

ORGANIZATIONAL MEETING
MINUTES

Tuesday, January 8, 2013

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Mrs. Dawn Wolfe, Planning & Zoning Administrator, called the meeting to order at 8:05 P.M. She then made a statement that adequate notice of this meeting had been made by e-mail to the Echoes-Sentinel and Courier News and had been posted at Town Hall and filed with the Municipal Clerk on Wednesday, December 12, 2012.

PLEDGE OF ALLEGIANCE

OATH OF OFFICE

Mrs. Wolfe administered the Oath of Office to reappointed member Thomas Behr; newly appointed member Jerry Aroneo; and reappointed 1st Alternate Michael Pesce.

ROLL CALL

On a call of the roll the following were present:

Thomas Behr, Member
John Fagnoli, Member
Jerry Aroneo, Member
Edwin F. Gerecht, Jr. Member

Michael Pesce, 1st Alternate
Richard Keegan, 2nd Alternate

Barry Hoffman, Board Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Twp. Planner
Dawn Wolfe, Planning & Zoning Administrator

Excused: Sandi Raimer, Member
Maureen Malloy, Member
Felix Ruiz, Member

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ELECTION OF CHAIRMAN

Mrs. Wolfe opened the Nominations for Board of Adjustment Chairman for the year 2013. Mr. Gerecht nominated Dr. Behr. There were no further nominations. Mr. Pesce seconded the nomination and the Board unanimously reappointed Dr. Behr to the Chairmanship.

ELECTION OF VICE CHAIRMAN

Mr. Pesce nominated Mrs. Raimer as Board of Adjustment Vice Chairman for the year 2013. There were no further nominations. Mr. Gerecht seconded the nomination and the Board unanimously reappointed Mrs. Raimer to the Vice-Chairmanship.

PREPARATION OF ANNUAL REPORT ON VARIANCES HEARD BY ZONING BOARD

It was agreed that the Planning & Zoning Administrator will prepare the Annual Report on Variances Heard by the Zoning Board, as required by NJSA 40:55D-70.1. Copies of the report and Resolution, when adopted by the Board of Adjustment, will be forwarded to the Township Committee and the Planning Board.

PLANNING & ZONING ADMINISTRATOR'S APPOINTMENT

Dr. Behr read the following Resolution.

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that Dawn V. Wolfe be reappointed Planning & Zoning Administrator until the Organizational Meeting of January 2012. The Planning & Zoning Administrator will hold office hours at Town Hall, 915 Valley Road, Gillette, N.J., Mondays, Tuesdays and Thursdays 8:30 A.M. to 4:30 P.M., Wednesdays 8:30 A.M. to 6:30 P.M. and Fridays 8:30 A.M. to 2:30 P.M.

All members present were in favor of Mrs. Wolfe's appointment.

Mrs. Wolfe thanked the Board members and said that she enjoyed working with all of them.

Dr. Behr allowed time for the Board members to read the Board Attorney's appointment as follows:

ATTORNEY'S APPOINTMENT

WHEREAS, the Long Hill Township Board of Adjustment requires professional legal services which shall include but not be limited to attendance at meetings, preparation of administrative documents and correspondence, legal research, consultation with the Board Members, Administrator, and other municipal personnel, as well as with legal representatives of applicants, and miscellaneous legal services (except for litigation and certain other types of services such as (a) Any litigation handled for the Board; (b) Any extensive or major redrafting of Township ordinances; (c) Drafting of resolutions on applications for development and for other matters coming before the Board; (d) Review of easements, deeds, agreements or documentation pertaining to formation of a planned development, condominium, homeowners' association, or the like; and (e) Other matters requiring attendance at conferences, work sessions, etc., out of the office; and providing advice as a non-fair open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5); and

WHEREAS, the anticipated term of this contract is (1) year; and

WHEREAS, the Law Firm of Bernstein & Hoffman has submitted a proposal dated December 4, 2012 indicating that it provide the legal services at a rate of Five Hundred and Fifty (\$550.00) Dollars per meeting (or \$183.33 per hour) for attendance at meetings, and an hourly rate of \$158.00 for other types of legal services including those embraced herein above and those set forth above in Items (a) – (e); and

WHEREAS, the Law Firm of Bernstein & Hoffman has completed and submitted a Business Entity Disclosure Certification which certifies that the Law Firm of Bernstein & Hoffman has not made any reportable contributions to a political or candidate committee in the Township of Long Hill in the previous one year, and that the contract will prohibit the Law Firm of Bernstein & Hoffman from making any reportable contributions through the term of the contract; and

