

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on August 26, 2013 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mrs. Rosemary Lopez
Mrs. Ruth Mills
Mr. Martin Reilly
Ms. Joan Scaccia
Mr. David Schulz
Mr. Robert Webster
Mr. Mark Karr
Mr. Roy Stewart, Chairman

Mr. Leon Hall, Borough Engineer
Mr. William Denzler, Borough Planner
Mr. Michael Sullivan, Board Attorney

Absent: Mr. Michael Bozza, Vice Chairman

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Stewart. Mr. Stewart 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

Ms. Scaccia moved to approve the minutes of the July 22, 2013 Regular Meeting, seconded by Mrs. Lopez.

Roll Call

Yeas: Mrs. Lopez, Mrs. Mills, Ms. Scaccia, Mr. Schulz,
Mr. Webster, Mr. Karr, Mr. Stewart

Nays: None

Abstain: Mr. Reilly

Absent: Mr. Bozza

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Stewart 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-1-12 Rand Homes Corporation, Madison Ave. Block: 53 Lots: 11,12.01

Mr. Stewart advised this application is on tonight's agenda for memorialization.

Mr. Sullivan asked the Board Secretary which members are eligible to vote on this Resolution.

Mrs. Coffey stated Mrs. Lopez, Mrs. Mills, Mr. Reilly, Ms. Scaccia, Mr. Schulz, Mr. Stewart and the alternates are eligible to vote.

Mrs. Mills moved that this memorialization be approved, seconded by Ms. Lopez.

Roll Call

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

Nays: None

Abstain: Mr. Karr, Mr. Webster

Absent: Mr. Bozza

Motion carried.

A copy of this Resolution is attached and on file in the Board Secretary's office in the Board of Adjustment's Resolution Book.

BA-6-11 Denise Yuliano, 49 Dogwood Rd. Block: 72 Lot 12 Rear

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

The Applicant was not present.

Mr. Stewart requested that the Borough Professionals review this application for completeness purposes.

Mr. Hall referred to their August 22, 2013 report and commented on specific checklist items, mentioning issues relating to the steep slope variance and applicable fees that still must be addressed; requested waiver from requirement to provide color photographs of existing residences on the same of the street within 200' – he recommends against granting this waiver; waiver from certain lot information within 500' of the subject tract – he recommends granting this waiver; waivers on flood hazard areas, etc. and wetlands – he recommends granting these waivers; written justification for a waiver that was not submitted to his knowledge. Based on issues relating to the checklist items not waived or still needed to be submitted, he recommends finding this application incomplete from an engineering perspective.

Mr. Denzler referred to their report of August 21, 2013 and stated they also believe this application should be deemed incomplete. He commented on the steep slope variance not applied for; this was recommended in their prior report of January 2013. He provided additional information to support his recommendation supporting finding this application incomplete.

Mr. Stewart asked if there has been any communication with the Applicant regarding this application.

Mr. Hall stated these are the very same items that caused the application be deemed incomplete in January 2013. He has not spoken with Applicant or her attorney since that time.

Mr. Reilly moved that this application be deemed incomplete; seconded by Ms. Scaccia.

Mr. Sullivan asked Mr. Hall if the Board should take action on the waiver request at this point (Mr. Hall's paragraphs 3, 4 and 5).

Mr. Hall responded this would be appropriate.

Mr. Sullivan stated the motion also includes the granting of the waivers and Items 3 through 5 of Mr. Hall's August 22, 2013 memorandum.

Roll Call

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

Nays: None

Abstain: Mr. Karr

Absent: Mr. Bozza

Motion carried.

The Board Secretary asked for confirmation that waivers 3 through 5 contained in Mr. Hall's memorandum are granted.

Mr. Sullivan confirmed that waivers A, 3, 4, and 5 of Mr. Hall's August 22, 2013 memorandum were included in this motion.

BA 2-13 EJK Realty, LLC, Route 10 East and Candlewood Drive

Block: 115 Lots: 1, 2, 3, 4, 5

Mr. Stewart advised this application is on tonight's agenda for completeness and public hearing.

Mr. Frederic F. Azrak introduced himself to the Board stating he is representing the Applicant in this matter and has appeared before this Board previously.

Mr. Hall referred to their August 22, 2013 report. He further referred to page 2, I under completeness. There are three separate applications before the Board: (1) minor subdivision; (2) amended preliminary and final site plan; and (3) several variances. He reviewed each application separately, including granting a waiver relating to the fact that there will be no tree removal; granting a waiver in connection with steep slopes since no steep slopes are proposed to be disturbed; copy of the Zoning Officer's decision; and items relating to residential use are not applicable, but a waiver is required. Based on this review and the information submitted, they recommend finding all three applications complete from an engineering perspective.

Mr. Denzler referred to their August 22, 2013 memo, they are recommending the Board find this application complete. Additional waivers he is noting are #64, Checklist E concerning water courses and water courses under #29 for Checklist F. From a Planning perspective, they recommend deeming this application complete as well as granting the waivers referred to.

Mr. Schulz moved that the application be declared complete with the approval of the waiver checklist items outlined by the Borough Professionals, seconded by Ms. Scaccia.

Roll Call

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

Nays: None

Abstain: Mr. Karr

Absent: Mr. Bozza

Motion carried.

