

BOROUGH OF WOODLAND PARK
PLANNING BOARD MINUTES
APRIL 11, 2011

Meeting called to order at 7:30 P.M. by Chairman Webb.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS PRESENT: TOM WEBB, COUNCILMAN DI DOMENICO, TRACY KALLERT, BILL KARP, SHERRY VAN DYK, MAYOR LEPORE, KEITH TANSKI, BOB KASSAI, CARLO RENNE AND RICHARD BERNSTEIN

ALSO PRESENT – JOSEPH WENZEL, BOARD ATTORNEY
WOODNEY CHRISTOPHE FOR DON NORBUT, BD. ENGINEER
KATHRYN GREGORY, BD. PLANNER

FLAG SALUTE

A motion to approve the minutes of the March 14, 2011 meeting was made by Mr. Kassai, second by Mr. Karp and approved.

A motion to approve the minutes of March 14, 2011 executive session was made by Mr. Kassai, second by Mr. Renne and approved.

ORDER OF BUSINESS

Chairman Webb noted two items that were noticed for this meeting but will not be heard. Berkeley College has asked to carry the application until May 9, 2011 and K. Hovnanian which is not listed on the agenda but notice was done will also be heard at the May 9, 2011 meeting.

DOCKET # 11-01 – O. KAPLINSKY & S. FILIPCZUK – 51 RYLE PARK AVE. –
BLOCK 102 LOTS 31,32,37 & 38 – MINOR SUBDIVISION/BULK VARIANCES

Ms. Esposito, attorney for applicant, stated they are here again because the last time they were here there was an issue on parking. They have amended their plan and are ready to proceed. They have included a variance for parking and there were some concerns from the Board that they have now complied with. They received the report from T & M Associates and there is one issue that they will comply with also. Ms. Esposito stated there were some

members of the public who are neighbors of Ms. Kaplinsky and she wanted them to understand that they started at this Board and went to trial court which remanded it back here basically saying the Board should grant the variances and subdivision. The town appealed that decision and it is in the appellate division now. They are back here on advice of the appellate judge and she wanted the public to understand that there is nothing other than what the judge suggested going on now. This application has gone through a sequence of events that started here went to the trial court and then the appellate division. They are now back here with the judge's recommendations. They are here tonight because there was a recommendation that they reduce the lot coverage size which they complied with. There was an issue at the last meeting regarding parking which they have complied with now. She did not want there to be any misrepresentations at all. Chairman Webb said that was fine.

Olga Kaplinsky, 12 Bolds Lane, Woodland Park, applicant, was sworn in. She stated she owns the property at 51 Ryle Park Ave. She said she would like to tell the Board and the public that she is not a criminal. She just wants to build a house. If there were no houses they would live in the street. She decided to build a house so other people can live in it. She asked them to look at her as a friend and not an enemy.

Mr. Christophe, Board Engineer, reviewed his letter that was a follow up to the 2/7/11 meeting. After reviewing the flood maps it was determined the property is located in flood hazard zone AE. The flood zone line should be clearly shown on the plan along with the base foot elevation which was partially addressed. The base foot elevation was called out but not shown on the plan and that is what they are looking for. The survey should be revised to be shown on the same datum as the special flood hazard area map. They need to know the true first floor elevation that the house needs to be at to avoid the flood area. It was brought to his attention that the applicant believes she is in zone X and that is one of the reasons they wanted them to show the line on the map because based on the map provided it may fall in both zones but he is not sure and there is still some confusion there. The architect did not reference the date of the map used so he can not check that. Chairman Webb asked how that relates to the site plan and elevations there. Mr. Christophe said it just shows which zone she is in but both are flood zone areas. There are elevations shown on the plan but they do not tie into the elevation on the FEMA map because they were done on different datum. The way to do that would be to redo the survey on the same datum.

Matthew Evans, architect/planner, was sworn in. Mr. Evans has appeared before the Board and was accepted as an expert. Mr. Evans stated that from what they have the engineer is correct they did the survey with an assumed data. The FEMA map and the area is basically a somewhat level area adjacent to the Passaic River and elevation is 130 so by transposing the bench mark to this property they would be able to determine basically the height of the first floor. If they have to be a foot above with living space or 2 feet or more that would determine basically where they would need to set the first floor to be in conformity with FEMA and flood insurance. They would supply that information. Chairman Webb asked if this was something they needed to supply now or if it was a building issue. Mr. Evans said before getting a permit it would have to be established what the flood elevation is and if they need floor vents.

Councilman DiDomenico asked if they were saying the flood zone starts at an elevation of 130. Mr. Evans said that was correct. Councilman DiDomenico said if he was reading the drawing right this lot basically is around 101. Mr. Evans said that was assumed and he would have to supply that information. Mr. Christophe said they would basically have to revise it on the survey.

Mr. Bernstein said if this property is in a flood area when you build a house and it has to be raised would it affect the drainage and other properties. If you have to raise the house the foundation will be higher and the water may run off differently. Mr. Evans said the footprint is the footprint and they are not increasing it. They are providing drainage seepage pits for the proposed development where any rain water accumulated from the roof would be directed in to the ground right from the house. There would be no increase in runoff for this development. Mr. Christophe concurred with that.

