

MINUTES

FEBRUARY 19, 2013

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:05 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 December, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

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

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

Kevin O'Brien, Twp. Planner

- Excused:
- Barry Hoffman, Bd. Attorney
 - Thomas Lemanowicz, Bd. Engineer
 - Dawn Wolfe, Planning & Zoning Administrator

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EXECUTIVE SESSION

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

APPROVAL OF MINUTES

The minutes of November 20, 2012 were approved as written on motion by Mr. Ruiz and seconded by Mr. Gerecht. Mr. Fagnoli, Mrs. Malloy and Mr. Keegan abstained as they were not present at that meeting. Mr. Aroneo abstained as he was not a member of the Board at that time.

The minutes of January 8, 2013 were approved as written on motion by Mr. Pesce and seconded by Mr. Gerecht. Mrs. Raimer, Mrs. Malloy and Mr. Ruiz abstained as they were not present at that meeting.

DISCUSSION

GENERAL NON-APPLICATION RELATED DISCUSSION OF THE VALLEY ROAD BUSINESS DISTRICT ELEMENT OF THE MASTER PLAN

Dr. Behr reminded the Board members that they will not and must not discuss or refer to any application that is now or might be coming before the Board. Secondly, he said that we are solely looking at the Valley Road Business District Element that was recently approved by the Planning Board in June, 2012.

He said that we have an interesting anomaly here in that the Valley Road Business District Element of the Master Plan is new as of 2012 and almost all of the rest of the Master Plan is still the one....

Mr. O'Brien added that the Re-examination of 2003 which succeeded the Master Plan of 1996.

Dr. Behr said that, in terms of most of the substantive content, it basically simply aligned itself with the earlier one.

Mr. O'Brien agreed.

Mr. Aroneo noted that the Environmental Element of the Master Plan was adopted in November or December, and the Meyersville Element as well.

Dr. Behr said that some years after the adoption of the Master Plan and the environmental ordinances (about 5 years ago), Dr. Hamilton came and conducted two sessions before the Board that basically take us to the Master Plan Element and the Ordinances. He said that because there is a new Master Plan now and, at such time as we get new ordinances, it is really critical for the Board to make sure that we know what has changed and what we need to pay attention to. In any event, he said that right now for the Valley Rd. Business District Element, the overall operative Master Plan, particularly in terms of the Land Use Element, is still the 1997 Master Plan (as supplemented by the 2003 Re-examination Report).

Mr. O'Brien agreed.

Addressing Mr. O'Brien, Dr. Behr said that he felt it would be useful as a framing exercise for him to take the Board through the goals of the 1997 Master Plan and highlight what he thought are the really significant issues of that plans in terms of the goals that cast light on how we should view Valley Rd. with particular attention to land use and housing. He said that there are a number of other elements in the overall goals of the Master Plan that he felt are worthy of reminding ourselves about.

In response to Mr. Pesce, Mr. O'Brien confirmed that the Master Plan deals with the entire town and elements then deal with either specific pieces or specific subjects such as environmental, stormwater, circulation, utilities, public facilities, open space, and conservation, all of which are subjects or they could deal with places like Meyersville, Gillette, Valley Rd., and Stirling, all subject to the overall goals of the Master Plan. He said that the MLUL allows for about a dozen different subjects as elements of the Master Plan and you can use as many or as few as you like. He said that the only one that you *must* have if you have a Zoning Ordinance is a Land Use Plan. The second one that you must have if you do affordable housing is a Housing Element. He said that those two are mandatory and the rest are optional. He said that, dating back to the 1996-1997 Master Plan, the Township used a number of different subjects as well as a number of different places to write the Master Plan at that point and we have been updating those studies since then. He added that we have branched out in a new area in terms of stormwater and we are updating the others as time goes on.

Dr. Behr said that, to his knowledge, what was in the 1997 plan (particularly the Land Use Plan) all of which is still in effect are the Goals, Land Use Plan, Housing Plan, Circulation and Sidewalk Plan, Utilities and Service Plan, Community Facilities and Recreation, Conservation, Historic Preservation, and Recycling.

Mr. Fargnoli asked Mr. O'Brien if all the Board recommendations on Pgs. 2-5 of the 2012 Valley Rd. Business District Element were approved.

Mr. O'Brien replied that what the Board has in front of it is the Master Plan but when you ask if these things have been approved, what you are talking about is whether or not those recommendations have been placed in a form so that they become ordinances, or the law of the Township and, as of this moment – no the Planning Board is working on the supportive ordinances to that Master Plan. He said that what was approved in June, 2012 was the Master

Plan itself. He said that the Master Plan document is a visionary statement which lays out for the Township what we would like our goals and objectives, what we want it to look like, and where we want it to be over the next few years - things that we want to keep in mind every time we review a development application. In terms of recent analogies he said that it might be like a Presidential inauguration speech where a speech is given and lots of objectives are put out for public consumption but they have no basis in reality until a statute is written and a law is passed by the appropriate body. He said that this is a little different in that the Master Plan makes recommendations to the Township and the governing body and, with the collaboration of the Planning Board, draws up those ordinances to support that Master Plan and then they become the force of law, so a Master Plan may have a very lofty goal. For instance, he said that the very first one from 1997 and restated in 2003, and again restated in another way in 2012, said “To conserve and enhance the essential rural and residential character of Long Hill Township in order to best provide for the health, safety, and general welfare of all Township residents”. He said that that is not easily taken down and made into a rule and what happens is that, with that vision statement in the back of your mind, you come up with rules such as density of housing so that you don’t have 1,000 people in a one block area. Instead, it is nicely laid out and it is very less dense which allows the essential rural and residential character to remain and it limits the amount of commercial space, emphasizing that residential character of the community. He said that the Master Plan sets goals and objectives and the Zoning Ordinance lays out the rules that reinforce what the Master Plan says.

Dr. Behr said that the ordinances (and *solely* the ordinances) are what determines the nature of the relief that an applicant must achieve when they come before the Board. He said that we do not say to someone that they need a variance because they are not in tune with this element of the Master Plan. He said that an applicant has to get a variance because their proposal violates a specific ordinance.

Mr. O’Brien agreed. He said that the job of the Board of Adjustment is to review applications based *solely* on the ordinances that are in effect that govern that application. In a use variance, he said that the first burden of proof is the special reason which must be rooted in the basis of zoning which is found in the MLUL and talks about encouraging municipal action to guide the appropriate use or development of all lands in the State in a manner which will promote the public health, safety, morals and general welfare. Also, to secure safety from fire, flood and panic and provide adequate light, air, and open space and ensure that development does not conflict with the general welfare and to promote the establishment of appropriate population densities. He said that they are very general goals and ones that mean something so that, for a use variance, an applicant must show that they meet one of these statewide set of goals. Under the burden of proof, he said that we have what is called positive and negative (or 2 sets of negative criteria, depending on which planner you talk to). He said that he calls the positive criteria that which means that a variance has got to be rooted in the Master Plan and the Zoning Ordinance – that you can reconcile the application with the Master Plan or the Zoning Ordinance in some way. The other half is that there be no negative affect upon the neighborhood (as in a physical affect) or an affect upon the community as a whole by virtue of that application. He said that when you talk about the Master Plan goals of the community, it talks about the essential rural and residential character of the Township and providing for the health, safety, and general welfare of all Township residents, does it meet that test on the positive criteria? He said that you then go to the negative criteria and determine if it has a physical affect on the neighborhood or the Township as a whole? He said that even though the Board’s decision is based in the Ordinance, your guidance comes from the Master Plan because the language in the approval says it has got to meet the negative and positive criteria and, if it doesn’t meet those, you don’t have a right to approve it.

Mr. Pesce said that, from a process standpoint, the Master Plan and its constituent subjects and elements are passed by the Planning Board and the enabling ordinances by the Township Committee.

Mr. O’Brien agreed.

Mr. Pesce asked what would happen if there was something in the revised Master Plan that was *inconsistent* with a zoning ordinance on the books today, prior to the adoption of something to change it?

Mr. O'Brien replied that the Zoning Board of Adjustment has to work on the current ordinances and, even though they may be inconsistent with the Master Plan that has been adopted, you have to wait for the ordinances to catch up to the Master Plan. For instance, he said that even though the Valley Rd. Business District calls for the establishment of an entirely new zoning district in the Township, the enabling legislation has not been passed. So those properties out on Valley Rd. are not in the Business District Zone officially yet.

Dr. Behr said that a great example is Parthenon Realty which was not in line, if he remembered correctly, with the existing ordinance.

Mr. O'Brien agreed.

Dr. Behr said that the Board could take into account that this is where the Planning Board is moving for the Valley Rd. Business District.

Mr. O'Brien agreed and said that they are reviewing those ordinances now to support the new Master Plan, but there is always a time lag on that which is part of the "nature of the beast".

Dr. Behr said that, when the Township Committee adopts an ordinance, it is the province of the Planning Board to say that this ordinance supports the Master Plan (or it doesn't). If it sends it back to the Township Committee and says it doesn't, the Township Committee has the absolute right to say that they are going to pass the ordinance anyway, but they would have to demonstrate in writing why they are seeing this is a different way than the Planning Board did with the Master Plan. He said that, ultimately, the sole authority resides with the Township Committee but the Planning Board is *required* on any ordinance to say does this meet or not meet the Master Plan and give that piece of information to the Township Committee.

Mr. O'Brien agreed.

Mr. Aroneo asked, in the example of Parthenon Realty, if the Board of Adjustment relied on the existing ordinance for the variance but also looked at the Master Plan that was about to be adopted (or already adopted)?

Dr. Behr replied, "Not officially, but to be mindful of it". He said that it is very clear to the Board of Adjustment that this is where the Planning Board says it wants to go, so that we need to be mindful of that, particularly with the negative criteria.

Mr. O'Brien believed that the Parthenon Realty application came *before* the adoption of the amended Valley Rd. Business District Element.

In looking at the date, Dr. Behr agreed that it *was* before.

Mr. O'Brien said that, unfortunately, with the new time of decision (which has been pushed up to when the application is deemed complete) the rules that were in effect as of that date are the rules that we use in order to judge an application before us.

Mr. Aroneo said that, in this case, it would have worked against them because the Master Plan that was in effect at the time did not permit retail and that is a retail application, whereas the Master Plan that was being worked on was looking at retail.

Mr. O'Brien said that the previous (2007) Valley Rd. Business District Element *did* allow retail, so it was on the books at that point.

Dr. Behr said that if the Board ruled against an application and the fact that they do not meet the new ordinance was a major part of the evidence leading to the Board's decision, that raises an interesting question of would that be appealable?

Mr. O'Brien replied that any decision is appealable with an attorney but it would be tricky as to whether they would win. However, he said that the burden of proof that was applicable to that application was met by a vote of the Board in its Resolution.

Dr. Behr felt that the Board was very careful, as they always are, in how that whole business is framed to be both fair to the applicant and very mindful of the applicable law.

Mr. Fagnoli said that there seems to some conflict such as they want to keep the roads narrow, yet they want to do more business. He said that they want to do wastewater management and yet nothing has been done. He asked how this all plays together as there seems to be no phased in idea of how this thing is going to work. He said that it is like saying "I want to be a better person" but you don't have a plan to be a better person.

