of what the proposed project will look like when finished. This is the plan that was submitted to the Board.

Mr. Hall asked about any exterior changes – lighting, signage, and awning. He recalls that the only change would be that the awning will wrap around the north corner versus the east corner and the goose neck lights will be relocated on this facade and the two existing building mounted signs will be reinstalled. Is this correct? He also asked about the new exterior handicapped ramp – what is the required minimum clear width of the ramp?

Mr. Sapra replied that two existing signs will be relocated and the lights will be installed as Mr. Hall indicated. The awning will wrap around. He provided information regarding the ramp. Railings are also required.

Mr. Sullivan asked if a new loading area was also a part of the installation of the elevator at Bottle King.

Mr. Sapra responded it is only the elevator.

Mr. Denzler advised that shifting the parking space away from the loading area will require an additional variance for loading space size. The ordinance requires a 10' x 40' loading space. A smaller loading space might cause traffic circulation problems in the area.

Mr. Hall asked if Mr. Sapra knows how deliveries occur now.

Mr. Sapra does not know the answer to this question.

Cross discussion about possibly adding a 3' wide staircase that would stop the sidewalk from being a dead end and also allowing everyone who is not in a wheelchair come up steps in conjunction with the ramp that will be installed.

The Applicant is agreeable to installing the staircase.

Mr. Hantman provided additional information about the Bottle King elevator and explained how it will look and how it will operate.

Mr. Schulz opened this portion of the meeting to questions of this witness from the public. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan swore in Dipak Patel who provided an address of 61 Morris Street, Morristown, New Jersey.

Mr. Patel stated he is the President of Kelido, Inc. He also owns other Dunkin Donuts in the State of New Jersey. He is familiar with the operation of this Morris Plains Dunkin Donuts. He explained why he is seeking approval for the proposed work as contained in the application and how the renovation would create a more pleasant and efficient environment and possibly reduce the number of patrons going to their cars to eat. He does not anticipate increased solid waste issues. Waste Management comes to the site twice a week to pick up garbage, and pick-ups can always be increased as needed. He provided information on the equipment contained at the business.

Mr. Hall asked if he anticipates any increase in employees in the morning shift.

Mr. Sapra replied he does not anticipate increased employees on any shift. He also advised there may be somewhat of a decrease in morning customers in light of his new Dunkin Donuts located at another Route 10 East site near Candlewood. He expects they will open this Dunkin Donuts in mid April.

Mr. Denzler asked when deliveries are generally received.

Mr. Sapra responded their deliveries are generally received between 2 a.m. and 4 a.m. and typically done by box trucks. At this time the parking lots are empty. Using an exhibit, he indicated how the delivery trucks enter the area where the supplies are unloaded.

Mr. Schulz opened this portion of the meeting to questions of this witness from the public. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan asked how the Applicant wishes to proceed.

Mr. Hantman responded that since they owe information to Mr. Hall they will request carry over to the Board's next meeting.

Mr. Sullivan reminded that in addition to the information requested by Mr. Hall, he also needs to provide a copy of the cross access agreement.

Mr. Hantman asked whether all the Applicant's witnesses must attend the Board's March 26, 2012 meeting.

Mr. Sullivan and the Professionals agreed that unless an unanticipated reason occurs, it will not be necessary for Mr. Hantman to have the witnesses return.

Mr. Hall did advise, however, that the site is not ADA compliant. He then left it to Mr. Hantman's decision as to whether the engineer should plan to attend the March meeting.

Cross discussion about property ownership, the two stores at the immediate site, and related matters.

Mr. Reilly moved that this application be carried over to the Board's next meeting on March 26, 2012, seconded by Mr. Bozza.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Ms. Scaccia, Mr. Webster,
Mr. Schulz

Nays: None

Absent: Mrs. Mills, Mr. Scagnelli, Mr. Stewart

Motion carried.

