

**MINUTES**

**MAY 1, 2012**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

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

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll the following were present:

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

Michael Pesce, 1st Alternate  
Richard Keegan, 2<sup>nd</sup> Alternate

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

Excused: Christopher Collins, Member  
John Fagnoli, Member

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**EXECUTIVE SESSION**

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

**APPROVAL OF MINUTES**

The minutes of April 3, 2012 were approved as written on motion by Mr. Ruiz and seconded by Mr. Pesce. Mrs. Raimer and Mrs. Malloy abstained as they were not present at that meeting.

**PARTHENON REALTY, LLC**

Valley Road  
Block 11301, Lot 4

**#11-08Z  
Prelim./Final Major Site Plan  
Use Variance (D-1)  
Conditional Use (D-3)  
Bulk Variance for Wood Sign  
Relief from Sec. 155.8a  
Design Waivers**

Present: Gordon Gemma, attorney for the applicant  
Brian McMorrow, licensed professional engineer  
Albert Taus, licensed professional planner

Edward Kolling, licensed professional planner

R. J. O'Connell, certified shorthand reporter

This is a continued hearing.

In response to Mr. Gordon Gemma, attorney for the applicant, Mrs. Wolfe confirmed that all 7 members present this evening are eligible to vote on this application.

Mr. Gemma said that this is a continuation of the April 3, 2012 meeting where the applicant's engineer, Mr. Brian McMorrow, traffic expert, Mr. John Harter, and architect, Mr. Albert Taus continued their testimony and addressed questions from the Board. While certain questions remained outstanding for the engineer and architect, he said that the testimony of their traffic expert concluded and there were no further questions such that he was excused. He said that progress was also made as to the issues of signage and lighting such that he hoped that, other than in passing, they would not have to go back and revisit those issues. He said that they also resolved issues in connection with overall layout and design, not of the building but of the parking area. Since that time, he said that the applicant's engineer met with the Board Engineer and there were subsequent discussions. In addition, he said that the Board's professionals and Mr. Hoffman also provided correspondence in a memo detailing what they believed to be the outstanding issues. He wished to briefly bring back Mr. Taus, as he had another commitment, to discuss the issues raised in Mr. Hoffman's letter of 4/17/12 as to the alignment of the entrance door and to put the matter of whether an applicant's prototype has any legal relevance and the answer is, "No, it doesn't", however the applicant can simply say that this is what they want - but does the Board have to pay specific attention to it - "No, it doesn't. It can ignore that and decide what it wants to do and the applicant can decide what *it* wants to do thereafter".

Mr. Hoffman said that it doesn't, by virtue of it being a so called prototypical building, (assuming that that were factually proven) to carry any special weight in terms of that type of finding or determination bearing upon the ultimate approval or denial that the Board might issue.

Mr. Gemma replied, "No, it does not". He said that, after Mr. Taus testifies, he would like Mr. Mr. McMorrow to testify as to his conversations with the engineer, how they were resolved, and any issues that were outstanding from the last meeting and whether any issues remain from this hearing. He said that he will also ask Mr. McMorrow to review Mr. Hoffman's summary of the outstanding variances so that, for the record, we are clear what is outstanding, what we have agreed to, and what was modified, so that there is no issue as to what the variances are based upon Mr. Hoffman's letter.

Mr. Hoffman noted that there have been adjustments in the relief that is needed based upon the very latest set of plans that were received by the Board on or about the date in which he issued his memo. He said that things may have crossed, but it was up to date at the conclusion of the last hearing.

Mr. Gemma said that Mr. McMorrow will testify as to Mr. Hoffman's memorandum and what their understanding of the variances are. He hoped that the bulk of the meeting will be focused upon the applicant's planner, Mr. Edward Kolling, who will address the use variances and the other issues as outlined in Mr. O'Brien's letter of 4/23/12 and then they will conclude their application. He said that at the last meeting there were certain residual issues about the alignment and why the front door can't be faced towards Valley Rd. and why it is faced the way it is. There were also a couple of other questions raised as to whether or not more windows are appropriate, whether they could use gooseneck lighting, and whether there was a potential for a walkway from the area where there was a discussion of whether there would be banked spaces or not. He said that Mr. Taus submitted what Walgreen's calls their prototype to discuss why and the rationale as to why they believe they can't move the door.

As to the gooseneck lighting, Mr. Hoffman said that his review of the extensive minutes that Mrs. Wolfe prepared and which were adopted at the last meeting, indicated that the applicant's attorney himself, or other representatives such as Mr. Taus, had agreed specifically to that request

on the part of the Township Planner, Mr. O'Brien, therefore if Mr. Gemma was planning to ask his witness what are the pros and cons of gooseneck lighting, he felt that we would be taking a step or two backwards.

Mr. Gemma said that his understanding of the minutes was that gooseneck lighting was appropriate for something that was more rustic and more of a barn and not this application with this prototype.

Mr. Albert Taus was previously sworn. He presented the following items which were marked into evidence as follows:

- **EXHIBIT A-27** – Copy of Sheet A-210 entitled “Exterior Elevations”, last rev. 4/17/12.
- **EXHIBIT A-28** – Copy of Sheet A-310 entitled “Monument & Building Sign Area Calculations”, last rev. 4/17/12.
- **EXHIBIT A-29** - Copy of Sheet A-111 entitled “Floor Plan”, last rev. 4/17/12.
- **EXHIBIT A-30** – Copy of Sheet A-111b entitled “Roof Plan”, last rev. 4/17/12.
- **EXHIBIT A-31** – Copy of Sheet C-100 entitled “General Project Data & Site Plan – 2012 Walgreen’s Criteria Set”, dated 01/23/12 (with no revisions).
- **EXHIBIT A-32** – Copy of Sheet A-111 entitled “General Floor Plan – 2012 Walgreen’s Criteria Set”, dated 01/23/12 (with no revisions).
- **EXHIBIT A-33** – Copy of Sheet A-210 entitled “Exterior Elevations – 2012 Walgreen’s Criteria Set” dated 01/23/12 (with no revisions).

Mr. Taus referred to **EXHIBIT A-27** and described the revisions which were made to the plan. One of the first revisions was the addition of two windows along the east side of the building towards the rear of the building. They were added to add more fenestration/interest on the exterior wall in response to some of the questions that were raised. Landscaping was added on the front elevation (an evergreen, a couple of maples, and some low growing shrubs) which are consistent with the Landscaping Plan and the concerns of the Board as to what faces Valley Rd.

Referring to **EXHIBIT A-28**, he said that the light fixtures were changed on all four sides of the building to a Colonial type of light fixture. He agreed that concern was expressed by Mr. O'Brien at the last meeting about the goose neck light fixtures and he felt that Colonial light fixtures are much more appropriate for the proposed style building because it is Neo-Colonial. He agreed that on the Hillsborough Walgreen’s building, which has more of a “rural barn look”, goose neck lighting is appropriate however, in his professional opinion, the proposed Colonial type of light fixture best matches the style of the proposed building. Another item changed was the monument sign where he added goose neck lights because it is more of a rustic looking sign made of carved wood and is more appropriate in that location. He also adjusted the monument sign to indicate smaller signage and added a “bridge” to accept the goose neck lighting.

Referring to **EXHIBIT A-29**, he said that the only change was the addition of the windows on the rear side of the building (adjacent to the parking lot). He agreed that it is consistent with what is shown on **EXHIBIT A-27**.

Referring to **EXHIBIT A-30**, Mr. Taus said that the roof plan is identical to the one the Board has in front of it except for the addition of the symbol legend which identifies what the roof top equipment is and the symbols of the elevations, etc., and the difference in the different elevation symbols. The previous plan did not contain the symbol legend on the drawing. He said that these revisions were made to the plans in response to concerns raised by the Board.

Mr. Gemma asked Mr. Taus, if the Board *insists* that they want goose neck lighting more than Colonial lighting, would the applicant be willing to make that change?

Mr. Taus replied, “I would say no”.

In response to Mr. Gemma, Mr. Taus agreed that he was asked by Mr. Hoffman about the issue of prototype and that is what **EXHIBITS A-31 through A-33** are meant to convey.

For the record, Mr. Hoffman said that he did not believe that he had the opportunity to delve into any questioning of the witness because it was late in the hour and he had specifically stated that he would reserve the right to pose questions when the application continued.

Mr. Gemma replied that that is why they provided these layouts and Mr. Taus is here. He asked Mr. Taus to go through **EXHIBITS A-31 through A-33** and identify what they are and what they are intended to show in his experience with these types of layouts.

Mr. Taus replied that **EXHIBIT A-31** is a Criteria Site Plan which shows the parking lot drive-thru location to be very similar to his particular store that they designed other than the parking in front of the building. He noted that the Long Hill site is proposed to have parking on the side of the building.

In response to Mr. Gemma, Mr. Taus said that the entrance doorway is located the same on the Criteria Plan as on the plan that he submitted.

Describing **EXHIBIT A-32**, Mr. Taus said that it is the floor plan without the fixtures in it, unlike his plan on which you can see the fixtures. It also has a side door entrance which is criteria of his client for their prototype.

Mr. Taus said that **EXHIBIT A-33** is the most recent prototype of a Walgreen's store showing the architecture and, specifically, the entrance on the side of the building.

In response to Mr. Gemma, Mr. Taus agreed that, in his professional opinion, the exhibits and floor plan present a good layout and functionality for the store and do a very good job of it which is why the applicant desires to keep what it considers to be a good layout.

Mr. Gemma asked Mr. Taus if he felt that the applicant can maintain this layout and provide a store with a diagonal entrance, as proposed by the Board.

Mr. Taus replied, "I don't think so".

Mr. Gemma asked Mr. Taus if the concerns as to design standards, as represented by the Board and Mr. O'Brien, have been relayed to Walgreen's and if he had tried to indicate that this is what the town wants to meet its design standards, particularly along Valley Rd.

Mr. Hoffman said that for the reasons he attempted to articulate at the previous meeting, he strenuously objected to what this witness recalls one or more other Walgreen's representatives....

Mr. Gemma interrupted and said that he asked this witness whether he conveyed to his client the concerns raised by the Board. He believed that he has the right and ability to testify what he conveyed to his client. He again asked Mr. Taus if he conveyed to his client the concerns raised by this Board.

Mr. Taus replied that he *did* and spoke to Mr. Jim Prohaska of Walgreen's (who is their head architect) on several occasions and relayed the conversations.

In response to Mr. Gemma, Mr. Taus agreed that he had relayed many of the concerns and the design standards as articulated by Mr. O'Brien and others and that was how they were able to adjust *most* of them.

Mr. Gemma asked Mr. Taus if his client had directed him to amend the layout and the floor plan to address those concerns.

Mr. Taus replied that wherever they were able to they did but the entrance area, in their opinion and his opinion is (indiscernible)...

Mr. Gemma asked Mr. Taus if he knew of anybody on behalf of the applicant, the engineer or the applicant itself, that has been able to get approval from Walgreen's to address the concerns of the Board.

Mr. Taus replied, "No".

Dr. Behr asked Mr. Hoffman if it was permissible for this witness to testify under oath that he has been directed to do such and such a thing. He said that he is not reporting on what their opinion might or might not be, but asked if he is he permitted to say that this is what I have been directed to do by my client?

Mr. Hoffman replied that the problem that he had with that is that for him to say that he was directed to do, or not do such and such, in and of itself may not seem harmful, but the next logical question or series of questions would be, what specific words or instructions were given to you in what form, in what context, so that we can weigh and evaluate how serious an intent or an instruction - how vital to the entire picture or proposal this would be and we would be deprived of the ability to probe into that potentially critical testimony if we can't go beyond the initial opening one of what were you directed to do and what do you base your judgment on? He felt that we are entitled to pursue that with somebody who is qualified to have been directly involved in that process.

