

MINUTES

APRIL 5, 2011

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:02 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

- E. Thomas Behr, Chairman
- Sandi Raimer, Vice Chairman
- John Fagnoli, Member
- Edwin F. Gerecht, Jr., Member
- Maureen Malloy, Member (arrived @ 8:05 P.M.)
- Felix Ruiz, Member

Michael Pesce, 2nd Alternate

- Barry Hoffman, Bd. Attorney
- Thomas Lemanowicz, Bd. Engineer
- Kevin O'Brien, Twp. Planner

- Excused:
- Joseph Pagano, Member
 - Christopher Collins, 1st Alternate

Dawn Wolfe, Planning & Zoning Administrator

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EXECUTIVE SESSION

It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

The minutes of February 15, 2011 executive and regular sessions were approved on motion by Mrs. Raimer and seconded by Mr. Fagnoli. Mr. Gerecht and Mr. Ruiz abstained as they were not present at that meeting.

ANNOUNCEMENT

With sadness, Dr. Behr announced that he had received a letter from Joseph Pagano advising that, for health reasons, he found it necessary to resign from the Board of Adjustment.

Mr. Fagnoli made a motion to recognize Joe in the same manner that past members have been recognized which was seconded by Mr. Gerecht. All were in favor and agreed that Joe will be sorely missed.

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HUNTER PROPERTY, LLC

279 Union Street
Block 11511, Lot 4

#10-04Z

Use Variance

Prelim./Final Site Plan

Bulk Variances

Present: Vincent T. Bisogno, attorney for the applicant
Lawrence Neville, principal of the applicant
William Hollows, licensed professional engineer
Robert Michaels, licensed professional planner

Lucille Grozinski, certified shorthand reporter

Proof of service was submitted.

Mr. O'Brien and Mr. Lemanowicz were sworn.

Mr. Vincent Bisogno, attorney for the applicant, said that his client, Hunter Property, LLC, has signed a contract to purchase the subject property which is located within an R-4 Zone. The property contains 15,000 S.F. and a 3,500 S.F. commercial building.

He said that, at one time, the property was commercial. In 1963, the former owner of the property came before the Board of Adjustment and applied for a use variance to construct a "truck garage" on the property in the same configuration as today. Approval was then granted by the Township Committee, which is how use variances were handled at that time. Several years ago, he said that the present owner of the property, W. G. Cannon Trucking Company, purchased the property. They were in the business of excavating roadways and had very large trucks that they used to park in front of the property. The inside of the building was used for repair of trucks and storage of materials.

He said that, in September, 2009, W. G. Cannon went into what is called State Court receivership, which is like bankruptcy. A receiver was appointed by the Court. Presently, the receiver is the owner of the property. His client, Lawrence Neville, is the owner of Hunter Property, LLC, and contacted the receiver and made a deal with him to purchase the property subject to various conditions. One of the conditions of the contract was that his client had to get environmental clearance and Mr. Neville hired a local company by the name of Environmental Excavating who did an environmental investigation and found that there were 5 underground oil tanks on the property and that several of them were leaking. This was reported to the receiver and he immediately hired Environmental Excavating who removed the tanks. All of the soil has *not* been remediated at this time. During the investigation, it was found that oil leaked into the basements of surrounding properties and a NJDEP investigation is underway at this time. Part of the deal with the receiver is to ensure clean up and part of the purchase price money may be used for that purpose.

He said that his client wants to use the property for a *similar* type use, although not exactly the same type use. It will be used for the trucking operation of Royal Turf, Inc., which presently operates from the adjacent property to the west. He said that Mr. Neville is very familiar with the subject property because his mother lives on adjacent Lot 3, which is in a commercial zone.

He said that his client is seeking preliminary and final site plan approval and that most of the variances are pre-existing conditions except for the use variance that was granted in 1963 for a truck garage. He said that that Resolution is very, very sketchy and it is hard to tell exactly what was approved. Therefore, he said that he is taking the position that a use variance is needed to continue the truck garage on the subject property. He said that, not only is the proposed use similar to the previous use, it is less intense and will only be used for approximately 9 or 10 months of the year. The other variances are all set forth on Pg. 2 of Mr. O'Brien's report in which he commented on the parking of vehicles outside, which is not allowed under the Ordinance, however he said that testimony will be presented this evening indicating that has been going on for the past 50 years or so on the property. He said that there are aerial photos that even

show the trucks parked outside since 2007. He noted that storage is not permitted outside and his client has one trailer that he would like to store outside, along with his trucks. Everything else will be stored inside the building. He noted that no additions to the building are proposed, however his client intends to fix the building up by repairing the doors, installing new windows, painting the inside and outside of the building, and installing new landscaping.

Mr. O'Brien presented a set of photographs of the site and surrounding area which he had taken on 2/15/11 which was marked into evidence as **EXHIBIT B-1**.

Mr. Lawrence Neville, principal of the applicant, was sworn. He is the owner of Royal Turf, Inc., a custom lawn care business, and also Hunter Property, LLC. He confirmed that he signed a contract with the receiver of W. G. Cannon to purchase the subject property. He said that he first learned that the property was for sale by talking with Mr. Cannon's son. He then contacted Arthur H. Miller, Esq., Assignee for the Benefit of Creditors of W.G. Cannon Trucking Co.

In response to Mr. Bisogno, he said that he is very familiar with the property noting that he has lived in the Township all of his life. He said that he currently operates his business out of the garage located adjacent to the subject property.

He described the subject building as constructed of cinder block with a brick front with large bays. The site contains a parking lot which currently consists of broken gravel and is not well maintained. There is no landscaping or lawn area of any mention.

He referred to a Site Plan by Murphy & Hollows Assoc., Inc., dated 6/2/10, last rev. 8/26/10 and pointed out Lot 3, which contains his mother's residence and the garage at the rear which he is currently operating out of, which is located in a business zone on the westerly side of the subject property. He said that Lot 1 contains a hair cutting salon and previously also contained a florist. Lot 32 contains an office building which was previously occupied by a financial company. He said that Humphrey's Pest Control is located at the corner of Main & Union Avenues and there is a bakery adjacent to it, followed by another storefront, with apartments above them. He said that Block 11510, Lot 27 is a vacant wooded lot and is used for vehicle parking. He believed that the vehicles belong to Mr. Carl Sundberg, owner of The Restore on Block 11510, Lot 1. He said that Block 11510, Lot 25 contains an existing single family residence which is proposed to be removed and replaced with a new single family residence. He said that he has spoken to the owners (Robert & Elisa Horvot) and they are aware of the present application. He said that Block 11511, Lot 6, which abuts the subject property to the east, contains a multi-family residence. Lot 7 contains a single family residence. He believed that the properties to the south, along Essex Street, contain single family residences.

Mr. Neville presented and described a colored rendering of what the subject property is proposed to look like after the proposed renovations which was marked for identification as **EXHIBIT A-1**. It was prepared by a local artist based upon the plans that he submitted to the Board. Currently, the parking lot extends completely across the road and there is no single entrance into the building. He said that he is proposing to make a single entrance into the parking lot and landscape the front of the parking area along the road where there is currently no landscaping. A fence is proposed to be installed outside of the building adjoining an existing fence along the westerly rear corner of the property where there is an existing board-on-board fence which is broken and also a wall. The proposed new fence would run from the wall to the back corner of the property. The existing gravel at the rear of the property will be removed and will be replaced with a lawn area. There is presently a broken chain link fence and some stockade fencing to the rear which he did not believe belongs to the subject property.