CORRESPONDENCE AND BILLS

Ms. Scaccia reported there are two bills for payment one to Anderson & Denzler Associates for \$72.40 and the second one to William Denzler & Associates for \$57.50 for professional services rendered to the Board of Adjustment.

Ms. Scaccia moved that the bill be approved for payment, seconded by Mrs. Lopez.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Ms. Scaccia, Mr. Webster,
Mr. Schulz

Nays: None

Absent: Mrs. Mills, Mr. Scagnelli, Mr. Stewart

Motion carried.

Escrow Report

The Board Secretary reported that no Escrow Report was received this month.

NEW BUSINESS

None.

OLD BUSINESS

Mr. Hall reported on the EJK stores on Route 10, advising that they received their first certificate of occupancy on or about February 1, 2012. Several more will be opening in the near future.

There being no further business, Mr. Reilly moved the meeting be adjourned, seconded by Mrs. Lopez. Voice vote. All in favor. Motion carried.

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary

Adjustment held on January 23, 2012 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza
Mr. Rosemary Lopez
Mrs. Ruth Mills
Mr. Martin Reilly
Mr. Roy Stewart, Vice Chairman
Ms. Joan Scaccia
Mr. David Schulz, Chairman
Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mr. John Scagnelli
Mr. Robert Webster

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Schulz. Mr. Schulz 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."

NOMINATIONS OF OFFICERS

Mr. Schulz turned the meeting over to the Board Secretary for nominations.

NOMINATIONS FOR CHAIRMAN

Mrs. Lopez nominated Mr. David Schulz for the position of Chairman, seconded by Mr. Reilly.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia
Nays: None
Absent: Mr. Scagnelli, Mr. Webster
Abstain: Mr. Schulz

Motion carried.

The Board offered its congratulations to Mr. Schulz on his position as Board of Adjustment Chairman for year 2012.

NOMINATIONS FOR VICE CHAIRMAN

Mr. Reilly nominated Mr. Roy Stewart for the position of Vice Chairman, seconded by Mr. Schulz.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Ms. Scaccia, Mr. Schulz

Nays: None

Abstain: Mr. Stewart

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

The Board Secretary turned the meeting back over to the Chairman.

Mr. Schulz expressed appreciation for being able to continue to serve on the Board.

APPROVAL OF THE BOARD'S LEGAL REPRESENTATION

Mr. Schulz commented that the Board must approve legal representation for the calendar year 2012. It was recommended that Michael Sullivan, Esq. continue in his role as the Board's legal representative.

Mr. Schulz moved that Michael Sullivan, Esq. be approved as the Board's 2012 legal representative, seconded by Mrs. Mills.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

Mr. Sullivan thanked the Board.

APPROVAL OF BOARD SECRETARY

Mr. Schulz stated the next item of business was the approval of the Board Secretary, Karen M. Coffey, for the calendar year 2012.

Mr. Stewart moved to approve this appointment, seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

Mrs. Coffey thanked the Board.

APPROVAL OF 2012 MEETING DATES

Mr. Schultz stated the next order of business is to adopt the Resolution to approve meeting dates for 2012, Board of Adjustment Resolution #12-01 - "Notice of Meeting Dates". Mr. Schulz read the following Resolution:

BOARD OF ADJUSTMENT - RESOLUTION 12-01

NOTICE OF MEETINGS

BE IT RESOLVED by the Board of Adjustment of the Borough of Morris Plains in the County of Morris and State of New Jersey on this 23rd day of January 2012 as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known and hereinafter designated as the "Open Public Meetings Act", requires notification of meetings of public bodies as therein defined, in the manner therein set forth.