WHEREAS, in addition, this contract is for professional services and may be awarded without public bidding pursuant to N.J.S.A. 40A:11-5(1)(a)(i); and

WHEREAS, the Township Chief Financial Officer, in accordance with N.J.A.C. 5:34-5.1, has certified in writing to the Township Committee the availability of adequate funds to pay the maximum amount of the contract;

NOW, THEREFORE BE IT RESOLVED, by the Board of Adjustment of the Township of Long Hill, in the County of Morris, State of New Jersey as follows:

1. A professional services contract with Bernstein & Hoffman, Attorneys at Law, 2253 South Avenue, Suite 8, Scotch Plains, N.J. 07076 is hereby authorized.
2. The Board Chairman and Planning & Zoning Administrator are authorized to sign a professional service contract with Bernstein & Hoffman, in accordance with the following terms and conditions:
 - A. Term: A period not to exceed 12 months
 - B. Rate: \$550.00 (or \$183.33 per hour) per meeting and \$158.00 per hour for other legal services as stated in Items (a) – (e) above
 - C. Services: The firm shall provide professional legal services.
3. The Planning & Zoning Administrator, in accordance with the provisions of N.J.S.A. 40A:11-5(1)(a)(i), is directed to publish a notice once in the Echoes-Sentinel stating the nature, duration, service and amount of this contract.
4. The Planning & Zoning Administrator shall make copies of this resolution available for public inspection at the Municipal Building, 915 Valley Road, Gillette, New Jersey, during regular business hours.
5. This contract shall be charged to 13-01-21-185-185-236. The certification of available funds by the Township Chief Financial Officer shall be attached to the original resolution and shall be maintained in the files of the Planning & Zoning Administrator.
6. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this Resolution.

All members present were in favor of Mr. Hoffman's appointment.

Mr. Hoffman said that it was his pleasure to serve the Board for another year.

PLANNING CONSULTANT'S APPOINTMENT

WHEREAS, the Long Hill Township Board of Adjustment requires professional planning services which shall include but not be limited to attendance at Board Meetings; field work, research and writing; and any other task assigned by the Board of Adjustment; and providing advice as a non-fair open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, the anticipated term of this contract is (1) year; and

WHEREAS, the Firm of Shamrock Enterprises, Ltd. has submitted a proposal dated December 7, 2012 indicating they will provide the planning services at a rate of Five Hundred and Fifty (\$550.00) Dollars per full Board meeting and an hourly rate of \$125.00 for all other planning services, including field work, research and writing; and any other task assigned by the Board; and

WHEREAS, the firm of Shamrock Enterprises, Ltd. has completed and submitted a Business Entity Disclosure Certification which certifies that the Firm of Shamrock Enterprises, Ltd. has not made any reportable contributions to a political or candidate committee in the Township of Long Hill in the previous one year, and that the contract will prohibit the Firm of Shamrock Enterprises, Ltd. from making any reportable contributions through the term of the contract; and

WHEREAS, in addition, this contract is for professional services and may be awarded without public bidding pursuant to N.J.S.A. 40:11-5(1)(a)(i); and

WHEREAS, the Township Chief Financial Officer, in accordance with N.J.A.C. 5:34-5.1, has certified in writing to the Township Committee the availability of adequate funds to pay the maximum amount of the contract;

NOW, THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Long Hill, in the County of Morris, State of New Jersey, as follows:

1. A professional services contract with Shamrock Enterprises, Ltd., Madison House, 866 Madison Ave., Rahway, N.J. 07065 is hereby authorized.
2. The Board Chairman and Planning & Zoning Administrator are authorized to sign a professional service contract with Shamrock Enterprises, Ltd., in accordance with the following terms and conditions:
 - A. Term: A period not to exceed 12 months
 - B. Rate: \$550.00 per Board meeting and \$125.00 per hour for all other work including field work, research and writing and any other task assigned by the Board
 - C. Services: The firm shall provide professional planning services
3. The Planning & Zoning Administrator, in accordance with the provisions of N.J.S.A. 40A:11-5(1)(a)(i), is directed to publish a notice once in the Echoes-Sentinel stating the nature, duration, service and amount of this contract.
4. The Planning & Zoning Administrator shall make copies of this resolution available for public inspection at the Municipal Building, 915 Valley Road, Gillette, New Jersey during regular business hours.
5. This contract shall be charged to 13-01-21-185-185-238. This certification of available funds by the Township Chief Financial Officer shall be attached to the original resolution and shall be maintained in the files of the Planning & Zoning Administrator.
6. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this Resolution.

