Borough of Woodland Park

Board of Adjustment

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WOODLAND PARK
BOARD OF ADJUSTMENT MINUTES
June 22, 2015

MEETING CALLED TO ORDER AT 7:30 P.M. by Chairwoman Patterson.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN 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 IN ATTENDANCE: RUTH PATTERSON, SEAN LIJOI, JOSEPH PASCRELL, BRIAN HOLLAND, ROBERT GITHENS, STEVE FAZIO AND RUSSEL JUZDAN

ALSO PRESENT –JOHN FIORELLO, BOARD ATTORNEY
THOMAS LEMANOWICZ, BOARD PLANNER

FLAG SALUTE

A motion to approve the minutes of May 18, 2015 was made by Mr. Githens, second by Mr. Pascrell and approved.

RESOLUTIONS

DOCKET 14-08 – 6 ANDREWS DR. LLC – 6 ANDREWS DR. – BLOCK 122 LOT 3.05 – USE VARIANCE/PRELIMINARY & FINAL SITE PLAN – ERTIFICATE OF OCCUPANCY OVER 5,000 SQ. FT. – Application is hereby memorialized.

ORDER OF BUSINESS

DOCKET # 15-02 – 1265 MCBRIDE AVE., LLC – 1265 MCBRIDE AVE. – BLOCK 121 LOT 1.01, 2, 3, 5 & 5.01 – SEEKING RELIEF FROM CONDITION # 5 OF RESOLUTION #12-01

Richard Brigliadoro, attorney for applicant, stated this is an application where they are seeking either clarification as to if the applicant were to install an electric griddle if whether

or not that would violate one of the conditions of the approval granted for Docket 12-01. There was a condition that read there would be no grills, fryers, ovens or grease pits. So they are looking to install an electric griddle and he has provided a sample of what it would look like. In the alternative if the Board finds that the griddle would run afoul of the approval then they are looking for relief of that condition. The Board Planner has also indicated that they may need a D-1 variance and they have noticed for that but they don't believe that is appropriate under these circumstances for the reasons that the café is a permitted use in the Commercial Center zone. The Board has some concerns about members of the public coming into the café and since they have been in operation for the 3 years the café serves only the people coming into the range. They do not really draw from the outside public. The café is only 495 sq. ft. and very limited in terms of table space. They are just looking for permission to utilize a griddle because they found that a lot of people from the range are looking for a quick bite to eat. So that is all they are looking to add to the menu.

Mr. Fiorello asked if they are first asking clarification before the witness. Mr. Brigliadoro thought Mr. O'Bierne's testimony may add something.

Thomas O'Bierne, applicant, was sworn in. He is the owner of the property at 1265 McBride Ave. and that is where the shooting range is and within that building there is a 495 sq. ft. café. The café serves only the people who come in to utilize the range and they don't draw anything from the general public. There are a few restaurants around the corner and so it simply serves patrons of the Woodland Park Range. The café sells soda, water, soft drinks, boiled hot dogs, microwave products, cake pastries and things of that nature. Also potato chips, pretzels and candy.

Mr. O'Bierne said the range is successful and John Bon Jovi shoots there with his family but the café has not done well. We had an idea to market Jersey products in the café such as Boylan soda and pork roll which is a Jersey product. The idea is to focus on these products but without any way to cook it is a problem. They are not asking for an open flame grill but what is really just a large hot plate. They need this addition in order for people to have something decent to eat for lunch or dinner.

Mr. Juzdan asked if it would require a hood. Mr. O'Bierne said no. The HVAC units they have can recirculate fresh air. The café has a separate system which would draw it out if necessary. The unit is 36 inches wide.

Mr. Fiorello asked if he was familiar with the resolution for Docket 12-01. Mr. O'Bierne said he did not review the entire resolution but he did look at the part that dealt with the grill. Mr. Brigliadoro said the resolution 12-01 did amend a prior resolution where kitchen facilities were not permitted to run a café. Mr. Fiorello said in regard to the other resolution it allowed the 495 sq. ft. café. He read the resolution that would allow the café to serve the public and would only have 3 tables and there would not be grills, grease pits, ovens or other cooking facilities. Mr. O'Bierne said he recalls that resolution. Mr. Fiorello said the Board granted it but with the condition there would be no ovens, fryers or grease pits. He asked if the grill was a fryer to fry hot dogs and taylor ham. Mr. O'Bierne said no it is a grill and you grill on it. Mr. O'Bierne said it is a hot plate where you heat stuff up and sear it. He