In response to Mr. Bisogno, Mr. Neville said that the second window above the window on the first floor is for a mezzanine office that currently has no windows. The existing front door and windows will be replaced and the building will be painted and cleaned. The gutters will be replaced, as well as the soffit boards. The interior is in need of complete renovation and will provide for storage space, truck parking, and offices, all for himself.

In response to Dr. Behr, Mr. Neville said that he did not believe that there are any windows the office side of the building, although there is an exposed air conditioner that protrudes from the building.

Referring to **EXHIBIT A-1**, Mr. Hoffman said that the testimony he heard up until this point is that some artist, whose credentials or qualifications are unknown (as is the name of the individual), prepared the exhibit, so we don't really know what data or information was taken into account or whether this is a true and accurate rendering of what the building and property will look like. He said that he was somewhat hesitant, unless we had either the preparer of the drawing to be here or, at least knew more as to what this intended to establish in terms of accuracy of scale and details.

Dr. Behr asked Mr. Bisogno if the rendering could be related to the plans? He said that we are looking at a building that does not seem to be changed in its fundamental shape and dimensions. There is a change to the left side of the façade of the building and indication that there will be a change in the fence, all of which should show up the plans that have been submitted.

Mr. Bisogno agreed. He said that the plans are basically what is shown on the rendering.

Dr. Behr felt that Mr. Hoffman's point is well taken, but he felt that the connection between the graphic representation and the plans must be made. Referring to **EXHIBIT A-1**, he noted that there is a beige protrusion and asked what it is.

Mr. Neville replied that it is a proposed concrete pad outside the right hand bay. He said that he plans to move material in and out with a forklift at that location and he did not want to break up the macadam with the forklift.

In response to Mr. Bisogno, he said that there is no basement in the building. He also said that he received a report from Mr. O'Brien indicating that he would like more shading or screening on the easterly side of the property which adjoins a residence. He then met with David Welch, member of the Shade Tree Commission, and agreed to take out the Oak trees and add Blue Spruce's with decorative grass, which is reflected in the current plans.

Also in response to Mr. Bisogno, Mr. Neville said that Royal Turf provides plant health care services, control fertilizer, and things of that nature. His business operates from approximately March 15th until approximately December 15th each year. After December 15th, he does some snow removal. He said that he leaves his snow removal equipment at sites he operates out of. No snow removal equipment will be parked at or dispatched from the subject property, although he noted that the former owner of the property parked snow removal equipment on site.

He said that his business operates from 7:00 A.M. to approximately 6:00 P.M., Monday through Saturday and that he has 5 employees, not including himself. He currently has 5 spray trucks and 2 pick-up trucks. He submitted and described two photographs which he had taken which were marked into evidence as follows:

- **EXHIBIT A-2** – Photo of one of the larger service trucks used in connection with his business.
- **EXHIBIT A-3** - Photo of one of his pick-up trucks parked next to a service truck.

He said that his vehicles are substantially smaller than the vehicles used by the previous owner, W. G. Cannon, who had tandem dump trucks which had dual axles in the back and their gross vehicle weight was probably 80,000 GVW. The maximum GVW of one of his own trucks is 25,000 and the "cab-over" shown in **EXHIBIT A-2** is 17,950, or 1/3 of the size of the Cannon tandem dump trucks which used to be lined up outside along Union Ave. He said that he was familiar with them parking there since 1979.

He said that there are currently 2 or 3 floodlights on the front of the building which will be addressed by Mr. Hollows.

In response to Mr. Bisogno, he said that no clients come to his office or will be visiting the building. His trucks are loaded up in the morning, depart, and go from job to job or residence to residence and return in the evening. Fertilizers and other products are delivered, generally on pallets. Trucks sometimes come with a Spyder or, he has a lift that is used to unload them. He felt that they will be able to pull into parking lot, unload, and depart safely. He said that it is very difficult to handle deliveries at present and that he has delivery trucks park along the gravel area (on Lot 3) and unload them from there. He did not believe that a special parking area or loading zone will be needed because deliveries occur only once every two or three weeks. He said that he stores his fertilizers and other materials on stacked pallets or set on the concrete floor.

He said that anybody that applies a pesticide for hire needs to be a licensed applicator and any business that does that for hire needs to be a licensed applicator business. His business is licensed by the NJDEP to apply pesticides for hire. He said that the NJDEP does spot inspections at the building and also of vehicles that are on the road.

He said that the trailer he utilizes is mainly used when he goes to larger commercial sites in order to bring their equipment. It does not go on the road everyday. Based on the configuration of the subject building, he felt it would be best to park the trailer on the side of the building which adjoins the commercial properties and it would be out of site.

He said that the reason he hired Environmental Excavating was to find out if there were any environmental problems with the property. He said that it was found that a leak had occurred in one of W. G. Cannon's tanks which caused the release of fuel oil onto the subject property and onto the adjacent property to the east. He said that an agreement was arranged with the receiver that, if he purchased the property, part of that money can be used for the eventual clean-up of the site. He said that he is to get a "No Further Action" letter from the NJDEP which means that the site has been remediated. He believed that the tanks have been removed, however he did not know how far they have gotten with the clean-up because of the weather that was experienced this winter.

Mr. Bisogno said that he was advised by the receiver that *all* of the tanks have been removed and that the remediation is underway, although it has not been completed yet. He said that it was a matter of the financing, as well as the weather.

In response to Mr. Gerecht, Mr. Neville said that his business does not do any lawn mowing or maintenance of any type. Only light maintenance will be done on his vehicles indoors – no repairs to speak of. He said that he would like to be able to store his trucks inside during the winter time, as supplies and inventory allow.

In response to Mrs. Raimer, Mr. Neville said that he remembered the subject property looking like its current state in 1979. He said that the macadam has broken up substantially, but other than that the building has remained basically the same. He also recalled seeing the Cannon trucks being parked in front of the site continuously since 1979 in various degrees. Sometimes the counts would go up and sometimes they would go down a little. Sometimes the plows would be parked along the westerly side and sometimes the County would come and remove them. He said that it varied in degrees as to how much debris was laying around the property. He said that he will do his best to keep his vehicles inside the building, but it will vary upon how much inventory he has inside the building. He said that the owners of Lot 25 (the Horvot's) should have a view of landscaping along Union Ave. and should not see any of his vehicles from their home. Based upon the proposed parking plan, he said that the neighbors immediately adjoining the property may be able to look down into the parking lot until the spruces grow higher. He said that he plows snow for condominium complexes (HOA's) and all of his snow removal equipment stays at the HOA sites. His workers go to the condominium complexes, start the equipment, and commence snow removal operations from there. He does not do any residential snow removal and does not plan to do so in the future unless he was to seek further Board approval. He said that the NJDEP requires that chemicals stored on the site be locked. Specific signage and a ventilated room are also required. He said that chemicals also cannot be stored in a multi-family dwelling, next to food products, or in the same room as an office - it has to be a

physically separate room. He said that chemicals would be ruined if they were to be stored outside.

