

ORGANIZATIONAL MEETING
MINUTES

Tuesday, January 4, 2011

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Dawn Wolfe, Planning & Zoning Administrator, called the meeting to order at 8:02 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 15, 2010.

PLEDGE OF ALLEGIANCE

OATH OF OFFICE

Mrs. Wolfe administered the Oath of Office to reappointed members Edwin F. Gerecht, Jr. and Sandi Raimer and reappointed 1st Alternate, Christopher Collins.

ROLL CALL

On a call of the roll, the following were present:

- Thomas Behr, Member
- John Fagnoli, Member
- Edwin F. Gerecht, Jr. Member
- Joseph Pagano, Member
- Sandi Raimer, Member
- Felix Ruiz, Member
- Michael Smargiassi, Member

- Christopher Collins, 1st Alternate (left at 8:22 PM)
- Michael Pesce, 2nd Alternate

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

Excused: Maureen Malloy, Member

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ELECTION OF CHAIRMAN

Mrs. Wolfe opened the Nominations for Board of Adjustment Chairman for the year 2011. Mrs. Raimer nominated Dr. Behr. Mr. Gerecht seconded the nomination and the Board unanimously reappointed Dr. Behr to the Chairmanship.

ELECTION OF VICE CHAIRMAN

Mr. Gerecht nominated Mrs. Raimer as Board of Adjustment Vice Chairman for the year 2011. Mr. Fagnoli seconded the nomination and the Board unanimously reappointed Mrs. Raimer to the Vice-Chairmanship.

Mr. Gerecht made a motion to adopt the following Resolution which was seconded by Mr. Pagano. All were in favor.

PLANNING & ZONING ADMINISTRATOR'S APPOINTMENT

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., Monday through Friday, 8:30 A.M. to 4:30 P.M.

Mr. Fargnoli made a motion to adopt the following Resolution which was seconded by Mr. Gerecht. All were in favor:

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; (d) Review of easements, deeds, agreements or documentation pertaining to formation of a planned development, condominium, homeowners' association, or the like; (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 October 25, 2010 indicating that they will provide the legal services at a rate of Five Hundred and Fifty (\$550.00) Dollars per meeting and an hourly rate of \$158.00 for legal services not embraced within the basic arrangement as outlined 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 7A, 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 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 11-01-21-185-185-236. 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.

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

Mr. Fargnoli made a motion to adopt the following Resolution which was seconded by Mr. Gerecht. All were in favor.

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 October 28, 2010 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 11-01-21-185-185-238. 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.

Mr. O'Brien said that it was his pleasure to serve the Board and the people of Long Hill Township.

Mr. Gerecht made a motion to adopt the following Resolution which was seconded by Mrs. Raimer. All were in favor

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, Maser Consulting, P.A., has submitted a proposal dated November 23, 2010 indicating they will provide engineering services at a rate of Five Hundred Fifty (\$550.00) Dollars per night meeting. Night meetings will be billed at the rate of One Hundred Eighty Three Dollars and Thirty Three Cents (\$183.33) per hour for the time actually spent on a given topic. An hourly rate of One Hundred Thirty Three (\$133.00) Dollars 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 Maser Consulting, P.A. has completed and submitted a Business Entity Disclosure Certification which certifies that the Firm of Maser Consulting 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 Maser Consulting, P.A., 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 Maser Consulting, P.A., 200 Valley Road, Suite 400, Mt. Arlington, N.J. 07856 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: \$550.00 per night meeting; night meetings will be billed at the rate of \$183.33 per hour for the time actually spent on a given topic; and \$133.00 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 11-01-21-185-185-237. 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.

Mr. Lemanowicz expressed his appreciation for the support of the Board and said that he looked forward to working with everyone in 2011.

Mr. Pagano made a motion to waive the readings of the following items up to and including “Meetings – Executive and Regular” which was seconded by Mr. Gerecht. 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 2011 in the New Jersey Planning Officials at the established annual fee for 2011.

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 FOR 2011

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 Tuesday of each month with the following exceptions: in July, August, and December, the Board will only meet 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.

2011 BOARD OF ADJUSTMENT CALENDAR

January 4, 2011 – Organizational Meeting – 8:00 PM	June 21
January 18	July 5
February 1	August 2
February 15	September 6
March 1	September 20
March 15	October 4
April 5	October 18
April 19	November 1
May 3	November 15
May 17	December 6
June 7	

After brief discussion, Mr. Gerecht made a motion to adopt the following Budget for 2011 for submission to the Township Committee which was seconded by Mr. Ruiz. All were in favor.

