

Borough of Pine Hill
Meeting
Planning and Zoning Board of Adjustments
October 12, 2017

- Call to order:** **Call to Order by Mr. Felix James 7:30 pm**
- Pledge of the Flag:** **Led by Felix James**
- Sunshine Law:** This is a regularly scheduled meeting of the Pine Hill Planning and Zoning Board. This meeting has been duly advertised and is in full compliance with the Sunshine Law.
- Roll Call:** **Present:** Mr. James, Mr. Waddington, Mr. Castor, Mr. Ford, Mr. Hagy Mayor Green, Councilman Robb, Mrs. Ciotto, Mr. Green, Mrs. Jones, Mrs. Gilson
Professionals: Solicitor: Mr. Sitzler, Engineer: Mr. Raday, Planner: Mr. Lust, Zoning Officer: Mr. Scardino
- Correspondence:** New Jersey Planner Vol.78, No. 4
- Approval of Minutes:** **Mr. James:** Everyone should have the minutes from September 14th. If everyone has had a chance to read can I have a motion to approve?
Mr. Castor: So moved
Mr. Hagy: Second
Roll Call: Mr. James, Mr. Hagy and Mrs. Gilson all "Abstained" all others "Aye" motion passed
- Application 2017-3** **Mr. James:** Okay next we are going to hear application 2017-3 Gary Shuhart and Marnee Cinelli-Shuhart 129 Cross keys Road Block 131 Lot 36 Major Site Plan and Use Variance

Mayor Green: Mr. Chairman since these applications are for a use variance you all have a good night.

Councilman Robb: I will have to be excused too

Mr. Robert Mintz: Mr. Chairman I'm Bob Mintz on behalf of the applicant. If the Board chooses; completeness I think that would be a first consideration or if you want to do the use variance initially.

Mr. Sitzler: I think the Board should consider completeness first. There are some waiver requests?

Mr. Mintz: I would like to have Jim Clancy sworn in and he would be able to respond.

Mr. Sitzler: Can you identify yourself for the record sir?

Mr. Clancy: Sure; James A. Clancy, Professional Engineer and Professional Planner PLP

Mr. Sitzler: Do you swear that your testimony before the board this evening will be the truth the whole truth and nothing but the truth?

Mr. Clancy: I do

Mr. Mintz: Mr. Chairman; Mr. Clancy can describe for you his credentials and his appearances before many boards as well as his representation for some boards

Mr. Sitzler: Have you been before this board before

Mr. Clancy: Probably a long, long time ago

Mr. Sitzler: Why don't you can give a brief synopsis of your credentials?

Mr. Clancy: I'm the Township Engineer as well as Land Use Engineer for Fitz Taylor also Stratford, Runnemede, Woodbury and for many; many more boards I can keep going on and on.

Mr. Mintz: You are licensed in New Jersey

Mr. Clancy: Yes

Mr. Mintz: And you appeared before those boards

Mr. Clancy: Yes

Mr. Mintz: Your license is based on your education background

Mr. Clancy: Yes

Mr. Mintz: and what is that

Mr. Clancy: I have a Masters in Engineering

Mr. Sitzler: I think that is sufficient. Does the board have any questions? I think we are satisfied thank you.

Mr. Mintz: Tim you received a report and you review that. Did you prepare plans for the applicant?

Mr. Clancy: Yes

Mr. Mintz: And they are conceptual only is that correct?

Mr. Clancy: It is not a full site plan; there are things that the Planning Board Engineer wants us to go through for efficiency. We can go through that when we get into the site plan but for completeness purposes we can go through that.

Mr. Clancy proceeded through the Planning Board Engineers review letter on section II Completeness (Major Site Plan). He covered all 5 items identified by the Planning Board Engineer that deemed the application not submitted or insufficient.

Mr. Mintz: That should be it short and sweet for completeness.

Mr. Raday: Do you have the Architectural renderings that say here shall be provided

Mr. Mintz: We do have renderings we would like to submit

Mr. Sitzler: The Board Engineer has indicated he would not have a problem with the completeness from the testimony. Does the Board have any questions?

Joe Luste: Do we need any waivers

Mr. Raday: Number 3 we do not you said you were going to comply

Mr. Mintz: Yes

Mr. Raday: Number 2 you said you would comply and number 1 has been submitted

Mr. Mintz: Yes

Mr. Castor: I have a question. They proposed 9X18 feet parking spots and our Ordinance is 10X20 do they need a variance for that?

Mr. James: That would come up in the site plan right now we are just doing completeness

Mr. Sitzler: Does anyone have a motion one way or the other on completeness

Mr. Hagy: Motion to show completeness; Seconded by Mr. Castor

Mr. James: Okay let's have a Roll Call on that

Roll Call: All "aye" Motion carried on completeness

Mr. Mintz: Mr. Chairman I would like to have Mr. and Mrs. Shuhart sworn in to give testimony

Mr. Sitzler Swore the shuhart's in

Mr. Mintz had Mr. Shuhart give his background information and the concept he was proposing for his business on the property he submitted application for. He also had him give testimony as to the type of business and the day to day activities the business will be doing at the property.

The Board asked questions as to number of employees and traffic on the property

Mr. Mintz they asked the Chairman to allow Mr. Clancy to return to give extra testimony as to his planning

Mr. Clancy gave his testimony on the site plan and what the negative and positive criteria was in relation to the property and the business proposed (Office Space and Warehouse Space) and the impact on the area where the property is located.

