

MINUTES
MAY 19, 2015

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:07 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meetings 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 on January 6, 2015.

MEETING CUT-OFF

Chairman Behr read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members then present to extend the meeting to a later specified cut-off time.

CELL PHONES AND PAGERS

Chairman Behr read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Excused:

E. Thomas Behr, Chairman
Edwin F. Gerecht, Jr., Vice-Chairman
Jerry Aroneo, Member (8:20 P.M.)
Michael Pesce, Member
Richard Keegan, Member
Michael O'Mullan, Member
Thomas Sims, 1st Alternate
Jeffrey Wills, 2nd Alternate

Michael Pudlak, Member

Dan Bernstein, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Bd. Planner
Cyndi Kiefer, Bd. Secretary

Ms. Kiefer advised Chairman Behr that he had a quorum and could proceed.

APPROVAL OF MINUTES

Mr. Pesce moved approval of the minutes of February 3, 2015 as written. Mr. Gerecht seconded the motion. A **VOICE VOTE** was taken. The minutes were approved as written by unanimous vote.

Mr. Gerecht moved approval of the Regular Meeting minutes of February 17, 2015 as written. Mr. Pesce seconded the motion. A **VOICE VOTE** was taken. The minutes were approved as written by unanimous vote. Mr. Keegan and Mr. Sims were ineligible to vote since they were not present at that meeting.

Mr. Gerecht moved approval of the executive session minutes of February 17, 2015 as written. Mr. Pesce seconded the motion. A **VOICE VOTE** was taken. The executive minutes were approved as written by unanimous vote. Mr. Keegan and Mr. Sims were ineligible to vote since they were not present at that meeting.

RESOLUTION FOR BARRY HOFFMAN

Chairman Behr read the following resolution in memory of Barry Hoffman, Board Attorney, for over 31 years:

Whereas, Barry Hoffman, Esq. began serving the Long Hill Township Zoning Board of Adjustment as Board Attorney in 1983, and for the ensuing thirty-one years provided invaluable legal guidance to the Board, and,

Whereas, Barry Hoffman, through his long tenure, helped guide the Board of Adjustment in ensuring that its procedures met the highest standards of procedural and ethical behavior, and,

Whereas, Barry Hoffman, by virtue of his extensive expertise in Land Use Law, successfully protected the Board and Long Hill Township against litigation throughout his years of service, and,

Whereas, Barry Hoffman achieved the remarkable record of never losing an appeal as Board Attorney due to his calm sagacity and the high respect he had earned among the judiciary, and,

Whereas, Barry Hoffman was a trusted, invaluable counselor and a respected friend to four successive Board Chairpersons,

Now therefore, be it resolved on May 19, 2015 by the Zoning Board of Adjustment in the Township of Long Hill, in the County of Morris, that Barry Hoffman, Esq. be honored by the Board for his exemplary service to the Board and to the community of Long Hill Township.

There was a unanimous **VOICE VOTE** to move and approve the resolution as written.

PUBLIC HEARING

STIRLING HOTEL, INC.
227 Main Avenue
Block 11509, Lot 3

#14-07Z
D-1 Use Variances
Prelim/Final Site Plan
Dev. Permit, Bulk Variances

PROOF OF SERVICE PROVIDED

Present: Vincent Bisogno, esq., Attorney for the Applicant
Thomas Baldassare, Applicant
A. Thomas Murphy, P.E., Engineer for the Applicant
David Achilles, Prior Owner
Thomas V. Delia, Zoning Enforcement Officer

Chairman Behr noted that there was a large public turnout for this application. He explained to the public the Board's procedures and how the public would participate in the process.

Chairman Behr began by stating that the Board of Adjustment was a quasi-judicial body which differed from the Planning Board and the Township Committee in that it acted as a court. The Board of Adjustment was created and empowered by law to hear exceptions and variances from what was permitted in any given zone and to rule on the admissibility of those. In so doing the Board was also required by law to base its decision on what the law required so that the board members' personal opinions about the application did not have any weight whatsoever. What mattered was what the law required and what a sense of fairness and openness would call for. It was absolutely essential for this Board that every application that came before it receive an absolutely fair and impartial hearing. To that end, very much as if the board members were a panel of judges or an impaneled jury, they could not discuss that application outside of the meetings. He felt this would be difficult because this application would probably generate a lot of public interest. He added he was sure that at one time or another each of the board members had patronized the establishment which could raise a question of **potential** conflict of interest. He asked Mr. Bernstein to discuss that.

Mr. Bernstein stated that he had written a memo that was distributed to the board members along with a copy to the applicant's counsel. He reviewed the land use laws which said that a member could not act in a manner in which he or she had a direct or indirect personal financial interest. He also reviewed published ethics laws along with the rules that this Board had adopted which went beyond it. It was his belief that simply eating at the Stirling Hotel would not disqualify a member. During Shop Rite's recent application heard by the Planning Board, it was noted that practically everyone in the township had shopped there including the board members and no conflict was raised. He felt that just stopping at a commercial establishment either to buy goods or to eat a meal in itself would not disqualify a member. If it did, this Board and the Planning Board would be disqualified. He was confident that they could proceed with this application even though board members had eaten at the restaurant.

Vincent Bisogno, the applicant's attorney, agreed.

Chairman Behr asked if there was any board member that felt that, for any reason, his association with or patronage of the Stirling Hotel would in any way prohibit him from giving this application a fair and impartial hearing.

All of the board members replied, "No."

Chairman Behr said given that response, he would proceed. He swore in the Board's consultants along with Mr. Delia.

Chairman Behr addressed Mr. Bisogno and stated that he felt there was no dispute that this was a permitted use in 1937, in 1941 and in 1987. The building predated the ordinances. The use predated the ordinances yet it was conforming to the ordinance. He felt there was very clear agreement in that. This application concerned improvements made *since* 1987 that were shown both in photos and documented by the Township's Zoning Officer and constructed without a site plan and/or variance approvals. The Board's position as stated in Mr. O'Brien's report was that these matters were being heard for the very first time de novo therefore the applicable ordinances would be the current ordinances. He then asked Mr. Delia to give the Board a summary of what he had seen on site.

Mr. Delia stated that his files went back to 2004 with the first application. At that time they had started working on a zoning application for site plan approval for the Stirling Hotel site. That was prior to Mr. Delia becoming the Zoning Officer. There was a Completeness Review Committee (C.R.C.) meeting on March 10, 2004 at which 11 items were deemed incomplete or missing from the application. A letter to that effect was sent to Mr. Bisogno. On November 1, 2004, Mr. Bisogno sent a letter concerning environmental issues on the site to two (2) township officials. There were different transition areas and letters from the Department of Environmental Protection (D.E.P.) that they had applied for. It was also sent to Mary Ellen Balady (construction official) who had observed that there were several more improvements on the site. Mr. Bisogno sent a letter to Mrs. Wolfe in November 2004 indicating that his client wanted to move forward with the application however he did not contemplate any new construction. The Township received a letter from the D.E.P. in January 2006 and the application progress ended at that point.

Mr. Delia stated that in January 2014 the Township received a letter with a list of complaints regarding the uses on the Stirling Hotel property. He visited the site and did a thorough walk-through with detailed photography. Warning letters were issued to the property owners and this new application was now before the Board.

Mr. Gerecht asked Mr. Delia if the documentations he made of his observations were contained in the professionals' reports.

Mr. Delia responded that basically they were. He added that when he did his walk-through, he took the 1985 site plan with him. He sketched what he observed on the site plan and also took photos.

Chairman Behr asked Mr. O'Brien if any additional relief was required in addition to what was stated in his initial report based on his observations of the property.

Mr. O'Brien replied affirmatively. He noted that on Tuesday, May 12, 2015, he and Mr. Lemanowicz visited the site to inspect and compare it to the survey which they had received as part of the application process. That survey was dated October 28, 2014 and showed the site as it existed on that date. That was the survey that was used by the Completeness Review Committee and the Technical Review Committee in discussing what was needed. That visit to the site showed that there were a number of structures that had been built since October 28, 2014. There was a chicken coop along with a bocce ball court (refer to page 6 of Mr. O'Brien's report dated May 14th 2015). Those structures were at the eastern end of the property. There was also a stage or a bandstand that had been added that appeared to be partially in the right-of-way at the southern end of the property. It was shown in Mr. O'Brien's photographs which were distributed to the board members. The bandstand itself was shown on page 10, Item 14, and the large black figure in the middle top of the picture was a back stand which appeared to be about eight (8) feet high. Mr. O'Brien said in addition there was a propane storage facility near the storage trailer which held a number of propane tanks shown on page 12 of his photo report, photo 18. In addition a natural gas generator had been placed next to the hotel itself. There was at one time a south driveway adjacent to the building. Since 1987, that had been filled with various items and structures and most recently a natural gas generator. In addition,

Mr. Lemanowicz pointed out in his report dated May 14, 2015 that based on his observations of the site as well as his count of the seats both interior and exterior picnic tables and seating areas, he believed a parking variance was required and that relief would be necessary there. Mr. O'Brien had discussed this with Mr. Bernstein who advised him that the additional structures were accessory to the principal commercial use but notice was necessary for these items. In addition to that the propane storage facility required a use variance on its own because the storage of propane and other petroleum products was prohibited in the Township (Section 123.3.jj). In summary, there were several accessory use bulk variances along with an additional use variance that were required and they had not been noticed.