All members present were in favor of Mr. O'Brien's reappointment.

Mr. O'Brien said that it was his pleasure to serve the Board

ENGINEER'S APPOINTMENT

WHEREAS, the Long Hill Township Board of Adjustment requires certain technical and/or professional services hereinafter described as Engineering Consulting Services which shall include but not be limited to the following: serve as the general engineering consultant to the

Board of Adjustment; attend all meetings of the Board of Adjustment as requested; advise the Board of Adjustment on all engineering matters under their jurisdiction; the Consultant shall be available for consultation by telephone at all reasonable times; represent the Board of Adjustment as its Professional Engineer pursuant to N.J.S.A. 40:55D-24; review site and subdivision plans, as requested; prepare special reports, plans, studies, applications, and similar work, as requested; testify on behalf of the Board of Adjustment before Commissions, Agencies, or Courts of the State of New Jersey, as requested; and perform any other related engineering work, as requested; and

WHEREAS, the anticipated term of this contract is (1) year; and

WHEREAS, Remington, Vernick, & Arango Engineers., has submitted a proposal dated December 18, 2012 indicating they will provide engineering services at a rate of One Hundred Eighty Three Dollars and Thirty Three Cents (\$183.33) per hour to attend night meetings. An hourly rate of One Hundred and Twenty Five Dollars (\$125.00) will be billed for engineering services for all other work including field work, research writing, and any other task assigned by the Board; and

WHEREAS, the firm of Remington, Vernick & Arango Engineers has completed and submitted a Business Entity Disclosure Certification which certifies that the Firm of Remington, Vernick & Arango Engineers has not made any reportable contributions to a political or candidate committee in the Township of Long Hill in the previous one year, and that the contract will prohibit the Firm of Remington, Vernick & Arango Engineers from making any reportable contributions throughout the term of the contract; and

WHEREAS, in addition, this contract is for professional services and may be awarded without public bidding pursuant to N.J.S.A. 40A:11-5(1)(a)(i); and

WHEREAS, the Township Chief Financial Officer in accordance with N.J.A.C. 5:34-5.1 h as certified in writing to the Township Committee the availability of adequate funds to pay the maximum amount of the contract;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Long Hill, in the County of Morris, State of New Jersey as follows:

1. A professional services contract with Remington, Vernick & Arango Engineers, 300 Penhorn Avenue, 3rd Floor, Secaucus, NJ 07094 is hereby authorized.
2. The Board Chairman and Planning & Zoning Administrator are authorized to sign a professional service contract with Maser Consulting, P.A., in accordance with the following terms and conditions:
 - A. Term: A period not to exceed 12 months.
 - B. Rate: \$183.33 per hour to attend night meetings; and \$125.00 per hour for other engineering services as stated above.
 - C. Services: The Firm shall provide professional engineering services.
3. The Planning & Zoning Administrator in accordance with the provisions of N.J.S.A. 40A:11-5(1)(a)(i), is directed to publish a notice once in the Echoes-Sentinel stating the nature, duration, service and amount of this contract.
4. The Planning & Zoning Administrator shall make copies of this Resolution available for public inspection at the Municipal Building, 915 Valley Road, Gillette, New Jersey during regular business hours.
5. This contract shall be charged to 13-01-21-185-185-237. The certificate of available funds by the Township Chief Financial Officer shall be attached to the original Resolution and shall be maintained in the files of the Planning & Zoning Administrator.
6. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this Resolution.

All members present were in favor of Mr. Lemanowicz's reappointment.

Mr. Lemanowicz expressed his appreciation and said that he looked forward to working with everyone in 2013.

Mr. Gerecht made a motion to waive the readings of the following items up to and including the “2013 Board of Adjustment Calendar” which was seconded by Mr. Farnoli. All were in favor.

CALENDAR ORDER OF BUSINESS

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that the Calendar Order of Business shall be mailed or given to each member of the Board on or before the Friday before each designated meeting.

Pursuant to the requirements of Section 13 of the Open Public Meetings Act, agendas for Regular and Special Meetings of the Board of Adjustment will be posted at Town Hall as required.

NOTICE OF PUBLICATION

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that the following newspapers are designated to receive Notices as required by the Open Public Meetings Law:

- 1) Courier News
- 2) Echoes-Sentinel

All notices required by the provisions of the Open Public Meetings Law shall be furnished the newspapers designated for such purposes.

NOTICE OF MEETINGS

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township, pursuant to the authority of Section 14 of the Open Public Meetings Law that the sum of \$20.00 annually is hereby fixed as a reasonable sum to be prepaid the Planning & Zoning Administrator by any person desiring notice of all Meetings to cover the cost of providing said notice. All requests to be made to the Planning & Zoning Administrator.

MINUTES

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township:

- 1) The minutes of the regular public meetings shall be sent to the Board of Adjustment members and that a copy of said minutes be posted at the Town Hall. By this procedure and/or unanimous agreement of the Board Members, the reading of said minutes shall be waived. Copies will be sent to the Board of Adjustment Attorney, the Township Engineer, the Township Planning Consultant, and the Township Library. Copies will also be made available to the public upon request. The charge for such copies of Minutes will be as determined by Township Ordinance.
- 2) A recording will be made of all Public Meetings and will be retained for two years or until after the conclusion of the appeal time or the conclusion of any litigation, whichever is later. Members of the public may listen to any tape by contacting the Planning & Zoning Administrator and establishing a mutually convenient time and place for the review. Arrangements for transcripts can be made through the Planning & Zoning Administrator.
- 3) The cost of providing copies of audio recordings of meetings to any person desiring the same shall be in accordance with the annual fees established by the Township committee for copies of public records..

MEMBERSHIP – NEW JERSEY PLANNING OFFICIALS

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that the Board approves the application for membership for 2013 in the New Jersey Planning Officials at the established annual fee for 2013.

MEETING CUT-OFF

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that, as a matter of procedure, it is the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any regular or special meeting of the Board unless a motion is passed by the members then present to extend the meeting to a later specified cut-off time. Further, that this notice shall be made part of published operating procedures for applications to this Board and shall be announced at the opening of each meeting.

MEETINGS (EXECUTIVE AND REGULAR) FOR 2012

BE IT RESOLVED by the Zoning Board of Adjustment of Long Hill Township that meetings, in general, will be held on the first and third Tuesdays of each month with the following exceptions: in January, the Board will meet on the second and fourth Tuesdays, and in July, August and December, the Board will only met on the first Tuesdays. Unless otherwise scheduled, all meetings will begin at 8:00 P.M. (or immediately following an executive session if deemed necessary) in Town Hall, 915 Valley Rd., Gillette, N.J. Following is the Regular Meeting Schedule. If deemed necessary, Executive Session meetings of the Zoning Board of Adjustment will be held in Town Hall, 915 Valley Rd., Gillette, N.J. on the same dates as listed below at 8:00 P.M. *prior* to the regular meeting.

2013 BOARD OF ADJUSTMENT CALENDAR

January 8, 2013 – Organizational Meeting – 8:00 PM	June 18
January 22	July 2
February 5	August 6
February 19	September 3
March 5	September 17
March 19	October 1
April 2	October 15
April 16	November 5
May 7	November 19
May 21	December 3
June 4	

After discussion, Mr. Gerecht made a motion to adopt the following amended Budget for 2013 for submission to the Township Committee which was seconded by Mr. Ruiz. All were in favor.

2013 BUDGET

BE IT RESOLVED BY THE Zoning Board of Adjustment of Long Hill Township that the following Budget for 2013 is approved for submission to the Township Committee:

<u>ACCT. NO.</u>	<u>ITEM</u>	<u>BUDGETED 2012</u>	<u>BUDGETED 2013</u>
21-185-185-101 & 101	Salary/Wages	\$ 35,233.04	\$ 35,589.00
21-185-185-201	Miscellaneous	50.00	50.00
21-185-185-203	Office Supplies	600.00	600.00
21-185-185-205	Postage	- 0 -	- 0 -
21-185-185-206	Printing	350.00	350.00
21-185-185-209	Conventions/Conferences.	350.00	350.00
21-185-185-211	Equipment/Service Agreements	150.00	150.00
21-185-185-213	Legal Advertising	150.00	150.00