In response to Mr. Pesce, Mr. Bisogno said that the receiver was appointed approximately 1 ½ years ago, in 2009. He confirmed that in the evening, no employees would be seen leaving the building to do perform snow removal. He did not know to what extent the clean-up of the site will entail, but did not get the impression that the building will have to come down. He agreed not to install improvements to the site until the clean-up process is over.

In response to Dr. Behr, Mr. Neville said that the basement of the residence on Lot 6 is where the fuel/waste oil entered and will be cleaned up.

In response to Mr. Fagnoli, Mr. Bisogno said that the contract his client has says the site must be delivered to him free and clear of any and all contaminants. They must also provide a “No Further Action” letter. He said that his client made special concessions to him to help him do that. He added that it is somewhat of a “leap of faith” on their part, but his client would like to buy the property if he can.

In response to Mrs. Malloy, Mr. Bisogno confirmed that new gutters will be added to the building and that the Environmental Commission had mentioned the installation of rain barrels that may be of help, which will be addressed by Mr. Hollows.

Mr. O’Brien noted that Mr. Bisogno and Mr. Neville had mentioned an amended landscape plan. He asked if the Board has seen it? (Mr. Bisogno replied “yes” and Mr. Hollows replied “no”).

In response to Mr. O’Brien, Mr. Neville said that the MSDS data sheets for all of the products he uses are readily available. He added that he is required by the NJDEP to send them a letter once a year with his inventories and will continue to do so.

In response to Mr. Hoffman, Mr. Neville said that Royal Turf has been in business since 1972. Prior to that, he said that his business went by a different name through a franchise (Lawn-O-Mat). He said that his business does not do any fall clean-up or leaf removal. He is currently only allowed to do fertilizer applications in New Jersey up until December 1st. It takes about two weeks for him to clean up all of his equipment and put it away for the winter. He said that Hunter Property, LLC was formed just to purchase the subject property and is a real estate holding company which is not actively doing business other than to own and manage this site. He said that his business falls under D.O.T. regulations, just like a trucking company does in order to move around fertilizers and weed controls. There are no transportation activities of Royal Turf that would be unrelated to the nature of the company’s business and that they only move their own commodities.

In response to Mr. Lemanowicz, Mr. Neville submitted a photograph of his trailer which was marked for identification as **EXHIBIT A-4**.

Also in response to Mr. Lemanowicz, he said that he stores his snow removal equipment off season at a location in Middlesex. Trucks that deliver his product vary from supplier to supplier from a pick-up or van all the way up to a tractor trailer, on occasion. He said that he would like delivery persons to back up onto the concrete pad for unloading from there to bring into the building.

In response to Mr. O’Brien, he described the size and weight of his trailer to be parked outside as a 20’ enclosed landscape trailer which he believes weights 7,000 lbs.

Mr. O’Brien noted that Mr. Neville had indicated that he falls under NJDOT regulations which means that commercial plates are used and you must have the name of the business on the side of the truck.

Mr. Neville agreed and added that the phone number and town must also be included. He said that, for a container shipment, the NJDEP has now moved him to the Federal carriers (ICC) for transporting his materials which are EPA registered and NJDEP approved for use in New Jersey.

Mr. O'Brien explained that the ICC (Interstate Commerce Commission) regulates all transportation activities between states. He asked Mr. Neville if his drivers have to do hours of duty?

Mr. Neville replied that none of his vehicles require a CDL to operate – they are under the weight class and have no air brakes. He said that all of his employees are licensed applicators or operators by the State.

In response to Mr. Hoffman, he said that he does not plan to install any identification signage either on the building or on the site. He said that no one comes to his office and he would prefer not to have any signage except for the street number on the building.

The meeting was opened to the public for questions.

In response to Mr. Robert Hovot, owner of Bl 11510, L 25, Mr. Neville said that, during the daytime, employees will park on the easterly side of the building and that their cars will *not* be parked on the street.

There being no further questions, the meeting was closed to the public.

Mr. William Hollows, licensed professional engineer, was sworn. He has appeared before the Board on many occasions and was accepted as an expert. He presented and described 3 colored renderings of the site which he prepared and were marked for identification as follows:

- **EXHIBIT A-5** – A rendered drawing of Sht. 2 of 5 of the Site Plan by Murphy & Hollows Assoc., Inc., dated 6/2/10, last rev. 8/26/10.
- **EXHIBIT A-6** – A rendered drawing of Sht. 3 of 5 of the Site Plan by Murphy & Hollows Assoc., Inc., dated 6/3/10, last rev. 8/26/10.
- **EXHIBIT A-7** – A rendered drawing of Sht. 3 of 5 of the Site Plan by Murphy & Hollows, Assoc., Inc., dated 6/2/10, last rev. 1/14/11.

Referring to **EXHIBIT A-5**, he said that the site contains 15,000 S.F. and is 100' wide and 150' deep. The building sits to the rear of the site and is 70' wide and 50' deep. There is a large paved area in front of the building that goes out to Union St. which is where the Cannon large dump trucks were previously parked. Working in the Township for many years, he said that he could recall seeing snowplows lined up on the westerly side of the property. There is an existing garage adjacent to the northwesterly corner of the property (on Lot 3) with a wall and a fence on top of it. There is no fencing along the rear of Lot 2 which contains a two bay garage which sits quite a bit off the property line. There is a board fence along the rear of adjacent Lot 1. There is also a chain link fence and a stockade fence along the rear of the subject property beyond which are residences. There is nothing along the easterly side line of the property except for "rough grass" and gravel. The lot coverage is approximately 68%. He also said that the area to the west of the building and across the back could be considered gravel since it probably contains more gravel than the field grass that has grown up over the years. The building is served by sanitary sewer, overhead wires, gas service into a utility room in the back (at the southeast corner of the building), and a well.

In response to Mr. Bisogno, he said that there will be a fence all along the perimeter of the property except for the area of the existing garage on Lot 3.

He said that **EXHIBIT A-6** was prepared for the original hearing date of January 18, 2011, which was cancelled due to a snow storm. **EXHIBIT A-7** is a revised version of **EXHIBIT A-6** which he prepared in order to address the reports issued by the Board's consultants in preparation

for the January 18, 2011 hearing date. He distributed copies of **EXHIBIT A-7** to the Board members in 11" x 17" size for convenience purposes.

