

AMENDED MINUTES

FEBRUARY 24, 2015

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Chairwoman Dapkins called the meeting to order at 7:35 p.m. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin Board, by sending a copy to the Courier News and Echoes-Sentinel and by filing a copy with the Municipal Clerk, all in January 2015.

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

OATH OF OFFICE

Ms. Kiefer administered the Oath of Office to reappointed member, Mayor Brendan Rae.

ROLL CALL

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

Excused:

Suzanne Dapkins, Vice-Chairwoman
Brendan Rae, Mayor
David Hands, Member
Ashish Moholkar, Member
Guy Roshto, Member
Timothy Wallisch, Member

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

Kevin O'Brien, Board Planner
Thomas Lemanowicz, Board Engineer
Daniel Bernstein, Board Attorney
Cynthia Kiefer, Board Secretary

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

EXECUTIVE SESSION

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

PUBLIC QUESTION OR COMMENT

Chairwoman Dapkins asked if there were any questions or comments from the public on items not on this evening's agenda. Seeing none, she closed the meeting to the public.

DISCUSSION – MORRISTOWN ROAD REZONING

Present: William and Gayle Stroh

John R. Frieri, Attorney for William and Gayle Stroh
John E. Leoncavallo, P.P., C.L.A. for William and Gayle Stroh
Thomas V. Delia, Long Hill Township Zoning Enforcement Officer

John R. Frieri, attorney with **Frieri & Conroy LLC**, 777 Walnut Avenue, Cranford, New Jersey, introduced him and stated that he was representing William and Gayle Stroh during these proceedings. He referred to Mr. O'Brien's most recent report which posed certain solutions to this issue that had been ongoing for some time. He felt that they could come up with a reasonable solution seizing on one of Mr. O'Brien's suggestions which was an overlay zone.

Mr. Fieri handed out copies of the "Morristown Road Business & Conservation Overlay Zone Proposal" prepared by John E. Leoncavallo, P.P., C.L.A. to the Board members. Ms. Kiefer marked it as **Exhibit A-1**.

John E. Leoncavallo, P.P., C.L.A., 388 Washington Road, Suite E, Sayerville, New Jersey, introduced himself. He was sworn in by Mr. Bernstein.

Mr. Lemanowicz and Mr. O'Brien were then sworn in by Mr. Bernstein.

Mr. Leoncavallo reviewed what had been submitted to the Board. He stated that the concept had changed over the past year and he was currently proposing an overlay zone on Morristown Road rather than another independent zoning district. There were a number of reasons for that. The overlay would respect the intention of the Conservation Zone. The overlay zone would be on three (3) of the six (6) lots that were originally discussed. He asked the Board members to review the last page of **Exhibit A-1** which was the location map. The six (6) lots included Lots 1, 2, 4, 5, 7 and 9 in Block 11203. He pointed out the "middle flag" which encompassed three (3) lots, Lots 5, 7 and 9, was what he was proposing as the "Morristown Road Business and Conservation Overlay Zone".

Mr. Leoncavallo stated that the overlay would create or preserve the Conservation Zone as its base throughout the six (6) lots. There would be no change to the conservation area within Lots 1, 2 or 4 and he added that the applicants were the owners of Lot 4. That lot contained a house that had stood for many years. Lot 2 was a house that has been a residence. There was some prior history and issues with Lot 1 in terms of their need for a use variance which was currently in abeyance. He did not want to do anything with that. He was focused on the overlay zone which would allow the base uses that were currently allowed in the Conservation District along with some other uses which the Stroh property would use because they were there prior to 1997. There were some other uses that were attached to Lots 7 and 9 that were done through use variance. The Overlay Zone dealt with residential property that had some background of commercial elements. That differentiated it from other things in that area.

Mr. Leoncavallo said that he had distributed a draft of the uses. The "Primary Uses" (1 through 4) were already in the conservation area. This would be the base. The Conservation Zone allowed these four (4) uses. He said that the overlay would add certain retail and service trade uses that were pre-existing prior to 1997 and that they could continue with no expansion. They would include the uses listed as 5A through 5M. Item 6 would be "Minor Office Uses" that could be utilized by the other two (2) properties. Item 7 was "Child Care Facilities" which were already allowed in a number of zones. Item 8 was "Parks and Open Space" which were at the rear of the properties to the east. Two (2) tracts, 15.01 and 16 were open space or vacant lots that belonged to the Township. He suggested that a number of the other uses which were accessory or ancillary in the Township's zoning such as home offices, senior suites, family day care homes, farm stands (already allowed on the lot next door – Lot 7) and keeping of horses and livestock be allowed in the Overlay Zone.

Mr. Leoncavallo said that Item 9 "Energy conservation Related Businesses" was faithful to the Master Plan and one of the elements, the Valley Road Business District. He felt that environmental uses were something that could be added and would not be destructive to the Overlay Zone or to the conservation area. Solar panel construction companies—not the manufacture of those panels but the administrative offices—could be in this overlay zone. Energy audit consultants, Conservation Advocacy Groups, and other Environmental Organizations and Associations were examples listed in Item 9. These would be new uses but they were energy related or environmentally related and would be very appropriate here. They would not have much of an impact on the Overlay Zone or the Conservation Zone.

Mr. Leoncavallo noted that other permitted accessory uses would be signs, parking facilities, satellite earth station antennas and any other accessory use that would be incidental to a primary use. They were allowed already.

Mr. Leoncavallo stated that he was just taking other parts of the Township's ordinances and utilizing those. He thought that this approach would have less impact but also would successfully address the issues that those particular three (3) lots had in a way that would be fair and meet the goals and aspirations of the town from 1997 forward when the Conservation Zone was initially put into the zoning package. He asked for direction as to whether or not this was a good way to go.

Chairwoman Dapkins mentioned that in Item 13, farm stands were the subject of a use variance.

Mr. Leoncavallo said that that was on the lot to the south. He added that they had a farm stand and he was unsure as to whether the lot to the south would want one. He didn't think that the impact of a farm stand would disturb the Board members but if it did, he didn't think Mr. Stroh wanted one no matter what. He asked if it was a concern to the Board.

Mr. Moholkar addressed his comments to Mr. O'Brien. He said that as long as he had been involved with this, the intent was to look at what was in place and what uses were in place prior to 1997 before the zoning was changed and ensure that there was a way to make that work. Since the zoning changed, all of these uses became compliance issues. These uses were to be added and no others. He asked Mr. O'Brien if this would add more than was there in 1997. Those three (3) lots could have the existing uses but not add anything new. He asked if that was what they initially discussed.

Mr. O'Brien said that among the discussions that this Board had had was a desire to know pre-existing non-conforming uses that were on the properties in the area and to identify them. That was done through Mr. Delia's work to the Board as well as his own work. He felt that Mr. Leoncavallo had summarized those comments in Section 5 where he discussed the pre-existing conditions. Then he added other uses that he thought might be worthy of the Board's consideration for an overlay zone in this area. He gave the justification as to why the Board should consider that.

Mr. Moholkar said that it would be everything that already existed in the Conservation Zone plus what was included in the overlay.

Mr. O'Brien stated that the Overlay Zone would be whatever the Board wanted it to be and in this case until now it had said that what was identified as existing would be the starting point. Other uses could be added to that list. He noted that Mr. Moholkar was correct in stating that past discussions started with what was in existence in 1997.

Mayor Rae said that his recollection was that it was not necessarily a starting point. He said that he was surprised that uses were being added and he wanted to know what the reason was for that.

Mr. O'Brien said that this was Mr. Leoncavallo's document and these were his suggestions.

Mr. Leoncavallo felt that they were not adding very much. It seemed like there might be some uses that could be added if the six (6) lots were used as a zone. He was only looking at the overlay zone uses that were on the Stroh property. If the two (2) other lots were added which were south of the Stroh property, Lots 7 and 9, there would be approximately eight (8) acres there although some of that was wetlands. There might be some other uses that might be appropriate and that was why they were added. If the Board felt that these were not appropriate, he would entertain that. Things could not be changed for just one (1) lot because then it would enter the realm of spot zoning. From his standpoint, if it was some other benign use and it existed in the Township's ordinance already, it could be included. He then discussed the various uses listed in his proposal. He noted that he wanted something small and perhaps restrictions could be put in place. He felt that many of these uses would be appropriate next to a conservation space. Besides the uses listed under Item 5, he could restrict any of the other uses if given guidelines from the Board.

Mr. Moholkar asked if they should just make it an overlay and since it was in conservation just say that everything in conservation plus those uses listed in Item 5. He asked if technically that could work.

Mr. O'Brien stated that that was how an overlay worked. Everything that was allowed in the Conservation Zone would stay as the "basement". The overlay would be the "first floor" and that floor would be allowed as well as the basement.

Mr. Moholkar asked if they were to do what was allowed in the Conservation Zone as indicated in the ordinance plus Item 5, assuming all the Board members agreed on Item 5, would that be a good direction to take.

Mayor Rae stated that he was in agreement with that because it was in keeping with what he understood the initial purpose of this exercise was.

Mr. Moholkar said that he wanted to make sure that they were keeping the Conservation Zone as is and just adding Item 5.

Mr. Bernstein asked, on the pre-existing nonconforming uses, were they protected or were they uses that had just sprung up.

Mr. O'Brien said that one of the problems addressed in the discussions over the last few years, was that the easiest way to go about this would be to go to the Zoning Board and ask for a Certificate of Nonconformity.

Chairwoman Dapkis asked why they were not doing that.

Mr. O'Brien said that first, the Certificate of Nonconformity was an approval given by the Zoning Board that would recognize that certain nonconforming uses were in existence prior to the change in the zoning ordinance. Only the Zoning Board could give that. The reason this applicant had not gone to the Zoning Board to request that was because they had indicated to this Board that over the years certain uses came and went. Certain uses were abandoned and had not been in continuous use since the zoning ordinance had changed. Their stated opinion was that they did not feel that they could meet the burden of proof on that.

Mr. Bernstein asked if that was for both the prior nonconforming uses and for the D variance for what had been in existence for decades.

Mr. O'Brien said that they had only discussed the Certificate of Nonconformity.

Mr. Bernstein noted that it was not an onerous procedure. This procedure of discussing rezoning had started in 2008 in the Zoning Officer's first letter. He asked if they would have needed a survey with the site plan elements for each of these properties if the Board was saying it was freezing the uses so that the Board would know exactly what was on each property rather than to continue as a mystery.

Mr. O'Brien said that if one were applying for a site plan application, yes absolutely. In this particular case, Township staff had identified what was on the properties and had allowed the applicant to submit input into that. That had been reflected in Mr. Delia's report to the Board.

Mr. Bernstein said that if there was a problem, the Zoning Officer want to know from a site plan what was actually there so that there was no problem in the future.

Mr. O'Brien said that that should be part of the process.

Mr. Bernstein noted that he was reviewing some of the uses. For example, under "Mason Contractors," could the contractor build some sort of facility which would require so many parking spaces? If all these uses were to be allowed, shouldn't there be controls on each of them? For example the mason contractor could have a structure, the cooling and heating contractor could have a structure, what could be parked outdoors, what was the F.A.R., what were the setbacks, what could be stored there, what would be the buffers, etc.

Mr. Bernstein had a second question. The proposal said that the uses could not be expanded. Could they be switched? If the mason contractor left, could a carpenter contractor come in? If it couldn't be expanded, the Board should know everything that took place in 1997. He felt that it really belonged with the Board of Adjustment. It would be a cleaner procedure. The Planning Board had been struggling with this since 2008. He wanted to know what the controls would be for each of the uses listed in items A through M.

Chairwoman Dapkins commented that that was the problem. There were no controls.

Mr. Leoncavallo said that if the Board approved what had been there since the 70's to continue, the controls could be drawn up.

Mr. Bernstein said that he had a problem because this was a hybrid. It was either a prior nonconforming use or it wasn't. He did not know of an ordinance that said, "You can keep what you've got but you can't expand it." That was prior nonconforming use language which under the M.L.U.L. belonged with the Board of Adjustment. When Mr. Leoncavallo discussed the uses, he really didn't say what they were. Mr. Bernstein wanted to see something on paper, a plan, otherwise the Zoning Officer would have problems enforcing it. Without a plan, it would be impossible.

Mr. Frieri said that the time for the Strohs or their tenants at that time to come forward was when the zone was changed from whatever the 1997 denomination was to the Conservation Zone. He was told that they never received notice of that change. The first time they knew that there was a problem was in 2008 when someone complained that these uses were not allowed.

Mr. Bernstein reiterated that it would be easy to go to the Board of Adjustment. It would have been far more expeditious.

Mr. Frieri said that there was a cost associated with that.

Mr. Bernstein said that there had been a cost from 2008 to 2015 along with this Board's time. The cost to the town had been enormous. The Strohs would have been well advised to have gone through the appropriate route.

Mr. Stroh said that the original attorney told him that by going before the Board of Adjustment, he would be zoning by variance instead of zoning. This zone was economic development before 1997 and was built up that way. The Township changed the zoning and he was never notified. It continued exactly the way--

Mr. Bernstein interrupted and said that it was not zoning by variance. It was a pre-existing nonconforming use.

Mr. Stroh said money had been spent that should not have had to be spent.

Mr. Bernstein said that preserving a nonconforming use was a valuable right however it had to be proven.

Mr. Hands asked which properties were being represented this evening.

Mr. Frieri answered Lots 4 and 5.

Mr. Hands asked if the owners of the other properties were amenable to this solution.

Mr. Roshto noted that Lots 1 and 2 were not included in the overlay.

Mr. Leoncavallo noted that Lot 4 belonged to the Strohs.

Mr. Roshto noted that that lot was also not included in the overlay.

Mr. Hands then clarified that they were referring to Lots 5, 7, and 9. He asked if Mr. Frieri represented all three.

Mr. Leoncavallo said that he had been working with the Strohs for the past few years.

Mr. Hands clarified that Mr. Leoncavallo was working on Lots 4 and 5. Lot 4 was not in the overlay.

Mr. Leoncavallo said that they had decided that Lot 4 would stay as conservation.

Mr. Hands said that Lots 7 and 9 were nonconforming however there was no indication what their preference was.

Mr. Leoncavallo said that he had never had any contact with them. He was unsure as to whether Mr. Stroh had ever been in contact with them.

Mr. Stroh stated that they had variances for what they were doing.

Mr. Hands assume that they wanted to continue with their operations.

Chairwoman Dapkins asked why they would need to be in the overlay zone.

Mr. Frieri stated that they didn't have to be. Mr. Leoncavallo had testified that the overlay zone, to avoid the issue of spot zoning, had to include other properties.

Mr. Bernstein noted the New Jersey Supreme Court case, *Riya Finnegan LLC v. Township of South Brunswick*, which dealt with spot zoning. "Spot zoning is the antithesis of planned zoning. The test is whether the particular provision of the zoning ordinance is made with the purpose or effect of furthering a comprehensive scheme or whether it is designed merely to relieve a lot or lots from the burden of a general regulation."

Mr. Hands asked, in terms of lot coverage on Lot 5, how would that impact what existed today versus what the zone would allow for.

Mr. Roshto answered that that was one of the points that was made earlier. There were no bulk requirements in this proposal at all. It just discussed the uses.

Mr. O'Brien said that that would revert back to the C Zone which was the underlying Conservation Zone.

Mr. Roshto said that was a point they should consider. For example, if they were going to allow mason contractors, would it make sense to use the bulk standards for the C Zone or should they be looking at the bulk requirements for a different type of zone.

Chairwoman Dapkins asked Mr. O'Brien if he had visited the property.

Mr. O'Brien answered that he had.

Mr. Hands asked Mr. O'Brien if it would conform.

Mr. O'Brien answered that all of the lots were very deep except for the factory lot. He said that he had not gone all the way to the back but he had looked at them from Morristown Road and he had gone back on Eloise, trying to see it from back there. It was difficult to see and guess however whatever was done had to conform to whatever the requirements were. If they were left as they were in a Conservation Zone, they would still have to conform to that or as Mr. Roshto suggested, they could be changed. No matter what, they would have to conform. If they could not conform, then they would require variance. He said he did not think that they would require variance for coverage because there was a lot of wetlands in the back of the properties.

Mr. Roshto asked how the applicant would propose that the Zoning Officer enforce an ordinance that said "with no expansion". He felt the applicant was asking the board members to allow the uses listed in Items A through M and put in the ordinance "prior to 1997 may continue with no expansion". How with the Township's Zoning Officer enforce that?

Mr. Leoncavallo answered there would be some line or some situation where they would give the Board some control. The Board would know where they stood with site plan issues that would be inherited and realize that they were going over what was allowed. They had not gotten to that point yet.

Mr. Roshto said that if he understood the answer correctly, the applicant would put together some type of site plan that Board could authenticate and the Zoning Officer could use to validate the expansion.

Mr. Leoncavallo said that it might not be a full-blown site plan because nothing might change too much. Then again, there might be some "shift out" from one use to another and then there might be a need for a more detailed site plan.

Mr. Frieri added that any use change would have to come as a use permit.

Mr. Roshto said that he was not referring to a use change. He was talking about bulk requirement changes. The Zoning Officer would need to know if anything was added tomorrow that wasn't there yesterday. He felt that Mr. Leoncavallo was saying that the applicant would commit to have a site plan before--

Mr. Frieri said that he felt they would have to have one.

Mr. Roshto asked about items A through M. He asked if they could confirm that all those items were existing uses today.

Mr. Stroh said that they were not all existing uses today. They were uses that were prior to 1996, some of which still continued today such as (A) mason contractor, (B) heating and cooling contractor, (C) fabricator, and (D) landscape contractor.

Mr. Roshto said if the applicant was to ask for a use variance from the Board of Adjustment, he would have to specify which use he wanted there and then apply for that variance. He felt the applicant was asking the Board to expand the uses beyond A through D all the way to M.

Mr. Stroh said that these were uses that were in effect before the zoning change in 1997.

Mr. Roshto stated that they had no way to confirm that other than what the applicant was telling them. That was one of the reasons the applicant had chosen this route instead of going before the Board of Adjustment. It was so difficult to prove.

Mr. Stroh said that that was correct.

Mr. Roshto asked Mr. Stroh, if the Board were to move forward with this, would it be okay if they looked at just Items A through D and not the rest of them.

Mr. Stroh said, worst case scenario, yes. He added that he would like a few of the other ones also.

Mr. Roshto asked what the reasoning behind wanting the other uses was.

Mr. Stroh answered that A through D would limit him quite a bit. If one of the tenants moved out, he would have to be replaced with that exact use.

Mr. Roshto asked if that was not a form of expansion. If a different use was added, different facilities of some sort would be required.

Mr. Stroh disagreed. These were two (2) long buildings which were rented out. (Inaudible) No additional buildings would be constructed. There would be no space added outside.

Mr. Roshto referred to the energy conservation businesses and asked if Mr. Stroh had any intent to do something in this area.

Mr. Stroh answered that there was no intent at this time. He felt that with the attention paid today to energy conservation, it would be good in the Conservation Zone.

Mayor Rae referred to the uses E through M and asked how Mr. Stroh had come up with those. He thought Mr. O'Brien had been involved in looking at these. He asked if the list had been substantiated.

Mr. O'Brien stated that this was the applicant's proposal. He referred to his memo 4 of 6 on the 26th of August. Mr. Delia had listed in his memo dated April 17, 2013, the various uses that he had seen on each property. Mr. Delia had gone on each property and listed what he saw, the number of trucks, the number buildings, etc. Those were the things that Mr. O'Brien had confirmed in his subsequent reports.

Mayor Rae asked if these were Items A through M or A through D.

Mr. Delia answered it was Items A through D.

Mr. Frieri said that these were historic uses based upon family history; things that had come and gone.

Mayor Rae asked, should the Board approve the Conservation Zone with the overlay, if there would be standards that would be associated with each one of these.

Mr. O'Brien answered, "Yes." The Board would have the ability to apply whatever conditions or standards they wished if the board members wanted to go in this direction.

In answer to Mr. Hands' question, Mr. Bernstein said that the applicant was asking the Planning Board to recommend to the Township Committee that an ordinance be adopted in some form. The Planning Board could recommend specific uses with conditions that would be set by the Board Planner, Mr. O'Brien in consultation with the applicant's planner.

Mayor Rae stated that he was in favor of the overlay zone in Item 5 with standards and conditions set by the Board.

Mr. Hands asked Mayor Rae if he meant uses A through M.

Mayor Rae answered affirmatively.

Mr. Roshto asked about Item 13. He wanted to know what the problem with that was.

Chairwoman Dapkins felt that the board members should decide whether or not they wanted to do this before going through the lists.

There was agreement amongst the board members.

Mayor Rae said that Mr. and Mrs. Stroh had been coming to the Planning Board for many years now. In effect, the board members could say that the Strohs would have to go before the Zoning Board. That was one choice.

Chairwoman Dapkins felt that the Board should decide that evening if they would take action or not.

Mayor Rae said that the Board could tell the Strohs that they would have to appear before the Board of Adjustment. That was one option. The other option would be for this Board to act to approve the overlay option or some other option.

Mr. Roshto was in favor of crafting an overlay zone.

Mayor Rae was in favor of that also.

Mr. Moholkar was in favor of that also. He added that when this was discussed some time ago, the intent was not to list everything that could have been there but to list everything that was still there. Essentially this would grandfather in anything that was there today that was there in 1997. He asked if there was a way to add some verbiage that would allow some switching of use. It would be confined to using the two (2) existing buildings. No other buildings could be constructed.

Mr. Roshto added that that was why he asked about the site plan and what was meant by "no expansion." If there was a site plan in place and the Zoning Officer could--

Mr. Delia referred to Item 5 and the uses for the overlay zone and stated that it would give the Township the potential for another TIFA.

Mr. Roshto asked for clarification.

Mr. Delia said that the applicant could split up the buildings and say he had different tenants in different sections in the same way they were doing in TIFA.

Chairwoman Dapkins agreed.

Mr. Delia added that originally TIFA was one building with one manufacturer. Now there were 60 facilities in that building. He asked that the board members be cautious so that he could keep track of what went on there.

Mr. Roshto assumed that the applicant would not have a problem if the Board wrote something in the ordinance that restricted the number of units in each building.

Mr. Stroh said that currently there were four (4) in addition to the one (1) unit that he had. There were a total of five (5).

Chairwoman Dapkins asked Mr. Stroh how many sheds were on the property.

Mr. Stroh answered that there were four (4).

Chairwoman Dapkins asked Mr. Stroh if they were in the wetlands.

Mr. Stroh answered that the whole property—

Chairwoman Dapkins interrupted and asked if the sheds were built into the wetlands.

Mr. Stroh answered, "So are some of the buildings."

Someone asked if they were built in the delineated wetlands area.

Mr. Stroh answered, "Yes. You can't help it. They moved the 100 year flood line and it comes right up almost to the houses there."

Chairwoman Dapkins stated that that was the reason the zone had been changed to a Conservation Zone.

Mr. Stroh said that the buildings were already there.

Chairwoman Dapkins stated that she did not think the sheds were there. When she visited the property they looked rather new to her. She saw cattails and foxtails growing in and around the sheds.

Mr. Stroh said that the sheds were there from when the chicken business was there.

Mr. Lemanowicz stated that he had reviewed the environmental issues of this property. The maps from the Department of Environmental Protection (D.E.P.) showed that the wetlands took approximately half of the property. That was a general state map that they used. There was also floodplain on the property and if there was an overlay zone, he felt that the Board should take care in reviewing the permitted uses to avoid a situation where materials would be in those areas that should not be involved in floods. The one use that caught his eye was the tool and die contractor. There were usually oils involved with that for lubrication and such and a use like that should not be in a floodplain. Referring to the senior suite use, he felt that the Board would not want senior citizens in the floodplain because it could become an evacuation problem. He recommended that, should the overlay be approved, the board members review the uses and how they would react to a flood condition.

Mr. Wallisch said that he was trying to understand what the Stroh family was trying to accomplish. He felt they wanted to find meaningful tenants for their property. He understood that using A through D would be restrictive. He was trying to figure out what type of grouping of businesses would be appropriate and enforceable.

Mr. Roshto said that he was trying to find a balance. The vision of the 1997 Master Plan involved conservation and managing the wetlands because it was a critical area. They had that in mind when they made the change. He felt what they were discussing doing was moving back to something more than that. He reiterated that if it could not be enforced, there would be an opportunity to expand. The moment there was expansion, the wetlands would be affected. He was trying to come to a compromise where the Strohs could improve their property and do some business but at the same time prohibit expansion into the wetlands.

Mr. Stroh said those properties had always been that way. At least a third of them were totally conservation and he had never been able to use them. There really was no expansion.

Mr. Frieri said that the applicant had zero intention of expanding anywhere near the wetlands. He was present to find a meaningful way to do business and settle the issue.

Mr. Roshto reiterated the need for a site plan to enforce that intention.

Mr. Moholkar felt that the board members were in agreement that this issue would stay with the Planning Board.

Several of the board members agreed that it would be settled with this Board and not be sent to the Zoning Board.

Chairwoman Dapkins disagreed.

Mayor Rae asked Mr. O'Brien how the Board could ensure that there would be no further expansion. He asked if something could be crafted around that point.

Mr. O'Brien said that it should be done on two (2) levels. The first level would be the uses that the Board members were discussing. There would be a list of uses that would be allowed. Second would be the physical structures that were on the ground and how the "no expansion" would be enforced. They would have to submit some sort of an "as-built" or some type of survey showing what currently existed on the ground and give that to the Zoning Officer as well as to the Board. That would establish the existing uses on the ground and the existing structures on the ground. If the Board so desired, it could say that there would be no expansion of those structures. The applicant would be able to expand the house because that was a permitted use in the Conservation Zone as long as they met the various requirements of the zone. The survey would show the nonconformities in the back, the two (2) sheds. It would show how big they were and where they were located.

Mr. Lemanowicz added that the Board might want to add the floodplain line to that map along with whatever wetland transition area line there might be. That might be a discussion point as to what other uses might be permitted which would be uses E through M. For example the board members could say that use "G" could be located in the upland area only. This would give some flexibility and also protect the environment. The map with dimensions would be a huge point. The Board could adopt that map with whatever zone changes or overlay zone.

Mr. Lemanowicz said that he had been on the property a long time ago. He said that there might be some items that were there that were no longer needed. There might be dilapidated buildings and as part of this discussion, the board members could say that the applicant must clean up certain areas.

Mr. Bernstein asked Mr. O'Brien, "We are talking about three (3) properties, correct?"

Mr. O'Brien stated that that was the current proposal.

Mr. Bernstein asked if the applicant was willing to prepare a survey or site plan so that the Board would have a baseline. Based on that plan, bulk standards would be suggested. He then asked what would be done with the other two (2) properties. What would happen if they did not supply a survey? Would they also be included and how would the Township control the other two (2) properties?

Mr. O'Brien said that the original discussion before the Board was that the entire area from Madison down to the railroad which included the properties to the south of Lot 5 which was where the nonconforming uses currently existed. The reason those other properties were included was because they had a similar history of a number of nonconforming uses and structures on the property. But now they had been split off. Lot 5 was the applicant's property and had the nonconformities. Lot 7 had the farm market which was allowed by variance. They had a site plan along with their approval and could not expand. They could only do what they had been given permission to do. Lot 9 where the industrial building was located was also granted a variance. They could not change in any way under the current rules. They could not expand or change their use except to what was allowed by the variance.

Mr. Bernstein said that they were rezoning for just one property.

Chairwoman Dapkins agreed.

Mr. O'Brien said that that they were rezoning for one property and expanding the uses on the other two (2) properties that were allowed by variance. They would be going from what was given to them in their use variance and then allowing other uses to be placed on top of that in the overlay.

Mr. Bernstein asked if Mr. O'Brien would consider the other sites when establishing bulk or dimensional standards or would he just look at this property.

Mr. O'Brien said that he would start with this property. The other two (2) would be immaterial to this Board because they had already been granted site plan approval. In this case what the Board was looking for was along the lines of a site plan approval for what existed on the property in order to freeze the uses and the structures.

Mr. Bernstein said that the other two (2) sites could not comply because they would not have grandfathered the same uses.

Mr. O'Brien said that that was correct.

Mr. Bernstein stated that it was moot as to the other two (2) sites. The zone would be applicable only to this one site.

Mr. O'Brien said that the additional uses—

Mr. Bernstein interrupted and said that they would have had to have been grandfathered— the ordinance said that they would have had to have been in existence in 1997. He assumed that these uses which were pretty restrictive were not on the other two (2) sites. He used "mason contractor" as an example. Unless they could prove grandfathering in 1997, the ordinance would not be applicable to them.

Mr. Roshto said that if the Board were to get into this in more detail, he would ask that the words "pre-existing uses and operations" be struck out because it would conflict with "include the following".

There was consensus on that point amongst the board members.

Mr. Hands referred back to the conservation point and asked Mr. Lemanowicz, if the Board could propose limitations in use without being too narrow. He specifically asked about "no high-traffic."

Mr. Lemanowicz answered that traffic was obviously a concern because this was an environmentally sensitive area but the issue was what would be under the flood level. What kind of materials would be there? Nothing should be introduced into that area that would be a potential problem. For example, with swimming pool installation and repair contractors, would there be shipments of chlorine? Would they be on pallets on the floor? That was not something that was wanted in the floods. With a tool and die contractor, there would be a lot of oils used for lubrication of metal parts.

Mr. Hands asked if there were any general statements that Mr. Lemanowicz could make.

Mr. Lemanowicz answered that he could find specific listings on properties where there should be no ground water infiltration in the storm water management regulations. He would use that as a guide and create a list based on that. If there were floodplains or wetlands, care should be taken. He assumed there was no drainage control on the property so even the upland property was probably draining towards the wetlands. Once the Board received the as-built survey, decisions could be made as to what would be permitted and what controls would be added.

Mr. Hands asked if there would be some retroactive work to bring the property up to the new standards.

Mr. Lemanowicz answered that in this situation the Board could say that as part of the approval, the applicant would have to for example, remove a dilapidated shed.

Mr. Bernstein said that he would assume there would be some sort of negotiation. If the Board were to pursue this, he would suggest that at a minimum the Board would receive a survey or site plan and Mr. O'Brien and Mr. Lemanowicz would speak with the applicant in order to resolve those issues.

Mr. Lemanowicz felt that it would be an important part of the process to have a map and walk through the property with the purpose of discovering what would be an issue and what would not be an issue.

Mr. Bernstein assumed that those issues could be resolved and they could come back to the Board before the ordinance was adopted with an agreement on the site conditions.

Chairwoman Dapkins opened the meeting to the public.

Charles Arentowicz, 605 Heritage Road, Millington, reminded the board members that had participated with him about two (2) years ago and the new members that, when this applicant came forward the discussion centered on what was there. The records were such that the board members didn't know what was there. It was astounding to him that the Board did not know what was on Morristown Road. Morristown Road flooded with every storm. The board members asked Mr. Delia to determine what uses were there as of 1997. It took a year-and-a-half to two (2) years to accomplish that. They were here tonight to discuss what was there and what should be done. He himself had been on the site a year-and-a-half ago to see what was there. He reiterated that Morristown Road flooded every time there was a heavy rain and he suggested that the Board allow and grandfather the permitted uses that were there in 1997 that Mr. Delia determined. He was not suggesting any expansion. In the expansion there had to be restrictions on what could and could not be done. He assumed that the Planning Board would make the necessary adjustments. Morristown Road was in the floodplain. For whatever reason, what was done in the past in this Township had caused a lot of water problems.

Mr. Roshto had a question on "C - Minor fabricator of ceramic insulators." He said that it sounded like a limited industrial use to him as opposed to what was listed under Item 5 as "Retail and service trade uses". He asked if he was interpreting it correctly.

Mr. O'Brien said that it sounded more like a manufacturing kind of thing.

Mr. Stroh clarified that it was not manufacturing. The contractor bought small ceramic insulators, the biggest one being the size of a quarter, put them together and then sent them out.

Mr. Roshto said that that was a fabrication type of operation. He didn't want to get into a situation where there were limited industrial uses there.

Mr. O'Brien suggested that they start with Mr. Stroh's "C" and then add some language as to how extensive it could be.

Mr. Roshto felt that the word "minor" was open to interpretation. He referred to the phrase "and other limited light fabrication" and wanted that stricken. He also hoped that they could list the non-permitted uses because he felt that this began to cross the boundary of limited industrial use.

Mr. Bernstein said if one of these uses moved out, the applicant could apply to the Board of Adjustment for relief.

Mr. Roshto asked if they were in a position at this point to discuss the other ones. He wanted to discuss #13 "farm stands."

Chairwoman Dapkins said that it was there before the Conservation Zone.

Mr. Roshto added that it was a nonconforming use with a variance. This would make it conforming.

Chairwoman Dapkins noted that farm stands were difficult to regulate. She said that she was on the Board and voted for this. She also noted that there were things going on there that should not be.

Mr. Roshto said that if the Board of Adjustment approved a variance for this, they reviewed it.

Mr. Moholkar stated that it was in the ordinance that farm stands were allowed in the Conservation Zone. He felt that they should allow the four (4) uses (A through D) which were existing along with some restrictions and controls. There should not be any expansion. Anything new would require a use variance.

Mr. Roshto referred to Item 9 which was the energy conservation related businesses.

Mr. Wallisch asked why they would not fall under the non-light industrial use of those existing structures.

Mr. Roshto said that a couple of them were unclear to him. For example, "Consultants" was an office use. He felt that some of the wording, for example "solar panel construction" required reworking.

Mr. Moholkar reiterated his belief that it should be the Conservation Zone plus these four (4) uses (A through D) which encompassed most of the items that were already in the proposal. If there was a change to any one of those uses, the Zoning Board would decide if a carpentry contractor equaled a masonry contractor.

Mr. Roshto asked him if he was saying no to Item 9.

Mr. Moholkar stated that he was saying no to all of it. He wanted the four (4) uses (A through D) plus conservation.

Mr. Hands indicated that he liked some of the other uses such as woodworking.

Mr. Moholkar said that it could be worded a little differently but he wanted to make the overlay as simple as possible.

Mr. Hands agreed.

Mr. Bernstein stated that it sounded as if the Board wanted to send a recommendation to the Township Committee. He wanted to know if the Board was recommending that its consultants establish bulk standards for these uses. He asked if the Board was suggesting that this applicant provide a site plan and/or survey to its professionals before the ordinance was adopted along with some discussion of cleanup efforts.

Mr. Frieri said that the applicant would have no problem with that however he questioned whether this would be a two (2) phase process. The Board would recommend the overlay however the bulk standards would have to be worked out first.

Mr. Bernstein clarified that the bulk standards would have to be worked out before the ordinance was adopted. He felt that the consensus was that the Board agreed on the overlay with uses A through D. The Board would recommend it to the Township Committee with the caveat that there be bulk standards established by Mr. O'Brien and the applicant. In addition, the Board would want to see a site plan or survey before it was adopted. Finally, there would be some agreement as to cleanup efforts.

Mr. Roshto stated that he was not sure that all of the board members had agreed on uses A through D and on the wording. He felt that the Board should still have discussion on uses E through M.

Mr. Hands asked if environmentally sensitive activities would be covered under the bulk standards.

Mr. O'Brien said that whatever bulk standards were established for this overlay zone could define anything on the property.

Mr. Lemanowicz added that the Township already had a Critical Areas Ordinance with its own set of bulk standards.

Mr. Hands wanted to ensure that those activities would be defined somewhere.

Mr. Lemanowicz suggested that there be an as-built survey instead of a site plan. An as-built survey would be prepared by a surveyor and would be to scale. At some point in the future, Mr. Delia might have to measure something on the site. This would be an accurate snapshot.

Mayor Rae felt that the board members were in agreement on uses A through D.

Mr. Moholkar added that these uses were already confirmed by Mr. Delia as being in existence since at least 1997.

Mr. Delia stated that they could add use L to that list. This was the factory on Lot 9.

Mr. Moholkar expressed concern about "Product Warehouse". He was concerned about what type of product would be there.

Mayor Rae said that that would be taken care of under Mr. Lemanowicz's comments.

Mr. Lemanowicz said that there may be a paragraph to say that the following items shall not be stored anywhere on the property or below the flood elevation or something like that. Once he got the maps and saw where the flood elevation was—

Mr. Delia clarified that that particular warehouse was raised up above the flood level. The building itself was up out of the flood height standard. It was an injection molding corporation.

Mr. O'Brien added that there was a pond behind it on the same property.

Mr. Moholkar had similar concerns for use E "Swimming pool installation and service/repair contractors" in terms of the chemicals.

Mayor Rae said that that would be taken care of under Mr. Lemanowicz's comments.

Mr. Hands felt that that use should be stricken because it was big and bulky.

Mr. Roshto noted that eight (8) of these uses involved contractors. He asked if the board members should look at this on the perspective of contractors who would not be storing a lot of materials versus contractors who would be disrupting the environment because of chemicals or lumber they would be storing. He said that he would not have a problem with any contractor as long as it was all inside the building. The moment the contractor began storing supplies outside the building, it would impact the environment.

There was discussion amongst the board members that outdoor storage was always a problem.

Mr. Roshto asked Mr. O'Brien how that would be addressed in an ordinance.

Mr. O'Brien answered that outdoor storage was not allowed currently.

Mr. Roshto asked if that was the case, was there a problem with any contractor.

Mr. O'Brien asked if the buildings flooded under the worst circumstances.

Mr. Stroh answered that some of them had flooded under the worst circumstances.

Mr. O'Brien said given that answer, it would be a concern.

Mr. Frieri noted that the one building floor was raised.

Mr. Delia added that it was the warehouse on Lot 9.

Mr. Moholkar asked if there were limits on the types of chemicals or oils, etc., would that automatically limit for example a carpentry contractor or a woodworking contractor. As long as they did not store their supplies outside, those two examples would not be very different from each other. They would basically be contractors with offices. As long as they were not leaving supplies such as arsenic infused wood outside in bulk in the water, could it be done that way?

Mr. Roshto felt that the four (4) uses that were the worst for the environment were already there. These others didn't seem to pose an environmental impact.

Mr. Stroh stated that the mason contractor had brick and block stored outside along with sand and gravel.

Mr. Roshto asked if that was allowed.

Mr. Delia answered that outdoor storage of any type was not allowed. It was not massive amounts. It was a half of a cube of brick and a couple shovels full of sand. He did not know how many years that had been done there.

Mr. Wallisch stated that that had never been approved. Mr. Delia agreed but noted that it had always been there. Mr. Wallisch said that that was a violation of the ordinance.

Mr. Bernstein said that it might have been grandfathered.

Mr. Wallisch asked when the ordinance prohibiting outdoor storage was approved.

Mr. O'Brien said that the first time he saw the outdoor storage ordinance was in the 80's.

Mayor Rae suggested that they go through the list of uses and say either yes or no to each.

Mr. Wallisch went back to Mr. Roshto's statement that as long as all supplies were kept inside the building, there was no need to cherry pick specific contractors— general contractors as long as everything stayed inside.

Mayor Rae asked about contractors who would store materials that would be hazardous in a flood.

Mr. Moholkar answered that that would fall under the caveat of prohibiting hazardous materials as discussed earlier by Mr. Lemanowicz. It would be a general provision to this.

Mr. Lemanowicz added that the general contractor could be there as long as that type of material was not there with him.

Mayor Rae struggled with how the Board would define those "materials".

Mr. Lemanowicz answered that he would review the D.E.P. regulations and come up with a list that would be supportable. The permitted uses would be in one paragraph. Prohibited materials would be listed after that.

Mayor Rae felt that the Board was going beyond what it was originally asked to do. The applicant had come to the Board stating that there were existing uses that they wanted to continue. Some of those uses were in existence and, from family history, the applicant knew there were other uses there. For simplicity's sake, he felt the board members should go down the list and decide which uses were in and which were out. He felt that Mr. Lemanowicz's suggestion would expand those uses beyond what was initially requested.

Mr. Lemanowicz used use E "Swimming pool installation" as an example. If all that contractor did was prepare pool filters, they would not need chlorine on site. But if it was more of a service, especially a weekly pool service, the contractor might have chlorine. He clarified that there may be a description where hazardous materials may or may not be involved. Rather than try to limit the use, just limit what that use could have.

Mayor Rae said, for simplicity sake, it could read "Swimming pool installation and service/repair contractor allowed but no storage of chlorine." That would be much simpler than trying to encompass contractors in general and then say this type of storage was allowed but that was not. He wanted to use the list to come up with something straightforward and simple. He felt that that was what the applicant was asking for. It would be easier to regulate the items on the list than to expand it.

Mr. Moholkar suggested that even if the board members went through the list and said yes or no to each item, there should be one general statement which would "prohibit storage of the following materials."

Mayor Rae agreed.

Since the board members were in agreement on uses A through D, Chairwoman Dapkins asked them about use E.

Mr. Moholkar said that use E was okay except for the chemicals. The board members agreed.

Chairwoman Dapkins asked about use F "Woodworking contractors". There was agreement to approve that use.

Chairwoman Dapkins asked about use G “Small packaging facilities”. Mr. Roshto asked if they were turning that into a storage facility.

Mr. Stroh answered that there had been several packaging facilities there. One was a pottery business that warehoused pottery that was sold to florists. Another one was a packaging firm where they brought pieces in on a contract basis. For example, if somebody wanted a game put together, the pieces were shipped to this facility, put together, and shipped out as a complete game.

Mr. Roshto said that he was concerned about this.

After discussion, use G was eliminated.

Use H “Carpentry contractors” was approved along with use I “Small electronic assembly contractors”.

Use J “Tool & die contractors” was eliminated.

Use K “General repair shops” was also eliminated.

Use L “Product warehousing” was already there on the site so it was approved.

Chairwoman Dapkins questioned use M “Studios for art, music and photography”. If it brought in students and cars, it could create a parking problem.

Mr. O’Brien asked if these were studios for artists or studios for classes.

Chairwoman Dapkins assumed that there might be classes because it said “music” also.

Mr. Roshto questioned the intent for the studios. He asked the applicant if he would be okay with striking this use.

Mr. Roshto then referred back to use I “Small electronic assembly contractors” and asked that language be added to make it clear that this would not be a limited industrial operation. As long as that was added, he was okay with it.

Mr. Wallisch asked how that was different from use C.

Mr. Roshto stated that he had the same problem with use C. The language had to be changed in some way so that it didn’t sound like it could be an industrial use.

Mayor Rae asked Mr. O’Brien if that was possible. Mr. O’Brien said that he would do his best.

Mr. Hands felt that use C and use I were very similar. He asked if they should be combined into one.

After discussion, the board members felt that if they were combined, it would be too general and possibly lead to an industrial use.

Mayor Rae suggested that they eliminate use I and make use C specific to what was actually there.

Mr. Roshto said that he was not opposed to use I. His concerns were minor however he questioned how they would be able to enforce these words.

Mr. Lemanowicz suggested that they add a maximum tenant space.

Mr. Roshto said that there would only be five (5) units.

Mr. Lemanowicz said that if there was a maximum tenant area, all five (5) units could not be taken by one contractor. He suggested that the Board wait for the as-built before they decided on what that number should be.

Mr. Wallisch said that the survey should include the interior of the buildings as well.

Mr. Hands asked if there was agreement that use C and use I would remain separate.

Mr. Wallisch asked if it should be more inclusive. For example, should it say “assembly” or something similar? At this point the tenant could only do ceramics and electronics.

After discussion, the board members decided to strike the word “electronics”.

Mr. Roshto asked the board members to discuss the language on the top. He wanted to strike “...which are limited to pre-existing uses in operation prior to 1997...”

Mr. Wallisch agreed because those restrictions were being eliminated afterwards.

Mr. Roshto clarified for Mr. Frieri that what was important to him were the phrases “no expansion” and “include the following.” He asked Mr. O’Brien if the definitions for “retail” and “service trade” uses were consistent.

Mr. O’Brien indicated that he would have to check that.

Mr. Moholkar said the danger in using “retail” and “service trade” uses was the parking requirements in terms of space requirements. He felt it would be better to say that it was C plus this overlay. No expansion would follow and there should be no discussion of “retail” and “service trade” uses.

Mr. Roshto stated that parking was referenced in another ordinance for these types of uses. They would have to cross check those parking ordinances.

Mr. Roshto summarized the changes that the board members requested. They were starting with a clean slate. Everything would be stricken. Item 5 would become Item 1. It would read, “Morristown Road Business and Conservation Overlay District. The following uses are permitted with no expansion.” He listed the agreed-upon uses as follows: A, B, C, D, E, F, H, I, and L. He continued saying that the board members had agreed that everything beyond that would be stricken. Items 6 through 15 would be stricken”, including, “Any other use in the opinion of the approving authority...”

Mr. O’Brien indicated that that phrase already existed in the ordinance.

Mr. Roshto felt that it would not apply to this overlay.

Mr. O’Brien answered that that was correct. It would only apply to the Conservation Zone.

Mr. Roshto continued with, “Permitted Accessory Uses” and said that they were the same as the C Zone and would be stricken as well. “Permitted Conditional Uses,” the same thing, and a “Not Permitted” section was being added.

Mr. Moholkar added that there should be something about storage of chemicals.

Chairwoman Dapkins asked about signs.

Mr. O’Brien said that signs were allowed in the C Zone as an accessory but they were rather limited.

Mr. Lemanowicz added that the wording for signs in the C Zone would be difficult to apply to what would be going on on this property.

Mr. O’Brien said that C was a residential zone.

Mr. Roshto asked if additional signage would be required for the businesses.

Mr. Stroh answered that currently there was just one sign at the end of the driveway that only listed one of the businesses. The heating and cooling contractor had a sign like those he used at houses.

Mr. O’Brien added that there was a wooden post with a sign on it and a sign stuck in the ground both of which were next to the mailbox.

Mr. Lemanowicz looked at the photograph and thought that they interfered with the sight distance. There was one sign on a pole. There was about a foot and then there was a sign on the ground which looked like a political sign. He indicated that he would like to look at that.

Mr. Delia said that those signs were there for many years. The ground sign was not supposed to be there but he had never taken issue with it.

Mr. Stroh said the post with the sign on it was originally used when the chicken farm was there.

Mr. Delia said he would have no issue with that however they would be looking at a multi-tenant sign.

Mr. Roshto asked if the Board were to make a change here, would Mr. Stroh improve the sign.

Mr. Lemanowicz said that in preparing the as-built, a detail of the existing sign would be included. At that time, if Mr. Stroh wanted to discuss a multi-facility sign, it would be something that could be proposed for this project.

Mr. Roshto noted that he was not looking for massive changes. He just wanted to see the area improved. There was general agreement amongst the board members.

Mr. Lemanowicz said that realistically it was just a matter of time before someone came before the Board looking for a sign.

Mr. O'Brien said that because this was a residential zone at the base, the Conservation Zone, residential type signs were allowed. The signs allowed were two (2) square feet. Ground signs for a home office were also allowed. These signs could be four (4) feet high and four (4) feet square. Ground signs for private clubs were also allowed along with private recreational facilities and multi-family residential structures. These signs could be eight (8) feet high and no more than nine (9) square feet in area. These small-scale signs were allowed and one of those would be able to identify the address or the name. There would not be multiple names on the sign. There would be one property name and one address period.

At 9:30 p.m., Chairwoman Dapkins recessed the meeting for ten (10) minutes.

RECESS

Chairwoman Dapkins reconvened the meeting at 9:43 p.m.

Mr. Wallisch asked if all the uses on all three (3) lots would no longer require variances.

Chairwoman Dapkins said that that would be the recommendation of the Board to the Township Committee.

Mr. Bernstein asked Mr. O'Brien if the existing parking standards or special parking standards in the ordinance would be used in the overlay zone.

Mr. O'Brien answered that that would be the starting point unless the Board wished to direct him otherwise.

Mr. Bernstein asked Mr. Stroh if he could meet the existing parking standards.

Mr. Lemanowicz indicated that that would be a part of the survey.

Mr. Bernstein clarified that it would show where the parking was located.

Mr. Lemanowicz indicated that it was a gravel lot and not striped therefore he could not count parking spaces.

Chairwoman Dapkins added that wheel stops might give him an idea of how many spaces there were.

Mr. Frieri said that the surveyor would be able to calculate that.

Mr. Lemanowicz said, after looking at a photo, that cars could be parked against the building however in the center section there was no orderly way to park cars. Once he got the map, he would be able to work some of this out.

Mr. O'Brien said that, in addition to the parking standards, some of the other standards in the ordinance would apply such as the "no outside storage of equipment or goods" and currently there was a lot of material on the property. He asked Mr. Delia to verify that.

Mr. Delia indicated that there was some but he had not been on the property in over a year.

Mr. O'Brien said that all the other standards in the ordinance would still apply.

Mr. Frieri said that that would be for a new tenant as opposed to the grandfathered tenant who had been storing "four bricks outside since 1970."

Mr. O'Brien said that the applicant was not here for a Certificate of Non-Conformity. The Board was listing uses that would be permitted as a part of the overlay and then setting some sort of bulk standards based on what currently existed and what the equivalent standards were in both the underlying zone and in similar zones. But the rest of the ordinance such as the "no outside storage" and the parking and the signage still applied unless the Board recommended a change.

Mr. O'Brien felt it was important to put that on the record so that no one thought what existed on the property today could continue as it was. It would have to meet whatever the ordinance said.

Mr. Bernstein suggested that before the ordinance was adopted, there would be standards that would be set by Mr. O'Brien and the applicant's planner. He also wanted to see a survey before the ordinance was adopted because that would be the trigger where site improvements could be made. Once the ordinance was adopted it would be difficult to have any leverage on any applicant.

Mr. Roshto noted that it would have to come back to the Planning Board anyway.

Mr. O'Brien stated that the typical process for this township's Board was to send a proposed ordinance to the Committee for review. They could send it back with comments or take action on it. By statute, it would come back to the Planning Board for review for consistency with the Master Plan. But if the Board was going to suggest specifics such as bulk standards, he suggested that an actual ordinance be prepared with those standards and then sent to the Committee.

Mr. Bernstein asked if the Board would prefer to send the concept to the Committee or wait and have more work done. The bulk standards would depend upon the survey.

Chairwoman Dapkins thought that this was more of a recommendation. It would be up to the Committee to decide whether or not it should be moved forward.

Mr. O'Brien said that only the Committee could make the final decision but the usual practice had been to prepare a draft ordinance and then send it to the Committee based on the Board's recommendations.

Mr. O'Brien felt from the applicant's point of view, it would be better if the Committee said it was a good idea before he spent any more money for the survey and ordinance preparation.

Chairwoman Dapkins agreed.

Mr. Roshto said that Mayor Rae could take the concept back to the Committee and ask.

Mr. Bernstein stated that there should be a motion which said that the Board proposed that there be an overlay zone on certain properties—

Mr. Roshto interrupted and said that he was suggesting that the Board's liaison go back and have a discussion with the Township Committee just to get a feel as to whether the Board should go forward or not. He did not feel a formal motion was necessary.

Mayor Rae agreed.

Mr. Hands asked if Mr. O'Brien could write some sort of summary of what had been discussed for presentation to the Township Committee. He wanted something a little more concrete.

Mr. Frieri asked if it would be appropriate to poll the board members.

Mr. O'Brien told Mr. Hands that that was up to the Board.

Mr. Roshto was confident that Mayor Rae could express the Board's wishes and that the Township Committee would understand. He did not feel there was a need for a formal written document.

Chairwoman Dapkins disagreed.

Mr. Wallisch felt that in order to minimize confusion, he preferred to have a summary of what the Board was discussing so that everything was communicated to the Committee.

Chairwoman Dapkins felt that it would protect the applicant.

Mr. Roshto disagreed. He felt that the Committee would not make a ruling about this subject until the entire packet was in front of them. He wanted to poll the committee members to get an understanding of where they were leaning. He did not think it was necessary to have anything written up.

Mr. Bernstein said there would be no cost involved in writing something up. He suggested, "Resolve that the Planning Board recommend to the Township Committee adoption of an overlay zone on the specific properties permitting whatever uses subject to the following caveats and that a survey/as-built would be prepared and submitted to the Planning Board for its review and subject to standards being established by the Board's planner." He added that it would be subject to the Townships other ordinances such as parking, outside storage, and signage.

Mr. Frieri agreed with Mr. Bernstein. The applicant would know where he was going.

Mr. Roshto indicated that the Township Committee would not make a ruling on that one page document. He wanted to make that clear to the applicant.

Mr. Frieri said it was his understanding that the Planning Board was sending a recommendation to the Committee that they were in favor—

Mr. Roshto said that was not correct. The Board would be sending the Committee information about what they were doing so that Mayor Rae could poll them to find out if the Board should move forward with this or not. Then the recommendation would be sent as an ordinance. The bulk requirement ordinances and the land-use ordinances would be sent to them and then the Committee would rule on it. This would be an extra step to ask them what they were going to do.

Mr. Wallisch added that the board members did not want the applicant to spend extra money and extra time on something that the Committee did not want to do. The Board members wanted approval to proceed.

Mr. O'Brien added that the Board members would vote on the resolution that Mr. Bernstein had just outlined.

Mr. Stroh asked, "Didn't the Township Committee already say for the Planning Board to go ahead and look at this?" He wanted to know why the Board needed to do this again.

Mr. Bernstein stated that in order to save money, he wanted to make sure that the Committee was on board. The survey would be expensive and Mr. O'Brien would have to spend time with Mr. Stroh's planner to set the conditions. It was Mr. Stroh's option to not send this to the Committee. He didn't want any surprises.

Mr. Roshto said that he was in favor of talking with the Committee however he felt it was unnecessary to write up a resolution and vote on it because Mayor Rae was present. He was fully informed and could discuss this with the Committee.

Mr. Wallisch said that he wanted something to make sure that the communication was clear.

Mr. Roshto said that the Committee would not vote on this. It would be an informal polling.

Mayor Rae agreed. He felt that if the Committee did not want the Board to move ahead, the applicant should know this before spending any more money to put together the ordinance.

Mr. Hands said that as long as it was not a detailed discussion, he was fine with it. If it was to be a detailed discussion, he felt that it should be on paper.

Mr. Roshto said to Mr. Hands that the Board was not sending a detailed document. He just wanted to know if the Committee was interested in the concept or not.

There was agreement that a copy of the motion would be sent over.

Mr. Bernstein offered the following is a motion: "Resolve that the Planning Board recommend to the Township Committee that it adopt an overlay zone with the properties known as Lots 5, 7 and 9 on Morristown Road with the uses that were discussed and with the caveats that the Board Planner and Board Engineer will receive an as-built survey showing what is on the property at this point and based on that, the Board Planner, after consulting with the applicant's planner, will prepare a series of bulk or dimensional standards for this zone. The zone would be subject to existing zoning ordinances pertaining to signage, outdoor storage and parking."

Mr. Roshto stated that he would have to vote "no" on this. He felt that he could not vote on a motion that evening supporting this concept without having all the paperwork. He did not want to make a recommendation to the Township Committee. He wanted to inform the Committee that the Board was discussing something and then get their feedback as to whether the Committee supported it or not.

Mr. Bernstein rephrased it to say the following: "The Planning Board has discussed the following and then add what he had just said. Does the Township Committee support this and should the Planning Board move forward?"

Mr. Roshto agreed with that.

There was discussion as to whether they should be in the form of motion. Mr. O'Brien stated that some formal action had to be taken.

Mr. Wallisch suggested that the motion request that the Township Committee give the board members a directional okay to proceed with what they were doing.

Mr. Moholkar motioned and Mr. Hands seconded. A **ROLL CALL VOTE** was taken. Those in Favor: Mr. Hands, Mr. Moholkar, Mayor Rae, Mr. Roshto, Mr. Wallisch. Those Opposed: Chairwoman Dapkins. The motion was approved by a vote of 5 to 1.

Mr. O'Brien stated that the next step would be for Mayor Ray to report to the Committee and then advise the Board as to their decision. He asked Mayor Rae when he felt he would present it to the Committee.

Mayor Rae answered that he would bring it up at the meeting scheduled for tomorrow night.

There was discussion as to when the survey could be completed pending a positive response from the Committee. Mr. Lemanowicz indicated that they would have to wait until some of the snow disappeared.

Mr. Roshto asked who would be putting the ordinance together.

Mr. O'Brien said, assuming that the Committee encouraged the Board to proceed, formal action could be taken at this level. He suggested that the Board wait to see what the Committee had to say.

Mr. Hands said that if the Committee had any caveats, the board members could discuss them before the survey was done.

Mr. Lemanowicz stated that the survey would have a big role in determining some of the bulk standards. Board members would not want to begin creating bulk requirements until they could see that map.

Mr. Hands wanted to know if the professionals had enough information and input from the board members to proceed assuming that the Committee was in favor of this concept.

Mr. O'Brien stated that as long as the committeemen did not forward any additional directions, the professionals could proceed. If there were any additional comments from the Committee, they would be brought back to the board members for discussion first. He noted that Mr. Stroh and Mr. Frieri should be part of those discussions should there have to be any.

Mr. Delia added that, should this be approved, any change in uses should require a zoning application and an Administrative Site Plan Waiver as was done with other commercial entities in the Township.

Mr. O'Brien said that any change in use would have to fulfill any requirements listed in the site plan ordinance.

Mr. Delia stated that this would enable the Township to know which tenants were leaving and which tenants were coming in.

Mr. Roshto asked Mr. O'Brien to work on the title. Currently it was called "Morristown Road Business and Conservation Overlay Zone."

Mr. O'Brien agreed that the word "conservation" was redundant.

Chairwoman Dapkins requested a motion to adjourn. Mr. Moholkar motioned and Mayor Rae seconded. The meeting was adjourned at 10:10 p.m. by unanimous **VOICE VOTE**.

CYNTHIA KIEFER
Planning and Zoning Secretary

Date