Addressing Dr. Behr, Mr. Gemma said that Mr. Taus is here as an architect and, as an architect he is a professional and, as a professional, he is entitled to give an opinion. He said that he has, in fact, given an opinion and that opinion testimony can be based, in fact, upon hearsay testimony as the basis of most opinion testimony. He said that he asked Mr. Taus to give questions and options about functionality and what he was directed by his client and that he can certainly testify as to what he was directed by his client. He said that he did not ask him, and it is improper to even infer, that he ask him to put himself in the mindset of his client.

Dr. Behr replied that he felt that is very fair and that we have agreement here. He said that he is certainly under oath and if he says, this is what I was told, he felt that that is admissible.

Mr. Gemma agreed. He said that if Mr. Hoffman wants to question Mr. Taus, *in the end* what you have is a client that for whatever reasons it has, and Mr. Taus talked about functionality, doesn't want to change the door. He said that this Board has a choice – they can leave the door where it is, they can demand as a condition of approval it be changed, and then the client has a choice – they can say either "yes" or "no". He felt that, to go further than this, is to "beat the horse to death". He said that we are not going to bring back architects and people from Walgreens noting that it is a large corporation and none of them, in and of themselves, may have the whole corporate knowledge. He said that we could go on for the rest of our lives having which official from where in Walgreen's come here to discuss what. He said that, certainly, if Mr. Hoffman wants to ask questions about what Mr. Taus knows and, within the purview of his testimony, fine, but beyond that we are not going to continue to let this go on and bring other people in so he can question them to see if they have sufficient knowledge and sufficient authority. He said that the applicant said that they can't do it.

Dr. Behr said that it sounded as if it was the position of the applicant that they are not willing to move the door.

Mr. Gemma agreed.

Dr. Behr said that the Board has to decide how much weight to give to that.

Mr. Gemma said, to be fair, their planner is going to testify as to a planning basis as to why the Board may consider waiving a design standard. He said that it is not a variance and, if you think we and our planner are correct, then you can say "yes" and, if you think their planner is wrong,

you can say “no”. He said that he had no further questions of Mr. Taus and would like to proceed.

Mr. Gerecht said that one drawing was modified to say what was on the roof. For the record, he asked Mr. Taus to read the little square since the Board did not have it.

Mr. Taus said that, in the first column going from left to right, it is basically just talking about the rooftop refrigeration compressors. He agreed that one column is the symbol and the next column contains the words. He said that it is just some framing on the roof where you could place the refrigeration and that it actually says “rooftop refrigeration and compressors”. He said that the next says “RTU” (roof top units) and gives its height (4’2”) and in the next column it is called out as “rooftop HVAC condenser”. Below that it shows a plus sign – elevation equals +/- (as an example) 21’9” above finished floor. He said that it describes that symbol as a roof elevation target and then there is a zig-zag symbol that says 6’11” above the finished floor. It also shows a roof level change. He confirmed that that was the only difference between what he testified from as **EXHIBIT A-30** and what the Board has in front of it.

In response to Mr. Gerecht, Mr. Taus agreed that those are items which are normally found on a roof.

Mrs. Raimer asked Mr. Taus if he left off at **EXHIBIT A-30** and asked if that was because **EXHIBITS A-31 through A-33** do not have any additional changes, or are those worth pointing out.

Mr. Gemma replied that **EXHIBITS A-31 through A-33** are the “typicals” from Walgreen’s. He said that he asked Mr. Taus to provide what a “typical” is so that the Board could see what they want and why they want it. They are *not* what is in front of this Board for approval. He said that **EXHIBITS A-27 through A-31** are simply trying to address some concerns raised about the issue of prototype and typical.

Mr. Hoffman asked, in other words, if a so called prototype is in the nature of a template basis upon which future site plans may be prepared.

Mr. Gemma replied, “Yes, sir”.

Mr. Keegan referred to the roof plan and asked if the units, particularly the ones on the front of the building, will be visible from the road.

Mr. Taus replied, “Not at all”.

Mr. Gerecht noted that the left side of the floor plan shows a walk-in cooler/freezer box on Sheet A-111. He said that there are windows behind that and asked what it will look like from outside. He asked if you will see the back of equipment.

Mr. Taus replied that spandrel glass will be used and you cannot see through it. He noted that the windows you can see through are lighter in color. He said that he stippled them to give more of an opaque look. He said that the opaque glass will be on the upper part.

Mr. Keegan asked if the Board had come to a decision at the last meeting on the walkway on the Valley Rd. side of the building, noting that those parking spaces are being retained.

Mr. Gemma recalled saying the last time that they could put a walkway there and the Board wanted to look at the landscaping plan. He said that Mr. McMorrow testified to it. He said that they certainly *can* put a walkway there and take away the landscaping unless the Board, because of concerns on Valley Rd., wants to keep the landscaping. He said that they would do it either way and whatever the Board wants, they will do.

In response to Mr. Pesce, Mr. Gemma said that, in the absence of a walkway if somebody did park on the left side of the building, they would walk through the parking lot. That was the area that the Shade Tree Commission and landscaper really focused on and wanted to make it look the nicest and so, that was the give and take.

Mr. Pesce noted that it was indicated that some additional trees were added to the front elevation of the building. He also said that there was a dialogue between the Shade Tree Commission early on. He asked if those revisions have been reviewed and endorsed by them.

Mr. Gemma believed that the Shade Tree Commission signed off on what they agreed to do and said it will be reflected in the landscape plan put together by the engineer.

Dr. Behr felt it was important to note that one of the concerns of the Board was the desire that we not have street facing facades that were simply massive brick. He said that in one case the applicant has responded to that by putting in additional Spandrel windows and in the other case that there be tree plantings on the Valley Rd. side, and those have been added. He asked for the size of the evergreen tree on the far left.

Mr. Taus thought they will be about 8'-10' in height and said that the engineer can respond to the question. He said that the evergreen is an Umbrella Pine and the other two trees are Japanese Maples.

Referring to the ground sign on Sht. A-310, Mr. O'Brien said that it has grown in terms of support. He asked for the current actual size of the sign *and* its supporting members.

Mr. Taus replied that the sign is 2.5' x 10' (25 S.F.). He said that the overall size of the size of the sign has not changed and that they just added decorative cornice.

Mr. O'Brien said that brick was added across the top and bottom in place of the message board which is no longer there, so the supports in the ground have increased.

Mr. Taus said that they in-filled it with masonry where the previous signage was located.

Mr. O'Brien asked for the size of everything except for the 25 S.F. of the sign.

Mr. Taus replied that the overall size of the sign is 14' wide, is in-filled with masonry, and is 8' tall. He said that there are a couple of cornices that were always there around the columns. He said that they took the opportunity at an earlier meeting to get every inch additional.

In response to Mr. O'Brien, Mr. Taus agreed that the calculations refer to the bottom original sign support structure, not to the revised sign support structure. He asked for the size of the now revised sign.

Mr. Taus could not provide the figure, but offered to approximate it. He said that he in-filled the signage with masonry to match the building.

Mr. Hoffman asked Mr. O'Brien if that data would be necessary to determine the extent of variance relief needed.

Mr. O'Brien replied that it is a design standard and one of the design standards calls for the signage structure not to be larger than the sign itself. Originally when the message board and the sign were in the structure, the structure was approximately equal to the sign. But now, basically instead of the reader board, there is more structure and mass. To accommodate the goose neck lights, he said that there is again more structure and mass to the sign. So, in one way, even though you have that 25 S.F. area of carved wood, it is surrounded by (at a minimum) two times that just in vertical structure in brick which could also give the appearance of being part of the sign – so you are making the sign bigger (as part of making the sign smaller).

Mr. Gemma said that he had the opportunity to speak to his client and he has agreed to take the area which was in-filled in brick out so that there would be nothing down there all the way to the ground.

Mr. Taus said that just the two columns would remain.

Mr. Gemma added that there would also be the sign and the support for the goose neck lights.

Mr. Taus added that the bridge would also remain.

Mr. Gemma said that Mr. Taus will provide the calculations and a new design for Mr. O'Brien to review and confirm.

Mr. Hoffman questioned if the Ordinance requirement is for 10 S.F.

Mr. O'Brien replied that the sign area is 10 S.F. He agreed that the appurtenances would allow up to an additional 10 S.F. He said that what is proposed is larger than what is allowed.

Mr. Gemma said that they are seeking a variance for the signage at 25 S.F., so they are still seeking a sign variance but it has been reduced from 50 S.F. to 25 S.F.

Dr. Behr noted that the size of the sign has been reduced *considerably* from what was originally proposed.

Mr. Gemma agreed.

Mr. O'Brien said that a design waiver is still required for the size of the sign at 25 S.F. and the supports at some undetermined number (but greater than what is allowed).

Mr. Gemma said that it will be reduced and the exact numbers will be provided.

In response to Mr. Gerecht, Mr. Taus said that the Walgreen's letters will be red in color on a simulated natural brownish-wood colored background.

Mr. Hoffman said that while he had originally intended to go into a more extensive cross-examination of the witness and go into the issue of prototypical signage, etc., in view of Mr. Gemma's acknowledgment at the outset this evening that whatever may have been chosen or selected by the developer of the site for its building design, it is not necessarily binding in any legally compelling sense on this agency and, therefore, he intended on being much more limited in his scope of questions. He referred to **EXHIBIT A-33** and asked Mr. Taus when was the first time he or his firm worked with or had occasion to see the exhibit marked as **EXHIBIT A-33** (not necessarily this specific one for this location), but generally when did he learn of the existence and/or work with this type of template as a basis of going forward with the design of a building.

Mr. Taus replied in the summer of 2011.

Mr. Hoffman asked at what location(s) he had occasion to utilize or evaluate the usability of the prototype building.

Mr. Taus replied that they were planning to use it for this location and agreed that he never previously had occasion to use it at any other location.

Mr. Hoffman asked Mr. Taus if he had subsequently used this prototype elevation at any other locations other than in Long Hill Township.

Mr. Taus replied, "No".



In response to Dr. Behr, Mr. Taus agreed that they had started out with a bigger wall mounted Walgreen's sign and have since reduced the size of it.

Dr. Behr asked if the prototype Mr. Taus was referring to as a prototype is the size of the reduced version in front of this Board, or is it bigger?

Mr. Taus replied that the one that is proposed now is smaller.

Addressing Mr. Hoffman, Dr. Behr said that arguing about the legitimacy of that prototype – the prototype sign is not the one that is now being proposed for this building, so he was not sure where we gain any ground here by talking about the legitimacy of a prototype that is not being proposed.

Mr. Hoffman thought that the reason they chose the design of the building for what they show is because it was predicated upon a prototype and that this is the prototype.

Dr. Behr said that the applicant has now come back to the Board with a smaller design.

In response to Mr. Hoffman, Mr. Taus said that he has *not* had an opportunity to use this prototype yet.

Mr. Hoffman asked Mr. Taus how many Walgreen's buildings he has been involved with (so far as their design) since the summer of 2011.

Mr. Taus replied that he was working on a Walgreen's in Haledon, NJ which is under construction now and its building style was designed prior to the current prototype. He said that he also did some work during that time frame in Maryland, inside a hospital.

Also in response to Mr. Hoffman, Mr. Taus said that he has driven past the existing Walgreen's on Rt. 206 in Hillsborough, NJ quite a few times. He described the style of its architecture as "rustic".

Dr. Behr interjected and said that he was lost as to where we are going with this. He said that the applicant has presented a building to us that could legitimately be said to be of a Colonial style, which is an accepted style within our design standards.