21-185-185-214	Publications	425.00	425.00
21-185-185-219	Dues/Membership	200.00	200.00
21-185-185-227	Shorthand Reporter	- 0 -	
21-185-185-236	Legal	500.00	500.00
21-185-185-237	Engineering	- 0 -	200.00
21-185-185-238	Planning Consultant	300.00	300.00
21-185-185-260	Preparation of Minutes	-0-	1,800.00
21-185-185-271	Education/Training	<u>150.00</u>	<u>150.00</u>
		\$ 38,458.04	\$ 39,014.00

DISCUSSIONS

PUBLIC PARTICIPATION IN BOARD OF ADJUSTMENT HEARINGS

Dr. Behr said that at the efficiency meetings that the Board conducted in October, one of the recommendations was that we do a better job communicating to the public about our process and what the public’s role is. He distributed a draft of an announcement that would be given to the members of the public when they come in or simply left on the table that explains the role of public participation in Board of Adjustment hearings.

Mr. Aroneo asked Mr. Hoffman if there was any reason that this wouldn’t be a document that would be supported by law.

Mr. Hoffman said that he did not see anything within the document that supplants the State Statute. He said that it just brings it down to common understanding and he was in favor of it.

Mr. Aroneo thanked Mr. Hoffman and said that he felt that the document would be extremely helpful for the public that may want to attend meetings.

Dr. Behr said that he has found that the public can find the Board hearings confusing and frustrating they want to have their moment to speak their piece. He said that our process does not allow them to make statements until all of the testimony has been presented and he felt that this document will help people understand that they *will* be heard and we *want* to hear them but we must follow a process.

Mr. Keegan felt that it would be helpful to define what a planner is. He said that, before he joined the Board, he attended a series of meetings in his previous town. He said that having a document like this would have been great but having a brief definition of what a planner and perhaps an engineer as well would be beneficial. He said that unless the public coming in has served on a board in the past, they come in totally blind and don’t know that they can bring in their own professionals and what those professionals may be.

It was suggested that it may be helpful to add “professional engineer, architect, planner and/or attorney”.

Mr. Pesce suggested a short paragraph that talks about the fact that the Board of Adjustment is assisted by 3 professionals and the applicant may well have their own professionals so that they understand who is sitting before them.

Mr. Gerecht felt that, at minimum, “attorney and planner” should be added.

Dr. Behr said that he would add a paragraph at the top stating that the Board is served by its consultants and the Planning & Zoning Administrator. He said that he would like *not* to get into defining an attorney, engineer, architect, and/or planner if it can be avoided because that will cause the document to be longer than one page.

Mr. Gerecht felt that it might be a good idea on a separate sheet, but not on the document being discussed.

Dr. Behr said that he was also thinking about what our real world experience is. He said that the last time that we had members of the public appoint their own professionals was the greenhouse in Meyersville when they brought a planner in to testify about the Great Swamp Greenhouse. He said that there were some members of the public who were quite opposed to it and they brought in their own planner. He said that that was the last time in many years that he could recall something like that happening.

Mr. O'Brien recalled that that was in 2004-2005.

Dr. Behr said that, if the Board is comfortable, he would make those changes and keep the document to a simple page and bring it back at the next meeting.

Mr. O'Brien felt that the fact that the titles are included at least alert the people that these types of things exist and they can do research as necessary.

PROPOSED ORDER OF PROCEEDINGS

Dr. Behr explained that this is what the Board worked on in October and distributed copies to the members. He said that it was basically approved but he wished to point out a couple of key things. He said that it is really important for us as Board members to be focused and organized so that we deal with one set of issues at a time and try and get that resolved so that we are not coming back to issues again and again because that slows the process down unnecessarily. He said that the challenge for the Board is to make sure that it is on point and have thought about the application well enough to plan questions ahead of time. Secondly, he said that it is the best practice to allow any witness to completely give his/her testimony *before* the Board or its consultants ask questions. During the testimony, he said that Board members and consultants should make notes of their questions and when they are finished, the meeting will be opened for questions. He said that part of his responsibility is to periodically summarize where we are, what we agreed to, and what is open so that the meeting can progress.

VALLEY ROAD BUSINESS DISTRICT ELEMENT OF THE MASTER PLAN

Dr. Behr said that the Valley Road Business District Element of the Master Plan was approved by the Board on June 26, 2012. He said that it was being distributed to the Board members because we are going to be receiving an application for Valley Road. He felt that it was critically important that the Board be aware of the Master Plan. He asked the Board members to read the document carefully.

In response to Dr. Behr, Mr. O'Brien said that his recollection was that the revised Valley Road Ordinances have been prepared and forwarded to the Township Committee for review.

