

Borough of Pine Hill  
Meeting  
Planning and Zoning Board of Adjustments  
July 13, 2017

**Call to order:** **Call to Order by Mr. Kevin Waddington 7:35 pm**

**Pledge of the Flag:** **Led by Kevin Waddington**

**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. Waddington, Mr. Castor, Mr. Ford, Mr. Hagy, Mayor Green, Mr. Green, Mrs. Jones, Mrs. Gilson  
**Absent:** Mr. James, Councilman Robb, Mrs. Ciotto  
**Professionals:** Solicitor: Mr. Sitzler, Engineer Mr. Dougherty, Planner: Mr. Luste, Zoning Office: Mr. Scardino

**Correspondence:** **The New Jersey Planner; VOL. 78. No 3.**

**Application 2017-3:** **Mr. Waddington:** Our first application this evening Application 2017-3 Extension of the Application from November 8<sup>th</sup> 2007 Third Fairway Development LLC

**Mr. Sitzler:** As the board may know; because this is pretty much a pro-forma under the Extension Act I believe they are entitled to this. Under the Extension Act there was a question as to whether they had to make a formal appearance before this body or if they could do this by written submission and I indicated that it is my opinion they may do this is pretty much pro-forma by written submission. We did get a letter which you should have dated June 26<sup>th</sup> from Mark Lario who represents Pine Hill Development LLC., and sets forth the submission on the application so it is something that conforms on paper so to speak as we would say

so the board can move forward with this without the applicant being present.

**Mr. Castor:** How many years has this been extended do we know?

**Mr. Gallagher:** This is the second

**Mr. Castor:** Is this the second or the third?

**Mr. Dougherty:** So exactly what happened was when this was approved in 2008 but the Permit Extension Act allowed it to be extended thru 2016 so then this board extended it from 2016 to now July 2017 that was the one year. They are entitled to three one year extensions the Permit Extension Act had extended it until 2016. So last year this board approved a one year extension, so that is the first one year so this would be a request to extend from 2017 to 2018 that will be the second year extension and then in theory if they come in again they will be entitled to; we would not have to grant it but they would be entitled to a request for an extension from 2018 to 2019 that would be the three years and after that they basically would have to reapply we wouldn't be able to extend after that. But this is only the second one

**Mr. Sitzler:** The current stat of the law is right now if I understand it correctly because it gets somewhat confusing when you try to read all the extensions but we are not a Hurricane Sandy jurisdiction and only those have additional extensions. Those jurisdictions effected by Hurricane Sandy and they are set forth in Statute and we are not one of them so the third year by current state law would be their last extension unless the law changes again.

**Mr. Dougherty:** One other thing we look at for any extension is have any of the zone in the ordinances change did any of the zoning on the property change and none of that has indicated that was the case. Basically the site plan would be the same if we reviewed it again anyway there have been no zoning changes have occurred since that time.

**Mr. Waddington:** Any other questions? Hearing none I will entertain a motion to either approve or deny the extension application

**Mr. Hagy:** I move to extend seconded by Mayor Green

**Mr. Waddington:** First and second roll call please

**Roll Call:** All “aye” with exception of Mr. Green whom abstained motion carried

**Application 2016-9:**

**Mr. Waddington:** Application 2016-9 HYZ Properties, 800 Turnerville Road for a use variance

**Mayor Green:** Mr. Chairman as Mayor I must abstain from this use variance so have a good night.

**Mr. Rinaldi:** Good evening Ladies and Gentlemen my name is Mark Rinaldi I represent the applicant HYZ Properties. As you know this is an application for a use variance and for a minor site plan approval it is Block 112.02 Lot 21. The matter began some time ago in 2016 when HYZ filed the application on their own and Mr. Dougherty appropriately pointed out because it was a separate entity it had to be represented by council and I was retained then. At that point the only application that was pending before the board was a use variance application. Mr. Dougherty indicated on September 1<sup>st</sup> through a review letter made the appropriate suggestion that if the board was going to consider the use variance that they may need to consider a site plan down the road. Well since I figured I was coming in to the case we kind of got of got held up last time behind Mr. Baron that I would just amend this so we do everything at one time both use and site plan so that is why we are here tonight I will have two people testifying. On behalf of the Applicant Hasan Yildiz and our planner Tiffany CuvIELLO both of them will be testifying.

**Mr. Sitzler:** Do you want to bring them up Mr. Rinaldi?

**Mr. Rinaldi:** Yes I do, Thank You

**Mr. Sitzler:** Lady and gentleman raise your right hand please. Do you swear your testimony before the board the truth the whole truth and nothing but the truth before the board this evening?

**Ms. CuvIELLO:** I do

**Mr. Yildiz:** Yes I do

**Mr. Rinaldi:** Mr. Chairman should I just jump in or do we need to discuss review I know I spoke with Mr. Dougherty a few weeks back and he had asked for basically a statement of the application as it applies to use; I sent that over I guess a couple of weeks ago and I don't know if that satisfies Mr. Dougherty with regards to completeness?

**Mr. Dougherty:** If I can comment on that? So; on my update on September 1<sup>st</sup> on page 2 the first portion of that is a completeness review. On that point I was requesting a checklist on the delineation of the exact purpose on this site; there are multiple uses on the site. In particular I know in addition to the auto repairs you were looking to do used car sales and also there is a retail use because of the propane tank refilling business, so with the letter dated July 5 2017 I would say the application is complete at this point so the board could make resolution declaring the application complete and you could move on to the hearing portion. I know they are looking for a use variance and site plan; my September 1<sup>st</sup> letter did happen to address some of the site plan issues just in a general sense but no new site plan has been submitted since that September I think. Have there been any other site plans submitted since?

**Mr. Rinaldi:** There was Hugh and my client as I understood dropped off multiple copies of the revised copy and that was a substantial time after the original was submitted

**Mr. Dougherty:** At this time I would recommend we start with the use variance and we consider that page complete. On the site plan is the August 5<sup>th</sup> 2016 the current one

**Mr. Rinaldi:** No this is September 8<sup>th</sup> what was the date you have there

**Mr. Dougherty:** August 5<sup>th</sup>

**Mr. Rinaldi:** Yes that was the original plan that was submitted, my client dropped off the revised copies. Les is my client correct

**Mr. Gallagher:** This is the only one I have August 5<sup>th</sup>

**Mr. Dougherty:** 8/5/16

**Mr. Hagy:** I have September 8<sup>th</sup>

**Mr. Rinaldi:** He has the right one

**Mr. Gallagher:** I gave him that yesterday it was the only one I had

An easel was set up to display the revised copy and Mr. Dougherty was given one to review

**Mr. Sitzler:** Mr. Rinaldi we were discussing; and we do not want to keep you out of the loop normally for the board in these types of applications is to proceed with the use variance first. You can certainly

because it is not granted the site plan becomes mute; however because there may be considerations for the use variance based on what you are doing on the site plan you are free to bring in some testimony to establish all those elements that you need for the purposes as planning use variances as far as referring to the site plan. We would probably prefer you to do that. The second issue that has come to my attention is in your notices you have two things you are asking for a use variance for used car sales; that's pretty clear you are also asking for in your notices that the auto repair continue. Now in speaking historically about the site it has been my understanding that your client took over this site and that it has always been used as an auto repair at least as long as the gas station has been there and so it wasn't quite sure what your position was; whether you are arguing this as a preexisting continuous nonconforming use because I don't know how many years we would have to go back to when that gas station was there whether it was a different zone and that gets very complicated for whether you are asking for two use variances. Do you follow me on that?

**Mr. Rinaldi:** I do and I think I can make it simple and clear what you will learn from the testimony is that it was a Getty Gas Station and it always did automobile repairs, the three bays were always there and in fact Mr. Yildiz he was the operator back from 2008 forward until which time Getty went into bankruptcy in 2014. Getty cleaned up the property and removed the oil tanks and then Mr. Yildiz came back and purchased the property from them. So our position is it was always operating as a gas service station and as a repair facility. Mr. Yildiz will testify that he operated it as a repair facility. So the application is to allow it to continue as it was an automobile repair facility

**Mr. Sitzler:** But are you asking it be now with the granting of a use variance because it is a nonconforming use that may be permitted. You are not in here to prove a nonconforming use and if you are entitled to it. So I think I'm not trying to split hairs with you but what I'm trying to say if you are asking for two separate use variances with one having strong evidence that it is a non-preexisting non-conforming use and the other one not so it is a new use

**Mr. Rinaldi:** Correct

**Mr. Sitzler:** Related to the previous one

**Mr. Rinaldi:** Exactly and Ms. CuvIELLO will be able to articulate it much more eloquently than I will when she compares it the current zone and the companion zone. In the first instance we will hear testimony that I think will convince the board of its pre-existing non-conforming use as an automobile repair facility; the absolute new use is the introduction of the used automobiles on that site. I don't think that has ever occurred on that property.

