

# AMENDED MINUTES

FEBRUARY 18, 2014

PLANNING BOARD

LONG HILL TOWNSHIP

## CALL TO ORDER AND STATEMENT OF COMPLIANCE

Chairwoman Dapkins called the meeting to order at 7:40 P.M. She then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

## MEETING CUT-OFF

Chairwoman Dapkins read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

## CELL PHONES AND PAGERS

Chairwoman Dapkins 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:

Suzanne Dapkins, Chairwoman  
Brendan Rae, Mayor's Designee  
Ashish Moholkar, Member  
Guy Roshto, Member  
Timothy Wallisch, Member  
David Hands, 1<sup>st</sup> Alternate

J. Alan Pfeil, Chairman  
Guy Piserchia, Mayor  
Gregory Aroneo, Member

Barry Hoffman, Bd. Attorney  
Kevin O'Brien, Twp. Planner  
Thomas Lemanowicz, Bd. Engineer

Ms Kiefer advised Chairwoman Dapkins that she had a quorum and could proceed.

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

## PUBLIC QUESTION OR COMMENT PERIOD

Chairwoman Dapkins opened the meeting for any questions or comments from the public on any items not listed on the agenda. Seeing none, she closed the meeting.

## PUBLIC HEARING CONT'D.

### RESTORE MEYERSVILLE, LLC

596 Meyersville Road  
Block 14701, Lot 27

#13-07P  
Prelim./Final Major Site Plan

Chairwoman Dapkins stated that at the last meeting, they had left off during the Public Comment portion of the hearing. She asked Mr. Hoffman to make a statement.

Mr. Hoffman said that there had been a question about the admissibility of an exhibit prepared by Elaine Zindel when the meeting concluded for the evening.

Chairwoman Dapkins asked if there was any member of the audience that had not yet had an opportunity to speak. Several people raised their hands. She noted that after Mrs. Zindel had made her presentation, those people who had not been heard at the last meeting, would be allowed to speak first.

John J. Delaney, of **Lindabury, McCormick, Estabrook & Cooper**, Westfield, New Jersey, introduced himself as the attorney for the applicant.

Elaine Zindel, 317 Meyersville Road, indicated that she had been sworn in at the last meeting. When questioned about her ability to create the drawing in her presentation, she said that she was mathematics major and knew how to scale a drawing. Her exhibit, which she stated was to scale, was meant to show the height and width of the volley barn in relationship to nearby structures. In answer to Mr. Hoffman's question, she stated that it was not meant to be a photograph. She said it was meant to be accurate from a measurement standpoint. She explained that the home on

491 Meyersville Road which was depicted on the exhibit was measured and used as a point of reference in regard to the size of the volley barn which was also depicted.

Mr. Delaney objected to the line of testimony and the exhibit based on the fact that there were no height or width variances requested. He felt the exhibit was not relevant or appropriate. He also felt the exhibit should not be admitted into evidence since Mrs. Zindel was not an architect or engineer.

Mr. Hoffman asked Mr. Delaney how this would harm his client if the Board gave the exhibit and testimony consideration while recognizing that she was not an individual with previous architectural drafting experience.

Mr. Delaney felt that it did not go to the relief that was being sought which was two (2) C Variances and Site Plan Approval. He felt it was an attempt to sway the Board in a way that was inappropriate, unfair, and prejudicial.

Mr. Hoffman asked Chairwoman Dapkins to poll the board members.

Mrs. Zindel stated that the exhibit did not have anything to do with any variances. It had to do with an ordinance which she would address later.

Mr. Delaney felt it was not appropriate since the application was compliant with the exception of three (3) variances.

Mr. Hoffman asked if the purpose of her drawing was to show what the building would look like or were the measurements meant to give some comparative analysis between the dimensions of the proposed facility and others in the neighborhood.

Mrs. Zindel said that the exhibit was meant to show how the building would look in comparison to a local home.

Mr. Hoffman asked if that had any relevance since that had nothing to do with the variances being sought.

Mrs. Zindel said that the exhibit spoke to how harmonious the building would be with the community.

Mr. Hoffman left it up to the board members as to the admissibility of the exhibit.

Mr. O'Brien said that Mrs. Zindel had referred to an ordinance issue and that she should put that on the record so that the board members could see if it had any relevance.

Mrs. Zindel noted that the ordinance was 152.1 and stated that, "...All new buildings shall be related harmoniously with the natural features of the site and to existing buildings and substantial structures in the vicinity that have a visual relationship to the proposed building..."

Mr. Hoffman stated that he assumed that this exhibit was meant to show that the proposed structure did not relate harmoniously.

Mrs. Zindel affirmed that assumption.

Chairwoman Dapkins asked the board members for their thoughts. They were all in agreement that they wanted to hear the testimony. Chairwoman Dapkins advised Mrs. Zindel to proceed.

Mrs. Zindel described the measurements and views of the proposed building on the exhibit. She also compared it to Walgreen's located on Valley Road.

Mr. Hoffman stated that this should be marked for the record as **Exhibit P-01** along with the date (02-18-14).

Mrs. Zindel also spoke about the Master Plan's vision for Meyersville in relation to the proposed building. She stated that the fact that one hundred (100) people came to a previous Planning Board meeting to show their dissatisfaction should have made it obvious that the community felt this was inappropriate.