Mr. Aroneo agreed.

Mr. O'Brien said that it is up to the Township Committee to pass them, change them, or deny them.

Dr. Behr added that, until the Township Committee approves an ordinance, the Board must follow the ones that are currently on the books.

Mr. O'Brien agreed and said that the current ordinances were written in response to the 1996 Master Plan.

In response to Mr. Pesce, Dr. Behr said that the application on Valley Rd. is coming to the Board of Adjustment and concerns what is known as the Kurz property. He asked Mrs. Wolfe if the applicant is still known as Greenhill Development.

Mrs. Wolfe replied that the (new) applicant is known as GH @ Long Hill, LLC, however it is the same James Luke who was the principal of Greenhill Development. She said that he has chosen to bifurcate his application and come before the Board of Adjustment for a use variance only as a first step. She said that the application has been filed, however it has not yet been deemed complete.

In response to Mr. Hoffman, Mrs. Wolfe said that the new application includes more properties than the original concept plan.

In response to Dr. Behr, Mr. O'Brien agreed that the property is currently zoned for office use.

Dr. Behr said that the application proposes to bring in some retail and residential uses as well as a gas station with a convenience store.

Mr. O'Brien added that two big box stores are also proposed.

Mr. Aroneo said that the no "Big Box Ordinance" has been passed.

Mr. O'Brien agreed and said that that is why it requires a use variance because it is over 30,000 S.F. (which is what defines a "Big Box" store).

In response to Mr. Pesce, Mrs. Wolfe agreed that, if the use is approved, the applicant will return in the future for site plan approval.

Referring back to the former Kraft application, Dr. Behr said that the applicant is not required to provide detailed architectural drawings, however it was the Board's practice with the Kraft application for the same process to get a very clear idea of the kind of building they were looking at because part of the Board's ability to weigh acceptance or denial has to do with the scope and the appropriateness of the building. He said that he believed that that would be the Board's approach again this time.

Mr. O'Brien said that while the Board is reviewing the use variance aspect of the application, which means that the applicant must prove that there are special reasons that are rooted in the basis of zoning, that they meet the positive criteria and that it can be reconciled with the Master Plan and the Zoning Ordinance, and lastly that it meets the negative criteria and that there be no negative impact upon surrounding properties or upon the Township as a whole. He said that, as you review those items, the elements of site plan do become important and there is a certain level of detail that has to be given. He said that, in the depth of the site plan, you have to go down a certain amount to have an idea of how the site will function and whether or not it will work for the use that is proposed, but you are not entitled to go down every single detail - just roughly what it looks like and how it works and whether or not you are satisfied that the use would work on the site.

In response to Mr. Aroneo, Mr. O'Brien said that you have to meet the special reasons, positive criteria and negative criteria – all 3 aspects for a use variance.

Dr. Behr said that "special reasons" really is saying that this is particularly suitable.

Mr. O'Brien replied that that is one of the tests that can be used or you can take a look at the basis of zoning and the MLUL and it can meet certain of those purposes and goals.

Mr. Hoffman said that there are different variations and each judge who had the privilege of dealing with municipal zoning over the years has put his own spin on what special reasons are. He said that some have said that they can be that the site is particularly or specially suited and others have said that special reasons can be the advancement of one or more of the purposes of goals of planning and zoning, which are listed at the beginning of Sec. 40:55D-2. He said that furtherance of one of those criteria can be deemed a special reason. He added that if it is a type of use (that these would not be) that is deemed to be inherently beneficial, then they get a free ride and skip right ahead to the negative criteria. Therefore, he said that there are different "niches or cubbies". He said that in the term "special reasons" you have to look further to gain a true picture of what the positive criteria would be for any given application.

Dr. Behr asked if it would be useful to copy a few pages from Cox that deal with this for the Board members.

Mr. O'Brien replied that you might want to do this as part of/in response to the application as an educational aspect. He then reviewed the general principle of a bifurcated application. He also explained that a use variance runs with the land forever.

Mr. Hoffman added that an applicant must perfect his/her use variance through the obtaining of a site plan and that has its own two year limitation.

Mr. O'Brien said that, hypothetically, a Board of Adjustment could actually approve the use, but when the applicant comes in for site plan approval you and you find out that it takes up 100% of the lot and there are no setbacks, you can actually vote the site plan application down and the applicant would need to seek new site plan approval.