Mr. Stewart stated the hearing will now be held on this application.

Mr. Azrak introduced himself again and also introduced his partner, Mr. Peter McArthur. He provided a summary report of their previous appearances before this Board. He advised the subject tract is 3.24 acres in size. The retail property is now in place and this application is placing the last "piece of the puzzle – a Harley dealership." He advised they are also seeking approval to subdivide the existing building because Harley requires that their dealers own their property in fee simple. They will discuss and provide testimony on floor area ratio (FAR); bulk and sign variances, and design waivers. This process began in 2007, and they have appeared before this Board for various relief and have endured over time despite the impact of the recession to reach this point. Mr. Kloss has requested that the Board be thanked for their cooperation in helping him to fill the retail storefronts.

Continuing, Mr. Azrak stated that Mr. Kloss has worked tirelessly to identify a person/company to occupy the remaining existing building. They need continued cooperation from the Borough to finalize this project and establish the Harley-Davidson dealership. Mr. DeFazio who is present at this meeting will be the owner of this dealership. He commented on police departments and their fondness for motorcycles/Harley-Davidson motorcycles. He advised they have pre-marked the curriculum vitae of the experts who will be called to testify tonight in order to keep the hearing moving along. They will be Exhibits A-1 through Exhibit A-4. He mentioned an August 15, 2013 letter from the Borough Attorney Ms. Fraser he would like to mark as Exhibit A-5.

Mr. Sullivan swore in the Borough Professionals.

Mr. Azrak commented on their agreement to give 6' of the 12' along Route 10 to accommodate any future widening of Route 10. This was done for the good of the Borough. An extra foot will be given to the Borough per the terms of the Board Attorney's letter.

Mr. Azrak called the Applicant's engineer, Bruce B. Connell, PE, PP, CME, 1901 Main Street, Lake Como, New Jersey 07719, who was sworn in by Mr. Sullivan. He provided a brief summary of his credentials and background and was accepted as an expert witness to testify as an engineer only, not a planner.

Mr. Connell provided a summary of the property location and orientation. It is located on the eastbound side of Route 10 at the intersection of Candlewood Drive and in the OB Zone. He referred to an exhibit showing a site rendering of the existing vacant building. It was marked as Exhibit A-6, "Color Rendering of the Site Plan." The existing building has 20,141 SF and they are proposing a 6,130 SF mezzanine within the building to be used for some offices but primarily for the storage of parts. The front door will face Route 10 and a canopy is proposed for this area as well as a canopy along the loading zone. These canopies are to provide protection during inclement weather. This will result in a front yard setback variance of 1.4'. The plan creates a new circulation aisle along the frontage of the building connecting to area of the loading dock for motorcycles only. The existing monument sign needs to be re-located because of the relocation of the parking area and driveway for the motorcycles; he pointed out where this would be installed. It would be on the easterly side of the driveway and would not impede safe sight distance. The reason for the subdivision is to allow Harley-Davidson to have its own fee simple lot. He provided commentary about cross-access, utility and parking easements. This results in the need to seek several variances. The footprint of the building will not change at all; there is no expansion to the existing building. All the work will be done inside.

Continuing, Mr. Connell advised on parking issues. The previously-approved plan had 126 parking spaces; the Applicant is proposing 124 passenger vehicle parking spaces and 23 motorcycle parking spaces. Design waivers for the space dimensions of the motorcycle parking spaces and aisles are smaller than for a standard vehicle. He provided information relating to the existing stormwater system designed for this site and with the proposed changes will meet the reduction requirements for the site; the existing underground detention basin has sufficient collection capacity. What has been previously approved will be shared by both lots. The existing utilities will be used and are separate from those serving the retail strip mall. A new electric service will be provided in the loading area.

Mr. Connell next provided testimony regarding signage. Two signs are proposed for the exterior of the building and one interior sign located more than 6' from the internal glass of the building. There will be a natural gas emergency generator located at the rear of the structure. An existing interior ramp will be retained. The strip mall monument sign will be located at the easterly side of the exit drive aisle out to Route 10. Its size will not change and will be located 3' from the property line to avoid issues with underground utilities.

Mr. Azrak stated that while the fire code official offered no comments, the Fire Chief requested that the FDC connection be moved closer to the rear of the building if possible. The red indicator light and the Knox Box will be moved as well, correct. He asked for confirmation on the number of expected employees – about 15-16? He asked for confirmation that the hours of operation are mostly 9:00 a.m. to 5:30 p.m. except for Thursdays which will be 9:00 a.m. to 8:00 p.m. and Sunday which will be 10:00 a.m. to 4:00 p.m., correct? Is it correct that the dealership's owner, Mr. DeFazio, will control the deliveries?

Mr. Connell replied the Applicant will comply with the Fire Chief's requests. There will be 15 to 16 employees with most being full time, but some part time also. He confirmed that these hours of operation are correct. Mr. DeFazio will control deliveries. In the slower months there will be one delivery, while in the busier times of the season there will be two deliveries. The motorcycles being delivered are palletted; the deliveries can last anywhere from 15 minutes to one hour, depending on how many motorcycles are being offloaded. UPS generally will come to the site once a day.

Mr. Hall asked about deliveries of retail products and parts.