Mr. Hoffman agreed. He said that he was just trying to establish so the Board has a clearer record. He said that he certainly did not, nor did this Board, introduce the term "prototype or prototypical", and he wanted the Board to be able to weigh the weight to be given to that denomination of a building style even in terms of Walgreen's own building track record.

Dr. Behr asked if the word "prototypical" was used for the sign size or for the style of the building?

Mr. Hoffman thought it was used for the size of the building.

Dr. Behr said that we have two different things here. We are talking about the style of the building.....

Mr. Hoffman interrupted and said "which is what I was referring to".

Dr. Behr said that the style of this building differs certainly from other Walmart's that we have seen and we have heard testimony that says that it differs in ways that move it closer to the design standards for Long Hill Township. He did not want to be taking the applicant's time with questions that may not be pertinent.

Mr. Hoffman replied that, if the Board is satisfied based upon the testimony we have heard, no special or exception weight is to be accorded the design because it has attached to it, or labeled in the corner of the plan, the word "prototype", then he had nothing further.

Dr. Behr said that the building we are looking at is *not* a prototype.

Mr. Hoffman replied that he had not introduced that term into the record.

Dr. Behr replied, “Understood” and asked Mr. Gemma to clear the matter up.

Mr. Gemma agreed with Mr. Hoffman that, in fact, the Board can take specific weight to the use of the word “prototype” and that it was simply a way of describing a template.

Dr. Behr asked if the word “template” referred to the building or the sign?

Mr. Gemma replied that it applies to the building.

Dr. Behr replied, “You have entered a degree of complexity here that is not serving you terribly well”.

Mr. Gemma replied that he understood, however he felt that Mr. Hoffman is complete so that they could move forward.

Mr. Hoffman agreed that he had concluded.

The meeting was opened to the public. Since there were no members of the public present, the meeting was closed to the public.

Mr. Brian McMorrow, licensed professional engineer, was previously sworn.

Mr. Gemma asked Mr. Mc Morrow to describe the proposed pine tree on the site.

Mr. McMorrow replied that it is an Umbrella Pine and that it is to be 7’ - 8’ tall at its initial planting. He said that they can grow upwards of 20’-30’ if left to grow.

Mr. Gemma asked Mr. McMorrow if, as a result of the last meeting, he had met with Mr. Lemanowicz to discuss outstanding issues which include concerns as to drainage and grading.

Mr. McMorrow replied affirmatively and said that the meeting took place on April 10<sup>th</sup>. As a result of that meeting, he agreed that he submitted revised plans, a revised design study, and a markup of a letter under his cover letter of April 17, 2012. As a result of the meeting and his submittal, he agreed that Mr. Lemanowicz issued his review letter of April 26, 2012.

Mr. Gemma asked Mr. McMorrow to go through some of the outstanding issues that were resolved and describe what, if anything at all, remains outstanding.

Mr. McMorrow agreed to do so, but first entered into evidence **EXHIBIT A-34** which is a colored rendering of Sheet 4 of 16 entitled “Site Plan” by Bohler Engineering, last rev. 04/13/12.

In response to Mr. Gemma, he agreed that if the Board would like a walkway, it can be installed or it can be left landscaped, as proposed. Either way, the applicant can comply with the Board’s wishes. He said that the only comment he needed to address in Mr. O’Brien’s report is where he asked for a crosswalk there. He said that they wouldn’t put a crosswalk to an area that didn’t have a sidewalk on the other side, but if it is the Board’s preference to have a sidewalk across the front, of course it will be added.

Mr. O’Brien asked if both could be accommodate – the landscaping *and* a sidewalk?

Mr. McMorrow replied that the sidewalk then would probably abut the curb so that they could maintain the integrity of all of that ground cover and planting up against the building.

Dr. Behr said that, on one hand, you want safety for pedestrians and, on the other hand, that is the primary façade of the building and this Board has discussed at great length the desire to have

that be attractive and to break up the expanse of the brick with landscaping, as shown. He asked if there is a middle ground.

Mr. Gemma said that the context of banking was discussed and the applicant can agree that if at some point in the future for safety or because, as Mr. O'Brien had brought up, Walgreen's may not use a lot of the spaces and someone else comes in and they do it, at that point the applicant may be required at the request of the Township professionals to put in striping, as well as a sidewalk. Until such time, however, as there is actually utilization, rather than take away from that, the applicant can keep it.

In response to Dr. Behr, Mr. O'Brien said that there is no banking of parking proposed at this point. All of the parking is proposed to be installed and, if all of the parking is installed, at some point someone will park there. He said that, currently, there is no way for someone who parks along those western parking stalls to get to the front of the building along Valley Rd. unless they walk down the driveway or walk around the back of the building which would also traverse the loading area, garbage area, and dolly area. If, as Mr. McMorrow said, a sidewalk *can* be provided, which will not have any impact upon the landscaping that is proposed, then that sidewalk would certainly not have any visual impact on Valley Rd. because you have already got a 24' wide driveway in front of it, added with 4' wide of concrete next to it, so it will not have a huge visual impact.

In response to Mr. Gerecht, Mr. O'Brien said that the minimum width of a sidewalk is typically 4'.

Mr. Lemanowicz said that the issue with that 4' is that you've got shopping carts. So, if you have two shopping carts going in different directions of a 4' sidewalk, somebody winds up in the street anyway.

Dr. Behr noted that every time you go into the Shop-Rite you have a parade of shopping carts with people pushing them, or running to catch up to them on the grade. He said that what we are looking at here is to see if there is a win-win that would meet the various needs that we are looking at so that we don't end up with a Hobson's choice.

Mr. O'Brien said that Mr. McMorrow has given you the win-win by stating that a sidewalk *can* be installed which will have no impact upon the proposed landscaping and a walkway across the western driveway which would allow people to safely get from their cars to the front of the store.

Mr. Gemma replied that they had no problem doing that and, if that is the Board's desire, they will put it in.

Mr. McMorrow agreed that that is the win-win – a 4' wide sidewalk.

Dr. Behr polled the Board and said that the issue is a solution that would allow the landscaping in front of the building and also provide for a walkway.

Mrs. Malloy said that she could not visualize such a proposal and asked Mr. McMorrow to review it.

Mr. McMorrow replied that, right now, there is an area in front of the pharmacy that is to be heavily landscaped and that was done after a number of meetings with the Shade Tree Commission and a couple of hearings before the Board. He said that the compromise (or thing that is lost) is the ability for pedestrians who may park over "here" to walk on a hard surface that is not a driveway to get to the front door. He said that their testimony is that they don't believe that "these" spaces will be used much, if at all. He felt that if they are used at all, it would be by an employee, so he did not think that there would be a parade of shopping carts back and forth. He felt that that would happen on the other side. He said that the sidewalk would then abut the curb. He recalled that a long time ago, they reduced the width of the driveway from 24' to 22'. He said that they wouldn't lose any one of the vertical landscape elements that are being

proposed here, they would just lose some lawn to put in a 4' wide sidewalk that does safely allow pedestrians to get from this parking space to the front door.

Dr. Behr said that you would surrender some lawn for a walkway, but in front of that you also still have landscaping along Valley Rd.

Mr. McMorrow agreed.

Mrs. Malloy said that it's a clearly marked sidewalk though.

Mr. McMorrow agreed and said that there would be a 6" raised curb next to it.

Mr. O'Brien added that the walkway would be properly striped so that it would be easily seen.

Mrs. Malloy said that she would prefer that.

In response to Mr. Ruiz, Mr. McMorrow said that the lighting will remain as is (and there will be no additional lighting in that area) because it is sufficient.

In response to Mrs. Malloy, Mr. O'Brien added that there is a lot of lighting in front of the store.

Dr. Behr asked for the Board member's reactions to being able to get a walkway in front of the building and also maintain the landscaping.

All Board members present were in agreement.

In that case, Mr. Gemma said that the applicant will put it in and move forward.

Mrs. Raimer apologized and said that she could not move forward yet. She said that Mr. McMorrow had referred to the front area as "heavily landscaped". She said that she was viewing one Umbrella Pine and two Japanese Maples. She asked where else it is "heavily landscaped", beyond those three things.

Mr. McMorrow replied that, if you look closely at the landscape, there is lots of ground cover and grasses that will have a vertical element as well, which will soften the foundation. He said that this was the foundation planting comment that had come up a long time ago.

Mrs. Raimer was aware of the intent for foundation plantings, she just wanted to make sure that there was something more than the 3 pieces that were described and called "heavily landscaped".

Mr. O'Brien said that it is all shown on Sheet 7 and, in the front, you can see that landscaped area.

Mr. McMorrow said that there are "hundreds" of plant species in there, some of which are flowers and grasses.

Mrs. Raimer thanked Mr. McMorrow for the clarification.

Mr. Gemma asked Mr. McMorrow to get back to the issues he had resolved with Mr. Lemanowicz and what is outstanding, if anything.

Mr. McMorrow said that among the biggest changes that were made to the plan is that the back curblin was moved back 3.1' further to the north to eliminate a lot of the driveway width and parking aisle and loading area variances that were needed. He said that the lighting was also modified to provide a .5 footcandle average in the parking spaces and a .8 footcandle average in the drive aisles, as previously discussed. He said that a lot of rework was done to revise some of the drainage calculations.

In response to Mr. Gerecht, Mr. McMorrow said that they adjusted the placement of the pole mounted lights and also utilized *some* of the building mounted lights. He explained that if you look closely at the plan, some of the lights are decorative and are there for architectural balance, but they won't be lit. He said that they were able to achieve a better uniformity without the hot spots and the dark spots and provide what he felt everyone agreed the last time to be a safe measure of lighting for a site that does have a fair amount of pedestrian and motor vehicle conflicts.

Mr. O'Brien believed that there was consensus on the Boards part for those footcandle levels.

Mr. McMorrow said that, beyond the curb and lighting, there was a lot of rework on drainage. He said that he revised and resubmitted calculations and was happy to meet with Mr. Lemanowicz in their office. At this point, he said that there is probably some housekeeping to do, but he did not think that it will change the design in any way. He said that it is providing the calculations in a couple of different forms so that there is beyond a shadow of a doubt for this Board, or anybody else that would follow us, that the drainage on the site works.

Mr. Gemma said that Mr. Hoffman had put together a summary as to what the variances are or are not or have been modified based upon the revised plans in order to have a clear record of what is being sought.

Mr. McMorrow replied that Mr. Gemma had provided to him a copy of Mr. Hoffman's April 16<sup>th</sup> memo where he summarized the various forms of relief being sought by the applicant. He said that he was asked to comment upon it and agreed with virtually everything that was stated in the memo, with two exceptions. The first had to do with the conservation width of 50'. He said that they are proposing to set the building at 50' 2" from the R.O.W. of Valley Rd., but by no means are they suggesting that what remains is a conservation easement. What he viewed as a conservation easement, is that they would maintain all of the existing vegetation there and they are clearly not doing that. They are moving the building to 50' from the R.O.W. and are providing a landscape plan.

In response to Mr. O'Brien, Mr. McMorrow said that he was referring to a conservation easement that was on Pg. 2 under miscellaneous bulk variances or design standard exceptions.

Mr. O'Brien felt that Mr. McMorrow may have misunderstood. He said that a conservation easement is mandated by Sec. 131 of the Long Hill Ordinance and that is that properties along Valley Road in this area must provide a 75' conservation easement from the front of any building or any improvement to the street, so the 75' is not to be disturbed.

Mr. McMorrow replied that they are obviously seeking relief from that.

Mr. O'Brien replied that they are seeking relief to the 50' mark, as well as for the other incursions such as the driveway and sidewalk that was discussed.

Mr. McMorrow replied that he agreed completely with the portrayal that Mr. O'Brien had just made. He did not read his comment that way.