**Mr. Sitzler:** I just wanted to get that cleared up. It is preferred that you try to stick with the use variance first because we would have to necessarily have to vote on those before we get to the formal presentation of the site plan.

**Mr. Sitzler:** If we could put the copy of the revised site plan up on the easel the board could step down to look at it. So when you reference it the board can have an opportunity to look at what you are presenting. I just wanted to make sure our engineer had a chance to review

**Mr. Dougherty:** Just to begin I think we should declare the application complete

**Mr. Sitzler:** Yes there should be a Resolution as to whether or not they are complete

**Mr. Dougherty:** I just wanted to say for the record it would have to cover the proposed use required and so Mr. Sitzler has also numerated it is for automobile repairs as well as used car sales and there is also a current use for propane tank refilling station; but in this cover letter it is indicated that the applicant is under a lease until May 2018 at which point he is planning on not renewing the propane tank refilling. So they would be the uses on the property at this point and we would have to hear some additional testimony, but I just wanted to make that clear and also the uses and that was what I was looking for in this narrative so I think this application could be considered complete.

**Mr. Sitzler:** Mr. Rinaldi just to make sure we are clear in interpreting your letter once this lease has expired your client no longer intends to do propane tanks leases so there will be two uses on the property?

**Mr. Rinaldi:** He is going to testify that he can't wait to get rid of the propane tank it is costing him but he is bound by the lease till May 2018

**Mr. Sitzler:** Does anyone have a motion as to completeness?

**Mr. Hagy:** Willing to accept application as complete

**Mr. Waddington:** Is there a second?

**Mr. Ford:** Second

**Mr. Waddington:** All in favor; all "aye" any abstentions? "none" application is complete

**Mr. Rinaldi:** Thank you; with regard to the applicant HYZ Properties LLC is that a limited liability company registered with the State of New Jersey

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Are you are a member of the limited liability company authorized to speak on this application?

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** How long have you been a member of HYZ properties?

**Mr. Yildiz:** Since last April

**Mr. Rinaldi:** And when did HYZ Properties purchase this property?

**Mr. Yildiz:** Last year in April

**Mr. Rinaldi:** And HYZ purchased this property from the Gas Company

**Mr. Yildiz:** Another investor

**Mr. Rinaldi:** Prior to owning the property you heard me earlier explain to the board that you ran this as a gas an service station as far back as 2008; tell the board who you were working for, who you ran it for back then.

**Mr. Yildiz:** I ran it for Getty until 2013 and they Getty went bankrupt. After that another investor bought it and we leased it back from the investor

**Mr. Rinaldi:** Let's go back to 2008 what was done on the property? There was gasoline pumps?

**Mr. Yildiz:** There was gasoline pumps yes

**Mr. Rinaldi:** Was the mechanic bays being used and who was doing the auto repair

**Mr. Yildiz:** Yes; there was another mechanic and I would help and pump the gas

**Mr. Rinaldi:** So there was not another company doing the repair you ran the service station, the gas station and the repair and you did that always up to 2013 when Getty went bankrupt

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Since you have been there since 2008 there were never any used car sales on the property were there?

**Mr. Yildiz:** No

**Mr. Rinaldi:** Now you run a used car lot in another location tell the board where that is

**Mr. Yildiz:** 201 Berlin Cross Keys Road

**Mr. Rinaldi:** Is that property that you own or do you lease

**Mr. Yildiz:** Lease

**Mr. Rinaldi:** How long have you been at the Cross Keys Road Location?

**Mr. Yildiz:** About three years

**Mr. Rinaldi:** Explain to the board what your plan is with cross keys road in the event the board is inclined to grant this application. By that I mean are you going to keep the Cross Keys Road Open or are you going to bring the entire used car operation to this location

**Mr. Yildiz:** I'm going to bring the Cross Keys business to 800 Turnerville Road so I can do a good business and good service because I can't be at two places at one time

**Mr. Rinaldi:** Now let's talk a little about the operation as it exist right now just with the automobile repair. How many employees do you have with just the automobile repair there on any given day?

**Mr. Yildiz:** I have one business partner who works and I do other things

**Mr. Rinaldi:** Your business partner is he the one that does the mechanical work on the vehicles

**Mr. Yildiz:** We work together and sometimes I run to Cross Keys Road

**Mr. Rinaldi:** But other than that it is just the two of you that are the employees at the site right now

**Mr. Yildiz:** Right now yes

**Mr. Rinaldi:** What are your hours Monday thru Friday for the repair facility and are you open on Saturday

**Mr. Yildiz:** Monday thru Friday 8:30 to 6:30 and Saturday I'm about the same 8:30 to 5:00

**Mr. Rinaldi:** If your application is granted are you planning on changing those hours for the repair facility

**Mr. Yildiz:** I want to keep the same time

**Mr. Rinaldi:** If the application is granted are you planning on hiring any more employees or will it continue to be the two of you



**Mr. Yildiz:** One more

**Mr. Rinaldi:** So a total of three

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Will that other employee be full time

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Let's jump over to the car sales if the application is granted are you planning on hiring any salesmen or is it just going to be the three of you

**Mr. Yildiz:** No just the three

**Mr. Rinaldi:** How long have you had the Cross Keys Road?

**Mr. Yildiz:** Almost 3 years

**Mr. Rinaldi:** On average over the last three years how many customers do you see coming to that car lot each day?

**Mr. Yildiz:** Some days I have no one and some days three or four

**Mr. Rinaldi:** On average how many vehicles do you have at the Cross Keys Road Location?

**Mr. Yildiz:** Thirty

**Mr. Rinaldi:** Now we agreed that no way thirty to thirty five cars can't fit on this location in fact the amended site plan provides up to 20 parking spaces. So if the board was inclined to grant the application you understand there would be a restriction on the number of used cars you would be able to have there. With that would that create a problem for you; you say you have about thirty to thirty five cars now on Cross Keys if the board granted this application and we able to start tomorrow what would you do with the cars that you wouldn't be able to fit on this property do you have another location where you can store them?

**Mr. Yildiz:** No not at this time I will not just buy so many

**Mr. Rinaldi:** You purchase these cars at auction so you're the one that controls how many you have in inventory so if the board is inclined to grant the application there is going to be a restriction on the

number of used cars that can be on this property. Is it your testimony that the board can understand that you will be the one that controls how many cars will be on that lot so there won't be an overflow of used cars on that lot.

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Now these used cars that you buy at the auction do you on occasion or in every case do repairs to them? And will you be doing repairs on site?

**Mr. Yildiz:** some times we do but if it is major work we don't

**Mr. Rinaldi:** I'm not a mechanic but a transmission and engine if they had to be replaced is that the kind of work you would do

**Mr. Yildiz:** I take the job but I don't fix it at my place I will take it to another place a different mechanic. If one place just focuses on transmission I take it to them or if another place just focuses on air conditioning I take it to them so they can fix.

**Mr. Rinaldi:** Okay I jumped into used cars so we are going to stay there for a little while; the board is going to want to know and they are going to be concerned with the amount of traffic coming in and out of that property. Now the board knows it was a gas station back in 2008 up until 2013; with regard to used car sale you already told the board that sometimes you have no customers during the day and sometimes you have more than one customer during the day. Give the board a better idea and if you need to break it down by a time in the year that is fine because it is a sales operation but give the board an idea about how much traffic just for the used cars how much traffic you anticipate coming in and out each day.

**Mr. Yildiz:** Around average about of 4-5 cars a day. During the summer business goes down and holidays December – January still down but March/ April to May it picks up then goes down again

**Mr. Rinaldi:** You don't anticipate any of that changing based upon what you have seen in the last three years on used car sales getting much busier

**Mr. Yildiz:** I don't think so

**Mr. Rinaldi:** I just wanted to make sure the board understood it. And you don't want to be in two places at one time; you want to get rid of the Cross Keys Operation and do everything from one central location here in Pine Hill

**Mr. Yildiz:** Correct

**Mr. Rinaldi:** Now when you purchased this property, you said in April of last year

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Have you made any changes or improvements to the property between when you bought it and now

**Mr. Yildiz:** Yes we did; we did some black top, cut some trees. We are going to do more like landscaping

**Mr. Rinaldi:** And I guess since Mr. Dougherty raised the question he wanted to know if the application was approved would you be doing any construction, making the building bigger adding space onto the building

**Mr. Yildiz:** No; just landscaping and painting the building

**Mr. Rinaldi:** Cosmetic

**Mr. Yildiz:** Yes cosmetic

**Mr. Rinaldi:** Let's go back to the automobile repair facility as it is operating right now at this location. Explain to the board again on average how many motor vehicles are coming in and out a day for repairs?