Mr. O'Brien agreed that they go in different directions and said that the wastewater item is a great example. He said that the Township has been under a sewer ban for 11-12 years now, yet there is some progress which may not be obvious to everybody, but things have been done but more obviously needs to be done to move that along. But as a visionary statement in the Master Plan, it is something that the Board of Adjustment should keep in the back of your mind as you review an application. For instance, if you get an application for a huge development, where is the wastewater going? He said that you can ask that question and a report will come to you as part of that application.

Mr. Fagnoli said that he understood that we want to keep the roads as they are and not expand, but if you want to get new business in, you will have to have wider roads.

Dr. Behr said that, as you read the Valley Rd. Master Plan, that vision of better business means bigger roads is a planning philosophy that is more and more coming into question. He said that, as he read the language of what the Planning Board is looking for, it is not contemplating that our economic success is going to be dependent upon how big our roads are and the ability to bring more cars into Long Hill Township.

Mr. Fagnoli said that there is a queuing problem and getting in and out of spaces takes time. He said that, if you have one lane, it is going to take time, therefore he saw conflicting goals.

Dr. Behr said that, because he was on the Planning Board up until the final version, he estimated that the total number of meetings spent discussing *exactly* the issue that Mr. Fagnoli raised over a 5 year period probably comes to 7 or 8 (or more). He said that, if you assume that Long Hill Township's business growth is dependent on a highway model of stores that exist only for the people who drive from outside the Township to get there, do their purchase, get in the car and leave, then *intelligently* narrowing streets #1, and #2 not having Valley Rd. continue to be a 4 lane highway dropped into the middle of Long Hill Township - if that is your assumption, then there are more successful community business models that you can think of that operate under a different premise. He quoted, "To encourage neighborhood oriented land uses in the commercial areas of Gillette, Meyersville, Millington and Stirling and to assure that such development does not encroach upon surrounding residential areas" and "To limit any major commercial development in the Valley Rd. corridor and to assure that said development is oriented to the shopping service and other needs of Township residents". He believed that it is fair to say that the Township has a different vision and we can be economically viable without having to rely on a very small chunk of highway and highway style commercial activity. He felt that one can always disagree with that. He recalled that the Planning Board hammered through that for 3 years in 1993-1994 and again from 2007-2010, and you simply make a choice about what is the vision for the Township and how do you want to define commercial success.

Mr. Fagnoli said that they talk about new traffic patterns and, again, it is just words – there is no plan. He questioned how this will all play out.

Dr. Behr said that, for better or worse, we are served by volunteer Boards and by a volunteer Township Committee and noted that some communities have a lot more money in their wallet than we have. He said that he has looked at plans for some communities where they have done exactly what Mr. Fagnoli said and spent \$30,000 - \$40,000 or more in consulting fees. At the end of the day, he said that he felt that to a certain degree the Township Committee does what it can do as well as it can. He said that it is interesting to go into the old Master Plan and look at some of the things that they wanted to do and note how many of them in the ensuing years actually have happened. He said that the answer is huge gains in environment, and some significant gains in historical preservation in the Township. He said that we have a new Town Hall and a new library that was a specific recommendation of the 1997 Master Plan and it was carried into action. He said that, if you take a look at the landscape plan that Mr. Carrel and Mr. Farnell prepared, they're envisioning now a greenway on some parts of Valley Rd. and additional shade trees alongside Valley Rd. that will move very clearly in the direction of the goals. He said that you have got to have developers that we are able to work with in such a way that they are able to take money out of their pockets and contribute because the Township does not have the money to do a lot of the things that we say we want, so unless you find other ways of generating that money, it takes a while to make them happen.

Mr. Aroneo said that you are also looking at something that is already built and you are looking at people that are trying to change that which doesn't necessarily happen overnight. He said that, if you start with a clean slate, you can just draw whatever you want. He said that these are people that have a vision and, unfortunately, their vision is for something that doesn't exist and so we may never get there but they are saying that anything we can do to get in that direction is helpful. He said that we are not here to build a highway to be the service center for the rest of the surrounding communities and we do not want a 2 lane road. He said that what we want is a downtown area to provide the goods and services that our residents need on a daily basis rather than people making 20 minute trips because Long Hill has the super shopping centers.

Mr. Fagnoli said that we are limited on how far you can make a greenway in the middle of Valley Rd.

Dr. Behr replied that they had thought through that and if you take a look at the landscaping plan, they did their best to say where does it make sense and where does it not make sense and that was through hours of conversation and, to the best of his knowledge, that landscaping plan was approved by the Planning Board and approved by the Township Committee. He said that people who know a whole heck of a lot about this have studied it and make recommendations.

Mr. O'Brien agreed that it can be done.

Mr. Aroneo said that the plan also talks against adding additional signalization at an intersection. In other words, they are saying work with what you have.

Mr. Fagnoli replied that you put all this information in and there is nothing to back it up. He said that it is all well and good but, if you have these plans, how come I do not see them? He said that he also could not make sense of the charts (referring to the Current (2012) Valley Road Zone Districts).

Mr. Gerecht agreed that the print was "a little light".

Dr. Behr jokingly said that he ran the documents off on his own copier and welcomed donations to purchase one of better quality. He said that he valued Mr. Fagnoli's comments and said that tree items were answered in the plan that was approved. It shows here is Valley Rd. and, as a goal and concept, here is where every additional tree should go. He said that as Mr. O'Brien has mentioned, for much of this there are now specific ordinances that support this in many cases. He said that, in the 1997 Master Plan (as re-examined by the Board in 2003) there are dozens of ordinances that specifically put teeth into this so that when somebody asks what was done about a particular goal in the Master Plan, he could point to the appropriate ordinance. When it comes to recommendations about structures, he said that we do in fact have a new town hall and a new

library. He said that we also have many of the greenways that were talked about in 1997. He said that the Township works on these things that in many ways may not be obvious.

Mr. Fagnoli said that his focus was on the business district and that he had no problem with the library, town hall, etc.

Dr. Behr replied that the Township Committee is going to do the best job that it can to pass the ordinances that create the teeth. He also said that if you take a look at the synergy between 2012 and 1997, what is both startling and encouraging is that the continuity of vision hasn't changed. He said that he could take a look at the more visionary statements such as "do not allow single family detached residences along the Valley Rd. Business District" which continues the vision from 1997. As to environmental best practices, he said that he worked with Dr. Hamilton to create the existing Master Plan and draft ordinance for the Planning Board. He said that we already have ordinances and we are tightening them but there is nothing in here that is not supportive. He said that, if you go into depth, and ask how much of this has teeth behind it, he said that he would say that a surprising amount is already supported in an ordinance and that is the measure that we judge by when someone appears before a Board.

Mrs. Malloy said that she felt Mr. Fagnoli is asking "When are we seeing these things?"

Mr. Fagnoli said that he was saying that he wanted detail and, if they have a statement, he wanted to see the detail.

Dr. Behr advised that, if you go onto the Township website and click on the Master Plan, every single ordinance is there and you can look them up and relate them.

Mr. O'Brien said that there are two pieces to that. He said that this Master Plan goal language is something that you keep in the back of your mind as you review an application. The specific language that goes in the Ordinance is very black and white. He said that 4th goal in the 1997 Master Plan is to ensure that road improvements along County and Township roadways are limited to those that address existing traffic safety problems and are undertaken in ways that strongly support the overall goals of this Master Plan and preserve and enhance the tree lined roads to help create the desired rural character of the Township. So it does speak to keeping the road narrow and allowing access to businesses knowing that Valley Rd. is already developed and it talks to the tree lined "look and feel" of the roadway. Although they are all goals, he said that pieces of them have been put into ordinances and some pieces have not because it is really not possible to do all of that. Instead, it is something that you have got to keep in as a vision.

Mr. Gerecht said that he noticed that in keeping with wanting to have the roadway narrower and more user friendly, they do recommend connecting parking lots and walkways between shopping centers. So there are a lot of things in it that discourage getting in your car and driving from Point A to Point B which is only 10'-20' away. He said that you possibly have some ways of parking your car in one spot and visiting more than one store and not have to get back in and out of your car so that, in effect, does discourage a lot of traffic.

Mr. O'Brien agreed and said that it is not the kind of thing you can put in an ordinance because what this actually calls for is as applications come before either Board, you look at them and consider doing a cross-easement between your property and the one next door and eliminate one of those driveways. He said that that is on a case by case basis, it is not something that you can legislate as a whole.

Mr. Gerecht referred to "Building Standards" on Pg. 4 where it says to "Encourage in-fill development" and asked exactly what that meant.

Mr. O'Brien replied that, if you've got a developed area and a vacant lot in the middle, you put something in there that matches what is around it.

Dr. Behr said that, to Mr. Aroneo's point, how long may it be before some of the buildings that represent older uses that are no longer permitted might be developed into something else – it could be 20 years.

Mr. Gerecht said that there is always a continual progression of people buying property and looking to develop it to enhance it and that is what we are hoping for – a reinvestment in this area so that we can achieve some of these goals by those applications coming before us.

Mr. Pesce asked if an example of that is the sport shop that used to be a single family home on Valley Rd.

Mr. O'Brien said that it was commercial downstairs and residential upstairs (rather than a single family home).

Mr. Gerecht believed that at one point many years ago it was a single family home.

Dr. Behr referred to The Uncommon Thread which at one time was a large residential home that is now 100% commercial.

Mr. O'Brien said that when you look at Valley Rd. today between Mountain Ave. and Main Ave., since 1997 we have had between 15-17 properties come before either Board and that is significant in that the Board's have been able to develop those properties in a way that meets the vision of the Master Plan and meets the spirit of the ordinances, as well as promotes the tree lined rural atmosphere of residential Long Hill and that is where you look at where your accomplishments are. He said that it is property by property when you are in a developed area like this.

In response to Mr. Fagnoli, Mr. Gerecht said that the bicycle shop was previously a bar, then a first aid squad building, then it was empty, and then High Gear Cyclery purchased it.

Dr. Behr recalled when it was a very ugly building. He asked Mr. O'Brien if there was anything else he wanted the Board to be mindful of. On a personal level, he said that he would have been delighted had the element in the Master Plan repeated the appropriate goals as it did in 1997.

Mr. Keegan asked if it was appropriate when we have an application, if another town had a similar development (but a separate developer), to invite their Township Administrator to give an opinion as to the outcome of the similar development.

Mr. O'Brien replied, "No", because each application is unique and you can only judge it based upon material that the applicant provides, at a public hearing that is noticed and open to everyone. He said that, during the Walgreen's application, one of the things the Board *did* say was that it wanted to know about the other Walgreen's, however they asked the applicant that question and the applicant provided information and, based upon that information, they requested pictures of other locations. However, to ask a third party unrelated to any of the proceedings for an opinion, unless they are called by the applicant or the Board calls them in for some reason, they would have to have a justification for it or it would not be proper.

Mr. Keegan asked if the Township could call an Administrator from another town during an application.

Dr. Behr said that he would struggle with the applicability.

Mr. Aroneo asked if the Zoning Board could call witnesses.

Mr. O'Brien replied that the Board can call witnesses and can subpoena them. Could that employee to a municipal employee someplace else even though there is a similar or dissimilar application there? As to applicability, he said that his initial answer is "No" and that you would have to prove how that connects.

Mr. Pesce said that, ordinarily, the witnesses that the Board calls are professionals who assist the Board in making decisions. He said that they are not usually fact witnesses – that is the job of the applicant.

Mr. O'Brien replied, unless you find that there is a need and then that is usually when the Board directs staff or the applicant to provide further information.

Dr. Behr said that, if an applicant brought a witness from another town to say that we did this in our town and it worked, to his mind in an of itself, that is not useful evidence about what would work in *this* town because their town is going to be different than ours. He said that he would have a hard time seeing how the fact that it was either successful or unsuccessful in some other town would be relevant.

Mr. O'Brien added, unless you could show that the circumstances were *so* close.

Dr. Behr agreed.

Mr. O'Brien said that, having answered Mr. Keegan's question in that way, he also would not want to discourage him from requesting further information on a particular topic. He said that he can do that either as a Board member (or as a Board) through the applicant. He said that it is akin in some ways to a jury where a jury is only allowed to look at certain things and you don't expect a jury member to go out and do their own research.

Mrs. Raimer said that the Board has on occasion, years ago, brought in its own experts such as for a traffic analysis, engineers, etc. if they were outside the areas of its consultants expertise.

In response to Mr. Pesce, Mr. O'Brien agreed that on such occasions it is paid for out of the applicant's escrow. For instance, he said that there was a Board of Adjustment case 6-7 years ago that involved a telecommunications facility and the Board called in a radio frequency expert who had expertise beyond what we had who could tell us whether or not that telecommunications facility was needed at that location nor not and met some of the requirements we were looking for, as opposed to one that they just wanted to put up because it was simple and fit this much of the "donut hole". He said that it was done at the applicant's expense and was "part of the game" and that any commercial applicant with any kind of a large application, as opposed to a homeowner or very local business person in one of the villages, understands that.

Mr. Pesce asked Mr. O'Brien, based upon his knowledge of the new Master Plan and the Valley Rd. Business District Element, what are the changes that will require supporting legislation? He asked if there were some glaring issues where there is some urgency to get a law on the books to support this.

Mr. O'Brien replied that the urgency is to have ordinances match the Master Plan, but there is no urgency in that the Master Plan calls for 10 story buildings and the ordinances call for 2 – some huge line of disparity. He felt that overall the 12 goals are in keeping with the goals as far back as 1997. He said that there are changes in terms of some setbacks, parking, and design. He said that we are trying to encourage parking behind buildings rather than in front of buildings to create that tree lined ambiance and let people go from place to place without having to move their car and the ordinances would support that, but there is no huge red flag that stands out.

Mr. Pesce said that one of the issues in the Parthenon application was lighting. He asked if there is actually an enabling ordinance.

Mr. O'Brien replied, "Yes". He said that there is a lighting ordinance on our books and it dates back to at least 1996. He said that the 1996 Master Plan talks about over-lighting and the ordinance does do that and no standards had been there for a long time. He said that the Shop-Rite has met those standards. He noted that there have been some complaints that it seems dark, particularly when you leave the Valley Mall, which is considered to be over-lit. He said that trying to get them to balance is hard, but we are trying to work with the new ones so that they are lit appropriately and still be safe.

Dr. Behr said that in many cases there are instances where an ordinance could be updated. He asked Mr. O'Brien if there were any dramatic changes to ordinances that are required to begin to effectuate this.

Mr. O'Brien replied, "Nothing traumatic", although there are a lot of small things that need to be done. He noted that we did allow additional uses but what was decided was that rather than to split the uses that were in the O Zone, B-2 Zone and B-3 Zone, the Valley Rd. Business District would allow all the uses as an economic incentive so that people could do retail, commercial, and office and see what worked – let the market speak.

Mr. Gerecht felt that that was allowing the Board to have more flexibility and felt that it is a bit rigid to tell someone they are 1' over onto another zone.

Mr. O'Brien agreed and said that you've got a commercial district anyway, so what is the difference. He said that the places you want to protect the most are the residential districts and you are doing that already.

In response to Mr. Fagnoli, Mr. O'Brien said that the map on Pg. 6 shows the zone districts that exist *today* and the zone districts on Pg. 7 are proposed (because they are not in the ordinance yet).

Dr. Behr agreed and said that it is the vision but it doesn't yet have any teeth.

Mr. Aroneo said that Mr. Fagnoli had asked if all of the business districts were combined with the office district and, actually, the answer is "Yes" in the area that became the B-D Zone. He said that the B-D Zone combined the B-2 Zone and the O-Zone, however a little piece of the O-Zone was left off (just east of Morristown Rd.).

Dr. Behr agreed that the first property opposite Town Hall is not part of the BD-Zone.

Mr. Aroneo added that that piece was recommended to remain in an O-Zone to buffer and protect our residential areas (Madison Ave. and Morristown Rd.) from the higher intense use of the B-D-Zone.

In response to Mr. Gerecht, Mr. O'Brien explained that the B-3 Zones are the shopping centers (Shop-Rite and the Valley Mall) and the Planning Board made a decision to leave them in their own zones because they are larger, there is more scale to them, and they have different requirements, whereas the B-D Zone is "everybody else".

In response to Mr. Fagnoli, Mr. O'Brien said that the R-4 Zone was existing in 1996 and they are not proposed to be changed.

Mrs. Malloy asked if we are still creating a river walk.

Mr. O'Brien replied that there are pieces of it and recalled an application on Plainfield Rd. where it was built.

Mr. Gerecht said that he served on a committee that started to do it from the other end and try to connect it but the only problem is that you have pockets of County property, State property, and privately owned property and it is very difficult to get the easements to go through those properties along the river.

Discussion followed regarding Valley Rd. and Dr. Behr said that the 1987 Master Plan actually calls for widening Valley Rd. to 4 lanes.

Mr. O'Brien said that there were actually two state-wide initiatives in the late 1950's and one was the jetport in The Great Swamp followed by the supersonic jetport in the Pinelands which would be in the middle of the New York/Washington D.C. corridor and so all the supersonic transport

people would be going to the N.J. Pinelands which would have been paved over to the tune of a couple of hundred miles to support that.

Mr. Pesce asked if this new map was approved at the time the Board heard the Parthenon Realty application, they would have not needed a use variance?

Mr. O'Brien replied that that is correct. They would have needed site plan approval from the Planning Board and may or may not have needed variances from some of the things the Board of Adjustment asked them to do.

Mr. Pesce asked, if the Board of Adjustment had denied that application, and this map got approved. Could they have come back?

Mr. O'Brien replied that the map is approved and was approved at the time of the Parthenon approval, however it was approved without an ordinance. He said that they would not have a shot on appeal because the Township has a presumption of validity to both the Master Plan and Zoning Ordinance. He said that they could not reapply because that is called *res judicata*.

Mr. Pesce said that that would only be in the facts haven't changed.

Mr. O'Brien replied that the *application* itself has got to change. How *much* it has to change is a matter of debate. In general, he said that it has to be a physical change to the plan itself.

Mrs. Malloy asked when we will be getting the trees on Valley Rd.

Dr. Behr replied that it could seriously take 20 years because you will not get a chance to do anything to some of the existing non-conforming commercial properties until they get a new owner (or the current owner decides they want a change and they have a reason to come before the Board).

Mr. O'Brien noted that as applicants come before the Board we are getting street trees. He noted that the Valley Mall came before the Planning Board last year and they are upgrading their parking lot and installing all new landscaping. With regard to Mr. Carell's plan, he said that the vision was for trees on both sides and in a few places some tree islands. He said that you can't do a continuous row because the road is not wide enough.

Dr. Behr said that Patrick Jones is copying and digitizing that long map that stretches about 15' so that it will be available both as a print document and as a digital version in a month or so.

Mr. O'Brien said that, particularly if we have it digitally, he could include it in a planning report to advise an applicant that this is our plan and request their response as to when it will be done.

Thus concluded Mr. O'Brien's presentation for which the Board members thanked him. The meeting adjourned at 9:23 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