Mr. Hoffman said that that was not his label, it came from the language utilized in the Ordinance as to what to call it.

Mr. McMorrow said that the only other exception he had was with respect to the lighting which appears on Pg. 4 – illumination of the driveways. He said that you indicate a maximum of .8 footcandles and they have it at .8 average and the driveway is at .5 average and the spaces. With that one comment, he felt that the memo from Mr. Hoffman was an accurate one.

Mr. O'Brien and Dr. Behr both agreed that the footcandles stated by Mr. McMorrow were correct.

Mr. Gemma asked Mr. McMorrow, other than in Mr. Hoffman's correspondence, if there was anything in Mr. O'Brien's latest report that has either not been addressed or will not be addressed by the applicant's planner.

Mr. McMorrow replied that he had covered just the one item – the cross walk.

Mr. Gemma said that he had no further questions of the witness.

Mrs. Raimer said that she was not privy to the conversation Mr. McMorrow had with Mr. Lemanowicz and so what she had before her was a memo dated April 26, 2012 and she was not clear if all of those issues were completely resolved. For example, she said that if you look at Pg. 6 of 8, Item No. 9 – Stormwater Management – Paragraph No. 2 talks about the runoff from drainage area P-3 and concerns about where that would flow and so, when Mr. Lemanowicz wrote this, it was of great concern to her and she did not know how it was resolved.

Mr. McMorrow replied that the area that is commented upon, or remains a comment in his letter, is that there is a portion of the site and it is basically the exit driveway on Valley Rd. and it runs into the street without being routed back through the detention basin. He said that that area is about 6,000 S.F. compared to 5 ½ acres of land that is otherwise going through the basin. He said that he had to do one more iteration of calculations to make *absolutely* certain that that 6,000 S.F., when coupled with everything else, meets the water quality requirements of the State and this municipality. He said that he was confident that it will.

Dr. Behr asked Mr. Lemanowicz if he was comfortable that this is something that *can* be resolved.

Mr. Lemanowicz replied that, when he met with Mr. McMorrow's people on the 10<sup>th</sup>, they went over some of the detail of the drainage design (which is somewhat technical). He said that this particular item has to do with total suspended solids and the applicant is required to remove 80% of the total suspended solids from the flow. He said that the design removes 90%, but doesn't clean all of the water, so now you have a certain percentage that is being removed 90% and a certain percentage that is removing nothing. He said that the calculation he is requesting is that, when it all comes together, are you still averaging the 80% that you are required? He said that he believed that it is possible and did not foresee that the design will dramatically change in meeting that requirement. He said that he was not expecting to see the basin double in size or anything like that. He said that there may be a tweak here or there but it would not be very obvious to anyone except for someone looking at the calculations.

In response to Dr. Behr, Mr. Lemanowicz said that he believed that it is possible to meet the 80% standard and that it would not require a dramatic change to the plan. He said that that is pretty much the nature of all of the remaining issues. He said that there is an issue of the elevation of the emergency outflow and it varies, depending on how you look at it, by a couple of tenths of a foot. Again, he said that it will not make or break the design, but it needs to match. He said that most of the issues that are left are in the order.

Mr. Gemma said that they would stipulate that as a condition of any approval they would meet those standards and, if they fail to meet those standards and it results in a change, they would have to come back to this Board. He said that they are confident enough that they can meet them and that these are just minor revisions.

In response to Dr. Behr, Mr. Lemanowicz agreed that this could become a condition of approval.

Mr. Hoffman said that the entirety of the drainage issues that were raised remain to be approved by way of conditions.

Mr. Keegan said that there are going to be shopping cards on this site and on the drive thru side of the building there is a fairly significant grade (as shown on Sheet 5) as it goes from 226 at the corner of the building down to 223 at the street in a fairly short interval. Since we are retaining the parking on that side of the building, he asked if it would be beneficial at that stop sign to have

a speed bump in an effort to prevent any carts from gaining ahead of speed and going out onto Valley Rd.

Mr. McMorrow replied that that grade is only about 3-3 ½ %, which is well within design standards. He said that typically 5% is the maximum grade you would want to have in a lot that has shopping carts and the like. He said that it is relatively flat for all practical purposes and, again, they would expect patrons of Walgreen's to actually park on the other side. He said that, if the space was to be used at all, it would be for employees.

In response to Mr. Gerecht, Mr. McMorrow said that they do not anticipate installing speed bumps at any time. He said that Mr. Harter, the applicant's traffic engineer, had testified that given the geometry of the site and the fact that it is not very big, you don't get very high speeds through here.

Mr. O'Brien said that he had raised a number of site plan concerns. He asked Mr. McMorrow if they were things that *he* or Mr. Kolling is going to address.

As he read the memo, Mr. McMorrow felt that the balance of what remains are things we probably have talked about before and we just need the planning testimony to support the design relief that is being sought.

Mr. O'Brien referred to his Pg. 6, Item No. 5A(3) which refers to the concrete bollards at the rear of the store and asked if they are still proposing those, or are they proposing a change.

Mr. McMorrow replied that they are still proposing bollards – no change from before. He said that they will be to protect the tote enclosures from any vehicles that might back up in the loading zone. The testimony that he recalled from the Walgreen's representative was that this is a high activity area and they are utilitarian for sure. He said that making them decorative once they are knocked around may be a little unsightly and that they would prefer the more simple, traditional bollard at the rear of the building from Valley Rd.

Mr. O'Brien replied that he would leave that to the Board deliberations later. He then referred to Item No. 4 on Pg. 7 regarding a "Conservation Restriction Zone".

Mr. McMorrow replied that they need to add that note.

Mr. O'Brien said that he would like to see a delineation of what that area is so that we all know.

Mr. McMorrow agreed to add the delineation.

In response to Mr. Gemma, Mr. O'Brien said that he was looking for the Conservation Restriction Zone and wherever that zone is, he would like to see it depicted somewhere. He said that right now it is just a little legend and letters and that is it – we do not know the extent of it.

In response to Dr. Behr, Mr. McMorrow said that they would graphically depict the limits of the Conservation Restriction Zone.

Mr. O'Brien referred to Pg. 7, Item B(2) and said that he had suggested that the Umbrella Pine be shifted to the east to be centered on the blank wall expanse.

Mr. McMorrow replied that he would concur with that.

Referring to Pg. 8, Item C(3), Mr. O'Brien said that we still do not have a store closing time that he could recall being testified to.

Mr. McMorrow replied that the thought there *was* a store closing time at that it was either 10:00 PM or 11:00 PM. As the engineer, he said that he could not specify. He said that it was not the intention of this store to operate 24 hours.

Mr. Gemma said that somebody will provide the information as to the store closing time.

Mr. McMorrow said that they agreed to turn off some of the lights after the store closes.

Mr. O'Brien requested to hear more about *some* of the lights. He thought that the Ordinance has in mind security lighting which is a considerable reduction that is adequate enough for security.

Mr. McMorrow said that there is building mounted lighting that would stay on and probably the light that is near the front door and maybe a light in the back, too, that would provide some visibility to the back for police cars patrolling the area. He said that it is a detail that is probably best worked out between them and the Police Dept.

There being no members of the public present, the meeting was closed to the public.

Regarding store closing times and for the record, Mr. Gemma said that Mr. James O'Malley had testified on January 17<sup>th</sup> and indicated that store closing times, however he did not have them in his notes. He said that he would ask him again as to what he had testified.

Mr. Hoffman replied that he thought Mr. Gemma would find that the answer is something like 10:00 PM except, perhaps, during the immediate pre-Christmas season.

Mr. Gerecht recalled him testifying that the store closes to the public and then the employees leave later.

Mr. Gemma said he would provide something in writing in a separate letter.

Mr. O'Brien replied that whatever that time is, then within a half hour of that the lights should go to a security level in order to keep in context with the Ordinance.

Mr. Gemma agreed. He added that, unless so directed by the Police Dept. (in case they said not to), he did not want to be in conflict with them.

Mr. O'Brien agreed. He said that the designation of the security lighting will also be reviewed by staff, along with the Police Dept. and Lt. Mazzeo.

Mr. Lemanowicz said that his notes from the January 17<sup>th</sup> meeting indicate that the store hours were going to be 8:00 A.M. to 10:00 P.M. seven days per week and the pharmacy hours would be from 8:00 A.M. to 10:00 P.M. Monday through Friday; and 9:00 A.M. or 10:00 A.M. to 6:00 P.M. on Saturday and Sunday. He said that there is just a question on the pharmacy hours on the weekends.

Mr. O'Brien said that the closing of the pharmacy wouldn't affect the lighting of the outside of the store because the store is still open.

Mr. Lemanowicz had nothing further. He noted that he will be meeting with Mr. McMorrow's team to discuss the drainage some more and getting his items addressed.

Dr. Behr said that, should the application be approved, we will need a very accurate list of conditions. He said that he would like to have the conditions enumerated *before* deliberations.

Mr. O'Brien said that he had one further comment. He said that the proposed bike rack appears to possibly block the entrance to the store. He asked Mr. McMorrow if it was situated appropriately, or should it be moved somewhat.

Mr. McMorrow said that, as he viewed the depiction on the plan, the bike rack would fit entirely within that area and not hang out.

Mrs. Malloy noted that there are 3 handicapped spaces right there and she felt that the ramp is in an odd position in relation to where the handicapped spaces are.



Mr. McMorrow replied that the curb in front of the handicapped spaces is a flush curb so you would not have to go around to the aisle. He said that the ramp really provides the accessible route for pedestrians who may come to the site from Valley Rd.

Mr. Gerecht said that the curb and the blacktop are at grade with each other.

Mr. McMorrow agreed.

Mr. Lemanowicz said that the graphic for the bike rack is only 5' deep and a bike will not fit in that.

Mr. McMorrow said that it can be moved a foot or two away from the door to the west.

Mr. Lemanowicz said that they may have to take the edge of the concrete and slide it to the west some more.

Mr. Gemma said that he had no further questions of this witness and wished to present the applicant's planner, Mr. Edward Kolling.

Dr. Behr announced that the Board would first take a five minute break.

**X X X X R E C E S S X X X X**

Mr. Edward Kolling, licensed professional planner, was sworn. He reviewed his educational and professional background and was accepted as an expert.

He said that in connection with this application he was asked to review the plans and undertake a study in support of the requested variances. He said that he visited the site and drove through the surrounding area and walked the site, as well. He reviewed the site plans that were prepared by the applicant's engineer and the architectural plans. He said that he has attended most of the hearings and reviewed the Township Master Plan, Re-examination Report, and Zoning Ordinance.

In response to Mr. Gemma, he said that he heard Mr. McMorrow and Mr. Hoffman discuss the variances and concurred with the variances needed. He agreed that one of the variances needed is a use variance and that the applicant will have to meet the positive criteria and show the special reasons and the purposes of zoning that this project will advance. He said that he will also have to show that the site is particularly well suited for this use and prove the negative criteria and show that there will be no substantial detriment to the zone plan or public welfare. He said that he will also have to show if there are ways of mitigating any of those detriments and the Board must weigh those and come to a decision on granting the variance, or not.

Mr. Gemma asked Mr. Kolling to apply the test – the request for the use variance, particularly tying into the Master Plan as he had reviewed it.