**Mr. Yildiz:** It is like the same, some days no cars and some days 4 or 5 cars. The repairs on most cars are in and out the same day

**Mr. Rinaldi:** So the cars that normally come in for repairs don't sleep overnight

**Mr. Yildiz:** Just once in a while when we have to get parts

**Mr. Rinaldi:** I think you said there are three bays and two lifts, so if need be if a car was there overnight because you needed to order a part would you have the space to store it inside

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Again because I want the board to have a really clear picture on a really busy day let's pretend it is one of your best days. How many do you think are coming out on a daily basis?

**Mr. Yildiz:** On a busy day with oil changes and everything less a than 10

**Mr. Rinaldi:** Okay so a great day less than 10 and a bad day is like today when nobody comes in

**Mr. Yildiz:** Yes like today when it is hot

**Mr. Rinaldi:** In regards to any proposed changes to the building and I know I'm kind of jumping in and out of site plan but I'm only trying to do that when I think it is relative to the use variance and I'm trying not to stray. With regards to the used sale operation it is my understanding that you are not required by the state to make any changes to the building or the parking area in order to sell used cars. Is that your understanding?

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** With regard to the lighting that exist on the site; you don't have any plans to change or increase the lighting

**Mr. Yildiz:** No everything is staying the same

**Mr. Rinaldi:** In regards to the sign there is already a pole sign there and you don't propose to put up any other signs or make that sign any larger

**Mr. Yildiz:** I have to put one sign with the name and phone number, required by the state and it is going on the same pole under the other sign

**Mr. Rinaldi:** We don't have a detail for the sign but your understanding is if the sign can comply with the ordinance then you would put it up, but understanding if it doesn't it might have to come back for a sign application if you have to

**Mr. Yildiz:** If I have to yes

**Mr. Rinaldi:** You don't propose any other sign then

**Mr. Yildiz:** No

**Mr. Rinaldi:** With regard to landscaping; you said you did a little bit of landscaping you cut down some trees that were hanging over. If the application is granted so that you can have the additional use of the automobile sales what additional landscaping are you proposing?

**Mr. Yildiz:** The grass behind and some flowers and small trees at the corner

**Mr. Rinaldi:** Just to make it a little bit easier Mr. Dougherty was correct when he pointed out in his review letter that a buffer is required if the use variance is granted particularly I'm referring to how it joins to lot number 20 and as you can see there is a fence running probably 75% up the property line it is a wood stockade fence but it ends as it approaches Daniels Avenue. What Mr. Yildiz plans on doing is to

continue buffer all the way to Daniels Avenue to satisfy the ordinance and whether that is a continuation of the wood stockade fence or of planting of trees he is willing to take the boards input on that. He would also turn west and put a buffer along that portion of lot 21 the grass portion of lot 21 if the board preferred he would be willing to do that. I know I said a lot do you agree with those?

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** To continue as part of the use variance you are going to be planting vegetation and landscaping between parking lot and the sidewalk.

**Mr. Yildiz:** Yes that is correct

**Mr. Rinaldi:** There is nothing there now

**Mr. Yildiz:** Just the black top and I will remove it

**Mr. Rinaldi:** There is a note I think a reduction of 5% of the current impervious area so we are going to reduce current impervious area.

**Mr. Dougherty:** Mr. Rinaldi the plans did not indicate the same thing

**Ms. Cuviallo:** The plans say 5 feet not 5%

**Mr. Rinaldi:** So it is a reduction of that 5 feet the entire length of the property. Now you have been operating the property back as far as 2008 was there ever an issue with traffic coming in or out of your location?

**Mr. Yildiz:** No

**Mr. Rinaldi:** There are three ways to get in and out of the location

**Mr. Yildiz:** Four, there are two on Hickstown Road one on Branch and another on Daniels

**Mr. Rinaldi:** And you don't plan on changing the way to get in and out of this property

**Mr. Yildiz:** No

**Mr. Rinaldi:** So even as a gas station I think you said 100 to 150 cars a day there was never a problem?

**Mr. Yildiz:** There was never congestion; no

**Mr. Rinaldi:** Then the answer is obvious when it comes to a repair facility that you have no problem with traffic.

**Mr. Yildiz:** No

**Mr. Rinaldi:** You also propose as part of the use variance you are going to complete the enclosure of the trash removal container. Is it enclosed at all right now? Is it enclosed right now or is it open

**Mr. Yildiz:** It is open

**Mr. Rinaldi:** And you are enclosing with a fence or vegetation

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** With regard to the propane tank you heard me speak to the board. How long have you had the propane tank?

**Mr. Yildiz:** We had that since I bought the property and it was here before I came. When we sold gas we sold a lot of propane and I thought it was going to be the same but we did sign a contract but after we are not renewing it. I only make about \$800.00 profit so it is not worth it to me.

**Mr. Rinaldi:** So it is my understanding the lease expires in June 2018

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** And it is your testimony that you are not renewing that lease and that tank is getting out of there

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** That is all the questions I have unless the board does or we can move onto Ms. Cuiello.

**Mr. Castor:** What is the % of commercial vs. personal vehicles in the business?

**Mr. Rinaldi:** What is the % of the commercial vs. personal vehicles being sold?

**Mr. Castor:** No that is not what I asked what is the % of the repairs being done in the auto repair shop; what % comes from the used car lot and the public?

**Mr. Yildiz:** I want to say right now 40% from used cars and 60% from public

**Mr. Castor:** I go by that place every day by the way I live off the back street and I have been through there when the cars are two and three deep. You could not get through that lot if you had to it has been that crowded. If you are going to move a huge car lot in there I don't see where you are going to have enough room to store very many cars to sell. It is not like that all the time a lot of cars have no tags on them so there is no doubt where they come from and there are tags that have tags and we know they are customers' cars. Another thing I see there all the time there is a wreck sitting there now and I don't remember how long on the left end of the parking lot out there by Daniels, it has been sitting there for I don't know how long. We all have this problem; I have it too at my shop they are abandoned what do you do with them!

**Mr. Rinaldi:** He raises an excellent point, and he reminds me I forgot to ask Hasan about that. There are cars out there and you heard the gentleman talk about the one car that is in really bad shape and other cars there now. Whose cars are they?

**Mr. Yildiz:** They are all our cars

**Mr. Rinaldi:** Why did you put them there?

**Mr. Yildiz:** To make it look like we are busy

**Mr. Rinaldi:** So all the cars that are there now, none of them are cars that were intended

**Mr. Yildiz:** Some are my partners' cars also; two or three

**Mr. Rinaldi:** They are getting out of there?

**Mr. Yildiz:** Yes; we will be cleaning them out of there also

**Mr. Castor:** I can understand the gentleman with his cars but if you can figure out how to get rid of customers' cars can you tell me because the police will not do it. I have one for 6 years now

**Mr. Rinaldi:** You mean customers that have abandoned?

**Mr. Castor:** That is right they have abandoned their car, you cannot junk it you cannot retile it you can do nothing to it. Because under the laws of this county they can come back and sue you for disposing of their vehicle; I have five right now and my neighbor complained about them and I had the police there and I said her are the serial numbers find the owners. They said are you nuts and they walked out the door and the cars are still there and I have a bigger lot than this gentleman does. I don't have a problem with the used auto sales but there is going to have to be a strict limit on the amount of cars go in there should there. Should there be a fire and you are really busy you are not going to get a truck in there. I

know we have an officer now that is going to go down there and make sure it stays that way. If you put 20 cars there for sale and then run a full-fledged repair shop there is no room.

**Mr. Rinaldi:** The gentleman is correct and that is why I started out the application with Mr. Hasan's testimony with him acknowledging if the board was inclined to grant this there was going to be a limit on the number of used cars that could be stored there. We only have twenty parking spaces on the entire site we are going to give birth to a couple of spaces when we get rid of the propane tank but that is not now so it is clear that there is going to have to be a condition on the number of used cars once we start subtracting the number of employee parking, the number of potential customer parking. As far as folks abandoning their cars I don't know I will have to ask your personal opinion.