Mr. Hoffman said that a use variance is good indefinitely it is just that if the applicant fails to break ground and proceed with the project within that two year period, he is subject to a change in zoning which could nullify the benefits that he obtained when getting the use variance. He said that the two year site plan period is a protective period for him. It doesn't run forever.

Mr. Pesce asked if the ordinances which are now pending before the Township Committee would have an impact, theoretically, on such an application.

Mr. O'Brien replied that they would not have any impact because those ordinances do not affect these lands because they are zoned Office and they continue to be zoned Office. He said that the Valley Road ordinances apply to other lands along Valley Rd., but not these.

Dr. Behr quoted from Pg. 2 of the Valley Road Business District Element of the Master Plan and said that it "shall encompass the area of Valley Road between the intersection of Main Avenue and Valley Road in Stirling and the intersection of Morristown Road and Valley Road in Gillette". He said that this property falls within the Valley Road Business District.

Mr. Aroneo said that he could explain that. He said that it was in the part of the study but when the ordinances were actually drafted that was a conscious decision left on the table and it was decided to leave those properties out of the rezoning for various reasons. He recalled that the big reason was to buffer the area from the highest density development.

Mr. O'Brien added that there were also some other factors at work including possible preservation of land. He said that just because it was in the study area doesn't mean that they had to do anything.

Mr. Pesce said that the only reason he asked is obviously from a timing perspective. He said that if this was going to happen and have an effect, the applicant ought to know that, but it sounded to him like it doesn't matter.

Mr. Lemanowicz said that it doesn't matter anymore because the law that was passed a year or so ago changed so that the ordinances which affect an application are those that are place *at the time an application is deemed complete*.

Dr. Behr said that the reason he mentioned the Master Plan is that it struck him that the Master Plan *does* apply.

Mr. O'Brien disagreed and said, "Not the Valley Road Master Plan, no". He said that the Planning Board studied the entire area, however it chose not to include a large number of properties that are in that study area and only included certain properties in the new business district zone and those are the ones that are enunciated in the Ordinance that has been forwarded to the Township Committee.

In that case, Dr. Behr said that we are saying that the language of the Valley Road Business District of the Master Plan does not apply to this property even though it falls within the study area.

Mr. O'Brien replied, "Correct". He said that the reason for that is that it is not in the Valley Road Business District Zone.

Dr. Behr said that it is a very fine point. To the extent that the Board of Adjustment is guided by any Master Plan language for this property, he said that it will be the 1996 Master Plan.

Mr. O'Brien replied that that is correct but that also does not foreclose the fact that Board members can look at the Valley Road Master Plan and say that it applies to ¾ of Valley Rd. between Morristown Rd. and Main Ave. and why can't the applicant consider unifying design with what else exists on Valley Road. He said that that is entirely up to the Board.

Dr. Behr felt that it is awkward that so critical a property that is in a gateway location isn't here, however he said that that will be dealt with once the application comes in.

Mr. O'Brien said that there is language in the Office Zone that is in the Master Plan that does severely restrict the uses that can go on it as well as the design element...(indiscernible). He said that, if you have a copy of the Master Plan, it is there.

Mr. Gerecht asked O'Brien to extract it so that the Board members do not have to go looking for it.

Mr. O'Brien asked Mr. Gerecht if he wanted it as part of this pending application or prior?

Dr. Behr replied, at such time as the application comes in.

APPROVAL OF MINUTES

The (executive and regular session) minutes of July 17, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Keegan. Mr. Pesce and Dr. Behr abstained as they were not present at those meetings. Mr. Aroneo abstained as he was not a member of the Board at that time.

The (executive session) minutes of September 4, 2012 were approved as written on motion by Mr. Pesce and seconded by Mr. Gerecht. Mr. Fagnoli abstained as he was not present at that meeting. Mr. Aroneo abstained as he was not a member of the Board at that time.

The (regular session) minutes of September 4, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Pesce. Dr. Behr and Mr. Fagnoli abstained as they were not present at that meeting. Mr. Aroneo abstained as he was not a member of the Board at that time.

The (executive and regular session) minutes of October 2, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Pesce. Mr. Fagnoli abstained as he was not present at that meeting. Mr. Aroneo abstained as he was not a member of the Board at that time.

The (regular session) minutes of October 16, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Fagnoli. Mr. Pesce abstained as he was not present at that meeting. Mr. Aroneo abstained as he was not present at that meeting.

There being no further business the meeting adjourned at 8:50 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator