

**HIGHLAND PARK PLANNING BOARD
MINUTES
July 8, 2021 @ 7:30 P.M.
Council Chambers, Borough Hall
221 South Fifth Ave. Highland Park, NJ
Via Zoom**

Call to Order

The meeting was called to order by Chairperson Kim Hammond at 7:30 pm. Annual Notice of this meeting was provided to the Star Ledger on January 29, 2021 and to the Home News Tribune on January 29, 2021. In addition, notice of this meeting via zoom was faxed to the Home News Tribune and emailed to The Star Ledger and the Highland Park Planet on July 6, 2021, and was posted on the Borough website at www.hpboro.com and on the bulletin board and doors at Borough Hall, 221 So. Fifth Avenue, Highland Park, NJ on July 6, 2021, and has remained continuously posted as required by law.

Roll Call:

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| Present | Kim Hammond, Scott Brescher, Kahalidra Hadhazy, Rebecca Hand, Alan Kluger, Padraic Millet, Stephen Nolan, Jeffrey Perlman left at 9:29 pm, Allan Williams |
| Absent | Matthew Hale, Paul Lanaris |
| <u>Board Professionals</u> | Roger Thomas, Esq., Jim Constantine, Planner, Bruce Koch, Engineer |

Action on any other business and work session.

Consistency Review Cannabis Ordinance

Ms. Hammond indicated that the Ordinance was distributed to everyone and the task this evening was to look at in terms of it aligning with our Master Plan.

Mr. Thomas, Esq., said the Board is being asked to do a consistency review pursuant to section 26 of the Municipal Land Use law and this Ordinance has been introduced at first reading by the Borough Council and is now being referred to the Planning Board as required because it is a land use regulation. The Board's job is to determine that it is not inconsistent with the Master Plan, to determine whether or not what is being done in this Ordinance is consistent with the goals and objectives of the Master Plan.

Mr. Thomas, Esq., said a question was raised as to what other towns have done, whereby they have decided to ban the distribution of cannabis because they felt that right now there is not a lot of information. They feel a little uncomfortable with the lack of regulations, which have been promulgated at this point in time. This town has taken a slightly different approach which you have every right to do and the reason why this ordinance is necessary is because the statute which was formulated as a result of the 2019 referendum which was approved by the voters of the State of New Jersey to allow for recreational cannabis throughout the State. The statute was ultimately approved on February 22, 2021 and it indicated among other things that there are certain classes of activity that are listed in the ordinance itself and if you do not do something within the first six months of the adoption of the statute then all of these classes of activities will then be permitted within your municipality for a period of five years and that cannot be changed during that five year period. You have the right to say that's okay, no we don't want that, you have the right to do what Highland Park has done which is sort of an interim, you also have the right during that five year period to say we've looked at this further, you can't take back what you have done, but if for some reason you decide as a community that you'd like to add a different class you have the right to do that. You are coming up to the deadline and if you don't do something then all of the provisions of the statute will apply to Highland Park. The only thing that cannot be prohibited is the sale to an individual of cannabis to the home.

Mr. Nolan said the uses that we are saying are allowed or would not be allowed are not allowed in any other zone, it is only the C Commercial and CBD. Mr. Thomas, Esq., said and yes that was his understanding and for the next five years that is where they would be allowed if the Borough chooses to do nothing else.

Mr. Perlman asked the Board Attorney to send to the Board some background on the different classes of cannabis, sale, distribution, cultivation etc. just a little more of the legislative history at some point.

Mr. Kluger said he had no issues with the consistency but a question back to the Council in terms of whether they had considered or would consider any limitation on any of these cannabis related uses or stores being within a certain distance from any religious uses or educational uses, not-for-profit uses, community centers. Ms. Hammond said that she was not going to give an official answer because she does not want to speak for the Council but she asked a similar question and her understanding was they used the guidelines for retail alcohol sales as their guidance. We allow it in the CBD, they limited it, it has to be licensed, and there are different hours that would be allowed on that type of business. In terms of location, they felt they could not limit it by proximity to something else and primarily because we are such a small town, I do not know what circle you could draw and not sort of eliminate everything.

Ms. Hadhazy said because there are different ways that people use cannabis and different products that are produced as a result, and people can use cannabis in cooking and baking and does the ordinance have room for or would the council consider room for entrepreneurs that wanted to start a home-based business that was creating products like food products using cannabis. Mr. Thomas, Esq., said that the discussion at the Council, they have chosen to limit it to the two that they have made reference to and only in the locations that they have made reference to. They have made a policy decision that home-based production and or distribution is not included.

Ms. Hammond opened the floor for public comment.

Dan Stern-Cardinale, 221 Harper Street, sworn and affirmed said we have alcohol retail sales and on-site consumption in the central business district, with cannabis being legal at the state level it seems like common sense that those types of businesses would all be consistent with everything else in the central business district. He asked that they please find that it is not inconsistent with the Master Plan.

Mary Botteon, 709 Madison Avenue, sworn and affirmed said that she wanted to be sure that you have received a June 29th communication from residents opposed to cannabis businesses in Highland Park. That was forwarded to the chair with the request that each member of the Planning Board and Zoning Board of Adjustment receive a copy. Ms. Hammond said that because she has received other emails from her and assumed it was on a personal matter and I would have sent that to Jennifer to distribute but do not recall getting something to distribute. In the future, anything to send to the Board would go through the Board Clerk. Ms. Botteon said earlier she sent an email to Mike Mullin, Jennifer and Joan copies of a communication as a follow-up to that under the heading of inconsistencies with the Master Plan regarding cannabis businesses. Ms. Hammond said that she definitely did not get an email today. Ms. Botteon said she was using the hp borough address that is listed. Ms. Hammond indicated that she did not have an hpboro address. Ms. Botteon said she would make sure each of you gets copies of these various communications because this is very timely. As far as inconsistency with the Master Plan, there are many of use who do want to point out where we see the proposed cannabis ordinance and the Master Plan and Land Use elements not lining up. The Planning Board and Zoning Board need to recognize that any marijuana businesses is actually operating outside of federal regulations including the food and drug administration and controlled substances act, so you know as residents we certainly have a right to presume that any land use developments, etc. that we support would be completely in compliance with all the laws. Officials in Highland Park cannot be picking and choosing which ones they will uphold and which ones

they will violate. We have a right to expect that the Master Plan only endorse fully legal establishments and businesses. There is the issue of local control, which is really important to expand upon. Something that Roger you know did not touch on is the fact that under S21, under the regulatory guidelines any pot business that is allowed in is grandfathered so it is not just a matter of you have five years and then you can decide to opt out. You can opt out five years later but anything you allowed in stays so you just lost your control and any flexibility right there on future land use redevelopment infill economic development decisions. Highland Park is stuck, whatever is let in for pot stays there, there is no opt out of what has already been let in and that is very critical to understand. The number one goal of the Master Plan is to preserve and enhance the character and small town feel of the community and again you receive communications from over 50 residents from all over town that do not see cannabis businesses supporting that number one goal. There are many examples in the documents we forwarded to you of where that fails to meet the goal, where cannabis businesses fail to support that goal, in addition there is the issue of cost to the taxpayers, general health, mental health consequences especially for children, nuisance crimes, loitering, smell of marijuana, decrease in property values. These are all things that do not align very well with our overall Master Plan goals. With regard to rehabilitation redevelopment reinvestment Highland Park identified itself as an entire area in need of rehabilitation which means that anything we do can make its own identify as its own little development plan well not for pot businesses are eligible for any state and local economic incentives. So again that is a big issue of bringing in any of these industries that cannot receive any of these economic incentives and again many of us feel we should put our time and energy and taxpayer resources into businesses that are not as controversial, that much better align with the Master Plan and Land Use Elements, that give us future flexibility.

Rita Polos, 48 Skyview Terrace sworn and affirmed said that she was opposed to the cannabis business. There are 40 towns that opted out and they did that for a reason. As a mother and as a resident, as someone who loves this town she is eager to hopefully have our downtown be lively and bright and electric and bustling with people and businesses thriving and does not see that with cannabis. If you look at Massachusetts and she knows people that live there, she has watched documentaries, there was a great town there and revere they have cannabis place and it brings people that loiter. There is a lot of people that are using it for medical reasons or just recreational but you have to look outside of the box. There are going to be people who are going to buy it provide it to younger people, there are going to be people who will buy it get into their car, roll a joint and smoke it throw the butt out the window possibly the wrappers and then drive out of our community and possibly hit someone. You really have to look at all the other aspects of it, there are the nice part that people are going to use it to bake but there is also that other part. She goes to Quick Chek and sees people buying cigarettes for underage kids so you really have to know that it is a drug and in the wrong hands can be very dangerous. She does not know if that is what we want to do right now especially when we are trying to work so hard to revitalize our downtown. She just wanted everyone to hold onto that, and that she does not think the money we are going to get which is not a huge amount from cannabis business is going to be able to offset all the other negatives that might come of it. With all of the other towns saying it, not to mention that fact that I don't want to hear the jokes anymore that we are high land park and this is where you're going to come to get high so. Take this into consideration, you are all intelligent people and you all live here and love this town as I do and I know you are going to make the right decision. She said that she thinks it is way too soon to see what the effects of these types of industries are going to have in our town.

Dan Stern Cardinale, 221 Harper Street said he just wanted to correct the record on some things, he knows this is beyond the scope of consistency review, but if you are going to make a determination based on data you should use the appropriate data to guide public policy. What the data shows with cannabis is that there is no association with an increase in traffic problems, there is a weak negative association with underage use and that becomes a stronger negative association as you get years removed from legalization. There is a weak negative association between the presence of retail businesses and crime in that neighborhood and

there is a weak positive correlation between the presence of retail businesses and property values in a neighborhood. This is the data based on reviews of anywhere from a handful to over 60 studies if you are going to use those types of things to make your determination you should at least have the correct data. Math is real, follow the data.

Mary Botteon, 709 Madison Avenue said in terms of again inconsistency with the Master Plan which is really the purpose of this conversation that Highland Park has a lot of goals and discussions in the Master Plan and Land Use regarding using our River access to the Raritan river, the Environmental Center, we promote ourselves as a sustainable community, a silver level certification but the marijuana industry is absolutely horrific on the environment and this is the time for us to walk the talk, we can't just say oh we support the environment we want to have our environmental center.

Ray Bordayoh, 420 South Second Avenue sworn and affirmed said every decision when you make a fast decisions about anything it is not going bring any positive consequences. My position is that you have to do more research and more understanding of things which you are going to approve. When you do more research then you know it is going to be more understandable for people, for residents of Highland Park on how to handle it and yourself how to handle it. She said that she does not know a lot about cannabis but knows that the decision which is made fast it is not going to be a good one. We have to think more about it.

Ms. Hammond indicated to the public that the issue before the Board is not whether or not to bring retail cannabis to Highland Park that decision is in the hands of the elected officials. The Board is looking at whether or not the retail business, location of those types of businesses are consistent with the Master Plan.

Ms. Hammond closed the public portion.

Mr. Millet asked when they are talking about grandfathered in that just meant the use of it doesn't affect any redevelopment plans for a structure or a building just like somebody who owns a convenience store, it doesn't have to remain there it is just that the use as a convenience store is essentially established, it won't affect any redevelopment plans down the road. He wanted to clarify that point, which is an issue of consistency and local control.

Mr. Kluger said while he feels many of the comments we have heard from the public especially those that were not in favor of the cannabis ordinance are important and I do not disagree with them however, I think those are issues for Council and not for the Board. Our role here tonight is consistency review with the Master Plan and he has not heard anything specific that would change his view as the ordinance is currently written is not inconsistent with the Master Plan. He said although he is probably not in favor in general in the cannabis ordinance, it is unfortunate the way the state set this up that the regulations are not even out yet and the deadline for when the regulations come out is the same day I believe is when towns have to either opt in or opt out. Towns were put in a very difficult position and guesses some towns have decided to sort of punt and wait until the regulations are out and then either opt in maybe later. Highland Park could have chosen to do that, they did not but we are not Council and we cannot change anything at this point and our role is strictly consistency review with regard to the Master Plan.

It was MOVED by MILLET and seconded by HAND that the cannabis ordinance is not inconsistent with the Master Plan.

ROLL CALL: Ayes - Brescher, Hadhazy, Hand, Kluger, Millet, Nolan, Perlman, Williams, Hammond
Nays – None

There being nine (9) ayes and no nays, motion passes.

Resolution:

Resolution P2021-04

Consistency Review of the Downtown Redevelopment Plan

Ms. Hammond said that everyone received the resolution more than a week ago, there were some minor revisions made then redistributed again today. Mr. Thomas Esq., said that he had received revisions from both the chair and the vice chair and about two weeks ago received comments from Mr. Constantine and Mr. Baumann and those have been incorporated into the draft. He took some of the comments that were made and incorporated them and sent them to Jen today and that is what you have in front of you now. On page six at the end of the first and complete paragraph has just simply added two sentences which indicated that the Board member and members of the public also raised questions with regard to coordinating a plan involving pedestrian and bike with the redevelopment area. It was also mentioned by Board members that the parking study should also include a review issues of parking, traffic and pedestrian safety. Page eight there is a reference to the fact that under number one just simply edit Tracts A and B as originally presented which is the system with Master Plan as they do enhance goals and objectives of the plan and number three with the first bullet point was modified to read there should be allowed one or more multi-level buildings with multi-level but with public plaza accessible from Raritan Avenue unless and until there is another location devoted to that public plaza. He said that Mr. Kluger made a comment that he would be happy to add which is to have the voting on each of the tracts and he was kind enough to provide that.

Mr. Kluger said on page eight, consistent to what we said for number one: Tracts A and B as originally presented are consistent. I think that we should state in some way that for number two with regard to Tract D, he doesn't know that we specifically said, Tract D as originally presented what would have been or was not consistent but at least to say that the Board finds Tract D as amended by Mr. Constantine or including the proposed changes of Mr. Constantine is consistent with the Master Plan. He said that without those changes I do not know that the vote would have been favorable.

Ms. Hammond said what is being suggested is under number two the language reflect that Tract D as in it's second formation which included the following and so it doesn't look like we are just saying hey we are making these recommendations, so remove the word recommend. Mr. Kluger said he was going to say take out the word recommendations because they were not recommendations they were conditions. Mr. Thomas Esq. said he would be happy to change the word recommendations to conditions.

Mr. Kluger said number three, the first bullet point that we should be allowed one or more multi-level buildings. He said he does not know that was necessarily our thoughts or the Board's recommendation. He thinks that was something that Mr. Constantine had mentioned or something that Mr. Baumann Esq. wanted put in. We really were focusing on was the loss of public space and the loss of a public plaza that would be available to continue public activities that we have had in the past and may have in the future. He said I do not know that we necessarily were recommending one or more multi-level buildings.

Ms. Hammond said that it was part of Mr. Constantine's new recommendations was that having more than one building which is not stated in the original plan might be an asset and doesn't think we were against that so instead of saying that there should be one because I think we would be fine if there were zero buildings and a multi plaza. It could say there can be more than one we are not saying there must be one. The plan calls for one building so to state it here is a little redundant, we do not recite all the things that the plan calls for what it did not specify was that it would be more than one so to say that it would be more than one but that it must accommodate the multi-use public plaza. Mr. Thomas Esq., said if the Board feels comfortable with the word can as opposed to the word should and he is perfectly comfortable with that. Ms. Hammond said to strike the one or more it would just say be allowed more than one, can be allowed.

Mr. Kluger said that overriding issue that we were bringing out was that whether it is one building, no building or multiple buildings that we would want to see a public plaza, public open space not necessarily about how many buildings. Ms. Hammond said it would be better to say public plaza first and to accommodate that also allow more than one multi-level building which is more consistent.

Mr. Kluger said the second bullet point we are only focusing on the farmer's market activities and what we do not mention is what part of the motion was. That when there will be a place you know to study and know what the parking requirements are for the RCHP activities and other activities that are going on at the church and for parking for the Raritan Avenue businesses and that was not mentioned at all. Ms. Hammond said that Mr. Constantine did give testimony that in the original plan that they were going to take into consideration the parking needs of both the community center and adding sort of some replacement for the municipal parking. He did say with the parking needs outlined in the plan consideration for neighboring businesses, municipal lot should be considered. Mr. Kluger said if we don't have a bullet point there it is going to get lost and that was an issue that was raised by numerous members aside from myself that the parking needs of the RCHP and the constituent organizations that are there and for the Raritan Avenue businesses must be taken into account in whatever changes are made in the Tract C plan.

Ms. Hand said that there was a typo in bullet point number one under paragraph two towards the top of the page reads the open space proposal to be removed from North Third to Avenue.

Ms. Hammond said on page five third paragraph down, as a result of these concerns, modifications to the plan were made and presented by Mr. Constantine period, Mr. Constantine suggested that a reasonable change...She feels that modifications to the plan were not made that was our issue. She thinks a better sentence there would say, as a result of those concerns, remove modifications to the plans were made and presented by Mr. Constantine it could just read as a result of those concerns; Mr. Constantine suggested that a reasonable change to the original plan might include and then lists those things. It is just cleaner because there is no other plan.

Mr. Perlman said when we say reasonable changes to the original plan might include a permanent space on South Third Avenue, that would mean that the actual right of way would be added to the plan and he doesn't know if that is something that's even feasible. There is already a plan with parcels identified. Ms. Hammond said it says might include we are not saying it must include. Mr. Perlman said he was not about whether you can add additional right of way in a draft plan. Ms. Hand said that she thinks it is a recap of what Mr. Constantine suggested which doesn't talk about using South Third, I agree but wasn't sure it could be added but doesn't think you did add it, it is just part of the recap to explain the thought process. Mr. Perlman said along with that is the next sentence the parking structure, Mr. Constantine's statement that the parking structure would be for residential parking and indicates that there may be multiple uses for the parking garage and that yet is to be determined. The plan is silent on what percentage of the parking structure would be for residential versus for commuter offered parking. Ms. Hammond said that this part of the resolution was reciting what his testimony was and either the plan or the bullets to the plan address the aspects of parking that are actually to be determined. Mr. Perlman said that Mr. Baumann, Esq. made comments at the last meeting that were open-ended about the use of the parking structure and are not reflected in the resolution and we need to clarify. Mr. Thomas Esq. indicated that it was in the resolution, page eight, paragraph two, third bullet: the new parking facility will be utilized for new resident and other needs as determined by the Borough.

Mr. Perlman said on page seven, the sentence with regard to Tract D, the board felt that the final recommendation should be made and he thinks it should say how many members or most member of the board, not all members of the board believed in these. Ms. Hand said that the motion reflects that. Mr. Perlman said he is asking if the language could be changed to say most of the members or majority of the

board members. The sentence before the now therefore be it resolved was also strongly recommended that the farmers market could be relocated. I think there are some members that do not want the farmers market to be relocated so ultimately I am asking that it say most members of the board strongly recommended. Mr. Thomas, Esq., said resolutions are generally referred to in terms of what the ultimate outcome of the determination is. He does not think it is necessary to be putting in every single comment of every single board member. Ms. Hammond asked if putting in the vote would remedy that. Mr. Perlman said no because that is an overall vote on a parcel he thinks specific for this one is about the farmers market relocation and accommodated and that's not unanimous and the language should be changed that most members of board recommended that the farmers market be relocated.

Ms. Hadhazy said on page seven where we talk about Tract C, the language is not what she remembered. Specifically the sentence that says generally the board found that the plan as presented was inconsistent unless the public space was enough to accommodate some of the activities and don't recall saying some but that we were looking to accommodate all of the current activities. Ms. Hammond said that we actually did say some. We are not requiring that the farmers market be housed on that space. We want there to be enough space so that many of the things that happen will continue to happen there but we are not requiring that it be a space that accommodates everything that exists right now.

Ms. Hadhazy said when we were discussing relocating the farmers market; she thought that we were talking about relocation of the farmers market in its current form. Ms. Hammond said what we kept coming back to was, it is not for us to solve the problem, it is for us to say we expect that if the space currently houses "x" that we are not going to eliminate those things, that those things are still going to be. If they happen in open public space that we are going to either, require that space to happen on that site or at the Redevelopment Entity's discretion to find some other location. The farmers market has to be relocated it cannot be dislocated.

Mr. Nolan said the suggestion that the whereas include most or some, the resolution is a resolution of the board, not of members of the board and the board voted and made a decision that is the resolution. It is not well some of us feel this way and others don't feel this way, the Board made these determinations and it doesn't matter at this point what members voted for what, so he would be opposed to any sort of feathering of the whereas. We decided as a Board and that was our decision. Mr. Perlman said the whereas already has where there are statements by some concerns by some members of the board. The therefore's are the board acted, the whereas is a summary of the discussion of the feelings of the board. So you are against having a couple of words being changed to reflect a little more disagreement which is pretty sad and I am asking for a couple of words, sentences to be changed so there is more accurate reflection that there was a disagreement among members. Mr. Nolan said he understood but his point is that preamble is a statement of findings by the Board, the Board made findings and the Board voted and the Board made a decision and that is it. When the Board takes action, the entire Board takes action not individual members.

Mr. Thomas, Esq. said that it is already referenced in the beginning of that paragraph; some board members raised concerns with regard to the level of open space, which in his opinion reflects what Mr. Perlman is talking about. Generally, he does not get in and tends to agree with Mr. Nolan, the idea that only some board members recommended this and other board members recommended that, it is a board action, it is not a board match.

Mr. Perlman said members raised concerns with regard to open space and the relocation of the farmers market in that sense as opposed to it was strongly recommended. Mr. Thomas, Esq. said that would be fine.

Mr. Kluger said that he does not know that the Planning Board was the one to recommend the farmers market be relocated, he thinks Council has gotten that language in there to make it seem like it was us that

wants the farmers market relocated because they want to build on Tract C. Mr. Thomas Esq., said that he did not recall what your vote was but his recollection it may not have been favorable which is okay but the point is that you know I believe and again it is up to the Board, that the Board did recommend based upon hearing what they heard from Mr. Constantine that they heard that the farmers market was not going to remain on Tract C in its present form and therefore the Board recommended that the farmers market was going to be or to be relocated and accommodated in another location. Mr. Kluger said he does not know that the Board said it should be moved from Tract C, I think we said it should not be on Tract D any more because we took away the public plaza by having this line sitting here with Tract C. He said maybe that is what some of the issues being raised here, it that it is making it sound like we as a Board want to it moved from Tract C, and some members may feel that maybe there shouldn't be much building on Tract C and leave the farmers market where it is. I think what we did say, and he agrees we it should be relocated from Tract D where it was intended based on the original plan and that's what we did recommend is you take it off of there and find someplace else to put it but we didn't say it couldn't be Tract C and shouldn't be Tract C.

Ms. Hammond said the emphasis was that if it wasn't going to be at Tract C it must be relocated it cannot be eliminated that was our emphasis, that we weren't interested in relocating it we were only interested in not losing it.

Mr. Thomas, Esq. said his understanding was with the plan that was proposed that the farmers market as it currently exists cannot be located on Tract C, it just can't that's what I understood. The general understanding of the testimony and therefore what was discussed earlier was that there would continue to be an open space for activities that were taking place right now on Tract C, given the fact that the farmers market was not going to be fully available for Tract C but it would likely have to be relocated but could not be lost in the process. Ms. Hammond asked if they could change the last bullet on page nine just to say something like if the farmers market cannot be housed on Tract C, it must be relocated as per the redevelopment agreement, given the importance of the farmers market to the town based on public input. Mr. Thomas, Esq. said if that is what the Board understands, what you guys did that is fine.

Mr. Constantine said on page two in Tract D your citation of lots includes a lot that's not included, removed lot 52, bottom of page four where you're referring to Tract D the last sentence says Tract D there would be a building with multi-level residential in some commercial office on the first floor and recommended that be changed to Tract D on Raritan Avenue, there would be two buildings because that's what the plan actually shows.

It was MOVED by MILLET and seconded by WILLIAMS to approve the memorialization of Resolution P2021-04 as revised this evening.

ROLL CALL: Ayes – Brescher, Hadhazy, Hand, Kluger, Millet, Nolan, Williams, Hammond
Nays – Perlman

There being eight (8) ayes and one (1) nay, the motion passed.

Resolution P2021-05

Consistency Review for Ordinance 21-2023 Concerning
Stormwater Management

It was MOVED by KLUGER and seconded by MILLET to approve the memorialization of Resolution P2021-05.

ROLL CALL: Ayes – Brescher, Hadhazy, Hand, Kluger, Millet, Nolan, Williams, Hammond
Nays – None

There being eight (8) ayes and no nays, the motion passed.

Hearings of New Cases:

Suburban Real Estate Development LLC
238 Cleveland Avenue
Block 169, Lots 31-33

P2021-02
Preliminary & Final Major Subdivision

Kim Hammond recused herself; Vice Chairperson Alan Kluger resumed the meeting.

John Wiley, Esq., Wiley Lavender, on behalf of the applicant. This is an application proposing seven lots, conforming to bulk requirements. Mr. Constantine suggested a possible better design if variances are granted.

William Lane, Engineer, sworn and affirmed. He indicated the property in question is a 36,000 square foot lot, 100x360 that fronts Cleveland Avenue. It was home to the Friendly Care Medical Transport until it was recently torn down. Lots 31 and 32 was where the facility was housed and lot 33 is predominantly some woods and open space (sheet two of engineering plans). Sheet three the subdivision plan showing what is being proposed, seven single family homes, they are all equal in size and width (51.43' wide), each lot will have 5143 square feet, they all have a 12' wide driveway that leads out to Cleveland Avenue, front walkway that leads out to Cleveland Avenue. All utilities for each of the lots, gas, water, electric, sanitary that will all go straight out to Cleveland Avenue although all the utilities are out on the road, what the client has agreed to do is replace the sidewalk and curbing along the site frontage and the also after all the utilities are in place to mill and overlay the pavement frontage along Cleveland Avenue. Currently there are eight street trees proposed along their side of the road, another seven flowering trees (one for each lot), and then along the westerly property line another 12 evergreens are going in. Across the front of the buildings are shrubs to enhance the aesthetics of the property. Before the site was demolished it was 60% impervious, this proposal now with each of the buildings combined and the driveways and sidewalks it is at 36% impervious, helping reduce the stormwater flow. Presently the stormwater pretty much flows along the rear of the property out to Cleveland Avenue, some along the southerly westerly portion travels down between the rear property lines but for a majority of it goes out to Cleveland Avenue. In reference to Mr. Koch's June 3, 2021 memo, number five has been answered with reference to the environmental phase two; we have submitted that to Mr. Koch and agreed to comply with everything else.

Mr. Kluger said in reference to item five, phase two and he was not aware of a phase two study that was recently submitted or was that submitted earlier. Mr. Wiley, Esq., indicated it was submitted earlier and then again to Mr. Koch. There was also a summary that we sent down. Mr. Kluger asked if they were referring to the ANS Consulting, subsurface soil sampling and testing report from November 5, 2020. Mr. Josell indicated that was correct.

Mr. Kluger said that his understanding and the understanding on Allan Williams, Environmental Commission that was not a phase two study and that might have been part of the overall environmental response that we need but based on the phase one that it asked significantly more to be done a part of a phase two. Mr. Wiley, Esq., indicated that was not their understanding at all. Mr. Koch said there are issues in this area from an environmental standpoint that have been dealt with on parcels across the street as articulated in his letter. We do not know if this property is affected by them as well, he checked with the company that did the initial investigation, no one in the firm is an LSRP nor do they perform phase two studies so they limited their work to the phase one. The only other document he has received is from a soil testing company that submitted evidence of four soil borings and indicated that there were no contamination levels exceeding the DEP criteria. He said that he did not have any demonstration that is the number of tests

required for a parcel of this size. He recommended to the Board on this case as well as all other prior cases, is whenever there are any areas of concern or however one might identify them in their particular report, that they should be investigated thoroughly. Prior to this if, a vote is taken favorably on this application as part of resolution compliance that we would require proof from an LSRP that the site is clean and safe for occupancy for residential use. In addition to that, the underlying potential groundwater condition with the sub slab vapor barriers for both radon as well as other issues potentially regarding groundwater should be addressed and must be demonstrated to his office that everything is acceptable and he would only accept that from an LSRP. Mr. Wiley Esq. said prior to issuance of the CO we would have to make a submission as to what the picocuries readings are for the various levels of the building. Mr. Koch said what has happened in the past and would strongly suggest in this case, is the sub slab barrier be put in as a passive system. If the testing prior to a CO comes up elevated then it is converted to an active system. It is designed passively with the ability to easily move it into an active system. He said that would really be the only approach that he would consider given the history in this area. Mr. Wiley Esq., agreed and will provide an updated phase two.

Ryan Josell, Developer, sworn and affirmed. He indicated that they provide a sub slab system in every house, a sub slab passive system and we will provide a letter from the LSRP for all the issues that were discussed.

Mr. Kluger asked if demolition work have gone forward knowing that there were environmental issues that were raised, maybe for the future not just because this application. We have heard from members of public and neighbors about and it concerns him, not just in terms of the application but just going forward what the proper procedure should be if environmental issues have been raised in a phase one study that required a phase two and demolition or clearing work should not happen until that phase two study has been done and approved by the Borough Engineer and seen by the Environmental Commission. Mr. Josell indicated that the phase one recommendation was for soil samples and neither the phase one or the soil samples came up contaminated, we will provide that letter but under the assumption we figured that the site was clean and we were permitted to go through the permits that we had. Mr. Kluger said in looking at the phase one it seemed that soil sampling was one item that was recommended but there were others, ground penetrating radar survey, magnet to meter and soil sampling, so one of the three was done. Mr. Josell said that all three were done, the ground penetrating radar and nothing came up, and there were no tanks on the property. Mr. Kluger said that he not only questioned it for this application but going forward whether we should have any procedures in plan so that if there are environmental issues, that is cleared for any demolition and clearing work that is done.

Mr. Lane said there was a one-car garage for each unit, a driveway space and one on-street parking for each lot; each house will have three parking spaces. Four or five bedrooms per house and therefore accommodate two and a half spaces required by RSIS. We are installing the public sidewalks, there is a suggestion to save a tree by wrapping around the base of the existing tree and we agreed to that. There is reference to an excess disturbance area of 72 square feet and Mr. Constantine's report under 7.3 – a steep slope letter was submitted indicating based on our review of the existing survey topographic survey there is no steep slopes on site. 7.4 which is tree removal, removal of one 30" caliper tree but we are projecting that an existing 15" and 22" could be retained but in the event they can't be retained we would add the two additional replacement trees for the two for the 15" and four for the 22". He said that the tree removal and replacement numbers do not line up with what the plan is, might have been carried over from another project. They have trees ranging from 8 to 17 inches, we are required to replace 12 trees based on that count and replacing them with the 12 evergreens along the southerly side of the property. Mr. Koch said given the size of the lots and the size of the homes in the proposed grading plan, is it really realistic that these trees won't die from soil compaction about the roots and just the general construction that will take place. He said that it is a strong likelihood that the construction in general unless somebody puts snow fence around

the drip line of the tree and nobody treads on that soil at all they may not die this year or next year but eventually along the way, they will perish. He asked if it was realistic to retain them from your perspective given the grading plan. Mr. Lane said that he believes that any trees that were existing on site based on the plan that's up are being removed. Mr. Wiley, Esq., said it was discussed about saving a couple trees from the comments under 7.4, apparently there are no 15 and 22-inch caliber trees that are being maintained, all trees are being removed and they are all on one side of the property, the rest of the site was building and blacktop. Replacement tree count is 12. Mr. Koch said it did not make sense to him that they might survive that is why he asked but they are all being taken down.

Mr. Lane, Engineer, said they were providing one street tree, while providing one shade tree and one flowering tree for each building lot in the front all the way to the left are the evergreen trees for tree replacement. There are shrubs and ground covers along the front of the building. Mr. Kluger asked if they had seen a copy of the comments from the Highland Park Shade Tree Advisory Committee. Mr. Wiley Esq., said that they have agreed to install linden trees and comments regarding the mix of the flowering trees. Mr. Lane said that they could change up some of plant and shrub types as requested and work with LRK in coming up with a satisfactory landscaping plan. .

Mr. Nolan said that he sees landscaping towards the front and on the side of the left most lot, what's the Plan for landscaping on the back lot lines which border an existing neighborhood and what sort of buffering will be placed. Mr. Lane said that the proposal is just fencing; there is about 30' deep to try to give each house a backyard but there will be fencing. Mr. Josell said right now across the backyard it is mainly a wooded area and you cannot really see any of the houses to begin with. There is certain areas that may be open and for each lot that is going to be up to the homeowner whether they want to put a fence there or add additional landscaping. We will work closely with them to make a plan that best fits their houses but as of right now the entire back line in mainly wooded and off our property.

Mr. Nolan said with all due respect and he appreciates the desire of the new homeowner in terms of whether they want to fence or whether they want buffering but thinks that there needs to be some consideration given to the people who already have houses there and lived there for many years and this is something new coming in. Mr. Wiley, Esq., said they are getting rid of something that was probably an eyesore historically in terms of their prior use. Mr. Nolan said that he is sure everyone appreciates that but this is something when the new development went in off Cleveland Avenue and we went through this exact same exercise. The developer there was more then willing to put in buffering because they were concerned about being good neighbors and making sure that the neighbors felt that they were part of the process. Mr. Josell said buffering exists along the backside of the property already. There are trees across the entirety of the backside of the property. Mr. Nolan asked if the developer was willing to work with the Borough Planner and the Shade Tree Advisory Committee in terms of recommendations about an appropriate buffer. Ms. Hand said that the Shade Tree Advisory Committee does have recommendations that there be additional planting on the rear property line. Mr. Nolan said he would agree there are some trees there you can see through there no problem as he walks past there everyday.

Mr. Constantine, Planner, said that the Shade Tree Advisory Commission and the Board recommends might enhance the value for the developer and the livability for both existing residents and new owners. If you enhance that tree canopy that is at the rear and can be placed at the line so that you can still maintain your maximum flexibility for new homeowner's rear yard area but they are, getting the benefit of that tree canopy that comes through the mature tree canopy along the rear of the existing homes. Mr. Josell said that they comply with the tree replacement plants so what we could do is take the trees from the west and move them across the back side to add to the canopy if the Board sees that as more beneficial to the development and will put a fence on the west side if we choose. Mr. Nolan asked what was to the west. Mr. Josell said an existing commercial garage.

Mr. Kluger asked if the trees were on their property or the homeowners behind their property. Mr. Josell said that they were on the homeowner's property behind his property, not on his property. There were no trees there before and there is none now, they are all past his property line on the lots backing up to the subdivision. Mr. Wiley, Esq., said approximately five of the projected housing lots were light industrial use or warehouse and was all blacktop and building. The trees occurred on the two lots to the right and they are being removed. They have calculated that to be 17. They have placed those evergreens along the southerly side, but could make it on the easterly side of the property in conjunction with the existing tree canopy that the neighbors. They could work with LRK on that and just put a fence to block the view of the adjacent commercial garage. Mr. Constantine agreed.

Mr. Williams said at the back of the lot there appears to be a concrete wall, is that going to be removed. It seems to be a retaining wall to the next properties. Mr. Josell said that was going to remain and was not on his property and it is on the line and it would affect the properties behind them if it were to be removed. There are garages sitting back right next to it and we found that there is no way to demo it without affecting the garages.

Ms. Hadhazy said that the developer mentioned that he would be working closely with the homebuyers or purchasers regarding landscaping or adding fencing and asked if there were properties being built to order or are you building all of them and then the buyers can add finishes such as additional landscaping and fencing. Mr. Josell said that they are built to spec and when they are purchased, they can add finishes and the finishes include landscaping and fencing.

Mr. Wiley, Esq. invited Mr. Constantine to describe what he thought would be a better design alternative but would require a variance. Mr. Constantine said that it would require two variances, one for the front yard setback and one for the side yard setback. We base this on going back to the design recommendations that are in the appendix of the Land Use plan of the Master Plan adopted in 2019, which was the draft form base code or residential design standards. In the 2003 Master Plan as a short-term action item. We are recommending that by sliding, the homes forward approximately 5' but somewhere in that range, somewhere a little closer to the street, the garage can be pushed back within the body of the home to accommodate that. We are also recommending, again looking to the recommendation for 50-foot lots in the Master Plan, going from a 10-foot side yard on the left and the right to a ten on one side and eight on the other. This would allow the house as it is slid forward and the garage pushes back to get slightly wider beyond that and then to try to break the length of the sidewall by stepping in or out two feet. There is a couple of ways they can do that, this envelope flexibility would require seven, one for each lot, side yard variances of 2 feet for one side yard on each lot. He said that if the applicant is willing to accept as a condition, there will be more flexibility for them to basically add architectural interest, have less garage doors up closer to the street which will basically allow for in a 16' garage setback which is twice what is required by our current ordinance to allow for a car parked in front of the garage doors, and to be behind the front portion of the house. This would be consistent with the Master Plan which would be the basis for the Board considering. Mr. Kluger asked how many feet for the front yard variance. Mr. Constantine said he would like to provide a little flexibility but would think it would be at least five feet to accommodate that offset garage, could be more so maybe a 5-10 foot. The townhomes across the street appear to be setback at 25 feet so these homes would slide a little closer to the street, effectively the street will feel a little bit more residential in character by doing that. The real benefit is trying to get more interesting homes and break the boxiness of them by having some flexibility for the application to adjust the homes going down the street.

Mr. Kluger said since the homes are being built to suit, the eventual buyer would be given the option so they could choose the original design versus without the variances. Mr. Thomas Esq. said he thought he heard that they were building the houses on specification. Mr. Josell said that Mr. Thomas Esq. was correct and they are being built on specification. Mr. Wiley Esq., said that they provided an envelope, what Mr.

Constantine is suggesting is change the location of the envelope that would allow the garages to be further set back and they provide use with some additional flexibility because of the geometry of the property.

Mr. Constantine said that this would be an opportunity to try to work with them to get as much variety as we can between the homes and also our suggestion probably would result in the rear wall moving forward a couple of feet which means the rear yard get bigger and further from the neighbors. It may encourage some of the home buyers working with the applicant so that we could have more rear yard area to maybe get some of that landscaping beefed up. He suggested on a conforming application that we create a collaboration to try to get the best possible and not cookie cutter matching across the street. It is an extension of the rich architectural character and variety that you find in the North side neighborhood.

Mr. Koch asked Mr. Constantine if he was going to propose any adjustment to the rear setback in keeping with the adjustment to the front. What happens after the approval is somebody comes in and they say look how much bigger the house we can squeeze on these lots. Then you are going to have what you want from the front façade but the houses can be 10 foot larger and that affects drainage and the massing can get bigger unless there is some constraint put on the rear yard setback to achieve what you are trying to achieve. Mr. Constantine said that they could try to make the rear setback increase by something that is sort of commensurate with the front. Mr. Koch said he thinks the building envelope could shift forward but could not increase in size because he is fearful that you will just, whether this developer builds it or they sell it to someone else and they are going to go before the construction and as long as zoning can give a permit for it, it is going to wind up filing the entire building envelope. Mr. Wiley Esq. indicated that they could stipulate that it would be the same size envelope as presented in our original application, its just the location of the envelope would change, if the Board decides that Mr. Constantine's proposal has merit. Mr. Koch thanked Mr. Wiley indicating that was a really good offer, but thinks Mr. Constantine should look into that because that wouldn't prevent an addition on a house in the future without a variance so that the rear yard area would still be open. Item 16 in his report asks the question about creep in terms of impervious coverage which the applicant agreed to everything but that comment really at some point should be revisited to explain how that will be handled when people decide they want decks and other things that will further exacerbate the impervious coverage.

Mr. Thomas, Esq. asked Mr. Constantine to clarify in terms of the front façade, the front garage would be approximately 16 feet from the front façade, move the front of the house up, move the garage back so there would be a distance from the front façade to the garage of 16 feet. Mr. Constantine said that was correct, that is the standard that is laid out in the Master Plan draft form based code. Mr. Josell said looking at their plans its not a concrete 16 foot, they are between 14 and 16 for each house, it was something that we discussed when we spoke prior to the last meeting. Mr. Constantine said that he would be willing to take the 14 to 16.

Mr. Thomas, Esq. said the side yard as indicated would be a bit of a bump out or indentation. Mr. Constantine said that was correct and was laid out on page 6. Mr. Thomas Esq., said that offset would be somewhere between two and three feet. Mr. Constantine said that it was a 2-foot side yard variance, and again what the Master Plan form based code calls for. Mr. Josell said that they will take all the variances but for the first house that we have already submitted outside of the subdivision as discussed, we are not going to have the bump outs on that because we wouldn't be able to get a permit on it prior to the hearing. He said it would make for different variety of houses all together. Mr. Constantine said that it was his understanding the application has submitted a building permit in hopes of an approval to move forward on a first house and they had to basically make that fit into the existing zoning requirements so they can't add the bump out and the variety and the shift in the massing. Mr. Josell said that that do have the 14 feet on the garage as requested

Mr. Nolan asked Mr. Constantine how that fits with his vision. Mr. Constantine said that if it is one of seven it wouldn't even be noticeable.

Mr. Kluger said if the permits have been applied for and it has not been approved yet and still have to get the LSRP done and there may be some other conditions for approval, will there still be time for you to re-permit to have that one house be consistent with the others. Mr. Josell said yes, he would have the LSRP to the Board next week but resolution for subdivision would take a month and resolution compliance could take months and really push him back.

Mr. Thomas, Esq., said compliance for the subdivision would take a whole year but you are looking to end up and what was presented to him was that a month or so ago, he was asked whether or not one building permit could be pulled assuming that there were no variances and his response of course was yes. It would seem to him that you could end up; Jim indicated that it may not make a difference, but you could actually change the permit to simply get that house gong as part of the individual permit but then make the modifications that are requested as part of Mr. Constantine's comments. He said he does not think that would delay him, still utilize the permit but incorporate the comments that Mr. Constantine talked about. Mr. Josell said that is what they have done except for the side yard setback.

Mr. Josell, Project Manager and Developer for Suburban Development said that the Borough has provisions that they would like to see called green building and environmental sustainability. All the houses have low flush toilets, Moen faucets with water sense and EBA certified, no VOC paint from Sherwin-Williams, no formaldehyde in finishes for the cabinets, all HVAC will be cleaned prior to occupancy, and there will be no indoor combustion devices. In regards to the electric vehicles, it is adaptable for EV use and will install at homeowners request, windows are silver line energy star windows, and all appliances are energy star as well as the light bulbs. The building façade itself will be vinyl siding and asphalt roofing and precast concrete foundation.

Mr. Constantine said that something that might be considered is capturing of storm water possibly with rain barrels and things of that nature, it is not required but something that might be considered and might work better on the rear of the home.

Mr. Nolan asked if the applicant considered something along the lines of hardy board or something like that, it is a bit more durable and more fireproof. Mr. Josell said that they have considered it but after running the numbers it is not economically feasible in this price range but it is an option if someone wants to buy it. It would be offered to the buyers but not as standard, it would be an upgrade.

Justin Auciello, Licensed Planner, 125 Half Mile Road, Suite 200, Red Bank NJ sworn and affirmed. He said that it is a pleasure as a planner to see a municipality work with an applicant to develop a project or make recommendations and work with the municipality to develop a product that is going to be better for the community at large. The benefits of granting the variances, it would be for six houses, so six variances for the front yard set back and six for the side yard set back, there was the one house that's already been applied for a building permit so that wouldn't apply in this instance. Granting the variances outweighs any detriments. The C criteria or the C2 criteria (Flexible C), positive criteria and negative criteria. The positive criteria is showing if any of the special reasons and in the state's land use law would be further by granting these variances and he thinks it is clear that in this instance there are multiple. Criteria A which speaks to the general welfare and the promotion of the general welfare for the community. This is granting these two variances as the applicant of course did come in with a performing application but in working with the Board and the Board's Planner it was determined, if the Board chooses to grant these variances, they would be certainly propel the purposes and the goals of the Master Plan. Creating a situation more respectful of the houses to the rear not to say that there is anything wrong with the previous application nit

this is a better planning alternative that is consistent with the Master Plan. Criteria M which speaks to the coordination with public and private entities, is a classical reason here tonight, desirable visual environment. Which is criteria certainly by the granting of these variances is the Board would have a product or the public or the community would have a product that is creating a creative layout and character as well so certainly over the positive criteria. There are many benefits that would be afforded to the community by way of granting the variances. Negative criteria there are two aspects, the first is that the variances should not have a substantial detriment to the public good and in this instance its actually the opposite. He believes by granting these variances you are creating a situation that you know you are going to have a development that is more reflective of the aims of the Master Plan, breaking up that boxiness and there is an opportunity here to move these homes further up from the rear yard. Certainly when we are looking at whether or not there are any detriments, he does not see any detriments for these two variances, if the Board does see a detriment in his professional opinion they do not rise the level of being substantial, which is the standard of proof in the first prong of the negative criteria. The second prong of the negative criteria is showing if the granting of the variances would impact in a negative way the zone plan and the zoning ordinance and again this project is permitted, its use that's already contemplated by the zone plan in the zoning ordinance and certainly relative to the Master Plan. This is the benefit of the Master Plan, this seeks to advance with the Master Plan, and in his opinion has no negative detriment to the zone plan, and zoning ordinance as well in sum is an opportunity that the Board has in working with the applicant and Board professionals. This is an application that he believes would be a benefit to the community.

Mr. Williams addressed Mr. Josell he indicated that he could have a letter from the LSRP next week and it is his understanding that we have not seen any ground penetrating radar work. We do not know if there are gas tanks there or not, the site with the trees on it apparently at some point has tin processing which could contaminate that site. He said that it does not seem like you have all your ducks in a row for an LSRP to make a conclusion. Mr. Josell said they took soil samples from that wooded area; as well, it was not just the concrete area. Mr. Williams asked if that was submitted to the Board. Mr. Josell said yes that is the ANS report, he showed the Board the GPR and indicated there are no tanks on the property. Mr. Kluger said that it would still be a condition of approval and that is why Ryan volunteered to have this ready by next week for the building permit issues because we have this data we just need it to be blessed by an LSRP because this particular firm is not an LSRP. Mr. Wiley Esq. said that they would be happy to submit it as a condition of approval.

Mr. Brescher said the applicant indicated that they were going to be repaving on Cleveland Avenue after the tie-ins, do we know if they were going to go curb-to-curb or just to the middle of the street. Mr. Josell said that they would be milling the top coat to the middle of the street; if we go beyond, we will do the full street. Mr. Brescher asked Mr. Koch to correct him if he is wrong, but thought that section was repaved only four or five years ago. Mr. Koch said that was correct and actually his report says curb to curb and he understood that they were in agreement with all the comments in the report based on something Mr. Lane entered in his testimony but now we are hearing something different from the applicant. He said that his recommendation is curb to curb, you have water line on one side, gas on the other and sanitary sewer in the middle and yes, it was recently paved. We can check on what the moratorium is from the DOT and see if we wanted to enforce that but I think milling and overlaying it from curb to curb along the frontage of the property is more a appropriate resolution of the matter. Mr. Josell said that was his error and they will comply.

Mr. Constantine said that he wanted to confirm, other then the items discussed, that the applicant agreed with any of the other recommendations we have which are relatively minor.

Mr. Kluger opened the floor to the public.

Paul Hammond, 255 Harrison Avenue, sworn and affirmed. He said that he regularly engaged in multi-million dollar capital construction projects as part of his job. Not only has he never seen a developer approach demolition and site preparation so cavalierly, he could not have imagined if being possible. If there was simply no effort made to provide any responsible protection or containment measures in our projects we would never be allowed to complete demolition without extensive demolition plans, which would include lead and asbestos testing and abatement nor would we ever think to move forward without one because of the obvious public health risks. We would provide responsible protection and containment measures as a matter common practice. He said that he would like to see the demolition plans and the leaded and asbestos reports especially since the demolition debris was then inexplicably dumped directly into a crusher on site with resulting plume of construction debris, dust covering an entire neighborhood in which children live and play. He said that he would also like to see the reports on the material that was brought in from off-site and likewise dumped into that crusher and the mountain of potentially contaminated debris that was created is still on site. He said is does not know how or why we would ever believe we could operate in good faith moving forward with someone who has operated to this point with such complete and utter disregard for the people with whom they are now neighbors.

Mr. Josell said that they did obtain a permit for demolition as we do in all other places; we proceeded as we normally would with demolition. As exhibited in this meeting and I am going to further exhibit with the LSRP all soil and materials on-site have been deemed clean. I am not sure what he is talking about with off-site material because we did not bring any off-site material everything that has been on site has been on site.

Mr. Thomas, Esq. said that he believes the concern is the demolition debris and whether or not there's been any testing of that as it relates to either things like asbestos, lead or other contaminants. Mr. Josell indicated that there is not asbestos in the building was taken down and it all went into landfills. Mr. Thomas, Esq., asked if there was testing on that material before it went to the landfill. Mr. Josell said no it is not required.

Mr. Kluger said that the applicant has been speaking with someone who is to his right or left and being provided with some responses is that and asked if that person should be required to be sworn in. Mr. Thomas Esq., said yes, it certainly looks to him to the extent he's been able to monitor it, it appears Ryan has been getting information from some other individual and I don't know who that is and think the Board has a right to know that and to have that individual who has that information sworn and give testimony. Mr. Wiley, Esq. said that individual was his father, Jeff Josell.

Jeff Josell, owner of Suburban Real Estate Development LLC, sworn and affirmed. He said that Ryan Josell is young, and just out of college and starting on his own venture here for Suburban and he was just trying to coach him a little because he is nervous and not quite sure what to say all the time. He said that a majority of the building was concrete block, concrete footings and that is what was crushed on site and remains on site. All wood debris was removed there was no asbestos in the building and we will have that either through ANS or through the LSRP in that report that we will submit. There really was not a requirement for an LSRP report that's why we didn't have one but we do feel we followed the recommendations of the phase one by doing the soil samples in the phase two. We are aware of the dust problem, we went around the neighborhood and spoke to neighbors and apologized we were unaware it was happening at the time, we had been crushing for a few days without issue. They spoke to the adjacent property owners, Ryan went and spoke to everyone and we thought that was kind of cleared up. We are sure there is not contamination on this site. This is not a union construction job so possibly Mr. Hammond's experience between his work and the level that residential construction works at could possibly be different but everything but everything is taken off site to dump by holders who are regulated and would not accept asbestos if there were any.

Mr. Thomas, Esq. asked if the interior building was intact and was there sheetrock or other kinds of materials such as plumbing material, insulation around the plumbing, things of that nature that were

observed prior to the demolition by either yourself or staff. Mr. Jeff Josell said nothing different than you would find in a house, there was Owens Corning pink insulation, wood framing of walls for bathrooms and other things like that, plumbing pipes and in a normal course of demolition, they are just lifted straight into a dumpster and taken to one of the dumps. He said that he could provide receipts for where it was taken if needed.

Ms. Hand said she thought that the earlier testimony was that asbestos materials had been removed previously before demolition, which it was never there, or it was removed previously. Mr. Jeff Josell said that he did not believe there was any there, we would have to check the phase one, phase two if it were there would have been removed before we got the favorable phase one and phase two. He said that he did not recall and is not there on a daily basis but did not recall it being there and does not think there is any testimony from them that there was asbestos there or asbestos removed. Ms. Hand said that she was pretty sure the testimony being that it was removed from the property before and taken away for disposal that may have been a generic statement of your routine practices and perhaps not applicable to this particular property but getting that clarified would be helpful. If there were asbestos in the property and you purposefully had it removed before demolition it might give some comfort or maybe you could say you looked for asbestos there was not any and so we did not have to any removed before demolition. Mr. Ryan Josell said that the statement that was made was there was no asbestos and we removed the additional debris from the property prior to crushing the additional debris meaning the non-concrete stuff.

Mr. Millet asked if there were any linoleum 9x9 tiles anything like that. Mr. Jeff Josell said there were concrete floors and some carpet in the office.

Mr. Nolan asked what dust mitigation efforts were taken because you are aware now that there was a problem in terms of dust going into people's yards and there being a problem and asked if this was something that was missed because it is important to us, these are our neighbors. Mr. Jeff Josell said that they were their neighbors as well, they are supporting us, that is why we went and spoke to every neighbor and provided them with the environmental reports, and we showed them what was going on. He said that they were crushing on Monday, Tuesday, Wednesday; it seemed to happen on Thursday afternoon whether it was the angle of the machine or the wind that picked up by the time it was brought to our attention it had already happened. We were on Cleveland it was not blowing towards us and did not see it pluming up but it did happen and it was brought to our attention and we immediately addressed it with all the neighbors. As far as we know Ryan's has spoken to everyone and everybody seems to be okay with it at this point, we were apologetic about it, we offered to power wash it or any residue, it rained a day or two later and it seems to have all washed away. It is unfortunate and not something, we wanted to happen, there was water on site and the machine that was used does have a dust mitigation system but for whatever reason those couple of hours at the end of that Thursday just did not go our way.

Mr. Nolan said you obviously appreciate the discomfort of the anxiety that this caused people in the area and their concern about as the project moves forward is it going to happen again, are there going to be other problems. From his perspective he wants to impress upon how important that is to us, he thinks they are genuine when they say they care about this but the neighbors are going to need to see that

Mr. Jeff Josell said that they run a good clean job. He thinks Mr. Constantine can attest to the work we have done and touching over the last 25 years, we do the best job we can possibly do and we try to be good neighbors to everybody and create beautiful projects that by the time we are done everybody should be happy. This was an unfortunate incident, had we known or it was brought to our attention immediately we would have stopped immediately and tried to fix whatever was going on which they tried to do the next day once we found out.

Nikki Kelsey, 233 Harrison Avenue, sworn and affirmed. She said that she is Lot 52, with 100 feet frontage or at the back of her property adjacent to the development. Recently the backhoe suddenly dug a big hole near her fence and the dogwood and then covered it up again. Has anybody any idea why that happened.

Mr. Jeff Josell said that he doesn't know if she was the one that sent us the email, we had provided copies of the tank removal reports as well as the GPR to you but your email to use made us say you know let us double check and make sure there is no tank there. Ms. Kelsey said that the problem was they dig the hole in the wrong place; the tank was literally in the corner near that garage and her backyard, 15-20 feet away from where the tank would have been. Mr. Jeff Josell said that they have a full GPR scan of the property but we were just trying to double check because you sent the email so were just trying to say maybe somebody might know something we don't know so let us check, come back and dig another hole and just check again. Ms. Kelsey said if you have done the radar and the rest of it that is fine, she was just curious as to why you were digging that hole there because she knew the tank was not there. She has lived in the house for 48 years and she remembers the gas pump being there and the tank but that was many years ago. Mr. Jeff Josell said that he did send her copies of the permits the tanks were removed. Ms. Kelsey said yes she received everything and appreciated that.

Sasha Rudy, 247 Cleveland Avenue, sworn and affirmed. She said that she did not live directly across the street from the site but across from the garage next to it. She said that she just found out that they maybe had asbestos or something; she walks by that to go to the grocery store. She has been touting walkability in the town and now it turns out that it might damage me years in the future and I will not know. What is going to be done in the future to prevent this, there is no way to take it back so what has to trust them now. Mr. Wiley Esq. indicated that it was represented that there's no asbestos on the property and we can submit to you phase one which would identify whether or not they thought there was any asbestos in the building that will give you a level of comfort. Ms. Rudy said that she does not know if there is a level of comfort that can help.

Mr. Kluger said that for the future, it is something that he's asked and we will follow up on to make sure that if there is potential issues raised that is fully taken into account before future demolition or clearing work is done on a piece of property. That we make sure that we have seen all the studies. Ms. Rudy said that she was never notified about any of it, so I just appeared one day and looked outside and there was demolition, no notice of cloud or anything like that, no one talked to her and she is less than 200 feet away probably. Mr. Wiley Esq., said that was not a requirement of the building permit, if Mayor and Council want to adopt some other procedures for the building permits that's probably you something that should be contemplated because generally speaking the Board doesn't get involved in demolition permits, it gets involved in land use applications. He suggested making a recommendation to the Mayor and Council going forward to have some other checkpoints for demolition.

Ms. Kluger asked Ms. Rudy if she was the owner of a property on Cleveland Avenue. Ms. Rudy said yes she owns 247 Cleveland Avenue. Mr. Thomas Esq. asked if she was notified of the application itself. Ms. Rudy said no that is why she has been checking the Board meetings and just curiosity. Mr. Thomas Esq., said under the law the applicant is required to get a list of property owners within 200 feet from the tax assessor, they have the right to rely upon that, he is assuming Mr. Wiley or his office made the appropriate notice in accordance with that property list and if your name was on it you should have gotten it, if your name was not on it then presumably you would not be entitled to that even though it may seem as though you're close. It depends upon whatever the tax list says.

Paul Hammond, 255 Harrison Avenue said he wasn't sure if this was for Jeff or Mr. Wiley, Esq. but he wanted to confirm was testing done, is it reported for lead, and asbestos and have those reports been submitted. Mr. Jeff Josell said that it was covered in the phase one that was done and there was a

recommendation in the phase one that was followed and those were all submitted. One was the GPR and everything was submitted and it was also submitted to the Engineer at a later date because they didn't seem to have it but we are happy to resubmit it along with an LSRP review stating his findings because that is what the Board is asking for. We do not think that was a requirement other than to do our regular environmental. We have no problem having the LSRP review everything and submit his letter of approval as well, so yes everything was tested for anything that was of any concern was further tested for and anything that had to be removed and taken to the place it needed to be was taken to where it was supposed to go. Mr. Hammond asked since all that debris is still on site would you test that debris slag. Mr. Jeff Josell said that they could test it; he does not think it is required, they were going to use it for driveways and everything else but we can test it.

Mr. Millet asked for clarification, on page 13 of the consultants report, item 6.3.1 hazardous substances it simply states a walk-through of the subject property revealed no evidence of hazardous waste. His assumption on that, having been in the business, is that they would have walked through and probably identified certain insulation around piping, nine by nines, they would have then went to test. Whether they took samples you know underneath or the soil that the concrete was attached to that probably did not happen, that is all it says in the phase one-site assessment.

Mr. Thomas Esq. indicated that he has looked at the first sheet of the plan and at least according to the list of the property owners within 200 feet; Ms. Rudy is not listed as a 200-foot property owner. He said that it was the Tax Assessor's responsibility to give the list and then Mr. Wiley Esq. and his client have the right to rely upon that.

There being no further comments from the public Mr. Kluger closed public comment.

Mr. Thomas Esq. said that he had a series of conditions based upon the testimony but given the fact the he probably only heard about 50% of the testimony he recommended the two variances be incorporated into any approval, if there is any approval that they include the front yard variances, moving the front yard up about 5 feet; that there'd be a distance between the front porch and garage of between 14 and 16 feet; side yard would also be modified in accordance with Mr. Constantine's report; the building envelope would simply move up so there is no need for enlargement of the building envelope; the comments made in both Mr. Koch's report as well as Mr. Constantine's report in terms of the applicant being willing to work with the Borough Engineer and Borough Planner to work out some of the issues as it related to some buffering in-between this property and other properties. The applicant has agreed to test the remaining debris on site to assure that there are no contaminant located on the site at the present time.

Mr. Nolan said that he would like to make clear the reduction in the front setback; there is an expansion of the rear setback.

Mr. Koch asked Mr. Thomas Esq., and Mr. Constantine how they would have that memorialized other than the resolution because in the future the surveyor won't pick up on this somebody who comes in with a building permit request and the zoning officer looks at it and has no idea that we've applied that constraint to these six or seven lot. Mr. Thomas Esq. said that he would want to indicate that the variance is granted and in order to accomplish that the maps will have to be modified to show that alternative building envelope in accordance with what the Board has approved. Mr. Koch asked if it could be incorporated in the deeds as well. He said that eventually the maps will be filed but eventually deeds would have to be prepared for transfer of title and that's probably the best chance the Borough has of somebody looking up the filed map will be limited and a survey doesn't have a requirement to show setback line. Mr. Koch asked Mr. Constantine how will this effect decks and other things because then the whole backyard could become a deck with the impervious coverage that is allowed. Ms. Hand said she thought a survey does pick up

setback lines as long as it's shown on the filed map with the town, she does not think rear yard setbacks are generally incorporated into deeds even the legal description of these which are limited to latitude and longitude notations but she does think they show up in legal surveys.

Mr. Wiley Esq., said zoning regulations have building lock coverage as well as impervious coverage, impervious coverage usually affects decks and those kinds of things so there are limitations already built into the code so someone would have to come in for a bulk variance.

Ms. Hand indicated that she was not disagreeing with the concern; she was under the impression that a survey would pick that up as long as it is reflected in the filed map with the town. Mr. Koch said generally that is not the case in his experience, the offsets/setback to the nearest property line to set back to the front yard set back is shown on the survey but the rear yards the setback lines generally are not. Mr. Thomas Esq. said there could be language included in the deed to reflect the fact that there is a building envelope that will be shifted in a manner as indicated in the variance and that the building envelope will not be expanded in regard to that variance, that it will continue to be the same building envelope that was shown on the plan just shifted further up. Ms. Hand said that was a good idea to have a reference to the resolution that gets passed which will include the variance and that language in the deed will force people to look back when they are doing title searches for those restrictions. She said that she would also incorporate the recommendations on the plantings from the Shade Tree Advisory Commission, the variations in planting standards was okay with the application. Mr. Wiley Esq. said they have no problem with that.

Mr. Kluger said that based on support from our professionals, there were no issues with granting waivers with regard to the traffic impact analysis, environmental impact statement, there was testimony that there was no slopes of greater than 10% disturbed, we would grant the front facing garages waiver, and a waiver for, provided a 50-100 foot subdivision sketch plat instead of the required 200 feet, within Mr. Koch's memo and the applicant had agreed, curb to curb repaving as well as placement of the sidewalk, the provision for the environmental side of providing the LSRP letter and the sub slab passive system. Testimony was provided regarding the green building and what their plans were for the exterior, vinyl siding but would provide upgrade option for hardy board.

It was MOVED WILLAMS and seconded by NOLAN to approve the application with all conditions as indicated.

ROLL CALL: Ayes - Brescher, Hadhazy, Hand, Kluger, Millet, Nolan, Williams
Nays - None

There being seven (7) ayes and no nays, the application was approved with the conditions as indicated.

Action on any other business and work session.

Correspondence and reports.

Zoning/Building Officer report – Scott - None

Rehabilitation Screening Committee report – Kim - None

Public comment on any item not on the agenda.

Mr. Kluger opened the meeting to the public for matters not on the agenda; see no one public comment was closed.

Adjournment

There was a motion to adjourn from MILLET and a second by NOLAN at 10:44 pm the meeting was adjourned.

Respectfully submitted,

Jennifer Santiago
Board Clerk