

**MINUTES**

**MARCH 1, 2011**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:03 P.M.

He then read the following statement:

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

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll the following were present:

E. Thomas Behr, Chairman  
Sandi Raimer, Vice Chairman  
John Fagnoli, Member  
Edwin F. Gerecht, Jr., Member  
Maureen Malloy, Member  
Felix Ruiz, Member

Christopher Collins, 1st Alternate (left mtg. @ 8:18 P.M.)  
Michael Pesce, 2<sup>nd</sup> Alternate

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

Excused: Joseph Pagano, Member

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**EXECUTIVE SESSION**

Dr. Behr announced that there is a need for the Board of Adjustment to meet in executive session to discuss personnel matters.

Mr. Gerecht made a motion to adjourn to executive session at 8:05 P.M. which was seconded by Mr. Ruiz.

The Board re-entered public session at 8:15 P.M.

Dr. Behr announced that the Board had already appointed Thomas Lemanowicz to serve the Board as its engineer through the balance of 2011 and the open issue that was discussed was a matter of his compensation.

Mr. Gerecht made a motion to approve the compensation proposal for Mr. Lemanowicz, as submitted to the Board, which was seconded by Mr. Ruiz. All members were in favor.

**APPROVAL OF MINUTES**

The Board of Adjustment approved the minutes of November 16, 2010, as written, on motion by Gerecht and seconded by Mrs. Malloy. Mr. Ruiz and Mr. Collins abstained as they were not present at that meeting.

The Board of Adjustment approved the minutes of December 7, 2010, as written, on motion by Mr. Gerecht and seconded by Mr. Fagnoli. Mrs. Raimer, Mrs. Malloy, Mr. Collins, and Mr. Pesce abstained as they were not present at that meeting.

**ANNUAL REPORT ON VARIANCES HEARD BY THE BOARD OF ADJUSTMENT**

The Board of Adjustment adopted the annexed Annual Report on variances on motion by Mrs. Raimer and seconded by Mr. Fagnoli. All members present were in favor.

(Mr. Collins left the meeting at 8:18 P.M.).

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**STONEHOUSE DIVISION, LLC**

33 Stonehouse Road  
Block 12101, Lots 34-37

**#08-07Z**

**Certificate of a Pre-existing  
Non-conforming Use**

Present: A. Gregory D’Alessandro, attorney for the applicant  
Timothy Barrett, principal of the applicant  
Frank Mileto, licensed professional planner and architect

R. J. O’Connell, certified shorthand reporter

This is a continued application.

Mr. A. Gregory D’Alessandro, attorney for the applicant, said that his client is seeking certification of a prior non-conforming use on Lots 34-37 of Block 12101 as a storage yard for construction (including landscaping) related vehicles, equipment, materials and inventory.

He said that he was not present at the two prior meetings and the applicant was represented by his brother, Douglas M. D’Alessandro, Esq., who has taken ill. He said that Timothy Barrett, principal of the applicant, and Mr. Frank Mileto, licensed professional planner and architect, are present this evening to offer additional testimony and answer additional questions.

Mr. Hoffman said that a good portion of the documents that were submitted recently came in by way of a signed certification of documents annexed to a signed statement by Mr. A. Gregory D’Alessandro, Esq. He asked Mr. D’Alessandro if he felt that that material is evidential in the same way that it would be if, for example, a principal of Stonehouse Division were to testify and provide the supporting documentation first hand?

Mr. D’Alessandro replied that his intention is to actually have Mr. Barrett go through the material that was submitted so that he could offer first hand information as to the authenticity of the information.

Mr. Timothy Barrett, principal of the applicant, was previously sworn.

Dr. Behr noted that Mr. O’Brien and Mr. Lemanowicz were also previously sworn.

Mr. D’Alessandro said that he wished to address Mr. Hoffman’s concerns and go through the 2/16/11 packet that was submitted and offer testimony on it, specifically with regards to the exhibits that were attached.

In response to Mr. D'Alessandro, Mr. Hoffman felt that, procedurally, the 2/16/11 packet should be marked for identification purposes as an exhibit and it can be accepted into evidence after supporting testimony has accurately identified it.

The 2/16/11 packet was marked *for identification* as **EXHIBIT A-7**.

Mr. D'Alessandro brought to Mr. Barrett's attention the portion of **EXHIBIT A-7** that was marked as "Exhibit A" entitled "Building Sketch". Mr. Barrett confirmed that he was familiar with the document and that it is a floor plan of the existing premises known as 33 Stonehouse Rd., which is known as Bl 12101, L 36. He confirmed that he personally measured the dimensions as shown on the floor plan and found them to be correct. He confirmed that the first floor is occupied by Barrett Roofs, Inc. and Regency Landscaping. The second floor is occupied by The Barrett Company.

Moving on to "Exhibit B", also entitled "Building Sketch", Mr. Barrett confirmed that he was familiar with the document and that it is a floor plan of the existing premises known as 84 Division Av., which is known as Bl 12101, L 34. He confirmed that he personally measured the dimensions as shown on the floor plan and found them to be correct. He said that there are currently no tenants on either floor and that the building is up for rent.

In response to Mr. D'Alessandro, Mr. Barrett said that "Exhibit C" is an updated list of the current tenants at the site including a list of each tenant's vehicles (including GVW), equipment and materials stored on site, as well as the date of commencement of occupancy. He said that he obtained the GVW of each vehicle from their registrations which were provided by the tenants themselves. He confirmed that the description of each tenant and their vehicles is accurate. He also confirmed that what was submitted in written form in "Exhibit C" supersedes his prior testimony before the Board as to the list of tenants and their list of equipment and vehicles.

Describing "Exhibit D", Mr. Barrett said that it is a list of tenants from 1997 and prior years. It includes the names of the tenants, dates of occupancy, and equipment (with some GVW's included, to the extent available). He described each of the tenants, their vehicles, and equipment stored on the site.

Mr. D'Alessandro noted that a zone change went into effect in 1997.

Describing "Exhibit E", Mr. Barrett said that it is a list of tenants from 1997 to present. It also includes the names of the tenants, dates of occupancy, and equipment with GVW's. He described each of the tenants, their vehicles, and equipment stored on the site.

In response to Mr. D'Alessandro, Mr. Barrett said that the E.R. Barrett tenant had a very large operation. In fact, he was the second largest commercial roofing contractor in the State. He said that he occupied the site from 1979 until 2002. After that, Stonehouse Division, LLC began to fill the yard other tenants to take up the space that E.R. Barrett had been using in order to offset some of their expenses.

Mr. D'Alessandro said that "Exhibit F" contains 4 aerial photographs of the site taken in/on 1979; 1987; April 12, 2004; and December 28, 2006.

Mr. D'Alessandro said that "Exhibit G" is a series of photographs. Mr. Barrett confirmed that the photos, which he and his daughter compiled, are representative of samples of the various vehicles and pieces of equipment that currently occupy the yard. They describe whose vehicles they are and their GVW. He described each photograph.

Mr. D'Alessandro stated that the legitimacy of the temporary structures identified by the Board Engineer are not a part of this application. Mr. Barrett agreed.

Dr. Behr asked Mr. Barrett to be more specific when he described "construction materials" being stored on the site.

Mr. Barrett replied that he was referring to stone, brick, slate, concrete pavers, lumber, and gravel.

Dr. Behr noted that one of the photos shows 2 trailers owned by Centamore Landscaping weighing 10,000 lbs. and 14,000 lbs. He asked if they normally have equipment on them?

Mr. Barrett replied affirmatively and said that they are towed by vehicles and so there would be more weight there than just the trailers themselves.

Mr. Gerecht asked if the materials shown being stored on site by Regency Landscaping is typical of what is normally stored there, or is it more or less than normally stored on a daily basis?

Mr. Barrett replied that it does fluctuate with less being stored in the summer time. He noted that the photos were taken during this winter.

Mr. Lemanowicz asked if the photos of the D'Urso Landscaping red dump truck which indicates a GVW of 25,950 lbs. (one shown with a trailer and one without a trailer) is the same truck? He noted that only one is listed on the inventory.

Mr. Barrett replied that it would be reasonable to conclude that there it is the same truck.

Mr. Pesce asked how the years of the aerial photos were chosen? He was curious to know why there wasn't one in 1997.

Mr. Barrett replied that he did not know the answer.

Mr. D'Alessandro replied that Mr. Barrett's brother, Rannny, provided them and they were the only ones he could find. He said he was searching for aerial photos where you could actually see the yard.

Mr. Hoffman asked what the earliest date was that any equipment/vehicles used by a landscaping contractor utilized the subject property?

Mr. Barrett replied, when E. R. Barrett moved out, that is when landscape contractors were brought in. He believed that it was in 2002. He said that the Poly Kite Decks, Inc. and All Weather Crete, Inc. operations did have some landscaping materials on site, however they were not landscapers. He added that, in roofing, they used Bobcats to remove existing roofs. He added that stone and lumber was used in roofing, as well as concrete pavers, so there is some crossover.

In response to Mr. Hoffman, Mr. O'Brien agreed that the year in which the zoning of the subject property changed from light industrial (including manufacturing type uses) to office use was in 1997, which was 5 years prior to the inception of the landscape business testified to by Mr. Barrett.

Mr. D'Alessandro asked Mr. Barrett what the hours of operation of the landscapers are versus the hours of E. R. Barrett roofing contractors?

Mr. Barrett replied that they are pretty much the same, although he added that the roofing contractors may have started earlier in the summer time because of the heat by an hour or so.

With regard to the size and weight of the equipment used by the landscapers versus the size and weight of the equipment used by the roofing contractor are the same. He said that the E.R. Barrett Company and the National Roofing Company had more employees than the landscapers "by a long shot". He said that there were more materials stored in the 1970's and 1980's than there is now.

Mr. D'Alessandro asked if the activities of the landscapers in totality, based on their hours of operation, types of equipment, materials, and numbers of employees, are similar to those activities of the roofing contractors?

Mr. Barrett replied, "Substantially, yes". He said that there has been a great deal of fuss made about snow plowing and they did not use roofing trucks for snow plowing, which landscapers tend to do but, other than that, they are absolutely identical.

Mr. D'Alessandro asked Mr. Barrett, before 1997 when there was a snowfall, what had to be done in the yard?

Mr. Barrett replied that the yard had to be plowed out because trucks were coming and going. He said that they had their own plow truck (and still have it) and plowing was done early in the morning mostly prior to when the employees arrived. He said the landscapers come to the yard now, get into their trucks, and drive away. He said that there has been a juxtaposition of everything on the site and the neighbors probably don't even know it. He said that they have never received any complaints.

Mr. Hoffman asked if there was some earlier testimony indicating that there were some earlier users of the site that had as their critical component the installation and removal of insulation?

Mr. Barrett replied, "Absolutely".

Mr. Hoffman asked for the earliest date of the insulation business that stored vehicles and equipment on the site.

Mr. Barrett replied that that was when the site was first occupied by National Roofing, in 1966, adding that insulation is an integral part of the roofing business. By building code, he said that you can't put a roof up without putting insulation in.

Mr. Hoffman asked if it is the same roofing contractor that does insulation, or is there a separate or subcontractor who does the insulation?

Mr. Barrett replied that the same contractor does both.

Mr. Hoffman referred to some of the photos which contain insulation trucks and said that they do not say anything about general roofing work – they talk specifically about the task of insulation.

Mr. Barrett replied that Paulsen Insulation specializes in insulation that is put underneath roofs or on walls. He agreed that the general roofing contractor and the insulation specialist might be performing work on the same job site.

Mr. Hoffman recalled from prior testimony that there were some gaps in terms of continuous utilization of the property by insulation contractors or specialists. While that type of activity or business may go way back, he said that it has not necessarily been continuous all the way down to the present date. He asked Mr. Barrett if that would be an accurate or inaccurate statement?

Mr. Barrett replied that it is "a little bit of both". He said that the insulation business relating to the roofing business has probably been there continuously since 1966. He noted that All-Weather Crete and Polylite Roof Decks were also in the insulation business. He said that such tenants come and they go.

Mr. Hoffman recalled in prior testimony, that irrespective of the length time of prior users of this type, the applicant was agreeable to stipulating that there be a restriction that no leasing, rental, or use of the property may occur by towing companies.

Mr. Barrett agreed.

Mr. Hoffman said that, similarly, while we may not have gotten into a detail of a precise definition of what constitutes a fleet of vehicles, there was some type of general understanding that fleet usage would not be an activity that would be conducted at all on this site. He said that his understanding of a fleet vehicle, as distinguished from the various trucks and equipment that we have heard testimony on this evening and in the documents submitted, a fleet vehicle is something that is used for the very function and purpose of transporting people or equipment from place to place. Its reason for existence is to travel from one destination to another as distinguished from contractor's vehicles which go from an office or storage location, such as here, to a job site. Fleet vehicles might go from one building to another but not to perform services, just to deliver somebody there such as a school bus, taxi cab, or messenger service. He asked Mr. D'Alessandro if he agreed.

Mr. D'Alessandro replied that a roofing contractor has a fleet of vehicles that he takes to and from various job sites which is different from Mr. Hoffman's definition.

After further discussion, Mr. Hoffman agreed that there are difficulties in defining what is meant.

Mr. O'Brien said that he felt that they are using the word "fleet" but seem to be going towards using fleet as a *use* of vehicles rather than an *number* of vehicles. He felt that "fleet" more accurately refers to a number of vehicles which may be of the same use or the same ownership, either of which would be accurate. But if you are looking for a particular uniform use, such as a school bus, limousine, or deliver van, then both numerically it could be a fleet and, in terms of use, the use is whatever it is.

Mr. Barrett said that he did not have any problem stipulating that the property would not be used for the various uses that were characterized such as taxi cabs, limousines, bus fleets, or transportation of people in vehicles. He said that it would not of the basic character of the usage to date and that would be the proverbial "apples and oranges".

Dr. Behr said that it seemed to him there is a very clear difference between vehicles which are engaged in construction related activities and vehicles whose primary purpose is the transportation of people.

Mr. Barrett replied that he totally agreed.

With regard to snow plowing, Mr. Hoffman asked if any vehicles are utilized either by landscapers who store on the property, or other contractors, for off-site snow plowing operations?

Mr. Barrett replied, "Yes sir, there are".

Mr. Hoffman asked if there are any restrictions or limitations as to the hours and days when that type of activity might come into play?

Mr. Barrett replied that there have not been to date and that, when it snows, they plow. It could be any time of the day or night or on a Saturday, Sunday, or a holiday. In response to Mr. D'Alessandro, he said that prior to 1997 when it snowed, the site would be plowed during sporadic hours depending upon the weather. However, they would not typically plow at 2:00 A.M.

Dr. Behr asked what percentage of vehicles on the site prior to 1997 would be engaged in leaving the site and snow plowing?

Mr. Barrett replied, "None", except for the plowing of his house.

Dr. Behr said that he felt a differentiation had been made between snowplowing to clear your own property and snowplowing as a gainful employment where trucks are leaving the site and, for fees, are going to plow people out in the surrounding area.

In response to Mr. D'Alessandro, Mr. Barrett said that he did not believe that the snowplowing has had any impact since they come and park their cars, get into a plow truck, and leave. He said that there is no warm up and they do not make much noise. He said that there has never been a complaint to his knowledge. He estimated that there have been 5 or 6 snowplows on the site in total.

Mr. D'Alessandro noted that clarification was sought in connection with Armenti Contractors.

Mr. Barrett said that Armenti Contractors have some interior storage which he believed to be a 20' x 20' area in a building out in the yard space which is identified as a 2 story frame warehouse containing 11,740 S.F.

In response to Mr. D'Alessandro, Mr. Barrett said that Royal Turf stores their chemicals in their own building in Stirling and does not store chemicals at the subject property.

Also in response to Mr. D'Alessandro, Mr. Barrett said that there has been liquid waterproofing on the site since 1966. He described liquid waterproofing as asphalt emulsions and asphalt coatings that are in a fluid liquid state.

Again in response to Mr. D'Alessandro, Mr. Barrett said that Centamore Landscaping has purchased a new vehicle which is included in the current list of tenants and vehicles. He agreed that, over time, the tenants will get rid of their current equipment and replace it with new equipment and, depending on the size of the vehicles, there will be some fluctuation. However, the basic character of use is going to remain the same.

Mr. Barrett said that the two trailers next to Royal Turf belong to Barrett Roofing. The two pick-up trucks belong to Royal Turf employees who drive to the site each day. The pick-up trucks are generally not parked on the site overnight.

He said that GEP, a previous tenant, operated out of 84 Division Ave. as long since moved out. He said that they took photographs and turned them into paintings and stored picture frames in two trailers in the yard which are substantially similar to the trailers stored in the yard by Barrett Roofing and other tenants.

In response to Mr. Lemanowicz's comment that "The applicant should expand the testimony as to how this type of general storage relates to the original storage of equipment and construction materials relating to the office uses on the site", Mr. Barrett replied that the usages are unchanged.

Mr. Lemanowicz said that the reason he brought it up is that the storage of photographic material doesn't appear to relate to roofing, landscaping, or any other construction type activity. While that particular use is no longer on site, in the future he wanted to avoid something like that coming back in and storing something else in a truck. He wanted to make sure that it was on record how a general storage truck, as opposed to a construction vehicle, related to that.

The 2/16/11 packet was then marked into *evidence* as **EXHIBIT A-7**.

Mr. D'Alessandro noted that the December 3, 2010 submittal contained "Exhibit H" which is a property appraisal of the subject property by Bruce L. Carlin, CA-S, I.F.A.S, dated 1/30/96.

Mr. Hoffman said that, quite apart from the fact that "Exhibit H" is in the nature of hearsay documentation produced by a real estate appraiser, he had reservations as to why it would, in any case, be evidential or relevant to a d-68 nonconforming use certification type of proceeding. He asked how it has any relevancy to the current proceeding at all.

In response to Mr. D'Alessandro, Mr. Barrett said that it was submitted for two reasons. The first was that he wanted to provide some historical reference that would be helpful and would show the building sketches and photographs.

Mr. Hoffman interrupted and said, including the fact that was noted separately by both Mr. Lemanowicz and himself that the real estate appraiser, or whoever assembled his appraisal, flipped the references to the building rooms so that he had what belonged on one exhibit on the opposite one and vice-versa.

Dr. Behr said that he appreciated Mr. Barrett's desire to be helpful to the Board, but his helpfulness is in direct relation to the proofs that are required given the relief that is requested. He shared with Mr. Hoffman a sense of puzzlement about why the real estate information would be useful. He felt that Mr. Barrett had already identified that some of the data provided in the document is simply inaccurate and, therefore, not helpful in its own right.

Mr. Barrett replied that it talks about storing roofing materials and roofing equipment also, with the date and notation that this is what the property was used for, which he felt was evidential.

Mr. Hoffman said that, topically, it might indeed be evidential, however the author of the document who is representing what those activities were is not here. He said that Mr. Barrett *is* here and the Board can cross examine and question him as to any statements he makes, reminding him that he is under oath. He said that he was perfectly comfortable that that is entirely appropriate. The author of the real estate appraisal, however, is not here and to the extent that anyone might have questions or reservations as to his statements, he is unable to be cross-examined.

Dr. Behr asked Mr. D'Alessandro if there is any evidence pertinent to the matter before the Board in the real estate information that the Board has not already heard?

Mr. D'Alessandro replied that it is mostly duplicative of what has already been testified to. He said that there is limited information in it and he submitted that it is a business record that was requested by Barrett Roofing in conjunction with their estate planning and other business purposes in 1996. He said that it was mostly offered to the Board for the photographs contained in it that depict the yard, as well as a brief description of what is in the yard – various vehicles, equipment, materials, etc.

Dr. Behr said that it has been the long history of the Board *not* to allow testimony where there is not the opportunity for both the Board members, consultants and public at large (should there be any) to cross-examine whoever is providing testimony and that opportunity does not exist in this case, nor did he believe that there is anything substantial in the report that has not already been heard.

Mr. D'Alessandro agreed that the Board has heard testimony from Mr. Barrett that is contained in the appraisal. He then asked the Board if they had any general questions regarding the application, noting that there has already been two meetings of testimony. He felt that the applicant has tried to recap the latest submittals and summarize the information that the Board wanted to hear. Rather than to become repetitive, he said that if the Board had any questions of Mr. Barrett or Mr. Mileto, that might be appropriate.

Dr. Behr asked the Board members and consultants if they had any further questions. There were none. He also noted that no members of the public were present. He called for a 10 minute recess, followed by a summary by Mr. D'Alessandro.

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Before giving his summation, Mr. D'Alessandro said that he had some questions of Mr. Barrett. Since 1997, he asked him ever intended to abandon the use of the storage of construction vehicles or materials on the site?

Mr. Barrett replied that he did not and that there was no overt act to let that use go away. Even though he has always had tenants come and go, he said that he has always tried to re-rent the premises, noting that he is actively trying to rent a building and does not intend to give up the use



to use the yard for the storage of vehicles, equipment, and materials relating to construction contractors.