NOW, THEREFORE, for purposes of compliance with the "Open Public Meetings Act" aforesaid, the Planning Board of the Borough of Morris Plains hereby makes the following designations:

1. The *Morris News Bee* and the *Morris County Daily Record*, or as an alternate, *The Star-Ledger*, are hereby designated as the two newspapers to receive notice of meetings as required by any and all sections of the "Open Public Meetings Act", or as an alternative, *The Star-Ledger*, it appearing that those newspapers are most likely to inform the local public of such meetings.
2. The location for the posting of the Notice of Meetings shall be the bulletin board of the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey where notices of this kind are normally posted.
3. The schedule attached hereto and made a part hereof entitled, "Notice of Scheduled Meetings for the Remainder of the Year 2012" is hereby adopted and the Secretary of this Board is authorized and directed within seven (7) days of this scheduled meeting to:
 - a) Post said meeting schedule and maintain the same posted throughout the year on the bulletin in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey;
 - b) Mail a copy of the same to the *Morris County Daily Record* and the *Morris News Bee*;
 - c) Mail a copy of the same to those persons who may request such a mailing provided they comply with the regulations providing for a mailing of such notice;

- d) The sum of \$5.00 per notice is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 14 of the Open Public Meetings Act and file a copy of said schedule with the Clerk of the Borough of Morris Plains.
 - e) The Morris Plains Board of Adjustment has their meeting date on the fourth Monday of every month except for May and December 2012 when the meetings are scheduled for the third Monday.
4. Notice of Schedule of the meetings for the remainder of the year 2012: Please take notice that the Board of Adjustment of the Borough of Morris Plains, will meet to discuss or at upon public business at 7:30 p.m. prevailing time of each of the dates set forth below in the Council Chambers, 531 Speedwell Avenue, Morris Plains, NJersey: February 27, March 26, April 23, May 21, June 25, July 23, August 27, September 24, October 22, November 26 , December 17, and January 28, 2013 at 7:30 p.m.
5. All meetings of the Planning Board shall be open to the public. I, Karen Coffey, Secretary of the Morris Plains Planning Board, in the County of Morris, and State of New Jersey, do hereby certify the foregoing to be a true copy of a Resolution adopted by the said Morris Plains Board of Adjustment on the 23rd day of January 2012, at a meeting duly convened by said body.

Mr. Stewart moved that Board of Adjustment Resolution 12-01 be approved, seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

APPROVAL OF MINUTES

Mr. Schulz stated the next agenda item is approval of the meeting minutes of the Regular Meeting on Decembeber 19, 2011.

Mr. Reilly moved the minutes be approved, seconded by Ms. Scaccia.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Abstain: Mrs. Mills

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

COMMENTS FROM THE PUBLIC

Mr. Schulz opened this portion of the meeting to comments from the public. Hearing no comments from the public, Mr. Schulz closed this portion of the meeting to the public.

BA-5-11 Kelido, Inc. (Dunkin Donuts) – 246 Littleton Road
Block: 161 Lot: 2.04

Mr. Schulz stated this matter is on tonight's agenda for completeness only.

Mr. Alan Hantman, Esq., of the firm of Morris & Hantman introduced himself to the Board and Professionals.

Mr. Hall provided information on his review of the application, site plan submitted, and checklist. He also gave general commentary as well as on certain documentation provided that appears to have some discrepancy. He stated that based on his review findings, the application is deemed incomplete.

Mr. Denzler referred to their January 23, 2012 memorandum and provided commentary on the application, site plan submitted, and checklist. He also deemed the application to be incomplete.

Mr. Hantman stated he understands the concerns of the Board's Professionals, but that they disagree. He provided information relating to why they disagree. He first referred to requesting a waiver for a formal site plan based on the insignificance of the application presented; this issue has not been addressed by anyone. He gave a brief historical summary of the Dunkin Donuts site. This application seeks to moderately enlarge an existing building that has been approved by this Board on three prior occasions; the Applicant wants to expand the existing space by 435 SF. Another 47 SF is to be done to permit Bottle King to install an elevator. Nothing is being changed outside the building, and no changes in parking or drainage are being sought. Most of the lighting, except for one light shown on the plan, is on the building. There is one lighting change being requested and this is clearly shown in detail on the architectural plan.