Mr. Sullivan asked if the dealership owner will be called to testify. He believes it will be best for the owner to testify as to how the business will be operated, confirming the hours of operation, the number of employees, information on deliveries and related matters.

Mr. Azrak replied that he certainly call him since he is present at the meeting. He asked Mr. Connell about the safety of the drive aisles, parking circulation, driveways, lighting, and signs.

Mr. Connell believes the proposed plan results in a safe and effective site. The variances being sought will not detrimentally impact the nearby community or the Borough's zoning code or Master Plan.

Mr. Hall asked about utilities requiring cross easements.

Mr. Connell responded stating the stormwater system and sanitary sewer system will require cross easements, the gas, water, and electric are separate and will not require cross easements. He commented that the sanitary sewer system would be on the westerly side of the driveway access to route 10 and on the new proposed lot 2.01; there will need to be an easement for that to stay in place to service the existing retail building. However, there is a hydrant for the water crossing between Lots 1.01 to Lot 1.02 that would be part of a cross easement agreement. The underground electric goes to a site that is located on Lot 1.02 and would need to be included "in the mix" as well.

Mr. Hall asked about a stormwater maintenance manual and stormwater operation manual and repairs. He commented on legal aspects of these items.

Mr. Connell advised that for the most part the system on Lot 1.02 is a collection system; the system on Lot 1.01 is actually the detention and treatment system.

Mr. Hall asked if all the proposed electrical service will be underground.

Mr. Connell replied yes, it will be underground.

Mr. Denzler asked if the front-of-the-building motorcycle parking spaces are for customer parking or for display purposes. Are there any noise considerations, perhaps in connection with repairs being done.

Mr. Connell stated they are for customer parking. They do not plan to have any outside display of motorcycles. This will be verified with the owner. There is no expectation that noise will be a problem in connection with the repair work. However, remember the motorcycles themselves will create a level of noise, but being located right next to Route 10 will somewhat reduce any noise concern issues.

Mr. Hall asked about lighting.

Mr. Azrak responded that the Applicant's Planner will provide more details.

Mr. Connell commented on the lighting in general, particularly that there will only be one day during the week when the business will be open when it is dark (winter months), so this concern should cause minimal, if any, problem.

Cross discussion about the proposed emergency generator and the HVAC equipment, including that the Applicant's architect will provide specific details.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting and thanked Mr. Connell for his testimony.

Mr. Azrak then called the Applicant's Traffic expert.

Mr. Sullivan swore in Mr. Matthew R. Welch who stated he is a project manager with Stonefield Engineering & Design. 75 Orient Way, Suite 303, Rutherford, New Jersey 07070. He provided a summary of his background and credentials and was accepted as an expert witness. He verified the contents of his curriculum vitae (Exhibit A-2).

Continuing, Mr. Welch spoke on their role in this project which he stated was advising on the shared parking aspects of this shopping center, including advising the property owner on whether this use could work on this site and be compatible with the existing uses. He explained the process he followed in order to provide the necessary advice. The peak use hours for this shopping center on a weekday are between 11:00 a.m. and 2:00 p.m., resulting in 77 vehicles on weekdays and 41 vehicles on a typical Saturday. The initial analysis prepared in 2010 predicted 103 vehicles for weekdays and 95 vehicles for Saturdays. He referred to an increase in parking demand when Coldwell Banker holds their weekly meetings on Wednesdays that run from 10:00 a.m. to about 11:00 a.m., however, this demand occurs before the lunchtime peak for the restaurants and does not have a significant impact.

Mr. Hall asked if these situations were observed during the peak hours?

Mr. Welch replied they did not count the morning Dunkin' Donuts peak. The Coldwell Banker timeframe was based on discussions with both the property owner and Coldwell Banker. He shared resource data from the Institute of Transportation Engineers (ITE) documents relative to typical parking demand. They also checked three Harley-Davidson dealerships in the area (Rochelle Park, Kinnelon, and Lebanon). In doing this they learned the ITE data is 40 to 60 percent higher than the highest usage site observed (Rochelle Park). They also observed the ratio between vehicles and motorcycles at these dealerships. About 25 percent of the parking was motorcycles with the rest being vehicles. Based on this information, they determined that the subject location will need 36 passenger vehicle parking spaces and 11 motorcycle parking spaces for weekdays and on Saturdays, 47 vehicle parking spaces and 15 motorcycle parking spaces. The total site is at 113 vehicle parking spaces (91 percent) and 11 motorcycle parking spaces and only 88 vehicle-occupied parking spaces on Saturdays. The site will have 124 vehicular parking spaces and encompasses the shared parking agreement that will exist between the two lots and 23 motorcycle parking spaces. What the Applicant is proposing will be sufficient to support this project. They did not take into consideration that some people might go Dunkin' Donuts or one of the other adjacent businesses; they did not take any "capture credit" in their analyses.

Continuing, and in answer to a question about not having taken this matter of Harley-Davidson customers also wanting to go to one of the adjacent businesses into consideration, Mr. Welch said he does expect this to occur. As to the impact on the adjacent retail stores' parking capability, he responded that it is a good question. He explained the reasons why their motorcycle parking spaces are located where they are, including that it allows them to be "shown off" and the location of an existing pedestrian crosswalk. He anticipates that more people may walk rather than drive say, from Harley-Davidson to Dunkin' Donuts.. He also mentioned that the existing dealerships they visited were standalone/isolated ones; this was done deliberately to focus strictly on the matter of parking demand.