Mr. Renne asked about the tanks in the ground and how low the water table is. He felt they might hit water going down a couple of feet. He did not know what good those tanks are going to be. Mr. Evans said if need be a soil test or ground water test will be done and they may have to increase the amount of storage under the ground. Mr. Renne asked if they know the water level from the river to the property. He felt there was always going to be water. Mr. Evans said that is what they are designing for and if they do encounter any type of ground water they would have to redesign for 0 percent. Mr. Christophe said they commented on this issue and advised that before the drywall is installed they should determine where the seasonal high ground water is and the base of the dry wall should be 2' above that. This is all addressed in their review letter. Chairman Webb asked him to review the drainage comments in his letter. Mr. Christophe read his comments on drainage.

Mr. Christophe continued comments for the 4/7/11 letter. The plan should be revised to show relocation of the utility pole. The applicant should show information pertaining to the driveway located on the north side of the home that they have an agreement with the neighbor for a shared driveway. The plans have been revised to show existing conditions currently in the field but no written agreement for the driveway that straddles the property line has been provided. Mr. Christophe noted all comments that have been addressed. They have complied with everything except for the confusion as to what flood zone the property is in and they have not provided an agreement with the neighbor for the driveway. It will modify the variances if there is or is not an agreement for the driveway. Chairman Webb asked about the variance situation. Mr. Christophe said the prior plans showed a garage proposed in the existing home. They showed a curb cut on the south side of the house and they showed a parking space. The revised plans eliminate the proposed garage and they are saying the parking requirement is met by the space they have on the north side of the home. Chairman Webb said the table shows 0 spaces and they are saying that is a variance for an existing condition. Mr. Evans said they are not counting the shared parking because it is not completely on the property so they are seeking relief for that existing condition. Mr. Christophe said the plans are correct.

Mr. Bernstein said even if the Board is not happy with the situation the court says they have to grant the approval and if they don't the judge will grant it. Mr. Wenzel said to be clear as

Ms. Esposito indicated in her remarks the matter is still technically in the appellate courts. Currently there is a revised plan submitted for the Board's review and decision as to whether or not to approve. If the Board approves the plan then the matter has been settled at this level and the case is dismissed. This type of hearing is required under a case called Whispering Woods. If the Board decides to not to grant the application it would go back to the appellate division for them to make a decision as to whether or not the trial court was correct in stating the Board was incorrect in denying the relief sought by the applicant. Mr. Bernstein said if it goes back to the appellate division and they decide the lower court was correct the application is granted. Mr. Wenzel said the order from the trial court states clearly the variances the applicant is seeking are approved as part of her original plan. This is a revised plan from the original plan and what would happen is if the appellate division decides against the Board and upholds the trial court the application and the variances asked as part of the original application are approved and the Board is under the order of the trial court to approve them. This would not be a remand situation where the Board would hear the case over again. The court specifically said the Board is to approve the variances as requested. Councilman DiDomenico said this revised drawing would not be the one approved but the original plans and variances would be approved. Mr. Wenzel said should the Board not approve this current application it would go back to where everything stood before this revised application was presented. They would go back to the original application and that would be the one the appellate division would review. The appellate division does not review the plan but reviews whether or not the trial court judge was correct or incorrect in deciding what he decided. Mr. Bernstein asked if the appellate division finds against the Board is there another place they could go for a final say. Mr. Wenzel said theoretically one could appeal to the NJ State Supreme Court. The Supreme Court does not make any decision immediately and takes it only on certain circumstances and can in fact deny them the opportunity to appear before them. They once again would be looking only at whether or not the court below made a correct decision under the law. Ms. Esposito stated the trial court approved not just the variances but also the subdivision. Mr. Wenzel said that was correct. Chairman Webb said his recollection is that the original application called for a much larger house. Ms. Esposito said that was correct. Chairman Webb said they reduced the size of the house to the same size as the house on Lot B.

Mayor Lepore said his original denial was based on the fact that they are taking what is already a nonconforming lot and subdividing it and create two nonconforming lots. That was one of his reasons and the second was this is an environmentally sensitive area that is prone to flooding. This area has been in the news with the recent round of flooding and if you look in Little Falls they are trying to buy properties in flood zones to restore the land to its natural state. He would be inclined even though they changed the application to a smaller dwelling to be built the fact of the matter is that nothing has changed and they are still going to create two nonconforming lots from one nonconforming lot and they will be building in an area that would have a negative impact regardless. There will still be a foundation and it will still impact the area around them. He asked if legally he can deny it the second time for the same reasons. Mr. Wenzel said to be clear the Board has the plan before it and they are not constrained in any way from making their determination. There is no additional impediment on any Board member to vote on this application. The flooding concerns that have been raised are dealt with engineering, building department and DEP. The DEP could

act in certain areas where there is flooding but those issues are out of the Board's control. Mayor Lepore said there have been in certain flooding events they have had emergency services go into the area to rescue or help residents. He asked if the house was going to be built on pylons. Mr. Evans said there is no proposed basement and anything that will be built will be built to the standards of New Jersey and the DEP. In order for them to build and get flood insurance the living space would be elevated above the flood elevation. Mayor Lepore said the question was if they were putting the house on pylons or would it have the standard foundation type of building. Mr. Evans said it could be with a standard foundation with flood vents so the water can flow underneath it unencumbered and recede.