Continuing, Mr. Hantman addressed the issue of the deed discrepancy, explaining why it exists. He also advised of his efforts to try to rectify this situation since a survey will not help. He believes he will be able to submit a title search and expert testimony to the Board that will provide sufficient evidence that the Applicant has a right to use this property and to allow for approval of this application. He also stated he understands his obligations under the Land Use Act and use variances. Referring to the 30-year existence of this business structure, prior approvals by the Board, the title search, and expert testimony to be given, he stated he believes this criteria entitles the Applicant to go forward. He believes all dimensional information was submitted, that the engineer, planner and architect will submit/re-submit documentation as required, and a title search will be submitted.

Cross discussion of this application, including how the determination of what relief is required needs to be made and issues relating to the deed and the tract outbound, topography, and area.

Mr. Hall believes that the issues of the deed and the tract must be resolved prior to the public hearing so that proceeding will start with a clear record. This information needs to be known and verified prior to the public hearing, and not through testimony.

Mr. Sullivan suggested that a title report theoretically could resolve the issue. If the title search was received prior to the public hearing in sufficient time for a thorough review, it may provide the needed data. The completeness hearing is to balance the nature and scope of the application and occasionally waivers are granted. At other times, there is agreement to continue the completeness portion to the next meeting and allow for noticing of public hearing, based on the expectation that the issue will be resolved.

Mr. Hantman again referred to the fact that this is the calculation of an existing site that the Borough and this Board has used on two prior occasions. To be questioning this now is reinventing the wheel.

Mr. Sullivan asked Mr. Hall when the last application before this Board for this Applicant was.

Mr. Hall responded he would need to review the file. It appears the most recent applications were in 1992 and/or 1994. He stated he is unfamiliar with what these applications show in relation to the question about tract outbound and lot area.

Mr. Hantman commented on previous application documentation prepared by RBA Engineers & Architects that has a date of January 1, 1988, and updated through August 13, 1992 for the entire tract. It shows both that area and the reserved area. The search for the current application has been ordered.

Mr. Sullivan stated that the Board wants to be comfortable that the number is accurate. Before granting a floor area ratio variance, the Board needs to know to what extent it is being granted. This issue must be resolved. He suggested that if the title report/search can resolve this question, provide it as soon as possible to Mr. Hall for his review.

Mr. Hantman repeated he does not believe there are any modifications proposed for outside the building. He referred to how the ramp is going to work is an engineering issue. There is no intention to do anything outside of the building meaning the four corners.

Mr. Hall stated this is incorrect. The Applicant is proposing of a new handicapped access ramp, new striping, and new signage. He also asked about the request for a waiver of site plan. On the Applicant's application form under Site Plan it says "Minor – Change of Use." Is there really a request for a waiver of the site plan?

Cross discussion about the matter of a request for a waiver of the site plan.

Mr. Sullivan stated that he believes there can be agreement that the application is for a minor site plan. He asked Mr. Hall if there are other items in his January 18, 2012 report that are problematic if the Board waives them or can the Board consider them as part of a waiver?

Mr. Hall replied he needs to review the site plan in more detail and provided additional commentary on checklist items.

Mr. Hantman provided a summary regarding his requests for prior information from the owner and/or Applicant such as a copy of the deed. The owner and/or the Applicant could not provide much data. He said he has tried to obtain certain information, and if he could get it, he would be happy to provide it to the Board and Professionals. Information was also requested from a prior owner, but little or no documentation was received. If the Applicant will need to re-certify a survey, he thinks the entire tract would need to be surveyed. He also referred to this application's site plan as well as two other plans referenced in the Resolution he provided the Board.

Mr. Hall commented on surveys in general and the possible need for a survey of the site in question. He also stated that if one of the earlier applications contains a tract outbound survey, then Mr. Hantman could reference it.