**Mr. Yildiz:** So far since 2008 I have had none

**Mr. Rinaldi:** I think you said basically the majority of cars about 80% or 90% of cars you repair are one day jobs

**Mr. Yildiz:** Basically Yes

**Mr. Rinaldi:** The gentleman is correct as mechanics your hands are tied there are certain procedures, you can put a mechanics lien and it will take you till death to get the title into your name. But in your experience you don't have any.

**Mr. Yildiz:** I haven't any experience

**Mr. Waddington:** How do these cars get to your lot? Do you have tractor trailer bring them in with a car carrier

**Mr. Yildiz:** No I have a dealers tag if the car is drivable I drive it if not I call a tow company

**Mr. Waddington:** So you have no plans of using any type of car carrier and off-loading onto any of the main roads, Daniels Avenue, Turnerville Road or Branch Avenue?

**Mr. Yildiz:** No I no intention to do that

**Mr. Waddington:** I just want to make sure if I was a resident on Daniels Ave I would not want to see it

**Mr. Hagy:** I understand there are twenty car spaces there and you have three bays and at least two employees there with their cars, so that would be 25 spaces. Do you plan on having all 20 used car facility?

**Mr. Yildiz:** No



**Mr. Rinaldi:** I think I neglected to ask, I know I did put it in my letter. How many used cars do you think you will have on that property at any given time used cars for sale?

**Mr. Yildiz:** Between 12 and 15 at the most

**Mr. Hagy:** The reason I asked this is because with auto repair you may have 8 to 10 cars in for repairs on a daily bases however when you have a lot here in town that typically has the lot filled with cars to repair; so I'm looking at a backlog here of repairs so that takes up a portion of spaces

**Mr. Rinaldi:** It is going to have to be and it would be up to the board when crafting the resolution, but if this is going to work it has to work in such a way that the resolution is clear and enforceable and by that I mean limiting the number of used cars on there on any given day. If the board determines that 9 to 12 of 12 to 15 is the number then that is the number and if means that Hasan is going to have to turn repair jobs away for that day because there is nowhere to put a motor vehicle then he is going to have to do that if he wants to operate in the manner he wants to operate. This is not a real stretch but it is a bit of a challenge and in order for it to work we would limit the number of parking spaces we can fit on the property if he wants to do this he will have to be bound by restrictions. He has taken ownership of this and he is a resident of Pine Hill and has made an investment in the building and taken ownership of the building.

**Mr. Hagy:** That brings me to the second part of the question are you going to have any customers parking on the street in order to come into your facility to select used cars?

**Mr. Yildiz:** No

**Mr. Hagy:** Everything is going to be on the property itself with the limited space?

**Mr. Rinaldi:** Tiffany was going to get to this but she has given me some of her thunder. You will see on the plan there is a very large canopy where the pumps use to be that is all wide open space there and that was not even included in the number of parking spaces that could potentially be available. Once the propane tank is out of there I believe and I'm not an engineer I believe we could get two more spaces. So if the need arises there is room for more parking but that is not counting the spaces under the canopy.

**Ms. Cuviallo:** That is an option if they need to they can make an appointment to come back.

**Mr. Rinaldi:** Would you agree with what the gentleman had said you cannot have any of your customers parking on any of the three streets?

**Mr. Yildiz:** Yes I agree with that

**Mr. Castor:** There is a grass lot down the building do you plan on doing anything with that?

**Mr. Yildiz:** We are going to keep it the same and maybe do some landscaping around it

**Mr. Rinaldi:** So all that grassy area is going to stay grass

**Mr. Yildiz:** Yes

**Mr. Green:** There by the grass the barrier there has enough space for a car to go thru you are not going to fill that in.

**Ms. Cuviallo:** That is the area for the trash enclosure

**Mr. Castor:** Wouldn't that make sense to put down some stone part of that and put the trash enclosure back there out of the way?

**Mr. Rinaldi:** Again you don't have the benefit of the plan in front of you that is exactly what is shown on the plan the trash enclosure is going in that gap

**Mr. Castor:** That will be a parking space you would lose but you would gain a lot more room.

**Mr. Dougherty:** The plan is showing the parking space is still there the dumpster will be back in that space but they are still counting that as one of the parking spaces

**Mr. Waddington:** So they would move the car dump the dumpster and put the car back

**Mr. Dougherty:** You are talking about the twenty parking spaces but of the twenty there are only 17 on the site plan the other three are inside the building is that right

**Mr. Rinaldi:** No I missed the three too but Tiffany was able to show me what I missed

**Ms. Cuviallo:** There are three existing spaces along Turnerville Road and they do not show on the Plan but there are three more by the propane tank. Plus the parking in the bays and the canopy where the gas tanks use to be will provide better flow on the site.

**Mr. Dougherty:** So there are twenty parking spaces outside. So let's break that down; if you have 12 used cars, possibly 5 repaired cars, 3 employees and you have people and you have people coming onto the site. So my question is will 20 spaces be enough? With 12 used cars, 5 repairs and 3 employees there is no room for people to drive in a purchase a car so that is a point for the board to consider how many cars will be the limit. The propane tank can be considered for the future.

**Mr. Rinaldi:** That is something to be considered if we say 12 used cars than that is a finite number and we know 3 employee numbers we know that is not going to change so the variable is the 5 repair vehicles. From what I heard from Hasan's testimony; I want to ask him because I want to be clear. On a given day and I know every day is different; I know you had no repairs today but tomorrow you may have 7 repairs. You have the 3 bays do you use all three bays are all your repairs done inside.

**Mr. Yildiz:** I keep some cars inside

**Mr. Rinaldi:** So if you had 5 customers tomorrow and they all showed up at the same time

**Mr. Yildiz:** Most customers ask when they come when can I get my car back they don't want to leave if I can't do it.

**Mr. Rinaldi:** And they come back another time

**Mr. Yildiz:** Yes

**Mr. Rinaldi:** Hugh your point is a good point and what we have to resolve is the variable of the 5 cars being there it is a possibility, but if we consider the 3 bays and the testimony of what Hasan has testified to that he turns customers away if there is nowhere to put the cars that is what we are left with. That is the variable the number of cars coming in for repairs.

**Mr. Dougherty:** That would be the boards consideration that would limit how many vehicles can be stored at that site. Of the 20 spaces how are we going to delineate that, how many used cars how many repairs and how many employees

**Mr. Waddington:** You also testified that you would have no new signage on the lot with the exception of the sign that you wanted to put below your current sign on the same post. I'm assuming that you are not going to put any kind of banners or streamers on your building or across to the sign

**Mr. Yildiz:** No only name and phone number

**Mr. Rinaldi:** The State only requires the name and the telephone number and that is all he is going to put up there; no logo no car picture just name and phone number

**Mr. Yildiz:** Yes

**Mr. Waddington:** So no banners, no streamers nothing like that

**Mr. Yildiz:** No

**Mr. Waddington:** Anybody have any more questions?

**Mr. Rinaldi:** I'm going to continue with use with Ms. CuvIELLO; Ms. CuvIELLO can you describe for them your current licenses and training, education and experience

Ms. CuvIELLO gave an overview of her qualifications to qualify as an expert in testifying as a Planner in the State of NJ

**Mr. Rinaldi:** Mr. Chairman I offer Ms. CuvIELLO as an expert in professional planning

**Mr. Waddington:** Thank You

**Mr. Rinaldi:** Ms. CuvIELLO you have been brought on to this application to testify in your capacity as a professional planner and as a part of that have you had the opportunity to visit the property

**Ms. CuvIELLO:** Yes I have

**Mr. Rinaldi:** And have you had the opportunity to stroll around the neighborhood and look at the surrounding and adjoining properties and businesses in the area

**Ms. CuvIELLO:** Yes I have

**Mr. Rinaldi:** Did you take the opportunity to review this borough's Master Plan in accordance with this application and how this use variance will relate or affect that Master Plan?

**Ms. CuvIELLO:** Yes I have. This is an application for a variance to allow the addition of used car sales on this property. The property is located in your limited business district on the corner of Branch Avenue and Hickstown –Turnerville Road. The property is surrounded by another commercial property along the main road and residential property on Daniels Ave behind it. Catty-corner across the street is Walgreens and we are all generally familiar with the surrounding area. This property has existed as a gas station based on research and historical aerial since at least 1970 so it has a continuing use as an auto related facility for over 40 years. In 2014 Getty which was operating the facility went bankrupt subsequent to that the tanks were removed and the property was purchased by HYZ properties and they began operating a repair facility out there, the repair facility was in operation with the gasoline service station for a number of years most likely going back to the 1970's and definitely going back to 2008. We are proposing now to add used car sales we are requesting 12 to 15 spaces for sales and this property located in an LBD district does not permit that use. The LBD Limited business district does permit uses; it is an interesting part of the ordinance that actually says that the permitted uses are those that are permitted under sub section 23-7-10.1 which is the general business district. So those uses permitted in the general business district that are determined compatible with the limited area established in this zone and provides a sufficient buffer to the existing residential uses specifically including the following,

professional offices, banks, churches and religious facilities it does not exclude any uses and when I look in the general business zone, new and used car dealers sales and service are a permitted use. So your ordinance leaves an opening for the board to determine whether or not a uses is compatible with a limited area or a limited business district in that zoning district to see if it is or is not a permitted use.

**Mr. Rinaldi:** Am I correct if the applicant chose or a subsequent owner showed they could reestablish this as a gasoline pumping station in this zone. Without needing an approval!

**Ms. CuvIELlo:** I would say potentially yes; it is a permitted use in the GBD zone and it has a history of use here so it would be a determination if it were to be reestablished. But the intent of what I was saying there is a provision in your ordinance that actually allows the board to make a determination if the use is compatible with the area where it is supposed to be located. I reference that because I find it to be significant given the fact that this site has operated as a gas station and repair facility and auto related use since 1970 and the surrounding commercial uses you have the store next door and I believe there is a Public Works Facility just up the street so there are there other uses in the area that are not residential in nature and this does kick in to this intersection. That being said being conservative we requested a use variance and we are providing testimony to allow those two uses and the temporary continuation of the propane use on this property. You have heard significant testimony from Hasan regarding his operation and how many employees they have and the estimated customers and I will talk about that a little bit more when I talk about the negative criteria and the positive criteria.

Ms. CuvIELlo provided statements to the negative and positive criteria to the board and the audience.

**Mr. Waddington:** Does anyone have any questions?

**Mr. Castor:** Yes; how far is the school? It is within 100feet she does not know the area.

**Ms. CuvIELlo:** There are other commercial uses before you get to the school

**Mr. Hagy:** One other thing; are there sidewalks that border the property

**Ms. CuvIELlo:** There is sidewalk along the whole property

**Mr. Luste:** After listening to the testimony and having a copy of the report here in front of me I would say that the testimony does satisfy the criteria of the land use law in my opinion

**Mr. Dougherty:** I just have a question; I know you covered it briefly. You have 20 parking spaces and the three bay spaces and it yielded 12 to 15 used cars. What I'm looking at is the provision in the ordinance that says for automobile sales 1 and ½ parking spaces should be provided for each 1000 square feet of course area so doing a ruff calculation based on 1800 square feet that would be 3 parking spaces for people coming to buy a car and then you have the three employees and if we say 5 cars to be repaired,

say 3 in the bay and 2 outside if you have 12 to 15 cars you are 2 to 5 cars over what you have parking for

**Mr. Castor:** Let me interject something here. It has 3 bays but you got to double them up we all do it. You have one in the bay you have one behind it the one in the bay maybe brakes or whatever and the one behind may need a water pump where you don't need to put it on the lift and we will put it up behind and do the water pump out side we all do it. So you have to figure if there is three bays there is six spots for cars being repaired. We all move them around to do whatever it takes to get them in and out sometimes we jack cars up outside and put tires on it. So when you have 3 spots you count six because you park them 2 deep I have been doing that for 50 years.

**Mr. Dougherty:** The only concern I have is the board doesn't want them to be parked outside and I understand what you are saying Joe that is a normal practice outside repairs. So it would be up to the board if there would be any exemption for outside vehicle maintenance. Also how many cars do you need on the lot to be a viable business? In other words if you only had 6 cars for sale would that no longer be viable. I know you asked for up to 15 and it would be between 10 and 15 so what is the minimum?

**Mr. Rinaldi:** Let me ask a few questions. Mr. Yildiz you and I have had this conversation and I had asked if you did repairs outside and if I recall what you told me was you don't make it a practice to do repairs outside but if a customer pulled up and said I have a flat tire you would do that out in front of one of the bays.

**Mr. Castor:** Watch what you say I go by your shop every day and you are under oath.

**Mr. Yildiz:** Yes I do flat tire quick fix

**Mr. Rinaldi:** Let me mention some of the other things you said, flat tire (quick fix) and others lightbulb (quick Fix), windshield wipers are those the kinds of repairs that you would limit to outside? You wouldn't be doing oil changes outside

**Mr. Yildiz:** No you need a lift

**Ms. Cuiello:** Radiator repairs

**Mr. Yildiz:** No you need a lift

**Mr. Rinaldi:** Mr. Dougherty's second question and I hope I have this right. In your opinion how many used cars do you need to have out on this property in your mind to be successful used car salesman at that facility.

**Mr. Yildiz:** As I said 12 to 15

**Mr. Sitzler:** Not to interrupt but I think the question was and I actually have the same question. What is the bottom line where he could feel he could be successful at used car sales? I know the optimum he wants is 12 the maximum is 15 what would be the least amount of cars where he would say I won't be able to function unless I have at least whatever.

**Mr. Yildiz:** Around 10 to 12

**Mr. Sitzler:** So 10 would be the lowest?

**Mr. Yildiz:** 10 to 11 yes

**Mr. Castor:** What are the hours of operation for the Car Lot?

**Mr. Rinaldi:** That is in my summary 10:00 AM to 6:00 PM Monday thru Friday and 10:00 AM to 2:00 PM on Saturdays

**Mr. Castor:** Will you have the lights that shine down so you don't disturb the neighbors?

**Ms. Cuviallo:** We are not changing the lighting so the lighting that is there is the same lighting that was there

**Mr. Dougherty:** Another thing just on lighting some of those seem like they are in disrepair stuff is hanging down off of them; that will be a condition too that any broken lights will need to be repaired.

**Mr. Yildiz:** I'm willing to fix it if it is broken

**Mr. Dougherty:** Just for clarification car sale was from 10 to 2

**Mr. Yildiz:** On Saturday

**Mr. Dougherty:** Just on Saturday

**Mr. Yildiz:** And on Sunday we are closed

**Ms. Cuviallo:** And 6 on Monday thru Friday

**Mr. Dougherty:** Cars sales Monday thru Friday is car sales as well from 10 to 6

**Mr. Sitzler:** 10 to 6 and 10 to 2 on Saturday

**Mr. Dougherty:** You are not going to have lights on for 24 hours so they would go off about an hour after you close in dark time so 7:30 would be the maximum

**Mr. Rinaldi:** Would they be going off automatically at night, would there be clocks on them

**Mr. Yildiz:** No I have a switch inside

**Mr. Rinaldi:** And when you close you turn the lights off

**Mr. Yildiz:** Yes I do

**Mr. Rinaldi:** So if you are allowed to establish the used car lot there, will you be doing the same thing when you leave the property at night the lights go off?

**Mr. Yildiz:** The corner lights will stay on; Branch and Hickstown and Branch and Daniels

**Mr. Castor:** The only place he has residential is back there along Daniels and it might bother the neighbors

**Ms. Cuviallo:** He is hoping to keep the lights on at the corner to deter people from sneaking around at night

**Mr. Hagy:** That is on the residential side of the property? Is there enough lights for safety as the customers walk the lot at night to look at cars?

**Mr. Rinaldi:** Here is the best way to answer that. I think there has to be a litmus test and I know he is going to have to check what the state requirement is because I'm sure they do. So I think his representation needs to be whatever the minimum the state requires he will comply with and I think that has to be documented on the plan as well. I think we would be guessing if we were to say it is bright enough for car sales

**Mr. Waddington:** The light that you plan on leaving on at the corner of Daniels and Branch Avenue what direction does that currently shine

**Ms. Cuviallo:** It is shoe box lighting so it shines down

**Mr. Waddington:** So it directs straight down

**Mr. Yildiz:** Yes straight down

**Mr. Waddington:** What I was concerned with was the corner property on Daniels Ave and I'm worried about the light shining in that direction



**Ms. CuvIELlo:** We could put a shield on the side of that light and if need be just on hook it depending on what lights need to stay on to make sure there is enough security light at night. His intent is not to be a nuisance to the neighbors

**Mr. Dougherty:** The sales spaces will be predominantly the 6 spaces along Branch Avenue and the 8 spaces along the back

**Ms. CuvIELlo:** There are a few spaces along Hickstown Road as well

**Mr. Dougherty:** Wouldn't they be customer spaces and what lights will remain on? Right now the lights are turned off but this will be a different thought

**Ms. CuvIELlo:** Right now we will need these on but we will review of the site to see if we need the ones on Daniels Ave on because right now with the limited vehicles we will be allowed to have they will be more prominent along the street so we can do a light test to show what the standards are and how it affects the neighbors. Again it is not his intent to create an impact with lighting at all.

**Mr. Castor:** That is usually the number one complaint with commercial the lighting

Mr. Dougherty: My recommendation would be since we are talking about measuring the light intensity and everything that that would be a site plan issue and that would be dealt with at the site plan stage. There are some issues with regard with landscaping, there was testimony with regard to landscaping but I would really like to see something on the plan. I think one of the things the board has to consider for the use is the number of parking spaces. Just as a thought the 10 spaces plus 5 for repairs assuming 3 are in the bays. So 10 used cars 3 in the bay 2 outside, 3 employees' and 3 spaces for the customers in accordance with the ordinance and then we also have the potentially movement of the propane tanks which would be two more so that would give you twenty but when the propane tanks go away you could actually have 12 cars on site.

**Mr. Sitzler:** I was thinking if the applicant would consider setting his minimum as 10, and you were given 10 considering all things looking good when the propane tanks go out with the testing at that point you would be permitted to have 2 additional.

**Ms. CuvIELlo:** If I could explain; it would be 10 cars now and 2 more when the propane tank is gone

**Mr. Yildiz:** Yes; okay that is fine

**Mr. Dougherty:** The thing as part of the use; there definitely was an understanding that there would be a limit to the number of cars. So at the onset it could be 10 provided and then 2 more once the propane goes away. That would be the maximum of used cars as a condition of approval as acceptable to the board

**Mr. Waddington:** So he has 20 spaces and of that 20; 10 can be used for used cars. Are there any other questions from board members as far as use? At this time I will entertain a motion to open the floor to the public

**Mr. Castor:** So moved; seconded by Mr. Hagy. All in favor

Mr. Waddington opened the floor to the public regarding the use variance change for 800 Turnerville Road.

**Mr. Sitzler:** anyone wishing to testify please come forward and give your name and address

Mr. Sitzler swore in the following which all gave testimony in favor of the use variance;  
Mr. Art Seifert; 9 W 4<sup>th</sup> Ave, Pine Hill NJ; Ms. Trulla 159 Cross Keys Road, Pine Hill NJ;  
Mr. Joe Bodanza, 163 Lafayette Avenue, Berlin NJ; Mrs. Angela Clark, 19 E 5<sup>th</sup> Ave, Pine Hill NJ  
All gave accolades of the applicants' customer service in both auto repairs and dependable used cars

**Mr. Waddington:** Do I have a motion to close the floor to the public

**Mr. Castor:** Motion to close seconded by Mr. Ford

**Mr. Sitzler:** I'm going to ask you take them one at a time and you can certainly have discussion about adding them and the reason I say that it is possible to grant one application and not another

**Mr. Castor:** Isn't the auto repair a moot point? It has been here as long as I have been here which is 42 years by the way!

**Mr. Sitzler:** Let me address that; from the testimony has been provided by all including the planner who painted an historical prospective thru her investigation. It would appear that the auto repair is a non-conforming, even if it is not an approved use; there is an argument that it may be because apparently we have the ordinance as our planner also pointed out and agreed with that could be an allowed use even though it is not specific in this zone but because incorporates the use in the GBD zone. So we have gone this far and there has been testimony in order to clean the record I would say they deserve a vote on that so going forward there would be no ambiguity in the next 20 years from now as to whether, I will leave it up to you Mr. Rinaldi if you get a use variance it has a little more meat going forward.

**Mr. Rinaldi:** It does and right now and if it was challenged and we would have to argue over the issuance of the mercantile license; and I have been down that road and especially since the Borough Planner pretty much agrees with the Applicants Planner. I don't disagree with the gentleman I could probably make a great argument that it is a preexisting nonconforming continuing use you don't need to grant me a use variance but cleaning the property and cleaning it all up I have no objection to that.

**Mr. Sitzler:** So anything else Mr. Rinaldi on that point

**Mr. Rinaldi:** No

**Mr. Sitzler:** So I would suggest you take the auto repair business; once you grant these variances legally it has more meat to the bone than the fact that you are recognizing it is a nonconforming use that can continue. I would ask the board to do that one first, the used car sales would be a second motion and the third one would be a temporary use until June 1<sup>st</sup> of 2018 of a propane dispensing station until that point of time that it would no longer be a permitted use.

**Mr. Castor:** I make a motion that we variance for the Auto Repair Shop

**Mr. Hagy:** Second

**Mr. Waddington:** Questions on the motion? I have a question. Since we are doing that as two separate use variances should parking for additional repair vehicles be part of that use variance or incorporated into the entire used auto

**Mr. Sitzler:** I should clarify that since you raised a good point. The use variance is contingent upon the site plan approval would set all those perimeters, so any use variance that is granted are all conditioned on site plan approval so we would get to it then.

**Mr. Dougherty:** The only thing I would put out there that there are several things that would not be picked up on the site plan. Those would be junked cars so that would be a condition of use

**Mr. Castor:** That would be a problem I now the board would like them removed right away but that is a major major problem today. I have junked them and it came back to bite me 6/8 months later

**Mr. Dougherty:** I think in the testimony they were cars they had in their possession right now and that should be a condition of use to be granted

**Mr. Waddington:** That would be a condition of use for the used car lot

**Mr. Dougherty:** I did not know if you wanted to do that now

**Mr. Sitzler:** This is just on the auto repair facility that would be on the next motion

**Mr. Waddington:** So I have a motion on the floor and a second to approve the use variance for the repair facility; roll call vote please

Roll call all "aye" motion carried

**Mr. Sitzler:** Okay the next variance would be for the used car sales and the condition would be that the existing cars that are there currently as of the date of this hearing that have been testified here would be removed. For anything to be granted in the future for the site plan these are to be removed prior to the approval of the site plan or at least as a condition of approval

**Mr. Castor:** I think the easiest way to do this is to put a cap of 20 cars on the lot regardless of whether they are for sale or repair whatever just cap it at 20

**Ms. CuvIELLO:** what about when the propane is removed

**Mr. Rinaldi:** My client just confirmed the lease expires June 18<sup>th</sup> of 2018

**Mr. Sitzler:** Okay so we are clear as to the day June 18<sup>th</sup>, 2018

**Mr. Dougherty:** I would like to recommend to the board because this use is being approved for used cars and there is, of the 20 spaces on the lot that are available but it would limit to what we had discussed before initially 10 parking spaces with more spaces coming available when the propane tank is removed that 2 additional spaces will become available. So initially limited to 10 spaces for each car and then 12 in the future and that would be for the sale as opposed to just say blanket for 20 spaces. The other condition I had heard just for the used car sales there would be loading or offloading on any of the local streets that would be a condition as well. Then also no banners and flags hanging so that would be a condition as well and then the other one that I had was the site lighting but that would be at the site plan stage. The timing of the lights, what is going to be lit?

**Mr. Castor:** I understand his concern is if you have used cars sitting out front or anybody's cars out front, customer's car they are ours it comes under the CCC (Care Custody and Control) and legally you are responsible if someone breaks into it.

**Mr. Hagy:** With the lighting it can be adjusted to not disturb the neighbors

**Mr. Dougherty:** Yes that is a big part of that

**Mr. Sitzler:** Okay so if I understand it the proposal that the board needs to consider on moving the motion on the use variance on the sales of used cars is that they would be limited to 10 cars until June 18<sup>th</sup> of 2018 or when the propane lease expires when 2 additional spaces would then be expanded to 12 car spaces for used car sales. There would be no loading of offloading of cars onto the local streets by tractor trailers, no customer parking on the streets, no hanging banners or streamers. Those would be the conditions of the variance for the use of a used car lot

**Mr. Castor:** I make a motion to approve under those conditions

**Mr. Waddington:** Do I have a second

**Mr. Ford:** Second

**Mr. Waddington:** Any questions? No Questions roll call please

Roll Call all "aye" motion passed

**Mr. Castor:** Next is the propane tank. I make a motion to approve the propane tank until lease expires in June 20187 and it is removed.

**Mr. Waddington:** Is there a second?

**Mr. Ford:** Second

**Mr. Waddington:** Any questions on the motion? Roll call please

Roll Call all "aye" motion passed

**Mr. Rinaldi:** We have crossed over so many times Hugh would it be best if we start to address your letter and any concerns that you have?

**Mr. Castor:** Don't we need a site plan on a print

**Mr. Dougherty:** Right, in general terms I think I can address some of the things I did look at the new site plan I was provided this evening. They have addressed some landscaping issues they are not showing on the plan but there was testimony they were going to continue the fence to Daniels Avenue but there is still a concern on lot 22 where there is supposed to be a break at the property line so there should be landscaping between all side property lines so that would be something that with the plans it should be there and we would be looking at a variance or a waiver from that. My thought would be to provide a life size plan and testimony and to come back for site plan approval that would be my recommendation to the board. The current site plan does cover some of the issues but the lighting so if we can eliminate them and only light the crucial lights that are necessary, the house shields that were testified to we would want to see that so they are not interfering or shining light into the houses. The landscaping around the trash enclosure and I do like where the trash enclosure is being placed. The building and tights that need to be repaired the guide rail for instance in the back that is in disrepair. So have those on the plan and address those issues and then come back to the board because right now the types of plantings the types of variances that would possibly needed would be important for this board to know

**Mr. Hagy:** Would there be any need for the parking spaces themselves to be identified with lines for the typical parking spaces

**Mr. Dougherty:** That would be the intent, in fact they do have these delineated and we will be getting to that. In fact there was a parking space that was shown for 170 square feet and they are showing 200 square feet. Although the configuration is slightly changed the new decisions made this evening is a better arrangement of the parking spaces but they would be eliminated. But the details of the striping I would like to see that, details of the sign, details of the handicap parking details of the painting the light density indication on the plan and they may be some other items. The sign can be addressed by saying you are going to meet the ordinance requirement so you won't need a variance

**Mr. Castor:** Since they are changing do they need to be ADA compliant?

**Mr. Dougherty:** Yes they would have to have an ADA parking spot which will be van accessible which he shows and signs and also and ADA compliant ramp which the site is flat so I imagine they may not need that for ADA accessibility but the big thing is the parking space. So there are some unresolved issues so I would recommend that the applicant based on the testimony tonight revise the site plan, resubmit it and then appear back before the board. That is my recommendation unless the board has anything else.

**Mr. Castor:** They would not have to advertise again would they?

**Mr. Sitzler:** You advertised for everything right

**Mr. Rinaldi:** I advertised for everything, are you okay with the storm water management I know there was not any testimony on it

**Mr. Dougherty:** Normally it is if you increase impervious coverage by more than a ¼ acre which I would say you're below that so there would not be an additional need for storm water management although it would be helpful

**Mr. Castor:** Actually they are reducing the impervious taking asphalt out

**Ms. Cuviallo:** Note 13 reducing impervious by 5 feet

**Mr. Waddington:** So we will have them on the agenda for August 10<sup>th</sup>

**Mr. Sitzler:** Ladies and gentleman in this application they were granted the use variances and the second part is the site plan you are all able if you are able to you are invited to come back for that it is going to be August the 10<sup>th</sup> at 7:30 PM the site plan for this application for HYZ will be continued with no further public notice or announcements because the applicant has satisfied that with the initial application they have advertised for everything including the site plan but because of those complications it is necessary to hear that and give the applicant the opportunity to make some adjustments to the site plan from the recommendations by the board professionals and to make sure

everyone has a copy of that new plan to review as we are going over. Mr. Rinaldi the applicant would waive all requirement of the board to act tonight

**Mr. Rinaldi:** Yes. I just had one thing for Mr. Dougherty if I had the new plan to you by August 1<sup>st</sup> would that be enough time, if not just tell me and you will have them by when you need them.

**Mr. Dougherty:** I would prefer by July 27<sup>th</sup> 2 weeks before

**Mr. Rinaldi:** You got it

**Mr. Waddington:** Next we have on our agenda the discussion on the fence situation

**Mr. Scardino:** Mr. Luste and I had a meeting where we discussed inconsistencies in our current ordinance the fruit of that meeting is before you. Joe has been kind enough to reduce his compensation. The fruit of that meeting was the graphics that Mr. Luste has prepared before you I think the next step is that we continue this work to one remedy the inconsistencies in our ordinances actually there are two sections which contradict themselves. I understand that they give me latitude as Zoning Officer but when we apply the ordinance sections to existing conditions there needs to be absolute concrete and solid footing when moving forward so we don't create opportunities for people to appeal not in bases of denying them their right but in the bases that we have two different standards that need to be applied. Moving forward on new applications and I do get a good number that cross my desk we are doing things we are doing things in a much more consistent manner now as to our approach. I did review the ordinances that we have; there were actually grandfathering clauses that were put in for existing fences and I think for a variety of different reasons notwithstanding the addition of the additional ordinance language and some inconsistencies of enforcement not to mention the fact that there are those residents that just did not understand that they need permits. We have a pretty wide array of conditions particularly at intersections; I think there has been an assumption that the ordinance said some things about the heights of fences between residences but if you examine the ordinances you will find that it isn't there and sad to say I identified a couple of properties since the last meeting where residences have installed fences between properties that don't meet the ordinances that we have. Issuing items like this will be very helpful to the applicants and very helpful to professionals like the fence installers giving them more direction and guidance and personally I think a lot of residents look to our website for information before they do work and anytime we can provide more information it makes it easier for everybody. The last thing that I want to do is go to a homeowner that has spent thousands of dollars in good faith and make them undo something because we weren't clear on what we needed them to do and I think the more information we can put out there makes it easier for them is just better government and I know that probably sound trite but I really believe in that. A lot of folks come in and they ask questions about whether they need permits or not and depending on how they fraise their question you can get a different answer for that. If you ask the construction department do you need a permit they are going to say no because the assumption is a construction permit when in reality you should always seek a zoning permit to make sure your fence is installed in your needs and bounds and it does meet our zoning requirements. This is step one in clarifying what needs to be done and then step

two would be examining the ordinance and making recommendations to either by this body by resolution to the governing body or directly to the governing body for recodification and amendment to clean up some of those inconsistencies. That is where I kind of left it and I will differ to our planner to farther articulate what's happening.

**Mr. Castor:** We can really do anything anyway doesn't it have to be mayor and council?

**Mr. Sitzler:** The Land Use Law provides that once a year the Planning and Zoning Board can make a recommendation of changes that they think need to be made in the ordinances so this would come under that category.

**Mr. Luste:** It would yes; the point of printing out these sketches in the office we also had some differences of opinion on reading the current ordinances when doing the sketches. Because the ambiguity and the miss directions in different sections were not consistent so in reality we needed to go back in now with our templet and say okay of this is a side yard and this is a rear yard the person has a right to go here with a 6 foot stockade fence but if you say that is a different side of the yard when you look at the land you can't do that. I took a pretty good stab at it and I saw in some of our instances in our ordinances had issues and in some there is a whole lot that is irrelevant because it is covered in another section of the ordinance. That is going to take another study about another 3 or 4 hour reading with Mike to go through that and then come back to the board with recommendations with chances to make it simple for the residents. One of the steps we are considering is that sight triangle is very important the ordinance talks about 100ft but in reality that is hard what is someone going to do with 100 feet, we want to make it more consistent of a triangle for those cars right. We make it clear when we say 36 inches above grade it's not on top of 5ft of fill because that puts it up 8 feet; so this is the kinds of things we are going to have to look at and Like Mike said this is the first step.

**Mr. Dougherty:** I think at this time it would be a recommendation to council to make those ordinance changes

**Mr. Sitzler:** Yes once he determines what those changes are and the explanation of why they are needed and that would be by resolution that would go from this board to the town council to review and they would determine if it is appropriate. They are the body that would create the ordinance or amend an existent ordinance.

**Mr. Dougherty:** The other issue Bill is that the Planning Board does not the ability to do that so the board has to make a recommendation for Joe to prepare a proposal to council

**Mr. Sitzler:** Correct

**Mr. Castor:** Do we need a resolution or just a letter to council?



**Mr. Sitzler:** A resolution for Pennoni to submit a proposal to mayor and council and what would be involved from a financial point as well as an estimate for the work involved

**Mr. Castor:** I make a motion to that effect

**Mr. Waddington:** DO I have a second?

**Mr. Ford:** Second

**Mr. Waddington:** Roll Call

Roll call: all "aye" motion passed

**Mr. Waddington:** I want to thank you guys on your work on the ordinances; this sort of map you put together is very clear

**Mr. Castor:** I asked Les to check is that trailer still there on Cross Keys Road? I would like to send the gentleman out to check and see if the trailer has been removed from the site on Cross Keys Road. The house trailer there that is and office trailer

**Mr. Sitzler:** We don't want to bring anything up with them right now I'm going to be writing a letter to them, because my understanding is they have not submitted a site plan yet and the board will get a copy of that. I will be writing them and I'm going to ask that they be put on the agenda whether they apply or not and they have the right to be heard. Basically there are concerns on what they are doing as to following through on the site plan which was a condition of their use variance. We are on top of that and we are going to take some action with respect to that.

**Mr. Waddington:** I have another question how did we finally make out over there on Little Mill with the easement where people were putting fences

**Mr. Scardino:** The residents that had fences and sheds in the easement were cited to do removals. Actually that is a good question; forgive me for not thinking to have it on the agenda. Two of the residents particularly have encroached end properties where they have not only access easement to the rear but they have also encroached the access easement between buildings so they stand to lose significant portions of what they believe to be their back yard and they have expressed desires to file appeals. I'm not certain or sure does that appeal come here or does that appeal come before town council and what is the format for those appeals do they file with the zoning board of adjustments are they heard on an individual bases

**Mr. Sitzler:** Are they cited to go to Municipal Court on this

**Mr. Scardino:** They are cited on a code violation but it is the Zoning Regulation that we cited them under

**Mr. Sitzler:** So is it a notice that if they don't do it that a complaint will be issued and they will go to municipal court?

**Mr. Scardino:** Typically that's the route that I take is through the municipal court

**Mr. Sitzler:** Speaking as someone that sits as a judge on a municipal court I can tell you and my experience as a lawyer as well that most municipal courts do not feel in those types of cases that they should be the arbiter of deleting this dispute. And the Court Judges do have the authority to transfer to us to hear, that is a land use violation. If the Municipal Judge wants to hear it they will hear it

**Mr. Castor:** When we have a fire access easement

**Mr. Scardino:** It is not for fire it just says access easement. Part of the back and forth when I started this with Hugh initially was; what is the difference between an access easement and a utility and drainage easement and it is my understanding and Hugh please correct me if I'm wrong because I do not like to assume anything when you are in these types of situations. This again appears to be something where there has been a comedy of errors; there has been a lack of consistent enforcement from the Home Owners Association in terms of issuing their own internal permits, there have been residents that have come to the town and they have been given permits and I think those permits were given without due consideration that it was in fact an access easement the believe may have been it was just a drainage or utility easement with potential for future disturbance is very limited if not remote, but when I looked at our Zoning Map when the original complaint was sent to my office the word access appears and access is not just for emergencies it is also for circulation if someone wants to move a refrigerator to the rear of their property or access the common features to that improvement like the tot lot or the walking paths they are afforded that opportunity. Because the next thing comes and we do have a letter from the Fire Chief affirming that they would like to preserve that access easement. If someone were to complain that they were not able to access the rear of their property that is the whole intent behind it so I use the word emergency but it is not titled emergency in the resolution, it is not title emergency in our tax document on the master map. The word access appears

**Mr. Dougherty:** It was an easement for say you wanted to take your lawn mower in the back of the town house, it is an access to for other people to use it to get

**Mr. Scardino:** And Emergency is part of that and I'm making that distinction for a purpose because a number of the residents have said well there is no way to get a firetruck back here, that is not the intention because if it was there would have been some sort of pavement or grass pavers or stabilizer basin in order to support vehicular traffic. The point is this is providing access so people can circulate if they so desire and the added benefit is the emergency access so I wanted to make that distinction. I sent each of the residents a letter where I detailed what my beliefs were based on the complaints and I gave

them till July 11<sup>th</sup> and I told them that I would stay any enforcement action until I knew clearly what their appeal rights were because I did not want to deny them their appeal rights or go into long court. If Attorney Sitzler it is your advice that we proceed

**Mr. Sitzler:** If you gave them a dead line, if they do not comply by the dead line then you would issue a complaint that would be your jurisdiction originally in the municipal court. Then it would be up to the Municipal Court Judge as to whether he wanted to hear that or not or if he wanted to transfer that because of the Land Use issues that they have a lawyer representing them, I don't know if they will or won't. If the Municipal Judge decides he wants to hear it the remedy is going to be he can find them on a daily bases actually and it could be astronomical. That is one of the reasons that judges in these issues when they get a zoning complaint might want the board that is better suited to hear which would be the Zoning Board because they can be ordered to be removed by the Zoning Board too, and they have the right to appeal any notice; council and or superior court.

**Mr. Scardino:** In a nut shell that is where we are at with it a total of 8 residents were cited, I met with the homeowners' association representative we surveyed the property I also served the property with the Fire Chief so they could get a feel for exactly what we were doing. I met with a number of the residents who had concerns about it showed them exactly where the fences were in violation what needed to be done. One resident has demolished a fence in conjunction with selling the property the fence was in poor repair and the realtor advised him to replace or remove it so that issue was kind of self-remedying another resident that had a fence that was encroaching and a shed came in and sought a zoning permit to relocate and they are in the process of doing that I gave them ample time to make that correction

**Mr. Sitzler:** You have a lot of leeway even if people are now telling you that your drop dead date before you issue a complaint if they don't appeal it if they come and change their mind and say I need just an extra 20 days to figure it out you have the discretion to withhold issuing that violation so can give them extra time.

**Mr. Scardino:** So that is where we are at but there is two particularly that they have enlarged their borders and I just, and one gentleman in particular that has in hand has approval from the Borough

**Mr. Sitzler:** At this point if I understand you correctly all you have done in notice them if they don't comply by that date July 11<sup>th</sup> you will follow up with summonses/complaints for violation of the ordinances

**Mr. Scardino:** That is correct

**Mr. Sitzler:** Then they will go to Municipal Court

**Mr. Scardino:** In the interim we have asked the Home Owners Association to reiterate that fences cannot be placed in access easements and that the first level of improvement has to go through the

Home Owners Association so that they don't continue to error because what happens one person does it then the next person matches and the next thing you know it spreads and we don't want that to continue

**Mr. Sitzler:** Did you also put the Home Owners Association on notice particularly with the two that say they don't want to comply?

**Mr. Scardino:** I did not because unfortunately those easements ride with the property, the Home Owners Association other than the fact that there is a Home Owners Association does not have a horse in the race in terms of maintenance of it they throw everything on the homeowner there is no common space per say the easement rides with each individual lot. I let them know what we were doing and I required what their procedures were but I did not notice them as a named party and to be fully honest with you it is only because at the time I sent those notices have a good contact with that management company which I do now.

**Mr. Sitzler:** I'm thinking it is their best interest

**Mr. Gallagher:** If I can interject I did find a copy of their constitution and bylaws and it does say no fence shall be constructed on any side or rear easement and that no fence shall be erected above 6 feet except around the immediate back patio or pool

**Mr. Sitzler:** Okay so they do have bylaws; that makes them have a stake in that because they are violating the bylaws of the Association

**Mr. Scardino:** Yes sir

**Mr. Sitzler:** So the Association should take a position with respect to the people that are failing to comply not just the Borough enforcement

**Mr. Scardino:** We have not even addressed the fences on rear properties and corner lots that don't comply with the ordinances so it is really a can of worms and a Pandora's Box

**Approval of Minutes:**

**Mr. Waddington:** If everyone has had the chance to read the minutes from June 8th, 2017 meeting I will entertain a motion for approval

**Mr. Hagy:** Move to approve

**Mr. Waddington:** Having a motion do I have a second?

**Mr. Ford:** Second

**Mr. Waddington:** I have a second all in favor?

Mr. Castor, Councilman Robb and Mayor abstained on minutes all others "aye" motion carried

**Old Business:**

**Mr. Waddington:** Motion approved. Does anybody have anything under old business? Hearing none

**New Business:**

**Waddington:** New Business the meeting will next month August 10<sup>th</sup> at 7:30pm

**Motion to Adjourn:**

**Mr. Waddington:** If nobody has anything else I will entertain a motion to adjourn

**Mr. Castor:** Make a motion to adjourn

**Mr. Green:** second

**Mr. Waddington:** All in favor? All "aye" motion carried