

**MINUTES**

**JUNE 10, 2014**

**PLANNING BOARD**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

Chairman Pfeil called the meeting to order at 7:30 P.M. He then read the following statement: Adequate notice of this meeting had 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, 2014.

**MEETING CUT-OFF**

Chairman Pfeil read the following statement: Announcement was made that as a matter of procedure, it was 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 was passed by the members present to extend the meeting to a later specified cut-off time.

**CELL PHONES AND PAGERS**

Chairman Pfeil read the following statement: All in attendance were 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:

J. Alan Pfeil, Chairman  
Suzanne Dapkins, Vice-Chairman  
Brendan Rae, Mayor's Designee (arrived @ 7:39 p.m.)  
Guy Roshto, Member  
Gregory Aroneo, Member  
Timothy Wallisch, Member  
David Hands, 1<sup>st</sup> Alternate

Guy Piserchia, Mayor  
Ashish Moholkar, Member

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

Ms Kiefer advised Chairman Pfeil that he 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**

Chairman Pfeil opened the meeting to the public and asked if there were any questions or comments from the public on items *not* on the agenda this evening. Hearing none, he closed the meeting.

**PUBLIC HEARING**

**MICHAEL GURVAL**  
91 Central Avenue  
Block 13103, Lot 6

**#14-05P**  
Minor Site Plan Review  
Bulk Variance

**PROOF OF SERVICE PROVIDED**

Present:

Michael Gurval, Applicant  
Lorraine Gurval  
Jonan Cheng, Proposed Tenant

The Board Consultants, Applicant, Mrs. Gurval, and Ms. Cheng were sworn in.

Michael Gurval (Stirling Library LLC) applied to the Planning Board of the Township of Long Hill for submission of completeness waivers and minor site plan approval for the installation of a 4 foot tall fence around a 360 square foot day care play area at the former Stirling Library which was located at 91 Central Avenue, Stirling on property designated as Block 13103, Lot 6 on the Long Hill Township Tax Map, which premises was located in the Public (P) Zone.

The application was reviewed by Board Planner Kevin O'Brien, P.P. with the firm of Shamrock Enterprises and Board Engineer Thomas Lemanowicz, P.E., with the firm of Remington, Vernick & Arango Engineers, Permission was granted by the Long Hill Township Zoning Board for the renovation and use of the former Stirling Library as professional and/or business offices and for the construction of an on-site parking lot in Application No. 07-03Z which was memorialized in a resolution which was adopted on July 17, 2007.

The Long Hill Township Zoning Board in Application No. 07-03Z (A) waived the on-site parking requirement which was memorialized in a resolution which was adopted on February 4, 2014.

A portion of the former Stirling Library was proposed to be utilized by Jonan Cheng as a day care center which would be open on the days when the Long Hill Township Schools were open and closed on the days when the Long Hill Township Schools were closed. There would be no weekend or summer hours and the day care would be open from 9:00 AM to 5:00 PM. Ms. Cheng expects to start with five (5) children in September of 2014 and end the year with ten (10) children. The maximum number of children in the day care center would be 15.

Mr. O'Brien noted that certain submission or completeness waivers were requested, which waivers were not opposed by him or the Board Engineer.

Mr. O'Brien added that the fence and the playground were a requirement of the New Jersey Department of Human Services for licensed daycare facilities and that no variances were required with the current application although it was noted that a variance was previously granted for a slightly non-conforming rear yard setback.

After deliberations, the application was approved on motion by Committeeman Roshto and seconded by Mr. Wallisch, subject to the following conditions:

1. The day care center was subject to the approval of the New Jersey Department of Human Services.
2. The plans shall be revised to show:
  - a. The fence shall not be connected to the building but shall enclose the four (4) sides of the 360 square foot play area.
  - b. The fence shall be within 1-5 feet of the building.
  - c. The gate shall be shown on the revised plans.
  - d. The entrance from the building to the play area shall be shown.
3. The scoured or eroded areas shall be repaired with stabilized lawn.
4. Applicant shall submit proof of payment of real estate taxes through the second quarter of 2014.
5. Applicant shall deposit sufficient funds so as to satisfy the escrow charges relating to the application.

A Roll Call Vote was taken. Those in Favor: Mr. Aroneo, Mrs. Dapkins, Committeeman Roshto, Mr. Wallisch, Mr. Hands, and Chairman Pfeil. Those Opposed: None. Dr. Rae arrived during testimony and was ineligible to vote.

#### **DISCUSSION**

Chairman Pfeil moved to the discussion item on the agenda: "Ordinance #330.14 – An ordinance revising and clarifying development fees and escrow deposits and amending Sections 170 and 180 of the Township Land Use Ordinance". He noted that this had been returned to the Planning Board for comment from the Township Committee after its First Reading with no amendments. This was the same document that the Planning Board had sent up to the Township Committee.

Mr. Hands had three (3) minor revisions. First, on page 1, Section 3, "Subsection 182 which shall be entitled *Schedule of Fees and Escrow Deposits*", the word "Fees" not should be plural in order to be consistent with the other references throughout the ordinance.

The second correction was on page 3, under 181.5(b), which should read, "...balances were sufficient to cover *anticipated* future professional services." The word "anticipated" should replace the word "all".

The final correction was located page 5, #27; delete "See 181.2b" because there were no other references like this in the rest of the table.

Mrs. Dapkins moved to recommend the three (3) minor modifications to the ordinance and to also recommend that the Planning Board find that the proposed amendment was consistent with the Master Plan. Mr. Wallisch seconded the motion. A Roll Call Vote was taken. Those in Favor: Mr. Aroneo, Mrs. Dapkins, Dr. Rae, Committeeman Roshto, Mr. Wallisch, Mr. Hands, and Chairman Pfeil. Those Opposed: None. Motion was approved unanimously.

Chairman Pfeil directed Ms. Kiefer to send a revised copy to the Township Clerk for the Township Committee's consideration.

**PUBLIC HEARING (cont'd.)**  
**RESTORE MEYERSVILLE LLC.**  
596 Meyersville Road  
Block 14701, Lot 27

**#14-01P**  
Prelim/Final Site Plan  
Development Permit

Present:

William Kaufman, Applicant  
John J. Delaney, Esq., Attorney for the Applicant  
Christian M. Kastrud, P.E., Engineer for the Applicant  
Gerald J. Legato, Esq., Attorney for Concerned Citizens of Meyersville

Chairman Pfeil noted that at the end of the last meeting, they had left the public's questioning of Mr. Kaufman to move on to public questions pertaining to the traffic study. That aspect was completed at that meeting and he wanted to return to the public's questioning of Mr. Kaufman.

Mr. Delaney, attorney with **Lindabury, McCormick, Estabrook & Cooper**, of Westfield, New Jersey, was present on behalf of the applicant, **Restore Meyersville LLC**. He reiterated that, at the last meeting, Mr. Kaufman had testified and in the interest of ensuring that the traffic expert would be able to present his study, Mr. Delaney had agreed to make Mr. Kaufman available for cross at this meeting.

Mr. Bernstein reminded Mr. Kaufman that he was still under oath.

Mr. Legato, attorney with **The Legato Law Firm LLC**, of Somerville, New Jersey, stated that he was present on behalf of the group, **Concerned Citizens of Meyersville**. Mr. Legato noted that he had several documents to enter into evidence and marked the first as **Exhibit C-1**. He asked that copies of that be distributed to the board members and Mr. Kaufman. He explained that this exhibit was an excerpt from the Township of Long Hill Land Use Ordinance, specifically, as he said, the "Permitted Primary Uses in the Meyersville Haven (sic) Zone". He asked Mr. Kaufman if he agreed that recreation use was not among the primary uses.

Mr. Kaufman said that he had been through this at great length and detail.

Mr. Bernstein said to Mr. Kaufman that Mr. Legato had a right to cross examine him and if the chairman found that the testimony was overly repetitive, he would step in.

Mr. Delaney said that his silence did not equate to acquiescence and objected. He added that they had had "agonizing" testimony from the professionals and that they had gone through this "ad nauseam".

Mr. Legato repeated his question.

Mr. Kaufman said that recreational use was not listed as a primary permitted use in this exhibit.

Mr. Legato then referred to **Exhibit C-1a** which he said was a blow-up of part of the "Permitted Primary Uses in the Meyersville Haven (sic) Zone". One section detailed the purpose of the Meyersville Hamlet Zone as "...to provide a quiet, peaceful, and unrushed corner of Long Hill. The Hamlet of Meyersville serves as a gateway to the Great Swamp National Wildlife Refuge, a major recreational asset and defining feature of the rural essence of Long Hill Township." He pointed out that there were nine (9) permitted uses and singled out #2—Retail service uses including "...barber shops and hair salons; health clubs and fitness centers;..." ---which was specific to this application. He said that since Mr. Kaufman had ruled out the concept of recreation, could he rule *in* the concept of "health club and fitness center", specifically "fitness center" since that was how the application was characterized.

Mr. Kaufman reiterated that he had already given detailed testimony on this subject. He noted that Mr. Legato did not mention #9 which said "...any other use that was substantially similar to those identified in the subsection." He said that after an active dialogue about this several weeks ago, he felt it was clear that this use fell into a combination of categories for use. As an example, Mr. Kaufman said a nail salon was not listed there but it might be considered a hair salon or barber shop.

Mr. Legato asked if Mr. Kaufman was seeking approval as a facility that would be very much like a retail service center such as a fitness center.

Mr. Kaufman reiterated that they had already discussed this.

Mr. Legato asked again, was Mr. Kaufman seeking approval of this facility based upon its similarity to a fitness center as defined as a permitted use in the zone.

Mr. Kaufman answered yes.

Mr. Delaney said that the zoning officer had made a determination that this application was a permitted use.

Mr. Kaufman added that a report by Mr. O'Brien also confirmed that.

Mr. Legato produced another exhibit which was labeled **Exhibit C-2**. This was an excerpt from Section 110 "Definitions and General Terms", specifically a definition from "Retail Service Use". Under "Retail Service Use", he asked Mr. Kaufman if he would agree that "health, education, and social services, recreational services" was clearly embracing the use of his facility.

Mr. Legato said that there was a definition of retail service use within the code that said "...those businesses that primarily provide a service rather than a product..."

Chairman Pfeil interrupted and asked Mr. Legato to go back one page. He asked Mr. Bernstein if, under #2 where it said "retail service uses, including barber shops and hair salons *semi-colon*" that the definition of retail services stopped at that semi-colon. Health clubs, fitness centers, and studios would be other uses in #2 but not listed under "retail services".

Mr. Bernstein said that he believed it was a recreational use. He did not see it as a retail service use however Mr. Legato saw it differently. It was up to the Board to make a determination.

Chairman Pfeil continued this discussion saying the term "studio" had nothing to do with "retail services".

Mr. Bernstein agreed with that analysis but Mr. Legato had a different interpretation. He felt that a retail service use did encompass a health club or fitness center.

Mr. O'Brien said that in the past, under "Retail Service Uses", all of those listed had been seen as examples of uses that might be before the Board.

Chairman Pfeil said that they were not necessarily retail uses.

Mr. Bernstein agreed.

Mr. Legato asked Mr. O'Brien if, when he referred to health clubs *semi-colon*, fitness centers *semi-colon*, studios, he meant they were examples of retail services.

Mr. O'Brien answered that they were both examples of retail services uses as well as examples of what was allowed in the zone.

Mr. Legato felt that he and Mr. O'Brien were in agreement. He then asked Mr. Kaufman if he was in agreement that health clubs and fitness centers were clearly examples in the ordinance of retail service uses.

Mr. Kaufman answered no.

Mr. Legato asked Mr. Kaufman in what way did he disagree with the fact that health clubs and fitness centers were not, in his view, considered retail service uses. He also wanted to know how the *semi-colon* played a part.

Mr. Kaufman said the *semi-colon* that separated barber shops and hair salons from health clubs and fitness centers, meant that they were talking about distinctly different uses in the zone. It may be retail, it may not be.

Mr. Legato said that according to Mr. Kaufman, these were not all examples of retail service use.

Mr. Kaufman said that they could be examples, but not necessarily. In this application, he had clearly demonstrated that it was not a retail use primarily because the difference between a retail facility and private facility or club was that anyone could walk into a retail facility at any time therefore there was no regulation as to who was there at any given moment. The capacity of the building was the only regulating factor. In a situation such as this which was not retail, every single occupant of the building was controlled by a schedule and activity. He referred back to his example of the athletic fields behind the municipal building which were owned by the township and said as a resident, he did not have access to those fields in a retail capacity. By that he meant he couldn't just walk up and start to use them. He had to get on a schedule that was managed so that the number of people using that field was regulated at any given time which then controlled the amount of parking. All those things made it different than retail which was why it kicked back to #9 which said "...substantially similar..." It was substantially similar to a health club or fitness center because they train athletes however it was not retail because the general public could not use the facility at any given time. The number of people using the facility was 100% controlled and therefore could not fit the definition of retail.

Mr. Legato asked if it was a private club.

Mr. Kaufman answered yes.

Mr. Legato asked if it was open to the public for membership.

Mr. Kaufman answered yes.

Mr. Legato asked if it was providing a service.

Mr. Kaufman answered that it was providing a service, but not a retail service like a convenience store where someone could walk in at any time.

Mr. Legato said under **Exhibit C-2**, retail service use was defined in the statute and did not mention those distinctions. It did mention "...those businesses that primarily provide a service rather than a product to individuals, businesses, and other organizations including but not limited to personal services, repair shops, studios, amusement,

and recreational services and health, education, and social services.” He asked Mr. Kaufman, “Do you not fit squarely in that definition?”

Mr. Kaufman said that it was a recreational service and that it was health and education so by that definition there were some similarities however it did not specifically say recreational volleyball training health and fitness which was why he had to interpret between the lines. Not every type of use would be listed. The ordinance was a guideline for professionals and it had been clearly interpreted not only for this application but for the previous application, by this Board’s professionals that this use was consistent with that which was stated in the ordinance.

Mr. Legato said that he did not disagree with anything that Mr. Kaufman had said.

Mr. Kaufman agreed that this application fit that part of the definition.

Mr. Legato introduced **Exhibit C-3**, off-street parking regulations for retail service use from the zoning ordinance, Section 151.1c. It listed the number of off-street parking spaces required. Under “Retail Sales, Trade, and Service”, it said that one (1) parking space was required for every 200 square feet of floor area. He then asked Mr. Kaufman how many square feet of floor area were in the building. He estimated 13,000 and Mr. Kaufman said that that sounded close enough.

Mr. Kaufman said that neither the Board nor the Board professionals had determined that this was a retail service use that required that amount of parking so it was hypothetical.

Mr. Legato said 13,000 square feet divided by 200 square feet equaled 65 as the number of parking spaces that would be required under this definition.

Mr. Kaufman agreed that the area of the building and the math were correct however he did not agree that the facility fit this definition so this calculation was hypothetical.

Mr. Legato and Mr. Kaufman continued to discuss this point.

Mr. Legato stated that he had no further questions, however he wanted to address the Board in summation.

Chairman Pfeil advised Mr. Legato that this segment was devoted to questions from the public on Mr. Kaufman’s testimony and that comments would come at a later time.

Chairman Pfeil asked Mr. Legato to reiterate which members of the public he was representing.

Mr. Legato answered that he represented a group called the **Concerned Citizens from Meyersville** but that he did not have their names with him nor did he recall them. He said that that had been submitted for the record last time.

Chairman Pfeil noted that any questions from a citizen represented by Mr. Legato, had to be presented by Mr. Legato.

Mr. Bernstein addressed Mr. Kaufman and said that under parking requirements, there was “open space and recreation”. The parking requirement for that was “as determined by approving authority”.

Mr. Kaufman agreed.

Mr. Bernstein asked if it was Mr. Kaufman’s opinion that the number of parking spaces would be what this Board determined rather than that which was listed under “retail services”.

Mr. Kaufman agreed.

Maria McCoy, Hickory Tavern Road, Meyersville, asked Mr. Kaufman to repeat what activities would be going on in the facility during the off-season timeframe of May through November.

Mr. Kaufman answered that the primary occupants, young women from ages 11 to 18, would utilize the facility however their season would have ended. There would be a smaller group of boys in that same age group using the facility. There might be some occasional day time activities such as small camps to keep the girls’ training up. It would be a less intense activity level.

Ms. McCoy asked about hours.

Mr. Kaufman said that the hours would be 9:00 a.m. to 10:00 p.m., seven (7) days a week.

Ms. McCoy asked if there would be a manager on-site at all times.

Mr. Kaufman answered that the only time the facility would be used was when coaches and one of the partners of the business were present. There would never be a time when the facility would be open for individuals to use it without supervision.

Ms. McCoy said that if she rented the facility to have volleyball games, she would get the key to open and close the building but there would not be a manager or staff person supervising.

Mr. Kaufman said that keys would not be distributed and she could not rent the building for use.

Mr. Zindel, 317 Meyersville Road, Meyersville, asked Mr. Kaufman if he understood what the use “open space and recreation” was. He noted that they were not separated in any way with commas or semi-colons and were not mutually exclusive. He wanted to know on whom he should rely for the accepted definition of the term.

Mr. Bernstein stated that the Board would make the determination as to whether it was a permitted use and what the appropriate parking requirements would be at the end of the session.

Arthur Brown, 479 Meyersville Road, Meyersville, said that Mr. Kaufman had noted in testimony that the Board, engineer, and zoning officer had already agreed on what use he was applying for.

Mr. Bernstein said that he did not know if the Board had a vote at the initial hearing as to whether it was a permitted use. The Zoning Officer said it was a permitted use in his report and it was treated as such. It would not preclude the Board at this point however, he felt that during the first application, No. 13-07P, it was treated as a permitted use. He had not seen a vote on it.

Mr. Delaney said that the Zoning Officer had made an interpretation and that was why they were heard by the Planning Board and not the Zoning Board of Adjustment both times.

Mr. Bernstein said it was his belief that the applicant had said it was a permitted use and the Zoning Officer did not question it.

Mr. Brown said that the Zoning Officer had approved it even though Mr. Kaufman had stated that there was no definition for this application.

Mr. Kaufman said it was not a single person’s determination. He explained it was a process. First, he had gone to an informal review called an A.R.C. meeting over a year ago with the Board planner, Board engineer, and three (3) board members with the application that was subsequently submitted last September. The Zoning Officer then reviewed the application and made a determination. The application then moved through a series of completeness meetings and the Board consultants prepared reports based on those meetings. The first report that the Board Planner, Mr. O’Brien, prepared was a zoning report which indicated the use. There was an engineer’s report and a second report from Mr. O’Brien. There were then nine (9) months of hearings. He felt it was accepted that they were heard by the Planning Board because that was the appropriate Board to hear the application.

Cecelia Cilli, 11 Sassafras Place, Gillette, asked if Mr. Kaufman remembered who the board members were during that A.R.C. meeting.

Mr. Kaufman said he did not.

Mrs. Cilli asked Mr. Kaufman if his business partner was one of the members present.

Mr. Wallisch said that he had been one of the board members present during that meeting and noted that the former chairman of the Planning Board was not there.

Mrs. Cilli said that no one was questioning the use. She noted that the application was submitted under “health club/fitness center”. She wanted to know what the words were in the ordinance that allowed the application to come before this Board.

Mr. Bernstein felt that this was not a question for Mr. Kaufman and that cross examination of Mr. Kaufman should be completed first.

Committeeman Roshto felt that he understood the question. He asked Mr. Kaufman if he had written “fitness center” on the line as proposed use.

Mr. Kaufman affirmed that he had.

Rosemary Agrista, 205 Long View Terrace, Meyersville, asked how many children would be able to become members of the academy.

Mr. Kaufman estimated around 200 members.

Mrs. Agrista asked if children both inside and outside of the township could be members and if so, how would that serve a village need.

Mr. Kaufman asked if the restaurant Casa Maya was limited to just local residents of Meyersville. If that was required as a “village need”, they would not survive very long.

Mrs. Agrista wanted to know how many children from Long Hill Township would be serviced by this academy.

Mr. Kaufman said he did not have an exact figure however during the last application, several parents from the township with children in the program spoke in favor of the application so there was a demand both at Watchung Hills Regional High School and in the local schools for this.

Mrs. Agrista asked if there was some sort of acceptance criteria and membership fees.

Mr. Kaufman answered that there were different levels in the program for age groups and abilities from beginner to elite in this specific sport. This fits one need for a demographic in this area.

Ed Zindel, 317 Meyersville Road, Meyersville, addressed the "substantially similar" clause. He read, "Any other use, in the opinion of the approving authority primarily intended to serve a village business function." He stated that that this was not primarily intended to serve a village business function. He asked if this business could survive if it relied primarily on village attendance.

Mr. Kaufman said that, in his opinion as a property owner in Long Hill Township and Meyersville, any business that currently exists or potentially might exist there would not be harmed in any way by the addition of this facility. On the contrary, the local village businesses would be served directly by this application. He felt strongly because of personal experience that people would drive to the facility and drop off their children. They would then need to go somewhere for those two (2) hours if they lived farther away. That could be a seat at the Casa Maya Restaurant or the Meyersville Inn or a visit to the village shopping center. That would serve a village business.

Dr. Rae noted that in addition to what Mr. Zindel had read, it said "...or, which in the opinion of the approving authority was substantially similar to those identified in the subsection." Given that, he felt that the Board didn't need to rely on serving a village function.

Mrs. Zindel, 317 Meyersville Road, Meyersville, said that she was under the impression the Flemington facility could rent a court *by the hour* to the public for birthday parties or men's teams and it wasn't necessarily education.

Mr. Kaufman said he was not aware if that was available in Flemington, however, it would not apply at this facility.

Chairman Pfeil reminded Mrs. Zindel that this was the time to ask questions about testimony given by Mr. Kaufman.

Mr. Bernstein rephrased the question to ask if there would be an opportunity at *this* facility since the application was for Long Hill. Mr. Kaufman did not have an answer to that question and Mrs. Zindel requested that he find out.

Mrs. Zindel noted that at the previous meeting, Mr. Kaufman had provided a series of pictures of what the building would look like. She referred to the street view from the east on Meyersville Road and his testimony as to how little of the building would be seen from the road. She said that she had gotten an aerial view of the area from Morris County and she had added a scale drawing of the building which was marked **Exhibit Z-1**.

There was discussion between Mr. Bernstein, Mr. Kaufman, and Mrs. Zindel as to what was depicted in the exhibit.

Mr. Kaufman said that if she wanted to refer to his site plan, he would be able to answer more questions accurately.

Mrs. Zindel asked Mr. Kaufman if he recognized the relationship between the site plan and the aerial photo with the building drawn in as a white block.

Mr. Kaufman said he could not tell if it was done to scale or who prepared it.

Mrs. Zindel said that Morris County provided the aerial photo and she had done the scaling.

Mr. Bernstein said that if it wasn't clear to Mr. Kaufman what the exhibit was, it would be impossible to cross examine him based on the exhibit.

Mrs. Zindel wanted to challenge Mr. Kaufman's testimony concerning how much of the building would be visible from Meyersville Road. She described the dimensions of the building and its orientation as it was scaled on the drawing.

Chairman Pfeil advised her that that size building was allowed on that piece of property.

There was further discussion between Mr. Delaney, Mr. Bernstein, and Mrs. Zindel. Mr. Bernstein reiterated that if Mr. Kaufman was not familiar with the plan and did not know if it was to scale, it would be almost impossible to cross examine him.

Committeeman Roshto asked Mrs. Zindel if she could ask her question using Mr. Kaufman's plan.

Mrs. Zindel said that she could. Mr. Kaufman noted that she was referring to his Landscape Plan that was given to the Board with markings on it (made by Mr. Kaufman) and that it had not been entered into evidence. It was marked **Exhibit A-4**. She noted the house which was to the right of the proposed facility and said if she walked out of the house into the middle of the westbound lane of Meyersville Road, she would see by line of sight the entire side of the building. She asked Mr. Kaufman if he agreed with her.

There was discussion between Mr. Kaufman, Mr. Bernstein, and Mrs. Zindel concerning the placement of an “x” at the spot in the road she was referring to.

Mr. Kaufman said at the front door of the house one would not be able to see anything.

Mrs. Zindel wanted his answer based on the spot in the middle of the road since that was where she thought he had taken his picture for his street view photo rendering.

Mr. Kaufman said that the renderings were taken using computer software. When an electronic scale model is built and placed into a photograph, there might be some distortion. He noted that the picture had come from Google Earth, not his own camera. He moved to the exhibit and drew a line from the “x” to the corner of the building, the neighboring property to the east and drew a line of sight which would be everything that would be visible if he was looking at the site. By his estimation, a little over 25%, maybe 30% of the building would be in view from that spot. However, there was a proposed berm with evergreen trees directly in that line of sight which would further obscure that view. He felt that those driving in cars would just glance. He also noted that additional trees were being planted in the front.

Chairman Pfeil adjourned the meeting for a ten (10) minute recess at 9:15 p.m.

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

Chairman Pfeil called the meeting back to order at 9:25 p.m.

Mrs. Zindel said that she had misinterpreted **Exhibit A-4** and had placed the “x” on the facility’s front walk. She asked Mr. Kaufman to answer he question from the corrected “x” placement.

Mr. Delaney voiced his objections to this repeated questioning and movement of the”x”.

Chairman Pfeil said that this line of questioning had been exhausted.

Mrs. Zindel said that she had another question.

Mr. Delaney again voiced his objections.

Chairman Pfeil stated that if this was Mrs. Zindel’s last question, he would hear it.

Mrs. Zindel asked Mr. Kaufman if he stood at the appropriate place and looked back at the building, did he agree that from certain places in that area that he would see the entire side of the building and as a result of that, he would be violating Ordinance 152.1e which stated—

Mrs. Dapkins interrupted, saying that Mrs. Zindel was making a statement.

Mr. Delaney objected stating that she was asking for a statement and a legal conclusion.

Mr. Bernstein said she was asking if the building violated the ordinance.

Mrs. Zindel said that if the entire side of the building was visible for a reasonable distance, did that not violate the ordinance which said “...appearance of the side and rear elevations of buildings shall receive architectural treatments comparable to that of any proposed front façade if said elevations were generally within public view.”

Mr. Bernstein asked Mr. Kaufman if he felt the facility violated that ordinance.

Mr. Kaufman answered that it did not.

Debra Schmitt, 486 Meyersville Road, Meyersville, asked if she was correct in stating that the long sides of the building on the plans submitted with the application were not drawn to scale. She said that she had looked at the entire packet that was filed with the application and the front façade was drawn with a scale of “so many feet to so many inches” and it looked nice. However, when she looked at the side representation that was submitted with the packet, it was not drawn to scale so that there was no way to get a perspective of the relationship of the front of the building to the sides of the building.

Mr. Kaufman said that all the architectural plans were presented to scale.

Ms. Schmitt said that there was a page that said “Not to Scale” on the side. She wanted to know to whom she could talk to further investigate that question.

Mr. Bernstein said that Mr. Kaufman was the architect and he testified that it was to scale so that was it.

Ms. Schmitt asked what if he was not stating the truth.

Mr. Bernstein said that she would be able to testify and present a copy of that to show to Mr. Kaufman that it was not to scale.



Ms. Schmitt asked which ordinance stated that 24 spaces would be required for a 12,700 square foot building in the business hamlet zone.

Mr. Bernstein said that the traffic engineer from the last meeting testified that 24 was the maximum number he had observed. The ordinance stated that for an open space and recreational use, this Board would determine the appropriate amount of parking. There was also extensive testimony to that effect with Mr. Legato.

Ms. Schmitt questioned if 24 spaces would be appropriate given the retail requirements and the fact that this facility might become a retail facility in the future.

Mr. Bernstein said that if approved, it would be for a children's volleyball academy.

Ms. Schmitt asked what would be the process to convert it to a retail establishment.

Mr. Bernstein answered that it would have to come back to the Board.

Ms. Schmitt asked how many parking spaces would be required if it was a commercial retail business.

Mr. Bernstein said that there had been a traffic engineer present at the last meeting and he would have been the appropriate person to ask. He felt that that was beyond Mr. Kaufman's scope of expertise.

Ms. Schmitt asked how the structure was different from a retail building.

Mr. Delaney said that that had been asked and answered. Chairman Pfeil agreed.

Ms. Schmitt asked if there was an ability to observe the volleyball courts from the mezzanine above.

Mr. Kaufman said that the mezzanine was open to the courts below. He noted that according to the Uniform Construction Code it had to be a certain maximum size and open to the area below.

Ms. Schmitt asked how many people could stand up there.

Mr. Kaufman answered that it would be limited by the fire codes but he did not have the exact number. He also did not know the exact area however he noted that it was on the drawings.

Ms. Schmitt asked what the maximum occupancy of the building was.

Mr. Kaufman said that that would be determined by the fire code and the fire marshal once the construction permit application was made. He said that that was a safety issue and would be a much higher number.

Ms. Schmitt said that it was a standing area so people could pack in pretty tightly.

Mr. Delaney advised Mr. Kaufman not to answer it since it was a statement.

Ms. Schmitt asked what would happen to the five (5) year lease if the property was sold.

Mr. Delaney objected on relevancy grounds.

Mr. Bernstein said that if the Board approved the application for a children's volleyball facility that would be all the facility could be. The new user would have to return to the Board for subsequent approvals on any other use.

Ms. Schmitt wanted to know if Mr. Kaufman had gotten an answer to a question she had asked at the last meeting pertaining to the number of 17 and 18 year olds who drove their own cars to the facility.

Mr. Kaufman said that Mr. Pehnke had given detailed testimony on that issue.

Ms. Schmitt stated that Mr. Pehnke had said he did not know the ages of the children, only that they weren't driving.

Chairman Pfeil asked if there were any other questions for Mr. Kaufman from the public. Seeing none, he asked Mr. Delaney to present his next witness.

Mr. Bernstein swore in Christian M. Kastrud, P.E., **Kastrud Engineering**, Bound Brook, New Jersey.

Chairman Pfeil said, for the record, that Mr. Kastrud had appeared before this Board previously and the Board had accepted his credentials as a P.E.

Mr. Kastrud referred to **Exhibit A-5** which was a colorized version of Page 3 of 7. He noted that he had been the engineer on the last application as well as this new one. He said that he had been hired by the applicant to prepare the engineering site plan. He described the site—"Archie's"—as currently developed with dilapidated buildings all of which would be demolished and removed resulting in a reduction in impervious coverage. Based on discussions during the last application and with Mr. Lemanowicz, he did prepare a stormwater management plan along with a basin to not only control the rate of runoff and water quality but also to reduce the rates. By reducing the impervious coverage, the runoff peaks would be reduced however that would not be enough to comply with the ordinance and

stormwater regulations. There would be a stormwater basin at the rear of the property to the north side which would reduce the runoff rates for the 2, 10, and 100 year storms and in addition provide water quality for the runoff from the site.

Mr. Kastrud noted that the parking had changed from the first application and was now in a single aisle to the east with 33 spaces provided. The building footprint was approximately 12,000 square feet with the detention basin to the north. He had received review reports from Mr. Lemanowicz and had addressed the majority of the comments. He would comply with the remainder also as a condition of approval.

Committeeman Roshto said that Mr. Lemanowicz's report had shown up on their desks that evening and was dated June 9, 2014. He wanted to know why it took so long to get to the board members.

Mr. Lemanowicz said that the Board policy provided that the applicant submit all documents two (2) weeks before a hearing. The professionals have a week to get their reports completed and then the board members and the applicant would have a week to digest them. He did not receive the final documents for this meeting until one week ago tonight.

Committeeman Roshto asked if this was normal.

Mr. Kaufman indicated that the last meeting was two (2) weeks prior and they had taken the comments generated from that meeting and distributed responses electronically. The actual plans were distributed a few days later.

Mr. Lemanowicz noted that he got the architectural plans on Friday and the engineering plans on Tuesday.

Chairman Pfeil said, as a general comment, that when the Board was meeting twice a month and revised plans are requested for a meeting that would be held two (2) weeks later with a ten (10) time limit, the applicant only had two (2) days to make the changes and send the documents out. He was unsure as to how to handle that type of situation.

There was discussion that in other such cases, the applicant skipped a meeting.

Committeeman Roshto wanted to be clear that they had had very little time to review it.

There was then discussion on how to proceed with testimony.

Chairman Pfeil suggested that Mr. Lemanowicz go through his report of June 9, 2014 and discuss those items that had not been addressed.

Mr. Lemanowicz stated Items #1 and #2 were completed. He noted that Item #3, a request for a wetlands map with N.J.D.E.P. approval stamp, had not been received.

Mr. Kastrud said that their wetland scientist was scheduled to meet earlier with the D.E.P. however the D.E.P. postponed the meeting so he did not have the map with the stamp on it. The scientist would be meeting with them on Thursday to get the map stamped with the L.O.I. stamp and that it would match his site plan.

Mr. Lemanowicz asked if Mr. Kastrud could testify that the new L.O.I. map would meet his plan. Mr. Kastrud said that he could. He noted that the L.O.I. wetlands map would be prepared by D.B.K. Consulting, not his office and that although it would not be prepared under his supervision, he would ensure that it would be the same map.

Mr. Lemanowicz said that Items #4, #5, and #6, were resolved.

Mr. Lemanowicz moved on to Item #7, which requested two (2) site triangles. Only one (1) was provided. Mr. Kastrud said that he would coordinate with Mr. Lemanowicz and the County Engineer and ensure that whichever was the most conservative would be shown on the plan.

Mr. Lemanowicz said that Items #8, #9, and #10 were addressed.

Mr. Lemanowicz stated that in Item #11, the site plan referred to the landscape plan for the sign. The landscape plan referred back to the architectural plans where it was actually located. He had asked for that to be cleaned up and it was not. Mr. Kastrud said that the notes would be changed to eliminate the landscape plan reference.

Mr. Lemanowicz noted that in Item #12 concerning the detention basin, sections (a) through (e) had been addressed. Section (f) referred to the ordinance which had adopted the Residential Site Improvement Standards (R.S.I.S.) as the standards for residential and non-residential, specifically the sections pertaining to retaining walls. There was discussion between Mr. Lemanowicz and Mr. Kastrud as to the requirements. Mr. Lemanowicz noted that there was a staircase at one end of the basin and if the Board was satisfied that that was sufficient for someone to be able to get out, he did not have an issue.

Chairman Pfeil asked how deep the water was at it deepest point.

Mr. Kastrud answered that it would be just over two (2) feet.

Mr. Lemanowicz asked what was the elevation of the water that was going over the emergency spillway.

Mr. Kastrud said that at the top of the 100 year storm, it was 237.33.

Mr. Lemanowicz asked if that was with the spillway clogged or was that normal.

Mr. Kastrud said it was NOT with the spillway clogged. It was with the outlet structure open.

Mr. Lemanowicz said that in any emergency condition, the water would be higher.

Mr. Kastrud said it would be 233 the way it was currently designed.

Chairman Pfeil summarized that it was a completely fenced in area. There was a staircase in the event that someone got into the basin and they would have to wade through 2.5 feet of water to get to it.

Mr. Kastrud said if it were full, it would be three (3) feet of water.

Chairman Pfeil asked the board members if that sounded reasonable.

Mrs. Dapkins asked what type of security would be present in case a child got inside.

Mr. Kastrud said there was a post-and-rail fence along with chain link along the outside of the fence. The squares were small enough so that it would not be climbable. He added that they could have it comply with the standards for a pool fence with a self-latching gate.

Mrs. Dapkins asked if there would be a way to install a lock on the gate.

Mr. Kastrud commented that he wouldn't want to have anybody not be able to get out if they were in and it was locked but there could be a lock to prevent anybody from the outside from getting in.

Mr. O'Brien said that in a self-latching gate like a pool gate, the latch would be located 54" above the ground and if it were opened, it would have to self-close.

Mr. Lemanowicz said that fences around detention basins have been a topic of discussion because were they lock someone from getting in or lock someone from getting out. He felt that in this case with the walls, it would be more of a case of someone getting in. If a child climbed over the fence, the rescuer could be locked out.

Mr. Kastrud noted that a self-latching pool gate was not currently proposed.

Committeeman Roshto asked if a three-to-one (3:1) vertical wall (such as the one in this basin) would allow a child to climb out.

Mr. Lemanowicz said that it would be easily accomplished.

Mr. Aroneo said that getting out was not the problem. He noted that in a neighboring town there was a tragedy not long ago.

Mr. Kastrud said they did not take it lightly and that was why the fence was proposed.

Mr. Aroneo suggested that maximum security measures be taken. He felt that Mr. Lemanowicz was presenting opposing arguments to having greater security.

Mr. Lemanowicz said that if it was just an earthen embankment and someone walked into the basin, they would roll down a slope. In this case, they would fall 3.5 feet and if they didn't know it's coming, it would be different than slipping down a hill. He asked again, would a lock prevent entry or exit. He felt that what the applicant was proposing was reasonable. It was a matter of whether one (1) staircase at the end was enough. He asked how long the basin was.

Mr. Kastrud answered approximately the width of the building—80 or 90 feet.

Mr. Lemanowicz said that was larger than an average swimming pool and had only one (1) staircase.

Mr. Hands asked if all four (4) sides had walls.

Mr. Kastrud affirmed that that was correct.

Mr. Hands asked what the standard would be for a swimming pool in reference to stairs.

Mr. O'Brien said that a regular sized pool would require that the yard or pool itself be fenced. The access would require a self-latching gate and that the latching mechanism must be located 54" above the surface.

Mr. Hands asked if it would be appropriate to build steps into a couple of spots on the wall.

Mr. Kastrud offered as an option to remove the walls and grade the basin out. It might encroach into the yards and require some relief from the Board for the structure of the basin being in a yard however then there would be slopes around the basin rather than walls.

Chairman Pfeil said that would open up a whole other issue.

Mr. Wallisch said that the pool standard for fences would be applicable in this instance.

In response to a question, Mr. Kastrud noted that the stairs would be constructed of the same materials as the walls, possibly a keystone or allen block.

Chairman Pfeil asked the board members if they would be satisfied with two (2) sets of steps and applying the pool fence standards.

Mrs. Dapkins asked if there was anything covering the outlet.

Mr. Kastrud said there were racks.

Mr. Lemanowicz added that the R.S.I.S. had a number of safety requirements for outlet control structures.

Chairman Pfeil summarized that the applicant had agreed to put an extra set of steps on the west side and apply the residential pool fence standards for this basin.

Mr. Lemanowicz said that Item #12(g) had been addressed and moved to #12(h) which referred to the wall around the basin as it related to emergency conditions. There was no revised stormwater management plan and the grades had not been changed so redesigning would be required.

Mr. Kastrud said that the elevations on the plans had to be clarified to correspond with the stormwater management report.

Mr. Lemanowicz said that the berm would have an emergency spillway in it meaning that one section of the berm would be a little lower so that in case the outlet control structure failed, the water would pass over that lower section. The remainder of the wall had to be one (1) foot above the water going over that. Right now, the top of the berm was only two (2) inches above that so there was about a foot of elevation that had to be added.

Mr. Lemanowicz said that Item #12(k) referred to the elevation numbers around the emergency spillway and had not been addressed.

Mr. Lemanowicz stated that Items #13 and #14 had been resolved.

In Item #15, there was reference to the swale along the western property line and its interference with trees. During previous discussions, the applicant indicated that the trees hung over the property but were not rooted in the property and they would need to be trimmed back. In testimony at the last meeting, Mr. Kaufman said that the trees would stay. The plans show that those trees but the swale would cut into the dripline and that had to be addressed.

Mr. Kaufman referred to **Exhibit A-4** which was the landscape plan. He said that following the last meeting, he and the landscape architect surveyed the tree canopy because the surveyor only surveyed the caliper of the trees and didn't actually measure the canopy. He referred to the red markings on the trees on the westerly side of the property line which indicated the actual canopy of those trees. There was one tree that leaned far into the building envelope and that tree would be trimmed back. The remaining canopy would remain in that location. There was an existing building in the north end of the site on the property line with a foundation, a concrete slab, and a roof. The trees in that location had grown around that and presumably there would be no feeder roots underneath the slab so when it's removed, it will be replaced with an earthen swale. Because of that, he disagreed with Mr. Lemanowicz that the swale would negatively impact those trees since they were already growing around an existing building. Two (2) additional trees had been added on the south side. Some existing trees on the eastern side were marked and there were a series of pine trees already located there that were fairly dense along with another deciduous tree towards the back. None of those would be disturbed, providing a dense evergreen buffer to the neighboring residence. He moved the two (2) trees recommended by the Shade Tree Commission to the western side and placed them in the only open space available given the fact that those larger trees have a root base and a canopy.

Mr. Lemanowicz said that there was a north clump and a south clump. The grading came into the south clump so that there would be a cut over the root ball which was the issue. Item #15 remained open because Mr. Lemanowicz did not have the calculations to show whether the swale needed to be that large.

Mr. Kastrud responded that they would examine their calculations to see if they could minimize the swale to reduce the amount of cut to satisfy Mr. Lemanowicz. He noted that the drainage swale was 25 feet by 80 feet, in the front of the building between the building and the road.

Items #16, #17, #18, and #19 were addressed.

Item #20 referred to inconsistencies in a curb detail. The detail showed an eight (8) inch face when it should be a six (6) inch face.

Item #21 was addressed. Item #22 was also addressed even though on the report it was listed as "not addressed".

Item #23 requested details on various items. All were satisfied with the exception of (a) the trash enclosure (it was noted that there was a detail on the top of Sheet A101), (g) rip-rap detail required revisions and calculations to develop the dimensions, (h) the sanitary sewer connection detail was not provided, and items #12(i) and (j) were provided however they require approval by the County.

Mr. Hands asked for a description for Item #12(h), Sanitary Sewer Connection.

Mr. Lemanowicz said that there should be a detail that would show how the sanitary sewer was going to be connected to the township main in Meyersville. As part of the conditions, the applicant would have to get a permit to connect to the sewer which was a separate issue. There was an existing connection and he assumed that the applicant would use the existing connection however the location of that connection and how it would be converted from a gravity connection to accept the force main was the detail that he was requesting.

Mr. Hands asked how the capacity was calculated to prevent undue stress on the sewer system.

Mr. Lemanowicz said that although there was a ban on *new* connections, this site already had a connection and that that would be done after it got to the construction department. Unless the township was satisfied, no building permit would be issued.

Item #24 referred to the Stormwater Management Report and requested a number of items. Since there was no new report, all those items were outstanding.

Mr. Kastrud said that that report would be provided.

Chairman Pfeil wanted assurances that this could be accomplished in time to be heard at the June 24<sup>th</sup> meeting.

Mr. Lemanowicz said that Mr. Kastrud would have to have the report to him by Friday (06/13/14).

Chairman Pfeil asked Mr. Delaney if Mr. Kastrud was his last witness. Mr. Delaney affirmed that he was. Chairman Pfeil said that if the report were available by Friday, it might be reasonable to assume that it could come to a vote at the next meeting.

Mr. Lemanowicz said that the numbers generated by the Stormwater Management Report would require regrading of the retention basin.

Mr. Kastrud said that the necessary changes in the plans would be made so in addition to the report, the plans would go to Mr. Lemanowicz.

Chairman Pfeil asked that Mr. Lemanowicz and Mr. Kastrud get together to work out all the details so that it would be clean when it was discussed at the next meeting.

Mr. Bernstein noted that one of the neighbors had hired an engineer vis-à-vis the drainage who might wish to be involved in the process.

Mr. Kastrud said that he would include the comments and concerns from that engineer and in fact, he had already spoken to him.

Mr. Lemanowicz said that Item #25 referred to a maintenance manual that was required by Stormwater Management Regulations and that had not been received. Mr. Kastrud noted that ordinarily that manual would be a condition of approval however in this case, in order to streamline the process, he would put one together. Mr. Lemanowicz said that the only thing that would be left once it was done would be to put an as-built in the back.

Item #26 was addressed. Mr. Lemanowicz noted that Item #27 referred to a graphic on the architectural plan that was not identified. That had now been addressed. Item #28 had been addressed. This concluded the review of the Technical Comments.

Mr. Lemanowicz moved on to new comments for this report. Item #1 dealt with the request for the site triangle which was generated because it looked like the sign was in the site triangle. Also, the sign was 43" high which would not be permitted.

Item #2 referred to the generic detail of the rip rap with a chart

Item #3 referred to the missing Stormwater Management Report. Because of issues Mr. Lemanowicz had brought up earlier, it would be necessary to regrade the rear of the property and he could not say what that would look like. He was unsure if the swale in the back of the property could handle the overflow. Mr. Kastrud indicated that he would try to make the swale on the west side of the property smaller because of the trees. There were limitations in the New Jersey Standards for soil erosion and sediment control on how fast water could flow over grass and he did not have that information.

Chairman Pfeil asked the board members if they had any questions of Mr. Lemanowicz or the engineer.

Committeeman Roshto asked when the Board could expect to see the Stormwater Management Report.

Mr. Kastrud said that he would get the report revised and delivered to Mr. Lemanowicz on Friday.

Mr. Lemanowicz said that if he received the complete package on Friday, he would have his report to the Board the following Friday.

Chairman Pfeil noted to the applicant that the municipal offices close at 2:30 p.m. on Fridays.

Mr. O'Brien said that the information should be sent directly to Mr. Lemanowicz and him at their offices.

Chairman Pfeil outlined the schedule for the following meeting.

Mr. Bernstein provided Mr. Delaney with the "Consent for Extension of Time for Decision" to June 25, 2014.

Mr. Delaney asked who was eligible to vote.

Ms. Kiefer informed the Chair that the only ineligible member was Dr. Rae. Once he listened to the CD of the last meeting, he would be eligible. She also indicated that she would send a CD to Mr. Moholkar, who was absent for this meeting.

Dr. Rae indicated that he would be unable to attend the June 24, 2014 meeting because of business obligations.

There was some discussion on the agenda for the next meeting and where the Resolution of Memorialization for Restore Meyersville LLC Application #13-07P would be placed.

Mr. Legato asked if the Citizens Group would have an opportunity at the next meeting to make an affirmative statement.

Chairman Pfeil said that he would and asked if he had any witnesses.

Mr. Legato said that he did not.

Arthur Brown, 479 Meyersville Road, asked why everything was being rushed.

Chairman Pfeil answered that there was only one meeting scheduled for July and one for August and that the application was close enough to push for it.

Maria McCoy, Hickory Tavern Road, Meyersville, asked if the original application would be finalized on the 24<sup>th</sup>.

Mr. Bernstein answered that it would be.

Dr. Rae motioned to adjourn and Mr. Wallisch seconded. A Voice Vote was taken and the motion was approved unanimously. The meeting was adjourned at 10:29 p.m.

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CYNTHIA KIEFER  
Planning and Zoning Secretary

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Date