Mr. Karp said he agrees with the Mayor but asked if the court addressed or ruled on the flood zone. Mr. Wenzel said he does not know if that was put before the judge. Usually what happens is the record is put before the judge and he reviews the testimony provided and makes a decision based upon that. Whatever the trial court judge's decision was and he did not recall if he took the flood area in to account, he decided the Board was incorrect in denying the subdivision and variances. The court specifically stated the matter would not go back on remand and the application had to be approved in total. Should the appellate division decide the trial court judge was correct if the Board does not approve this application and it goes back to the appellate court and they decide the trial judge was correct it would go back to the approval of the subdivision and variances. Mr. Karp asked if the judge had knowledge of the flooding problems in the area. The appellate court is not going to add in anything new into the record. Mr. Kassai stated he had a copy of the judge's order and Mr. Wenzel reviewed it. Mayor Lepore asked Mr. Wenzel to review the decision by the judge.

Ms. Esposito stated that basically at the trial court she and Mr. Wellinghorst who was the Board attorney at that time, each had to submit briefs to the judge with case law, statutes and their positions. In the brief Mr. Wellinghorst submitted he references Mrs. Polanco's comments regarding the flooding. Ms. Esposito said to answer the question the judge did have some knowledge there was flooding in the area.

Councilman DiDomenico said the way he sees it is the bottom line for the Board is if they deny it, it will go back to the appellate division and that judge is only going to look at the procedure that was followed and the law that applied for that decision. If the judge agrees with that decision and the Board does not accept this revision they are going to get approval for the larger plan. If the Board believes that the appellate judge is going to side with the first judge they are going to wind up with something worse. The bottom line is the court has superseded the Board's authority and approved it. Mayor Lepore felt it is important to get a flavor of the judge's state of mind when he denied and why exactly he denied it. Mr. Wenzel stated that the judge gave both an oral decision and then followed up with an order. In the oral decision the judge does not indicate anything in that decision relative to the flood zone issue. The judge based his decision on the fact the Board was arbitrary in not approving the subdivision and variances based on the testimony provided by Mr. Evans in the prior hearing with regard to the nature of the area, size of the homes in the area and the qualification that the home being built was within the character of the area and it did not violate any of the zoning ordinance. Obviously there is a zoning ordinance that states

otherwise but he felt the home was within the character of the neighborhood and the legal issue was whether or not it was one lot or 2 lots with the infamous doctrine of merger which he stated the lots did not merge by law because one lot sat on one street and the other lot on another street. The judge felt the Board was arbitrary in its decision to deny. Chairman Webb said that was why the chance of success when they evaluated this led them to ask the attorney to approach the court and see if there was some give as to what the applicant would put on the property and that is what is before them now a plan proposing a smaller house.

Mr. Kassai said he handed the decision to Mr. Wenzel. He said he agreed with the Councilman and the judge has ruled and appealing it would not benefit the Board.

PUBLIC OPEN

Mr. Polanco said he disagreed with the Councilman and Mr. Kassai and felt the Board was representing the community and must take a stand. He felt denying the application would tell the court they are serious about this issue and hopefully the Board attorney can be there and advocate for the community. He agreed with the Mayor that this is a sensitive area. He said for the past few weeks there has been article after article in the paper about how sensitive the area is. He asked which Planning Board member lives in his area and have been through what they have been through. He stated his neighbor Sal had a flooded basement and asked how many Board members came to help. He felt they were by themselves with no help. He asked the Board to stay with them.

Alex Cercone said he is a life long resident of Ryle Park Ave. and his family also lives on the street. They own 5 houses on Ryle Park Ave. He said he is opposed to this. He is a licensed engineer and felt just a footing on that property would displace 2500 cubic feet of dirt. He had water come up to the bottom of his basement. Any dirt that is going to be displaced is going to affect his property. He also has another bias because currently in 51 Ryle Park Ave. there are about 10 people living in the house. There are 4 cars and only room for one car to park in the driveway. They park on the street and recently one of them hit his car. It is annoying and he did not think they needed any more homes in the area. The parking is atrocious right now and is getting worse and worse.

Jay Lijoi, 65 Passaic Ave., stated the sheer absurdity of the whole thing makes him want to get up and speak about it. They do have a parking problem. They have an individual who rents one house now and wants to build another to rent out. This is for profit motif only and she is taking advantage of the community. They are going to build tanks underground on a 40' piece of property and nobody sees the absurdity of that. They have to wait to figure out the level so that when it floods they are a foot above it so they can get their flood insurance. They are buying out properties in Little Falls that are in the flood plain. The neighbors don't get a say because they find out about it after it has taken place. Now the Board is saying its futile because the judge ruled. The Cercone family has been paying taxes on 5 houses in the neighborhood for over 80 years. The Lijoi family has been paying taxes over 80 years on 5 or 6 houses in this area. At this point for the amount of taxes they have paid to the town over 80 years he thought they were entitled to taking it to the next step. They may lose the argument but he would at least be happy they took it there for them. When the court says

they have to build it the neighbors would say thank you because they stood up for them. Now its legal jargon but the realty is that your sitting on the sand and clay where the water table and river rises the water table comes up and goes into your basement. They can talk about meeting all regulations but he knows about it and felt the Board owes it to the taxpayer to take it to the next level. He felt they have paid enough taxes to take it there. He asked the Board to do it for them because they need them on their side to take a shot and if they lose they are okay with that. He would come and talk to judge as someone from the neighborhood. Some battles are worth fighting and he asked the Board to give them their shot.