Mr. Luste requested that Mr. Clancy to provide testimony to how the proposed use will fit in with the current land uses in the area

Mr. Clancy described the area and how this proposed business will fit in

Mr. James: What is going to be stored in the warehouse?

Mr. Clancy: Some electrical equipment and the vans for protection

Mr. James: Sounds like a garage and some supplies

Mr. Mintz: 4 vans will be in there plus some electrical equipment and when they come in they will leave their cars outside and drive the vans out and take what equipment they need and when they come back drive the fans in and take their cars home.

Mr. James: So the cars will be in the building?

Mr. Mintz: No the cars will stay outside they will only be there from 7 to 3

Mr. James: IS the warehouse connected or not connected to the building?

Mr. Mintz: It is connected

Mr. James: So you can go from the office into the warehouse?

Mr. Mintz: Yes

Mr. Mintz had Mr. Clancy give a description of the layout of the lot and how far the building would sit back from the road

Mr. James: Does anyone have any more questions?

Mr. Sitzler: Mr. Mintz do you have anything else you would like to add with respect to the use variance?

Mr. Sitzler: Okay the applicant has concluded his testimony with respect to his application for a use variance; unless the board has any questions or any special comments the board. The Board would have to consider what is gold standard of the use variances which is the Positive and Negative Criteria. They have to meet goals as far as its consistency with the Master Plan. The Positive Criteria has to exist for the board to grant the variance and that special reasons promote the general purpose of the zoning and is not contrary to the Master Planning. The Negative Criteria of the variance can be granted without substantial detriment to the public good, and that the granting of the variance will not substantially impair the intent and the purpose of the zone plan or zoning ordinance.

There has been submitted that there will be some residential development possibly to the rear of the property and the applicant testified they will address that to the board's satisfaction with buffering, with plantings to the rear of the property. That is the only thing the applicant recognized as having a negative impact. So again it is required there has to be at least 5 votes in the affirmative for the variance to pass.

Mr. Mintz: I do appreciate you going over that.

Mr. Sitzler: Any questions before we get to the public portion

Mr. Hagy: with regard to the warehouse how large is it

Mr. Shuhart: The warehouse is 60'X 100'

Mr. Hagy: Will it be used for anything else besides stock and parking company vehicles

Mr. Shuhart: no

Mr. Hagy: Do you have any future use for that?

Mr. Shuhart: Not at this time

Mr. Caster: What is the ceiling height?

Mr. Shuhart: The ceiling height is I believe 16'

Mr. Mintz: How long have you been in this business?

Mr. Shuhart: I was licensed in 1992

Mr. Mintz: And is this the first structure you are building for the continuation of your business?

Mr. Shuhart: Yes

Mr. James: One other question on supplies, nothing toxic, explosive or things of that nature to be stored?

Mr. Shuhart: No I have our vans serviced at a local garage so we have no oils not chemicals nothing that we store there

Mr. Hagy: Trash pickup; are you having a contractor coming in there to pick up

Mr. Shuhart: Yes

Mr. James: Any more questions?

Mr. Castor: Make a motion to open the floor to the public, second by Mr. Waddington

All "aye"

Mr. James: The floor is now open to the public

Mr. Sitzler: Is there anyone that would like to be heard on this application with regards to the use variance?

Mr. Castor: Make a motion to close the floor, second by Mr. Hagy

All "aye"

Mr. James: The floor is now closed to the public

Mr. James: I will entertain a motion to approve the use variance

Mr. Castor: Motion to approve, second by Mr. Ford

Mr. James: Roll Call please: all "aye" motion carried

Mr. Sitzler: Mr. Gallagher, did they advertise for both the use variance and site plan?

Mr. Gallagher: Yes

Mr. Sitzler: Mr. Mintz I just confirmed with the Planning Board Secretary that you advertised for both so for the record. If there is anyone here with an interest in this matter the site plan portion of this application will be held at the next board meeting which will be November 9th at 7:30 PM if you have an interest please come, and that is for the site plan application. Mr. Mintz you will not be required to re-advertise.

Mr. Mintz: Thank you

Application 2017-4

Mr. James: At this time we are going to hear application 2017-4
CHE Group LLC, 127 Berlin-Cross Keys Road Block 131 Lot 35 Final Site
Plan

Mr. Barron: Good evening Ladies and Gentlemen of the board, Jeffrey Brennan representing CHE Group LLC. I guess this is the point where we are at the site plan. We have a report that was issued by Mr. Dougherty. I would like to make some legal observations because there are some things in the report that don't apply to this application very clearly when comparing to the ordinance and I'm prepared to put on our witnesses in testimony to indicate the justification for that. Mr. Dougherty is correct in his letter in the very beginning as to completeness as to several items he has not seen. The recycling report we are requesting a waiver for. Completeness is a waiver able item design waivers are for things you are required to actually construct so this was a request to waive the recycling report. If I can have Mr. Eisenberg sworn in I think I can explain pretty quickly why we are asking for that.

Mr. Sitzler swore in Mr. Eisenberg.

Mr. Eisenberg gave testimony that there was no recycled material on the site to recycle and the truckers took away all their trash and recyclables.

Mr. Barron stated they would give report if required but there was nothing to report. He continued about the landscaping that they were not asking for a waiver but a dialog with the board about the appropriate landscaping and they would agree to input from the board. They did not submit a plan because they just received Mr. Dougherty's report the day of the meeting so there was no time to prepare a plan to accommodate what Mr. Dougherty had asked. The other thing Mr. Brennan pointed out was Section 23-8.6 they were not asking for waivers so it did not apply they were going to do what we tell them as far as the landscaping and buffering then they would submit a plan.

Mr. Barron: So the board would have to determine if you are comfortable with moving forward with the site plan with what you have heard in the testimony. If you are I'm prepared to go right into the site plan with what we are proposing to do.

Mr. Sitzler: I have a question Mr. Barron in the event someone inadvertently drops some trash by someone who may be leasing a parking spot will there be anything in the lease.

Mr. Barron: I apologize I have not seen it in the lease but we will put it in the lease that they are not allowed to dispose of any material on the site that it would have to be disposed some where else. I HOPE Mr. Eisenberg did not come across argumentative if someone drops something and he sees it he will pick it up and put it in the trash can but if it an automotive battery he may not because it is heavy, he would tell them to get it and throw it out. He tells me it is in the lease we can make it a condition of the site plan and also a condition of the use variance.

Mr. James: What happens if someone is in a lease and it is too late to put it in there and be adopted?

Mr. Eisenberg: That has occurred quite a few times since I have owned the building, they leave a security deposit and if I have to police it I do. In the past there has been tires, parts, batteries and I clean it up that's what we do.

Mr. Barron: Are you willing to make that a condition of Site Plan approval, that if there is anything left on the property by tenants (for lack of a better word) that you will be responsible to have those items cleaned up.

Mr. Eisenberg: Yes

Mr. Luste: There is another use in the building that is on site correct?

Mr. Eisenberg: I run a Beauty Supply business; so that is what we have there

Mr. Luste: That particular use does not have any recyclables or any major trash either?

Mr. Eisenberg: We have a dumpster; an 8 yard dumpster that is picked up. It is mostly cardboard

Mr. Barron: There is no retail sales on that site so there are no customer sales at that site. It is sales out and shipments out.

Mr. Luste: Thank you

Mr. Waddington: You don't recycle your cardboard now?

Mr. Barron: Not for commercial businesses

Mr. Castor: It is for the town I do business in Gloucester Township

Mr. Gallagher: The State has passed a law

Mr. Barron: It is my understanding that the local Municipality has to pass an ordinance

Mr. Gallagher: Pine Hill has passed an ordinance and as the Recycling Coordinator I send out a letter every year

Mr. Barron: Then we will recycle the cardboard; we will just do it through our current hauler

Mr. James: Any other questions

Mr. Waddington: So if we have an ordinance in our town that cardboard is supposed to be recycled and they are asking for a waiver for a recycling report because they did not have anything to be recycled but

now we find out thru discussion there is cardboard being disposed of that should be recycled will we need a report for that.

Mr. Barron: Well the report can say the following the hauler will pick up the cardboard and recycle it, there is your report

Mr. Raday: Will you object to having your Engineer do an abbreviated report

Mr. Barron: No but that is what it is going to say added to the existing hauler will pick up and dispose of it per the State Law and recycle it, because we can't use the municipal. I have no problem with that.

Mr. Raday: So Item number 1 has been addressed and #2 you will address on the site plan.

Mr. Barron: Yes it is addressed on Mr. Dougherty's letter Roman numeral III, b. page # 4.

Mr. Sitzler: If there is no further discussion then the board would entertain a motion about completeness.

Mr. Castor: I make a motion on completeness, seconded by Mr. Waddington

Mr. James: Roll Call Please: all "aye" motion carried

Mr. Barron: I guess some of you had heard this testimony so I apologize for being repetitive, but I want to set the stage because there are some comments in Mr. Dougherty's review letter that bare repetition as to how this was run over the years because it is actually restated in the resolution when the board adopted the use variance so the board adopted that testimony previously.

Mr. Barron then had Mr. Eisenberg give testimony to the length of time he owned the facility, and how long the use of the facility for storage had taken place. And the type of surface in the parking area and how it was maintained and if there were any previous problems with standing water and that the review by Mr. Dougherty on the paving of the lot does not apply.

Mr. Sitzler swore in Mr. Anthony DeRosa; Engineer for the applicant. Mr. DeRosa then gave his testimony on the site plan and the security of the fence surrounding the site and the parking spots for both the warehouse and the additional use for truck parking.

A discussion about the size of the truck parking spaces arose where the board had approved 18x75 and the site plan was showing some 18x50 spots. The center parking was removed to allow better circulation for the trucks movement in the lot reducing parking spots from 150 to 83.

Further testimony was given on the landscaping and the storm water basin. Some maintenance on the storm water basin was also agreed upon.

Mr. Barron: If any of the board members have any questions about the site plan we would be glad to answer them I believe it is pretty straight forward.

Mr. James: With all the spaces being 75 feet is that going to change anything on the plan?

Mr. DeRosa: We will probable move some of the spaces on the Eastern side down so they line up with the rest and we may lose 1 or 2 of these spaces on the corner.

Mr. Waddington: So you said it is a stone parking lot and you said in a previous meeting you have no intentions of paving it and I believe you. How are these spaces going to be marked out?

Mr. DeRosa: That would be up to the owner and the board to decide, it could be done a number of ways a sign could be posted at the back of each one identifying the numbers or we could do concrete bumpers with numbers painted on them

Mr. Eisenberg: We are going to number each space on the fence with a plate made with numbers

Mr. Barron: His question is; how will they know where the edge is? They will know the number they have but ow will they know where the edge is so they don't go over the spaces.

Mr. Sitzler: How will they know where the lines are?

Mr. Barron: We talked about this and it is quite effective using bollards and by putting them at the corners that will delineate the space you can pull into

Mr. Luste: How will the truckers know which way to circulate?

Mr. Barron: We will give them a copy of the site plan once approved; we will attach it to the lease

Mr. Luste: What about sidewalks

Mr. Barron: There will be no sidewalk

Mr. DeRosa: The only sidewalk in the area is across the street by Auto Lenders

Discussion took place on the sidewalk they agreed to post a bond for a fixed period of time if needed or required and if the neighboring business would put in a sidewalk then they would also as long as the County approved it.

Mr. Eisenberg gave testimony about the existing lighting in the area of the parking and the safety issue if more light poles were added where trucks may hit them. Testimony was also given to the number of years current tenants have been parking there and the amount of light being sufficient at night.

Mr. James: Are we saying we don't want light or we do want light?

Mr. Barron: Mr. Eisenberg would extra lighting assist the truckers in circulating the lot that is what I want to know.

Mr. Eisenberg: No, never had a problem and never had an issue

Mr. James: How many trucks have you had on the lot at one time?

Mr. Eisenberg: The most is what I have now 77

Mr. Sitzler: Mr. Eisenberg I don't see an issue with the lights with the trucks coming in at night but safety checks or report checks by local police if have to go on there if there is a report. For example if there is noise like someone breaking in someone's car you have to consider the police officers response to an area as large as that in the dark.

Mr. Barron: In your years of business have you ever had a request from the police of local responders for additional light so they can see?

Mr. Eisenberg: No

Mr. Sitzler: There are things like motion detector lights so if anyone does

Mr. Barron: I think we can work with Pennoni to discuss at corners having motion detector lights

Mr. Barron: If no one has any more questions if it is acceptable with the board is to go through the Pennoni report. There is nothing we can say about pages 2 and 3 because Mr. Dougherty has accurately represented the conditions of approval as laid out in the use variance. We can note them on the plan, attach them to the lease, and attach them to the plan.

Mr. Raday: I would just attach them to the plan

Mr. Barron: The next issue we come to is landscaping, there is already a buffer that goes from 29.6 feet down to a small area here. We did talk with the board at the previous meeting we would supplement the buffer by putting in plantings that is the residential area behind here was ever developed it would soften the area. Now Mr. DeRosa pointed out to me and I think he should point out to you. What is the elevation between those two sites?

Mr. DeRosa: The elevation is a difference of about 10 feet from where the residential property would be to the back of our property line. This means our property sits up higher plus with the existing vegetation so with the elevation plus the height of the vegetation would screen of the trucks from any development on that lot

Mr. Barron: so in other words their site does no look down on us so they would see everything? It is just the opposite our sight looks down on them.

Mr. DeRosa: Correct anything that would be developed houses, roadways would all look up to our site which would be up a hill up into trees

Mr. Raday: We would not object working with your Engineer on creating a supplement in the one corner for landscaping

Mr. Barron: That is what I was going to say we would work with you to make an effective buffer, but we don't want to take any trees down

Mr. Luste: Question! I heard testimony that the drivers of these big rigs they back in to their parking spaces so the head lights would not shine through the landscape area.

Mr. Barron: Correct

Mr. Barron: Now the next section talks about off street parking; Section 23-9.19 does not refer to this type of parking area. It refers to accessory parking for commercial industrial offices, in other words if you have a primary use on the site these parking standards apply to that and it makes scents when you think about it because you have regular vehicles, you have cars. This is all trucks this has nothing to do with that section. In Mr. Dougherty's statement it says if under 50 spaces, we are over 50 so it does not apply to us either. All I'm saying is, we are not required to do the landscape dividing strip. We will do the screening of the trash as part of our landscaping. Then the last one is the heavy loading of trucks, we do not do any loading, I don't know if you remember the testimony we don't put anything on these trucks. Mr. Dougherty even noted in number 11 "A sign shall be posted in the tractor trailer parking area stating: "No transfer of materials from one trailer to another shall be permitted." So that requirement would not apply because we are not doing that.

Mr. Barron: We are asking for waivers; we do agree with number 1 as to the lines. Number 2 and 3 do not apply. We will comply with 4, and 5 again clearly doesn't apply particularly because Mr. Dougherty wanted to make sure there is no loading and unloading, except as stated before in an emergency a flat tire or some other emergency where they would have to empty the truck on a temporary bases and put it in something else but we will not be loading trucks on site.

Mr. Raday: I think what Mr. Dougherty and our office was trying to allude to there is a substantial difference between a regular passenger vehicle and a tractor trailer, so we are talking about subject to heavy loading we are talking about just the weight of the vehicle

Mr. Barron: We have tried to be very straight forward from the beginning, the cost of paving this yard would be; we couldn't do it and continue to store trucks there it would be just way to expensive.

Mr. Barron continued to give testimony on the parking area and why the need to pave was not necessary. Mr. Eisenberg also continued testimony with the type of stone and how it is packed down and maintenance plan of the parking area stone in the yard. The stone is rolled and packed when needed. A maintenance plan will be provided as part of the site plan.

Mr. James: What about spills and leakage

Mr. Barron: First in the truck we don't allow any storage, we did talk about if we had a gasoline spill. Have you ever had anything like that occur?

Mr. Eisenberg: No

Mr. Barron: The answer to that is with the environmental regulations he would have to isolate it, he would have to remove any contaminated soil and he would have to replace it with the stone he had before. Now he would naturally look to the responsible party, they would have to pay for that. That is how it is done, if a spill occurs you immediately clean the spill. I know Mr. Chairman if you have black top it seems like a great answer, but it isn't

Mr. James: I'm just asking a question, I'm talking about generally cars, trucks or whatever can have leaks and you are going to have 77 of them in there with possible leaks in to the surface

Mr. Eisenberg: Since I have had the property I have had to have 3 base lines done for my financing and there has never been a problem, they requires it every time

Mr. Castor: Gasoline eats asphalt

Mr. Hagy: It was my understanding the trucks come into your yard empty, and you just gave testimony if a truck needed maintenance the truck would have to be unloaded. I'm a little bit confused

Mr. Eisenberg: I think you misunderstood; the trucks come in empty or loaded, we have a lot of car carriers that are loaded with cars, we have people that haul building materials on flatbeds and then we have closed container trucks that I don't know what is in them

Mr. Barron: Let me clean it up if I misspoke. You do not permit loading on the site right?

Mr. Eisenberg: No

Mr. Barron: And you do not permit unloading; so they either come in loaded or they come in empty.

Mr. Sitzler: Yes the use variance prohibited that and that was also a condition and also transferring things from one to another and things if that nature

Mr. Hagy: This was brought up before; if a truck comes in loaded you don't particularly know what the contents are is that correct

Mr. Eisenberg: That is correct

Mr. Barron: But they do sign the lease that prohibits a whole slew of items, so they are on notice they are not permitted to have them on site

Mr. Hagy: Now if these trucks come in loaded are they subject to inspection

Mr. Barron: Under your use variance they are, you put in a provision that the township officials would be able to spot check if they wanted to see what was in the truck. Whether we do it or we don't you can do it too it is guaranteed that somebody can look at it.

Mr. Hagy: Thank You

Mr. Green: Do you use the parking lot for your business for deliveries?

Mr. Eisenberg: We do; not the whole lot. The building sits on the side the tractor trailer's that deliver to us come in back up to the loading dock

Mr. Green: Would that involve the ordinance if they use the parking lot for their business?

Mr. Barron: No that is a designated parking area attended to this office not any of these spaces

Mr. Waddington: How do you address dust control and things of that nature? You have never had any arguments from neighbors or residents

Mr. Barron: Here is the question when the trucks come I do there kick up dust

Mr. Eisenberg: It depends; sometimes yes sometimes no it is exposed to the elements

Mr. Barron: So if you have a long period of dry weather then you don't go out and water the yard down.

Mr. Eisenberg: No

Mr. Barron: With his testimony and I believe the board knows it to be true; everything along this area of Cross Keys Road is commercial.

Mr. Raday: With the potential of residents in the rear of the property if that issue comes up

Mr. Barron: We are hoping with the buffer and with them just backing up there will be very little dust. I should also mention there is also vegetation on their side we didn't demarcated it but there is vegetation on their side.

Mr. DeRosa: Also as the applicant testified we use a coarser stone so it is not like a crushed concrete where it has a lot of fine material to it, yes dust can be created and kicked up but for the most part that is why a thicker aggregate was used so it is less likely to happen.

Mr. Eisenberg: Mr. Dougherty was out at my yard and Mr. Sitzler and this gentleman there and it is pretty solid and there is not that much dust

Mr. Barron: I think it is important to remember there is only one truck at a time coming into the yard; his experience is it is rare to have two trucks at one time coming in the yard. And that is it Mr. Chair that is our presentation that is our comment. We do have somethings that obviously Mr. Sitzler will address and we will have to clean up, we have to give you a recycling report. We have to deal with the landscaping supplement plan which we will do in conjunction with Pennoni's Office and if you want us; I had hoped we did not have to come back before the board but I believe the comment was we could work with Pennoni to create that buffer and we are certainly willing to do that. The sidewalk has to be addressed by you. We did talk about lighting and we said we are willing to do that. Are there any ADA spaces

Mr. DeRosa: There is an ADA parking space that is signed out in front of the office area

Mr. Barron: That was on Mr. Dougherty's letter so we wanted to put it on the record that it does exist

Mr. Raday: You don't delineate that on the plan

Mr. Barron: I know we don't that is why I wanted it on the record

Mr. Sitzler: Have we resolved the issue about the size of the parking spaces?

Mr. Barron: 75 feet I think the chairman resolved that

Mr. Sitzler: I understand your point it came at the end of the hearing as to what size trucks will be used after it had already been agreed that 75X13 would be used and I don't think the board has been changed on that. That is a smaller truck can fit

Mr. Barron: It was probably my fault because when Mr. Mancini was working on the plan I told him there was a provision for smaller sized trucks, but the Chairman was wright the actual condition in the use variance it says 75 feet long so we will comply with that.

Mr. Sitzler: I specifically that we wanted to know because of the various types of vehicles and boats that were there over the history of the property we were very specific of what types of trucks would be allowed.

Mr. Barron: We will comply

Mr. Castor: Are the boats and busses and trailers and everything out of there?

Mr. Barron: Lets be specific; is there anything in there other than tractor trailers

Mr. Eisenberg: There is one bus and it has been there for 30 years

Mr. Barron: well it is going to have to be somewhere else for 30 years. That was real clear in the boards determination that you could not store anything except tractor trailers and busses kicked off the whole controversy because they had been there at one time and in fact the board was very clear tractor trailers and tractor trailer only.

Mr. Eisenberg: I had sent a letter to the owner of the bus a couple of months ago and I have not heard back.

Mr. Barron: Well if you don't you will have to remove it, we will go after the owner for the cost of removal but you are going to have to move the bus

Mrs. Jones: The last few times you mentioned a gentleman that was running a business

Mr. Barron: He is here

Mrs. Jones: Has that been settled?

Mr. Barron: No I gave that gentleman notice that he will have to remove, I'm going to call it a vehicle I don't know what else to call it, an office trailer. What I had said the board has prohibited anything other than tractor trailers. I gave him time to remove it or come before the board and if you can convince the board that you should get a use variance to be able to keep your trailer on our ground that's fine but we

can't do it because it was very clear from the board they don't want all these assorted things on our grounds so we said we can't do it. The gentleman spoke to an attorney the attorney wrote me a letter and said that is not our understanding and I said well I respect that, get it off in the nicest way I could. It has not been removed and he has been put on notice that if not removed we will file eviction and evict him from the site. You made it very clear you did not want it there and I told you I will do what every is necessary to get it off or have him come before you and make the appropriate application and have him tell you why he thinks it satisfies the requirements to get a use variance and you can decide we can't do it.

Mr. Sitzler: Mr. Barron one last thing to the stone that has existed on that lot, and I do agree the day that we were there was a little bit of a dust storm that blew up when we were visiting the site. As part of the maintenance plan for that would it be a problem to include that if somehow in the future there is a complaint about dust that there would be a maintenance plan to try to mitigate that. I don't know if water is the only way

Mr. Barron: We will be willing to talk to Pennoni this is all about smart people trying to figure out a solution.

Mr. Sitzler: Now your legal argument on our ordinance as to whether paving applies is because there are more than 50 vehicles in one section

Mr. Barron: You now the ordinance relates to accessory use parking

Mr. Sitzler: Right sort of like a parking lot to service a retail business. I just wanted to make it clear to the board what the legal argument was as opposed to Mr. Dougherty's interpretation

Mr. Barron: To be honest if I would have seen Mr. Dougherty's review letter before today and I know we got out plan in on the last day but if I would have seen the review letter earlier I would have called Hugh and talked to him about it. I did call but I didn't get Hugh so I did not have a chance to talk to him.

Mr. James: The other question you said with the stone if it was cars it would be a different matter am I correct?

Mr. Barron: If it was a parking lot for a commercial use or an office use then it would make sense that it should be paved part of that is because cars would be used but this is the primary use of this site and that section of the ordinance does not go to that. You do not have an ordinance section that says that if you have a truck parking depot these are your standards it doesn't exist. So trying to twist a commercial parking requirement into this is really a great stretch and by the way I looked at the definitions in your ordinance to try and get a sense of it and there is really no help there you don't have a definition of a parking lot of parking facility, some towns do they talk about parking garages your ordinance does not.

Mr. Green: There will be cars parked on the lot correct you have employees correct

Mr. Barron: There will be cars when someone comes in to take their truck out they leave their car we were very clear about that. Those cars are assuming whatever concern they have to be able to park their trucks in there

Mr. Sitzler: The difference from a legal standpoint is that those people are tenants that are renting those spaces they are not like an invitee in a business such as a Dunkin Donuts where you are going in to get coffee and you are parking your car as a temporary visitor. These are people leasing the actual physical spaces and they have the opportunity as any tenant does to observe the conditions of the property that they are leasing. That does not mean we could not have an ordinance that was suggested that we don't have right now for storage but I do agree we don't have any storage ordinances that deal with where it is a principle use. Virtually everything deals with most of the time deals with accessory uses for parking you don't have an ordinance where a property is used just for storage of vehicles whether it be on a temporary bases

Mr. Raday: Assuming all these spots are full if a tenant comes in to pick his trailer up where does he park?

Mr. Barron: Let's say his truck is here he parks his car here, he backs his truck out and front ends it here pulls his car in

Mr. Raday: Okay

Mr. Waddington: I have one more question for the Engineer. If these spots over here are going to become 75 feet is this turning radius correct? It looks like they would be starting to go left to make that radius turn if this is a truck turning templet. If this is the truck turning templet will they still be able to make those turns.

Mr. DeRosa: Yes these spots will come out but there is still plenty of room to make the turn on the East side.

Mr. Barron: Can I point something out if you look real close this is that office trailer that we want to have removed. When this office Trailer is removed we are going to slide these back to get the 75 feet.

Mr. James: Any other questions

Mr. Hagy: Is this all contingent upon what we talked about tonight? The lighting, the supplemental buffer, the bus being removed as well as the trailer

Mr. Barron: Yes

Mr. James: If there are no other questions from the board can I have a motion to open the floor to the public

Mr. Castor: Make a motion to open the floor to the public; second by Mr. Hagy

Mr. James: All in favor? All “aye” The floor is now open to the public.

Mr. Clack: My name is Mr. James Clack I’m the gentleman that owns that office trailer

Mr. Sitzler: Sorry is it Mr. Clack?

Mr. Clack: CLACK

Mr. Sitzler swore in Mr. Clack

Mr. Clack gave testimony of the length of time that he has been a tenant at Mr. Eisenberg’s parking area the business he conducts from the yard and that he had applied and received permits from the Pine Hill Construction office to have his office trailer on the property. He went over the personal cost to open his business and safety additions he added to the property. He questioned what he needed to do to keep his business going on the property.

Mr. Sitzler replied to the past history and that Mr. Eisenberg and retained a lawyer because things that were going on at this property did not meet Pine Hill Ordinances. He explained that he received his permits based on a theory that this was many years an approved use on the property. And that several months ago when Mr. Eisenberg and his professionals came before the board they were unable to prove to the boards’ satisfaction that there was a preexisting nonconforming use that allowed the storage of vehicles other than busses that had been the only approved use that had been in the past that had been discovered that the board found creditable not tractor trailers not boats and not a trailer such as yours. The unfortunate problem that you ran into a local official that worked for this Borough that was also believing that was a preexisting nonconforming use, apparently they made an erroneous decision to give you those permits and that the Borough cannot be held accountable for an erroneous issuance of permits. It was also mentioned that full hearings had taken place where all these decisions were made and his presence was not there.

Mr. Sitzler: Right now you are just a member of the public and we could not hear your plea without an application. What you are trying to do is have a 3rd business on the sight which is not normally permitted. Don’t take this the wrong way I’m not trying to minimize your plight but you are not before this board right now you would have to make an application thru your attorney or with yourself for a use variance to continue the type of business you just described and I can’t pre- judge what the board would do with that. But it does somewhat impair some of what the approvals of Mr. Eisenberg’s project so that is something you have to keep in the back of your mind. There has placed on the record that Mr.

Eisenberg's Attorney Mr. Barron he did what he had to do. There were things he had to do to get the use variance; those boats had to go the buss that is still there has to go there are no busses allowed any more on this property. There was a full blown hearing and a very very highly conditioned use variance granted. You were not part of that; that would be a third use. What you are doing would be a third use on one property which is even rarer than two, but you still have the right to come before the board as long as you are a tenant or a proposed tenant you can come before the board and make an application for a similar use variance that is all I can tell you. I hope I answered your questions I'm trying.

Mr. Clack: I think I get the jest, I, just a little

Mr. Sitzler: If someone from the Borough makes a mistake, a Borough Official issuing permits makes a mistake the Law doesn't make the Borough suffer a long termed consequence and say hay because there was an electrical permit that you paid for and you wired a temporary building which you have it is not a permanent building.

Mr. Clack: That is correct

Mr. Sitzler: That means that the Borough must live with that forever

Mr. Clack: No I was not requesting that

Mr. Sitzler: Okay but that is the situation unfortunately because Mr. Eisenberg also believed he had the right to store boats, tractor trailers and other things when he came before the board and that is why he approached us with two different arguments. The one said he should have for lack of better terms grandfather rights but what he was doing was denied and that would encompass what you were doing; your use. And the one that he got was a new use variance with a lot of conditions that do not allow all the other uses and all the other storage materials, vehicles, boats and other trucks like that. For example you heard tonight these tractor trailers can only park there they can't load or unload, they can't dispose of trash it is a very restrictive use ordinance. That is available to you there is a resolution you can get from the Borough that shows what all the conditions are. The application on which you are basing your use was denied which is the theory that it was a preexisting approved use.

Mr. Clack: I did apply for a application for a variance I was told I could not apply because I was not the owner but everything this town has asked me to do I have done.

Mr. Sitzler: I don't know where that came from but if you are a tenant or a proposed tenant you have a right to come before this board and ask if a use that you are proposing on a particular property as a proposed tenant you would have the right to do that.

Mr. Barron: The application that you use in Pine Hill requires the owner sign off consent. So if Mr. Clack wants to do it we have no opposition to him doing it but we have been told by the board that it can't be there so we are kind of in a catch 22. If we say you can do it are we violating the approval we got from you and I did write Mr. Clack's Attorney doing exactly doing what you did. I said we tried to get to get a larger variance with previous use the previous resolution said all of that and the board turned it down, and then we moved forward with a use variance so

Mr. Sitzler: Please don't interpret this as being disrespectful Mr. Clack if you consulted a Lawyer: Mr. Riley I believe

Mr. Clack: Vance Riley

Mr. Sitzler: Mr. Vance Riley; you should rely on speaking with him and determining what your best course of action is because I can't be in a position to tell you how you should proceed I represent this board.

Mr. Clack: I understand. I appreciate that. I want to say thank you to the board for you time and hearing the small guy

Mr. Sitzler: Thank you Mr. Clack

Mr. James: Is there anyone else from the public that would like to speak? Motion to close

Mr. Castor: motion to close, second by Mr. Hagy

Mr. James: All in favor say "aye" all "aye" floor closed to the public

Mr. Sitzler: If the board has no further questions we are at the point that the board will either approve or deny the minor site plan. Now the board should be aware that during the long use variance procedure this case has a long history it is not the usual case that the courts that ultimately decide these things when people don't agree have said that when you give a use variance to an applicant you have to take into consideration when they come in there is a required minor site plan. Taking into consideration that once they get that use variance you have to have to be more reasonable with the minor site plan. In other words we can't grant a use variance and then make it extremely difficult to comply with the site plan. You absolutely have the right to do everything that Pennoni and Mr. Dougherty and Mr. Raday has said about what the conditions should be, but keeping in mind the biggest hurdle the applicant had was getting the use variance to do this. I don't know if that helps or hinders anybody with the thought process

Mr. Castor: What would be the waivers?

Mr. Sitzler: Let's try to piece them together as we go through the review letter.

We now know all the parking spaces will be 75X13 regardless the size of the trucks, and the size of the trucks has been set forth in the use variance. I believe that will reduce the number of spaces from 83 to whatever that comes up.

Mr. Barron: It is likely we will not be able to fit 83 spaces

Mr. Sitzler: If you have the review letter I believe that the conditions on page 2 and 3 you are okay with Mr. Barron

Mr. Barron: with the exception of number 11 where it is clear that Mr. Dougherty is adding one where is says "a sign shall be posted in the tractor trailer parking area stating" "No transfer of materials from one trailer to another shall be permitted". We agree with that

Mr. Raday: As well as doing the recycling report

Mr. Barron: Yes we will do the recycling report

Mr. Sitzler: So all of those conditions will be part of the site plan, sidewalks were discussed there was a proposal that we have acknowledged that the board has always required sidewalks. It has been represented and I don't think there is any dispute that the County will ultimately make that decision. There has been a proffer from the applicant for a bond to be posted in the event that sidewalks in the future would be allowed. Am I correct in that statement, that is something I have seen it has been done quite often when there are no other sidewalks to connect to.

Mr. Barron: For a fixed time Mr. Sitzler I would never agree to more than 5 years because if nobody has done anything in five years it is likely it will not be done in 25 years

Mr. Sitzler: I understand we can't have a bond that goes on forever. It could be that the town would put in for a sidewalk subject for the County approval. That could be the words.

Mr. Sitzler: On the landscaping that they will agree to work with the Borough Engineers on the buffer, not taking and replanting but just filling in and the Borough Engineer would be able to supervise that activity. There is also the issue of paying or not paying, there has been the legal arguments that were made there is some validity to those from my point of view. Even the characterization to that means it is necessary to some principal use and the anomaly to this is that the storage of vehicles is the use. I understand the argument that is being made, however there has been a lot of argument about including the condition if it is of the type of stone that we have been told. Again is we go back over the years with the use of this property apparently the busses were there and it wasn't paved for many many years, so what we can require and what has been suggested that there be a maintenance plan to make sure if the

stone is kicked up it is replaced, if it kicks up dust and there are complaints there will be some kind of activity which include watering to get down the dust. Once again this property is being leased to 77 tenants right now; individual tenants so there are going to be terms that are going to be included in there. There are going to be bollards placed to designate in lieu of paving and striping and there will be placards

Mr. Barron: Signs

Mr. Sitzler: Signs will designate each space

Mr. Barron: We agreed to a maintenance plan for the basin

Mr. Sitzler: A maintenance plan for the basin. And as far lighting you agreed to work with Pennoni on some security lighting. The entire area does not have to be lit maybe even motion areas so it is not constantly lit. You know if you have a police call out there in the middle of the night at least with motion detectors. Or with even the truckers moving about out there at night there would be at least that minimal amount of light. Mr. Barron is there anything else I'm missing?

Mr. Barron: Nothing Mr. Sitzler except to say any other conditions that were addressed by the board with the use variances.

Mr. Sitzler: Yes all of the conditions of the use variance would carry over as approval to the minor site plan. It was also mentioned earlier the right to inspect and that is going to be in the lease. Mr. Barron you are going to get me a copy of the lease which I will review and then I will make available to the board. So if the board members want to read it, I will make it available so it is in at least the records of the property. From time to time if there are any changes can Mr. Eisenberg get a copy to the board would you agree to make that a condition as part of the application.

Mr. Barron: I agree you have a right to know what is going on the property

Mr. Sitzler: Okay I think that would be part of the resolution to approve

Mr. Castor: Make a motion to approve, second by Mr. Hagy

Mr. James: Can I get a roll call

Roll call Mr. James "no" all others "aye" motion carried

Mr. Barron: Thank you for barring with us it has been a long process

Open Floor to Public: Mr. James: can I have a motion to open the floor to the public

Mr. Castor: so moved, seconded by Mr. Waddington

Mr. James: All in favor; all “aye” Floor open

Mr. James: Seeing no public motion to close the floor

Mr. Hagy: Motion, seconded by Mr. Castor

Mr. James: All in favor: all “aye”

Old Business: Mr. James: There is no old business

New Business: Mr. James: New business the next meeting in November the 9th at 7:30 pm

Motion to Adjourn: Mr. James: I will entertain a motion to adjourn

Mr. Castor: So moved, second by Mr. Ford

Mr. James: All in favor; all “aye”