2011 BUDGET

BE IT RESOLVED BY THE Zoning Board of Adjustment of Long Hill Township that the following Budget for 2011 is approved for submission to the Township Committee:

<u>ACCT. NO.</u>	<u>ITEM</u>	<u>BUDGETED 2009</u>	<u>BUDGETED 2010</u>
21-185-185-101 & 101	Salary/Wages	\$ 34,552.00	\$ 35,235.00
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	-0-	350.00
21-185-185-209	Conventions/Conferences.	350.00	350.00
21-185-185-211	Equipment/Service Agreements	250.00	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 -	- 0 -
21-185-185-236	Legal	500.00	500.00
21-185-185-237	Engineering	- 0 -	- 0 -
21-185-185-238	Planning Consultant	400.00	300.00
21-185-185-271	Education/Training	<u>300.00</u>	<u>150.00</u>
		\$ 37,777.00	\$ 38,460.00

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(Mr. Collins left the meeting at 8:22 P.M.).

APPROVAL OF MINUTES

The minutes of November 2, 2010 were approved as written on motion by Mr. Ruiz and seconded by Mr. Fagnoli.

RESOLUTION OF MEMORIALIZATION

TOMASINA & ADAM WAZETER

15 Lacey Avenue
Block 13701, Lot 46

#10-02Z
Bulk Variances

The Board of Adjustment memorialized the annexed Resolution of approval for Tomasina & Adam Wazeter (App. No. 10-02Z) on motion by Mr. Fagnoli and seconded by Mr. Pagano.

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

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ANTHONY & ROBYN LAKE

21 Vickie’s Place
Block 12203, Lot 20

#09-07Z
Bulk Variances
Waiver for Relief from
Stormwater Mgt. Reqts.

Present: Richard J. Brady, attorney for the applicant
William Hollows, licensed professional engineer
Anthony & Robyn Lake, co-applicants

Sharon Palmer, certified shorthand reporter

This is a continued hearing.

Mr. Richard J. Brady, attorney for the applicant, said that his clients last appeared before the Board on June 1, 2010 and that proof of service for the new notice that was provided for tonight’s hearing was submitted. He had only had one witness to present this evening, Mr. William Hollows, licensed professional engineer, who was previously sworn.

Mr. Hollows said that he was familiar with a Drainage Plan prepared by his office originally dated 7/19/10, last rev. 12/14/10, as well as the report of Thomas Lemanowicz, Board Engineer, dated 12/23/10. He said that runoff from the entire roof area of the dwelling will be collected and diverted into a subsurface drywell system located in the front of the lot. The drywell facility will include a Fluidic-Cone which is a device intended to cause a hydraulic condition that will provide for more flow restriction than a conventional diameter orifice. It will create pressure that will move stormwater out of the drywells and into the storm sewer network in the street.

Mr. Lemanowicz had no objection to the applicants’ utilization of the proposed device within the stormwater management system.

Mr. Hollows said that there is an existing stormwater detention basin that serves the subject lot and the surrounding area, noting that this facility appears to function well. He also stated that the drainage plan calls for the removal of 541 S.F. of existing impervious coverage which will be accomplished by removal of the existing rear walkway on the lot and by narrowing the width of the existing driveway. The removal of this impervious area will aid insofar as stormwater management is concerned.

Mr. O’Brien said that, at the June meeting, Mr. Lake stated that he would be working with the Construction Department to ensure that the access to the pool met current code. He asked if that was done?

Mr. Brady replied that, if approval of the application is granted, there would absolutely be closures on the doors, as well as the automatic pool closure gates on the steps. Otherwise, the rest of the pool is enclosed. He confirmed that nothing has been done to date and that the pool is closed.

The meeting was opened to the public for comments. There being none, the meeting was closed to the public.

Mr. Brady gave his summation. He said that the applicants are seeking a c-2 variance. Under the purposes of the MLUL Sec. 40:55D-2, he said that there are several portions he believed to be appropriate for consideration of this application. Specifically, subsection b that addresses to secure safety from flood and, with the stormwater management proposals being presented, this will fulfill that portion of the obligation. In addition, he said that most of the pre-existing improvements conducted by the predecessor in title, as well as modifications made by Mr. Lake, would apply to that portion of subsection g to provide sufficient space in appropriate locations for a variety of recreational uses, both public and private. With regard to the positive criteria, he said that there will be retention of the runoff from the two existing structures that now drain directly into the storm sewer system in the driveway and then into the retention system next door to the immediate neighbor to the right, if you are facing the home. He said that relief can be granted without substantial detriment to the public good and that the bulk of these conditions have been in existence for 7 years, except for the 885 S.F. portion of it. He said that it has proven not to negatively impact the community and, in fact, a neighbor testified at the last meeting indicating that he has not had any issues and it would be of most importance to him, since he is living directly adjacent to the basin previously discussed. He said that variance from the current Zoning Plan and Ordinances would not be detrimental to the residents of the Township.

The Board began its deliberations.

Mr. Fagnoli said that two things bothered him. One is the lot coverage, even though it has been reduced, and the other is the approximate 875 S.F. that was added without the required permits. However, he said that because of the proposed reduction in stormwater runoff, he felt that the benefits will definitely outweigh the detriment. He felt that all of the recommendations of the Board's consultants should be satisfied and said that he would *reluctantly* approve the application.