Mrs. Polanco stated she has not been in the neighborhood as long as some of her neighbors but they love the neighborhood and care about their house. This proposal will have a big affect on her house. She did not think it was right to build a house 3' from her windows. There is also the problem with the floods. They are surrounded by the river and McBride Ave. even floods. She asked the Board to support the neighborhood.

PUBLIC CLOSED

Ms. Kaplinsky asked who would protect her. She is a citizen of Woodland Park and owns two houses. She has paid taxes for 11 years on those two houses and all she wants to do is build another house where she is going to live. Right now she is \$ 200,000 in debt and this is not profitable. The public does not know her situation and her tenants help her to pay her mortgage. She is just like her other neighbors. There is just a simple lot that no one is using. She noted that someone approved Rob's Way and they took down many trees. She noted that she has a dream for this property.

Councilman DiDomenico stated he appreciates what Mr. Lijoi said. He agreed the Board needs to stand up for something but this is a classic case of cutting your nose to spite your face. The Board could deny this tonight and the public could walk out with a sense of accomplishment but the probability in his opinion is that an appeals judge is going to say nothing inappropriate happened with the lower court's ruling. If they deny it and he upholds it you would wind up with something significantly worse then what they see in front of them. The public is saying they can live with that but as a resident and Councilman he doesn't know whether he can live with that. He addressed Ms Kaplinsky's comments that it is a vacant piece of land and she is not cutting down trees but in his opinion she should have known when she bought the land that this was denied on at least one other occasion that he knows of. The Board has tried to do the right thing and they recognize that this is not a good use. They also recognize they are between a rock and a hard place because if they say no the end result would be worse than the result they get if they say yes. He thought he was in a dilemma and thought the other members feel the same way. He doesn't like it and his feeling always was let some judge approve it. He felt now that he would be approving something worse so it is a tough decision.

Chairman Webb agreed and felt no one was comfortable with this. It is a very difficult situation and the Board feels the court unfairly overturned the decision. The Board also knows they are fighting an up hill battle because the upper court is most likely going to

accept the trial court's decision. He believed the attorney would tell them while not guaranteed it would probably be the outcome. He thought one point was made that the original house is 5% bigger so it is really 20% more coverage which would be a 25% increase in land area that would be approved if the appellate court sides with the trial court.

A motion to deny was made by Mayor Lepore, second by Mr. Renne and denied by a vote of 9 – 0.

Mr. Wenzel said what will now happen is they will contact the appellate division to inform them of what has occurred and the matter will go back on the active appellate division calendar for them to hear it and make a determination.

BREAK – Call to order 8:50 p.m. Roll call. All present.

DOCKET # 11-03 – TD BANK N.A. - 1235 MC BRIDE AVE. – BLOCK 96 LOT 14 & 15 – PRELIMINARY/FINAL SITE PLAN – BULK VARIANCES

Damien DelDuca, attorney for applicant, stated the current use on the lot is the Sunset Grill. They are here seeking site plan approval to demolish the restaurant and replace it with a TD Bank. The property is in two zones, it is in the Commercial Center zone and the General Office zone. They have a presentation on the site plan issue but there is one threshold issue that relates to use that in speaking with the Board attorney they agreed it should be addressed from the outset. The bank is a tenant at this location and the lease is subject to all approvals. When he was asked to file this application the first thing he did was look at the ordinance and found out the property is in two zones. There are two tax lots here. He referred to the site plan and pointed out the triangular lot that is Lot 14 and most of the lot is Lot 15. The zone line runs with the lot lines. He wrote to the zoning officer and explained they would be filing this application and asked him to make a determination whether the use is permitted. Mr. Esposito issued a decision on 1/27/11 and concluded the bank use is a permitted use. In the CC zone a bank is a permitted use but he would agree a bank is not a permitted use in the GO zone. However there is a section of the ordinance which is a split lot ordinance provision. He quoted the ordinance. When you have a property in two zones the ordinance says look at the less restrictive zone and apply those standards. The ordinance goes on to say provided the extension shall not include any part of the lot that is more than 35' from the district boundary line. This lot has been used as a restaurant for over 30 years and he submitted a title report that shows the Foukas family has owned the property since 1978. This property constitutes a lot that has existed in single ownership since May 30, 1979. He stated almost everything is within the 35'. He did not believe that the ordinance when it included the language regarding the 35' intended this property that is not entirely permitted use because a small sliver of mostly grass and small amount of asphalt that has nothing to do specifically for a bank it does not mean it has to go to the zoning board. He felt the 35' has more to do with bulk standards because if it applied to the use that would render the provision virtually meaningless. He thought the provision means the bank is a permitted use on the entire site and anything over the 35' would have to apply to the bulk standards. This issue came up when Ms. Gregory, Board Planner, issued her review letter. In doing her job she noticed the provision and brought the issue to the Board's attention. He

does believe the ordinance as he interpreted it is saying this is a permitted use. The Board needs to agree or disagree with him and the zoning officer. If the use is not permitted they would have to go to the zoning board. Subject to this issue being resolved they are prepared to go forward.