Mr. Delaney asked Mr. Hoffman and Chairwoman Dapkins to have the reference to the number of people Mrs. Zindel stated stricken from the record. It was his contention that the actual number was irrelevant.

Mr. Hoffman agreed with him however he felt that the Board was liberal in allowing comments from the public which might not be necessarily in sync with what experts would testify to. He felt the board members could give recognition to the fact that Mrs. Zindel said that more people had shown up to oppose the proposed facility than were in favor. He also felt the board members were well aware of the fact that this was not a popularity contest.

Mr. Delaney agreed with him. He asked Mrs. Zindel if she was a licensed planner, a licensed architect, or licensed engineer.

She replied that she was not.

Mr. Delaney asked her if she understood that the application called for a setback of sixty (60) feet from the road.

Mrs. Zindel said she thought it was possible to bring it up to twenty-five (25) feet. She said that it was currently sixty-nine (69) feet back.

Cathleen Cuddihy, 399 Meyersville Road, respectfully requested that the Planning Board deny the application because it was out of scale and proportion to the neighborhood. She also felt the hours of operation would have a negative impact and that the increased traffic on the circle would create a problem. Last, she was concerned about the asbestos.

Mr. Delaney asked Ms. Cuddihy if she was familiar with the fact that the Great Swamp Watershed Association supported the application.

There was a verbal exchange between the two.

Mr. Hoffman recalled some extensive questioning by Sally Rubin, Executive Director of the Great Swamp Watershed Association and she expressed concern about environmental effects. He did not recall her stating that the Great Swamp Watershed Association supported the application.

Mr. Delaney stated that on his rebuttal case, he would introduce evidence that they support the application.

Phyllis Fast, 498 Long Hill Road, was sworn in by the court reporter. She stated that she was a board member of the Great Swamp Watershed Association and the Chairman of their Land Use Committee. She refuted the statement that the Great Swamp Watershed Association--

Mr. Delaney interrupted and discussed with Mr. Hoffman whether Ms. Fast had the authority to speak for the Great Swamp Watershed Association. She was allowed to continue.

Ms. Fast stated that the Great Swamp Watershed Association had not said that they did *not* support it however it was her belief that they had not said that they *did* support it.

Mr. Delaney answered that during rebuttal he would submit an email and also would have his client testify to the fact that the application had that support.

Jim Rugolo, 114 Maple Avenue, Stirling, was sworn in by the court reporter. He stated that although he could not speak to whether the building was appropriate for the Meyersville location, he wanted to tell the Board that his daughter had benefited from her experience with Central Jersey Volleyball Academy. He did not want to belittle the concerns of the residents, however if there was a way for the building to reside in the township, it would be a great benefit for the children. He said that C.J.V.A. and the facility were well run and all the children benefited from it.

Dan McGuire, 339 Chestnut Street, Stirling, was sworn in by the court reporter and echoed Mr. Rugolo's comments.

Madeline Taylor, 588 Meyersville Road, Gillette, was sworn in by the court reporter. She failed to see how the project would add value to or aid in the resale of her property as was stated by another resident at a previous meeting. Although she did understand that there were those in favor, she felt that the hours of operation of the proposed facility were too much.

Don Farnell, 7 Trent Place, had been sworn in at an earlier date was still under oath. He stated that he was a licensed landscape architect and a professional planner in the State of New Jersey. He noted that it was someone from the public who finally presented a graphic as to the relative size of the facility because the applicant had not done so. He felt that the facility was inappropriate for the area. He addressed the parking variance, as a professional planner, and stated that it could have been moved to the side or rear. He felt, based on his forty (40) years of experience as a licensed landscape architect and professional planner, that the plan could have been developed with the parking not in the front yard.

Arthur Brown, 479 Meyersville Road, Meyersville, expressed disappointment that a project of this large size was being considered. He felt it was inappropriate and did not belong in a hamlet.

Debra Schmitt, 487 Meyersville Road, Meyersville, wanted to offer the Board a list of sixty-seven (67) similar facilities identified in New Jersey, each subsequently located on satellite imaging for the purpose of determining where the governing planning boards permitted these facilities. She stated that all were in industrial parks, on major highways, or in heavy industrial zones. She expanded her search to New York State, Connecticut, Massachusetts, and Pennsylvania where all were similarly relegated to the aforementioned zones.

Mr. Delaney stated that since this had been already determined as a permitted use, the testimony was inappropriate and should be stricken.

Mr. Hoffman stated that the members could give the testimony as much weight as each deemed appropriate.

Mr. Delaney stated that his objection still stood.

Ms. Schmitt said that the only exception was on New Vernon Road in Gillette for the Center Court Facility which in itself was a problem property and had been for a number of years. In May 2013 the Township Committee and Planning Board relaxed the zoning in Meyersville by decreasing the front setback to twenty-five (25) feet and increasing the permitted lot coverage to forty (40) percent thus paving the way for this application to come close to complying. She felt that the applicant had not met his burden of proof.

Mr. Hoffman stated that, for the record, Mr. Christopher Connor, former Chairman of the Planning Board, submitted a letter explaining why he had recused himself from any participation or involvement with this applicant insofar as the Meyersville property was concerned.

Ms. Schmitt stated that Mr. Connor had participated in the presentation that resulted in the revision of the Master Plan.

Mr. Delaney interjected that he objected and that he felt it was inappropriate.

Mr. Hoffman said that the letter from Mr. Connor spoke for itself insofar as denying any involvement with this application.