The Board Secretary advised the previous applications have been reviewed by Mr. Hantman and by the Engineer. She explained what was able to be found. She suggested that perhaps with the deed there is a verbal survey or there might be a survey with the deed.

Mr. Hantman explained some of the difficulties relating to the deed and survey. If he could get a title policy from the other people, he would be able to determine what they think they bought.

Mr. Schulz asked Messrs. Hall and Denzler about lighting and the relatively small nature of the addition, are there any other larger concerns?

Mr. Denzler provided his comments concerning setbacks and several checklist item issues.

Mr. Sullivan stated that waiving checklist items 16b, 26, and 27 seems to be a comfortable action for the Board. He asked Mr. Hall about this.

Mr. Hall stated he agreed and suggested granting a partial waiver to checklist item 18g discussed at the bottom of Page 1 of his report.

Mr. Sullivan recommended a motion that checklist item 16b could be waived, checklist item 18g could be partially waived as outlined by Mr. Hall, and that checklist items 26 and 27 could be waived. He suggested deferring checklist item 18a for now.

Mrs. Lopez moved that the checklist items as indicated immediately above be fully or partially waived, seconded by Mr. Bozza.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

Mr. Sullivan suggested that this application could be deemed incomplete and reviewed at the next meeting based on what is submitted or the Board could give Mr. Hantman an opportunity to submit the title report. This is a submission that the Board and Professionals do not know if it will actually happen. The public hearing could be scheduled.

Mr. Hantman suggested he could amend the application to show a greater deviation from floor area ratio and believes this action would allow the application to be deemed complete. His searcher advised he will be able to provide him with a title search within 10 days, and he will then be able to provide the search information to the Board and Professionals.

Mr. Sullivan asked if the Board is willing to allow Mr. Hantman the time to address the outstanding issue with regard to checklist item 18a and also allow noticing for public hearing.

Mr. Schulz stated this is correct and put the risk on the Applicant to provide the needed documentation. He noted that all re-submittals must be received at least 14 days prior to the February Board meeting which is February 27, 2012.

Mr. Sullivan encouraged Mr. Hantman to have the Applicant's engineer speak with Mr. Hall as needed.

Mr. Hall advised he has already spoken with the Applicant's engineer and will continue to speak with him as needed to resolve the outstanding matter.

Mr. Sullivan stated that the next motion should indicate that checklist item 18a remains incomplete and that the completeness hearing on this item will occur at the Board's next meeting, and that the Applicant is allowed to notice and the public hearing will be scheduled anticipating that the outstanding issue will be resolved in a timely manner.

Mr. Reilly moved that the application is incomplete with reference to checklist item 18a, with waivers for checklist Items 16b, 26 and 27 and a partial waiver for item 18g, and allowing the Applicant to move forward toward a public hearing, assuming receipt of necessary documentation, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Motion carried.

Mr. Hantman thanked the Board and Professionals for their time and consideration of this application.

CORRESPONDENCE AND BILLS

There was no correspondence and no bills.

OLD BUSINESS

Escrow Report

Mr. Schulz asked why the General Plumbing Supply is still on this report. Are they fully complete?

Mr. Hall replied there is still an issue with rusty shelving at the rear of the site that needs to be addressed or possibly removed.

Mr. Sullivan asked whether there is a Developer's Agreement that may address this issue.

The Board Secretary reviewed other escrow report issues for the Board, including that the Yuliano application most likely will be on the February agenda and explained the matter of the request addressing the completeness clock and how the Applicant would like to distribute the report(s). The attorney, Mr. Rago, will be sending a letter to this effect.

Mr. Sullivan requested this letter be sent to him upon receipt.

Mr. Hall advised that additional funds (\$1,000) should be requested from EJK.

NEW BUSINESS

None.

There being no further business, Mr. Reilly moved the meeting be adjourned, seconded by Mr. Stewart. Voice vote. All in favor. Motion carried.

Karen M. Coffey
Commission Secretary

Maureen Sullivan