Referring to **EXHIBIT A-7**, he said Mr. Neville would like to reduce the driveway opening and put a planter area along Union St. The parking area will be resurfaced and the parking spaces will be redesignated with hairpin striping. A handicapped parking stall was added adjacent to the entrance door to the building. The landscaping was changed along the easterly property line which has a blue spruce along the along the street. Proposed maple shade trees with lower growing plantings under them are proposed to be planted along Union St. The area near the entrance to the building is also proposed to be dressed up with plantings and a brick paver walkway. A concrete pad is proposed for loading and unloading. On the easterly side of the property, 6 parking spaces (including 1 handicapped parking space) are proposed. 5 of those parking spaces, which will measure 9' x 19", will be for the employees. A wide aisle is proposed and trucks will have to back in off of Union St. in order to unload. Smaller trucks could maneuver in and off load for garage storage. On the westerly side, 10' x 20' parking stalls are proposed, which is where Mr. Neville would like to park his trucks. Although the parking spaces on that side are a little larger, they will still be uniform and follow the same line across the planter. No curbing is proposed for budgetary reasons. He noted that the subject property is just south of the flood plain. The way it is graded, in order to put curbing in, they would have to either raise the grade (which will put water onto the neighbors) or lower the grade in the parking lot (which would bring the flood plain into the site). He said that it seems to function now and there is a storm inlet at the northeast corner along Union St. He said that they are proposing to outline the new paving area, have straight lines, and hair striping, which is much more functional than it is now. He said that Mr. Neville had mentioned a suggestion by the Environmental Commission in its January 17, 2011 report that rain barrels be placed by the leaders from the gutters, and an overflow drain that would go out the storm drain on Union St. He said that the inlet is 3' deep, so that the overflow could be piped to Union St. He felt that the Environmental Commission's report was a good one and noted that they would not be able to get any percolation on the site because the soils will just not take it. On a conservative approach, he said that there is 68% lot coverage which will be reduced by 5% when the landscaping is done. He said that they will also remove the gravel on the westerly side and plant grass and plant some kind of ground cover in the rear where there are some Maple shade trees on the site which have roots right on the surface. He also noted that there are some shade trees on adjacent properties to the rear which shade the rear of the site. He suggested that a ground cover such as pachysandra be planted, with grass on the side.

In response to Mr. Bisogno, Mr. Hollows said that there are 3 floodlights across the front of the property which the applicant would like to utilize. Since the applicant does not yet own the building, he said that they cannot check the lights out. There is also currently no electricity to the building. He said that chances are that the applicant and his employees will not be on the site very late. There was a man door near where the applicant is proposing to park his trailer and his client would like to open it up and replace it with a new door with a light above it, and also some type of new carriage light near the entrance which would contain a 75 watt bulb. He said that the lights could be placed on timers.

Mr. Hollows reviewed the technical comments contained in Mr. Lemanowicz's report dated 1/11/11. He felt that he had addressed Item #1. The edge of the pavement across the street is now shown and the edge of pavement has been extended in both ways (on the side of the subject property, also). As to Item #2, he said that all he needs to do is add a legend to his drawing stating what is existing and is proposed with regard to the contours and spot shots. He said that Item #3 is more of a legal question and has to do with an encroachment onto the subject property by the driveway serving the property to the east.

Mr. Bisogno said that Mr. Neville has spoken to the neighbor about the encroachment, however he does not intend to ask him to remove it. He said that they would rather not enter into any easement, and have no objection to it continuing there.

With regard to Item #4A, Mr. Hollows said that they are proposing to make the parking stall for the storage trailer gravel, rather than paved since the trailer will not be moving in and out all the time. Under the Ordinance, gravel is considered to be pavement, but they felt that the gravel would provide more drainage. However, if the Board insists it be paved, it will be paved. He said that item #4B has to do with curbing and he had already mentioned why curbing is not proposed. Item #4C concerns hairpin striping which is shown on the revised plan. Item #4D notes that the Ordinance requires them to have an elevated sidewalk and they really cannot do that. He said that they are working with an existing building and he did not see the point in digging it out because it works the way it is currently. He said that they intend to remove the existing landing and install brick pavers.

With regard to Item #3, Mr. Lemanowicz said that the landscape plan shows that about half of one of the trees along the property line is going to encroach on the gravel driveway (or gravel driveway is going to encroach upon a tree, one way or the other), making the tree possibly ineffective. He was not sure if the northernmost evergreen is going to be able to survive if a vehicle is going to be banging into it or if it is trimmed so that a car will fit.

Mr. Bisogno felt that that is something that could be adjusted in the field. He said that, maybe it will interfere and maybe it won't, however it is something that the applicant will work with the engineer on and locate it.

Dr. Behr said that, looking at the location of the gravel drive and the amount of space there, it doesn't look like there is some kind of solution for planting a tree in that area that would allow the tree to survive.

Mr. Lemanowicz said that, scaling off the plan, the trunk of the evergreen is about 2' off the edge of the gravel. So even as a freshly planted tree, it is going to be up against the cars and eventually the evergreen trees will "bush out" and someone is going to get tired of their car getting scratched. He did not think that there will be a spot for that tree because you have the parking lot on the other side and the front bumper of a car on the subject property is only going to be about 4' from the trunk of the tree. He said that it just didn't seem that leaving the encroaching gravel driveway from the adjoining property is going to work.

Mr. Hollows said that, if they can work it out, it would allow another couple of feet. He said that you could still park a car there in something that is 9' wide and it would allow a couple more feet for the tree. He said that they have about 2' now and that would give them 4'. Realistically, he felt that the tree is going to rule and take over and the homeowner will either shorten up their parking stall or move it to another location.

In response to Mr. Lemanowicz, Mr. Hollows said that the existing tree near the driveway encroachment is a spruce.

Mr. Lemanowicz suggested replacing the one spruce with two columnar evergreen trees which would not need as much space and still serve the purpose. With regard to the gravel parking area for the trailer, he said that gravel in a parking lot that is driven over on a fairly regular basis does pack to become impervious. In this case, if the trailer isn't moved often, it really isn't going to become impacted except for the narrow area of the tire tracks. Therefore, he felt that there would be some benefit to leaving it gravel.

Referring to Item #5, Mr. Hollows said that a handicapped parking stall has been added to the plan. He said that Item #6 has to do with the parking stall sizes which he felt he had already addressed. He said that Item #7 has to do with conflicts of moving cars around. He felt that, realistically the easterly side of the parking lot will fill up with standard vehicles for the employees and on the westerly side the work trucks will go out to a site and so that area would be open in order to get the trailer out. He did not believe there will be a conflict and said that it is an "operational type of thing".

In response to Mrs. Raimer, Mr. Hollows said that there is no reason for trucks to back out onto Union St. Tractor trailers will come down Union St. and back into the site and pull forward to exit the site.

Referring to Item #8, he felt that it is more of a comment. In response to Mr. Lemanowicz, he said that he had not applied a turning template for tractor trailers to the site, however he did not foresee a problem, noting that there is a 45' aisle between the parking stalls.

Mr. Lemanowicz noted that, based upon Mr. Neville's testimony, there will be a total of 13 vehicles.

Mr. Hollows replied that there may be an instance when someone will have to pull a work vehicle out and put their car there. He said that Item #9 speaks to the landscaping plan that has been revised from input from David Welch, Shade Tree Commission member. With regard to sight triangles, he said that there are no grade problems here and the reality is that the adjoining property has a garage on it. Although there is a stop bar shown, one will have to edge out a little bit because you cannot see past the garage when looking towards Main St. As to Item #10, he said that a stop sign and stop bar have been added to the plan. As to Item #11, he said that it was explained that the concrete pad is for loading and the use of a forklift. As to Item #12, he said that rain barrels will be added, as well as an overflow pipe to a storm drain on Union St.