Ms. Kiefer noted for the record that Mr. Aroneo had arrived at 8:20 PM.

Mr. Bernstein noted that he had spoken with Mr. Bisogno and that Mr. Bisogno was aware that new notice had to be given for the next meeting. Those items that had been noted by Mr. O'Brien as requiring new notice should not be discussed at this meeting. The fact that there would be new notice should not stop the Board from proceeding on the application this evening.

Mr. O'Brien stated that these structures had not been reviewed. The site plan for these structures had not been reviewed. It was unknown as to how they interrelated with the entire site plan and whether any variance relief might be required. These were all newly built since the survey was presented to the professionals. He reiterated that they had not been properly reviewed as of yet.

Chairman Behr indicated to Mr. Bisogno that the first thing the Board wanted to address was the waivers.

Mr. O'Brien stated to the chairman that staff had reviewed the waiver list submitted by the applicant which was created on January 22, 2015. Those waivers were recorded in his report on page 8. Initially based upon the survey in the site plan that was reviewed as part of completeness review and technical review, no significant challenges were made by the professionals based upon their assumption that the structures on the site plan were built already. Based on that, staff had no objection to the following waivers: Items 11, 12,--

Mr. Keegan interrupted and asked about Waiver No. 12. He wanted to know, since these were being considered as new structures and there would be soil disturbance associated with that, why the Board would grant that waiver.

Mr. Lemanowicz responded that the grass had taken throughout the site with some exceptions. It would be very difficult to see where the limit of disturbance was. There was another item later in the checklist that discussed grading. At that point, staff would be able to see if there was a change in grade. There was also aerial photography that could be used. It would be impossible to go on site right now and determine what areas of lawn had been disturbed since 1987. If the grades had been changed, they might be able to see that.

Mr. O'Brien continued with Waiver Items 13, 15, 17, 42, 44, 47, 49, 51, 53 and 54. He reiterated that these were the waiver items that staff had no objections to. These were the items that were reviewed based on conditions on site as it currently existed.

Mr. Lemanowicz reviewed those completeness waiver items that were requested but that staff felt should be further discussed by the Board. He started with Waiver Item 18 which required a listing of approvals required by other governmental agencies. The new structures found on site specifically the bocce court and the bandstand appeared to have required some fill to make a flat spot for the structures. They were placed in the flood hazard area which was a violation of the ordinance and also would prompt a flood hazard applicability determination. Staff did not feel this item should be waived because it obviously had an impact on the work that was done that they were unaware of during the completeness phase.

Mr. Lemanowicz said that Waiver Item 26 discussed changes in grade. It stated that "a site grading plan where changes in grade were proposed"-- "proposed" meaning that it happened after 1987. As he had previously explained there had been changes in grade for the bocce court and the bandstand.

Mr. Lemanowicz then discussed Waiver Items 32 and 33. Both items had to do with drainage and whether 32 or 33 was used depended on the amount of the disturbance and new impervious. In this case with the new structures and other items on the site, it was difficult to determine just how much new impervious there was and how it would affect drainage. For the project as a whole since 1987, there was at least several thousand square feet of new

impervious coverage that had to be attended to with drainage calculations so staff would not recommend that that waiver be granted.

Waiver Item 34 required dimension plans for existing and proposed buildings. Mr. Lemanowicz said that staff had an issue with that because they had to verify the dimensions of these new structures and the impervious area that they created partially because of the zoning aspect and setbacks and coverage within the critical areas.

Waiver Item 38 required that the location size of all existing and proposed utilities be specified. Mr. Lemanowicz noted that there was lighting on the bocce court and electric service of some sort to the chicken coop. He assumed that there was some power to the bandstand and again all of that work was done within the flood hazard area possibly within a wetlands transition area. Those items needed to be shown.

Waiver Item 41 required calculations verifying capacity of swales, pipes and other drainage features. Mr. Lemanowicz reiterated that there was a substantial amount of new impervious area on the site so the drainage would have to be reviewed and that this had gone beyond what the professionals were aware of previously.

Waiver Item 52 required "detailed engineering data including... plans, profiles and established grades..." Mr. Lemanowicz stated that it was difficult to determine how the whole area of the parking lot which now included a grassy area would work. More detail on that was necessary.

Mr. Lemanowicz summarize that those were the completeness items that staff felt needed to be addressed rather than waived because of the amount of additional work that was found on the property.

Chairman Behr addressed Mr. Bisogno and stated that this concluded the Board's explanation of their position as it pertained to the application.

Mr. Bisogno stated that in regard to the completeness items, he felt that most of the items if not all were very minor in nature. He added that his client would comply and supply the information. That would not be an issue.

Chairman Behr told Mr. Bisogno that this information would have to be submitted in a timely fashion in order for the board members to consider it at the next meeting.

Mr. Bisogno agreed.

Chairman Behr asked for a motion to approve the completeness waivers that were recommended by staff. Those waivers were Items 11, 12, 13, 15, 17, 42, 44, 47, 49, 51, 53 and 54. Mr. Aroneo motioned approval and Mr. Pesce seconded. A **ROLL CALL VOTE** was taken. Those in Favor: Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. O'Mullan, Mr. Sims, Chairman Behr. Those Opposed: NONE. Motion to approve the completeness waivers as recommended by staff was approved unanimously.

Chairman Behr then asked for a motion to deny the request for the following completeness waivers: Items 18, 26, 32, 33, 34, 38, 41, and 52. Mr. Gerecht moved denial and Mr. Pesce seconded. A **ROLL CALL VOTE** was taken. Those in Favor: Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. O'Mullan, Mr. Sims, Chairman Behr. Those Opposed: NONE. The motion to deny the request was passed unanimously.

Mr. O'Brien indicated that given the Board's vote, the application was now **incomplete** and this Board no longer had jurisdiction.

Mr. Bernstein stated that the applicant could present the prior nonconforming uses because they would not require the site plan if he could convince the Board that everything was grandfathered and therefore there was no need for site plan approval. He suggested that they move forward with at least the prior nonconforming use aspect of the application which meant that everything was established and permits were obtained within the appropriate time.

Mr. Bisogno introduced Tom and Dorianne Baldassare as the owners of the Stirling Hotel. He also noted that their son, John, was present and would eventually be the manager of the hotel. He felt that the reports of Mr. Lemanowicz and Mr. O'Brien were good and directed the board members to the issues that were involved in this application. He disagreed with some of their legal conclusions but he felt that they were very thorough. He thanked Mr. Bernstein for helping him with a notice which was somewhat complicated. He also thanked Mr. Delia because he had

been very patient with both him and his client in moving this application along. Finally he thanked Mrs. Wolfe and Ms. Kiefer who had both been very helpful in the application.

Mr. Bisogno stated that the Stirling Hotel was over 100 years old. There was conclusive documentary evidence indicating that at least in 1907 there was a hotel on this particular site. He reiterated that he had evidence to establish that which he felt was very important. The property consisted of one-and-one-half acres (1-1/2) of land located in the R-1-5 zone and also in the R-4 zone. Prior to 1970 this entire lot was in the R-1-5 zone. It was all commercial. In 1970 the back portion of the property which was approximately 150 feet by 150 feet was changed to the R-4 zone. He was not sure why. Throughout the years the owners of the Stirling Hotel had use the entire property-- they called it "the Grove." He felt that everybody had seen it and everybody was aware of how it had operated. The entire back of the hotel was used for parking. Parking had existed in this location ever since the automobile was invented.

Chairman Behr wanted to clarify that Mr. Bisogno was saying that parking had existed in the Grove since—

Mr. Bisogno said that it went back to the 1940's when the automobile was invented. He felt that this would have significance as he went along with the application. As pointed out by Mr. Delia, the reason the applicant was here today was because somebody notified him that there were some irregularities on the site which the applicant acknowledged. The reasons why would be explained as they went along.

Mr. Bisogno said that the fact that Mr. Lemanowicz and Mr. O'Brien had honed in on the 1987 date or even going back to 1983 was the correct timeframe that they were looking at.