Cross discussion as to what the true impact may be on parking in light of the likelihood of customers moving around the entire site among the various businesses, including that existing proprietors are anticipating an uptick in their business with a Harley-Davidson dealership on the site and that it is unlikely that everyone will walk versus drive among the various businesses.

Mr. Welch reminded that there will be a shared parking agreement between the two sites. The analysis they are preparing is based on numbers that are 40 to 60 percent higher than the numbers actually being observed in the field.

Mr. Denzler stated he is satisfied with the data provided by the Applicant regarding the parking issues and the shared parking agreement to be executed. The existing retail parking spaces can be used by either a car or a motorcycle.

Continuing, Mr. Welch next provided testimony in connection with the sign variances and why he believes they should be granted. He discussed sight distance and safety issues regarding easy visibility of signs. The site will continue to operate safely and efficiently. As to the variances, he agrees that they do not substantially impact the surrounding community or the zoning code or the Master Plan from a traffic standpoint.

Mr. Hall asked about their analysis on Table 3. Why does the tenant require 23 motorcycle parking spaces?

Mr. Welch replied that the design should not be exactly on the peak. The owner believes there probably will be times when more rather than less motorcycle parking spaces are needed such as a special event of some kind.

Mr. Hall referred to his report under III-Application Comments. He asked if the counts were done during the school year whether they would be expected to higher than what was obtained in August.

Mr. Welch replied he does not think there would be any impact. He said they conducted August counts for specific reasons: (1) it was their first opportunity to do so with all the businesses occupied and (2) they checked the Urban Land Institute seasonal variability data and discovered that August is the second highest peak month for fast food/general restaurants; December is the highest. He does not believe doing the counts during the school year would result in any significant difference.

Mr. Hall asked about the general circulation of the truck that will deliver the motorcycles. He asked if the wheelbase is any bigger than the previous exhibits seen for site circulation.

Mr. Azrak replied that this is a question for the owner.

Mr. Hall asked about the number of monthly deliveries.

Mr. Azrak again replied this is a question best asked of the owner.

Mr. Welch added that in speaking with the owner, the months in which two monthly deliveries is typical are April, May, June, July, August, September, and October.

Cross discussion concerning the path of the motorcycle driveway, is it correct that they come around the front of the building, make a left on the curb, come to a stop sign, and then drive in the loading dock? What prevents a tractor trailer from backing up into a lane? It included a statement that the owner will schedule deliveries outside the peak hours.

Mr. Azrak commented that the owner has total control over deliveries and will not accept them if there is blockage; it is not automatic that the delivery is done how the delivery company wants to do it.

Mr. Welch consulted one of the displayed exhibits. The loading area is approximately 19' wide which is sufficient for the average truck to back into. The adjacent travel path for the motorcycles is 12' wide. From both operational and business standpoints, the owner does not want the delivery trucks backing into the motorcycle drive aisle. He will ensure the delivery trucks are staying in the loading

area. Even if there is a temporary decrease in the 12' width, a motorcyclist would have adequate room to drive by.

Mr. Hall stated this is essentially backing into an extension of a parking aisle. He asked if the loading zone is actually 14' wide versus 19' wide. He stated the tenant/owner will self regulate the deliveries, but he must be asked certain questions. The most time for possible conflicts around deliveries is expected to be just two hours per month.

Mr. Welch confirmed that it is 14' wide, not 19' wide.

Mr. Webster asked if there are signs to guide the motorcycles as they enter the premises to alert that there is motorcycle parking at the front of the dealership?

Mr. Welch replied he does not believe there will be signs, but when approaching from Route 10 these stalls will be the first they see before they get into the parking lot, and they are well visible at the front of the dealership.

Mr. Hall added that initially there may be some motorcycles parked in the car parking spaces, but as the business gets up and running, they will know they find these motorcycle parking spaces at the front. They will learn quickly.

Mr. Stewart asked Mr. Hall about any possible impact on the "speed-up lane"/the merge lane and other traffic issues. This related to the deliveries.

Mr. Hall stated this needs to be discussed with the tenant/owner.

Mrs. Mills asked if the delivery trucks will enter on Candlewood Drive or Route 10?

Mr. Welch responded it will enter on Candlewood Drive and exit onto Route 10.

Mr. Hall asked about peak demand analyses. Is the demand higher or lower or about the same when compared to previous analyses/

Mr. Welch replied their analysis two to three years ago was very conservative (higher from a study standpoint). The actual peak demand today is roughly 75 percent of what they projected it would be. He believes the recent analyses are more realistic as to what the parking demand for the site. In designing a site and designing a parking supply, you want to design for the typical high based on available industry data. What they designed for is more than we are seeing and more than we anticipated to occur on the site. A cushion has been built in for this current application for the Harley-Davidson dealership.

Mr. Hall commented that having the real, on-the-ground data for the three dealerships they visited showing their demand based on actual dealerships is less than what is being predicted for this application's calculated peak demand.

Mr. Stewart commented that the consequences of the co-location situation are potentially a bit more serious.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting.

There was a five-minute break.