In response to Mr. Fagnoli, Mr. Hollows stated that Mr. Neville would like to use the water in the rain barrels to water his landscaping.

With regard to Item #13, he said that there will be a depth of 3' from the grate to the invert. He said that Item #14 (revision to the landscape plan) has been addressed, as well as Item #15-17. He said that Item #18 concerns the easterly property line adjacent to the multi-family house. He said that the applicant is proposing to bring the board-on-board fence up to a point that is opposite the rear of that house and, at that point, the blue spruce take over as screening. He said that the fence would be too tall for the front yard. He said that they did not want to give the neighbor a closed in feeling which is why the species of the plantings along the easterly side were changed to the blue spruce – to create a natural screen rather than a fence screen.

Mr. O'Brien noted that a fence up to 4' is permitted in a front yard and 8' in side and rear yards.

As to Item #19 regarding the trash enclosure, Mr. Hollows said that it was decided that it would be in front of the building with a board-on-board enclosure around it. It will be hidden from the public because of its location near a wall with a fence on top of it and a new board-on-board fence across Lot 2, as well as a 6' x 6' dumpster enclosure. He did not know of a better location but said that he was open for suggestions.

In response to Mrs. Raimer, he said that it would be wide enough for the disposal company to enter and empty the dumpster.

In response to Mr. Lemanowicz, Mr. Neville said that the fertilizers used come in plastic bags that are returned to the site every night. He said that his dumpster (which is the same size as proposed) is currently emptied once a week.

In response to Mrs. Malloy, he said that the jugs that the pesticides come in get triple rinsed and there would be no residue left in them when they are disposed of in the dumpster.

Mr. Hollows said that he had already discussed the proposed lighting. The last item to be addressed concerned signage and he said that Mr. Neville had already indicated that he is not planning to put any signage on the building at this time.

Mr. Lemanowicz noted that the spruces are on top of the gas lateral. He asked if the gas lateral is proposed to be relocated?

Mr. Hollows replied that they will have to look into that. He said that there is a gas valve out in the street opposite their northeasterly corner and there is a meter on the building. If the gas service needs to be moved, he said that it will be moved.

Mr. Bisogno asked Mr. Hollows if he wished to address any comments in Mr. O’Brien’s report date 1/13/11?

Mr. Hollows replied that the question on the underground storage tanks is still pending. He said that the well on the subject property will be part of the clean-up of the site. He said that Union St. was just paved, therefore they cannot dig it up to connect to city water. He added that there are methods that they can put onto wells for different things. He said that the receivership has to give Mr. Neville a clean bill of health with regard to the water.

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Dr. Behr announced that there are two Resolutions of Memorialization which are scheduled for adoption this evening. They will be considered at this time after which the Board will continue consideration of the application of Hunter Property, LLC.

RESOLUTION OF MEMORIALIZATION

ROBERT & ELISA HORVOT

268 Union Avenue
Block 11510, Lot 25

#10-01Z
Bulk Variances
Development Permit
Relief for Principal Building
Setback from Critical Area

The Board of Adjustment memorialized the annexed Resolution of approval for Robert & Elisa Horvot (App. No. 10-01Z) on motion by Mr. Gerecht and seconded by Mr. Fagnoli.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, and Mr. Pesce. Those opposed: None.

RESOLUTION OF MEMORIALIZATION

RICHARD DAUNNO

437 So. Northfield Rd.
Block 10201, Lot 6.01

#10-05Z
Bulk Variances
Development Permit
Unimproved Road

The Board of Adjustment memorialized the annexed Resolution of approval for Richard Daunno (App. No. 10-05Z) on motion by Mrs. Malloy and seconded by Mr. Fagnoli.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mrs. Malloy and Dr. Behr. Those opposed: None.

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Mr. Robert Michaels, licensed professional planner, was sworn. He was accepted as an expert.

He confirmed that he has visited the subject property and was present during the testimony of Mr. Neville.

He presented the following items which were marked for identification as follows:

- **EXHIBIT A-8** – A photo board containing a series of photographs that were taped together to give a panoramic view of the property opposite the subject project taken from Union Ave.

- **EXHIBIT A-9** – A photo board containing a series of photographs that were taped together to give a panoramic view of the subject property taken from Union Ave.
- **EXHIBIT A-10** – An aerial photograph obtained from the Morris County Planning Board with the subject property outlined in red.

Mr. Michaels said that the photos contained in **EXHIBITS A-8 & A-9** were taken by David Zimmerman, who is a licensed professional planner. He explained that he was substituting for Mr. Zimmerman this evening but, in addition to visiting the site, was fully versed in this application and reviewed all of the application forms, ordinances and the Master Plan. He described the photos taken by Mr. Zimmerman. He also described **EXHIBIT A-10** and said that the aerial photography was taken in 2007. The actual map and plan on the margin of the exhibit came from the Morris County Planning Board and is dated 10/20/10. He said that you will note in the aerial photo that there are 5 tandem dump trucks parked on the subject property and the noses of the trucks are abutting Union St. He said that a couple of other vehicles were also on the site at that time. He said that the zone line between the R-4 Zone (in which the subject property is located) is coincidental with the westerly property line. Therefore, the properties to the left are in a B-1-5 Zone.

He described the relief being sought and noted that there are some pre-existing conditions on the property. The minimum lot size required is 20,000 S.F. and the property is currently undersized at 15,000 S.F. He said that there are insufficient combined side yards with 35' required and 29.38' existing. The minimum rear yard setback required is 25' and 19.9' is existing. The maximum permitted lot coverage is 25% and currently there is a lot coverage of 68.8% and, after the proposed improvements, it will be reduced to 63.8%. He said that a trucking garage is proposed for Royal Turf which is not allowed in the Zone and, therefore, a d-1 variance is needed. In relation to that, he said that there will be outdoor storage of a trailer and some truck parking outdoors as was stated by the application. The materials for the proposed use will not be stored outdoors, they will be stored indoors within the building. No vehicles containing advertising displays may be parked on the site. As was noted, the vehicles that Mr. Neville has do have advertising displays on them and they will be parked on occasion.

Mr. Hoffman replied that he was not sure the name of the business that owns the vehicle (truck) in question is required to be on there pursuant to other governmental regulations. Whether that constitutes "advertising" is perhaps a "stretch" or a "reach". But to be in the safe side, to say that you may need a variance from that prohibition in the Ordinance against advertising, then you are seeking it.

Mr. Michaels said that the applicant may not need some of the relief being sought depending on how the previous approvals that were granted are interpreted. He noted that the Ordinance does not allow off-street parking in the front yard which is an existing condition and proposed to be continued.

Mr. Hoffman said that, in terms of the use variances, the fundamental or most basic issue seems to be the fact that the use that is proposed is one that is not allowed in an R-4 Zone and perhaps a sub-part of that might be whether the applicant falls within the ambit of the prior use variance that had been granted to a predecessor so as to enable the applicant to "piggy-back" onto that and provide that as justification for the primary basic use variance, whereas the other issues are in part also in the nature of "d" variances for outside overnight parking of commercial vehicles in what is a residential zone. That is a separate ordinance requirement that apparently is not going to be fully complied with and then, to the extent it *may* be necessary, outdoor advertising, if indeed as such, is being sought. The prohibition of parking within a front yard, while indeed an Ordinance requirement, is in the nature of a type of c-variance (or bulk variance), rather than a use variance issue.

Mr. O'Brien agreed.

Mr. Michaels concurred with Mr. Hoffman's synopsis. He said that there was a copy of a 1963 Resolution in the packet and, at that time, a variance was sought and it was stated for an expansion of an existing business use now being made of the property and what was being sought at that point was the construction of a garage for parking of trucks, or a "truck garage".

Mr. Hoffman noted that there was not definition in the document as to what that may mean.

Mr. Michaels agreed and added, "Or, what the prior use was". He said that, at one point, records indicate that this property was in a non-residential zone, which he believed to be LMF. He said that, in 1937, it was in C (non-residential) Zone. So there was an existing business that occurred prior to 1963 and, in 1963, it was to permit the construction of a "truck garage", presumably for a trucking business that was already on the property at that time. That Resolution had a condition that said "There shall be no outside storage of materials or any further storage outside of the garage upon completion of the new building". He said that he was assuming that that didn't relate to the parking of trucks for a couple of reasons. One is because one thing that the aerial photo shows is that there *was* parking of trucks outside, at least in 2007 and Mr. Neville had testified that he frequently noticed trucks parked outside.

He said that the applicant must establish that special reasons exist for approval of this application and use. He said that one of the things that they need to show is that this site is particularly suitable for the proposed use. He said that some of the reasons for that are what is currently found on the subject property – the type of building and the orientation of the building. He said that the building that is there now is not a residential building, it is a garage and a commercial type of a building that cannot be readily adapted for residential purposes and has a large parking area in front. He said that it is in a mixed neighborhood on the border of a commercial zone. It has a 3-family residential use adjacent to it on one side, which is not permitted in the Zone, and there are other commercial uses that are somewhat similar including Mr. Neville's existing use and the use of Humphrey's Pest Control. He said that the applicant, as a result of this application and his use of the property, will enable an environmental clean-up of the site which is a positive aspect of this application. He said that this use is duplicative in many respects to the pre-existing use on the property, although it is less intense than the use that was approved in 1963 and pre-dated the 1963 application. He said that some of the information that Mr. Neville stated that shows that it is less intense is the months of the year in which the use occurs, the types of vehicles which are being proposed for the subject use, and the numbers of vehicles. Additionally, he said that it will also be a positive because the site plan shows improvements to the property such as the new landscaping and buffering that is proposed, the reconfiguration of the parking lot where the curb cut currently occurs across the entire expanse of the frontage of the property is going to be reduced to an ingress and egress driveway of 24' in width. He said that the property is uniquely suited for the proposed use and advances certain purposes of planning which is another aspect of special reasons that must be shown. He said that the purposes of planning are found in the M.L.U.L. in the preamble in Sec. 40:55D-2 and the ones that he felt will be advanced in this case are (a) "To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare". He said that they are advancing this because of the clean-up of the site and also because of the proposed aesthetic improvements to the property, with the landscaping, pavement, the reduced curb cut, and the general overall clean-up and maintenance of the subject property. He said that purpose "c" is to provide adequate light, air, and open space. He said that the building is not being expanded and all of the light, air, and open space that currently exist around the building will continue as is and it will be enhanced by the landscaping, in his opinion, and will help the site be developed in a compatible manner and nature with the surrounding properties. Another purpose is "g", to provide sufficient space at appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. He said that this is a proper location for this type of commercial use given the nature of what is there today and also it is compatible with the neighboring uses by the fact that it has been there for so long and has compatibly existed with those neighboring uses and the surrounding neighborhood. He said that the applicant must also demonstrate that his proposal meets the negative criteria and that it can be demonstrated that the variances can be granted without substantial detriment to the public good.

He said that he believed that he can and a lot of it relates to the number of issues that he already mentioned. He said that the public is being served by the proposed upgrading and maintenance of the site, the environmental clean-up, the landscaping, the paving, and the reduction in the curb cuts which all go towards enhancement and not being a substantial detriment to the public good. He said that the second prong of the negative criteria is that the variances can be granted without substantial detriment to the Zone Plan and Zoning Ordinance. He said that the use has been there for years and hasn't impacted the use of the neighboring R-4 properties. He added that it will also be adequately buffered from the neighboring R-4 properties that are behind and next to it. He said that the distinctive uniqueness of the parcel serves to ensure that no precedent is established. He said that it is a very unique piece of property with a unique set of circumstances that surround it. He said that the Master Plan has some language in it which he believed the applicant is helping to implement. There is a statement that says, "To uniformly encourage the upgrading and beautification of non-residential properties throughout the township, including improved business design, landscaping, signage, screening, and other site improvements". He said that the application is advancing that goal and that there are other goals that relate to various neighborhoods within the community, including Stirling. Specifically, the plan for Stirling states, "To encourage appropriate façade renovation and building maintenance to enhance the visual appeal of Stirling and to encourage private sector investment in the business district and to enhance property values in and around the study area". In his opinion, the granting of this application will help to advance those purposes and intents of the Land Use Plan. He believed that for all those reasons, the application meets all the criteria to grant the proposed use and also all of the c-variances like the parking in the front yard relate to existing conditions that are there and how we find them and they are just being enhanced. He felt that there are sufficient reasons to approve the application.

Mr. Pesce said that everyone has gone to great lengths to describe this as a trucking business, which seemed to him to be "a strain". He said that he gathered that they are doing it to get as close to begin able to "piggy-back" the 1963 variance Resolution as possible. He asked Mr. Michaels if he needed to?

Mr. Michaels replied that he did not think that they so much "piggy-back" on it as there are similarities. He said that the proposal is for a distinct different type of use – it is not a trucking operation where that is the main intent of the use (to truck materials back and forth). He said that that is an *incidental* use, but the purpose of it is to operate a lawn service business out of the site. He said that the initial variance granted in 1963 is very vague as to description. He said that he felt they are really seeking a d-variance to permit what his client is proposing to do there. He said that it has *similar* aspects, but it is not 100% similar.

In response to Mr. O'Brien, Mr. Michaels said that he would consider it to be a lawn service business.

Dr. Behr said that to say it is a lawn service business would make sense, but it is not typically what he thought of as a landscaping business.

Mr. Michaels agreed.

Mr. Hoffman asked about the variance that was referred to allowing the overnight parking outdoors (or ban on that happening) for commercial purposes in a residential zone? He asked Mr. Michaels if he felt that allowing that type of usage to take place here could arguably set somewhat of a precedent that could result in adverse consequences elsewhere in residential zones of Long Hill Township?

Mr. Michaels replied that he did not think it would. He felt that the application is seeking to allow the parking of vehicles overnight outdoors. As far as "piggy-backing" on the previous approvals and uses on the property, he said that there has been outdoor parking of vehicles over the years on this piece of property. He said that, in that aspect, they are "piggy-backing" on that old approval. He did not think that it is precedent setting because of those unique set of circumstances that you find on this property with its prior use and activities and the limited

nature of his client's activities in that there won't be that type of outdoor storage for a number of months out of the year from December to March. He repeated that he felt it is very unique.

Mr. Hoffman said that the applicant is currently seeking not only use and bulk variances, but is also currently seeking both preliminary and final site plan approval. He asked Mr. Michaels if he felt that this application is ready or ripe for this Board, at the initial hearing this evening, to grant not only the necessary and somewhat varied list of variance relief, but also site plan approval when we have letters of some duration from Mr. Lemanowicz, in particular, that detail numerous engineering and other technical requirements? He asked if it wouldn't be premature and more appropriate for the application to be bifurcated so that, if the Board finds the use and bulk variances to be acceptable, the applicant could come back at a subsequent meeting with revised plans that would hopefully clean up or remove most of the numerous site plan details?

Mr. Michaels replied that he was a consultant to a number of municipalities and lot of different boards handle applications differently. He said that he was comfortable, with proper conditions that would be established in any Resolution, or even stated at the hearing on some of the aspects that were agreed to to approve the application this evening, with those agreements. He said that that is a practice which he has endorsed in many municipalities in which he is a consultant. He acknowledged, however, that every Board has its own practices and he did not want to be presumptive as to give advice to this Board when it has its own professionals that are either comfortable or not comfortable with advising the Board whether to grant an approval with conditions. He said that sometimes they are very short minor conditions. From listening to the previous testimony, he thought there was a lot of agreement, but he said that it is really the Board's decision. He said that he was comfortable that there is enough information to approve the application at this point and he has advised Boards in the past to do that.

Dr. Behr said that he knew that we have heard testimony in relation to the various points that were listed in Mr. Lemanowicz's report, however, we will need a motion to extend the meeting if we are to continue discussion of this case. He said that the question is, how close are we to be able to rule on the case?

Mr. Fagnoli said the question Mr. Hoffman raised is, is there enough information to make a decision? He said that, in his mind, there is. He felt that it is pretty straight forward – the changes that are going to be made and a lot of the questions have been addressed.

Mrs. Raimer made a motion to extend the meeting until 11:15 P.M. which was seconded by Mrs. Malloy. All were in favor.

Mr. O'Brien said that he has some open questions from his report. He said that the gravel area to the rear of the building is shown on Sht. 2 and on subsequent sheets it is blank. He asked if there is a gravel area behind the building and, if so, what happens to it, or is it not gravel?

Mr. Bisogno replied that there is a gravel or dirt area in back of the building and it will be planted with grass or some other covering. He said that the testimony was that the gravel will be removed on the sides *and* rear.

Dr. Behr asked Mr. Lemanowicz if there were any issues that he felt could not be appropriately handled by conditions that the application has not, to his satisfaction, addressed?

Mr. Lemanowicz replied that he was trying to go through all of the information to list conditions. He said that the only thing that he was not able to do was to put some turning templates on the driveway. He said that testimony was given that there may be tractor trailers coming into the driveway and now that he had a width of Union St. to be about 26', with a driveway opening of 24', he said that he would like to see how a tractor trailer is going to get in and out. If there *isn't* enough room, he said that the alternative would be widening the throat of the driveway a little bit.

Mr. Bisogno said that the applicant will have no problem agreeing to that.

Mr. Lemanowicz said that that would be the only condition that is a little more than a “yes” or “no” at this point.

Mr. Hoffman said that he appreciated Mr. Bisogno saying that they have no problem, but what he thought he heard Mr. Lemanowicz say is that he does not want to be, nor does he purport to be a committee or subcommittee of the Board to make a decision on lessening or adjusting the width of the driveway opening – that is a Board decision to make, it is not for him after taking into account the different pros and cons on the issue.

Mr. Lemanowicz replied that there is a potential that there is going to be some adjustment that he could not quantify right now.

Mrs. Raimer asked Mr. Lemanowicz if he could quantify a range?

Mr. Fagnoli asked if we could not just say that, based upon an engineering determination the size of the driveway will be not less than 24’ or more than 35’ in width?

Mr. Lemanowicz replied that he did not have a problem in doing that if Mr. Hoffman is okay with it.

Mr. Hoffman said that, as long as it is the Board that is giving the parameters that would be acceptable.

Mr. Gerecht said that he had no problems with that.

Mr. O’Brien said that he was pretty comfortable, from an operational point of view and past experience, that a 40’ tractor trailer will fit in the driveway. He said that it will be a tight turn, but it will be possible and he did not think it will be a problem. However, he felt that a 53’ tractor trailer *would* be a problem. He felt that standard deliveries are probably 40’ tractor trailers.

Mr. Lemanowicz said that, if we put the templates on and that’s what it shows, that is what is shows. He said that he did not anticipate a range of up to 35’ but would rather have a little extra space.

Dr. Behr noted that it *would* have an impact in the front as to the trees and buffering.

Mr. Lemanowicz agreed, but reminded that the applicant is adding a considerable amount of landscaping.

In response to Mr. Hoffman, Mr. Gerecht said that the permissible range will be between 24’-35’.

Dr. Behr noted that no members of the public were present.

Mr. Bisogno stated that he had no further witnesses and had no further comments.

The Board began its deliberations.

Mr. Hoffman said that the question is should the Board, after having heard the evidence and reviewed the plans and exhibits, grant the necessary use and bulk variances together with preliminary and final site plan approval for this project?

Mr. O’Brien said that he believed that Mr. Michaels summed up the proofs rather well in that there have to be special reasons for the granting of the use variance that are rooted in the purposes of zoning and that this can meet the positive criteria by being reconciled with the Master Plan and Zoning Ordinance and that it meet the negative criteria and that it have no significant impact upon the area or the town. In terms of the bulk variances, they can prove them by either a hardship based upon the size and shape of the property, which has not been discussed

this evening, or a finding that the benefits of approving this application outweigh the detriments, as well as the negative criteria.

Mrs. Raimer said that, starting with the request for the use variance, when the applicant appeared tonight it was stated that this is a trucking business and she was really struggling. However, when Mr. Michaels testified and explained that it does not necessarily have to fit within the criteria of a variance for a trucking company, but just a simple request for a use variance, she felt a little more comfortable. She felt that Mr. Michaels did an excellent job of explaining the special reasons that exist and that the site is particularly suited for the proposed use. She said that it is an existing garage and has a parking area in front. She said that she was not going to spend a lot of time thinking about what was allowed by the last variance in 1963 because she did think that it needs to be applied here. She said that this is a mixed neighborhood and that you can walk several feet in one direction and be on a commercial property and several feet in the next direction and be on a residential property. Therefore, she was hard pressed to say that it fits within one type of zone rather than another – it is a mixed zone. She said that there are commercial uses surrounding this site, as well as multiple residential uses surrounding the site. She said that the area in front of the garage is exactly what Mr. Neville needs for the type of business that he is seeking to run out of this location. It meets the positive criteria, particularly so with the environmental clean-up that is proposed. She said that a less intense use of the site is proposed than what existed there before with the months of use being slightly less than which was occurring on the property with the prior commercial use. There are new landscaping and buffering plans for the property and the new landscaping plan should help with the water on the property. She felt that the improvements to the façade and gutter system are tremendous benefits that will allow the positive criteria to be met. She felt that the applicant has adequately shown that he has met the negative criteria. She noted that it is a unique piece of property and said that it is difficult to picture a residential use occurring on a property that is really just a garage. She felt that the public will be well served by the upgrading and maintenance of the property and, particularly so, by the renovation of the site and, most importantly, by the environmental clean-up. Having discussed those reasons, she felt that it is quite easy to establish that the applicant has met the criteria for the bulk variances, as well, if you rely on the criteria for the benefits outweighing the detriments. With regard to the preliminary and final site plan approval, she said that that was a little trickier for her. She said that there were some discrepancies in the engineering reports. She got the sense that there was a tendency to agree with that which Mr. Lemanowicz was proposing but there seemed to be some open areas and she was not quite sure if all of those open areas can be reconciled comfortably with Mr. Lemanowicz, so she would defer any decision on those site plan approvals until a later date.

In response to Mr. Hoffman, Mrs. Raimer agreed that she would, in effect, bifurcate or separate out that part for the Board to deal with at a subsequent time unless it can be squarely established what those details are that need to be ironed out right here and right now with very detailed criteria for how they will be worked out. She did not know if they can be because Mr. Lemanowicz has listed conditions so long that she was still counting. She said that she was comfortable granting the use and bulk variances.

Mr. Bisogno said that the applicant has some time constraints that he is trying to get by and that is the reason they are pressing for the site plan approval.

Mrs. Raimer asked Mr. Bisogno to help her understand that time constraints.

Mr. Bisogno replied that are in regard to closing and contract conditions as to when they have to satisfy certain conditions. He said that he had some personal problems that he must address and that he will not be able to be present at a meeting in May, therefore he was looking to get it done now. He felt that Mr. Hollows' testimony covered, in detail, Mr. Lemanowicz's comments. He said that it would be very helpful if his client could get the full approval (site plan and variance) so that he could move forward.

Mrs. Raimer replied that she has just one vote and she was not sure if her colleagues will agree.

Mr. Fargnoli asked if there was a "drop dead" date as to the contract?

Mr. Bisogno replied that he did not think that it will fall apart and that the seller will probably extend the time for an approval. He did not want to mislead the Board and say that the deal will be cancelled, but he said that there is a *possibility* that that may happen.

Mr. Hoffman said that, assuming the Board were to go along with what Ms. Raimer stated, at a minimum we could produce, with the assistance of the Board Administrator and himself, a letter stating that at tonight's meeting of the Board of Adjustment, a motion was adopted listing the types of approvals granted, all of which will be memorialized at a subsequent date. He said that the applicant would then have something tangible in hand that could be shown to the seller or attorney, who is the receiver, to create good faith.

Mr. Bisogno replied that he did not know what position he will take and that his best judgment is that he has every interest in cooperating with the applicant, but he was not positive.

Mr. Gerecht concurred with Mrs. Raimer on the issue with the use variance and bulk variances. He believed that it is a less intense use. He said that he has seen the property with all of the big dump trucks on it. He felt that the property will be made better and less ominous to the neighborhood. He did not ever see the property being used for residential purposes. He said that he had less of a problem with approving the site plan aspects. He did not believe that there are that many problems with it and, in effect, that there was a lot more of a consensus than there was disagreement. He believed that the issues can be dealt with between the engineers and they can come up with some conditions. He believed that the renderings that were presented are pretty much applicable to the property – to use it to adapting to property nicely, to being landscaped and adding grass and making it less commercial-like, so that it will look more pleasant to the eye and agreeable. He said that he would have no problem approving both the site plan and variances.

Mr. Fagnoli agreed. He said that the property looks like it has been used for commercial purposes since the 1930's and this is a case where zoning is less than useful. He said that it is a mixed use neighborhood and has been so forever. He felt that the benefits will definitely outweigh the negatives. He also felt that it will better protect the watershed. He said that he was in favor of the use and bulk variances and did not have a problem with the site plan. He said that he had confidence that the site plan details can be handled.

Mr. Ruiz agreed. He said that his main concern was the remediation aspect of the application being so close to the flood plain. He felt that the proposal will help tremendously. He said that he had no problem approving the application.

Mrs. Malloy said that she agreed with Mrs. Raimer. What disturbed her in a case like this is watching the way the town has planned over a series of years. She wished that there was more consistency amongst each Board so that we do not wind up with this "mish-mash" of commercial and residential which seems to be "pock-marked" throughout the entire Township. She said that it made her wonder the best way to vote on this. She said that she would think that if the property is in bankruptcy, the receiver would be the most interested person to commence in the amount of remediation but, unfortunately, that is not the case. She questioned if it will promote the welfare of the person who is interested in purchasing it – obviously, because it is his business and he wants to run a good one out of this. She felt that the best thing to say is it better that somebody is coming along and desiring to fix it up in the way that was described rather than just leaving it there to look deplorable in a residential area as well as being a possible detriment in terms of environmental hazards. She felt that it is better to do something with it than to do nothing. She said that she will approve the application.

Mr. Gerecht did not feel that Mrs. Malloy was clear in what she was approving.

Mrs. Malloy replied that she was approving the variances. In terms of the site plan, she felt that the engineers need to work that out.

Dr. Behr asked Mrs. Malloy if she was approving both?

Mrs. Malloy replied, "Yes".

Mr. Pesce said that he was in support of the bulk variances. However, he felt that the Board should take the time to get the conditions worked out before approval is granted for site plan approval. It struck him that there are a lot of things that need happen here independent of the Board. He said that the clean-up is not going to happen overnight and he doubted that there are people lining up to buy the property, therefore he felt that the seller will work with the applicant to deal with whatever extension is necessary to clean it up and do it right.

Dr. Behr felt that the applicant has sufficiently met his burden of proof in demonstrating that special reasons exist that would support the approval of this application. He said that they have been recited by several other Board members and he was not going to dwell on them. He felt that it is important to recognize that this is atypical in some ways because it really is a very mixed use. He said that there are a lot of trucks around and it looks like a commercial area in many ways. He said that there are many positives about what has been done here and those positives far outweigh the negatives and support the purposes of planning as the applicant has testified. He said that the applicant has met the challenge for negative criteria. He said that he would vote to approve the use. With regard to the site plan, he said that he reviewed the notes he took in connection with Mr. Lemanowicz's report and they demonstrate that he felt that the applicant has testified that he is in agreement and will comply with all of Mr. Lemanowicz's comments. Therefore, he said that he would also vote to approve the requested preliminary and final site plan.

Mr. O'Brien said that, should the Board be so inclined to as to approve this application, he and Mr. Lemanowicz will list the conditions and provide them in writing to Mr. Hoffman.

Mr. Hoffman added that he may also have his own suggested changes or additions, which normally occurs.

Mr. O'Brien and Mr. Lemanowicz stated the conditions they had noted.

Mr. Gerecht made a motion to grant the necessary use and bulk variances together with preliminary and final site plan approval, all of which will be set forth with appropriate conditions in a subsequently adopted Resolution of Memorialization. Mrs. Malloy seconded the motion.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Pesce, and Dr. Behr. Those opposed: None.

The meeting adjourned at 11: 27 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator