

MINUTES OF THE
REGULAR MEETING
OF THE LAND USE BOARD
AUGUST 1, 2017

THE REGULAR MEETING OF THE LAND USE BOARD OF THE BOROUGH OF MANVILLE, COUNTY OF SOMERSET, STATE OF NEW JERSEY, WAS HELD ON AUGUST 1, 2017, IN THE MANVILLE MUNICIPAL COURTROOM, 325 NORTH MAIN STREET, MANVILLE, NEW JERSEY AT 6:30 P.M.

CHAIRMAN GEORGE KELMAN PRESIDED

Chairman Kelman called the Regular Meeting to order at 6:30 p.m., and the Secretary announced that proper notice had been given by the posting of the Regular Meeting notice and by transmitting the notice of the meeting to the Courier News and the Star Ledger.

SALUTE TO THE FLAG

Everyone present participated in the Salute to the Flag.

ROLL CALL :

CHAIRMAN GEORGE KELMAN, Present
VICE-CHAIRMAN, TED CAMACHO, Present
JOE BARILLA, Present
COUNCILWOMAN DAYNA CAMACHO, Present
VACANT POSITION
RUDY NOWAK, Present
MAYOR RICHARD M. ONDERKO, Absent
JIM POWERS, Present
DONALD QUICK, Absent
BRANDON AGANS, Alt. #1, Present
STEVE RODZINAK, Alt. #2, Arrived at 7:06 p.m.
MICHAEL KASSICK, Alt. #4, Arrived at 6:38 p.m.
CHRISTOPHER M. CORSINI, ESQ., BOARD ATTORNEY, Present
BOB BOGART, BOROUGH ENGINEER, Present

APPROVAL OF MINUTES

Chairman Kelman requested approval of the minutes of the Regular Meeting of July 5, 2017.

Rudy Nowak, seconded by Jim Powers, made a motion to approve the minutes of July 5, 2017.

All present were in favor.

APPLICATIONS

Chairman Kelman announced that we would be taking the Agenda out of order this evening, while waiting for other members to arrive.

A/ Appeal of Application #PB-17-02
1419 West Camplain, LLC
Block 122, Lot 9, 1419 West Camplain Road
Use Variance

Attorney Corsini gave a brief statement of the appeal. He explained that this is an appeal of the Zoning Officer's decision pursuant to subsection "a" of the statute (Section 70 of the MLUL). He stated that the Applicant must provide proof that the use intended was not abandoned (Section 502 of our Land Use Ordinance) which he read into the record as follows:

"If the non-conforming use of any land or building is terminated for a period of time of one-year or more, such termination shall be presumed to constitute an abandonment for the purposes of this ordinance, and the burden shall be placed on any person asserting that such was not abandoned to affirmatively prove such assertion. This provision shall not preclude the finding of an abandonment by reason of cessation or termination of use for a period of less than one year."

Attorney Corsini stated that the applicant went to the Zoning Officer pursuant to Section 511 of the Ordinance, and he has denied the use. The Applicant is now appealing to the Board under subsection "a".

Mr. Gorney quoted Section 503, and provided the Board members with copies of the Ordinance on which he bases his argument.

Attorney Corsini stated that Mr. Gorney can use that to constitute part of his argument. He stated that the appeal that comes to the Board is from the Zoning Officer's contention that the use is abandoned.

Mr. Gorney also presented the Board with copies of the letter from the Zoning Officer, and the Affidavit of the prior owner, Thomas Mezoff. The Affidavit was marked as Exhibit A-1.

Mr. Gorney noted that substantial improvements were made to the property after a fire in January of 2003. He stated that A-1 contains copies of permits applied for. He also stated that the former owner paid the sewer bills from the time of the fire to September of 2016, and the bank paid the taxes on the property during that period. He stated that it is the Applicant's position that in order to have an abandonment, there has to be something besides mere time.

Mr. Gorney stated that his client would give testimony regarding the permits.

Mario Grabowski, 1419 West Camplain Road - reviewed the permits contained in Exhibit A-1. He also noted that he has paid the utilities on the property since he acquired it in August of 2016. He noted that there was a letter in the packet from the Tax Collector stating that all tax and sewer payments are up to date on the property.

Attorney Corsini stated for clarification to the record that Mr. Gorney presented the Board with a packet of documents that contain page numbers prefaced with "A". He stated that the Board will treat this document, for the purposes of the record, as "A-1" in its entirety.

Mr. Grabowski presented plans to the Board that were approved in 2006 for a two-family house after the fire in 2003. He stated that after repairs were done, he submitted plans for a two-family house, which were accepted by the Borough. The plans, in their entirety, were marked as Exhibit A-2.

Mr. Grabowski stated that the house was originally three bedrooms upstairs and three bedrooms downstairs. He stated that the plans were approved for a two-bedroom apartment upstairs, and a three-bedroom apartment downstairs.

Mr. Grabowski stated that he applied to Mr. Wilczek, the Zoning Officer, for an application, which was denied. He stated that there was some inconsistency in the record. Mr. Wilczek told him that in 2006 the property was listed on the property record card as a single-family home. Mr. Grabowski stated that there are permits from October 16, 2006 for smoke detectors, plumbing, and electrical for a two-family house. He referred to the package having page numbers starting with "F".

When questioned by Chairman Kelman, Mr. Grabowski stated that he purchased the home in August of 2016 and that he purchased the property from a Sheriff's sale. He stated there was no distinction as to whether the property was a one- or two-family house. He stated that he did intense investigation checking many town records, and there were plans for a two-family house. He stated there were no violation letters, and Mr. Mezoff never received any letters stating that the house was being changed to a single-family from a two-family. He stated that the lot size is 40 x 100.

Chairman Kelman noted that the home is located in the S80 zone, which would require an 80 x 100 lot.

Mr. Grabowski stated that the house is 100 years old, and it is a non-conforming use. He stated that the house next door, 1501 West Camplain, is also a two-family house on the same size lot. He stated that things have changed in 100 years, and there may be issues with parking, however, he is willing to work with the Board to create additional parking if necessary. He stated he will address any concerns with the neighbors.

Mr. Grabowski presented a packet of photographs which were marked as Exhibit A-3 showing two electric meters, new framing for both floors from fire damage on the second floor and water damage on the first floor, and three electrical panel boxes. He also noted there were photos of the lolly columns in the basement and rough electric.

Jim Powers asked if Mr. Grabowski has evidence that the house was a two-family home prior to 1996.

Mr. Grabowski stated that he has the MLS listing stating it was a two-family. The listing was marked as Exhibit A-4.

Mr. Grabowski also noted the copy of the property record card which states that the property is a two-family home.

Chairman Kelman explained the appeal to the public before opening the public portion.

Paul Lipot, 214 South 15th Avenue - stated that originally this was a single-family home and a store-front, and one family lived in that house. He also spoke about lawn cutting and snow removal.

Mr. Grabowski stated that prior to 1996 it was listed on the tax record as a two-family house. He also noted that he is going by the findings of the Zoning Officer. He stated he has been mowing the lawn once per month, and he has not received any violations. He also stated he removed snow every time it snowed, however, maybe not the same day. He said that once he is granted permits to work on the property, he will maintain it.

Chairman Kelman asked Mr. Lipot if he was aware that it was a two-family while he was living there.

Mr. Lipot stated he believes there was more than one family living there. He also stated that the next door property is not the same size.

Mr. Grabowski disagreed and stated that it was the same size.

Donald Dahm, 1415 West Camplain - stated that the property has not been tended to in many years. He stated that the current owner is not tending to the property now.

Mr. Grabowski stated that he has been taking care of the property and has received no complaints. He stated that when it is converted to a two-family, all the work will be done in two months.

When no one else in the public had questions for Mr. Grabowski, Chairman Kelman closed the public portion.

Attorney Corsini stated that the standard for the Board to consider is as an appeal of the Zoning Officer decision.

Mike Kassick asked about the electrical box that was replaced.

Mr. Grabowski stated that the whole building was rewired in 2005 or 2006 and a new electric box was installed by PSE&G in 2006. He stated that the electric and plumbing inspections were passed.

Mike Kassick remembered that the property was "White's Market" at one time, and the owners lived upstairs and the back was used for storage. He stated it was one family and the building downstairs was a business.

Mr. Grabowski stated that according to the records of the town and when it was sold in 2008, it was a two-family home.

B/ Application #PB-17-01
Mark Manville, LLC
Block 82, Lot 42.01, 1 North Main Street
Preliminary Major Site Plan, Final Site Plan, Use Variance,
Bulk Variance, Conditional Use Approval

John Wyciskala, Esq., thanked the Board, Police Department, and the Borough Professionals that gave their time regarding this matter. He began his closing statement saying that testimony was provided on April 4th, May 2nd, and July 5th. He provided a history of the application noting that the Trojanowski family made the decision to close the business and sell the property after 100 years of business. He stated that the development of the first Royal Farms Convenience Store with fueling will be a major benefit to the Borough of Manville and the community. He stated that they provided an overall design and layout for the project, and he spoke about the many design elements that make the building and canopy attractive, and it will be one of the most attractive buildings on Main Street. He noted the testimony that was heard over the course of the hearings, the comments from Borough professionals, Board members, and residents which resulted in plan changes. He stated that they worked with Somerset County over the course of this application, and resolved any issues the County had relative to ingress and egress since the County has jurisdiction on North Main Street. He stated that his project team has been responsive, courteous, and respectful in responding to comments and questions from the public.

He reviewed the testimony of Michael Jeitner of Bohler Engineering, who has been involved in the design of numerous Royal Farms Convenience Stores with fueling. He noted that Mr. Jeitner is not only familiar with the design, but also with the operation of those stores. Mr. Jeitner testified that the project will provide job growth for 40 to 50 employees, and he described the inside and outside operations, safety, delivery and waste recycling. Mr. Wyciskala also reviewed Mr. Jeitner's testimony as to the safety equipment, emergency shutoffs, equipment exceeding DEP standards, and training of employees.

Mr. Wyciskala provided Mr. Nowak with information he requested regarding the grades of gasoline, which will be Regular (87 octane), Medium Grade (89 octane), Premium (93 octane) and diesel.

Mr. Wyciskala reviewed the testimony of Matt Seckler, the Traffic Engineer who testified as to traffic generation and the pass-by traffic rather than new traffic that would be utilizing the facility. He noted that Mr. Seckler addressed Mr. Barilla's questions about real time trip generation, and provided data from other similar sites that was consistent with the ITE manual, and actually lower than what is stated in the ITE manual. He reviewed Mr. Seckler's testimony regarding site circulation for truck and pedestrian customers, safety and deliveries. He also spoke about Mr. Seckler's testimony regarding hours of fuel deliveries, for which they have agreed to restrictions during peak hours. He also stated that Mr. Seckler addressed the questions of the public concerning proximity issue to schools and churches with 1,500 feet. He noted that this is now irrelevant since the Zoning Ordinance does not have a separation between fuel stations and schools or churches. Nevertheless, Mr. Seckler performed a study as to the number of children in the morning and afternoon walking near the site, and the numbers

were not very high. Mr. Seckler addressed the concerns of the Board and residents, he created an additional sidewalk through the site to provide safe pedestrian passage to avoid walking across the driveways.

Mr. Wyciskala noted that they performed an analysis based on Mr. Nowak's questions regarding safe distances between fueling stations and schools and churches. He stated that Mr. Seckler did an analysis on some similar stores in the area, and he provided a detailed summary of numerous convenience stores with fueling operations that are located next to or across the street from schools and churches which function efficiently and safely.

Mr. Wyciskala also noted that Sgt. Petrone attended the last meeting and answered questions. He also noted that Sgt. Petrone stated that the Police Department did not have an issue with the design of the facility, other than the recommendation that fuel deliveries not occur during morning peak hours.

Mr. Wyciskala noted that they have presented their application for "D" variance relief, along with Bulk Variance relief that has been reviewed in detail. He noted that the Board should understand that the nature of the "D" variance, which is the more significant of the relief in any application. He explained that they are not seeking a D-1 Use Variance, since both uses are permitted in the Commercial Zone, however, motor vehicle service stations, although permitted, they are a conditional use, and the applicant must satisfy all the conditional use standards in the zone. He explained that there is a single deviation from one conditional use standard in the ordinance, which is the requirement that motor vehicle stations fuel pumps and service facilities be set back a minimum of 37 feet from the right-of-way. He explained that they have proposed a setback of 32.3 feet for the canopy over the pumps, and not the pumps themselves which are 44.8 feet from the right-of-way. He stated that the 44.8 feet is actually further from the right-of-way than the other existing gas stations on Main Street.

Mr. Wyciskala also noted that they originally noticed this application based upon a 1,500 foot requirement to churches and schools, however, in the final analysis, it was found that the Borough Ordinance does not have that separation standard for churches and schools. He addressed the standard with respect to 1,500 feet from another gas station, and he stated there is a former facility within that distance, however, their position is it is not an operating fuel station, and as such, there is no deviation in that regard. He stated that they provided testimony and proofs to be sure it was covered.

Mr. Wyciskala also explained that they noticed for two principal uses on one lot, however, after a further review of the Zoning and Land Use Ordinances, they did not find a prohibition to two principal uses. He stated that these are uses that are normally intertwined now.

Mr. Wyciskala reviewed the testimony of John McDonough, the Planner who testified as to the variances, the separation standards which go back to a time when fuel systems did not employ the same safety protections. Mr. Wyciskala stated that Mr. McDonough reviewed all the bulk variances, and he provided testimony that satisfied the burden and this Board can grant the requested variances in accordance with the Medici case, the Coventry case, and the other applicable case law that the Board has heard.

Mr. Wyciskala discussed the conditions that were suggested over the course of the hearings. He stated that it is within the Board's purview to impose reasonable conditions when variances are sought. He stated that he has reviewed the transcripts, and he referred to the following conditions:

- No fuel deliveries in the morning peak hours (7 a.m. to 9 a.m.)
- No fuel deliveries in the evening peak hours (5 p.m. to 6 p.m.)
- No fueling of tractor trailers (to provide signage, if necessary)
- No turn signs (left onto Brooks; right onto North Main) for large trucks
- Imposition of Title 39 allowing Police Department to issue tickets on site
- Additional sidewalks

Mr. Wyciskala spoke about public comments and noted that members of the public with their own business interests gave comments. He also stated that the other gas station owners and counsel from the former Lukoil site commented, which he stated the standard for competitive businesses to object is questionable. He stated that the applicant did not object, however, they did not agree with the comments made. Mr. Wyciskala noted that competition is not a bad thing, and consumers are entitled to options and alternate brands.

Mr. Wyciskala stated that the approval of this project will provide the Borough with the enhancement of the property on North Main Street, which may encourage other businesses to enhance their properties. He quoted a member of the Board who after reviewing the site renderings stated this will be the nicest building on Main Street. He stated that his client is making a significant investment in the property acquisition and redevelopment of the property. He noted that Mark Development has been in the business of development for twenty-five years and have created hundreds of commercial retail projects, and they are well respected. He also noted that Royal Farms has a track record of being very civic-minded in the communities they serve, and they will support local law enforcement and be a part of the Manville community.

Mr. Wyciskala respectfully requested approval of the Board for this project.

Rudy Nowak asked what the tier level of the gasoline will be for sale.

Chairman Kelman stated that he has research tiers of fuel, and it is his understanding that Royal Farms purchases fuel from the lowest bidder, therefore it will vary on whoever is the lowest bidder at the time.

Chairman Kelman thanked Mr. Wyciskala for summing up the testimony and evidence presented and began the Board discussion on the application.

Attorney Corsini made the Board aware that the 1,500-foot requirement for churches and schools is not a variance that is in play for this application. He stated that the canopy issue is a conditional use variance, subject to the proof therefor. He stated that the variance for the 1,500 feet from another service station, if the Lukoil was active, would certainly be a conditional use. He stated it is a question of fact for the Board to

determine whether it is an active station. He stated that the balance of the relief requested is for C variances, and the Board is aware of the standards to be applied to both C variances and D variances based on competent proof provided by witnesses to the Board. He stated that he will answer any questions as to these issues, and he hoped the Board would frame the deliberation in those terms.

Chairman Kelman began the discussion by noting that the D variances are conditional use variances, which means that if the Lukoil station was not in 1,500 feet and the canopy over the fuel pumps was not within 37 feet of the right-of-way, there would be no need of a D variance. He stated that the Lukoil station has been closed for some time, so there is a question as to whether or not that is an active service station. He informed everyone that he grew up in the Borough and at one time there were gas stations throughout the town.

At this point the discussion was interrupted by a member of the audience, and the Chairman requested a five-minute break.

A break was taken at 8:10 p.m.

Chairman Kelman called the meeting back to order at 8:16 p.m.

Chairman Kelman continued to explain the conditional use variances sought by the Applicant. He noted that he grew up in town, and at one time there were numerous gas stations throughout the town: a Sunoco Station where Verizon is, the Lukoil Station owned by Mr. Manna, a gas station at the corner of Main Street and Kyle Street, a gas station on South 13th and West Camplain Road, and on South Main Street. He stated that at one point in time there were at least five gas stations in town. He also stated that he tried to research why the Ordinance is written as it is with the 1,500-foot distance provision, however, he could not find that information. He stated that the question is whether the Manna gas station is a viable gas station since it has been closed for some time due to environmental issues, and we do not know when it will be reopened. He stated that if it was to reopen, it is his position that the 1,500-foot zoning restriction is arbitrary. He stated that the Board is a quasi-judicial forum that must follow case law provided by the court system. He stated that the standard for approval of the variances is whether the site can accommodate this use even though it is within 1,500 feet of the closed Lukoil station.

Chairman Kelman also noted that the second issue is whether the canopy extending into the 37-foot area causes substantial detriment to the public. He stated the Board should consider if the gas station will fit in the community and be consistent with the Zoning Ordinance. He stated that it would be a permitted use in the Commercial Zone if it was not for those two conditions. He stated that it is his opinion that neither of those conditions would cause a substantial detriment to the public if it is approved.

Chairman Kelman spoke about the various C variances dealing with parking spots, setbacks, and lighting. He stated that he has reviewed the list of the C variances, and it is his opinion that the C variances are not so substantial that the application can be denied. He opened the discussion to the rest of the Board members.

Steve Rodzinak stated that he agreed with everything Chairman Kelman stated, and the testimony he has heard and listened to. He stated that the positive criteria has far outweighed the negative criteria, and with the restrictions and modifications they have made, he thinks it is a good application.

Rudy Nowak questioned which Board members were eligible to vote on the application tonight.

The secretary read the list of members eligible to vote: Joe Barilla, Ted Camacho, George Kelman, Rudy Nowak, Jim Powers, Brandon Agans, and Steve Rodzinak.

A discussion was held regarding eligibility to vote. Attorney Corsini explained the voting process.

Chairman Kelman thanked their public for their interest in this application, however, he stated that many of the people who have commented have personal interests in seeing this application denied, and that is something that the Board can consider in listening the public comments. He asked the Board to focus on the testimony provided by the experts, their personal knowledge of the town, the Master Plan, and the Zoning Ordinance as interpreted by the Board.

Rudy Nowak stated that he feels a member voting negatively should give their reasons therefor.

Chairman Kelman stated that it is his understanding there is no requirement for a Board member to do so, however, he feels it will be beneficial for this application to state reasons.

Chairman Kelman also stated that he does not feel this application at this location will create any more of a hazard for any pedestrians than any other business in town. He stated that anyone can be a potential victim to anyone who is not paying attention to what they are doing. He stated that if drivers and pedestrians both act in care, there should never be any accidents.

Rudy Nowak requested that Mr. Rodzinak make a sworn statement that he listened to the recordings of the meetings he missed.

Chairman Kelman stated that he did not think it was appropriate, however, if Mr. Rodzinak was willing to do so, he can.

Attorney Corsini had Steve Rodzinak raise his hand and swear that he listened to the recordings of the meetings he missed, and that he can give accurate and honest testimony before the Board.

Rudy Nowak stated that he believes this is an over-intense use of the property. He feels that either use would be bad enough, but to combine the two in a facility open 24 hours a day, seven days a week, and 365 days a year is incomprehensible that this is the best use of the property. He stated that a gas station on the best corner in the Borough is not the best use. He agrees it is a beautiful building and an improvement, however, it is not

a safe use for this property. He stated that the corner is one of the most dangerous intersections in Somerset County, and an intense use such as this will make it more dangerous. He stated that this is not in the best interest of the Borough.

Chairman Kelman discussed the issue of the increase in traffic. He stated that he personally would stop there if he happened to be driving by and needed gas or needed to buy something. He stated that testimony has been given that this is not a destination location, and he does not go out of town to get gas or buy food unless he is driving by. He stated he does not see that this application will significantly increase the traffic in town. He acknowledged that Main Street during rush hour is very busy, but he doesn't think this will change. He noted that Somerset County has reviewed all the plans and has signed off on them. He also stated he feels traffic will be improved when Somerset County removes the second lane.

Joe Barilla commented that the Board must make a decision based on laws and by the Borough professionals. He stated that a decision cannot be made based on personal like or dislike. He stated that if the professionals say that there is no detriment regarding traffic safety, the Board should consider that. He stated that if this matter goes to appeal, the Judge will review the transcript for why members voted no and for evidence that supports it will be a detriment.

Rudy Nowak stated that the traffic on First Avenue toward the Post Office is very busy and cars use it to avoid Main Street.

Chairman Kelman stated that he has uses First Avenue as an alternate to Main Street a few times a week, and he has never had more than two cars in front of him waiting to make a turn at the stop sign.

Chairman Kelman requested a motion to grant the variances requested in this application.

Steve Rodzinak*, seconded by Brandon Agans, made a motion to grant the variances as requested in this application.

*with the conditions set forth by the applicant.

ROLL CALL: AYES:BARILLA, KELMAN, AGANS, RODZINAK
 NAYES: CAMACHO, T., NOWAK, POWERS**

**Mr. Powers stated his reasons for denial of the application is the safety and well-being of the people of Manville in conjunction with the proper administration of the applicable law. He stated that the project is a far too intense use of the property. He noted that the intersection is already notorious for traffic and accidents, and he stated that Somerset County has noted it as one of the most dangerous intersections in Somerset County. He stated he does not feel it is in the best interest of Manville and its citizens. He stated that two-principal uses directly across from another convenience store is not suitable to existing traffic conditions. He stated that the proposed project simply cannot accommodate the problems associated with the proposed use. He stated that the project will cause substantial detriment, and he mentioned the issue of the project being within 1,500 feet of another service station. He stated that in reality the other station has

been undergoing a massive remediation process which is nearly complete. He stated that the benefits of this project are outweighed by the substantial detriment, mostly the effects of traffic at the location. He also stated that the project meets no need for the town, and it is unnecessary.

Chairman Kelman stated that the application has been denied.

Mr. Wyciskala thanked the Board for their time.

C/ Application #PB-17-05
 Dharm, Inc. t/a Dunkin' Donuts
 Preliminary Major Site Plan, Final Site Plan
 Block 150, Lots 15-19 and 25 - 321 South Main Street

Chairman Kelman requested that the Applicant come forward and continue their application from the July 5th meeting.

Carl A. Picazio, Esq., appeared on behalf of the Applicant, Dharm, Inc., t/a Dunkin' Donuts. He stated that they are continuing the presentation of their application for the traffic study and an update of the plans. He stated that both witnesses are here to provide testimony. He also advised that they received a letter dated July 28th from Engineer Stan Schrek indicating his review of the plans. He stated that Gary Dean, Traffic Engineer, would be testifying regarding stacking of vehicles in the drive-through. He also stated that Mr. Patel of Dharm, Inc. is here to answer questions regarding the site itself or operations on the site.

Mr. Picazio noted that Oliver Young is here from GK+A Architects in place of Cynthia Fall, who testified at the last meeting.

Oliver Young, GK+A Architects gave his curriculum vitae stating he has been practicing in the field of Architecture since 1998, and he has been a licensed Architect in the State of New Jersey since 2006.

Attorney Corsini accepted his qualifications and swore him in.

Mr. Young stated that Cynthia Falls prepared the report, however, she is on vacation. He stated that he has reviewed the drawings, report, and Van Cleef's letter of response. He testified that drawings were resubmitted on July 13th in accordance with Van Cleef's letter of June 29th. He stated that they received a second letter from Van Cleef on July 28th indicating that they have addressed all the technical comments.

Chairman Kelman noted that Mr. Schrek's July 28th letter had some comments regarding letters of approval and no interest, and asked if those issues have been addressed.

Mr. Picazio stated that they are in the process of getting those documents. He further noted that obtaining those letters can be a condition of the approval, if the Board grants it.

Chairman Kelman asked Mr. Young about the cuing of vehicles in the drive-thru and whether any changes have been made to the plans.

Mr. Young stated that they have not made any changes to the plans.

Jim Powers asked what the maximum amount of cars will be in the drive-thru.

Mr. Picazio stated that Mr. Dean would be able to testify to that.

Chairman Kelman opened the public portion for questions to Mr. Young.

When no one from the public had questions for Mr. Young, Mr. Picazio requested that Mr. Dean testify.

Gary Dean, Dolan and Dean, Traffic Engineers - gave his curriculum vitae stating he graduated with a degree in Civil Engineering and has been a Traffic Engineer since 1983. He also noted that he has appeared in Manville on two prior occasions for the Big Apple Circus and the Adesa Auto Auction expansion five years ago. He also noted that he has represented several different Dunkin' Donuts franchisees in 50 or 60 different locations throughout the State, which included studies of drive-thru operations and cuing.

His credentials were accepted by the Engineer and Attorney.

Mr. Dean testified that he has reviewed the letter from Stan Schrek, and he is aware of the concerns of the Board regarding the adequacy of stacking. He stated that in any case, whether the establishment is Dunkin' Donuts, Starbucks, McDonalds, or any other facility with a drive-thru, the fundamental concern is safety. He stated that they want to insure there is adequate space on the site to accommodate what is expected to be typical stacking to avoid backups on public streets. He stated that this site is the conversion of what was previously a bank to Dunkin' Donuts. He stated that five vehicles can fit in the cue, and he referred to the site plan, Exhibit SP2 of GK+A Architects of April 24, 2017. He stated that any subsequent vehicles will stack within the parking lot, and a stack of 15 vehicles or more would cause spilling onto South Main Street. He stated that 5 vehicles is typical for Dunkin' Donuts, and maximum in morning peak hours was reviewed at other Dunkin' Donut sites. He stated that many sites are substantially busier than they expect this location to be on South Main Street since they are on two- and three-lane State highways like Route 22, which are carrying thousands of vehicles per hour. He gave the following findings:

Route 6, Little Falls - 10 vehicle cue maximum
Stelton Road, Piscataway - 6 vehicle cue maximum
Route 36, Long Branch - 6 vehicle cue maximum

He stated these were maximum numbers at 7:30 in the morning as people are on their way to work. He noted that the other tenants located in this shopping center aren't generating any traffic at that time, when Dunkin' Donuts will be the busiest. He stated

that at the time of the morning, cuing will have no effect on the on-site access and circulation.

He stated that they also reviewed Starbucks locations, as follows:

Route 22, Green Brook - 8 vehicle cue maximum
Flemington - 10 vehicle cue maximum

He further noted that 10 vehicles can fit on this site. To create a larger cue, some parking spaces would have to be removed. He stated that in light of a mixed use nature of the site and the fact that Dunkin' will be less busy mid-day hours when the other tenants are busy and need parking, it would not be recommended to eliminate parking spaces for a drive-thru stack. He stated that the stack can be contained on the site.

He added that Mr. Schrek commented regarding Saturday morning, so they did additional traffic counts on a Saturday morning. He stated they were done on July 22nd and the peak hour was right around noon when CVS was busiest. He stated that it is not a peak time for Dunkin' Donuts. He stated that at that time there were 45 total vehicles at the site in a one-hour time period, so less than one car per minute. He stated that at that time he would expect cuing at Dunkin' Donuts to be around 3 or 4 vehicles.

Jim Powers asked about vehicles entering the site from Kyle Street.

Mr. Dean stated that they can change the on-site flow of traffic by directing vehicles to use the Main Street entrance for drive-thru. He stated this can be done with signing and striping. He stated that the traffic flow is much less on Kyle Street than on Main Street. He explained the striping that could be done by referring to the site plan. He also stated that he doesn't think it is necessary.

Rudy Nowak asked if a study was done regarding the traffic light at Kyle and South Main.

Mr. Dean stated that they did do the study, and it is controlled by Somerset County.

Jim Powers asked about the distance available to exit the drive-thru when there is a delivery.

Mr. Dean stated there would be enough room, since there is 70 feet available between the loading area and the front of the drive-thru. He noted that this is the same design that has been there for the previous tenant, the bank. He also noted that deliveries are not usual made during peak morning hours.

Mr. Picazio noted that CVS does not open early to accept deliveries during the peak times, and stated that Dunkin' Donuts is not busy later in the day such as lunch and dinner time. He asked Mr. Patel to comment.

Attorney Corsini reminded Mr. Patel that he is still under oath.

Mr. Patel, stated that the big truck comes once per week, and usually that happens between 2 a.m. and 4 a.m. He stated there is also a 12-16 foot box truck that makes the deliveries, not a tractor trailer. He stated that they set the time for large truck deliveries at between 5 a.m. and 6 a.m., before rush hour. He stated that they can also request a smaller truck.

Chairman Kelman opened the public portions to questions to Mr. Dean.

Dean Shepard, P.O. Box 222 - asked what the length was from the service window to the end of the cue. He noted that the cars will not be close to each other.

Mr. Dean stated that there was 98 feet available, so even the largest car, which is a Chevy Suburban at 18 feet 3 in., allowing 20 feet per vehicle would allow 5 cars in the cue. He stated the average minivan is about 16 feet. He stated it may even allow 6 vehicles if they are smaller.

Mr. Shepard asked about arrows on the site plan off of South Main Street.

Mr. Dean stated that the arrows designate in-bound and out-bound movements.

Mr. Shepard stated that more than 5 cars will block the parking. He noted on the site plan how he felt parking would be blocked.

Mr. Dean stated that the only way to cure that would be to eliminate parking spaces, however, in his opinion since the peak times in use for the stacking are when there is no use for the parking spaces, he doesn't see an issue. He stated it is not a matter of safety, but inconvenience. He stated that as they observed traffic in the morning, the few customers that did enter the site (he believes 6 in over an hour) all parked in front of the CVS door at the northern end of the site, so there was no conflict between stacking at the drive-thru, should it exceed 5 vehicles. He said a McDonald's or Burger King would conflict with traffic in the lot since they do business at lunch and dinner times, and he would not recommend that.

Wes Taylor, 260 North 6th Avenue - asked if the parking can be moved to assist with the traffic cuing and traffic for other tenants. He mentioned drivers who do not want to make a left onto South Main Street using Kyle Street to access the light.

Mr. Dean stated that the intent of this design is to maintain the two-way parking aisle closest to Kyle Street so that the individual could use Kyle Street to go to the light. He stated there would be no change to the design of the parking lot.

Mr. Taylor asked in the event that there were more than 5 cars in the cue, and there was traffic coming in from Kyle Street as well as vehicles coming in from South Main, there will be a conflict of vehicles coming from either direction to get in line. He asked if there was any idea that could assist drivers trying to leave the parking lot toward Kyle Street.

Mr. Dean stated that the scenario would most likely occur at 7:30 in the morning when no one else will be leaving the site except Dunkin' Donuts customers. He stated that if they are Dunkin' customers who are not using the drive-thru, he would imagine they

would park in the 9 spaces adjacent to the drive-thru. He noted there are 20 parking spaces in the south area of the lot, and many customers may not want to wait in line at the drive-thru, so they may just park and walk in.

Mario Grabowski, 1419 West Camplain Road - asked if a study was done to determine how long the average order took to fill. He noted that stacking would resolve itself since if he sees more than 5 cars in the drive-thru, he will either leave or park and go in.

Mr. Dean stated that he is correct that people tend to use the drive-thru if it is convenient, and if there is too long a line, it is no longer convenient. They may go to a different location or just park and walk in. They did have a study and he noted that the numbers vary, but they are between 27 and 45 seconds. He gave specific sites and specific numbers.

Maria Janucik, 720 East Frech Avenue - noted there is already a Dunkin' Donuts on Main Street. She asked if this was a second location or if they are moving.

Mr. Dean stated they are moving the location.

When no one else from the public had questions for Mr. Dean, Chairman Kelman opened the public portion for comments on the application.

Mario Grabowski, 1419 West Camplain Road - stated he thought this was a good idea, since the current location is a bad parking lot. He stated that there is plenty of space here. He stated it is a good use for the flood zone area, and he feels it will help the other businesses, CVS and hair salon.

When no one else from the public wished to comment, Chairman Kelman closed the public portion on this application.

Chairman Kelman stated that the D variance on this application was simply for the purposes of the drive-thru being a non-permitted use in the area.

Mr. Picazio stated that was Mr. Schrek's interpretation, however he feels that the drive-thru has been there in use by the bank. He stated that eateries are permitted in the zone.

Attorney Corsini noted that the Board will be considering the site plan, D-1 variance and C variances.

Chairman Kelman opened the discussion by the Board members.

Jim Powers stated that they should consider a one-way exit only at Kyle Street.

Chairman Kelman stated that he didn't know if the Board could do that, as it might affect the other businesses on the property.

Mr. Picazio stated that the tenants cannot control traffic flow as it would be a decision of the landlord. He suggested bringing the landlord up for questioning.

Ned Licitra, owner of the center was sworn in. He stated that people use the Kyle Street entrance as a by-pass for the light at South Main Street. He also noted that the Kyle Street entrance is used for deliveries so they can back into the loading dock.

There was a discussion regarding creating a one-way exit only at Kyle Street.

Chairman Kelman stated he does not think keeping the Kyle Street entrance two-way will cause a significant problem. He stated that Kyle Street is one of the exits out of Lost Valley, and occasionally there's traffic back-up during youth activities in the Valley, but it is generally low traffic.

Jim Powers agreed with Chairman Kelman but stated that he was concerned about rush hour.

Joe Barilla stated that there will be a lot of traffic generated by this project. He stated that people still buy coffee at 3:00 and 4:00 in the afternoon. He stated that when he visits locations, they are very busy even at other times. He thinks that the way the parking lot is set up, he sees conflicts with the existing tenants. He also stated that he feels the drive-thru will made it worse.

Chairman Kelman stated that his experience with the present location is more of a problem than at this location. He also asked if there were any plans for the current location.

Mr. Licitra stated he was not sure.

Chairman Kelman stated that the Board can set conditions for the applications.

Mr. Bogart stated that no matter what, it is a congested area. He stated he does not have any conditions, however, he noted that some Boards retain jurisdiction so that if changes have to be made at a later time, the Board can request changes or conditions. He stated until the store is in operation, no one can really guess what the implications will be. He stated that he agreed with Gary Dean that he doesn't think there will be that many cars in the cue. He believes people will leave if they see a line, especially in the morning.

Chairman Kelman asked if the Applicant is agreeable in having the Board retain jurisdiction should a decision be made at a later date that the Kyle entrance/exit should be re-evaluated.

Mr. Picazio requested a few moments to confer with his client.

Mr. Picazio thanked the Board for their patience and stated that he spoke with Mr. Licitra, the owner of the property and his client. He stated that they would certainly allow the Board to retain jurisdiction, but asked that it be limited to six months and no more than one year, after the opening of Dunkin' Donuts.

Attorney Corsini stated that it is reasonable.

Chairman Kelman stated that they would also want input from the Police Department.

Steve Rodzinak mentioned that they briefly discussed screening for the neighbors that live next door at the townhouses, as well as noise.

Mr. Picazio asked if the Board would prefer natural buffering.

Chairman Kelman stated that there is a privacy fence there now, which is owned by the townhouses. He stated he doesn't know how much room there is for a natural barrier.

A discussion was held regarding the existing fence and possibly adding another natural barrier.

Mr. Picazio provided the Board with photographs of the fence, which were marked Exhibit A-1.

Chairman Kelman stated that he would defer to the Borough Engineer for the best way to separate the headlights and noise from the residential area.

Mr. Picazio agreed.

Rudy Nowak stated that his concern is the construction on the bridge on South Main Street, and he does not think it is practical to proceed now.

Chairman Kelman stated that it was testified that there will not be any actual construction, merely a re-fitting of the existing building and removal of one drive-thru lane.

Mr. Picazio stated that Mr. Nowak is referring to the big County project on South Main Street, and as a result it is a mess. He stated that it will hopefully be completed soon, and they are giving the Board an adequate amount of time to work out any situation which may arise.

Chairman Kelman stated that the application should not be prejudiced because there is another project going on.

Brandon Agans, seconded by Steve Rodzinak, made a motion to approve the application.

ROLL CALL: AYES:KELMAN, POWERS, AGANS, RODZINAK
 NAYES: BARILLA, CAMACHO, T., NOWAK

Chairman Kelman stated that the vote was 4-3, so the application has been denied.

D/ Application #PB-17-06
 Kontos, George
 Use Variance, Bulk Variance
 Block 111, Lots 16 & 17 142 South 3rd Avenue

Chairman Kelman asked that the applicants come forward to present their application.

Jim Powers recused himself from the application and left the Board.

Attorney Corsini asked that Mike Kassick come forward to sit in for Mr. Powers.

Peter Lanfrit, Esq., 3000 Hadley Road, South Plainfield, Appeared as Attorney for the Applicants, George and Eve Kontos. He stated that they are applying for a Use Variance and Bulk Variances to construct a two-family house that is currently in a Commercial Zone. He stated that the property in question is located at Block 111, Lot 16 & 17, 142 South 3rd Avenue. He stated that he has two witnesses, the applicant, Eve Kontos, and Herb Lauterwald, a Civil Engineer, Surveyor and Planner.

Eve Kontos, 44 North 19th Avenue - was sworn in by Attorney Corsini. She stated that she is one of the owners of the property, which they purchased in 2014. She explained that a single-family ranch and a detached garage were on the property. She stated that the house and garage were in extremely poor condition, so they acquired a permit to demolish both the house and garage in 2015. She also testified that they will be relying on exhibits and photos taken by her about a month ago of the subject property and the other properties in the neighborhood.

Mr. Lanfrit marked 3 exhibit boards as Exhibits A-1, A-2 and A-3.

Mrs. Kontos testified that the property is located on Block 111. She indicated the location on the maps. She stated that most of the surrounding properties in the neighborhood are two-family residences. The other properties are owned by the church or vacant. She noted that on the next street over there are single-family homes, but no commercial property or structures. She stated that there is one vacant lot at the end which faces Camplain Road that has been on the market for two years as a commercial property. She also noted that all the lots in the area are significantly undersized. She provided a list of lots in the area, and noted that the two-family houses are on 50 x 100 lots, and some on 37 x 100 lots. She noted that the lot in question that she is applying for a two-family home is 50 x 100. She also stated that she owns other two family homes within the municipality. She noted one is on a 37.5 x 100 lot, and the other is a 40 x 100. She stated that one is right on this street, and the other is on South 4th Avenue. She stated that one home was purchased as a two-family home, and the other was converted to a two-family home.

Mrs. Kontos referred to the exhibits to show a proposed elevation for a duplex home, side-by-side, so each family has three bedrooms, living area, garage, and driveway. She stated that there's adequate room in the rear yard for family activities, and they have taken care of the grading as suggested by the Engineer. She also stated that the home will have a basement for storage.

Mrs. Kontos noted that each dwelling will have two parking spaces: one in the garage and one in the driveway which meets the parking requirements. Mrs. Kontos also testified that the Diocese of Metuchen (Christ the King Church) owns the adjoining property. She stated that they approached the church several times to purchase the

property to make it a conforming lot for their project, however, the Diocese rejected the sale and made it clear that they had no intention of developing the land, but they did not want to sell it. She also noted that the Diocese had no interest in purchasing their property. She reiterated that there are no commercial uses in or around her property, however, she owns a commercial business on Main Street, and she would not put a commercial use on this site. She stated that as a resident of Manville, she would like to see Main Street fill up with businesses first, and as a business owner she would not put a commercial use there since the street is full of residential homes and it would impair the residents. She also stated that a two-family can function on this lot, and she prefers this design since it gives both families privacy and room. She stated that they have never had a problem, and they have no issues with their current tenants. She also testified that there is a need for additional rental units in the town, but she feels that it should be done correctly by providing adequate storage, parking and everything a family will need.

Chairman Kelman stated that one side of the property is a vacant lot, and he asked what was on the other side of the property.

Mrs. Kontos stated there was a two-family home on a 50 x 100 lot next door.

Chairman Kelman asked what was located behind the proposed property.

Mrs. Kontos stated there was a single-family home on a 60 or 40 x 100 lot. She stated that she has a list of all adjoining properties, uses, and lot sizes.

Attorney Corsini confirmed that the list of adjoining properties would be marked as Exhibit A-4.

Chairman Kelman opened the public portion for questions to Mrs. Kontos.

When no one wished to question Mrs. Kontos, Mr. Lanfrit called Mr. Lauterwald to testify.

Herb Lauterwald, P.E., and Architect, Surveyor and Planner was sworn in by Attorney Corsini. His credentials were accepted by the Board.

Mr. Lauterwald testified that he prepared the plan that is before the Board and he described the property as a 50 x 100 foot lot, and adjacent to the property is another 50 x 100 foot lot with a house about two feet off the property line. He stated to the rear is a residential zone with residential housing. He stated that on the north side of the property is a vacant lot. He stated that the character of the neighborhood is residential and church-owned, and the church may own some of the residential dwellings. He stated that they will be constructing a two-family home 32 feet wide and 50 feet deep, with 25-foot front and rear yards. He stated there will be 9 feet on either side for side yards. He stated that the lot zone requires 10,000 square feet, and this lot has 5,000. He also stated that the front- and side-yard setbacks do not apply because it is a commercial zone. He also stated that the property is not suitable for commercial use since it is not on Main Street and there is no market for a commercial use. He noted the empty commercial lot for sale at the end of Camplain Road that has been on the market

for a long time. He stated that he feels the lot is appropriate for the proposed use since it is surrounded by one and two-family homes. He also stated that there is no detriment to the Zoning Ordinances or the Master Plan.

Mr. Lauterwald stated that he has reviewed the comments made by Mr. Schrek and made some revisions as suggested. He also stated that the changes made by Mr. Schrek will not materially alter the plan the Board is currently reviewing.

Chairman Kelman asked how many multi-family homes within a 200-foot radius are located on 50 x 100 lots or less.

Mr. Lanfrit stated there are 8 within 200 feet.

Chairman Kelman asked if he felt the proposed dwelling would fit in with the neighborhood.

Mr. Lauterwald stated that it would.

Rudy Nowak asked why they would not just build a single-family to comply with zoning.

Mr. Lauterwald stated that a single-family house would not comply with zoning.

Rudy Nowak stated that most two-family houses are on 80 x 100 and 100 x 100 lots. He stated that when these houses were built many years ago, there were no zoning laws. He stated that the fact that there are so many homes that are non-complying, it doesn't make it right to add another. He also stated he thought the home will need more than two parking spaces.

Mr. Lauterwald stated he could widen the driveways.

Rudy Nowak stated that he is here to serve the taxpayers of the town to the best of his ability, and building two-family homes on undersized lots is not in the best interest of the community. He stated he cannot support this, however, he would support a one family home.

Mr. Lauterwald stated that a one-family would be difficult to market in an area with so many two family homes. He also stated that a one-family residence with five bedrooms would create more of a parking issue

Steve Rodzinak asked Mr. Lauterwald how he would characterize the neighborhood.

Mr. Lauterwald stated that he would characterize it as residential mixed, older houses, not many tear-downs. He stated that he hasn't seen anyone come in and assemble a bunch of houses owned by different people and knock them down to change it into a conforming zone. He stated that just doesn't work.

Chairman Kelman opened the public portion for questions to Mr. Lauterwald.

When no one from the public wished to question Mr. Lauterwald, Chairman Kelman closed the public portion.

Mr. Lanfrit made a final comment and referred the Board to the Municipal Land Use Law and the purpose of zoning 40:55d-3 "...to promote the establishment of appropriate population densities and concentrations that will contribute to the persons, neighborhoods, communities, and regions of preservation of the environment." He stated that if they were going to go by the Borough's Ordinance, they would be putting a commercial establishment on the property, and he doesn't believe any Board member would promote a commercial use on this property. He stated that the neighbors wouldn't want a commercial use either. He stated that there was a single-family dwelling on the site that went into dis-repair, however, every other house on the street is a two-family house. He stated that while some of the lots may be wider, the houses are narrower than we are proposing. He stated that most of the houses on the street are narrow with a long driveway and garages in the back. He stated that this leaves limited area in the back yard for family. He stated the two-family house proposed has driveways at the curb, and provides a functional rear yard, and two-family houses which are consist with the neighborhood and the size of the houses in that neighborhood. He stated that the way the house is being constructed, it will fit well in the neighborhood. He stated that if they built a single-family, they may not able to sell it, because it doesn't fit in the neighborhood. He stated that Boards grant deviations from standards when appropriate, as in this case. He also noted that his client attempted to obtain additional land from the church to make the lot conforming. He also stated that a commercial use, which is permitted, would be detrimental to the area, and a single-family would not fit into the area. He stated that a two-family house would be the most appropriate use for the property. He thanked the Board for their time.

Chairman Kelman opened the public portion for comments on the application.

When no one from the public wished to comment, he opened up the discussion on the application for the Board members.

Chairman Kelman stated that a two-family in this neighborhood is an appropriate fit since the majority of the homes in the neighborhood are two-family on undersized lots. He agreed that a commercial use on the property would be inappropriate.

Steve Rodzinak stated that the applicants made a good faith attempt to acquire more land, and the house that they are proposing is within the character of the neighborhood. He stated a single-family home would require the same variances as a two-family. He stated that they are providing the RSIS requirements for parking, and they are utilizing all the Engineer's recommendations. He agreed with the Chairman.

Brandon Agans stated that the character of the house fits with the neighborhood.

Chairman Kelman stated that based upon the projects that have been built by the applicant in the past, it will be an improvement to the area.

Chairman Kelman requested a motion to either approve or deny the application with the conditions discussed.

Rudy Nowak, seconded by Ted Camacho, made a motion to deny the application.

ROLL CALL: AYES:CAMACHO, T., NOWAK
NAYES: BARILLA, KELMAN, AGANS, RODZINAK,
KASSICK

Chairman Kelman requested a motion to approve the application with the conditions set forth.

Steve Rodzinak, seconded by Brandon Agans, made a motion to approve the application.

ROLL CALL: AYES:BARILLA, KELMAN, AGANS, RODZINAK
KASSICK
NAYES: CAMACHO, T., NOWAK

PUBLIC PORTION

Chairman Kelman requested that anyone who wished to comment come forward.

Maria Janucik, 720 East Frech Avenue - asked whether this Board was a Planning Board or Land Use Board.

Attorney Corsini stated that the terms are interchangeable under the statute.

Mrs. Janucik noted that she received a copy of the Mark Manville application, however, it did not have an application number.

Chairman Kelman stated that the forms are undergoing a change.

Mrs. Janucik asked if this meeting was being recorded.

Chairman Kelman stated that it was.

When no one else wished to comment, Chairman Kelman closed the public portion.

When no one on the Board wished to comment, Chairman Kelman requested a motion to adjourn the meeting.

Ted Camacho, seconded by Steve Rodzinak, made a motion to adjourn the meeting.

All present were in favor.

The meeting was adjourned at approximately 10:16 p.m.

ATTEST: Nancy Kagan, Board Secretary