Mr. Sullivan swore in Mr. Robert A. DeFazio who provided an address of 4 Mountain Road, Lebanon, New Jersey 08833. He confirmed there will 15 to 16 employees. As to the deliveries, he confirmed that there will be two deliveries during their peak seasons and will be done on his preference. At his existing store, there are no Friday deliveries. He currently has deliveries on Wednesdays.

Mr. Hall recommended that deliveries be done in the afternoon; the day of week is open as far as he is concerned. He suggested that the Board consider mandating an afternoon delivery around 3:00 p.m. on either a Wednesday or a Thursday. The goal is to avoid the morning peak travel on Route 10 East.

Mr. DeFazio agreed the 3:00 p.m. delivery time on either Wednesday or Thursday is acceptable with him.

Mr. Sullivan asked how many employees would be on site at any one time. He asked for confirmation of the months when there will be two deliveries.

Mr. DeFazio replied that the maximum at any one time would be 14 employees. Two monthly deliveries would occur April through October.

Mr. Hall asked for an estimate of how many customers might be on site during a weekday at 3:00 p.m. What kind of business time is this, light or heavy? When the tractor trailer arrives on site, will someone from the store come out to assist the driver in backing up into the loading zone? Perhaps cones can be placed at the 12' wide motorcycle lane to keep it available.

Mr. DeFazio stated he will place cones at the parking spaces in the vicinity of the loading zone to prohibit parking at that time. Most motorcyclists will not be at the dealership at this time of day. Someone will come out to assist.

Mr. Hall asked when the most customers visit Mr. DeFazio's existing dealerships. What is the maximum number of customers who would be in the store at any one time?

Mr. DeFazio estimated this number to be 12 to 15.

Mr. Hall stated this could result in as many as 29 people there at one time. This would typically occur on a Saturday.

Mr. Stewart asked whether Mr. DeFazio would plan special events and where would participants congregate? Would a 200-cycle group going on a road rally start at his dealership? Are 1,000 motorcycles ever going to show up at one time?

Mr. DeFazio said attendees would congregate in the parking lot and in the building. He did not think there would be any large road rally groups using his dealership as a starting point. He likes to do a spring special event and another to introduce the new model year motorcycles and likes them to be aligned with a special community-based cause. He described special event activities at his other dealerships, for example, a poker run.

Mr. Denzler stated he would not expect anything along the lines of the Route 80 Motorcycle Run. He would expect that Mr. DeFazio would coordinate with the Borough's Police Department on special events as appropriate. He provided information on some similar kinds of events he is familiar with.

Mr. DeFazio advised that if Police assistance is required, they are hired and paid by his company. He stated he will agree to a condition of approval that special events will be coordinated through the Morris Plains Police Department.

Cross discussion about the issue of signage for this business and the signage of the adjacent businesses, especially this has been an issue in the past, including whether the signage can maximize the visibility for cars driving on Route 10 to help avoid the possibility of rear-end collisions that are happening at this location; the monument sign's size and height; and the uncertainty on the part of Mr. Hall as to whether a higher sign or a larger sign would have reduce the number of accidents on Route 10.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting. He thanked Mr. DeFazio for his testimony.

Mr. Azrak stated his next witness is Mr. Ralph L. Finelli, Architect. An exhibit was marked as Exhibit A-7.

Mr. Sullivan swore in Mr. Finelli who provided an address of P. O. Box 144, Sergeantsville, New Jersey 08557. He provided the Board with a summary of his background and credentials and was accepted as an expert witness. His curriculum vitae marked as Exhibit A-3 is accurate as submitted.

Mr. Finelli referred to Exhibit A-7 that provides a variety of views of the existing building.

Mr. Azrak referred to several exhibits marked Exhibit A-8, Exhibit A-9, and Exhibit A-10 and asked Mr. Finelli to review these exhibits for the Board.

Mr. Finelli explained that Exhibit A-8 shows the eastern most corner of the building and the overhead door that will be pedestrian entrance. Exhibit A-9 shows a view from the Candlewood Drive access and shows the one-story that is on the western side of the building. Exhibit A-10 shows the view from Dunkin' Donuts.

Mr. Azrak asked if there are stringent requirements made of Mr. Finelli in his position as the Architect.

Mr. Finelli replied that he designed the Lebanon facility with Mr. DeFazio about 15 years ago. The program for space allocation required by Harley-Davidson is very strict. He then reviewed Exhibit A-7. This is a view of the building when traveling westbound on Route 10. He described the facade for the proposed building, the awning over the front entrance, the skylights, placement of the Harley-Davidson logo and trademark, the bay area, an upper sign, and the existing sloped ramp.

Mr. Azrak asked about the rendering not showing the HVAC units on the roof. These will be shielded, correct?

Mr. Finelli replied they will be shielded. He referred to the mezzanine floor plan and the measured elevation drawings. There will be no equipment on the top of the main two-story structure since it is occupied by all the skylights. The one-story structure to the rear of this building and the one-story structure on the Candlewood Drive side will have aluminum louvers erected that will raise the coping height up to the same two-story height; behind the screening is where all the roof-top equipment will be located. This is why it is not shown on that particular rendering.