Mr. Kolling said that one of the things that occurred in the recent past is that a Valley Road Business District of the Master Plan which was adopted by the Planning Board in December of 2008. He said that one of the recommendations in there was to combine the B-2 and the O Zone along Valley Rd. to create a continuous downtown or commercial strip. He said that it was intended to allow businesses and commercial uses to co-exist. If you take that into mind, he said that this is an ideal location for the proposed use. He said that it is in an O Zone, but it is in that portion of the O Zone that is to be combined with the B-2 Zone. It is in close proximity to the B-2 Zone and he felt that it will promote that intent to create a single mixed-use commercial zone along Valley Rd. He said that the Vision Statement within the Master Plan also suggests to create that downtown of Long Hill and that the downtown should be planned to develop over time into a thriving, economically sustainable commercial center that provides many of the goods and services that residents need on a daily basis. He said that the proposed use is in keeping with that and a pharmacy can provide, not only pharmaceuticals and prescription medicines, but over the counter medicines, convenience items, and would serve those day to day needs of the

residents of Long Hill. He said that, when you take that into account, he felt that the promotion of the intent and purpose of the Master Plan isn't in itself a positive because the intention of the Master Plan is to protect the general welfare of the community and so by promoting the purposes of the Master Plan, he felt that it meets the positive criteria by that degree alone and it is a particularly well suited area being within that area that is intended to be combined with the B-2 Zone. He said that it is at a signalized intersection and is large enough to accommodate the use without detrimental impact, so in that regard he felt that it meets the suitability test and also in terms of justifying the fact that it is not in the Zoning Ordinance – the Master Plan was adopted in the recent past and the Zoning Ordinance hasn't been changed, but it definitely is in keeping with the intent. He said that it also promotes several of the purposes of zoning. Because the property is well suited for the intended purpose, he said that it can provide a needed service in the community in the form of the pharmacy. He said that it is consistent with the recommendations of the Master Plan so he felt, therefore, that it promotes the public health, safety and welfare which is consistent with N.J.S.A. 40:55D-2a. He said that it is a very well designed project with the extension of the private roadway and helps relieve traffic impacts along Valley Road which he felt promotes safety consistent with Paragraph 2b. He said that it provides sufficient space in an appropriate location for the use which promotes the purpose of Paragraph 2g. He felt that it is a very well designed project and the landscaping relates very well to the roadway. He said that it is a very attractive building, Colonial in style which uses a lot of masonry and window and he felt that that also promotes a desirable visual environment consistent with Paragraph 2i.

Mr. Gemma said that one of the comments raised, particularly into that context was that by providing the goods and services that people need in the town, it may help also reduce vehicular trips from outside of town. He said that basically you don't have to travel outside of town and it will be in a centralized location consistent with the Master Plan. He asked Mr. Kolling if that was correct.

Mr. Kolling replied that that is correct and that is exactly what the Master Plan is referring to – that it would serve the needs of the community and reduce out of town trips. He said that this location, being near the other shopping center across the street, would be able to create a “hub”.

Mr. Gemma said that he would assume that that is also in terms of the positives and promoting the purposes of zoning. He asked if the applicants are agreeing to comply with the comments from the Shade Tree Commission, in that it tries to seek to meet the intent and purpose of providing the enhanced landscaping along Valley Rd.

Mr. Kolling replied that that is correct and that it does create that enhanced visual/tree lined environment and maintains the character of Long Hill along Valley Rd.

Mr. Gemma asked Mr. Kolling to address the negative criteria.

Mr. Kolling said that you first look at the negative criteria in terms of substantial detriment to the zone plan and, notwithstanding the fact that it is not now permitted within the O Zone. He said that the O Zone and B-2 Zone do have some overlapping uses that are permitted such as professional offices, medical offices, restaurants, and financial institutions, so they are not dissimilar. He said that this use *would* be permitted in the B-2 Zone, so if you take that combined as well with the recommendations of the Master Plan, there really is no substantial detriment to the Zone Plan because the Master Plan aspect is actually recommending that this type of use be permitted in this area.

Mr. Gemma asked, to be clear, it recommends that by overlapping the O Zone and the B-2 Zone?

Mr. Kolling replied, “Exactly”.

Mr. Gemma asked if it would be a permitted use?

Mr. Kolling replied that it would be a permitted use within this area so, therefore, there really is no substantial detriment to the Zone Plan in that regard.

Mr. Gemma asked, in order to enhance the goals and objectives of the Master Plan, actually this would be a permitted use?

Mr. Kolling replied, "Correct". He said that you have to look at the substantial detriment to the public welfare and public good. He felt that if you take a look at the context of this property and what its surrounding neighbors are, which are also business, retail and commercial in nature, it is compatible. Being that it is consistent with the character of the area, he said there really would be no substantial detriment. He felt that the site plan has been conceived in a very reasonable and appropriate manner and the way that the traffic flows and the modifications to the signal at Plainfield Rd. and all those sort of things have been done in a way that would probably actually improve pedestrian flow and traffic safety, so there is no substantial detriment in his mind to the public whatsoever.

Mr. Gemma asked Mr. Kolling if there are any mitigating factors, other than what the Board proposed as conditions, that would mitigate some of the impacts.

Mr. Kolling replied that he felt that the Board has been very thorough and he felt that those things have already been addressed. He did not see where any additional mitigation would be needed.

Mr. Gemma asked Mr. Kolling to bring up the issue of the conditional use variance – whether it is needed and why.

Mr. Kolling replied that it was originally written in the application that the applicant was seeking conditional use approval which *would* apply if this were a B-2 Zone and if it were a permitted use, but really in this situation it is part of the use variance because the drive-thru is part of the pharmacy. However, he said that we should note that all of the bulk criteria, setbacks, distance criteria and things of that nature for the drive-thru have been met in this application. He said that, if it were to be located in the B-2 Zone, it would be a conforming conditional use associated with the permitted pharmacy.

To be clear, Mr. Gemma asked, if in fact the recommendations of the Master Plan were adopted and the O Zone and the B-2 Zone were merged, then this use would be a permitted use?

Mr. Kolling replied, "That is correct".

Mr. Gemma asked, and then this condition of a permitted use - you would meet all of the criteria for it?

Mr. Kolling replied, "That's correct".

Mr. Gemma asked if there was anything else as to the issue of the use variance, in particular in terms of the balancing.

Mr. Kolling replied that the Board would obviously take into consideration the beneficial aspects of this project – the enhancements that it is making to the site and to meeting the goals of the Master Plan and then balance it with any detriments. He felt that, on the balance of it, it is clear that the positives would outweigh any negatives and he said that he did not see any detriments whatsoever at this point, but if there was any mitigation to be applied, they could be applied to mitigate any detriments that the Board might perceive.

Mr. Gemma said that, unlike the use variance, there are other variances needed for the signage. He asked how they are classified and what type of test would be applicable for those types of sign variances.

Mr. Kolling replied that there are c variances and, in this case, we would probably be looking at it from the perspective of a c-2 where the benefits outweigh the detriments. He said that you also have to look at the O Zone criteria where we really have a B-2 type of use. He said that there are multiple signs on one wall and, in the case of an office building, you may just have the name of

the office building and that is sufficient. In the case of a retail establishment, he said that they have 3 different signs but they are really part of 1 package, so they are effectively 1 sign. He said that there is the “W” which is the logo, and the name of the store being “Walgreen’s” and then being what it is (the pharmacy). Also, in terms of looking at it, there is a mitigating factor that we do not exceed the permitted sign area which would be 135 S.F. and they are actually at 108 S.F. He felt that you have to look at it as 1 sign package and the fact that they do meet the gross area criteria (actually lesser than it), so that the benefits of granting the variance would allow for this single design package versus just 1 big sign on the wall.

Mr. Gemma asked if the distinction of this is that it is a retail establishment versus an office establishment and if retail were more permitted, like a pharmacy, you would normally have these types of signage on the walls.

Mr. Kolling replied, “Exactly” and said that these types of signs are not things that in his mind are excessive. He said that they are customary, appropriate, and reasonable for this type of retail use in any commercial district. He said that, obviously, the purpose is to promote business and to attract people to the business and signage is a necessary component of letting people know what the business is, where it is, and that it is open. So he felt that signage is really a part of any commercial district and part of what the objective would be of any commercial district.

Mr. Gemma asked Mr. Kolling to discuss the proposed monument signage.

Mr. Kolling said that the monument signage has been dramatically reduced and is now meeting the design criteria in terms of it being a wooden sign and also in terms of the structure that supports the signage. He said that they are all natural materials. The wood is an actual material and the support is brick columns that has some detail at the top that emulates the design of the building and, therefore, becomes part of the site design. He said that the idea is to create a sign that is consistent with the architecture. He felt that the proposal meets the intent of what the monument sign criteria is, albeit somewhat larger, and they also meet the goal of using natural materials and lighting it from exterior sources such as the gooseneck lamps.

Mr. Gemma noted the need for a conservation easement of 75’ and said that the applicant is actually seeking to put the bulk of the facilities a lot closer than 75’.

Mr. Kolling replied that that would be a setback type of c variance. He said that, in this case, there are sort of conflicting goals and objectives. On the one hand, the Zoning Ordinance requires a 75’ conservation easement and, on the other hand, the Master Plan that was more recently adopted suggests moving the buildings closer to the street. He felt that, in terms of being able to orient the building towards the street and to make it part of the streetscape environment, the benefits of moving it forward would outweigh any detriment to the Zone Plan criteria. He said that moving it closer to the street is also mitigated by the substantial proposed landscaping. He said that the benefit of moving it closer to the street also allows for easier pedestrian access from the sidewalk which is recommended by the Master Plan.

Mr. Gemma asked if the design standards for lighting are, in fact, design standards and not variances.

Mr. O’Brien replied that lighting is a design standard.

Mr. Gemma asked Mr. Kolling for the criteria for a waiver and asked how it is addressed.

Mr. Kolling replied that it is similar to the c criteria in terms of whether there is a hardship in terms of addressing it and meeting it – is it something that can be achieved and can you achieve that goal in some other methodology. In listening to the discussion of the engineer and how it is being addressed, he said that they have been able to reduce the pole heights to comply and there has been a middle ground struck providing for the safety and the efficient operation of the parking lot to provide safety for automobiles and pedestrians and still meet the intent of not having the site over lit and, therefore, not having any glare going off the site. He said that they

have been able to balance that and, therefore, he believed that they have achieved the goals and the intent of what those design criteria are.

Mr. Gemma said that there is one other design standard and it is an important one that the Board is wrestling with and that is the issue of the building layout. He asked Mr. Kolling to address why relief may be appropriate from the design standards.

Mr. Kolling confirmed that that is a design standard and said that he felt that the design actually meets the intent and recommendations of what the design standards are and what the Master Plan is talking about in terms of creating a more vibrant downtown environment. He said that the building is designed to be in a Colonial style with a lot of natural materials, such as the brick. He said that it is not a cookie-cutter type of building by any means and is obvious to the eye that the façade facing the street reads like a front and that is important in terms of being on the main street. Also, in terms of the way the site is laid out, he said that there is an issue of having the parking not being in front of the building and that has been addressed by moving it to the sides and to the rear. He said that it would be impossible, unreasonable, and not really desirable to have all of the parking in the rear because it would create a sea of parking. He felt that the proposal is a better approach and is consistent with the Master Plan. In terms of having the building oriented towards the street, he said that there is a tower element that identifies the focal point and where the main entrance is, notwithstanding the fact that the door may be angled towards Valley Rd. He said that the focal point indicates where the entry is. He said that there are two walkways that lead from the sidewalk into that focal point and, for this building and site, the front door to the site, from a pedestrian perspective, is that walkway. That is where a person walking down the street will then turn, come through the walkway, and come to an entrance plaza at that focal point where the benches are and the bike rack is and then enter into the building. He felt that they have addressed the idea of being oriented towards the street and having a front that faces the street and has, essentially, a front door leading from the street to the building.

Mr. Gemma said that he assumed that one of the inherent conflicts from this, almost like the issue of the conservation easement and being closer, is no one parking in the front and along the sides, but you want the doorway oriented more towards the front.

Mr. Kolling agreed and said that it is an inherent design conflict in that regard in terms of how you have the main entrance and where you can place your main parking and also have some orientation towards the pedestrian that might be on the sidewalk.

In response to Mr. Gemma, Mr. Kolling said that, in addition to his testimony, he had the opportunity to review Mr. O'Brien's report of 4/23/12. He said that the beginning is comments and what he has reviewed. He said that Pg. 3 talks about the signage design violations and he felt that he has addressed most of those. One that he wished to comment upon had to do with the window sign issue. He said that when he looked at the criteria in the Ordinance, he perceived that as being more from a traditional plate store window and you have a sign in that window that says "Open" or advertising and things like that. He said that that is really not the case here and he felt that Mr. O'Brien was referring to the glass element in the tower where the "W" stands, so he did not know if that really applies in this case. But if it does, he felt that the granting of that variance is beneficial because the glass can be removed and they simply have the "W" on a brick wall and he did not think that would be a very nice aesthetic design, so he felt that the benefits would offset any detriments in that regard. He noted that the "W" has already been calculated as part of the sign area, so it is not any *additional* sign area. He said that they haven't discussed the specific size of the columns and beams versus the sign area, but the idea is that the free standing sign becomes an architectural element consistent with the building. As to the design waivers, he said that most of this is engineering and they have talked about the outdoor lighting. In the zoning chart, he said that they discussed the front yard and they sought some waivers for checklist items, which again would be an engineering issue. In terms of general planning considerations, he said that they talked out the ideas of how they would meet the recommendations of the Master Plan and the ideas of orienting the road to the street. He said that the rest of the issues seem to be site plan, landscaping, and lighting which he felt have all been addressed as well. He said that, at the end, they talk about the Master Plan which he

brought up as part of his testimony, therefore, he felt that he addressed the issues raised in Mr. O'Brien's report.

Mr. Gemma said that he had no further questions of Mr. Kolling.

In response to Mr. Ruiz, Mr. Kolling confirmed that he was aware that there is already a Walgreen's in town and in Berkeley Heights.

Mr. Ruiz said that the intersection near the subject property is probably one of the busiest in the Township. He asked Mr. Kolling if he felt that the traffic pattern is suitable for the proposal.

Mr. Kolling replied that he had listened to the testimony of the traffic engineer and also noted that an internal roadway has been constructed, so there is no direct access to the site. He said that it allows for vehicles to enter into the property, in general, and then access the facility from the internal roadway, so that it has less of an impact on Valley Rd. He said that *any* use on the property is going to have some impact on Valley Rd. and he felt that the proposal has been handled in a way that will mitigate or limit those impacts. He said that there is also an existing traffic signal there which the traffic engineer had testified to that will be modified to accommodate the additional movements.

Regarding the location of the entrance to the building and the need for a design waiver from the design criteria, Mr. Pesce felt that we know two things at this point. One is that Walgreen's has previously built buildings with diagonal entrances at the front of their buildings and, secondly, we know that they don't want to do it here. He asked if a diagonal entrance would be problematic from a planning perspective.

Mr. Kolling replied that he did not know that it would be problematic, but he did not know that it would improve the situation that significantly and that it would really be de minimis because the doorway is at the furthest point to the front as you can get. When you arrive from the street, he said that you are actually arriving at an angle to that, so to orient the entryway at that location really wouldn't make that much of a difference and that you might save 3 or 4 steps. He felt that the way the building architecturally reads is still going to read like that is the entrance because the tower element is really the focal point.

Dr. Behr said that the issue of a front doorway onto Valley Rd. is one that has been important. He asked Mr. Kolling if he was familiar with the PNC Bank across the street.

Mr. Kolling replied, "Yes".

Dr. Behr asked if it has a front entrance.

Mr. Kolling replied that he was trying to picture it in his mind.

Dr. Behr said that it is actually a rear entrance, but it has the look of a front entrance. He said that the doctor's office nearby has the same thing. He also noted the Oceana Grill and said that you enter that building from the parking lot on the side, but in part of their approval their design was to put in something facing Valley Rd. that looked like a door. He said that it is very clear that the recent buildings that have gone up on Valley Rd. are trying in various ways to comply with the desire to create the visual *appearance* of an entrance, even where none exists. He asked Mr. Kolling if he could think of any other ways, without necessarily tilting it – although that is still an option as Mr. Pesce had correctly pointed out that Walgreen's has used in the past, in addition simply to the tower structure where we could honor that sense of a front entrance directly on Valley Rd.

Mr. Kolling replied that one thing that could be done without changing the function of the building, the architectural detail on the exterior could be changed from having the appearance of a window in the base of the tower, to having something that looks like a door. When the person gets to that point, it would be easily recognizable that it was not a door and the actual functioning door would be very close (within a couple of feet proximity). He did not believe that it would be

an inconvenience in that regard and, at the same time, it would allow for the internal of the operation of the store to function in a manner for which it is intended, which is to create a safe, efficient, ingress and egress for the customers.

Mr. Gemma said that he assumed that would also work because at that corner, if it was a façade rather than a door, there is no sidewalk in front of it – there is grass and landscaping.

Mr. Kolling said that there may be some redesign that would be necessary. He said that the building is set back 50', so a person driving on the road would still have that visual of the door in the front.

Dr. Behr said that he was just playing with this and not recommending it, but the interesting thing is that you have two tower facades coming down, so you would take the treatment on one side and there may be some sense of mirroring it on the other side.

Mr. Kolling replied, "True".

Mr. Hoffman asked Mr. Kolling if he, from a professional planner's prospective, had an opinion with regard to the categorization, classification, or treatment of the area that has been discussed somewhat extensively, namely the southeasterly corner of the proposed building and its design in terms of allowing access either from one location or, perhaps, from another location a few feet away. He asked him if he felt that this feature or aspect of development is critical and cannot be separated out, for purposes of this Board's consideration, from the totality of the project. He asked if it is a "make or break" issue from a planner's perspective in evaluating the proposal or can it be fairly dealt with in a piecemeal fashion.

Mr. Kolling replied that, in any application you should really look at it holistically but, at the same time, this is just one element of the application – how the façade relates to the street and the pedestrian environment on Valley Rd. He did not think that it can be separated from the functionality of the building either, so it has to be looked at holistically both from the exterior and the interior in terms of how it functions.

Mr. Lemanowicz noted that Mr. Kolling had indicated that the project would enhance the traffic circulation on Valley Rd. He asked him to go through that again.

Mr. Kolling replied that, obviously it is going to have an impact on traffic because there is going to be an additional movement at the light. He believed that what the traffic engineer had talked about in terms of modifying the cycles is that it would allow for better/safer pedestrian movement across Valley Rd. which would then provide for better pedestrian access to the site. By saying that it improves it, he said that it can't improve it because if it is going to have an impact, it is going to have an impact *but* he felt that this design is a better approach to providing access to the site than having direct driveways from Valley Rd. into the site. Instead, people primarily would enter and exit at the private road which is across from Plainfield Ave. and then be able to egress at a controlled signal versus simply existing on the road. He said that the one place that they do exit directly onto the road, there is a right turn out which is a relatively easy maneuver versus trying to make a left turn or backing up of traffic with people trying to make a right turn or a left turn in.

Mr. Lemanowicz said that this property is obviously vacant, but this applicant is somewhat unique in that it already has a facility in very close proximity to the site and they are choosing to move from that facility to this one. Going on to the traffic idea, from a planning perspective, he asked Mr. Kolling if it is better to have facilities group so that you can park the car and walk to several different businesses, or to take one of those businesses out and put it someplace else, so now if a person wants to go to one of those stores in the group *and* to Walgreen's, now that creates that extra traffic trip.

Mr. Kolling replied that that is true, but the goal of the Master Plan is to make Valley Rd. one continuous commercial district, so this facility may be a little more stand alone today, but the

idea is that over time, the street would fill in and allow for those types of pedestrian movements between the commercial uses.

Mr. Gemma said that he had no further questions of Mr. Kolling and that he was finished and had nothing further to add. He also confirmed that he would not be presenting a summation and would allow the Board to move quickly.

Dr. Behr said that, should the Board vote to approve, he felt that it is important to get a very exact list of any conditions upon which an approval would be based. He asked Mrs. Wolfe to take notes on this.

The proposed conditions of approval were discussed as follows:

By Mr. O'Brien:

- The sign be no more than 25 S.F.
- The columns, supports, and size shall be provided to the Board staff and that the wood carved sign be of a natural finish.
- Driveway lighting shall not exceed .8 footcandles.
- Parking area lighting shall not exceed .5 footcandles.
- Outdoor lighting to be shut off to a security level ½ hour after closing (which at this point is between 10:00 P.M. and 11:00 P.M.) and will be supplied by the applicant.
- The security lighting is to be reviewed by the Board staff and Lt. Mazzeo of the Traffic Dept.
- The bike rack is to be moved west by 2' (which would entail additional concrete).
- A striped walkway is to be provided for the western parking aisle to the front of the building along with a 4' wide sidewalk adjacent to the front driveway with no change to the proposed landscaping per the April 17<sup>th</sup> plan.
- A conservation restriction zone will be delineated on the site plan.
- A Title 39 enforcement agreement with the Long Hill Police Dept. shall be executed.
- A Knox Box will be installed at the direction of the Fire Official.
- The Umbrella Pine at the proposed southwest corner of the lighting shall be shifted slightly to the east to be centered on the blank wall expanse.

He also noted that submission waivers have been requested for Pg. 5 of his report, Item D. He said that 3 waivers were requested and it would be up to the Board to grant or deny those waivers. They are:

Checklist Item #24 (Preliminary Major Site Plan) – Plans, profiles, cross-sections and construction details, horizontal and vertical alignments of the centerline of all proposed streets and of all existing streets abutting the tract, as well as similar details on curbing, sidewalks, storm drains, drainage structures and cross-sections every fifty (50) feet of all proposed streets and of all existing streets abutting the tract. Sight triangles, the radius of curblines and street sign locations shall be clearly indicated at the intersections.

Checklist Item # 4b (Final Major Site Plan) – Final cross sections, plans, profiles and established grades of all streets, aisles, lanes and driveways, and construction documents (plans and specifications or reference to specifications) for all public improvements.

Checklist Item #4c (Final Major Site Plan) – Final plans and profiles of all storm and sanitary sewers and water mains.

He also pointed out that on Pg. 6 of his report, Item V(A)3 regarding bollards, that the applicant has proposed to continue with the yellow concrete filled bollards that are industrial in nature. He said that he suggested to the Board that they be replaced with decorative bollards because, in his opinion, this is a high traffic area and anybody going to the drive-thru will pass this area. Anybody going to the western parking area will traverse this area, so he believed it to be a high traffic area and did not believe that it is a fairly quiet area, so he felt that something decorative rather than industrial is called for here, but that is up to the Board.



In terms of the building standards, he said that the applicant has discussed allowing parking only to the rear of the building and also discussed keeping building entrances facing Valley Rd. They discussed closer front setbacks to Valley Rd. and also discussed the architectural standards. So the questions in front of the Board which were at the top of his Pg. 6, are whether or not the building should have a front entrance facing Valley Rd. or, in the alternate, is a diagonal entrance that faces the intersection appropriate, or is Mr. Kolling's testimony concerning the focal point of the tower sufficient for you.

Dr. Behr said that we have also heard testimony that they would be amenable, perhaps, to treating the window on Valley Rd. in such a way that it created more of a harmonious look with the actual entrance which has its own unique framing on the eastern side.

Mr. O'Brien agreed. He said that there has also been discussion about squaring the building off against Valley Rd. as opposed to the current proposal to keep it skewed and the Board has heard testimony in that regard from the applicant and its planner.