Ms. Schmitt wanted to state for the record that Mr. Connor did participate—

Mr. Delaney asked that the comment be stricken from the record and he asked Chairwoman Dapkins to gavel the witness down.

Chairwoman Dapkins asked the witness to step down.

Ms. Schmitt asked if the Planning Board wanted the list of facilities for the record.

Mr. Delaney objected.

Mr. Hoffman and Chairwoman Dapkins agreed that the list was not necessary.

Michael Behr, 176 Hickory Tavern Road, had been previously sworn in. He referenced the applicant's expert planner's testimony about front yard parking in the surrounding businesses. He also referenced her comment that the proposed building would not be bigger than the surrounding buildings.

Mr. Hoffman interjected and advised Mr. Behr and the rest of the audience to be careful before anyone in the room was charged, directly or indirectly, with fostering perjuring testimony. He referenced Mr. Behr's comment that the applicant's planner stated something which was incorrect and therefore, untrue. Mr. Hoffman suggested that it would be in Mr. Behr's interest to say that the planner, "in his opinion", did not have all the facts straight rather than accuse her of lying.

Mr. Behr said he understood. He felt he was pointing out some discrepancies. He said that after the planner stated that the volley barn would not be larger than the surrounding buildings, the Board did point out that it would be larger so the testimony from an expert witness was not accurate. He also felt that the traffic study was more of an observation rather than a study. He asked if the Board could make some stipulations that if changes were necessary because of the increased traffic, it would be the sole responsibility of the original applicant.

Debbie Brown, 479 Meyersville Road, stated that when this application was filed, the proposed use was "indoor recreation/health club/fitness and training center". It was subsequently determined that the proposed use was compliant.

Mr. Delaney objected since this was a permitted use.

Mr. Hoffman advised Ms. Brown to proceed since at this point she was merely reciting what the application stated.

Ms. Brown said based on the information provided by the applicant, the township's determination was correct and no errors were made. The fact that the actual educational use was withheld by the applicant brought the legitimacy of the application into question. A group of people opposed to the project contacted an outside expert for advice.

Mr. Hoffman asked if that expert was present.

Ms. Brown answered that she was not, however she had a letter from that expert.

Mr. Hoffman and Chairwoman Dapkins both indicated that that constituted hearsay which the Board could not accept. The applicant and the board members had the right to question the author of that letter. In response to Ms. Brown, Mr. Hoffman said that the letter could not be presented as evidence.

Cecelia Cilli, 11 Sassafras Place, had already been sworn in. She asked the Board to reject the application based on the fact that it was totally inappropriate for Meyersville. She felt that the hamlet was a unique spot in the state and that the residents had worked long and hard with multiple municipal entities to preserve it. She felt if this application could be passed here, it could happen anywhere in the township.

Mr. Delaney objected based on the fact that under the law, each application rose and stood on its own merits.

Mr. Hoffman said that the Board was aware of that.

Mrs. Cilli asked the Board to preserve this little historic portion of New Jersey.

Ed Zindel, 317 Meyersville Road, was previously sworn in. He discussed whether the volley barn would advance the goals and objectives of the Master Plan and he cited, "... a general absence of large nonresidential land uses..." as an essential feature of the Master Plan's overall vision statement. He felt that the volley barn was the "quintessential large nonresidential land use". He pointed out "Center Court" as one of the few blemishes along the scenic route from Harter Road to Meyersville Road and asked the board members not to repeat that mistake.

Mr. Zindel also discussed several other sections of the Master Plan which dealt with the description of "rural" and felt that the volley barn did not meet that description.

Mr. Zindel also felt that the noise pollution, light pollution, and concentrated traffic created by the volley barn would negatively impact the surrounding residential areas thus violating another aspect of the Master Plan. He said that the massive size of the structure would be offensive to those residents.

Mr. Zindel noted that the project was in violation of 102.1(b) which ensured that any new development would be in scale in terms of both design and use. He felt that it was not in scale with either the design or use.

Mr. Zindel cited the Land Use and Housing Goals which stated that all new buildings would relate harmoniously to the site and the surrounding structures. He felt that even though the structure was proposed to be "barnlike" in both design and color, he felt that the applicant had not met the burden of proof with respect to this statement.

Mr. Zindel stated that if the building were turned and moved to comply with the twenty-five (25) foot setback, it would "grossly" violate Ordinance 152.1 and a variance would be required.

Mr. Zindel asked if the application met the written purpose of the Meyersville Hamlet District Zone. He felt that with front yard parking and concentrated traffic, the "quiet, peaceful, unrushed corner of Long Hill Township" would be compromised. The volley barn would be the most visible feature of the Meyersville Gateway to the Great Swamp and because of its mass and character, it would degrade the essence of this Gateway.

Mr. Zindel pointed out that in 2007, the township received a grant funding a redevelopment plan called "Smart Growth". The principles of the plan included development which would be traffic calming, promote pedestrian friendly circulation, and create a streetscape which would be consistent with a traditional village. He felt that the volley barn failed to achieve any of these ideals. He stated that the proposal to park cars in front of the volley barn violated Ordinance 151.2(c) and bore witness to its inconsistency with the goals of the Long Hill Township Master Plan, further compromised the streetscape, and set a dangerous precedent for future development. He felt the variance should be denied.

Mr. Zindel addressed studies that had been done on noise levels. He stated that he had references and he could present them if need be.

Mr. Delaney objected, citing that it was hearsay and speculative.

Mr. Hoffman said that there already been testimony based on the study and the Mr. Zindel was simply reiterating what was in the record already.

Mr. Delaney wanted his objection noted.

Mr. Zindel continued discussing the noise study with reference to shouting, whistles, loud clapping, and children swimming. He cited the references.

Mr. Hoffman stated the Mr. Zindel was not offering that information as evidence but for the purpose of showing that in this expert scientific study of noise levels, the credentials of the authors of that document were as stated.

Mr. Zindel continued his argument that the volley barn would produce significant noise pollution. He felt it was a health and public safety issue that had not been addressed by the Board.

Mr. Zindel stated, in closing, that Restore Meyersville LLC willfully acquired a chemically polluted problematic parcel of land with the expectation of realizing a monetary gain. He went on to say that the residents felt it was neither their problem nor the Board's problem and they should not have to be offended by the scale of the project or be inconvenienced by its activities just to ensure that this profit would be realized. He felt that the volley barn project was a public outrage and a contravention of the intent of the Municipal Land Use Law, Long Hill Township Master Plan, the purpose of the MH Meyersville Hamlet District Zone, and the principles of the N.J.A.C. grant. He asked the Board to deny the application because the proposed use would violate the overall vision statement 102.1, overall goals 102.1(a), 102.1(b), 102.1(c), and land use and housing goals 152.1(b) and 152.1(f).

Kirsten Kielblock, 53 Lacy Avenue, Gillette, was sworn in by the court reporter. She stated that her family had lived in the area for hundreds of years and that her grandparents never envisioned anything like the volley barn when they signed their farm into Farmland Preservation. As a lifelong resident, Ms. Kielblock voiced her opposition to the project.

Richard Pfluger, 129 Hickory Tavern Road, Meyersville, was previously sworn in. He said that he did not oppose the application because it was volleyball. He felt that during the summer and the hot weather, the doors and windows would be open. He referred to previous testimony about the decibel levels of the sport. He also felt that the additional traffic would back up the roads and the circle. In addition, he did not feel there was adequate parking

available at the facility itself. He stated that it was inappropriate for a hamlet which was considered smaller than a village. He also referred to Copper Springs where the initial use was stated as a private swim and tennis club which was fine. However, now under new ownership, its current use caused hundreds of cars to be parked all over the adjacent areas including residents' lawns. He felt that the volley barn would be as much of a nuisance as Copper Springs and would not fit in a hamlet or residential area. He asked the Board to vote against it because it was inappropriate.

Evan Dorste, 78 The Crescent, Millington, was sworn in by the court reporter. He was in support of the application. As an employee of Central Jersey Volleyball Academy and a volleyball coach at Watchung Hills Regional High School, he felt it would be a great addition to the township.

Doug Walker, Watchung, was sworn in by the court reporter. He spoke as an advocate for the project and addressed some of the points previously presented such as noise. He also spoke about the reverence of the sport along with his opinion that the facility was well designed.

Chairwoman Dapkins asked if there were any other comments from the public. Seeing none, she closed the meeting to the public.

Mr. Hoffman noted that earlier in the evening, Mr. Delaney had stated that he would present some rebuttal testimony pertaining to the position of the Great Swamp Watershed Association. On counsel's representation that he would presents proofs on that, Mr. Hoffman suggested that any closure of the public hearing be with the one exception that if any member of the public had any contrary evidence pertinent to that singular issue, they should have the opportunity to present that.

Mr. Delaney stated that he had an email from Ms. Rubin, Executive Director of the Great Swamp Watershed Association, to his client. They were in dialog and she had no objection to the application. He wasn't sure whether Mr. Hoffman would allow those emails to be admitted since there had been previous opinions on other documents.

Mr. Hoffman stated that he did not see any difference between the other letters that were not admitted and the emails.

Mr. Delaney conceded. He was going to put it into the context of having Mr. Kaufman testify to the effect that the Great Swamp Watershed Association had no objection however, if the ruling from the Chair was that it was inappropriate and inadmissible, he would accept that.

Mr. Hoffman said that it was not appropriate.

Mr. Delaney stated that although he disagreed with Mr. Hoffman, he understood and accepted that decision for consistency purposes.

Phyllis Fast, 498 Long Hill Road—

Mr. Delaney interrupted, stating that he was under the assumption that the meeting had been closed.

Chairwoman Dapkins answered that she was opening the meeting again because she assumed that Ms. Fast had something to add relevant to what was just discussed.

Mr. Delaney stated that it had been denied and would not be in the rebuttal.

Mr. Hoffman stated that there was nothing to rebut since the applicant was not offering anything.

Ms. Fast asked if the email description could be struck from the record.

Mr. Hoffman answered that the email would not be considered.

Ms. Fast said she had other information which was a response to that email.

Mr. Hoffman reiterated that the email would not be considered.

Ms. Fast stepped down.

Chairwoman Dapkins adjourned the meeting for a brief recess at 8:52 P.M.

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The meeting was called back to order at 9:05 P.M.

Mr. Hoffman reminded the public that the applicant, who would bear the burden of proof, always had the final opportunity to give commentary. Since the public had been afforded ample opportunity to state its views with respect to the application, it was now Mr. Delaney's turn.

Mr. Delaney thanked Mr. Hoffman, Chairwoman Dapkins, the board members, Mr. Lemanowicz, Mr. O'Brien, and the public. He began by saying that every time he went through this process, he felt that there must be a better way. He said he had had eighteen (18) nights of hearings on a case but at the end of the case, he listened to the zoning

board deliberate and it was very civil. He felt it reflected on the great system in this country called democracy where everyone had an opportunity to participate. Both he and his client wanted to thank the Planning Board for letting them participate in this process.

He said that the application was about a permitted use with three (3) minor C Variances. It was about a volleyball and fitness training center for young people. It was not a tournament center. It was not a crazy use like a gin mill or a go-go bar or some terrible use. It was about a volleyball and fitness and training center for young people. This past week, the glory of many of the country's young athletes was shown on television as they competed in the Olympics. They were from all over the United States and from places such as Long Hill Township. Helping youth is something that is talked about everywhere and he felt that this would be a golden opportunity to help the youth of this area. He quoted Mayor Piserchia as he spoke in his annual message on January 6, 2014, "We must finally address the longstanding commitment from this Committee and past Committees to the shortage of active recreation facilities for our residents. We must provide the services the residents of Long Hill Township expect and deserve while controlling the costs and I am confident that this Committee is up to that challenge." Mr. Delaney asked the board members, as they deliberated after his closing statements, to please keep the words of their mayor in mind and to remember that this would be a wonderful center for the youth of the area.

Mr. Delaney then outlined what the application was seeking. The applicant was seeking site plan approval for the permitted building, two (2) di minimis coverage C Variances caused by the property's location on a county road, and a C Variance for parking in front of the building to make it work for the site. He noted that the proposed parking was much less than existed on the site. He felt these were not major variances. They were minor C Variances. He stated to the board members that their job, as stated by the applicant's planner and Mr. O'Brien, was not to find detriments. Their job was to weigh the detriments against the benefits which in this case were very substantial and clearly outweighed the detriments. Mr. O'Brien's report set forth the law on page 17 and page 18, "...that in most cases like this permitted use, the Board must grant site plan approval". He then noted Mr. O'Brien's comments regarding the C-1 Hardship Variance Criteria and the Flexible C-2 Criteria, which Mr. Delaney felt were the most appropriate. He stated that, as the applicant's planner testified, both the C-1 and C-2 Variances were appropriate with the two (2) di minimis C Coverage Variances brought on by the county road and also by the parking in front which, as stated earlier, already existed. He reiterated that this was a permitted use that would have substantial benefits.

Mr. Delaney then detailed the benefits. He started with visual impact and stated that it would be a brand new building, beautifully landscaped and an indisputable improvement over the abandoned junkyard that currently existed regardless of whether one liked the size of the building.

Mr. Delaney spoke about public health and noted that there were currently no controls for testing or maintaining the contaminants. The new proposed project would completely mitigate the environmental hazard and although there might be a small risk during actual construction, the final project would be clean, safe, and landscaped with a deeded restriction in perpetuity.

Mr. Delaney then stated that no one knew what was in the dilapidated structures and debris on the property. The new facility would remove any of those ecological threats and provide many trees.

Mr. Delaney discussed the environmental impact. He noted that there had been much discussion about the sensitivity to the Great Swamp. Without this approval, he stated that the site would shed fifty percent (50%) of the water that hit the surface uncontrollably into the adjacent wetlands carrying with it anything that was lying on the surface. The new proposed project would not only substantially reduce the flow and volume well beyond the ordinance requirements, it would also capture and filter the stormwater prior to its eventual release into the water table and ultimately the Great Swamp Watershed.

Mr. Delaney then addressed the economics. He noted the testimony outlining how parents would drop their children off then go into the community and spend money which would be an economic benefit to the community.

The architecture was the next subject discussed by Mr. Delaney. He referred to testimony by Mr. Kaufman, a licensed architect in the State of New Jersey, indicating that the building would have the right colors, the right design guidelines, and would be set back over sixty (60) feet from the roadway where only twenty-five (25) feet was required. Mr. Kaufman stated that it was an efficient design for the three (3) playing courts with little secondary function.

Mr. Delaney referred to the testimony of Christian Kastrud, a licensed engineer in the State of New Jersey. He testified about the substantial improvements with the stormwater management quality, the efficient site flow, and most importantly, he responded positively to each request made by Mr. Lemanowicz. Mr. Delaney felt that the Board could not ask for a more cooperative applicant.

Mr. Delaney then addressed traffic and parking. He stated that Karl Pehnke, a noted statewide expert, had said there would be "no perceptible impact on traffic". It would be a low volume roadway; the parking lot would be dead. Mr. Delaney said that with other permitted uses, the traffic impact would be far greater. He felt that Mr. Pehnke's testimony was clear and unambiguous. He noted that Mr. Pehnke himself studied the traffic, and the use. He discussed the twenty-four (24) total parking spaces would be required when in fact twenty-eight (28) would be installed. Mr. Delaney felt that Mr. Pehnke put his reputation on the line.

Remediation was the next topic. Mr. Delaney said that two (2) experts discussed the state mandated Licensed Site Remediation Professional (L.S.R.P.) program that would remediate the site. They discussed the capping solution,

the precautions that would be taken, and the public and health safety issues that would be addressed. In addition, the two (2) experts discussed the ongoing maintenance program. Mr. Delaney stated that without this development, the community would not get the benefits of the site being taken care of in the way this applicant was going to take care of it.

Mr. Delaney noted that the Licensed Landscape Architect had a nice colloquy with Mr. Lemanowicz. There would be thirty-seven (37) new trees planted, 35,000 square feet of new grass, landscaping, and evergreen buffers. The landscape architect also stated that he would work with Mr. Lemanowicz to ensure that what was placed on the site would be appropriate.

Mr. Delaney then referred to the testimony of Christine Nazzaro-Cofone, a licensed planner in the State of New Jersey, who had testified in over 200 cases. She talked about the substantial improvement in the lot coverage and the di minimis building coverage issue because of the county situation. She also discussed the appropriateness of front yard parking for this situation where the building would be set back over sixty (60) feet and its aesthetic orientation. She felt that this good planning outweighed any detriments. She, too, put her reputation on the line stating that this was most appropriate.

Mr. Delaney then addressed Chairwoman Dapkins and the board members. He stated that the public had asked them to do the right thing and to do their best. He said he agreed with that but that it did not mean that they should take the easy route to make the public happy or look for the parade of imaginary horrors. Instead, the Board was required to do the right thing, to do their best, and most importantly, to follow the law. He reiterated that this was a permitted use with two (2) di minimis C Variances on coverage due to the county road and a parking variance for parking in the front that was consistent with the area. It would make the building functional, aesthetically pleasing, and more appropriate for the site.

Mr. Delaney noted that there had been a lot of discussion on how large the building was. He felt that that was a red herring since it complied with height ordinance and with all the variances. It would be set back over sixty (60) feet. The building could have been moved much closer however his client recognized that it would be appropriate to have it in the back. Mr. Delaney said that according to the Master Plan, the building should relate harmoniously with the other buildings—not be identical in size and scope. He asked the board members to remember that this was an infill lot. He noted the testimonies of the architect, planner, engineer, and traffic engineer—all stating why this would be appropriate. He said that the traffic engineer pointed out that the traffic impact could be much more detrimental for other permitted uses.

Mr. Delaney said that, as part of the “speculative parade of horrors” that had been heard, noise had been raised. He stated that that was pure speculation. There had been no expert testimony. There were no residences nearby—the closest being approximately seventy-five (75) feet away. He stated that he was talking about kids and volleyball indoors, intermittent activity which would turn over every two (2) hours. It would not even be used during the school day. It would be a use that started after school, ended at 10:00 P.M., turned over, and then weekend use. There would not be people running outside, or craziness, or tournaments. It would be a simple use of a training fitness center. If noise became a problem, there were state guidelines and municipal guidelines which would step in and do what would be appropriate. The application would be about kids playing volleyball. Sheer speculation on noise, he said.

Once again, Mr. Delaney thanked the Board for its time, patience, courtesy, and attention. He told the board members as they deliberated to keep in mind as their anchor, that this was an approval for a permitted use, a wonderful use, a volleyball and fitness training center. It was something that some would die to have in their communities. It involved two (2) di minimis C Coverage Variances brought on by the county road issues. It involved one (1) C Variance for parking in front to make the site appropriate, attractive, workable, and have less parking in the front than presently existed.

Mr. Delaney repeated what the public had said and asked the board members to do their best, but do the right thing under the law. He stated that after all the testimony that had been presented over the past six (6) meetings, this case cried out for approval to bring this wonderful use to this wonderful community.

Chairwoman Dapkins asked Mr. O’Brien to speak.

Mr. O’Brien stated that the items of relief needed were as followed. Major Site Plan Approval would be required as per Section 162 of the ordinance, lot coverage of 40.9% where 40% is allowed under Section 131, building coverage of 22% where 20% is allowed under Section 131, parking in the front yard which is not allowed per Section 151.2 as well as parking spaces for recreation use as to be determined by the approving authority. In addition, a development permit would be required per Section 143.5 and a design waiver for sidewalk access to parking lots would be required for Section 151.2(e).

Mr. O’Brien then discussed the required proofs that the Board would be considering, first for the Site Plan Approval and next for the Bulk Variances. For the Board to grant the requested variances, the applicant must demonstrate to the Board that either of the following two (2) proofs could be met and he must also show that the application could meet the negative criteria.

Mr. O’Brien noted that the first proof would be Hardship which is known as the C-1. That required peculiar and exceptional practical difficulties which do not allow the property to be developed in accordance with the ordinance. An undue hardship could arise from exceptional narrowness, shallowness, or shape of a specific piece of property,



exceptional topographic conditions or physical features uniquely affecting a specific piece of property or an extraordinary and exceptional situation uniquely affecting a specific piece of property.

Mr. O'Brien stated that the second criteria would be Flexible C known as the C-2 which had two (2) conditions. First the application would advance the purposes of the Municipal Land Use Law and second, that the benefits of granting the variance would substantially outweigh any detriment.

Mr. O'Brien said that, lastly, concerning the negative criteria, the applicant must demonstrate that he would meet the negative criteria by showing that the requested variances could be granted without substantially impacting surrounding properties and the neighborhood. The applicant must further demonstrate to the Board that the variances requested could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Mr. O'Brien asked if the Board had any questions. There were none.

Chairwoman Dapkins then asked Mr. Hoffman to address the Board.

Mr. Hoffman stated that he did not have any additional words of wisdom.

Chairwoman Dapkins asked who wanted to start the deliberations.

Mr. Roshto thanked the residents who came out to these meetings. He stated that he listened carefully to all the testimony from both the professionals and the residents and that he would make his decision based on what he had heard. He felt that from a permitted use perspective, this was something that the residents would love to have. However, the question was whether this was the right place for something of this scale and character. He looked at the impact to the neighborhood and went to the Master Plan to understand what was meant by neighborhood businesses. He felt that the Master Plan was very clear in defining what that was and what the character of the Meyersville Hamlet was. The Master Plan talked about the rural character and preservation of history, about making sure that what went on in that hamlet was in keeping with the other buildings, in keeping with the community feel of the hamlet. He then asked if a project of this size would fit the community and the neighborhood. To him it was compelling that it would not. He noted that the testimony mentioned the words "di minimis and minor variances" multiple times. Going from 20% to 22% was just a number however it was not di minimis to him and resulted in a very expansive development project in the hamlet area. Going from 40% to 40.9% was the same thing. If it could have been developed at 40% it would have had to have been smaller. He noted that he had asked the applicant during testimony if he would consider reducing the number of courts and the applicant answered no.

Mr. Roshto then discussed the front yard and the parking. The testimony that he heard talked about parents dropping children off and driving away how it would benefit other businesses in the area. He agreed with that however he noted that in dropping the children off, the parent would then *go* somewhere else. Mr. Roshto felt that the Meyersville Element was very clear in that it was not looking for a town that "drops and goes", it was looking for a town that "parks and stays". The proposed business was not, in his opinion, a neighborhood business. He agreed that this recreational use would be a wonderful addition to the township and if the appropriate location could be found, he would support it. However, this was not the right location.

Mr. Moholkar noted the proximity of the proposed facility to the Meyersville Café and the other restaurants. He questioned whether those parents would *drive* to those restaurants as opposed to parking the car and walking to those locations. For Major Site Plan Approval, it was his understanding that the board members had to weigh the benefits versus the detriments and compare that against what variances were being sought as well as the general overall meeting of the Element and Ordinances in order to approve that site plan. He agreed with Mr. Roshto that this use would be a wonderful addition to the township but not in this area because of the other buildings. There was no visual relationship to the other buildings nor did it complement the existing structures in the village. The terms "rural" and "semi-rural like" appeared several times in the Master Plan as well as in various elements however "barn-like" did not make it rural. Just by painting it a certain color and having the façade look like a barn did not make it rural.

Mr. Wallisch said that there were three (3) specific areas that required approval as far as the building coverage and the lot coverage and the parking in the front. He said that when he looked at impervious coverage going from 60% to 40.9%, he saw it as an improvement and moving in the right direction. As far as the building coverage of 22% versus 20%, he conceded it was greater but didn't see that as a major stumbling block. As far as the parking in the front, there was also a considerable amount of side parking. For some of the businesses there, he couldn't tell what the front street was and what the side street was so he didn't know whether it would necessarily stick out as compared to everything else. It matched what was there. He saw a lot of efforts as far as the treescape to push the building back, to soften its size, and to help block some of the view of the building. Mr. Wallisch saw those as considerable steps in the right direction. It was certainly a huge improvement over what was there now. He noted that it would take care of the contaminants that existed on the property. There are all sorts of positives that had been put forth by the applicant. His biggest concern was whether this facility really matched the other buildings in that area.

Mr. Wallisch visited the other facility in Flemington because he was concerned about the public's fear regarding the noise and traffic. He stood right outside the building during their practices inside and could not hear anything on the outside with the door closed. When he opened the door, the noise was not an issue to him. He was surprised at how quiet it was. He was there during a shift change and he did not see parking as a major issue. Having been through Meyersville numerous times on his bike and in his car, he didn't feel that this would be a significant increase in the

amount of traffic to make it a nuisance or a hazard. The thing that did strike him about the building in Flemington was that it was a big building. With the barn front, it would soften it up a little bit but it was still a big building compared to everything else down there. He struggled with it fitting the Master Plan and complementing the rural aspect of that area. That was the part that he had struggled with for the last three (3) months.

Dr. Rae agreed with Mr. Wallisch and felt that he had stated the facts very eloquently. He was in favor of approving the application. He, too, struggled with the size of the building especially whenever the surrounding area was viewed. However, after a lot of thought, he had come to the conclusion that the way it was designed—set back sixty (60) feet, a barn-like structure, rural in nature—he felt that it was an acceptable structure in that area.

Mr. Hands said that at the end of the day, the benefits had to outweigh the negatives. The benefits of the remediation and improving the lot, and visual improvement would be achieved by most any redevelopment on that site. He was not sure that there were enough of the individual benefits to outweigh the fundamental concern of the building which was its size. He felt that volleyball would be a great addition for the township but to have that size building in a hamlet would be a concern. He was not sure that the expected benefits could outweigh that one large concern. Mr. Hands also voiced concern over what would happen if the tenants changed.

Mr. Wallisch felt that he had heard a lot of fear of the unknown in the comments from the citizens. He cited as examples the noise, the traffic, the asbestos run-off, and solar panels. Issues were brought up that were never even broached during the past months. He felt that no proposal would satisfy those citizens and he expressed concern about the public's view of an appropriate development.

Mr. Roshto stated that he did not see fear. He saw an articulate impassioned argument that discussed point by point the ordinances and the Master Plan and felt it was well done.

Mr. Roshto then returned to the comment about the building being set back sixty (60) feet. He said in the past the Planning Board had deliberated at length about whether or not to move it up to ten (10) feet, not to go backwards but to move it up. The conversation that the Planning Board had was not about moving a large building backwards but bringing smaller more in-scale buildings forward so that it would feel like a hamlet. This application was the opposite of desires of the Planning Board in the past. Twenty-five (25) feet was the compromise. Originally, it was fifty (50) feet. He discounted the argument that it was considerate of the applicant to move the building back sixty (60) feet because he felt that the applicant *had* to move it back since it was so big.

Mr. Roshto then addressed the parking lot. He noted that in the Master Plan there was a goal to encourage biking in that area yet the traffic expert testified that he did not consider large numbers of cyclists. He considered a standard number of pedestrians and cyclists. He also did not consider the circle because he felt it was not relevant which was surprising since it was the center of a very small hamlet. Although he listened and weighed the testimony of the traffic expert, the traffic expert lost him at that point.

Mr. Roshto said that the building would not promote the Master Plan's ideal of a neighborhood community. He said that this was not what he envisioned when he helped write that Master Plan.

Chairwoman Dapkins stated that she agreed with Mr. Wallisch and Dr. Rae. Based on the testimony of the applicant's witnesses and her understanding of the Municipal Land Use Law, she would be in favor of the application.

Mr. Hoffman stated that according to his count, three (3) board members seemed to be leaning in favor of approval and three (3) were leaning the other way.

Chairwoman Dapkins concurred.

Mr. Hoffman advised the Board that in cases such as this where there was a tie, the application would not be approved. A tie would be a situation where the applicant, who bore the burden of proof, had not met his burden of proof by carrying a majority of the board members. He posed the question to the board members, after having listened to the comments of their colleagues, if any member felt persuaded or interested in pursuing some dialog to see if the vote would change. Sometimes members were be persuaded by different thoughts voiced by their colleagues.

Chairwoman Dapkins asked Mr. Hands would like to offer further comment.

Mr. Hoffman pointed out that this was simply a discussion. This dialog was to express the thoughts of the board members.

Mr. Hands said that he had thought about the application for a long time and that he had found the process to be very open. This piece of property required improvement. He appreciated the applicant's willingness to make changes and to listen to comments however at the end of the day, he referred back to the Master Plan which was written years ago to set the foundation for this township and to outline what would be appropriate in certain areas. With that in mind, he was not in favor of the application.

Mr. Roshto said that as the board members deliberated, he had hoped that they would do as Mr. Hands had done and asked the question as to whether they believed the intent and purpose of the township's zoning plan and ordinances would be met. He asked if the applicant had overcome the negative criteria hurdle and he was surprised that it was a tie. He was surprised that the board members were not closely looking at what the township vision was for the

future. He felt the building was incredibly out of character and out of scale for that area. He did agree that there were benefits however they did not outweigh the detriment of generations of having that building built there. The location of parking was an issue that was discussed at length by past Planning Boards and it was very deliberately placed in the rear because the board members felt it would be the right thing for the future. If this application was approved with its parking in the front, the next application would be approved also even though each application should be judged by its own merits. Parking in the front did not meet the Master Plan regardless of whether existing businesses in the hamlet had parking in the front. The *goal* was for the future, not for what was there now. Applicants should be encouraged to place parking in the rear so passersby don't see people dropping off and people picking up. He felt that each argument made in testimony missed some mark in terms of the Master Plan and the application was not even close to meeting the negative criteria.

Chairwoman Dapkins asked Mr. Hoffman for a motion.

Mr. Hoffman stated that, under the M.L.U.L., it did not matter whether the motion was framed to approve the application which would fail to get a majority vote, or to deny the application. He then quoted Section D-9, "Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application." The applicant having the burden of proof, had not satisfied that burden, and it mattered little or any if there was a motion to approve or a motion to deny. The case failed for that reason. He suggested that a motion be offered to deny the application with respect to the various items of relief that were outlined by Mr. O'Brien in his earlier comments. He then asked Mr. O'Brien for his thoughts on this.

Mr. O'Brien agreed with Mr. Hoffman.

Mr. Delaney asked which board members were eligible to vote.

Ms. Kiefer stated that all six (6) board members were eligible to vote.

Mr. Hoffman clarified that they were eligible either by having attended all the prior meetings or by listening to the recordings of those meetings they had missed.

Ms. Kiefer affirmed that this was the case.

Mr. Delaney disagreed with Mr. Hoffman and felt that a motion should be proffered in the affirmative. He felt that if it was a tie, the record would be clearer.

Chairwoman Dapkins felt that it would be easier for the board members to understand what they were voting for if it was done in the affirmative.

Mr. Hoffman stated that the motion would be to grant the application for Site Plan, Variance, and Development Approval as outlined by Mr. O'Brien.

Chairwoman Dapkins asked for a motion.

Dr. Rae motioned and Mr. Wallisch seconded.

A Roll Call Vote was taken. Those in Favor: Dr. Rae and Chairwoman Dapkins. Those Opposed: Mr. Moholkar, Mr. Roshto, Mr. Wallisch, and Mr. Hands. Motion to approve was denied.

Chairwoman Dapkins asked for a motion to adjourn.

Mr. Moholkar motioned and Dr. Rae seconded. Meeting was adjourned at 10:00 P.M.

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CYNTHIA KIEFER  
Planning and Zoning Secretary