felt you would need oil for a fryer. He said it was his understanding that he is here to ask consideration on the condition. They are just here asking permission to put in an $800 hot plate. Mr. Fiorello said at first there were no cooking facilities and then they came in and said they want a small café with 3 tables with 6 seats. Mr. Fiorello asked if there were more than 6 seats in the room because the resolution limits it to 6 seats. Mr. O'Bierne said they have 3 tables with bench seats. Mr. Fiorello asked if there were only 6 seats. Mr. O'Bierne said there were 6 seats. Mr. Fiorello said when they were here before they talked about having a hot dog turner. Mr. O'Bierne said this is the same thing except it is flat and you can cook pork roll on it. Mr. Fiorello said the Board said no other cooking facilities other than that. Mr. O'Bierne said that is why he is here to ask for consideration of that condition. Mr. Fiorello asked the special reason. Mr. Brigliadoro said it is not a D variance because under the ordinance restaurants are permitted. Mr. Fiorello said this was a use variance for a shooting range and in connection with that they asked for a café. Mr. Brigliadoro said it is a permitted use. Mr. Fiorello said because it was part of the range it was a use variance. Mr. Brigliadoro said it is within the same building but a permitted use. Mr. Fiorello said if it is in the same building then it is part of the application for a use variance.

Mr. Lemanowicz said the position he is taking here is that the café is not open to the general public and is intended to be part of the shooting range and that is why he believes it is almost like an accessory to the shooting range so it is covered under the D variance from the beginning. This is the logic he took by saying the café is part of the range D variance. Mr. Fiorello said it was just stated that it is open to the people who come to the shooting range so obviously it is accessory to the shooting range. Mr. O'Bierne said he stated that the only people who come there are from the shooting range but it is open to the public they just don't get anyone coming in. He said the reason they are doing it is because the café is not doing well at all they are trying to increase sales there. It is a nice thing to have and there is a reason they have it because they don't want people making an illegal transit from their home to the range to train or practice and then go around the corner to Pizza Hut and commit a felony by waylaying with a firearm in their car because that is not allowed. They want to be able to feed the people in the range because it is the right thing to do and the smart thing to do. They are just not doing it with a hot dog roller and they have to try something else. It has not worked out well at all. Chairwoman Patterson asked if they would get rid of the hot dog roller. Mr. O'Bierne said they will. The griddle does not have an open flame.

Mr. Juzdan asked if the fire department had any concerns at the last application. Mr. Lemanowicz said he did not recall seeing anything from the fire department. There is no exhaust fan required and the entire building is sprinklered. The HVAC unit has the ability to take in and exhaust fresh air. Mr. Juzdan asked if there would be advertising in the window. Mr. O'Bierne said no. If someone came in from the street and buys a cup of coffee they can but they feel it is important for range customers to have this café. They will not serve hamburgers. Mr. O'Bierne said he would prefer the customers eat at his range but they are not doing that and he doesn't know where they eat. Mr. Fiorello asked if adding pork roll to the menu would help. Mr. O'Bierne said he did because he believes in his product.

Mr. Brigliadoro said if the Board determines by looking at #5 of the resolution that the electric griddle does not run afoul of that and in the alternative ask for relief from condition #5 to allow the griddle.

Mr. Lemanowicz said the website he found indicates that a griddle is the same as a grill.

Mr. Juzdan said he did not recall why this condition was put in place. Mr. Fiorello said the Board did not want this to become a place where there were grease pits, exhaust fans and cooking since it was so small. It was basically for the people who use the range. The idea was to keep it small and have no problem with grease pits or spills.

Mr. Brigliadoro said the testimony of Mr. O'Bierne was that after 3 years in operation they are really not drawing from the outside so they are not increasing the intensity of the use. This is an electric grill with no fire or flame. He asked for the Board's consideration of the request. The griddle would be a replacement for the hot dog turner.

Mr. Fazio felt the request was reasonable since it was a replacement of another piece of equipment.

A motion that the griddle replacing the hot dog turner does not violate condition # 5 of the resolution was made by Mr. Lijoi, second by Mr. Holland and approved by a vote of 7 -0.

BREAK

Reopen Docket # 15-02 for PUBLIC COMMENT

Jose Fernandez, 14 Ray Ave., was sworn in. He was opposed to changing equipment in the café. He felt it would not help them. He said when he goes to the range he is not thinking about food, he just shoots and leaves. He felt that is what everyone should do. There is no reason for people to be hanging around. He felt they could bring their own lunch. He did not think they should have built the range because it is also a residential area. He hears gunshots at his home. Chairwoman Patterson said at this time they are only discussing the café and the griddle. Mr. Fernandez said he opposes the griddle because he didn't see a use for it.

DOCKET # 14-07 – N. MARINO – 199 BROWERTOWN RD. – BLOCK 60.01 LOT 7 – USE VARIANCE –

Dan Granatell, attorney for M.A.N.A.R. Family Partnership an objector, stated that their property is located at 195 Browertown Rd. He has submitted a letter regarding notice being deficient because he felt he should have noticed property owners within Lots8 & 9 also. Subsequently the notice was done. He said ordinance 32.3-6a states that you can't appear for 6 months if notice is deficient. He does not believe a certificate of noncompliance had been issued and this matter cannot be heard. He submitted copies of letters he sent which were marked O-1 (2/10/15), O-1 (5/15/15) He submitted a copy of the ordinance and it was marked O-2. Mr. Fiorello read the ordinance. Mr. Fiorello said there has been no notice of

non-compliance. Mr. Granatell said he requested a notice of non-compliance. Mr. Fiorello asked if before tonight's meeting if notice was given to all property owners within 200'. Mr. Granatell said it was. Mr. Fiorello said if there is no notice of non-compliance the 6 months can't start to run. Mr. Granatell said his objection letters date back to February of this year and this is his first chance to be heard. Mr. Fiorello said we are where we are now. Mr. Granatell said he maintains his objection but the Board can decide either way. Mr. Fiorello asked if he objected to the adjournments. Mr. Granatell said he just requested that before the matter was heard he could address the notice issues. Mr. Fiorello said the 6 months would run from the time of the notice of non-compliance and apparently the people who were not notified were notified before this Board considered the application. In his opinion that the provision is not applicable because the Board did not give notice that they were in non-compliance and in the meantime they did notice everyone. They are here tonight for the first time hearing this application.

Mr. Juzdan agreed and saw no grounds for non-compliance.

Mr. Granatell said the second objection relates to the res judicata issues. Previously this applicant has appeared before the Board regarding two D-variances regarding multi-family. One was in 2008 and one was in 2009. Both those applications were denied. This is the third attempt at multi-family use. He said he would like to submit prior resolutions. The 2008 application was for an 8 unit residential apartment building that was 2 stories. He believes it was age restricted. The 2009 application was a slimmed down version for 4 residential units. Here we are today with 3. He does not believe anything substantial has changed on Mulroony Circle or Browertown Rd. so he believes the applicant is barred from asking for a D-variance for multifamily use. The 2008, 08-05 resolution was marked O-4 and the 2009, 09-04 resolution was marked O-5. They were both bifurcated applications so no site plan was involved and both applications were denied.

Mr. Granatell said they were both bifurcated applications asking for multi-tenant use. This is the third time he has requested multi-tenant uses. The similarities between all the applications actually run deeper than just the 8 units and 4 units. If you look deeper into the resolutions you actually you can see there were more similarities. When you go further into the resolution you find even more similarities. The 2008 application was for an 8 unit apartment building. Part of the reason it was denied was based on the increased traffic on Browertown Rd. and that it was in a Residential area. The Board found it to be a detriment to the community. When you look at the 2009 application there are similarities as to why the application was denied such as the increased traffic that would be dangerous on Browertown Rd. So they went from 8 units to 4 units which were both denied for the same reasons. Now we have technically 5 uses. He felt the Board has already decided that this site is not suitable for this use because of the increased traffic on Browertown Rd. and he is not aware of any changes to Mulroony Circle that would make the Board think otherwise.

Mr. Fiorello said he has a two prong objection. The prior applications were for multi-family units and now we have another request for multi-family and the reasons for the denial was the traffic increase and the site was not suitable for this use.

Joseph Petriello, attorney for applicant, stated that there are several elements for res judicata to apply. One of them is that the parties are the same and they concede the parties are the same. Secondly for it to apply there must be on the merits and they concede it was decided on the merits. However the third principal is that the applications must be substantially similar to each other and the mere fact that they involve multi-family dwellings is not sufficient to make them substantially similar. In 2008 you have an application for 8 units and in 2009 you have an application for 4 units. They are both multi-family but the board at that time did not apply res judicata because even though they are both multi-family they were substantially different. There are cases that hold that even a reduction of one unit is sufficient to make it not substantially similar. He would argue the notion that because this application has a component for multi-family it is not similar to the other applications. The other applications were for all multi-family and this application is for a mixed use. He would argue that the application is not similar enough because it has one less unit and a mixed use. There are 2 office units that were never involved in the previous applications. There has been a change in circumstances in 2012 there was an amendment to the Master Plan which recommended a zone change for this property. For these reasons he takes the position that res judicata should not apply and would like to proceed with the application.

Mr. Granatell said in 2008 and 2009 multi-family use which was denied and here you have the same thing which is the third attempt for multi-family use. He thought it goes further as to whether or not this property is particularly suited for multi-family use. He thought the Board was very clear in their prior decisions that it is not. Mr. Fiorello asked what he makes of the mixed use being proposed. Mr. Granatell said it was interesting the he talked about the Master Plan recommended that this was a mixed use and he is not aware of an ordinance saying it is a mixed use. It is still a split Residential B and General Office zone so that has not changed. Still the exact same lot, he is still looking for multi-family use and the road conditions have not changed its still a traffic hazard.

Mr. Petriello said the Master Plan did not recommend a mixed use in 2012 but for commercial. But it has not been done yet. One of the changes that has occurred is the 2012 recommendation that this property be rezoned.

Mr. Lemanowicz explained res judicata to the Board. He said if the Board feels that 3 residential units over an office space is essentially the same as an 8 unit age restricted facility or a 4 unit apartment building then it applies. In this case they have a new use in the building. The fact that there may be traffic issues with all of them he did not think that a potential traffic issue makes an application similar. Nor does he think that a multi-tenanted building makes it substantially similar because in that case a strip mall would be the same as a duplex they both have multi-tenants. He thought you have to look at what the tenancy is in addition to the size and shape of the buildings.

Mr. Fiorello said he concurs with what has been said by the attorneys and the planner and it is up to the Board to decide if res judicata applies.

Mr. Juzdan thought the Board should hear the application because the Master Plan has been worked on since the last application with recommendations and the other two were strictly residential and now it is a mixed use application.

Mr. Fazio thought there were similarities and felt the property was smaller because they are using the back lot for the other property.

A motion to proceed with the application and res judicata does not apply because the Master Plan has made recommendations in regard to this property after the previous applications and the current proposal is for mixed use and the others were all residential was made by Mr. Juzdan, second by Mr. Pascrell and approved by a vote of 5-2.

Mr. Granatell said he has other questions for the applicant and their professionals.

Mr. Petriello said his planner has been delayed so he will start with the architect.
He stated that this is an application regarding Block 60.01 Lot 7 commonly known as 199 Browertown Rd. The property is developed with a single family dwelling and an office which received a variance in 1984. The property was originally part of the adjoining property to the north which is now owned by Mr. Granatell's client. There was a subdivision of the property granted in 1997. That is why when you look at the property there are features that are unusual for separate properties. They are proceeding with the application for 3 apartments on the 2nd floor and 2 offices on the 1st floor. There is sufficient parking provided and they are proceeding with a bifurcated application. It is sometimes confusing because there are some features that the Board is anxious to know about but are typically presented in a site plan application.

Matthew Evans, architect, was sworn in. He has testified many times before the Board and they accepted him as an expert. He prepared a plan for this application. Sheet 1 was marked A-1-a and A-1b. He stated the site is 33,158.66 sq. ft. The property has an existing parking area in the rear that is used for the adjacent office building. The westerly side of the property along Browertown has an existing residential building. The parking area that is utilized by the medical building is separated from the front of the property. There was a previous approval with conditions for the parking lot to be utilized by the adjacent property.

Mr. Evans said they are proposing to keep the existing curb cut. They are basically taking down the building and putting up a new 2 story, 3 unit apartments on the 2nd floor and offices on the first floor. The plan shows the split zone that the property is in. 80 to 85% of the property is in the General Office zone the rest is in the Residential B zone. The Board determined the property was in a split zone during the prior application for the parking area. Mr. Evans read a portion of the ordinance for split zones.

Mr. Evans said they showed what was pertinent to the application based on the B and General Office zone. So they show the requirements for the different zones with what has been more restrictive. A front yard setback variance would be required; they would need a variance because they are not proposing garages for the residential units and a use variance.

They have 20 spaces proposed in the rear. The requirement for the apartments is 6 spaces and the offices require 10 so they have a surplus.

Mr. Evans referred to sheet A-2 which shows the floor plans for the 1st floor with 2 office tenant spaces and handicapped bathrooms. The tenant space is 1300 sq. ft. per tenant. There is a central entrance for the apartments. Apartment # 1 has 980 sq. ft., apartment #2 has 1020 sq. ft. and apartment # 3 is 615 sq. ft. Apartment 1 is a single bedroom unit with a full bath and living space. Apartment 2 is a single bedroom apartment and a smaller one bedroom apartment at 615 sq. ft. The plan also shows the elevations. The office entrance would be in the front. The building would be limited at 2 stories. There would be no access to any attic.

Mr. Petriello said this is not a site plan but just some basic information. If they came back for site plan approval there would be some modifications and additions. Mr. Petriello referred to the Board Planner's report dated June 2015. Mr. Evans said they are proposing a two story building and he believes the average height would be 35' and they have from the grade to the peak no more than 30'. He said they would be within the requirement of the height so there would be no negative impact. It would be difficult to move the building back because of the adjacent parking in the rear. Mr. Lemanowicz said the question was not just for building height but for building volume. The planner would answer that question. Mr. Evans said they show the parking in conformity with the ordinance and site plan standards and did not think there would be any negative impact. They would all be standard spaces and drive aisles. The building is situated as it is to accommodate the parking. They could update the size of the parking spaces. It is their intention to have 24' drive aisle and backup circulation area. If need be they can dimension it.

Mr. Granatell, attorney for M.A.N.A.R. Family Partnership, objector said he was looking at the layout for the bulk requirements. He asked if they were intending to knock down the existing building. Mr. Evans said yes it will be all new construction. Mr. Granatell asked if they could build a conforming office structure with no bulk requirements. Mr. Petriello said there would be no conforming structure because it is a split zone. Mr. Granatell said that was interesting because they brought attention to the ordinance that said if the majority of the lot is in one zone then it could be built to meet that zone's requirements. Here is the General Office zone so why can't a conforming office building be built on the site. Mr. Petriello said the ordinance says you should build it to that zone provided it is not more than 35' from the district boundary line and this is more than 35'. Mr. Evans said they have some certain site restraints which would make it difficult to build a conforming office building. Mr. Granatell asked if they could build a conforming single family dwelling on site. Granatell said the General Office zone permits Residential B single family dwellings. Mr. Petriello said the ordinance gives the zone extension of 35' with a split zone. There would still be a small area in the Residential B zone, so you could not build a conforming office building.

Mr. Lemanowicz said the Residential B district points out that the ordinance requires that the front yard setback be no less than buildings within a 100' of this building. He asked if he could tell him the setbacks of the buildings within the 100'. Mr. Evans said they show a

building adjacent to the site that averages between 20' & 30'. He did not do a full study of all the setbacks. Mr. Lemanowicz said determining distances from structures to property lines can only be done by a licensed surveyor. They do not know where the other buildings are so they don't know if this application satisfies 22-6.2.a which goes back to the A zone. He asked about the parking space size. Mr. Evans said they were designed as 9' X 18' with the exception of the handicap spot that is 8' X 18' with a striped area adjacent to it. Mr. Lemanowicz said that would be another variance because RSIS states that required size would be 9' X 20' for residential or 10'X 18' for office use.

Mr. Lemanowicz asked if he knew how the ordinance measures building height. Mr. Evans said he believes it is the average grade and the average of the roof on a pitched roof. Mr. Lemanowicz said it is actually the average grade and the highest point. He said the 27'5" he provided is from the floor to the highest point. Mr. Evans said he would say 30' would be the maximum they would design for and it would be within the 35'. Mr. Lemanowicz asked if he had any topography to back that up. Mr. Evans said not at this time. Mr. Lemanowicz asked about the issue of Mcmansion which means a very large home. He asked Mr. Evans to compare the overall mass of this structure to the structures on Mulroony Circle. Mr. Evans said it is two different typologies. They have a typology of a mixed use commercial/residential building and those are single family residential buildings. He believes the Mcmansion really describes an oversized building on an undersized lot and that is his interpretation of a Mcmansion. He believes the density and proportion of this structure is suited for this site and for the type of use and did not believe the McMansion would come into play.

Mr. Lemanowicz said the difficulty in dealing with a bifurcated application is the line that you draw with planning issues and site plan issues. When you have a building of this size and for the buildings surrounding this except for the medical building next door, this building in his opinion is substantially larger and you would need to see the topography and landscaping and how much the parking area takes up. It appears they are also going to need the 2nd variance for the 2nd front yard issue because of the buildings within 100'. With respect to which zone is the less restrictive he felt that issue is up for decision. Under the General Office zone the ordinance provides a series of light and air requirements where it goes into window opening sizes. He asked if Mr. Evans reviewed this ordinance. Mr. Evans said they have designed the building with large windows for all the units including the commercial. He designs for maximum light and ventilation and optimizing larger windows. So that would conform to the requirement. Mr. Lemanowicz said the ordinance sets forth the requirement for window space based on the square footage of the units and as the plans are presented the units have always less than ½ and sometimes a 1/3 of what is required.

PUBLIC OPEN – Questions for architect

Joseph Vacca, 193 Browertown Rd., said he lives across the street from the Hromiak Terr. intersection. He said people are making u-turns in his driveway all the time. He felt the discussion should be about safety because there are no sidewalks and the kids walk up and

down there. Mr. Fiorello said he can come back during the public session to make his presentation. This portion is only for questions.

PUBLIC CLOSED

BREAK – 10:00 p.m.

Mr. Lemanowicz said the driveway right now is looped through two properties because they used to be one property. He asked if the looped driveway was part of the subdivision approval because if it was and now they are changing it they would have to involve the other property. Mr. Petriello said he has a copy of the 1997 subdivision resolution and the driveway was not part of the conditions in the resolution. He also looked at the deed and the deed does reserve an easement to the adjoining owner but is only for drainage and it runs on their property along the northerly boundary line for a distance of about 120'. Mr. Lemanowicz asked if there was a plan for the subdivision. Mr. Petriello said he requested the resolution so there must also be a plan in the file. Mr. Lemanowicz felt the Board should have verification of that.

Peter Steck, Planner, was sworn in. He stated his qualifications and was accepted as an expert. He prepared the planning study. This is a property that is already developed and fairly sizable. It is a bifurcated application to seek approval of the use first. If the use is approved they must come back for site plan approval. They must come back with all the details and they have to again satisfy the negative criteria. The property is fairly large at 33,158 sq. ft. and slightly irregular which resulted from a subdivision of an adjacent property. It is improved with a parking lot in the rear that was approved by variance and the front has a tired dwelling that had approval in the past for a single family dwelling with an office in it. The applicant has tried for a number of years in redeveloping this property because it is fairly sizable and the house is tired. There is a fair amount of pavement in the back that is certainly more than is needed for a single family dwelling. In his judgement it is right for something to happen. The applicant is proposing a redevelopment of the property by tearing down the building completely and starting from scratch by building a new structure with offices on the first floor designed for 2 tenants and 3 apartments on the 2nd floor. The building is fairly rectangular but the applicant has made it look residential in feel by the material used and the scale of the windows. The applicant could chose to make it look more like an office building but a decision was made that this would look better for the area. Neither zone anticipated this mixed use. They meet most of the dimensional standards but they need a use variance for the office use of this building that goes into the residential zone. They need a use variance for the 3 dwelling units for either zone because neither of the zones allows the 3 dwelling units. They need D-1 variance and need 5 affirmative votes from the Board. They also have an issue of the front setback. If they get the use variance they can come back for site plan and then it could be modified to setback the building. They have more than enough parking and they can comply with the RSIS dimensional standards. This is not a retail use with shopping carts.

Mr. Steck said he believes there are special reasons that support the granting of the application and that means there are public purposes that are advanced in the MLUL. They

have to show the site is particularly suited for this type of use and then they have to meet the negative criteria that if approved it would not be substantially detrimental to the public good or substantially impair the zone plan or zoning ordinance. Here you have the Master Plan saying the whole lot should be in some sort of commercial use such as the same zone as the office building right next door and that is a fairly recent recommendation. But that is not the same as what the zoning ordinance said. In the Medici case the Master Plan and zoning ordinance are in perfect alignment and that is not the case here. The Master Plan suggests the zoning ought to be changed and it is just that the town has not acted on that zoning. There has already been recognition that the front portion of the property is permissible for mixed use. The Board has already made a decision that there should be residential and an office. In his opinion the split zone nature of the property results in an extreme hardship. The front part of the property is fairly substantial in size. It's true you could put a single family house there and comply with both zones but why would you demolish a house with an office on a site this size and so much paving in the backyard. The applicant wants to improve this property. In terms of the intensity of use it is going in a reverse direction. There are purposes of the MLUL that are advanced aside from the issue of extreme hardship. It is his opinion, encouraging a mixed use which is a nice transition to the formal office building next door and the home and storage in the rear. Both properties have a lot of paving on it. A mixed use like this allows the applicant to tear down the building and start from scratch which means the building will meet all the parking requirements and building code requirements. It will promote an appropriate population density because there is a demand for smaller apartments. He noted in his report that these apartments tend to be marketed to the bookends of the population. This would be older people and young people just starting out. He felt this encourages an appropriate use of land given the mixture in the area. This will promote a desirable visual environment. Anything they do here would require some sort of variance. He thinks there is a demand now for smaller units and rental units. The Master Plan recommended something different from the current zoning so there is a disconnect here. One of the variances required is for not having garages for the apartments. That is a generic requirement and is understandable where you have a single family house but when you have a mixed use like this where people can share parking it allows for less parking. He felt it meets the enhanced burden of proof. None of the abutting properties are pure single families. The building is bigger than the houses in the area but didn't think someone was going to look at it as a Mcmansion. He believes the use variance can be approved under these unique circumstances for the special reasons he mentioned. He believes it is particularly suited because of the split zone nature. They are sandwiched between a mixed use on one side and an office building on the other so in his opinion this makes sense.

PUBLIC QUESTIONS

Mr. Granatell asked the permitted uses. Mr. Steck said on one side of the property they can have professional offices and on both sides of the property they can have a single family house. Mr. Granatell asked if multi-family units were allowed in either zone. Mr. Steck said no they are not permitted there are other zones that allow multi-family. He has reviewed the Master Plan and it does not recommend multi-family use for the site. It recommends something different from the current zoning which is local commercial. It was

not defined as to whether residential was allowed above the commercial use. The trend is to allow apartments over stores. Physically you could put a single family dwelling on this lot but there is nothing you can do without coming before this Board because the back of is already in a non-conforming use as parking. Even if they subdivided and removed a piece of property they would still require a D variance. Mr. Granatell said earlier they discussed two resolutions denying multi-family use for the site. He asked if Mr. Steck knew why they were denied. Mr. Steck said they indicated there was a concern about traffic. He said this driveway is where it should be and at the time of site plan approval they will come in with a traffic expert. He is not a traffic expert. Mr. Granatell asked if this is approved how many principal uses would be on the site. Mr. Steck said technically you could call the parking in the rear a principal use but the front use would be one mixed use building. Mr. Granatell asked if the applicant noticed for multiple principal uses on the site. Mr. Steck said when you have a use that isn't permitted the other variances are subsumed into the use variance so he thinks it's clear what they are asking for. Actually it is a notice issue for attorneys and not for planners. Mr. Granatell asked if 3 separate principal uses would be compatible with the Master Plan. Mr. Steck said it does not detail what a new zone would entail. It is not inconsistent with the working in the Master Plan. In 2008 there were 8 units and in 2009 there were 4 units and now there are 5. Mr. Steck said there are only 3 apartment units. Mr. Granatell said there are 3 apartment units and 2 offices which are 5 separate uses. Mr. Steck disagreed. Mr. Granatell asked if 3 apartments and 2 offices would intensify the use. Mr. Steck said yes.

Mr. Lemanowicz said the recommended zone is not thoroughly defined and agreed with Mr. Steck. It does say the 3 localized commercial zones be converted to a local commercial zone and upper and lower mixed use commercial/residential. So they are looking to create 3 new commercial zones and it appears this one is the only one that is not mixed use. Mr. Steck said the Master Plan says local commercial zone but it is still not clear. Mr. Lemanowicz said it does say those are the 3 zones they are talking about and if this is the local commercial is would seem this area was singled out not to have mixed use. Mr. Steck said this entire property was recommended to be in one zone and it is the same designation as the office use adjacent to it and it is supposed to be smaller businesses. The governing body has not translated that into zoning yet. Mr. Steck said his point is that there is a disconnect between the Master Plan and the zoning that is in place. This allows him to reach the negative criteria even under the enhanced burden of proof.

Mr. Lemanowicz read the description of a Mcmansion. This is not a single family house but if you look at the building's overall appearance it is not something that is going to transition from the medical building next door and the residential homes. Mr. Steck said this structure has a lot of detail. This building is not a house but the fact that they are sandwiched between a non-conforming house and a big office building gives them more flexibility than they would otherwise. The Mcmansion applies to a single family house. The book Mr. Lemanowicz read from is not law.

Mr. Lemanowicz said he has a comment in regard to the traffic generated by the office. ITE puts this building in approximately 130 trips a day versus the 10.1 generated by the single family use that's there and there is an office use there right now. He said traffic generation

is definitely a part of the use discussion. Mr. Steck said if they tear down the house and put up what they propose they will produce more traffic then there is today. If they come back for site plan approval they have to get a traffic engineer. He doubts the driveway is in a bad location because you want it to align with the cul-de-sac across the street. Yes there is more traffic but keep in mind the Master Plan wants this to be potentially a retail site with a row of businesses there. Mr. Lemanowicz said retail traffic is different from office. You can see that the office building next door underestimated and had to encroach on to this property for more parking. The discussion has to be made if you want to have office there that is going to create that level of traffic. Mr. Steck said this could be a deli or Dunkin Donuts which would clearly have more traffic than they propose. He knows it is frustrating to have a bifurcated application but if they can't prove modern traffic standards at site plan this Board can turn them down because they can't meet the negative criteria. Mr. Lemanowicz said at that point they would already have the use. Mr. Steck said as he understands the law they still have to reach the negative criteria and if they can't make it they end up with zero. Mr. Lemanowicz said the issue of the use they are requesting is suitable for this location has some place in this discussion.

Mr. Fiorello said traffic is not only for site plan and in the past on applications for use variance traffic played a big part in the decision of this Board. He did not think it was reaching in a case like this that if they don't know what the traffic is going to be and they don't know what the proposal is going to be a traffic engineer may well be required in regard to a use variance based on the history of what those Board's did in the past. Mr. Steck said they were not bifurcated applications. You get a second bite here that you didn't have in the other applications. He agrees traffic is an issue. Mr. Petriello said there is no clear line as to what you are required to give in a bifurcated application. Mr. Fiorello said you are required to give what the Board says it needs. He hears the Board say that they need traffic information in this part of the application and he puts that out there because in 2 prior applications traffic meant a lot.

Mr. Pascrell said we also know that the Master Plan calls for no more multi-family. Mr. Fiorello said there used to be something in the Master Plan that stated they did not want any more multi-family homes. Mr. Lemanowicz said there is that general discussion in the Master Plan.

Mr. Lemanowicz stated he listed some things that he still needs to generate more facts. They don't have a specific idea of the height of the building or the topography, at this point the property slopes downward from the existing building toward Browertown. With the depth of the building in order to make the back door at grade the front door is going to be higher than grade which would further the issue of visible mass. The height has to be at 35' which means it could be 30' high in the back and 40' high in the front. If that's case it is something important to find out. The front setback in the R-B zone there is a requirement that it should be no less than the average setback of buildings within 25'. Visually here this building is forward to the building to the north that may be another variance. There is also the issue with respect to the subdivision and if the loop road was part of the approval. There are a couple of issues that are still outstanding.

PUBLIC OPEN

Joseph Vacca, 193 Browertown Rd, was sworn in. He asked how they can say they have enough parking spaces with the 20 spaces. Mr. Steck said the code requires 16 parking spaces and they show 20. Mr. Steck said they are one bedroom apartments which may not need 2 spaces. Mr. Vacca felt without knowing who would be occupying those spaces if they have enough parking. Mr. Steck said they comply with the parking required. Mr. Vacca said he looks at parking lots. Mr. Steck said they are surrounded by parking. It is his opinion that the Master Plan wants them to be more pedestrian friendly and he reads that as they want the building up front with parking the rear. Mr. Vacca said he lives there and he doesn't want to see that. He asked about the height of the building. He said there are going to be tall buildings with people looking out into his privacy. He has problems now and he has had incidents where he had to call the police about the property. He said when he cuts the grass he has almost got killed. They make u-turns in his driveway because they past the entrance. There is going to be more traffic and more people. Mulroony Circle is a dead end and they will be going down there to turn around or going into Hromiak Terr. This is traffic they do not need. Mr. Steck said it conforms to the standards of the municipality. Mr. Vacca said there are no sidewalks there. He does not need any more invasion of privacy.

PUBLIC CLOSED

Mr. Lemanowicz said there is one more variance they have not talked about yet. In the General Office zone it requires a 10' buffer. There is no buffering shown and based on the parking lot and the property to the north is a residential zone you can't put a 10' buffer along the parking lot and the northerly property line because the pavements is less than 10'.

Chairwoman Patterson said given what she took in from the Board Planner she has more questions now than before. She felt she needed more information. She would like to see a traffic plan, survey and topography. The Board agreed to request additional information. They felt the traffic plan is major. Mr. Fiorello asked if there was an issue for them to bring in a traffic engineer to the next meeting. He asked if they could provide a survey. Mr. Petriello agreed. Mr. Lemanowicz said they need topography and the issue of the setback of the surrounding buildings and it would be helpful if the dimension were consistent. The aisle width and parking space sizes did not look quite right. He said the history of the minor subdivision should be provided. Mr. Juzdan asked the square footage of the buildings on either side. Mr. Steck said they would have to have permission to go on someone else's property but they could do it by aerial.

Application will be carried until August 24, 2015 . There will be no further notice and applicant has waived time restraints.

A motion to adjourn was made by Mr. Juzdan, second by Mr. Pascrell, all in favor. Meeting adjourned.