Mr. D'Alessandro gave his summation. He said that he has submitted a legal memorandum to the Board and Mr. Hoffman and he felt that we substantially agree on the points of law relative to this application. In order to have the certification of continued use that the applicant is seeking, he said that they need not show that the use is exactly the same as it was in 1997. He said that everyone will agree that it is "substantially similar", which does not mean exactly the same. In terms of determining whether something is substantially similar or not, he said that the Board needs to look at the totality of the circumstances and not just look at what type of contractor might be there. He said that it is a qualitative measure of what types of vehicles and equipment are on the site, how they used the site - has there been an exacerbation of the use? He said that, in this particular application, he submitted to the Board that there is really no difference between a roofer and a landscaper and how they use the site. There has been much testimony that the vehicles are the same and there are no more or less of them or more traffic coming in and out of the site. With regard to snowplowing, he said that there has been testimony that there is really no difference to an outsider that it makes any more noise or traffic. He said that there might have been one big tenant there at one point, like E.R. Barrett, and they left and there are now a bunch of smaller tenants but that doesn't mean that it is a substantially different use and it is considered to be a lawful continuation and not something that would disqualify it as a substantially similar continuing use. He said that there are a couple of examples of what is a substantially similar use and he cited them in a legal memorandum. He said that there was a case where they were parking 1 ½ ton trucks and they were later replaced by 6 ton trucks and that was not deemed to be a substantial difference. He said that there was a site that was manufacturing music boxes and they turned over and later they put in tenants that were manufacturing blades and glasses and that was not deemed to be substantially different. He noted the Stop & Shop case where Saks Fifth Avenue was replaced with a Stop & Shop and that was not deemed to be a substantially different use. He said that cases where it *has* been deemed to be substantially different uses include a restaurant which later brought in live entertainment and became more of a discotheque, even though they served some food.

He said that there has been substantial testimony by Mr. Barrett and Mr. Mileto that their equipment, vehicles, types of employees, and the totality of the operation is substantially the same. He noted that no neighbors have complained and there was testimony from neighbors that they couldn't tell the difference between what was going on before and now and to them it is all the same. He felt that that is probably one of the biggest measures of the totality of the situation – how it impacts the neighbors.

Finally, he said that there has been no abandonment of the use. In order for there to be an abandonment of the use, he said that there has to be *an intent* to abandon it. The mere fact that a tenant might leave is not deemed an abandonment. He said that you need some overt act in order for there to be an abandonment and, in this case, there hasn't been. He said that tenants have come and gone and the owner immediately sought to replace the tenants with new tenants that are substantially the same, therefore there has been no abandonment.

He said that it all comes down to, what is the difference between a roofer and a landscaper, and how do they operate their business? He submitted that there really is no difference even though there wasn't a landscaper there before 2003, they are substantially the same. He said that there has been substantial testimony that the roofing business has been going since the 1960's and the insulation business has been operating on the site since before 1997. They have all been continuous uses and their activities, vehicles, and equipment are all substantially the same as that of a landscaper and there should be no reason that a landscaper would not be allowed or not be deemed a substantially similar use. For those reasons, he said that he hoped the Board will approve the application and allow his client to continue its use with regard to the storage of construction related vehicles, equipment, and materials on site, including those of a landscaping contractor.

The Board began its deliberations.

Mrs. Raimer said that the applicant seeks a certification to permit the continued indoor and outdoor storage of equipment, machinery, materials and vehicles incidental to the use and operation of the roofing and construction related businesses that are taking place at the premises right now. In order to qualify for this nonconforming use status, she said that the use must have existed at the time of the ordinance change and the use must have been continuous. She said that we have established that the ordinance change was in 1997, but what we need to figure out is whether or not the use was continuous. She felt that the applicant's attorney and the applicant, himself, has clearly established that a roofing contractor occupied the site since then and he continues to occupy it now, regardless of the size of the roofing contractors that might exist there now. She said that the landscapers, on the other hand, have *not* been there continuously since 1997. They have been there since 2002 or 2003, at best. She said that a variety of types of contractors which have vehicles and equipment, to her, are not necessarily the same. She said that the applicant opines that the use of similar trucks and equipment makes the landscape contractors *similar* to the pre-existing roofing company, and she did not agree. She noted that the applicant's counsel also pointed out that the uses don't have to be identical. She did *not* consider them to be sufficiently similar, let alone identical, for the following reasons: she said that there may be *some* similarities but, in her opinion, the hours and days of operation *do* differ. She said that some of the landscapers perform off-site snow plowing and that is different than roofing. The volume and type of the equipment may be different and, although there is some modest overlap, the materials are different. To her, it is a dissimilar use. For those reasons, she said that she would grant the d-68 non-conforming use certification, but *only* insofar as it relates to the roofing business. She said that her approval would exclude the landscaping contractors and any other contractors that did not exist at the site since 1997.

Mr. Pesce said that he was "on the fence" on this one. He said that, certainly, the uses are not "apples to apples" – they are also not "apples and oranges". He felt that they are more akin to "peaches and nectarines". He said that it is close, however he said that he would come down on the side of the uses being sufficiently similar and continuous to be in favor of the application. He said that he was, frankly, more troubled by the snow removal operation because he *did* think that is a "different animal". He said that he was also persuaded by the fact that there seems to be no significant negative impact to the neighbors or the people that the Board ought to be protecting in a consideration of an application like this. In a close call, he said that he would support the application.

Mrs. Malloy said that she felt the same way that Mr. Pesce did. She said that it is hard to make a clear decision in terms of the continuous use or in terms of the kinds of trucks that are on the property. She did not see a big difference between the roofing trucks and the landscaping trucks and felt that they are both pretty much similar in terms of the volume, amount of noise, and the coming and going. She said that she happens to live in the area of the property and she said that we are talking about somebody's business that has been there for a number of decades. At the same time, it is abutting a number of residential properties and this particular applicant had no control over the fact that those residential properties were going to be occurring at the same time his business was going on and he was occupying the space. While it may not be the most sightly location, and there are two different kinds of uses going on at the same time (the residents and the businesses), one right next to another – but that is Long Hill. She said that we have Cumberland Farms right in the center of Division Ave. next to a number of different residential properties around it and that is the character of our town – it is a "little hodge-podge". She said that when she goes out and jogs, she sees the beauty of some areas such as the river and trees and she likes the area of Waverly Ave. and River Rd. and then she comes upon the Barrett Roofing Co. and it is a "little sudden" and is a little "obnoxious", but it has been there for a number of years. She did not have any problem with the noise because she lives on a busy road and hears noise from the Shop-Rite trucks coming off of Rt. 78 and coming down Valley Rd. at 5:00 A.M. every single morning. She said that there are a number of different landscaping businesses in the area and a number of different home maintenance and improvement trucks going up and down the street constantly, so there is nothing to distinguish the noise from Barrett Roofing trucks from what she hears on a continual basis on Valley Rd. anyway. But she said that she would like to see some kind of improvement of the property in terms of the buildings that are falling down. She said that they just don't look nice. She said that she would prefer some kind of natural screen. She said that she was not against the business, but it just doesn't look nice to the

neighborhood itself. She said that if the applicant can find a way to make it look a little bit more conforming and pleasant, then that is fine. She said that she felt we are talking about a family business that has been in existence for many years. If approved, she asked if we are talking about the fact that it is zoned for what it is and would it transfer over for years to come if the applicant owns this land but the family is no longer there. She asked if it would continue to be just for this purpose? She asked what would happen if the owner had a son? She asked if the business would be transferred to the son?

Mr. Hoffman interjected and advised Mrs. Malloy that she cannot conduct a question and answer dialogue of the applicant or his attorney at this point. He noted that whatever approval, permit, certification, or other form of relief may comprise or consist of that may be granted by this Board carries on or runs with the land irrespective of who the particular title owner or tenant may be from time to time. He said that we deal with the property and the nature of the development and usage on the property – period, and don't focus on or concern ourselves with who the given tenant/user may be from time to time.

Dr. Behr agreed that, if approval is granted, it is for the property regardless of who owns it.

Mr. Hoffman said that Mrs. Malloy's other concern about wishing to see buffering or landscaping or other such improvements that might ameliorate impacts of the site from surrounding and nearby land uses – the short answer is that, if the applicant is amenable to doing that, they can certainly do so on their own. But, to the extent that you would want to have the Board involved in that process, we simply don't have the jurisdiction to deal with it unless the applicant were to return and seek a variance of a site plan approval. He said that we don't have the ability to tailor our d-68 certifications to look forward to further enhancements of the property. We are dealing with whether what is there now is legally valid, period.

Mr. D'Alessandro said that the applicant would be willing to do some landscaping.

Mrs. Malloy replied that that would be wonderful. In terms of the law and what the Board members are making their decision on, she felt that the applicant has sufficiently proven that there has been no abandonment and that the use has been continuous. She did not feel that there has been a serious deviation in the kinds of equipment being utilized on the property. She also felt that the applicant has proven that it has been there for a while. She said that she was in favor of the application.

Mr. Ruiz agreed with Mrs. Malloy. He felt that the difference between landscaping and a roofing company, like Mr. Pesce said, is that you are not comparing "apples to apples" or "oranges to oranges" either – they are quite similar in both. He understood that the Board cannot force the applicant to make any improvements, but looking at the photographs he said that a little housekeeping would be nice. He said that he would vote in favor of the application.

Mr. Fagnoli felt that it has been established that the property has been in continuous use for a long time and there has been no intent to abandon any of the uses. He felt that building trades and landscaping trades are kind of kindred uses and, to him, are very similar and making a distinction he felt is making a distinction without a major difference. He said that one of the reasons for the non-conformity is basically a change in the ordinance – it was all light industrial and the uses prior to that. He agreed that sprucing up the property would be a good idea and he said that he would vote in favor of the non-conforming use.

Mr. Gerecht said that he would have to agree with the majority of the rest of the Board. He felt that the use of the property in storing trucks, equipment, trailers, backhoes, and tractors have *not* substantially changed. He said that landscaping and roofing are two different companies, but we are not talking about performing roofing on the property – we are talking about storing their equipment. He said that the only concern he would have is that, when snowplowing, you do have people going in and out of the property at various hours, but he did not think that that is a *major* problem. He did not think that we have *major* concerns with large amounts of vehicles entering and exiting the property on any substantial time basis in the middle of the night. He noticed in the photographs that the property has varied from having a large number of storage trailers on it

(when the major roofing company was there) to being less congested. He said that it has looked better and worse over the years. He did not feel that the difference between storing a pickup truck that has a landscaping name on it is any different from a pickup truck with a roofing name on it or, for that matter, a backhoe or dump truck. He felt that there has been a continuous use of storing equipment, including construction equipment, on the property regardless of what the equipment has been used for. He said that he was in favor of the application.

Dr. Behr said that there certainly is no joy in going to an applicant that has been in business in the Township for many, many years and ruling in a way that would limit their ability to make gainful employment, particularly in this economy. However, he said that he was troubled by the following facts: The purpose of zoning and the purpose of delineating non-conforming uses is to respect the character of a zone and the intent, therefore, is not to allow non-conforming uses to expand. He said that he was completely unconvinced by the argument that a roofing business and a landscaping business are similar. He said that landscaping is not allowed and he did not believe that it is a use that is similar. He said that Mr. D'Alessandro had mentioned the issue of "substantially similar" and what we are basically talking about is moving in the direction of allowing this to be a general commercial storage site for vehicles. He did not think that that is consistent with what the Board should be doing. Secondly, he said that the history of the applicant and of the application has been marred by any number of discrepancies and it doesn't inspire confidence that a relaxation of zoning in this instance would necessarily be a wise thing to do. For a variety of reasons, but not the least of which he did not feel that the applicant has met the burden of proof, he said that he would vote against the application.

Mr. Hoffman said that it would appear that unless, based upon the deliberations, some members were to change the views or opinions that they have currently expressed, it would be appropriate for someone to offer a motion to grant the requested non-conforming use certification, the details of which will be set forth in subsequent Resolution of memorialization.

Mr. Gerecht made a motion to approve the application.

Dr. Behr said that, while a number of Board members have expressed a desire for some attention to be paid to landscaping or buffering to mitigate the impact of this particular use in a residential area, he said that he was not sure exactly how that would be carried out or effected by this Board.

Mr. Hoffman replied that, for the reasons he has already tried to articulate, he did not believe that this Board would have the jurisdiction absent the applicant coming back seeking some approvals which, incidentally, might be necessary and probably *would* be necessary when the uses or continuations of the three "temporary" structures needs to be considered. But absent their being here for some valid reason such as a need for some other approvals, his opinion was clearly and flatly that the Board does not have the jurisdiction to require any such improvements or enhancements on the site. He said that, what they may be able to do without the benefit of Board approval, he would defer to Mr. Lemanowicz and Mr. O'Brien.

Dr. Behr said that, if the applicant decided out of the goodness of his heart to do that, that would be a beautiful thing, but that is not a matter that the Board can be concerned with this point.

Mr. Hoffman agreed – not in the present proceedings.

Mr. Fagnoli seconded the motion made by Mr. Gerecht.

A roll call vote was taken. Those in favor: Mr. Fagnoli, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz and Mr. Pesce. Those opposed: Mrs. Raimer and Dr. Behr.

The meeting adjourned at 10:15 P.M.