Mr. Bisogno said that this application did not include anything concerning construction. Nothing was going to be built there. There were no additions planned for the hotel. This was an application to obtain approval for what was there already. The main issue in this case as the board members would see from the list that Mr. O'Brien had prepared in regard to the variances involved were based upon the current zoning ordinances in Long Hill Township. They were applying the current ordinance to a business and a use that had existed for over 100 years. He stated that whenever someone tried to make a law retroactive not only was it unfair but it was unconstitutional. As an example, he said if he had a sign put up and he had paid \$5000 for the sign and then the Township and acted an ordinance that said that the sign had to be smaller and it had to be taken down, that would be a retroactive law that was not enforceable because of the fact that it impaired upon someone's rights. He felt there were similar issues in this application. One of those issues was the parking. The parking ordinance did not go into effect until 1956 or 1957. The ordinance required that the parking lot be paved. The parking lot had been stone since the early 30s or 40s when automobiles were in existence. The ordinance required that there be markings on the pavement and curbing, lighting and landscaping. None of this was in effect when the Stirling Hotel was in business. This was just one example. He planned to go through the entire list of variances and show the Board the items that were unfair.

Mr. Bisogno said that the applicant did agree about structures added to the property without getting site plan approval and without getting the appropriate permits which he now wanted to address. His advice to his client was that he should stick with the law regarding whether or not these laws were retroactive and how they applied to him. The applicant took a contrary position and felt that he should do whatever he had to do to satisfy the Board and to do what was best for Long Hill Township. He said that Mr. Baldassare had lived in the Township basically his entire life and knew the area very well.

Mr. Bisogno noted a couple of other minor housekeeping items that he wanted the board members to be aware of. When the applicant had decided to come forward to present the application, he was notified that the application was \$9,500. Mr. Bisogno had objected to that fee because he felt it was in excess of what was required to process an application. They were also advised that the escrow fees were over \$34,000. In order to come before this Board, the applicant had to come up with over \$44,000. Mr. Bisogno was able to discuss this with Jack Pidgeon, Township Attorney, and they came up with what he felt was an amicable solution. The application fee of \$9500 would be paid under protest and one-third (1/3) of the escrow fee would be paid at this time. He was not concerned about the escrow fees because the board professionals were very reasonable in their fees.

Mr. Bisogno said that the second item he felt the board members should be aware of was that the applicant was applying to the Department of Environmental Protection (D.E.P.) for various permits: a Flood Hazard Area Verification and a Letter of Interpretation (L.O.I.). The applicant's current L.O.I. expired in 2011. In addition he was applying for a Flood Hazard Area Individual

Permit which would allow him to maintain and keep the buildings and structures that were on the site at the present time.

Mr. Bisogno said that he had four (4) witnesses to present. David Achille was the former owner of the Stirling Hotel. His family owned it from 1947 to 1983. Mr. and Mrs. Baldassare bought the hotel in 1983 and had owned it ever since. He noted that there was approximately 68 years of continuous ownership between the two families. Tom Murphy, engineer for the applicant, would also testify. David Zimmerman, planner for the applicant, would testify although he was not present at this evening's meeting.

Chairman Behr said that Mr. Bisogno had raised some legal issues that he wanted Mr. Bernstein to comment on in terms of the retroactivity of certain laws.

Mr. Bernstein asked, in Mr. Bisogno's earlier example, if that sign was put up and no permits were issued for the sign and no application was made-- the sign was simply put up-- would it obtain grandfather status?

Mr. Bisogno said it would not.

Mr. Bernstein continued that when Mr. Bisogno referred to retroactivity, if in fact the applicant either received approvals prior to 1987 or they were built before zoning went into effect which was 1937, they would be grandfathered. However if these were put up without getting any approvals, they would not be grandfathered.

Mr. Bisogno agreed with that.

Chairman Behr said that he had a second question as well. Situations changed over time and ordinances changed to recognize those. Everyone in Long Hill Township recognized the issues surrounding flooding in the township and the ordinances that might have been sufficient to protect public safety in 1937 might no longer be sufficient to protect public safety in 2015. To that extent, he respected what Mr. Bisogno was saying in principle however this Board had an important obligation to protect public safety as it existed now. He felt that that was part of the discussion that the board members needed to have.

Mr. Bisogno agreed that that was correct however he gave Chairman Behr a caveat to that. The ordinance regarding stormwater management and flooding and critical area went into effect in Long Hill Township in the 1970's. The parking lot existed in its current location at that time. One of the zoning issues being raised was that this was in a flood hazard area. The parking lot was always there. He did recognize the exception in regard to public health, safety and welfare. If something reached a stage where it was critical to the public health, safety and welfare, then that ordinance might be retroactive. As an example he gave the case of Rothman vs. Rothman regarding equitable distribution in a divorce. The people were married before the law went into effect and divorced after. The court said that the equitable distribution law was retroactive and applied because it was more concerned about the welfare of the spouses. That would outweigh the rights that may have been established. He said that although there were certain laws that could be retroactive they were the exception rather than the rule.

Chairman Behr said all that was well taken however the board members should look at specific instances and specific potential rather than looking at it from a global viewpoint. Flood mitigation issues should be taken on a case-by-case basis in relation to the improvements that had been put on the site since 1987.

Mr. O'Brien said that it appeared everyone was in agreement based on Mr. Lemanowicz's pictures and Mr. Delia's information, that 1987 would be the baseline that showed where the site plan issues began. The hotel had been built prior to 1937 and the Township agreed that the hotel was a use prior to the zoning laws of 1937. After 1937 it was a conforming use in the B-Business zone that existed at that time. It continued to be a conforming use as that zone became the B-1-5 zone—the Village Business District. It continued to be a conforming use. The issue arose when starting in 1987 based upon the photographs and the site plans, these additional structures were then placed on the property. Mr. Bisogno, if he wanted to go back beyond 1987, would have to show that that parking for instance preexisted the ordinance in 1937 and did not have to conform to anything that was enacted afterwards. If the parking lot existed there on both the area immediately behind the hotel and then further to the east towards the residential area where it currently existed now, Mr. Bisogno would have to offer proof showing that.

Mr. Bisogno agreed with that. He had taken a great deal of time going over the zoning ordinances. The first zoning ordinance that addressed parking in any way went into effect in

1955. That was when parking and loading zones were first discussed along with other issues regarding parking. There were different time frames for different variances based upon what the ordinances said. One would have to look at whether it was in use **before** the ordinance. That was what he was prepared to do.

Mr. Aroneo advised Chairman Behr that he had a personal disclosure that he wanted to make at this point. He said that it was probably diminimus however he did have a relationship with the Stirling Hotel some 25 years ago or more when he had worked there part-time. He sought the advice of the Board Counsel, Daniel Bernstein, to determine if there was a conflict. Mr. Bernstein determined that there was no conflict given the amount of time that had transpired. He wanted to say that first so that everybody knew it.

Secondly, Mr. Aroneo wanted to thank Mr. and Mrs. Baldassare for their community support. Every time there was a community event around town whether it was Flight 93 or the fishing derby sponsored by the PBA, or a charity auction with a gift basket auction, most likely there would be a Stirling Hotel gift card in there that they had donated. He wanted to thank them very much for their community support throughout the years.

Noting that he had arrived late and had missed Mr. Delia's presentation, he asked how the complaint that was mentioned was received. In addition he asked if there was more than one complaint. He wanted to know if that had been discussed with this group.

Mr. Delia responded that he had not discussed the complaint that evening. He explained that he had received an anonymous letter from another business owner complaining that he was being treated unfairly. The Hotel was allowed to do all types of various things behind the facility yet he was not allowed to do that because he would have to come before the Board. That was the catalyst for this proceeding.

Mr. Aroneo reiterated that it was a written complaint.

Mr. Aroneo asked Mr. O'Brien if it was correct that prior to 1970 it was a commercial zone. After the Grove area was zoned R-4. He noted that he had been on the Planning Board in 2010 when the rezoning of the B-1 zone was done. Parking and some other things were discussed. He wanted to know if that was an actual rezoning of the entire district or was it just a change in the existing ordinance and some of the parking regulations.

Mr. O'Brien responded that the Planning Board suggested, and the Township Committee adopted, a change to the zoning ordinance which took the parking requirement for downtown Stirling and changed it to a 50% requirement. It was seen as a business investment tool to encourage businesses because so few could offer parking along Main Avenue. That was enacted by the Township Committee and that ordinance was still in effect. That standard was what they were judging this particular application by. According to Mr. Lemanowicz's report, they were still short spaces even with that allowance.

Mr. Aroneo said that in essence, the B-1-5 zone was not changed. He said the reason he was asking this question was to ensure that there was no oversight back then. If the zone was actually changed, it would've made sense to him now to incorporate that R-4 with the B-1-5 given that it's adjacent to the property and used for the same purpose. An R-4 being used for business purposes and owned by the same entity as the property in the B-1-5, wouldn't they just consolidate those lots and incorporate it into the B-1-5. He asked if Mr. O'Brien would discuss that. He wanted to know if that was sensible zoning. He didn't think it was spot zoning.

Mr. Bernstein interjected that he did not feel they should discuss rezoning at this point. The applicant was before this Board for a prior nonconforming use and variances. The applicant could have come in for rezoning but that would be for another day.

Chairman Behr addressed Mr. Aroneo and said that the board members would have to deal with the zoning and the ordinances as they existed that night.

Mr. Bernstein agreed.

Mr. O'Brien pointed out that there had been no change to the zoning in that area since at least the 1996 Master Plan and zoning ordinance. The only change that had been made township-wide was the addition of the "P" Public Zone for governmental buildings to be put into their own zone. There had been no changes to this district or this area that would affect this application.

Mr. Pesce asked if the 1987 date was being used because there was a photograph of the property on that date or was there some other significance.

Mr. O'Brien replied that the significance to the 1983-1987 time period was that there was a site plan and a photograph that showed conclusively that there was no change to the principle building of the hotel property. The subsequent structures such as the patio with the tent to the rear, the walkways and patios in the back, the additional buildings to the back, the fence and the parking beyond the fence had all been added since 1987.

Mr. Pesce asked if anything legislatively had happened during that time.

Mr. O'Brien responded that the Master Plan was re-examined in 1986 and there were subsequent ordinances in 1987 but no change was made to this zone as a result of that.

Mr. Bisogno said that the 1987 date was a fair date for the applicant. He said that the board members could go back to 1983 if they wanted.

Mr. Sims asked Mr. O'Brien about the references to the critical areas on parts of the property. He did not see those areas defined on the survey. He also wanted to know when the critical area was established.

Mr. O'Brien stated that the critical areas included the wetlands and the special flood hazard area. He asked Mr. Lemanowicz for a more technical explanation.

Mr. Lemanowicz referred to Sheet 2 of 2 of the site plan most recently revised on October 28, 2014. He described the line that went through the center of the parking lot and was labeled "100 year flood line firm." Anything "down sheet" from that was defined in the ordinance as a critical area because of the floodplain.

Mr. O'Brien added that a variance would be required to build in a critical area.

Mr. Lemanowicz said that state permits would be required also.

Mr. Sims asked if the professionals could give him a decade when the critical area was established.

Mr. O'Brien said that Mr. Bisogno had stated in his opening remarks that that dated back to the 1970's. That was his best recollection also.

Mr. Delia agreed.

Mr. O'Brien said that that predated the 1987 date that had been agreed upon by all parties.

Chairman Behr added that the date of the flood line was updated periodically by F.E.M.A.

Mr. Lemanowicz stated that F.E.M.A. was updating all of the maps in New Jersey because of Sandy. They had not gotten to Morris County yet. With respect to the parking lot in the floodplain, the issue was that because the seating capacity of the facility had more than doubled without permits and without site plan approval, had site plan approval been applied for, improvements to the parking lot would have been required. So while the parking lot had been there, the intensity had increased which gave the municipality the ability to regulate the parking and what went on in the floodplain.

Mr. Aroneo noted that there was a L.O.I. (Letter of Interpretation) dated 2006 in the packet. He wanted the professionals to discuss that L.O.I. and when it would require an update.

Mr. Lemanowicz responded that the L.O.I. was only good for five (5) years so that expired in 2011. It was no longer valid.

Chairman Behr asked if the board members had any other questions for the professionals or for Mr. Bisogno. Hearing none, he asked Mr. Bernstein to clarify under what auspices they were proceeding with this hearing.

Mr. Bernstein replied that it was his opinion that the Board could proceed with the prior nonconforming use and structure aspect or grandfathering. The applicant, in his notice, had contended that certain structures and certain uses pre-existed the ordinances.

Mr. Bisogno said that that was correct.

Mr. Bernstein stated that that did not involve site plan or variances. It involved, "Did these uses start at a time when they were legal and did they acquire the necessary permits?" They had to be lawful structures meaning permits were issued. The applicant would be given an opportunity to prove his case. That aspect of the case was proper. He had spoken to Mr. Bisogno. As to the variances, they might be inextricably bound to the site plan. If that was the case and he felt the professionals agreed, action on those should be deferred.

Mr. O'Brien said that the professionals had advised the Board that based on recent changes to the site since the application had commenced, there were issues that should be addressed by the applicant to better inform the Board and to give the board members sufficient information so that they could intelligently rule on the application.

Mr. Bernstein summarized that it was their opinion that the board members had insufficient information to proceed with the site plan and variance aspect of the application.

Mr. O'Brien said that in accordance with the denial of certain site plan waivers, yes.

Mr. Bernstein asked if they felt the Board could proceed with the prior nonconforming structures and uses in order to make a determination as to what, if anything was grandfathered. He also suggested that the Board ask the applicant when the plans would be revised to provide sufficient information and satisfy the items on the checklist.

Chairman Behr asked Mr. Bisogno if he was comfortable with that.

Mr. Bisogno replied that he was. He wanted to comment on Mr. Lemanowicz's statement that the intensity of the parking had increased on the property. He felt that that had nothing to do with the variance because the parking ordinance went into effect in the 1950's. The capacity to use this business the way it was being used today existed in 1937 and before that time. It was the same facility now that they had in 1937.

Chairman Behr asked if Mr. Bisogno was saying that the facilities and the amenities and the seating capacity were the same now as they were in 1937.

Mr. Bisogno replied that that was correct. He reiterated that the applicant had the same ability to run the business. He was just more successful at it today.

Mr. Gerecht felt that ability and actual use were two (2) different things.

Mr. Bisogno agreed. He added that it was there already.

Chairman Behr asked what Mr. Bisogno meant.

Mr. Bisogno explained that the opportunity to have the number of people that were there now was there in 1937. They hadn't done anything differently.

Mr. Aroneo asked if the outside use was the same. He asked if the Grove was used for picnics with picnic tables.

Mr. Bisogno replied, "Absolutely." The Grove was used for picnics. The entire parking lot area was used for picnics. It had been going on that way—

Mr. Aroneo asked if Mr. Bisogno was stating that it had always been used for indoor and outdoor dining.

Mr. Bisogno replied, "Absolutely."

Chairman Behr stated that the Board would need to hear testimony about that. After an explanation about the Board's hearing process for the benefit of the public, he asked Mr. Bisogno to present his first witness.

Mr. Bisogno called David Achille.

Chairman Behr swore the witness in.

David Achille, 115 North Avenue, Stirling, stated that he had lived in Long Hill Township for 68 years. He was raised at the Stirling Hotel. His family purchased the hotel in 1946 and he lived with his parents upstairs. It was operated as a hotel meaning that rooms were rented out. His

family owned the hotel until 1983 when it was sold to Mr. and Mrs. Baldassare. He stated that he had been involved in the operation of the hotel since he was a young boy.

Mr. Bisogno noted that he had some documents he wanted marked into evidence. This witness would be able to testify to one of the documents. The others would be authenticated by other witnesses. Copies of **Exhibits A-1a, A-1b, and A-1c** were handed out to the board members. The first two (2) were pictures of the hotel that Mr. Baldassare found. He directed the Board's attention to **Exhibit A-1c** which was a survey. He asked Mr. Achilles if he had ever seen that survey before.

Mr. Achilles responded that he had.

Mr. Bisogno asked him if the Stirling Hotel looked like that when he purchased it.

Mr. Achilles responded that it did.

Mr. Bisogno directed his attention to the northerly part of the sideyard on Railroad Avenue which showed a one story masonry garage. He asked if it was there when he owned the property.

Mr. Achilles replied that it was. He noted that Williams Furniture Store on Front Street in Plainfield had their advertisement on the back. He stored lawnmowers and cars in there. It was there when the property was sold to Mr. Baldassare.

Mr. Bisogno noted that on the easterly side yard there was a bocce ball court.

Mr. Achilles agreed.

Mr. Bisogno continued southeast on the property and noted a structure.

Mr. Achilles said that it was a smokehouse. He said it had been there a long time and was made from concrete and rails from the railroad. He added that it looked like it was 100 years old or more.

Mr. Bisogno asked Mr. Achilles if there were any other structures in that area.

Mr. Achilles responded that there was a concrete slab in front of the smokehouse. It was used for serving beverages.

Chairman Behr noted that the concrete slab was not shown on the plan. He asked for the rough dimensions of the slab.

Mr. Achilles responded that it was probably about the same size.

Chairman Behr estimated that that would be 16 by 12.

Mr. Achilles agreed.

Mr. O'Brien asked for the date of the survey.

Mr. Achilles did not know. Mr. Bisogno added that they had looked for the original. This copy was found in the records of the Stirling Hotel when Mr. Baldassare bought it. There was no date on it however it was prior to 1983.

In response to a question from Mr. Pesce, Mr. Bisogno stated that the bocce ball court, the one story masonry garage and the smokehouse were all there in 1946 when Mr. Achilles' family purchased the hotel.

Chairman Behr asked if they were there in 1983 when the property was sold.

Mr. Achilles said both the garage and the smokehouse were there in 1983.

Mr. O'Brien asked if the bocce court was there in 1983.

Mr. Achilles responded that it was. He said it was built in the 1950's. It was not there when his family purchased the hotel in 1946.

Mr. Keegan asked if the one-story garage existed where the current entrance to the parking lot was located.

Mr. Achilles said it was.

Mr. Bisogno asked what was in back of the hotel itself.

Mr. Achilles replied that there was asphalt where the tent was currently located.

Mr. Bisogno asked what it was used for.

Mr. Achilles replied that they did not have air-conditioning until the late 1970's. Everyone would come outside, bring to the tables, sit and drink and eat on the asphalt.

Mr. Gerecht asked him if they moved the tables from inside of the hotel.

Mr. Achilles responded that that was what they would do because the entire property was licensed. He added that people would eat in the area southeast of the smokehouse. That was used for picnicking from the smokehouse on. Sometimes it was the gun clubs and sometimes it was the firehouses. He clarified that this area covered Lots 28, 29 and 30. The entire property was a Grove lot.

Mr. O'Brien said it was his understanding that Mr. Achilles would take chairs and tables from the hotel, bring them outside and then they would come back inside and put them away. There were no permanent structures with roofs.

Mr. Achilles said that was correct.

Mr. Aroneo said that Mr. Achilles had stated that there were outdoor tables that stayed there. Picnic tables?

Mr. Achilles responded affirmatively. He added that sometimes he borrowed them from the firehouse.

Chairman Behr felt that this was an important detail. He asked if the tables and chairs that people used for picnics were moved from the hotel to the outside or—

Mr. Achilles replied that "Some were moved to the asphalt part and some were in the smokehouse and some were permanently in the yard."

Chairman Behr asked Mr. Achilles if his testimony was that there were some permanent picnic tables in that area.

Mr. Achilles responded, "Yes."

Chairman Behr asked Mr. Achilles if he had a rough estimate of the number of permanent tables.

Mr. Achilles replied, "Depending on where they moved them."

Chairman Behr advised Mr. Achilles that he was trying to get a sense of the scope of the **permanent** seating in the Grove.

Mr. Achilles responded that there could be as many as 60 to 80 to 120 people there.

Mr. Gerecht asked if those tables stayed out there.

Mr. Achilles replied that some of them did. They would pick up the picnic tables and chairs and move them around. He had one steel table that was about 25 feet long. Depending on where they moved the picnic tables, there could be 10 or 12.

Mr. Bisogno asked if there were any other activities outside that were encouraged.

Mr. Achilles said that they played bocce ball. There were three (3) horseshoe pits. One was located in Lot 30 on a 45 degree angle. There was one that was almost directly in front of the smokehouse. There was one down by Lot 32.

Mr. Bisogno asked where people parked.

Mr. Achilles responded, "Same place they park now."

Mr. Bisogno asked if anybody ever parked in the R-4 zone.

Mr. Achilles responded, "No."

Mr. Bisogno asked what that area, now called the R-4 zone, was like.

Mr. Achilles said there were trees and grass. It was used as a picnic grove all the time.

Mr. Bisogno asked where the parking occurred.

Mr. Achilles responded that it was where the garage was located and where "... his fence is, Lot 4, where the fence is, right in that area. Back-to-back parking."

Chairman Behr requested that the applicant refer to the lot numbers.

Mr. Achilles replied, "Where the garage is, running parallel to the garage. Track Lot 3."

Mr. O'Brien clarified that Mr. Achilles was referring to Track 4, Lot 3 which was due south of the garage.

Mr. Achilles replied, "Yes."

Chairman Behr asked if that was head-in parking.

Mr. Achilles responded, "Yes. Parking towards Main Street. It was facing east."

Mr. Bisogno asked if there was parking on Lot 4 and Lot 5.

Mr. Achilles replied, "4, yes. 5, where the grass is, no."

Chairman Behr clarified that Lot 5 was basically grassy.

Mr. Achilles responded, "Yes. That was where we had the picnic area. That was all a Grove license."

Chairman Behr asked if there was a fence between Lot 4 and Lot 5.

Mr. Achilles replied, "No."

Chairman Behr asked what distinguished between Lot 4 and Lot 5. He wanted to know if there was any demarcation between the two lots.

Mr. Achilles replied, "No."

Mr. Aroneo asked if there was ever any overflow parking there.

Mr. Achilles said that there was a telephone pole there. He said that it was never used for overflow parking.

Mr. Bisogno asked about Lot 32 and Lot 31.

Mr. Achilles responded, "That's where I had one of the horseshoe pits in that area. They put the tables there anywhere they wanted to. It was open for anything. No parking. At one time the road went through."

Chairman Behr reiterated that on Lot 31, there was no parking.

Mr. Achilles replied, "No."

Mr. Aroneo asked if Mr. Achilles was referring to Somerset Street when he said that the road "went through."

Mr. Achilles responded, "Yes."

Mr. Aroneo asked how far east it went.

Mr. Achilles said, "It went right to the street."

Mr. O'Brien asked if Mr. Achilles was referring to the area behind Lot 33.

Mr. Achilles said, "Yes. By Biaggio's. That was the post office at one time."

Mr. O'Brien asked if that was where Mr. Achilles' family sold land to the Metzlers.

Mr. Achilles said that that was their deli.

Mr. O'Brien asked if it became an entryway for them or for Mr. Achilles.

Mr. Achilles said it was for the post office.

Mr. O'Brien clarified that that was on Mr. Achilles' property and it was then sold to the Metzlers. That way Mr. Achilles no longer had access to Somerset Street.

Mr. Gerecht asked what a Grove license was.

Mr. Achilles said that the entire property was licensed on a C-3 license through the state to serve liquor on the premises.

Mr. Gerecht asked when that license was obtained.

Mr. Achilles responded that it was always that way. It was that way when his family bought it. Anywhere on the property, liquor could be served.

Mr. Bisogno asked about the outdoor dining on the asphalt in the back.

Mr. Achilles said that because there was no air-conditioning, he would have tables there. Some people would bring 55 gallon drums and have their own cookouts. They also had cookouts on the lawns. There would be lawn picnics.

Mr. Gerecht asked if anyone ate outside in the winter.

Mr. Achilles replied that that did not normally happen.

Mr. Pesce asked if the asphalt area shown on the map was where the tent was located currently.

Mr. Achilles replied that it was.

Mr. Bisogno asked about the hours of the outdoor dining, if there were any.

Mr. Achilles replied, "Then, 2:00 in the morning. Except for New Years. It was 5:00 AM."

Mr. Bisogno asked if there was any music outside.

Mr. Achilles replied that a couple of his friends would play guitar out in back.

Mr. Bisogno asked if there was any recorded music.

Mr. Achilles said, "Yes. We had a radio. I think back then it was either cassette or eight-track."

Mr. Bisogno asked, in addition to the asphalt area located in the back of the hotel, was Track 1, Lots 31 and 32, and Lots 4 and 5, used for picnics.

Mr. Achilles replied, "Yes. All the way to the end of the property, Somerset Street, and behind the other two lots on Railroad Avenue."

Chairman Behr said that in addition to the asphalt, there was outdoor dining on Track 3.

Mr. Bisogno said there was dining on Track 3, Track 1 which was a combination of Lots 4 and 5, and 32 and 31. There was dining also on Track 2 which was a "...combination of Lots 30, 29, and 28."

Chairman Behr clarified that based on what he was hearing, parking was limited to Lot 3, Track 4.

Mr. Achilles responded, "Yes. Right behind the garage. That was Track 4 and Lot 4."

Chairman Behr again clarified, "Lot 4, Track 1." He noted that basically everything south of the hotel was outdoor dining.

Mr. Achilles said, "It was open."

Mr. Bisogno said that Mr. Achilles had indicated that there were events held outside. He asked what type of events they were.

Mr. Achilles said that he had sponsored some softball teams. They were in the parking area and the entire Grove area. He clarified that it was Lot 30, 31, all of the area east of the bocce alley. There were makeshift grills out of 55 gallon drums. There were bocce tournaments and bowling leagues.

Mr. Bisogno asked what Mr. Achilles meant by "sponsored."

Mr. Achilles said that they had parties. There were also gun club meetings.

Mr. Bisogno asked how many people were in attendance for these events.

Mr. Achilles replied that it was about 80 to 100 people.

Mr. Bisogno asked about Fourth of July parties and Memorial Day parties.

Mr. Achilles responded that parties were held on Memorial Day, Labor Day, and July 4th. Those were his personal parties. They were for all of his customers and others who would come because it was free. There was free beer, free food and use of—

Chairman Behr asked if there were more than 80 to 100 people at those events.

Mr. Achilles said that people would come from other places because everything was free.

Mr. Bisogno asked if all of these activities were going on since his family owned the hotel from the late 1940s until 1983.

Mr. Achilles replied, "Yes. There were about 10 to 12 events each year."

Mr. Bisogno asked if these events occurred during the months of May through October.

Mr. Achilles replied, "Yes."

Mr. Bisogno advised Chairman Behr that he had no further questions for this witness.

Chairman Behr asked if any of the board members had questions for this witness.

Mr. Keegan noted that at the beginning of Mr. Achilles' testimony, he had stated that initially he lived upstairs with his family and at that time the hotel was still functioning as a hotel.

Mr. Achilles said that there were about seven (7) or eight (8) people living there.

Mr. Keegan asked if Mr. Achilles' family had converted the upstairs into apartments.

Mr. Achilles replied, "Yes, I did. I had one for myself in the front."

Mr. Keegan asked if Mr. Achilles had stopped renting to hotel occupants.

Mr. Achilles replied, "Yes, somewhere around 1977 or 1978."

Mr. Keegan asked if, at that time, there were three (3) apartments as there were currently or was it configured differently.

Mr. Achilles responded, "There was just mine."

Hearing no further questions from the board members, Chairman Behr asked if the consultants had any questions of this witness.

Mr. O'Brien referred to the survey that everyone was currently looking at and asked if it accurately reflected what the property looked like when it was sold to the current owner in 1983.

Mr. Achilles responded, "Yes except that line there where they closed off the Grove part."

Mr. Bisogno said that that was the zone line.

Mr. Achilles added, "I didn't know about it until two months."

Mr. O'Brien said that in 1983 when the property was conveyed, the smokehouse was in the back on Lot 30.

Mr. Achilles said, "Right where it is. Yes."

Mr. O'Brien asked if there were any other structures on Lot 30 or 29 or 28.

Mr. Achilles said, "There were some chicken coops in the back."

Mr. O'Brien said that they were not shown on this survey.

Mr. Achilles said that when the fellow who lived on that street moved, they were torn down.

Mr. O'Brien said that in 1983 the only structure was that smokehouse.

Mr. Achilles responded, "Yes. And the one story masonry garage."

Mr. O'Brien said that the garage was on Track 4 Lot 3. The asphalt was on Lot 36 to the rear of the hotel.

Mr. Achilles responded, "Yes."

Mr. O'Brien asked about the bocce court which actually straddled the property line. He asked if it was still there in 1983.

Mr. Achilles responded, "Yes."

Mr. O'Brien asked if Mr. Achilles had permission from the adjoining property owner for that.

Mr. Achilles responded, "I don't think so."

Mr. O'Brien noted that the bocce court was not there now and it was not continued after Mr. Achilles sold the property. Mr. O'Brien summarized that the structures that were on the property when it was sold in 1983 were the hotel, the asphalt to the rear of the hotel, the garage facing Railroad Avenue, the smokehouse, the pad next to the smokehouse and the bocce court. He noted that the pad next to the smokehouse was not shown on the survey.

Mr. O'Brien also noted that the three (3) horseshoe pits were not shown on the survey either.

Mr. Achilles replied, "No."

Mr. Pesce asked if they were there in 1983.

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

Mr. O'Brien had no further questions for this witness.

Mr. Lemanowicz asked about the drainage ditch that was shown from roughly in back of the hotel. He wanted to know who filled that in.

Mr. Achilles said, "It's not filled in."

Mr. Lemanowicz noted that it was not shown on the current plan.

Mr. Achilles added, "I walked it the other day. It's not filled in." He added that the one on the other side was not filled in either.

Mr. Lemanowicz said that the one at Somerset and across the back was still there.

Mr. Aroneo added that they were filled in with debris.

Mr. Achilles said that he had gone back there to check and when he was there, they were about a foot deep.

Mr. Lemanowicz had no further questions.

Mr. Bernstein asked Mr. Achilles to draw in the tables as circles on a copy of the plans. In response to Mr. Achilles' question, Mr. Bernstein asked him to draw in all 12 tables.

Mr. Aroneo asked Mr. Bernstein if he wanted the different locations if they were moved.

Mr. Bernstein said that the typical locations would suffice.

Mr. Achilles began drawing in the tables. At one point he commented that he had them practically everywhere but they were not permanent.

Mr. Aroneo asked if the extremely heavy table which was difficult to move would be considered permanent.

Mr. Bernstein noted that the witness said they were next to trees.

Once Mr. Achilles was finished, Mr. Bernstein asked him to draw in the horseshoe pits. It was his understanding that they were there at a certain point and then they were taken out. He asked Mr. Achilles to make them long so that they could differentiate them from the tables.

Mr. Bernstein then asked Mr. Achilles to show the parking areas in red.

The plan with the tables, horseshoe pits and parking drawn in by Mr. Achilles was marked **Exhibit A-2**.

Mr. Pesce asked about the property to the east which was off Railroad and off Somerset. He noted that there was a house immediately next to Lot 5. He asked what was there now.

Mr. Achilles replied that the water company had a lot there somewhere.

Mr. O'Brien said that it was Vacant Lot 6 on the site plan.

Mr. Pesce asked if there was a single family home there today.

Mr. Achilles replied, "Yes."

Mr. O'Brien said that was on Lot 7.

Mr. Achilles said that there should be two (2) or three (3) houses there.

Mr. Pesce asked about the property immediately east of Lot 28.

Mr. Gerecht clarified that that would be Lot 25.

Mr. Achilles said that that was all woods.

Mr. Keegan said, during Mr. Achilles' ownership, directly to the south of the hotel structure, there was an "alleyway" between the hotel and the next building.

Mr. Achilles asked if that was heading towards Main Street.

Mr. Gerecht clarified that it was where the word "chimney" was.

Mr. Achilles said it was a driveway.

Mr. O'Brien clarified that it showed on the survey to be at least 13 feet wide.

At 9:53 PM, Chairman Behr recessed the meeting for a 10 minute break.

RECESS

Chairman Behr called the meeting back to order at 10:03 PM.

Mr. Lemanowicz referred to Mr. O'Brien's package of photographs, specifically #8 which was located on page 6, "Looking west towards dumpster area and parking lot behind Lot 34." He referred to a section that was brick red and asked if that was the area that was sold to the post office.

Mr. Achilles answered, "Yes."

Mr. Lemanowicz said looking back at the survey that Mr. Bisogno had provided, the drainage ditch right next to that was the one he referred to originally. It appeared in the photograph to be gone.

Mr. Achilles answered, "Yes."

Mr. Lemanowicz asked Mr. Achilles for the status of that ditch when the property was sold.

Mr. Achilles replied that it had a pipe.

Mr. Lemanowicz asked if it was piped before he sold it or after.

Mr. Achilles replied that it was after.

Mr. Lemanowicz asked if he knew when after.

Mr. Achilles replied that he did not.

In summary, Mr. Lemanowicz said that the survey showed a drainage ditch that started at the rear of the hotel and flowed southward to Somerset Street along the west line of Lot 32. When he questioned the witness earlier, apparently he and the witness were looking at different ditches because the witness said it existed. Mr. Lemanowicz said that that ditch did not exist anymore. The witness was saying that it did exist when he sold property.

Chairman Behr asked if there were any members of the public who had questions for this witness.

Carl Sundberg, 253 Main Avenue, Stirling, stated that originally when he moved in in 1971, as one entered the hotel the bar was on the left and there was a dining room on the right. He also remembered times when Mr. Achilles had bands in the bar. The patrons could go outside with their drinks. He wanted to know if he was correct.

Mr. Achilles agreed with all of Mr. Sundberg's recollections.

Hearing no further questions for this witness from the public, Chairman Behr closed this portion of the meeting to the public.

Mr. Bisogno asked that two (2) documents be marked for identification at this point. The first was an aerial view of the property by Robertson Aerial Survey Inc. dated March 23, 1969. The purpose was to show the condition of the property in 1969 prior to the zoning change that occurred. This would be **Exhibit A-3**. It was circulated among the board members.

Mr. Bisogno pointed out that on the back of **Exhibit A-3**, was another exhibit, **Exhibit A-4** which was a copy of a filed map from the County Clerk's office. It was dated 1907. The area highlighted in yellow was the Stirling Hotel and the designation "hotel" was listed on the map.

Mr. Bisogno then called his next witness, Thomas Baldassare.

Chairman Behr swore in the witness.

Mr. Baldassare, 59 Mountain Avenue, Gillette, stated his occupation as restaurateur. He said that he and his wife, Dorianne, owned the Stirling Hotel since 1983. Previously, he co-owned Linda's Fireside Inn since 1959. He had been in the Township for 57 years.

Mr. Bisogno asked Mr. Baldassare if he had ever visited the Stirling Hotel before he owned it.

Mr. Baldassare replied that he had. He added that he used to ride his horse through there when he was a child.

Mr. Bisogno referred to **Exhibits A-1a, A-1b, and A-1c**. He asked Mr. Baldassare where these documents had come from.

Mr. Baldassare responded that they were in a packet in the office from when he purchased the hotel. **Exhibit A-1a** depicted the Stirling Hotel with an old car in front of it. **Exhibit A-1b** also depicted some cars but was a little more recent. **Exhibit A-1c** was the survey which was also found in the packet.

Mr. Bisogno asked about **Exhibit A-1c**. In the northwesterly corner of the lot was a one story masonry garage. He asked if it was there when Mr. Baldassare purchased the property.

Mr. Baldassare replied, "Yes."

Mr. Bisogno asked approximately how big the garage was.

Mr. Baldassare responded that it was approximately 800 square feet with a loft above it and a peaked roof. It was made of cinder block and provided storage for mowers and tables for the Grove. There was a little fracture in the north corner and in 1985 there was a heavy snow. The whole building collapsed. At the time he could not afford to rebuild it so he had it carted away.

Mr. Bisogno asked Mr. Baldassare where he stored those items.

Mr. Baldassare replied that he brought in a couple of sheds.

Mr. Bisogno asked Mr. Baldassare about the bocce ball court which was shown on the easterly side line. He asked if it was there when he bought the property.

Mr. Baldassare responded that it was there however it was in disrepair and covered with brush. He added that he cleaned it up and got rid of it.

Mr. Bisogno said that on **Exhibit A-1c** it also showed the smokehouse.

Mr. Baldassare said that the smokehouse was there when he purchased the property. He said it was a typical smokehouse built with the rails from the railroad tracks. There was no refrigeration back then so they smoked their meat and used it for the hotel. He had continued to use it for storage. There were tables in there.

Mr. Bisogno said that Mr. Achilles had indicated that in the vicinity of the smokehouse was a concrete pad.

Mr. Baldassare said that the pad was still there. It was approximately 16 by 16 and had been repaired. When he purchased the property it was covered with brush. A pavilion now covered the pad.

Mr. Bisogno said that the survey also showed an asphalt area directly behind the hotel.

Mr. Baldassare said that that was there when he purchased the property. He added concrete interlocking pavers to the top of it around 1984.

Mr. Bisogno showed Mr. Baldassare **Exhibit A-3** which was the aerial photo. It showed the Stirling Hotel property with the arrow in green and various structures on the property.

Mr. Baldassare pointed out the Stirling Hotel on the aerial photo. He also pointed out the garage on the north side of the property on Railroad Avenue.

Chairman Behr said that the aerial photograph was verifying the information that was seen on **Exhibit A-1c**.

Mr. Bisogno said that that was correct. He asked Mr. Baldassare if there were any other buildings that he could see on the photograph.

Mr. Baldassare said that there was the smokehouse and some buildings to the east on the other side of the ditch on the east corner of the property. He noted that he owned approximately 12 feet of property on that side of the ditch. They were gone now. He couldn't make them out but he pointed out a structure and some small buildings. There was a dog kennel and a rabbit coop.

Chairman Behr asked if it was Mr. Baldassare's testimony that in 1969 there was a dog kennel and a rabbit hutch based on his memories as a child.

Mr. Gerecht asked if it was solely based on Mr. Baldassare reading the photograph or his memory.

Mr. Baldassare said that it was based solely on his reading the photograph.

Chairman Behr asked if he knew what those buildings were actually for.

Mr. Baldassare answered that he would have to ask Mr. Achilles.

Mr. Bisogno asked that the colored version of the survey be marked as **Exhibit A-5**. He asked Mr. Baldassare to tell the Board where the parking was located when he purchased the property.

Mr. Baldassare replied that the parking was in the east of the property, right behind the hotel.

Chairman Behr clarified that that would be the area that was shown in gray.

Mr. Baldassare said that it was the gray area and the green area. There was parking in the green area and he also used the grass area.

Mr. Bisogno asked Mr. Baldassare, in 1983 when he purchased the property, the area that was used for parking was the area in gray but what about the area shown in green on the plan.

Mr. Baldassare said that that was parking also.

Mr. Bisogno asked if Mr. Baldassare had used it for parking and if Mr. Achilles used it for parking.

Mr. Baldassare replied that "we used it but it was a rough area, a very rough gravel."

Chairman Behr clarified that in 1983 the area in green encompassed what had been discussed as—

Mr. Baldassare interrupted and said that he was a little disoriented. That was the grass. He pointed to an area and said that that was for parking.

Chairman Behr said that in 1983 the area that Mr. Baldassare described as parking that was gray would have been on the original survey Lot 3 Track 4, Lot 36 Track 3.

Mr. Baldassare said that was correct.

Chairman Behr said that the area to the right of that would be Lot 4 Track 1, Lot 32 which was shown in green.

Mr. Baldassare said that was correct.

Mr. Bisogno asked if that was used for parking.

Mr. Baldassare said, "Yes."

Mr. Bisogno reiterated that in 1983 when Mr. Baldassare purchased the property the area that was being discussed as Lots 4 and 5 on **Exhibit A-1c** and also on **Exhibit A-5** was used for parking.

Mr. Baldassare said that was correct.

Mr. Bisogno referred to the area marked R-4 Zone and asked if Mr. Baldassare had ever parked in that area.

Mr. Baldassare replied that he had.

Mr. Bisogno stated that Mr. Achilles had said that he had never parked in that area.

Mr. Baldassare responded that Mr. Achilles never parked in that area however he had.

Chairman Behr clarified that the R-4 was the Grove area. It was the "L" shaped extension that in the older map was Lots 30, 29 and 28.

Mr. Bisogno stated that that was correct.

Chairman Behr said that according to the testimony, no parking was permitted there by Mr. Achilles however Mr. Baldassare—

Mr. Baldassare said he wanted to make a correction. He used it for the antique car show. This show was done for the community center and those cars were rolled back there.

Chairman Behr said that that was an event and not patron parking.

Mr. Baldassare said, "No."

Chairman Behr wanted to focus the attention on where the patron parking was located when Mr. Baldassare first moved there.

Mr. Baldassare responded, "32, Lot 4 and Lot 5." He then corrected himself and said it was Lot 3.

Mr. Gerecht further clarified that it was the gray area.

Mr. Baldassare said that that was correct.

Mr. Bisogno asked if there was any pavement in that area.

Mr. Baldassare said that it was gravel. There was no curbing. On the south end he had installed a bed. It was made of six by six railroad ties and shrubs, arborvitaes. There was no lighting in the parking lot. There were some spots. He had installed lighting and he indicated that there was a rendering of what that lighting looked like on that side of the property.

Mr. Bisogno asked about fencing on Railroad Avenue.

Mr. Baldassare said that he had installed the fencing. He said it was under four feet high.

Mr. Bisogno noted that there was an entrance way with a trellis.

Mr. Baldassare said that there was a trellis with trumpet vine which was approximately 15 to 20 feet wide.

Mr. Bisogno asked if it directed people into the green area on **Exhibit A-5**.

Mr. Baldassare said that that was correct. He now used that area for parking. It was the north piece of the property facing Railroad.

Mr. Bisogno asked Mr. Baldassare to tell the Board what days of the week the hotel was open.

Mr. Baldassare said that the hotel was open seven days a week from 11:30 AM to 10:00 PM Monday through Saturday. Sundays it was open until 9:00 PM. This was for inside and outside.

Mr. Bisogno said if Mr. Baldassare had prepared a configuration of the first floor of the restaurant. He asked Mr. Baldassare if it was accurate.

Mr. Baldassare confirmed that it was totally accurate.

Mr. Bisogno referred to a comment by Mr. Lemanowicz that more seats could be placed in there. He asked if that was feasible and again asked if the plan was accurate.

Mr. Baldassare confirmed once again that his plan was accurate. He said he could not put in more seats because the Fire Marshal had seating charts for each room which showed how many there were supposed to be and he strictly enforced that.

Mr. Bisogno said, in regards to the first floor, including the bar and the restaurant on the inside, there were about 93 seats.

Mr. Baldassare confirmed that that number was correct.

Mr. Bisogno asked what was on the second floor of the hotel.

Mr. Baldassare said that there were three apartments—Sonny's apartment (Mr. Achilles' original apartment), Mr. Baldassare's son's apartment in the rear (he noted that he had full architectural drawings and permits for that apartment), the third apartment, and an office.

Mr. Bisogno said that according to Mr. O'Brien the applicant did not have the required square footage for the apartments on the second floor. He asked Mr. Baldassare if he had done the calculations for those apartments.

Mr. Baldassare confirmed that he had.

Mr. Bisogno asked that the layout of the apartments on the second floor with the square footage calculations be marked as **Exhibit A-6** showing that each one was in excess of 500 square feet.

In response to Mr. Bisogno's question, Mr. Baldassare stated that he had 53 employees at the restaurant. Some were full-time and some were part-time. Many of them came from town, the high school, college, a few from Watchung, Warren and New Providence. He noted that some of them rode their bikes. Some came by train from Bernardsville and Summit. Some who lived on Elm Street walked to work. For those who came by car, Mr. Baldassare indicated that he had made accommodations for employee parking at Stirling Auto Center on 233 Railroad Avenue because that facility was closed at night which was Mr. Baldassare's busiest time. There were approximately 10 to 20 cars parked there.

Mr. Bisogno asked Mr. Baldassare where the outdoor dining occurred.

Mr. Baldassare replied that it occurred in the east part of the property. He pointed to the area on **Exhibit A-5** page 2 of 2 and showed it to the board members. He explained that it was the "tent area" which was labeled "concrete block patio with tent enclosure" and at the "brick paver area" which was to the right of the bench.

Chairman Behr noted that moving eastward, an additional bench and railroad ties were shown.

Mr. Baldassare stated that that area was for patron seating. A-1 was an eight by eight structure. To the south of that was a table and bench which was a waiting area. There was no dining there at all however alcoholic beverages were consumed there.

Chairman Behr referred to the "existing covered sitting area." He asked if that area served patrons.

Mr. Baldassare stated that that was where his dumpster *used* to be however patrons were now served there.

Chairman Behr asked what the shed behind that was used for.

Mr. Baldassare responded that it was for storage of paper goods. He added that he had brought that shed in and it had been moved around the property several times.

Mr. Bisogno asked Mr. Baldassare if the outdoor dining that was being discussed had been submitted to the Board when the seating floor plan for the inside of the restaurant was submitted.

Mr. Baldassare confirmed that that was correct.

Mr. Bisogno said that during his visits to the hotel, he noted that patrons were seated at the bar along with 3 to 4 people standing behind them.

Mr. Baldassare confirmed that that was correct on certain nights.

Mr. Bisogno referred to "outdoor dining" on page 3 of the plans that Mr. Baldassare had submitted to the Board. Mr. Baldassare listed a certain number of tables and a certain number of seats on that plan. He asked if that was a fixed number or were there more people that could congregate in that area because of parties and events.

Mr. Baldassare responded that there absolutely could be more people. Some would be standing around waiting for a table. Beepers were handed out in the restaurant so it didn't get overcrowded inside. They could then call the patron when his table was ready.

Mr. Bisogno asked how often Mr. Baldassare served food outside.

Mr. Baldassare replied that food was served outside from 11:30 in the morning until 10 o'clock at night except on Sundays which was 9 o'clock at night. In response to Mr. Bisogno's question, Mr. Baldassare said he had been doing this for 32 years since he took over the hotel.

Mr. Bisogno stated that the outdoor dining ordinance went into effect in 1989.

Mr. Baldassare confirmed that that was correct.

Mr. Bisogno asked if Mr. Baldassare played music outside.

Mr. Baldassare confirmed that he did. It was something like Pandora on some speakers. It had been many things over the years. As far as live entertainment, on Mondays there were small local groups that played which ended at around 9 o'clock at night. He added that these were not rock bands. This had been done whether it was a special event or just outdoor dining since he opened the restaurant.

In response to Mr. Bisogno's question, Mr. Baldassare described some of the special events. One of the events that had been done for four (4) years was the "Flight 93 United Airlines/Continental." It raised money for the Shanksville Monument to the tune of over \$500,000. On a monthly basis, beer events were held. The 75th anniversary event for the Police Department was also held there. The car show pushed over 3000 people to the back of the hotel. That was held for the Community Center once a year, usually the first week in October. Another event was held for the Library to raise money.

Mr. Bisogno asked if Mr. Baldassare considered that a continuation of what Mr. Achilles was doing with his family.

Mr. Baldassare replied, "Yes, but we're a little bit busier." He noted that the property itself was one of the rarest licenses in New Jersey if not the entire country. It was a "C" License and the entire property was licensed including the parking lot, basement and apartments. Whoever made this complaint also made a complaint to the ABC. There was a lengthy and stressful investigation by the ABC. At the conclusion of their investigations, they said it was one of the cleanest investigations they had ever had. The two detectives asked, "Would you like to know why we are here? Someone complained that you were serving alcohol outside and you're allowed."

Mr. Gerecht asked if he had any documentation.

Mr. Baldassare said that he could get it.

Mr. Bisogno asked how many events were held at the hotel in a month.

Mr. Baldassare replied that when the first application was submitted, Mary Ellen Balady (construction official at that time) told him that this was not allowed with a tent. That year he did 12 weddings. He no longer did weddings. He asked Mary Ellen if he could do that last wedding. He stopped using the Grove until the 9/11 event.

Mr. Bisogno asked Mr. Baldassare if he knew that Mr. Achilles and his family were using the Grove for events at the facility and for outdoor dining.

Mr. Baldassare replied, "Yes." He knew that because in 1959 when his family purchased Linda's Fireside Inn, they were the two (2) Grove licenses. They had an outside stand and picnic tables, fireplaces, pony rides and hayrides up and down Valley Road.

Mr. Bisogno referred to **Exhibit A-5** and asked about the R-4 Zone. Was there outdoor dining there on a regular basis or was it just for the events.

Mr. Baldassare responded that people would wander out there but basically it was for events. He noted that they had just had an event on Sunday. The Dogfish Head Brewery came in. There were 500 people on the property with no issues, no police calls or complaints. It was over by 7 o'clock. This was in addition to what was going on inside the restaurant. Over 2000 people went through the place that day.

Mr. Bisogno asked if people had parked in the street, in Mr. Baldassare's lot and in the train station.

Mr. Baldassare replied that they had parked in the train station and on Main Avenue. He said that normally the events would not be that big but people came out of the woodwork.

Mr. Bisogno asked about the buildings that were constructed after 1987. He noted that they had been identified on the plan. The applicant had submitted pictures of the buildings that were depicted on the plan. They were identified as A-1 through A-9.

Mr. Baldassare said that that was correct.

Mr. Bisogno said that the board members had copies of the pictures that were submitted. He asked Mr. Baldassare to show the board members where A-1 was located.

Chairman Behr interrupted and advised Mr. Bisogno that there were only 15 minutes remaining in the meeting. Since it was obvious that the application would have to be carried, he suggested that the professionals be allowed to make any comments they deem necessary at this point and Mr. Baldassare could continue his testimony at the next meeting.

Mr. Bisogno agreed. He noted that the balance of the testimony would focus on the concerns of the professionals.

Chairman Behr asked the board members if they had any immediate questions of this witness. Hearing none, he asked the public if there were any questions. Hearing none, he closed that portion of the meeting.

Mr. O'Brien advised the chair that there were a number of completeness items that the Board had requested. He suggested that the applicant advise the Board as to when these items would be provided for review. He referred to page 8 of his report of May 14, 2015 and listed the items: 18, 26, 32, 33, 34, 38, 41 and 52.

Mr. Lemanowicz noted that a lot of those documents would rely on the survey and measurements. He felt it might be advantageous for the professionals to discuss these with the applicant in order to avoid several rounds of submissions. He suggested that they sit down and review everything with more specificity in order to get exactly what the professionals were looking for. It would almost be like going to a completeness meeting again.

Chairman Behr asked if the applicant could give the Board an idea of when he would be able to submit these items.

Mr. Bisogno stated that he would like to sit down the Board professionals sometime the following week to review the items the applicant and the applicant's engineer. He felt it would then take anywhere from 2 to 4 weeks to get the documents.

Chairman Behr said, in light of that, the Board would hold off on scheduling the next hearing.

Mr. O'Brien advised that if the hearing was adjourned to a date certain the notice that had already been given would be preserved--

Mr. Bernstein interjected that that notice had been deficient and the applicant would have to give new notice because of that.

Mr. Gerecht added that if there was a date certain, the old notice would not have to be repeated. It would have to be supplemented, however.

Mr. Bernstein suggested that the applicant file a completely new notice because he didn't want any confusion. Someone receiving the supplemental notice might think that there were only three items being requested.

Mr. Bisogno agreed with Mr. Bernstein and said that he would rather have a completely new notice with everything included.

Mr. Bernstein said that he preferred to get an extension to October 1, 2015. He asked Mr. Bisogno to send a letter to Mrs. Wolfe or Ms. Kiefer. Mr. Bisogno agreed.

Mr. O'Brien advised Mr. Bisogno that the professionals were available to meet with him and his client next Tuesday. Mr. Bisogno said that he would confirm the time and date with Ms. Kiefer.

In response to a question from Mr. O'Brien, Mr. Bisogno stated that at the next meeting he would address the concerns of the Board regarding the accessory buildings that were

constructed without permits. The chicken coop would be discussed along with the other items that were added after the plans were filed. Next, the planner would testify regarding the justification for the variances.

Chairman Behr said, based on the comments from the consultants, the board members wanted to hear testimony to assure them about safety and dangers to public health. As indicated in Mr. Lemanowicz's report, there were some real concerns about stormwater management associated with this application and the Board wanted to hear testimony about that.

Mr. Bisogno advised Chairman Behr that he intended to call Mr. Murphy also. He understood the Board's concerns about stormwater management. His client wanted to comply as much as he could with the Board's requirements however Mr. Bisogno was advising him differently. He hoped to discuss the stormwater management during the meeting on Tuesday.

Chairman Behr asked if there was anything further. Hearing none, he asked for a motion to adjourn. Mr. Gerecht motioned and Mr. Aroneo seconded the motion. By unanimous **VOICE VOTE** the meeting was adjourned at 10:53 PM.

CYNTHIA KIEFER
Planning and Zoning Secretary

Date