Chairman Webb asked to hear from Ms. Gregory. Ms. Gregory said when looking at the application initially it was her opinion a use variance was necessary because the GO zone does not permit banks. The split zone provision was brought to her attention. She had a discussion with the applicant's attorney the other day and they did not discuss his reasons. She believes that what was just described this evening makes sense. She did not really understand the 35' provision and felt it was a little confusing. It seems his interpretation would be correct in terms of the split zoning because otherwise it does not make sense. She thought he had a very good point. She has not come across this in many years. She agreed the matter should be here at the Planning Board. Mr. Wenzel said he has had discussions with Ms. Gregory and Mr. DelDuca and he also agrees. He has reviewed the ordinance and the law and it is his opinion that absent the ordinance you would be in a use variance situation but the ordinance does provide for safe harbor here. The 35' buffer mentioned in the ordinance doesn't make sense and he wondered why it was not a percentage. He concurred with the opinions expressed by the attorney and planner and it appears to be the remaining portion is truly di minimus. The current building also straddles the two zones. Mr. DelDuca said it does more so than the bank. They are reducing the encroachment over the 35' line. Mr. Wenzel thought the Mayor & Council should review this ordinance for further clarity. He said if the Board would like he could communicate to the Borough Attorney for a review of the ordinance. Chairman Webb thought that was a good idea. Mayor Lepore said they have the Chairman of the Ordinance Committee here and he was sure the matter would be addressed. Councilman DiDomenico stated that Councilman Vargas took over as Chairman but he is still on the committee and will bring it up to them. He asked Mr. Wenzel to get something to him or Mr. Buglione as to what he would like to see.

Mr. DelDuca said the only variances required are a front yard variance that they do not believe is required. The CC requirements would apply here and it is 15' minimum that they meet. They also require sign variances.

David Wisotsky of Bohler Engineering, applicant's engineer, was sworn in. He stated his qualifications and was accepted as an expert. He referred to the survey that was submitted to familiarize everyone with the general conditions. The two lots together are .652 acres. The restaurant is one building that is 3400 sq. ft. and has 46 parking spaces. There is about 89% impervious coverage on the lot and there is very little landscaping on the site. The site has 3 access points, two on McBride Ave. and one on Lackawanna Ave. Both roads are county controlled. One of the access points is about 30' from the intersection. The site has no storm water management features to speak of.

Mr. Wisotsky said the first exhibit is the copy of the site plan submitted to the Board. It is a colored rendering dated 3/3/11 and was marked A-1. They are proposing a TD Bank with 3 drive thru lanes. The site has 2 ATM's one in the drive thru lane. There is also a walkup

ATM. Access to the building is on the west side and a smaller vestibule to the east. The site has 22 parking spaces. They have removed one of the access points on McBride which is the one closest to the intersection. There will be two full movement accesses, one on McBride and one on Lackawanna. The Board engineer has noted the interest in continuing the streetscape down McBride Ave. They will use pavers and decorative lamps along McBride Ave. The bank will have 7 or 8 employees per shift. Maximum number of employees would be 14. They are divided between tellers, two that service the drive thru, a manager and loan officer. It was noted there is no dumpster on site. However, at a bank trash is removed daily for security reasons by the people who clean the bank. There is no need for a dumpster location. Armored trucks come once a day but he is not permitted to tell the Board at what time. There is an occasional FedEx truck. Hours of operation Monday to Friday 7:30 a.m. to 8:00 p.m. Saturday 7:30 a.m. to 6:00 p.m. and Sunday 11:00 a.m. to 4:00 p.m. The hours he gave them are the maximum meaning when the ATM is open and the bank lobby is typically open an hour shorter than that on either side.

Mr. Wisotsky discussed the drainage and stated there is less intensity than was there before. He noted how the cars would queue in the drive through. Operational TD bank has 2 tellers at once. The average transaction time is between 2 and 3 minutes. If you have up to 4 cars waiting it may block the bypass. If the by pass does get blocked the transactional time is between 2 & 3 minutes so the wait time would be minimal. The average queue is about 3 or 4 cars. Mr. Bernstein asked if all 3 drive thrus would be open at the same time. Mr. Wisotsky said TD Bank typically has them all open. Mr. Kassai asked about the ATM in the drive thru. Mr. Wisotsky said it is not designed for use and a car passing through. Pedestrians are discouraged to use the ATM in the drive thru lane.

Mr. Wisotsky stated engineering wise the utilities are being pulled off of what is existing for the restaurant. Water and sewer is coming in from the front and the electric is coming from the pole and will be put underground. The bank does not need gas so the gas will be capped.

Mr. Wisotsky said the landscaping is superimposed on the plan. They will be adding a number of trees. They are keeping 3 trees on site right now, they are adding another 6 trees and there are twelve shrubs on site and they will be adding an additional 177 and 48 ground cover plants. There will 231 plantings plus the existing trees which is substantial green space. There are couple of waivers noted on the plan that Ms. Gregory has also noted in her letter. Mr. Tanski said he was concerned about the intersection at McBride & Lackawanna and whether the line of sight is blocked by the landscaping. Mr. Wisotsky said the county has made the same comments and the landscaping has been designed with that in mind. It is a signalized intersection but you still want visibility. He said the 2 trees would be 6' tall and the shrubs around the sign would not go over 24".

Councilman DiDomenico asked how the building would be heated. Mr. Wisotsky said the heat is electric. Councilman DiDomenico asked where the gas would be capped during the site work. There will be no gas line on site.

Mr. Wisotsky said there is a requirement for head light screening along the parking lot and that has to be at least 3' off the property line. They are requesting a waiver from that for along Lackawanna because it is less than 3' off because of the irregular size and tightness of the lot. They think the design works well. There is more than 15' to the street with a big lawn area in the county right of way. It is not near the actual street line. The edge of the parking line is about 1' off the property line along McBride so they have omitted the screening. The other waiver is the size of the fence where they are proposing 8'. This condition has been listed as a variance. They are allowed a 6' fence along the property line except if you are within 15' of the street line and then it goes to 3'. They are proposing the 8' fence because there is a residence behind them and they are trying to be respectful. This residence is also not in good repair and the bank would like to separate themselves from it. Ms. Gregory asked about the side property line next to the insurance company property. They would like to shield the lighting from the commercial use also. If the property owner does not object they would put in a 6' fence. Mr. Wisotsky said the engineer noted the lighting is fairly intense for a small lot but that stems from the state regulation for ATM locations. In the police comment letter he had asked for more intense lighting for security purposes. He does not know what the light levels are in the old TD bank branch in town. The lights are positioned to shine into the site and not spill on to the adjacent properties.

Councilman DiDomenico asked if there would be an 8' fence along the left side of the property. Mr. Wisotsky said that is the proposal but he did mention the bank is willing to bring it to 6'. They would like to have a fence almost up to the right of way for security reasons. Ms. Gregory noted the fence can only be 3' high if within 3' of the street line. She thought perhaps a 3' up to the point and 6' after that would serve the purposes for security. She said the property line does not follow the curb along the other side but suggested the 3' fence for 15' and then 6'. They would like to keep it open to have an attractive street corridor. Councilman DiDomenico thought the other property has the clock tower and thought an 8' fence would be overpowering. Ms. Gregory said she could see an 8' fence along the back of the property. The applicant would be okay with that and the 3' fence for 15' and 6' after that along the left side of the site. The variance would be needed for the 8' fence along the back property line. Mr. Wisotsky pointed out the area where the fence would be 8'. He also pointed out the portion that would be 3'.

Mr. DelDuca marked the title commitment dated 10/19/10 exhibit A-2.

Mr. Wisotsky referred to a rendering showing the sign locations and marked it A-3. He described the signs and the variances that are necessary. They are proposing one free standing sign. It is located at the corner of McBride & Lackawanna. The sign is 15' in height and 37 sq. ft. in face area on each side for a total of 74 sq. ft. of free standing signage. They need a variance for height and square footage. The existing sign measures 16' in height and a face area that is about 37 sq. ft. They are proposing a sign similar in character to what is there.

Mr. Bernstein said another bank came before the Board a few months ago that was proposing a large sign and they turned it down. He did not know whether the Board would want to give a bank a variance when another bank was turned down. He felt the height and

square footage was higher. Mr. DelDuca said it was a legitimate question and asked that they get through the presentation and then he would give his opinion as to why they think they should grant the variances and distinguish it from other sites.

Mr. Wistosky described the signs and how they were illuminated. He described the temporary construction sign that is 24 sq. ft and ground mounted. The third sign is the TD Bank logo that is over the front door in the middle of the building. It is 17.6 sq. ft. in size and they are allowed a sign in front of the building but it can only be 12" and this one is 2'4 7/8". The reason is because of the proportional size of the logo and how it fits on the building. The fourth sign is illuminated TD logo on north and east face of the building which both become variances. They are looking for customer recognition so they need both signs. The fifth sign is the TD bank lettering over the door and the height once again makes it a variance. The #6 signage is directional signs which the ordinance has no regulations for. The directional signs are 4 ½ sq. ft. and 3' high which are standard size for TD Bank.

Mr. DelDuca asked if they applied to the county for approval and where it stands. Mr. Wisotsky said they have received a letter back from the county with typical conditions of approval. They intend to comply with all county conditions. They are agreeable to all comments from the municipal professionals as well.

Mr. DelDuca referred to the Board Engineer's letter of 4/5/11. There were comments made regarding the streetscape. Mr. Wisotsky said the bank is willing to put in improvements along the McBride Ave. frontage. He said they would continue the sidewalk and paver pattern that exists there and continue the same light pattern that is there. If the tree locations have to be adjusted they will do that. Dropping the lights down to 12' would reduce the throw of the lights. They would be happy to look at it with the Board engineer. There were generally no problem with the fire and police letters. The Fire Dept. asked the building be sprinklered but it does not have to be by code. The Police Dept. letter stated they would like to see 2 handicapped spaces but they proposed 1 because the number of parking spaces has been reduced. Councilman DiDomenico thought the police dept. requested 3 spaces. Mr. Wistosky said they intend to put one because that is the law for the number of spaces they are proposing. The existing restaurant has 46 spaces and that is why they have 2 spaces. They are proposing 22 spaces and are only required to provide 1 space.

Mr. Wistosky referred to Ms. Gregory's letter dated 4/7/11. She talks about reducing the number of spaces from 22 to a lesser amount of spaces. He said the ordinance indicated they need 15 spaces and the engineer stated in his letter they only needed 8 spaces but either way they go over the required number of spaces. They are proposing 22 spaces, 8 of which would be used by employees, so they will be providing the public with 14 spaces. This is based on experience on doing a lot of banks like this and they show a peak requirement somewhere in the area of 20 spaces but it depends on the size of the branch. He felt 22 spaces are a serviceable amount for employees and the public. They do not violate any impervious cover requirements. The more green they can make a site the better off they are but the bank has to weigh in its operational requirements. Councilman DiDomenico asked since they were over the required number of spaces what the aversion was to putting in a 2nd handicapped parking space. Mr. Wistosky said they are in excess of the zoning

requirement but not in excess of what the bank would need. He pointed out the location of the proposed ADA space. He said in bigger banks with 35 spaces they are obligated to put in the 2nd ADA space.

Mayor Lepore thought the law for ADA parking was being taken advantage of by too many people. It was really designed to assist people who really need the space like people in wheelchairs who really need the room. He asked if they had employees who need ADA spots would they be prepared to provide a 2nd spot for the employee. Mr. DelDuca said they would.

Mayor Lepore asked to see the drawing that shows the exterior of the building and asked what material it was. Mr. Wistosky thought it was a question for the architect. Councilman DiDomenico said he was interested in the type of furniture and carpet they were proposing. The Fire Dept. asked that the building be sprinklered but it is not required. Mr. DelDuca said they never said that nothing in the building can burn. Sprinkler systems are very expensive and regulated by the building code so they don't believe they are necessary. It doesn't mean if there is a fire nothing burns. They do not believe the cost is justified for the site based upon the existing building code and did not think it was a site plan issue. They have done a lot of banks and they are not a risky use from a fire standpoint. They are not a volatile type use and there is a good reason why the code doesn't require sprinklers.

Mayor Lepore asked what the exterior building material is made of.

Mr. Ben Lee, architect, was sworn in. He stated his qualifications and was accepted as an expert. Mr. Lee said his office prepared the renderings marked A-3. He said the building material was glass and wood resin composite material. The roof is made of rubber. The fascia is painted steel. Mayor Lepore asked if this was the standard cookie cutter presentation for TD bank. Mr. Lee said all TD banks look similar to this. They do have variations but this is the standard. Mayor Lepore said he likes the idea of what they are doing here but his only concern is that this corner is the entry point to town from two directions, one from Little Falls and one from Totowa. He asked that they consider if possible something that looks more luxurious like brick or decorative stone. He would like to see the building be a showcase as people enter the town and maybe make a statement as to what they are going to expect when they come into Woodland Park. Although this is nice it leaves him wanting more. Mr. Lee said they could explore some other application that is similar to brick on the tower. Mayor Lepore thought they should give it something to make the building stand out.

Mr. Kassai asked if this was pre-fab construction. Mr. Lee said yes it was. Mr. Kassai said that is why the banks are all similar looking because they are pre-fab buildings and why they are not addressing the environment of the community. Mr. Lee said the pre-fab building is very sensitive to the environment and they work closely with the site engineer to make it be a nice site. Mr. Kassai asked if it is of such design that changing it would be a difficult problem. Mr. Lee said no it is not and as he mentioned there is another application they can put on the tower that is like a brick material. This could render a more friendly aesthetic to the neighborhood. Mayor Lepore felt a stone façade of some sort would make the building

look richer and more inviting. He said they are asking for some significant variances for signs and the commissioner was right that the Board did deny another bank the larger signage. He felt if they were willing to make an investment in the building and make it more pleasing by making a statement when entering the town he may be more willing to go along with the variances. Mr. DelDuca said the client will change the tower and felt combining that with the landscaping would make it a pleasing site. The bank is evolving and changing its brand all the time. This is the type of building TD bank wants to build. The client is willing to put in some red brick but can't make it entirely brick. They must retain the corporate brand.

Mr. Bernstein said as a potential customer he was wondering what temperature the materials in a safe deposit box would burn because it is a composite building with no sprinklers. Mr. Lee agreed that the boxes are in a safe that is a fire rated safe. All contents would be safe during a fire.

Mr. Kassai said there are TD Bank branches in Elmwood Park where they have taken historical photographs of the town that they have used as back drops. He asked if it would be possible to do that in Woodland Park. Mr. DelDuca said yes they are featured walls from TD bank for all towns. It is called the mural wall and when your first come in it is the historic presence of the town that they want in there.

Ms. Kallert asked if they could add the brick to the two columns in the front along with the tower so it would tie the whole building together. Mr. DelDuca said he would check with his client.

Councilman DiDomenico stated to the Board that he knows they heard an application for another bank that had a certain feature to it that extended beyond the regulations and the Board asked them to conform to the dimensions they said. He also attended a grand opening of another bank in town and the CEO of the bank attacked him because the Board of Adjustment would not allow them to change their sign as well. The Board has a history of trying to maintain that and he is just bringing that out. Mayor Lepore said it is a fair point. This applicant is making more of an investment than what they were planning to do with the brick & stone façade. He said when the new town signs were in the garage he wondered where they would put these large signs but when you see them out there then you realize you need a certain size sign depending on where the building is located. Given the fact this is a corner property as opposed to the bank in the shopping center. Councilman DiDomenico said some of the signs in the shopping center are grandfathered in and are larger than what is allowed. Mayor Lepore said that is a fair point but the other bank on Browertown Rd. is set back and thought in terms of scale it works for that bank. This building is going to be set back more than the existing building does. Normally he would not be inclined to give them the variances for the signage but given the fact they are making an investment and more pleasing he would be more inclined to approve the variances. Mr. DelDuca said the signs based on the location are appropriate. He felt granting the variances for the signs is not a significant issue at this location when you compare it to the benefits of the overall application which is reduction in impervious coverage, reduction in parking and the

beautification of the property. They think the Board would be within their rights to say the benefits substantially outweigh the detriments in this case.

Mayor Lepore asked if it would be a big deal to ask for a plan to show the brick columns and tower. Mr. DelDuca said they can't make the columns brick but they can make a brick tower. Mayor Lepore asked them to send a revised plan to the code enforcement office. Mr. DelDuca asked if that would be a condition of approval. Mayor Lepore said he would like to see it. Chairman Webb thought the entire Board would like to see the revised plan. He said the Board has not heard from the Board Engineer or Planner. He would also like Ms. Gregory to take a look at the signs and how they fit with the property from a planning prospective. He felt this application should be carried.

Ms. Gregory said there were some recommendations about building materials and wanted the Board to know her pet peeve about the application. The parking is too close to McBride Ave. She understands the spaces are 18' in depth and they cannot be made any smaller. There is also a two way lane that has to be 24'. The original application showed the building at 48.07' back and it was changed to be a reduction. She felt they should move that parking back because one of the variances is for the shielding of the parking. She felt the Board still needs to address McBride Ave. She felt to just have it set back further it would give a sense of safety for a pedestrian walking. She felt there should be some type of landscaping even if they don't get benches and the like. If there is any way to squeeze it up a little more it would be helpful. This is her one pet peeve about the application. She will address the signs as requested. She felt the elimination of one of the curb cuts is a real benefit.

Mr. DelDuca said they are essentially finished. They do have a traffic engineer here. They would like to have action this month rather than next month. In response to Ms. Gregory, if they reduce the spaces to 9' wide, he asked how that would change the setback. Mr. Witosky did not think it would help along McBride Ave. He stated he would prefer the 10' wide spaces.

Ms. Gregory suggested moving the building and using a different prototype. She said they are trying to address this particular site and perhaps a modification of the building could increase the parking setback to increase landscaping and safety. Mr. DelDuca said modifying the size of the building is not as simple as you think. They are not requesting a variance for the headlight shielding they are requesting a waiver. Talking about changing the whole building is problematic for the bank. They think the overall landscaping plan so dramatically blows away what is there today he would ask the Board to focus on that. The only issue they have for landscaping is the 3' waiver. They are willing to go along with the streetscape plan.

Mayor Lepore asked if they would be voting on this tonight. Chairman Webb said there were concerns, they have not heard from the Board Engineer or Planner and they would like to see the new rendering of the building. He felt the Mayor had a point that they are talking about a site that is an entry point to the Borough. Councilman DiDomenico asked Ms. Gregory to show percentages of signs they are asking for. Chairman Webb said he was

interested in the prospective of the signs and asked Ms. Gregory for her comments on it for next month. Mr. Gregory said it may help the Board if they could see the free-standing signs relationship to the building.

Mr. Karp felt the Mayor was looking for a much richer building. He noted a branch in West Caldwell that had a richer look to it. Mr. Wenzel thought the bank was a former Commerce Bank which became a TD Bank site. Mr. Witosky agreed.

Mr. Christophe stated it may not be necessary for the traffic engineer to testify because they concur with his comments and defer most of the traffic issues to the county.

Application will be carried until the May 9, 2011 meeting with no further notice. Mr. DelDuca said they would like a revised rendering of the tower material and a rendering of the free standing sign location. Mr. DelDuca waived all time restraints. He requested a special meeting. It was agreed they would attend the regular meeting of 5/9/11.

A motion to adjourn was made by Councilman DiDomenico, second by Mr. Karp. All in favor, meeting adjourned.