By Mr. Lemanowicz:

Mr. Gemma stipulated that the applicant will comply with all open items contained in Mr. Lemanowicz's report dated 4/26/12.

Mr. Lemanowicz noted that there were a couple of other items discussed in testimony that were not in his report. They are:

- Relocate the water and gas service as to retain two of the existing trees.
- The light pole height is to be revised to meet the Ordinance height of 15' (to the top of the fixture – *not* to the light source).

By Board Members:

- Deliveries are to be limited to the morning hours prior to 12:00 P.M.

Mr. Hoffman said that, having lived with hundreds of use variance and site plan applications over the course of his career in the land use field, he respectfully suggested that the Board is going about the deliberative process (which is the key decision making for this major application) backwards because the first issue (and critical issue) that must be decided for this project to go forward and a spade may be put in the ground for any development to take place, is whether you are satisfied with the affirmative and negative criteria for the use variance having been granted *predicated* upon the assumption that reasonable and appropriate conditions can be worked out and agreed upon. He said that that is an *essential* stipulation or proviso that goes with ancillary question #1 and, if indeed a majority of at least 5 Board members agrees that the answer to the use variance question is "yes", *then* the Board should go through item by item and formulate, with the assistance of the consultants, in reviewing the record the nitty-gritty details – whether deliveries should be barred before or after a certain hour, rather than getting the focus away from the critical number 1 issue.

Mr. Gemma said that he would only offer for the Board the consideration that, in fact, that is what they are doing. While he did not feel that the cart has been put in front of the horse by looking at the conditions the Board is imposing in seeking to deduce things that would mitigate the impact in such that it is trying to come to the determination whether relief for the use variance is appropriate. He said that he understood Mr. Hoffman and bowed to his experience, but he did not think that the Board is remiss in doing it the way it is.

Mr. Hoffman said that he felt that they have the right to express preference procedurally as to how the Board should go ahead because it is their application.

Further discussion continued regarding delivery hours.

Mr. O'Brien quoted from Pg. 17 of Mrs. Wolfe's minutes of 1/17/12 as follows: "Mr. O'Malley replied that the standard truck would fit. Based on the proposed hours of operation on this site, he said that if they were opening at 8:00 A.M., they would request that the warehouse truck

arrive at 7:00 A.M. It would be their goal, operationally, to be done with the truck before they even open.

Mr. Gemma said that they would ask as a reasonable condition that deliveries be limited to the morning hours prior to 12:00 P.M. which provides a window of opportunity and if it is not adhered to, the Zoning Official will nail them and they will come back before the Board.

It was agreed by the Board that deliveries will take place prior to 12:00 P.M.

Mrs. Raimer said that she had reservations to the “prior to 12:00 P.M.” and said that she needed to narrow that window because she needed to make sure that it is not going to interfere with morning traffic going down Valley Rd.

Mr. Gemma said that their traffic expert had testified that the A.M. peak hour is more like 7:30 A.M. – 8:30 P.M., so he did not think that you can tell them they can’t come during that period of time – that is probably when they are coming, during the morning peak, but that is on Valley Rd. and that is why it is a signalized intersection. He said that he believed the concern as to deliveries was not the *use* of Valley Rd. or the turning movement Mr. Harter had indicated, which is why they are putting the light at that intersection, but it is parenthetically a County road and they have jurisdiction. He said that the concern for safety was the conflict of movement on the site itself between deliveries and a truck being there and people coming back and forth. He said that that was the concern and not as much as Valley Rd.

Dr. Behr asked if there were any conditions the Board may have overlooked. He asked Mr. Hoffman if he could think of any.

Mr. Hoffman replied, “No”. He added that he will exhaustively pour through his notes, the minutes, the reports, and every document in the file before composing and completing any detailed list of conditions.

Dr. Behr added that there is also standard language utilized to the effect of “and any other conditions deemed reasonable” which is reasonable and appropriate.

Mr. O’Brien said that the hours of operation which Mr. Lemanowicz gave before are reflected on Pg. 14 of the 1/17/12 minutes. In addition to that, he said that Mr. O’Malley (on Pg. 18) points out that for approximately 7 days prior to the Christmas holiday, the stores have extended hours and are open until midnight.

Before deliberating, Dr. Behr said that he wanted to talk briefly with the Board about being mindful of what we are doing here. He said that we haven’t heard an application like this is some time and there are some members of the Board who have *never* heard a commercial application like this. He felt that it is useful to take a moment to make sure that we are very clear on what our deliberations need to entail. He asked Mr. O’Brien to elaborate in a moment. He said that when he is talking to people about an application like this you get interesting comments. Some people will say that they would love to have a Walgreen’s and feel it is really great and others disagree and don’t feel a Walgreen’s should be there and that we need something different, perhaps like a Whole Earth type of place. He said that, as private citizens, everyone is allowed to have their own opinion, but that kind of reasoning has absolutely nothing to do with the criteria upon which the Board must rule. He said that he has also heard people ask why they are putting up a new building when we have so many vacant buildings in Long Hill Township. He said that such thoughts have *absolutely* nothing to do with the factors that would cause the Board to approve or deny this application.

Mr. O’Brien said that the Chairman’s points are well received. He said that each application is to be judged on its own merits, all by itself, no other application or other events and nothing else in this community should have any bearing whatsoever upon the application that is directly in front of the Board and the Board is to judge the application based upon the merits of what has been presented in testimony, as well as information received from the Board’s staff and comments received at the hearings. He said that each application is unique and stands and rises on its own

unique aspects. Among the deliberations to be considered are the special reasons that have been enunciated and whether or not you feel that those special reasons rise to the criteria required for a use variance to be approved. In addition to that, the negative criteria – first that it can be reconciled with the Master Plan and the Zoning Ordinance – does this application meet that requirement? Are you satisfied that the Master Plan and Zoning Ordinance have been addressed? He said that the second aspect of the negative criteria is its impact upon the community and, in particular, the neighborhood surrounding it. He said that you have heard plenty of testimony concerning traffic, site impact, and the neighborhood. He asked the members if their concerns have been addressed through that? He also reminded the Board that off site traffic has no bearing on this application. He said that the deliberations should only include what is happening on this site and in its *immediate* local and not off site traffic at all. He said that there are a number of bulk variances and the applicant has asked that you discuss them from a benefits outweigh the detriments perspective and it is up to the Board as to whether or not they meet that burden – that the benefits of granting the various bulk variances that have been discussed outweigh any possible detriments to the community. Lastly, he said that the Board has got to deliberate and weigh the testimony that has been given to it very carefully, relying upon the testimony that was presented through these hearings, as well as in the reports received and the exhibits that have been presented. He said that it is most important that the members concentrate on what they have heard and learned in the course of the hearings and make their decisions based solely upon that information.

Dr. Behr said that, normally, the Chairman deliberates last and that he has been wrestling with that for 2 reasons. He said that he was on the Planning Board for all of the work that went into the current Master Plan and, while he understood that some changes to that Master Plan may be contemplated now, he felt that it is important to recognize that those changes would not impact this application. In addition, he said that he has worked very hard with Patrick Jones (former Chairman of this Board and a licensed architect) in taking a look at our architectural standards and, therefore, is able to respond to a number of items in this application with a certain degree of expertise. He said that it is not without precedent and Patrick Jones on some applications like this, as Chairman, would lead and so did Bill Neville. He said that he would stick with his gut and defer to Mrs. Raimer to start deliberations.

Mrs. Raimer said that this type of application is one that we haven't had to deal with in a long time. She said that she sat on the application of Commerce (now TD) Bank and also the application of Somerset Bank. She said that the important thing about this particular site, as Mr. O'Brien has pointed out, is that it is a gateway into our community and what it looks like is very important for how we are seen as people enter and those that already live here could appreciate. She felt that the applicant has done a lot to try and conform to all of the Board's requests and consider the fact that we are trying very hard to address our efforts to develop a business center in the hub of town that has some architectural elements that are consistent throughout and that are aesthetically pleasing that create not just pedestrian access but a sufficient amount of greenery so that we can feel that "home town" appreciation that we are lacking at the moment. She said that this will be the first property to create that precedent, although no decision here has any precedential value. In considering the use variance, she felt that Mr. Kolling has done a very good job in helping guide the Board as far as the required proofs that special reasons do exist that would allow this application to be approved. She said that this particular application is well suited for this site. She appreciated that it is at a signalized intersection with internal roadway access. She said that it meets the first part of the negative criteria in that it can be reconciled with the Master Plan. If the recommendations of the Master Plan are adopted (and she was hopeful that they will be), she said that this would have been a permitted use, but in the meantime it does enable this area to become more of an economically sustainable commercial center as specifically cited in the draft element that is pending. She said that it enhances the visual environment and keeps with the standards of Long Hill Township both in its design elements, the Colonial style, the natural elements used, and the matching of the brick to similar structures within the Township. She felt that the applicant has done a lot to address some of the design standards when they were at times vague or in draft form. As far as a substantial detriment to the public good, she said that it is consistent with the character of the area or the area that we are seeking to develop. She felt that the modifications to the signal *would* improve the pedestrian flow and, hopefully, traffic safety. She said that she did have some concerns about the circulation design

and did not feel that it is ideal, but given some of the some of the other options, she felt that it is the best option that we have to work with and, over time, we will become accustomed to the circulation design just as we are at other sites. For all of the reasons she had stated, she said that she would grant the use variance. With regard to the c variances, she said that ordinarily she would like to take this as one global element and decide them all in one, but she felt that there is too much involved here. With regard to the signage variances, in particular the monument sign, she said that the applicant has met the criteria, reduced its size, and made it of natural elements. She said that the lighting has been changed and the applicant eliminated some of what was originally proposed so that it would be more consistent with the signage ordinances that are in place now. She said that she was not “overjoyed” with the extent of the signage on the building, but in weighing the benefits and the detriments, she felt that it is important for the structure to be recognized without making it over lit or over done, so she would have to agree with the applicant’s professionals and find that the benefits outweigh the detriments in allowing the proposed signage. With regard to the conservation easement, she felt that moving the building closer to the street mitigated the gap by adding the proposed landscaping and walkway. She felt that the landscaping is particularly important and that the configuration of the landscaping is essential. She said that there has been some talk about trying to orient the building so that it would align with Valley Rd., or should it be angular, and there was a lot of “back and forth” on that. She felt that by creating the angular landscape bed in the front, the applicant is creating a visual impact that is pleasing and satisfactory. By modifying the lighting, she said that the applicant is providing for the safety of the pedestrians and the drivers without creating an area that is over lit. In the cases of the conservation easement and the lighting waiver, she felt that the benefits outweigh the detriments. As to the requested design waiver, she said that the building being Colonial and the façade appearing like a front, with no parking in front, and oriented towards the street with the tower creating a focal point at what could be conceived as an entrance plaza, would allow her to say that she was comfortable with the proposed design. She said that she would like to see more of an entrance-like element on the front façade, even if it is a faux entrance but, in other respects, she said that she would say that the benefits outweigh the detriments and she would grant the waiver for the building design. She asked which other waivers or variances she had not considered.

Mr. O’Brien replied that he felt that Mrs. Raimer had covered the vast majority. He suggested that she do an all inclusive that the remainder, if she so felt, meet the same standards.

Mrs. Raimer said that, for the reasons she had stated, she would be comfortable granting the application. She said that she had given it long and hard consideration, apologized for being “wordy”, but said that she felt it was important.

Mr. Pesce said that he, too, believed that the applicant has met his burden for the use variance. He said that he was particularly persuaded by the argument that this is, in fact, contiguous to a B-2 Zone and were it in a B-2 Zone, many of these issues and variances would not be necessary. He said that it certainly sounded to him like the Master Plan is looking to have some overlapping which, to him, made sense. He also felt that the criteria and the burden for the bulk variances have been met. He said that his only frustration is on the issue of the location of the entrance. He said that his frustration is over the fact that he hasn’t heard why Walgreen’s has changed the location that it has had in many stores over the years and all of a sudden draws a line in the sand over an issue that is, in fact, at variance with the design building standards in our Master Plan. He suspected that they have a reason, but he said that he hasn’t heard it. However, he said that he did not feel his concern rises to a level where he was prepared to condition his approval on them fixing that, but he was close to that, frankly, primarily because he did not feel on that issue and that issue alone that there has been an adequate demonstration of why they want to do what they want to do, despite what our Master Plan says. He said that he knew that Mr. O’Brien had talked about switching out the now industrial bollards for something more decorative and he said that he would *not* insist upon that. He added that he was not sure that the Board had resolved whether that would be a condition or not, but he felt that industrial type bollards would be more appropriate at this location.

Mr. Hoffman added that industrial type bollards are what are shown on the plans, so if approval is granted to the plan, it would include that.

Mr. Pesce replied that he understood and that he only mentioned it because Mr. O'Brien had mentioned it as a possible condition, which is *not* one that he would support.

Mr. Keegan said that he believed that the Township *would* benefit from having a pharmacy with a drive-thru, not only because it would benefit the elderly and the disabled, but also it would benefit families with young children. He felt that the applicant has demonstrated why a use variance should be granted, however he did not feel that a c variance should be granted for the signage. He said that he still believes that it conflicts with the Master Plan and the subsequent ordinances adopted by the Township and it too closely resembles what you would find on a highway. As was previously pointed out, he said that other major brands such as Starbucks, Panera, and PNC Bank have signage that is more in line which what he felt the Master Plan is trying to achieve. He also said that he had *significant* reservations over the tower element and, specifically, the "W" signs. He said that, as the applicant's planner had testified, the tower will be a focal point of the building and, frankly, he did not feel that a large illuminated "W" as a primary focal point when you are entering the Township benefits the Township. With regards to the tower and overall building, he said that this building benefits from a topographical advantage in that it sits 5' higher than Valley Rd. So, it is not just going to be 20' off the ground or so, it is going to be 20' plus the extra 5'. He said that Mr. O'Brien's evidence showed that the applicant did have signage very similar to what is found at Panera and Starbucks, however they felt that it is not appropriate for this site. He said that his argument would be that the architecture between those two buildings, while not identical, is similar. It is both brick and glass of a moderate nature. As to the remainder of the c variances and the design waivers, he felt that the applicant has demonstrated why they should be approved. He said that his only hold up is the signage.

Mr. Gerecht said that he concurred with Mrs. Raimer and her eloquently elaborated statements. Over the extended course of this application, he said that he has had problems with various aspects of it and still had some problems with the driveway configurations and the way it is designed but, as Mrs. Raimer had stated, he felt that we can get used to it and hope that the applicant is correct in that most of the traffic will not have to do some maneuvering to get in and out of that area by the door. Overall, in looking at the entire application, he believed that it has met the negative and the positive criteria. He did not believe that it will be a detriment of any kind and will improve an area that has been under developed and sitting as vacant land. He felt that the proposal will be a good use for the property and said that it is in an area that will benefit from the intersection that is there and that it will upgrade the traffic signal and impact it in a positive manner. As to the signage, he felt that the applicant has done a significant job in reducing it. He said that it did not bother him as much that there is a "W" or the Walgreen's. He believed that by reducing the size and changing the monument sign to a wooden sign and having it externally illuminated instead of internally illuminated has minimized its impact so that it looks more in line with the type of signs that we encourage in the Township. He did not feel that it will look like a strip mall sign. He said that the building will be a "massive building" and will be one of the biggest buildings on Valley Rd. that we have in "look" to it, but he felt that it is a positive look. He said that he was not so much worried about the position of the door because we have other buildings on Valley Rd. that *don't* have the door spacing. He felt that it doesn't detract from the building and preferred the door *not* in the front because he felt that it would look "a little more sloppy" for him. He said that he likes a nice uniform look in the front where you don't have perhaps an "open" sign on the front door or something to distract drivers. He believed that it will act more like a uniform front to the building and make it look nicer to the front of the building from the Valley Rd. side. He felt that it makes more sense to have the door on the side where the parking is. He believed that the applicant has done a good job with its testimony and complying with a lot of the Board's requests and modifying its plans accordingly with the Board's experts. He said that he would be in favor of the application.

Mr. Ruiz made a motion to extend the meeting until 11:20 PM which was seconded by Mrs. Raimer. All were in favor.

Mr. Ruiz said that he was very proud of the job that the Board is doing with this applicant. He said that it was not an easy application and he felt that the Board did a very good job in listening and taking everything into consideration. He said that he was in agreement with Mrs. Raimer and Mr. Gerecht in what they had said and that he was in favor of the application.

Mrs. Malloy felt that special reasons exist that allow the application to be approved. She felt that the proposal will definitely be something different for the Township and that they will have to take into consideration with regards to the increased traffic patterns. She felt that there will definitely be an impact no matter how we look at this and how it is going to fit into a new Master Plan when it comes to unifying the downtown for, basically, community use. With regard to the design waiver she felt that, despite the impact on traffic, it will be a more easily accessible location. She felt that the proposal is an architecturally pleasing building with the signage and the lighting and, especially the security/after hours lighting, fits the character and nature of our community. She said that she was particularly in favor of the Colonial choices because she felt that it fits in very well with our Town Hall, Gillette School, and the Sr. Citizen's Center. As to the signage and conservation easement, she felt that the benefits outweigh the detriments. With regard to the door facing Valley Rd., she felt that ultimately we have a history where there have been even more recent structures that are not completely facing Valley Rd. and it has contributed to a very "mish mash" pattern up and down what we are considering the business district. To this extent, as to the ultimate intentions for the usage of downtown space in terms of being able to incur pedestrians, hikers, and bikers and have a place where people will stroll around and have cultural and entertainment events, she felt that the landscape ultimately is going to contribute to a more unified look on what we are saying is the business district. She felt that Walgreen's has done everything to live up to this criteria in terms of basically planting trees and listening to the Shade Tree Commission. She felt that the applicant has worked very nicely with the Board in everything it has had to say with regard to reducing macadam, building up the trees and flowers, and she felt that, ultimately, as we do this up and down the street just beyond this application, that is what will ultimately create an area where people are going to want to come and commune with one another. She felt that the applicant has worked the best way it could in the space given to design a structure that is useful and architecturally pleasing and she felt that the use is beneficial to the community with regard to the drive-thru pharmacy and, particularly, the walk-in coolers where you can run in and purchase a fast gallon of milk without having to go to a supermarket. She said that she wholly concurred with her fellow Board members and would approve the application.

Dr. Behr said that, at the very beginning of the hearing one of the points that was made that has guided his thinking on this was that we have a chance with this building to really do something very special that, over time, can help define what Valley Rd. could ideally begin to look like. He felt that the applicant has *more* than sufficiently met his burden of proof in demonstrating that this building would be exactly that kind of a structure. He felt that the applicant has demonstrated special reasons and that it is well suited for the site for a number of reasons, not the least of which is that it really is consistent with what the new Master Plan contemplates for this area. He said that the second piece to it, which he felt is very important, that was a major part of the Master Plan and also a landscaping plan that was approved by both the Township Committee and the Planning Board, is the attention that the applicant has placed not just to landscaping, but to where they had extensive brick in the front to mitigating that, so you are combining man-made elements with natural elements, and he felt that that is very much to be desired. He said that people have talked about the fact that the intersection is signalized and we have heard the fact that the traffic is not going to be burdensome. He said that he shared concerns, in part, about the circulation, however it was not a "break issue" for him and that he felt we will get used to it. He said that the applicant gets major kudos on the architectural standards. Worth noting, he said is that the color of the brick matches the brick colors elsewhere in the Township and it is not the orange color that we see elsewhere. He said that, if you pay attention to the details in this building, architecturally, and compare it with both Town Hall and the PNC Bank across the street, you will see that the applicant has gone to greater lengths to try and put in the small details that help elevate a building and make it more attractive. In terms of the flexible c variance, he believed that, in whole, the benefits outweigh the negatives. He said that he would be most pleased if there was some faux treatment to the doorway and, along with other Board members, he was not troubled by the fact that the commercial bollards that are on the plan will be put in. He said that he did not know that he would make a big case for decorative bollards at this particular location and, for those reasons, he said that he would vote to approve the application.

Mr. Hoffman said that it may require more than one vote.

Dr. Behr said that 6 members of the Board said that they were not troubled by the signage and 1 member said they were.

Mr. Hoffman said that he was not sure that *all* of the members expressed commentary on the signage.

Dr. Behr said that, if somebody did not raise it as an issue, he was assuming ascent.

Mr. Hoffman replied, "Perhaps".

Dr. Behr said that he heard unanimity on the use variance (as did Mr. Hoffman). He said that he also heard unanimity on all of the waivers with the exception of the signage. He said that there were concerns about traffic and a number of other concerns but he did not hear any of those get elevated to the level of a reason to not approve. He asked Mr. Hoffman how he would recommend that the Board proceed.

Mr. Hoffman said that he would believe that there should be a single vote taken based upon a motion to be made and seconded to grant the essential use variance for the project. Beyond that, he said that there are a variety of ways in which to frame the necessary relief needed for bulk variances and, including those on signage, as well as perhaps on some of the waivers vis-a-vis the design of the structure.

Dr. Behr said that he did not wish to prolong this. He said that he heard, with the exception of the concern about the signage, unanimity in terms of the c variances and waivers, but would stand corrected if others recall differently.

Mr. O'Brien said that the Chair may wish to divide this into 4 distinct areas that are based upon the Statute. He said that the first is a use variance along with site plan approval; the second would be the c (or bulk) variances; the third would be the design waivers which would include the signage; and the very last would be the Checklist waivers.

Dr. Behr said that all of these would be subject to the conditions that have been enumerated.

Mr. O'Brien agreed and said that the d variance would require a super majority and the c variances, design waivers, and the Checklist waivers would require a majority.

Mr. Hoffman agreed with Mr. O'Brien.

Mr. Gerecht made a motion to approve the use variance and preliminary and final major site plan aspects of the application, subject to the conditions enumerated earlier, which was seconded by Mr. Ruiz. A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Pesce, Mr. Keegan and Dr. Behr. Those opposed: None.

Mr. Pesce made a motion to approve the requested c (bulk variances) aspects of the application, subject to the conditions enumerated earlier, which was seconded by Mr. Gerecht. A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Pesce, Mr. Keegan and Dr. Behr. Those opposed: None.

Mr. Gerecht made a motion to approve the requested design waiver (*including signage*) aspects of the application, subject to the conditions enumerated earlier, which was seconded by Mr. Ruiz. A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Pesce and Dr. Behr. Those opposed: Mr. Keegan.

Mr. Pesce made a motion to approve the requested Checklist waivers, subject to the conditions enumerated earlier, which was seconded by Mrs. Raimer. A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Pesce, Mr. Keegan and Dr. Behr. Those opposed: None.

Mr. Gemma thanked the Board for its time and effort and approval of the application.

Mr. Spiro Koutsogiannis, principal of the applicant, thanked the Board members for what they are doing for the Township and said that they acted very thoroughly and professionally throughout the application.

Dr. Behr thanked Mr. Koutsogiannis for his service to the Township as well.

The meeting adjourned at 11:20 P.M.

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DAWN V. WOLFE  
Planning & Zoning Administrator