Mr. Gerecht agreed. He was troubled by the large expansive development of the property. He understood that at the time the dwelling was originally built, there was above ground detention to cover the as-built designs. He felt that there has been progress made in the retention of stormwater and in allowing it to flow off of the property into the existing basin in an orderly manner. He noted that there were no objections from any neighbors claiming any adverse effects on their property which he felt is one of the most important things the Board must account for. He said that he would vote in favor of the application.

Mrs. Raimer felt that how we got to this juncture is regrettable, but at this point she felt that the applicants' have done what they believe is necessary to address the stormwater runoff that they and the previous owner was responsible for and, at this point, she felt that that is all we can ask for. Using the benefits outweighing the detriments concept, she said that she would vote to grant the requested relief.

Mr. Pesce said that he was not yet a member of the Board on June 1st, however he did have an opportunity to review the recording of those proceedings. He said that it was clear that the process of getting here was a painful one, however he felt that on balance there has been some good faith in response to a difficult situation. He said that he would support the application.

Mr. Pagano agreed with his colleagues. He said that he had questions about any construction that was done without the proper permits, but then that is not something the Board is voting on or has control over. The fact that the stormwater has been reduced and that situation has been improved, led him to believe that approval of the application will not be a detriment to the

existing properties and will improve the current situation and, therefore, he said he would approve of the application.

Mr. Ruiz agreed with his fellow Board members and said that he was in favor of the application.

Dr. Behr also concurred with his colleagues. He felt that the applicants have satisfactorily met their burden of proof. He shared with the feelings of a number of Board members that there were murky circumstances around the conditions of the property that probably have not been, to his satisfaction, completely resolved. However, he said that the net result of the development of the property does represent an improvement in stormwater management for the Township, which he felt is a very significant issue. He said that he would vote to approve the application.

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Mr. Hoffman reviewed conditions of the draft Resolution to be memorialized at a later date.

Mr. Gerecht made a motion to approve the application with the conditions discussed which was seconded by Mr. Ruiz.

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

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PROCEDURAL DISCUSSION
STIRLING LIBRARY, LLC

91 Central Avenue
Block 13103, Lot 6

#07-03Z
Status Update of
Condition 2(d)

Present: Michael Gurval, principal of the applicant

Dr. Behr said that this discussion is a continuation of a deferral for the applicant to meet certain conditions for parking contingent upon the owner being able to obtain sufficient tenants for which additional *might* then be required. He said that, in the past, the Board has granted extensions from having to comply with this and that is the matter to be discussed this evening.

The Resolution of approval granted to the applicant on July 17, 2007, states that “Mr. Gurval said that he expects to have a total of eight (8) office rooms on the top floor of the building, with three (3) of the offices to be occupied by Stirling Library, LLC and with five (5) of the offices to be rented to other tenants. The witness indicated that if plans should work out well, the applicant may also place some additional offices in the lower level of the building. His goal is to have overall occupancy of the building by at least 50% professional offices of a “low impact” nature”.

Dr. Behr said that there has been some communication between Mr. O’Brien, Mrs. Raimer, Mrs. Wolfe and himself on the matter and that he had a strong opinion about what is appropriate for the Board to do, but in fairness he wanted to allow Mr. O’Brien to speak first.

Mr. O’Brien said that when the application was approved, the Board decided that they would relieve the applicant of the necessity of providing a parking lot next to the (former) Stirling Library to the left (or north) side. The proposed parking lot would have removed a huge tree and put head-in parking against a residence and would have extended down below the library. The Board decided at that time that, since the library had existed for some 40 years without any off-street parking whatsoever and that was thought to be a much more intense use than an office building, they would try to see if the street would accommodate the parking necessary for this office building. If it did, he said that the Board indicated that it would “wash its hands”, grant a final approval, and be done. The way the Resolution was worded was that the Board would look at it again in a year or when it is completely rented, whichever comes first.

A year later, the Board looked at it, however it was not completely rented. He said that the members were fairly happy with the situation and there were no negatives noted or discussed. In October, 2009, he said that the Board agreed to grant the applicant another year in hopes that the units would be rented by then. In his opinion, this Board also said that in a year we are going to make a final decision, even if it is not fully rented out, because at that point we are going to have a fairly good idea as to whether this thing works or not to put closure on it. Otherwise, it seemed to him from the reading of that record that the Board did not want this to go on year after year after year for ad infinitum and, instead, wanted to put closure on it. He said that he and Mrs. Wolfe have disagreed on that language. He said that what is in front of the Board now is, “Do you want to close this out?”

In response to Mr. O’Brien, Mr. Hoffman agreed that, if the Board wishes to close it out, it would require a noticed public hearing. He said that the adopted language in the Resolution specifically states that any final disposition or determination pertinent to this issue can only be made at a noticed public hearing in accordance with the MLUL. He said that he must say, however, his reading or spin on what the Board actually said and didn’t make a determination on, as well as what it did decide, is somewhat different from that of Mr. O’Brien. Having read and re-read the language of the Resolution, he said that he wouldn’t personally characterize action taken by the Board as having rendered any final determination. The Board looked at the presentation and comments that were made during the hearing, was satisfied that there *may* not be any essential need to construct a parking lot for 7 vehicles at the rear of the building, but that it felt at the time with the facts before it, namely only a portion of the building having been rented, it would be premature to render any final determination on that, and so the Board deferred any final disposition until it was either fully rented or a given period of time (which was 18 months) from the date of adoption of the Resolution which goes back to July, 2007. The first 18 months was up at the end of 2009 and, at that time, the Board simply carried its disposition of the issue for an additional year, bringing it to the end of 2010 and that is where it left off because the Board criteria of when this decision should be finalized had still not occurred – namely the building is not fully rented and it wouldn’t, under the language of the Resolution, be the appropriate time to make a determination on that point. On the other hand, he said that he could well appreciate the position or interpretation that we shouldn’t perhaps be carrying this indefinitely for another 5, 10, or 20 years. He said that he did not have a simple remedy for that, but he did *not* feel that the Board made a determination – it left it for a future point in time.

Dr. Behr said that he wanted to allow any Board members who wanted to ask questions to clarify in their own minds what the issues are and then simply poll the Board. He felt that the question before the Board has been stated quite clearly by both Mr. Hoffman and Mr. O’Brien. Either we make the decision to grant another year of continuance basically prolonging the decision about whether or not a parking lot has to be put in, or we make the decision to resolve it this year, in which case it would need to be a formally noticed hearing and also, the applicant would be subject to the financial burden that goes with having to actually appear before the Board at a noticed hearing.

Mr. Hoffman said that, by the same token, the applicant may benefit if the Board’s ultimate determination should be to relieve it from the responsibility to construct a parking lot. He said that one of the required revisions to the site plan was, as stated in Condition 2c, “Delete from the site plan the proposed on-site parking lot, the exterior lighting associated with such parking lot and the proposed new stormwater management facilities (detention basin, piping and inlets); and mark the plans as having been “reserved” for the possible installation of such facilities in the future, all as contemplated by or in a manner similar to that specified in Section 151.5 of the Ordinance”. He said that that is a comment that referenced the section of reserving something for possible treatment or determination in the future and was borrowed from the cited section which talks about reserving parking. In this case we are reserving a possible parking lot which is a similar type of stipulation. He said that the Resolution continues in Condition 2d, “Add the following note to the plans: The Board of Adjustment shall hold supplemental proceedings 18 months after the date of adoption of this Resolution (i.e. in December 2008) to assess whether, following the full occupancy of the building on the site, there are traffic, parking and/or circulation problems attributable to such occupancy, and whether the problems can be expected to be alleviated by the construction of a parking lot (and other facilities marked on the plans as

‘reserved’). The supplemental proceedings shall be held following the servicing/publication of notice in the manner prescribed by the Municipal Land Use Law and the Township Land Use Ordinance. The Board of Adjustment shall, following the holding of such supplemental proceedings, determine whether it would be appropriate to require the installation of the ‘reserved’ facilities (or the installation of any other site improvements, including landscaping and buffering), in which case the applicant shall promptly arrange to have the required facilities installed (within a time frame to be set by the Board) and the applicant shall post performance guarantees and inspection fees in amounts set by the appropriate Township Officials”.

Mr. O’Brien added that part of the Resolution requires that the parking issue be revisited after a “tryout” period. The Board would then consider its own observations of the area, as well as comments from the Central School staff, the Police Department, the public, the Board’s own consultants and the applicant.

Mr. Hoffman agreed.

Dr. Behr agreed that if a decision is made, it would need to be at a publically noticed hearing with the involved parties being given ample opportunity to appear before the Board. He said that one of the options that we have right now is simply to continue the matter. The other option is to say that it is time we resolve it, in which case we move into the rigor of a formal hearing.

Mr. O’Brien said that Mrs. Wolfe was kind enough to take down the colloquy on 10/20/09 and the very last three lines are: Mr. Behr: How about, all in favor of continuing this for either a year or until full occupancy? Mr. O’Brien: To no later than the end of December, 2010. Dr. Behr: With a specific date, date certain. All in favor? (All said “aye”). So, his impression was that the Board said “to a date”....

Mr. Fagnoli interrupted and said that it also said “full occupancy”. He questioned if it wasn’t an “either/or”? He asked what the understanding was of everyone who was at that meeting?

Dr. Behr replied that, in all fairness, he did not think going back and trying to recall what we meant by what we said....

Mr. Fagnoli replied that he *did* recall what he meant.

Dr. Behr said that each Board member will have an opportunity at this point to say, “What do we do now?” Since Mr. Michael Gurval, principal of the applicant, was present, he asked him to come forward and provide testimony.

Mr. Michael Gurval was sworn. He said that he resides at 41 Shawnee Path, Millington, and has owned the subject property/building for the past 5 years. He said that the building was the Township Library for a long time and had a lot more traffic than it has now. He said that he currently has 7 people in the building and has 3 more individual offices upstairs and about 1,000 S.F. downstairs that is open space and can be rented. He estimated that he probably will not have more than 5 more people. He said that he has never had a problem with parking and the only issue he has experienced is with the teachers who don’t like to park in the Central School parking lot even though there are plenty of spaces there. Instead, they park in the street in front of his building. He said that if that issue was resolved, there is enough room for another 20 cars out there. He did not see what the whole issue is and why we have to not only continue this, but continue with cost of getting plans done and all of this bureaucratic nonsense.

Dr. Behr replied that, to the best of his knowledge, Mr. Gurval has not needed to provide any additional plans.

Mr. Gurval agreed that he has not. However, in listening to tonight’s discussion he felt that he is being asked to go through the additional burden of revising the plans and doing other things to go through a formal hearing.

Mr. O’Brien replied, “A formal hearing, yes, revising plans, no”.

Dr. Behr believed that the plans that were submitted would be the plans that this Board, if they chose to do so, would utilize. He said that what has happened is that the Board has basically deferred the requirement to enact the conditions that the applicant agreed to when the approval was granted in 2007.

Mr. Gurval replied that he understood.

Dr. Behr said that, in all fairness, he felt that the Board has been very generous to date, in not requiring that the applicant do anything other than get a deferral of a decision that was already adopted, to which the applicant agreed.

Mr. Hoffman read a portion of the Resolution which states “The Municipal Planning consultant recommended (as noted above) that the proposed parking lot and related site improvements be removed from the plans and “banked” or “reserved”, with the issue to be revisited after a “tryout” period”. So, yes, the applicant had to do something with it – just put the note “reserved for possible future parking lot” on the plan.

Dr. Behr told Mr. Gurval it was not as though the Board was asking him to do something onerous.

Mr. Gurval agreed. He said that the last time that a hearing was going to be held, Mrs. Wolfe sent him a letter, advising of the required escrow, which he could not recall, but said it was a large number to go through the hearing, which he thought was onerous. He repeated that the site was that of the former Township Library and he was asked to construct a parking lot. He said that he spent a lot of money on two sets of plans - one set with a full parking lot, and then he was told that the Environmental Commission thought that that wasn't quite right and they wanted less parking spaces. During that time, he estimated that it was an 11 month period of going back and forth when he wasn't occupying the building. At that time, he said that he had people knocking on his door and asking if they could rent space. He said that the whole delay put him in a position where now he can't rent the space because the economy is different than it was before. He said that he was speaking out of a little bit of frustration. He did not see where another possible 8 cars could have an effect on the area, the street, or the neighbors. He said that he did not want to spend a lot of money to finalize this, but he would like to finalize it if it could be done in an expeditious and inexpensive manner.

Dr. Behr replied that the actions of the Board are determined by law so that, under certain circumstances, notice is required to be given and there has to be a public hearing even though the likelihood is that no one will show up or there may be no objectors. At this point, he did not know of any way that the Board could grant the relief that he seems to be requesting short of having a public hearing.

Mr. Hoffman added that the Resolution specifically says that in so many words.

Mr. O'Brien said that that was agreed to in 2007 by the applicant with the understanding that he did not have to put in a parking lot at that time which saved an incredible amount of money as opposed to coming back to the Board in a year or two and getting a final approval. He said that that was all discussed at that time.

Mr. Gurval replied that he didn't have much of a choice – spend \$100,000.00 on a parking lot, or delay the issue until such time as he knew it wouldn't be a problem.

Dr. Behr said that there is no way that the Board could have predicted the economic situation we are in and that it has been difficult for a lot of people, not only the applicant. There was every reason to believe that the applicant would be able to fill the building and then, in a year or so, the Board would be able to take a look at it and determine whether or not more parking is needed. He said that the issue right now is grant a continuance for another year or to say we will resolve the matter, in which case, we must have a public hearing. The law does not allow the Board to waive that requirement.

Mr. Gurval asked if he could have an estimate of what a public hearing would cost him?

Mrs. Wolfe recalled a figure of \$3,000.00 to appear if the applicant had come before the Board for a full hearing.

Dr. Behr replied that a full hearing may be \$3,000.00 and less than a full hearing may be less than that. He said that the applicant must pay for notice and the services of the Board's consultants and the court stenographer.

Mr. Gurval said that he could also be in a position where the Board decides that they *do* want a parking lot installed and, without full tenancy, he would have to have the additional burden of constructing a parking lot.

Mr. Fargnoli replied that that is a possibility.

Mr. Hoffman agreed.

In that case, Mr. Gurval replied that he would not have the income from the building to install a parking lot, so it is a "tough role of dice" for him, even if it is a slim possibility.

Mr. Hoffman said that who, if anyone, that shows up at a public hearing could be a significant factor in the judgment of individual Board members because, as Mr. O'Brien mentioned, the Resolution does specifically say that the Board will revisit that issue (after full occupancy of the building) and that the Board would consider its own observations of the area, as well as comments from the Central School staff, the Police Dept., the public, and the Board's own consultants and the applicant. So those are all the potential players. If nobody is interested or desirous of showing up, that speaks for it not being a subject of concern to the neighborhood, but we don't know that.

Dr. Behr said that, ultimately, the Board has got to take a look at the property and the parking and the use and reach a determination that either additional parking is necessary or additional parking does not seem to be necessary and that requiring the applicant to install additional parking would be an undue burden.

Mr. O'Brien added, and it may possibly be a detriment to the neighborhood.

Dr. Behr agreed because one large tree would be lost and there are other factors associated with the construction of a parking lot which came out at the first hearing that could conceivably cause detriments to the neighborhood.

Mr. O'Brien said that it was the very unique circumstances to this application that led the Board to take the very unusual position of extending an application out because, to the best of his knowledge, he believed that this is probably the only commercial property in the Township that has "zero" parking.

Mr. Ruiz asked Mr. Gurval if, based upon where he saw the market going in the next 12 months, he had any reason to believe that he would have greater occupancy a year from today, or are we just "kicking the can" down the road for no reason if we defer again?

Mr. Gurval replied that the Board would probably just be "kicking the can". He said that he has an elderly tenant downstairs whose 2 year lease will be up in October and he has told him that he plans to work until he can't work anymore. If that lease renews, he predicted that it might be another 2 year lease and not a long term one. He said that he has two handicapped parking spaces and the gentleman is handicapped, so he occupies one of them. He said that he did not feel that he really needs two handicapped spaces because his own business (which occupies most of the upstairs) rarely has any visitors.

In response to Mr. Fargnoli, Mr. Gurval said that he has 6 offices upstairs, 1 downstairs, and another area of about 1,000 S.F. Of those, 5 spaces are currently leased out. He said that the 3

offices upstairs and the 1,000 S.F. area downstairs are currently not occupied. He said that likely what will happen if he rents the 3 offices upstairs is that he would probably take 300 S.F. of the 1,000 S.F. area downstairs and make that a downstairs conference room for himself rather than to continue to utilize 1 of the 3 upstairs offices as a conference room, as he currently does. He said that he could not foresee himself being in a situation where he will have 5 or 6 more cars parked out front.

Mrs. Raimer asked if any of the tenancies anticipate clients or visitors in excess of a certain number, so that we have a general sense of the greatest amount that we could anticipate with full occupancy?

Quoting from the Resolution of approval, Mr. Hoffman said that “Mr. Gurval said that he expects to have a total of eight (8) office rooms on the top floor of the building, with three (3) of the offices to be occupied by Stirling Library, LLC and with five (5) of the offices to be rented to other tenants. The witness indicated that if plans should work out well, the applicant may also place some additional offices in the lower level of the building. His goal is to have overall occupancy of the building by at least 50% professional offices of a “low impact” nature”.

Mr. Gurval repeated that he occupies 5 of the offices upstairs and has 3 left. In renting the 3 individual offices, he said that he is not expecting someone who is going to have traffic come in. He said that one of the offices he is renting is for the office of a head hunter who has been there for over a year and never had a visitor. He said that that is the type of tenancy that he would expect. He said that the tenant downstairs, who uses the handicapped space, does library consulting and writes children’s books.

Mrs. Raimer asked Mr. Gurval if things were to change and the only available tenants that were interested in the vacant office space were those types of people that need to bring in clients on a regular basis, is there any way for him to restrict his types of clients or tenants that he might rent to in order to keep traffic under control?

Mr. Gurval replied that, if the economy were different, he guessed he would say “Sure”. He said that, within the last year, he has had 3 people come in and express interest in renting space.

Mr. Hoffman asked Mr. Gurval if, hypothetically, a solo practitioner such as an accountant were to want to occupy one of the rental units at a dollar rental figure that is acceptable, would he give consideration to that type of prospective tenant?

Mr. Gurval replied that that is the type of person he is looking for.

Mr. Hoffman said that what might turn out is that accountant “a” would see clients on a rare, if ever, occasions – maybe he sees his clients through the internet or over the telephone or at their locations, and he might transfer his interest to accountant “b” who might have a busy tax practice and see clients at this location on a regular basis. He said that it *can* make a difference.

Mr. O’Brien noted that Item 2 on Pg. 2 of the Resolution specifically points out that the application was both for professional offices and business offices. No health care offices were to be allowed. Among the professional office uses specifically allowed were accountants.

Mr. Hoffman agreed noting that the offices of lawyers, engineers, accountants, architects, planners and similar professions are considered to be professional offices.

Mrs. Raimer said that, if it should come to pass that at some point in time there are tons of people coming and going out of the building and there is not enough parking in the vicinity, does anybody have any recourse to say that it is the subject premises that is taking up so many of the parking spaces on the street? She wanted to know if there is anything that anybody could do in that case. She asked if the final action is not to build the parking lot and continue like this.

Mr. Hoffman said that, unless we put some kind of deed restriction against the property which would entitle that subject to remain open after final disposition to keep a “hook” in the subject,

he did not see how it could be revisited. He said that if he were the attorney for the applicant, he would strenuously object to any deed restriction of that nature, since that encumbers his property in a way that could make financing or rentals somewhat difficult or problematic. He felt that the Board has to make a decision and, whatever it is, will be permanent in nature or just carry it for another year or two. He did not feel that a final decision can be rendered and have it subject to being revisited.

Mr. Gurval said that, directly across the street, there are a number of parking places (about six) that are removed for a certain period of time due to pick-ups and drop-offs during school periods. He said that there is no parking between 7:15 and 7:40 AM and 2:15 and 2:40 PM., and so there is hardly ever anybody parking across the street. If an accountant or lawyer came in and they did have activity, there are always parking spaces there. Unless there is a special event going on at the school, there is rarely an issue.

Mrs. Raimer asked if there are any restrictions in the school parking lot such as for teachers and/or parents only?

Mr. Gurval replied that he never looked into it. However, if that was an opportunity, he would be glad to park there. He said that there are 4-6 teachers who park either in front of his building or up the street a little bit.

Mr. Gerecht said that, if Mr. Gurval rented to an accountant or a lawyer, for the most part their clients would be one or two people at a time. There would most likely be a staggered approach of visitors.

Mr. Gurval agreed.

Mrs. Raimer asked Mr. Gurval, if it were up to him, would he like a hearing and some closure, or if he would want to revisit every now and then and not have to go to the expense of a hearing to close it out?

Mr. Gurval replied that the building cannot support the financial burden of adding a parking lot right now. He said that he is basically supporting the majority of the costs of the building and his tenants pay a little bit less than the taxes. He said that he has the cost of the mortgage and upkeep. He said that the neighbors are great and he would be shocked if any of them had an issue. If there are any issues, they may be with the school because they like to park in front of his building. He did not think that the Police Dept. would have an issue. He said that his vote would be for no parking lot and he was pretty confident that his neighbor's vote would also be for no parking lot. He asked what percentage he would need in order to win?

In response to Dr. Behr, Mr. Gurval confirmed that, to the best of his knowledge, on most days there are open parking spaces at the school. He said that there are a few teachers that frequently park in front of his building and, occasionally, there were a lot of teachers that parked there and so, on occasion, he has sent e-mails or called the Administrator and they indicated that they understood and said that they would talk to the teachers. He said that it is the way it is and he did not think there is anything that can be done about it.

Also in response to Dr. Behr, Mr. Gurval confirmed that his testimony is that, if the teachers were not parking in front of his building, he would have ample parking.

Dr. Behr said that, being that building was the Township Library at one time, he could not imagine how many people were on the library staff at one time and then there were patrons using the library on a regular basis. He said that the property sustained that level of activity and parking for many, many years.

Mr. Gurval said that his major concern, even with the smaller parking lot that was proposed, was that it was going to cost probably over \$150,000.00 to put in. He said that he cannot afford that and the building doesn't support it. He did not know what he would do if the Board decided to make him put in the parking lot.

Mr. Fagnoli recalled Mr. Gurval saying that it was going to be very costly and that he wanted to see what would happen once his building was fully occupied, which was the reason the condition was put in the Resolution.

Mr. Gurval said that, if there is any chance that it would be finalized that he would *not* have to put a parking lot in, his vote would be to continue as is. He also noted that he may never have full occupancy.

Mr. Fagnoli said that the problem is if the Board does not require a parking lot and then it becomes a problem, then we have created a bigger mess which is something he was not comfortable with.

Mr. Gurval asked if it would be possible, instead of revisiting the matter every year, to wait until he *does* have full occupancy? It might be 3 years or it might be 5 years.

Mr. Fagnoli asked if the Board could do that?

Mr. Hoffman said that the Board could modify the terms or triggers of what would necessitate a public hearing.

Mr. Fagnoli asked if the Board could say that a public hearing will be held when the applicant reaches 80% occupancy and make a formula for that?

Mr. Hoffman said that the Resolution already says that there shall be a public hearing if there is full occupancy. He felt that the Board has the discretionary power to lower that number or percentage to “x”, whatever that might be.

Dr. Behr replied, “Or, keep the same number – full occupancy”.

Mr. O’Brien asked if that action would have to be taken at a public hearing to amend the Resolution?

Mr. Hoffman replied, “Yes”. He said that this speaks not only to the need for that to be done in so many words, but the reasoning for that stipulation, namely before the Board renders such a permanent relief as far as construction a parking lot, it wants to at least give the opportunity for all these potentially affected parties to come in and give their comments.

Mr. Gurval replied, “So, in order to have a long term continuance, I’d have to spend another \$2,000.-\$3,000.”

Mr. Hoffman said that a continuance would have to include the mandatory need for a final type of dispositive public hearing if there is full occupancy, or some lesser number that would trigger that that the Board might agree upon.

Mr. Gurval replied that, if there is full occupancy, we all know what the issues are and he would, hopefully, have the rent to support a parking lot.

Dr. Behr said that the Board has the option of continuing the thinking that went behind the actions that were taken to date to say that what the Board wanted was to see what happens when there is full occupancy and, until such condition is met, arguably the Board does not have the information it needs to make a decision one way or the other.

Mr. O’Brien said that Mr. Hoffman had pointed out that anything less than full occupancy requires a noticed public hearing to change that threshold.

Mr. Hoffman said that, technically, that is correct. He said that he would not lose sleep if the number were lowered to 90% occupancy but, technically, we are changing the terms that would require or excuse a public hearing.

Mr. Lemanowicz said that, in that case, there might be two public hearings because if you have a public hearing to change the Resolution now, and then next year when he hits the number, he has another public hearing.

Dr. Behr replied, “Or, we could simply take what we have now and extend it”.

Mr. Fargnoli did not think that there will be full occupancy within the next year.

In response to Mr. Pagano, Mr. Gurval said that there are 6 cars there are right now (in connection with the units that are rented).

Mr. Pagano noted that, if that number were doubled, you would have 12 cars.

Mr. Gurval felt that there is adequate parking for 12 cars.

Mr. O’Brien said that the original application called for a parking lot for 7 cars, where 21 spaces were required.

Mr. Gurval said that the lot doesn’t support that many cars.

Dr. Behr said that it seemed to him that the issues here are clear. He said that we cannot change the Resolution in any way, nor can we finalize the Resolution without a properly noticed public hearing. The applicant has been very clear in saying that that would represent, in his current condition, a financial burden. He said that the Board can try and do its best to mitigate that burden for the applicant, but the Board still has to do what the law says it has to do.

Mr. O’Brien said that we could rely upon the plans from 2007.

Dr. Behr agreed. He said that the other option is to continue for another year under the existing conditions which basically establish that, at such point, either at the end of a year or when occupancy is full, the Board will look at what is there and consider if more parking is needed. He said that there are some strong arguments for saying that the applicant doesn’t need any more parking at all, but that is something that the Board would have to decide in a meeting that is specifically directed at that question.

Mr. Fargnoli said that the condition for making a determination is not going to exist. He asked how the Board will make a determination when it does not have the information it needs?

Dr. Behr replied that that was his point. He asked the Board members if they were ready to make a decision?

Mrs. Raimer said that she was not ready to make a decision until there is full occupancy. She hated to drag the matter on and putting the applicant in a position of not knowing, but she noted that the Board is saving him a few thousand dollars while it waits to find out how many cars would be occupying the site when it really is fully occupied. She was in favor of granting another continuance.

Mr. Pesce agreed for the same reasons. He felt that it is the best way to be responsive to Mr. Gurval’s concern.

Mr. Pagano agreed that there is not information to make a final determination without full occupancy. He personally felt that it will not come to that and that the parking will remain adequate, but he said that we just don’t know.

Mr. Ruiz said that, without a doubt, the question has not been answered and that full occupancy is needed before a determination can be made.

Mr. Fargnoli agreed and asked if an extension of 18 months can be granted, rather than one year?

Mr. Gerecht agreed that it needs to be revisited the future and preferred 18 months because of the economy, or until full occupancy, whichever occurs first.

Dr. Behr concurred with the other members of the Board. He saw no harm to the public good, under the existing conditions, in granting a continuance for another 18 months or until such time as there is full occupancy.

Mrs. Raimer asked, to avoid putting ourselves in the same predicament we are in today, if the applicant returns in 18 months without full occupancy, must a decision be made at that time, or does the Board have the option of holding it open for another period? She wanted to be sure that the understanding and minutes are clear so that nobody questions in the future whether it needs to be our final determination.

Mr. Hoffman replied, “Yes”. He said that, what we would be doing 18 months from now is what we have been doing for the last two years – namely deferring making a final decision. He said that it could be deferred further.

To sum up, Mr. O’Brien said that the Board will put the matter on the July, 2012 agenda for further discussion and receipt of information from Mr. Gurval as to the status of his occupancy or, should reach full occupancy before then, it would be incumbent upon him to contact Mrs. Wolfe and schedule a public hearing. It would *not* be a public hearing in July of 2012 for the purpose of discussion.

Mr. Gerecht made a motion that the Board continue the deferring of a final determination with respect to the installation (or excuse from installing) an on-site parking lot and that it be deferred for 18 months, until July, 2012, or until the sooner date when there would be full occupancy of the building. Mr. Fagnoli seconded the motion.

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

In the interest of being accommodating to the applicant and his cost concerns, Mr. Hoffman said that Mrs. Wolfe can prepare a letter to the applicant confirming the decision made by the Board this evening rather than to require a full Resolution which will cost more money.

Mr. Gurval added that all of the tenants must be approved by the Township anyway and so when their inspection is done, it will be known when full occupancy is reached.

Mr. O’Brien confirmed that that is through the Administrative Site Plan Waiver procedure.

Dr. Behr said that the Board will know because a) of the site visit by the Site Plan Waiver Subcommittee; and b) because the applicant will tell us.

Mr. Gurval agreed.

The meeting adjourned at 10:05 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