Mr. Azrak requested that Mr. Finelli discuss signage. An exhibit was marked as Exhibit A-11. It is Sheet A-1 of the set that members have and there is no difference between the two. He pointed out the louvers and the one-story structures, and where the screening will be. He discussed where and how the Harley-Davidson bar and shield will be suspended behind glass surfaces.. This sign is specifically located for the best visibility from route 10 East. He also located where the shop area will be. The emissions from the shop area may travel up the walls on the inside, but it will not penetrate through the roof, but rather through a side wall within the enclosures. He also discussed elevation matters.

Continuing, a new exhibit was marked as Exhibit A-12. Mr. Finelli pointed out the location of the catty-corner sign, the suspended bar and shield which is set back about 7' and occupies a space that is about 12'x15' or 15'x15' with the intent of capturing the Route 10 eastbound traffic. The cross-hatched area is the two-story space; the building currently from the primary floor up to the roof structure is about 22'. It will be a two-story showroom, similar to the design of the Lebanon dealership. On the mezzanine level in addition to the parts storage area there will also be some offices, a balcony, and a conference room.

Another exhibit was introduced and marked Exhibit A-13. This is the first floor plan and is the exact drawing that the Board has.

Mr. Finelli described the first floor area, including the showroom itself. He talked about the service area, various doors, and restrooms off to the side. It is as open a plan as possible. Everything is strictly in accordance with the Harley-Davidson's program and philosophy.

Mr. Hall asked about a motorcycle coming to the site for service and where would they come in. How far out does the front awning project? Regarding the suspended interior sign, is it being suspended off the I beams of the structure? He asked about the height of the exterior aluminum louvers along the Candlewood exposure.

Mr. Finelli replied the customer would come in to the back area. Elevation difference is made up in the entry ramp; he also discussed issues relating to grades. The awning projects out 5'. No, a structure for the suspended sign will be created. The aluminum louvers will not be any higher than the existing the existing parapet walls and the existing second-story wall.

Mr. Schulz asked if there is a roof over the illuminated sign.

Mr. Finelli stated that the illuminated sign is not under roof, but is in the building. He provided information to explain how this can be discussing the proposed glass framework.

Cross discussion about the illuminated sign and the building calculations, including Mr. Denzler explaining that it is within the building itself below the roof line and Mr. Finelli stating that the sign is above the one-story roof, below the plane of the two-story roof, and behind the glass walls. Also referred to was the volume of the building and how various definitions are reached.

Mr. Denzler referred to Sheets A-1 and A-3 in connection with the illuminated sign.

Mr. Hall stated that this discussion is coming down to "what is meant by inside the building" under the Borough's ordinance. He mentioned the definition of "a building" under Municipal Land Use Law (MLUL), but was unable to absolutely state what this was at this time at the meeting.

Mr. Azrak stated that if required the Applicant could put a roof over it.

Mr. Sullivan advised Mr. Denzler that a determination needs to be made whether this needs to be added as an additional sign variance.

Mr. Denzler replied that based on what he had heard that if there is no roof above it, then it needs a variance. In reading the pertinent section, it states "No wall sign shall be located above a first floor of any building unless that building contains a single use."

Mr. Sullivan stated you can argue this both ways. He asked Mr. Denzler if he would be comfortable making a determination one way or another.

Mr. Denzler responded that he is comfortable. He believes it should be included. As to his report, he would add Section No. 13-5.8(c)1.2(c) to allow that sign. The dimensions are still covered as a variance.

Mr. Azrak stated the definition of a building as set forth in MLUL Section 40:55(d)-3 reads as follows: "Building' means a combination of materials to form a construction adapted to permanent, temporary or continuous occupancy and having a roof."

Mr. Hall stated that based on this reading, there definitely is a need for a variance since it is not inside the building since it has no roof. He asked about the rear covered loading area asking what the slope is on this roof?

Mr. Finelli stated it is a metal roof with a minimal slope.

Mr. Hall advised that if there is an approval he would suggest a condition that the architectural plans submitted for building permits be reviewed and confirmed by the Building Subcode Official to confirm the dimensions about the interior sign that was just discussed.

Mr. Denzler asked how the sign will be elevated.

Mr. Finelli stated it will be suspended on the framework they are creating.

Mr. Schulz asked about lighting for the flag pole. Will the flag come down each evening or will there be lighting?

Mr. Finelli stated this is a good question.

Mr. Azrak stated the lighting plan is silent on the lighting for the flag. He believes this issue can be worked out with Mr. Hall.

Mr. Hall stated he can approve the flag pole lighting detail if the Board is comfortable with that.

Mr. Azrak stated the Applicant will agree to this as a condition.

Mr. Hall asked if the HVAC equipment will be visible from Candlewood, Route 10 or Prospect Avenue.

Mr. Finelli replied it will not be visible.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting. He thanked Mr. Finelli.

Mr. Sullivan swore in the next witness, Mr. Daniel McSweeney, the Applicant's Planner, who provided an address of 409 Washington Boulevard, Sea Girt, New Jersey. He is the president of McSweeney Consulting LLC. He confirmed the content of his curriculum vitae (Exhibit A-4) and provided a brief summary of his background and credentials. He was accepted as an expert witness.

Mr. McSweeney stated he was retained to provide a planning analysis of the special reasons variance and "C" variances being sought and reviewed the engineering plans as revised through July 16, 2013. He has also reviewed the Borough's ordinances, the Master Plan Summary Report and the reports of both Borough Professionals dated August 22, 2013. He provided information regarding meetings he has had with others involved with this application and conducted site inspections. He has testified on three previous occasions on applications relating to this property. He gave a description of the area surrounding the subject site.

Continuing, Mr. McSweeney stated the existing 20,141 SF building and a new 6,130 SF mezzanine will be constructed in the northwest portion of the site at the corner of Route 10 and Candlewood Drive; will be occupied by a Harley-Davidson dealership; and will be located on proposed Lot 1.02. The newly-created lots will contain 41,471 SF of building area on the entire parcel. The total FAR for the entire site is 29 percent. The ordinance for the OB Zone allows an FAR of 25 percent. Neither newly-created lot will not meet the minimum lot area requirements for the LB Zone; this results in the need for two lot area variances. If these lots were in the C-1 Zone (much of the Route 10 corridor east and west of this site), both lots would meet the C-1 Zone lot requirement.

Mr. McSweeney advised the five points of ingress and egress have been eliminated; there are now only one point of ingress and one point of egress, consistent with NJDOT requirements. The entire property is located in the OB Zone which previously only permitted office buildings and hotels as permitted uses; retail uses were not permitted. However, this Board in 2007, 2009, and 2010 granted use variances which run with the land for the development of the retail uses, the restaurants and the utilization of the building that is the proposed Harley-Davidson dealership. Also, the recent adoption of Borough Ordinance 3-2013 amended the OB Zone requirements to allow retail sales and services and motor vehicle sales and services as permitted uses in OB Zones that have a minimum of 150' of frontage on Route 10 covers this property. He commented on a zone change that occurred within the past 15 years on this property that changed its designation from the C-1 Zone to the OB Zone. He stated that in his opinion the site plan and variance application is for the adaptive re-use/re-development of the existing 21,141 SF building for the Harley-Davidson dealership. The 2,000 SF building that once existed on this site was eliminated and replaced by the new retail building that now contains six retail/commercial uses.

Continuing, Mr. McSweeney spoke about a variety of variances being sought. They include a lot area variance (Lot 1.01); for lot width variance; for parking for both lots; for a side yard to be created for Lot 1.01; for the canopies; for the size of the motorcycle parking spaces; for the motorcycle drive aisle; for the FAR for Lot 1.02 and the existing building; and for a front yard setback along Candlewood Drive. There are also variances requested for signage; those needs having already been addressed in detail. He believes that this sign package for use with the Harley-Davidson dealership is a more sensitive treatment of the building than that previously approved by the Board not knowing who the tenant would be. There is no possibility of acquiring additional land since none is available. He commented on how being designated in the C-1 Zone would make for differences when compared with being in the OB Zone and are not out of character for the property nor the general area. He also commented on relief that is offered by the MLUL Hardship Variance (C1) wording. In his opinion, the lot and the building are unique and the variance should be granted since they are providing re-development of a "tired, vacant, abandoned building with a new Harley-Davidson dealership." He also spoke about the relief provided under another MLUL provision where deviating from the ordinance standards outweighs any detriment. He believes the variances being sought also fall under the C2 standards.

Mr. McSweeney next discussed the Special Reasons variance relating to the FAR. A "D" 4 variance from the FAR requirements of the zoning district is needed. He again referred to the ordinance change adopted earlier in 2013 that permits motor vehicle sales and service. The parcel Lot 1.01 is compliant with the FAR standards for the zone and has an FAR 22.8 percent where the FAR maximum is 25 percent. Lot 1.02 needs the FAR variance. He cited several court rulings relevant to the granting of FAR variances. He believes what the Applicant is proposing with his application will eliminate an eyesore, a blighted vacant building, and in turn provide significant benefits to the surrounding area as well as to the Borough itself. The proposed use is certainly compatible with and complimentary to other uses found along and adjoining the Route 10 corridor today. He listed all his reasons for why in his opinion the variances should be granted and the application approved. In connection with the FAR variances being sought, in such FAR cases it had been held that in establishing special reasons for FAR variance, a more relaxed burden of proof applies rather than the standards for prohibited uses in the zone. He cited several court cases. Summarizing his opinion, he stated that the "D" 4 FAR Special Reasons variance should be granted because the use is now permitted in the OB Zone and the site and the site plan accommodate all issues associated with the increase in FAR and the variances being sought. Granting this variance will not substantially impair the intent and purpose of the zone plan, zoning ordinance, Master Plan nor will there be any substantial detriment to any adjoining properties. It is a better plan and a better use of this property for this site and for the neighbors. The variances sought can be granted.

Mr. Azrak referred to the amending of one sign variance, asking Mr. McSweeney if his testimony would be the same.

Mr. McSweeney stated his testimony would be the same.

Mr. Sullivan asked Mr. Denzler a question about the parking variance being sought regarding the number of parking spaces required for Lot 1.01 (shopping center) and that according to his memorandum there is a parking requirement of 137 parking spaces with 61 provided.

Mr. Denzler responded yes.

Mr. Sullivan asked about Lot 1.02 that has a requirement of 66 parking spaces and the Applicant is proposing 63 parking spaces plus the 23 motorcycle parking spaces. He asked Mr. Denzler if he is considering this a variance.

Mr. Denzler's responded yes, because it started off with the total lot versus the individual lots.

Mr. McSweeney stated he agreed with Mr. Denzler's position commenting that part of the problem is that the Borough's ordinance is silent as to parking spaces for motorcycles. Most ordinances do not address this.

Mr. Denzler stated he agrees with most of McSweeney's testimony and offered commentary regarding efforts earlier this year to possibly reconsider the designation of the zone to C-1, but the Borough Council believed the OB Zone designation was preferable. The FAR variance for the new lot at 35.3 percent, while exceeding the 25 percent permitted, it is only slightly more than the 35 percent permitted in the C-1 Zone. He also spoke about the lot area and lot width variances using the C-1 Zone requirements versus OB Zone requirements. He also commented on pre-existing to the zone setbacks; parking variance(s); cross easements; signage, and the impact of the underground utilities. He asked Mr. McSweeney if some of the larger signage is too big for one single use.

Mr. McSweeney stated he does not believe so based upon signage location and that the building is located on Route 10. He also believes the interior sign is appropriate, too, since it is more of a branding or a logo for both inside and outside the building.

Mr. Hall mentioned a setback and said moving this could conflict with an existing retaining wall that is along the parking bay on the west side of the access drive. This would impact signage visibility.

Mr. McSweeney agreed with this conflict possibility. He reminded there are just one point of ingress and egress and one freestanding sign for the two properties. He thinks what they are proposing is very reasonable in terms of the location, size, and scope.

Mr. Hall stated he believes the parking variance is the most significant variance being sought. Having real data in connection with the operation and expected parking needed for the Harley-Davidson dealership is very helpful. However, with this data from the existing Harley-Davidson dealerships, he is comfortable with the parking variance.

Mr. McSweeney thanked the Board.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting. He thanked Mr. McSweeney.

Mr. Azrak stated he has no further witnesses and then provided a brief summary on the goals of this application and requesting that all the relief being sought be

granted so the Applicant can move forward. He thanked the Board for the five years of work on this project.

Mr. Sullivan asked about a condition concerning existing buildings on the subject property from the July 26, 2010 resolution. If the Board approves this current application, this condition will be superseded/deleted.

Mr. Azrak agreed.

Mr. Hall offered comments concerning the proposed Harley-Davidson dealership. He visited the site earlier this evening and advised on several issues: (1) the existing dumpster enclosure behind the existing retail facility have front gates without screening and need to be replaced; (2) debris and garbage outside the dumpster enclosure that should be looked at by the Board of Health; (3) site lights – most were on, but some were off – they should either be all on or all off and should be checked to ensure proper functioning; and (4) fees relating to soil disturbance permit. These need to be included as conditions of approval.

The Board Secretary advised the fees (4) above) have not been paid.

Mr. Hall listed the fees due as: (1) application fee - \$100; (2) escrow fee - \$1,000; (3) the permit fee - \$100; (4) inspection fee - \$250; and (5) issuance of permit fee - \$100. He advised the Applicant has agreed to an expansion of the existing dumpster enclosure behind the retail.

Mr. Azrak stated the Applicant has no problem with the proposed conditions (1) – (4) listed by Mr. Hall.

Mr. Stewart opened this portion of the meeting to the public. Seeing no one, he closed this portion of the meeting. He thanked Mr. McSweeney.

Mr. Stewart stated that as part of the approval, he would like a review of the conditions that would be included in the memorialization.

Mr. Sullivan listed the conditions: (1) cross easements for shared parking, site access, and site circulation, for maintenance and operation of the stormwater management and storm sewer collection systems, and for utilities as necessary; (2) comments in the Morris Plains Fire Department e-mail; (3) condition referenced in the Borough Attorney's letter (Exhibit A-5); (4) no outdoor display of motorcycles; (5) deliveries would be scheduled at 3:00 p.m. on Wednesdays or Thursdays; (6) special events need to be coordinated through the Morris Plains Police Department; (7) the detail of the illumination for the flag would be subject to review and approval by the Borough Engineer; (8) Mr. Hall's comments (1) – (4) as listed above about the dumpster enclosure, debris and garbage, and the site lights; (9) all standard conditions, including Developer's Agreement and fees.

Mr. Stewart asked if there should be any condition(s) relating to the installation of the emergency generator.

Mr. Denzler said since it will be natural gas powered, there will be no concerns about fuel spillages. Noise and testing are covered by the standard conditions.

Mr. Hall added that as he reads certain NJDEP regulations regarding noise standards, emergency generators are exempt from the noise standards.

Mr. Sullivan stated that testing is not exempt. Isn't routine testing and maintenance required. And, the noise from the emergency generators is the noise caused while operating during an emergency, not during the testing.

Mr. Denzler stated he wants a condition addressing the issue of emergency generator noise during non-emergency testing.

Mrs. Lopez moved that this application be approved with the variances and conditions as discussed, seconded by Mrs. Mills.

Roll Call

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

Nays: None

Abstain: Mr. Karr

Absent: Mr. Bozza

Motion carried.

Mr. Stewart stated this application will be memorialized at the Board's next meeting on September 23, 2013. This is the official time of approval and encouraged caution in beginning work prior to this action. He thanked the Applicant.

Mr. Azrak thanked the Board.

CORRESPONDENCE AND BILLS

Mrs. Mills stated she received no documentation for action; there are no bills.

NEW BUSINESS

None.

OLD BUSINESS

None.

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

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary

