LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MAY 11, 2016

CALL TO ORDER BY CHAIRMAN GARY

SILENT PRAYER

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETINGS STATEMENT: "adequate notice of this meeting has been provided indicating the time and place in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star-Gazette and The Express-Times and by posting a copy on the bulletin board in the Municipal Building".

ROLL CALL:

Present: Members DeGroff, Horun, Devos, Bittone, Larsen, Vice-Chairman Rutledge, Chairman Gary
Absent: Member Unangst

OLD BUSINESS:

- Approve the Regular Meeting Minutes from April 13, 2016

Member Devos**:** I have a question.

Chairman Gary: Oh, sure.

Member Devos: Um, on, on reading the minutes, I wasn't here for them, so I have to abstain, but in reading the minutes, uh, one of the statements is that the Townships making the choice to sell it to the developer; and it's

Chairman Gary: Yeah.

Member Devos: School Board.

Chairman Gary: Yes.

Attorney Sposaro: The minutes are accurate, I think the testimony was inaccurate, but the minutes do reflect what was testified to. I think it was a mistake on behalf of the person who was testifying.

Member Devos: Okay.

Attorney Sposaro: So the minutes should stand, uh, but we'll have to see what we have to do, if anything, to correct the record on that.

Motion by: Vice-Chairman Rutledge **Seconded by:** Member Bittone

ROLL CALL:

AYES: Members DeGroff, Horun, Bittone, Larsen and Vice-Chairman Rutledge
NAYS: None
ABSTAIN: Member Devos, Chairman Gary

- Approve Resolution 2015-08 - **Hawrylo Application Status -** Application for the Construction of a driveway through a right-of-way between Block 93.02, Lots 6 & 7 in Lopatcong Township, to access block 12.01, Block 3 in Greenwich Township. Resolution to dismiss the application without prejudice.

BOARD OF ADJUSTMENT
TOWNSHIP OF LOPATCONG
WARREN COUNTY, NEW JERSEY
CASE NO.: 2015-08
PREMISES: BLOCK 3, LOT 12.01 (GREENWICH TOWNSHIP)
RESOLUTION DISMISSING THE APPLICATION OF JOHN S.
HAWRYLO WITHOUT PREJUDICE

WHEREAS, John S. Hawrylo has made application to the Zoning Board of Adjustment of the Township of Lopatcong for variance relief for the construction of a driveway through an unimproved segment of the Spruce Run Lane right-of-way to service a new home proposed on the property designated on the Greenwich Township tax map as Block 3, Lot 12.01.

WHEREAS, the within matter was heard and considered at the regular open public meeting of the Zoning Board of Adjustment of Lopatcong Township on Wednesday, October 14, 2015 held at the Municipal Building, 232 South Third Street, Morris Park, Phillipsburg, New Jersey 08865; and

WHEREAS, the aforesaid open public meeting was noticed, advertised and held in accordance with the Open Public Meetings Act; and

WHEREASS, this matter was opened to the public for both the questioning of witnesses as comments; and

WHEREAS, The Zoning Board of Adjustment considered the following:

1. Application for Variance;
2. Variance Checklist;
3. Description of Relief Requested – Variance and Waiver;
4. Copy of Recorded Deed for Lot 12.01 in Block 3, Greenwich Township;
5. Completed W-9 form;
6. Plan entitled "Variance Map – Spring Rum Lane Road Right-of-Way", Consisting of one sheet, prepared by Parker Engineering & Surveying, P.C., dated December 9, 2015;
7. Recorded final plat for the Scotts Mountain Estates major subdivision Entitled "Final Plat, Phases 1 and 2 for Scotts Mountain Estates – Block 93, Lots 14 and 15.01, Lopatcong Township, Warren County, New Jersey", Consisting of two sheets, prepared by Errol Melnick, P.L.S. of VanCleef Engineering Associates, dated July 12, 2000 revised through December 7, 2000;
8. Report prepared by Paul Sterbenz, P.E., P.P., Zoning Board Engineer, dated July 6, 2015;
9. Correspondence from Donald B. Whitelaw, Esq., dated November 17, 2015 with attachment; and
10. Report from Donald W. Barrett, dated February 4, 2016.

WHEREAS, the Zoning Board of Adjustment does hereby make the following findings of facts:

1. At the conclusion of the October 14, 2015 public hearing the Board asked the applicant to explore whether access to the subject property existed from Route 57. In response the Board received correspondence from Donald B. Whitelaw, Esq., dated November 17, 2015 with attachment.

2. The Board in turn requested that a title company examine the matter and provide an opinion regarding access. The Board was provided with a report from Donald W. Barrett, dated February 4, 2016.

3. Since that time, the applicant has not further prosecuted his application. Neither the applicant nor has any representative of the applicant appeared at the February, March or April 2016 meetings of the Board. The Board is unaware of any notice being provided by the applicant as required by the Municipal Land Use Act.

Based upon the applicant's failure to prosecute this application, the Board voted to dismiss the application without prejudice.

NOW, THEREFOE BE IT RESOLVED by the Board of Adjustment of the Township of Lopatcong, State of New Jersey, that the application of John S. Hawrylo for variance relief for the construction of a driveway through an unimproved segment of the Spruce Run Lane right-of-way to service a new home proposed on the property designated on the Greenwich Township tax map as Block 3, Lot 12.01. Be and is hereby dismissed without prejudice.

CERTIFICATION

I, Phyllis D. Coleman do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Board of Adjustment of the Township of Lopatcong at a duly called meeting of the Board of Adjustment held on April 13, 2016.

_____

Phyllis D. Coleman

Motion by: Member DeGroff **Seconded by:** Vice-Chairman Rutledge

ROLL CALL:

AYES: Members DeGroff, Horun, Devos, Bittone, Larsen, Vice-Chairman Rutledge, Chairman Gary
NAYS: None

NEW BUSINESS:

- Approve Resolution 2016-05 – **Delaware Park, LLC - 21 N. 2nd Street, Block 22, Lots 9 & 9.01 – Preliminary & Final Site Plan Approval with Variance in the R-75 Zone –** Redevelopment of Vacant School into Apartments. To Permit Combined Side Yard Setback of 25.4' where a Minimum of 28' is Required, Existing Condition and to Permit Greater than Maximum 50% Lot Coverage, Existing Condition.

BOARD OF ADJUSTMENT
TOWNSHIP OF LOPATCONG
WARREN COUNTY, NEW JERSEY
CASE NO.: 2016-05
PREMISES: BLOCK 22, LOTS 9 & 9.01
21 NORTH SECOND STREET, LOPATCONG TOWNSHIP, NEW JERSEY
APPLICANT: DELAWARE PARK, LLC

WHEREAS, Delaware Park, LLC has made application to the Zoning Board of Adjustment of the Township of Lopatcong for use and bulk variance relief and site plan approvals for the conversion of the now vacant Delaware Park School into eight apartment units located at 21 North Second Street, Lopatcong Township, New Jersey; and

WHEREAS, the within matter was heard and considered at the regular open public meeting of the Zoning Board of Adjustment of Lopatcong Township on Wednesday, April 13, 2016 held at the Municipal Building, 232 South Third Street, Morris Park Phillipsburg, New Jersey 08865; and

WHEREAS, the applicant submitted a proper and complete Affidavit of service of notice of the instant proceeding upon all property owners within 200 feet of the subject property; and

WHEREAS, the applicant submitted a proper and complete Affidavit of Publication; and

WHEREAS, the aforesaid open public meeting was noticed, advertised and held in accordance with the Open Public Meetings Act; and

WHEREAS, this matter was opened to the public for both the questioning of witnesses and comments; and

WHEREAS, the Zoning Board of Adjustment considered the following:

ORIGINAL SUBMISSION

1. February 4, 2016 letter from attorney Mark R. Peck, Esq., of Florio Perrucci Steinhardt and Fader to Board Secretary Phyllis Coleman summarizing the applicant's submission;

2. Completed Lopatcong Township Subdivision and Site Plan Application ;

3. Completed Lopatcong Township Application for Variance (Superseded by Submission Item 9);

4. Completed Variance Checklist;

5. Completed Minor Site Plan Checklist;

6. Survey drawing entitled "Property Survey – PICC Land Management – Block 22, Lots 9 and 9.01 – Lopatcong Township, Warren County, NJ" consisting of one (1) sheet, prepared by Robert E. Berry, P.L.S., of Barry Isett and Associates, Inc., dated November 30, 2015;

7. Plans prepared by Seidler Design and Redevelopment LLC as follows:

a. Sheet SP.1 (Schematic Site Plan) – dated February 26, 2016 (unsigned and not sealed).

b. Sheet TS.1 (Existing Conditions Plan) – dated December 2, 2015 (unsigned and not sealed).

c. Sheet A.1 (Existing Conditions/Demolition Plan) – dated December 2, 2015 (unsigned and not sealed).

d. Sheet A.2 (Proposed Floor Plan) – dated February 10, 2016 (unsigned and not sealed).

e. Sheet A.3 (Proposed Details) – dated February 10, 2016 (unsigned and not sealed).

f. Sheet A.4 (Schedules and Details) – dated February 10, 2016 (unsigned and unsealed).

(Note: Sheets SP.1 and TS.1 were superseded by Submission Item 22.)

NEW SUBMISSION

8. March 30, 2016 letter from Kevin M. Smith, P.E., PP, CME, of Finelli Consulting Engineers, Inc. to Zoning Board Secretary Phyllis Coleman summarizing the applicant's submission to the Zoning Board;

9. Completed Lopatcong Township Subdivision and Site Plan Application;

10. Completed Lopatcong Township Application for Variance;

11. Preliminary Major Site Plan Details Checklist;

12. Final Major Site Plan Details Checklist;

13. March 30, 2016 letter prepared by Kevin M. Smith, P.E., PP, CME, of Finelli Consulting Engineers, Inc. to Zoning Board Secretary Phyllis Coleman summarizing the submission waivers that are being requested;

14. Drawing entitled "Exhibit A – Truck Turning Template – Preliminary and Final Site Plan – Delaware Park LLC", prepared by Finelli Consulting Engineers, Inc. (Undated);

15. Copy of March 22, 2016 letter from Joseph Mendez, E.I.T., of Finelli Consulting Engineers, Inc. to Elizabethtown Gas Company regarding the availability of service;

16. Copy of March 22, 2016 letter from Joseph Mendez, E.I.T., of Finelli Consulting Engineers, Inc. to Verizon regarding the availability of service;

17. Copy of March 22, 2016 letter from Joseph Mendez, E.I.T., of Finelli Consulting Engineers, Inc. to Service Electric Cable TV of New Jersey regarding the availability of service;

18. Copy of March 22, 2016 letter from Joseph Mendez, E.I.T., of Finelli Consulting Engineers, Inc. to JCP&L regarding the availability of service;

19. March 30, 2016 certification indicating that real estate taxes and sewer assessments have been paid;

20. Copy of a two hundred (200) foot property owner's list issued by the Tax Assessor's Office;

21. Report entitled "Carbonate Assessment Report – Delaware Park Apartments" prepared by Charles Tiedeman, P.E., of Finelli Consulting Engineers, Inc., dated March 31, 2016;

22. Plans entitled "Preliminary and Final Site Plan – Delaware Park LLC - Block 22, Lots 9 and 9.01 – Lopatcong Township, Warren County, NJ" consisting of seven (7) sheets, prepared by Kevin M. Smith, P.E., PP, CME, of Finelli Consulting Engineers, Inc. dated March 30, 2016;

23. Plan entitled "Proposed Elevations", prepared by Seidler Design and Redevelopment LLC, dated February 10, 2016, last revised April 13, 2016, consisting of one sheet;

<u>REPORTS FROM PROFESSIONALS</u>

24. Report prepared by Board Engineer, Paul Sterbenz, P.E., P.P., dated March 3, 2016;

25. Report prepared by Board Planner, George A. Ritter, P.P., dated March 3, 2016.

26. Report prepared by Board Engineer, Paul Sterbenz, P.E., P.P., dated April 8, 2016;

27. Report prepared by Board Planner, George A. Ritter, P.P., dated April 11, 2016; and

28. The Zoning Board of Adjustment did receive correspondence dated April 13, 2016 from Rick and Chris Crossley, together with petition opposing the conversion of the Delaware Park

School. This petition was not considered by the Board.

Based upon the recommendation of the Board Engineer, the application was deemed complete. Submission waivers were granted for items 13, 22, 27, 31, 35, 52 and 56 on the preliminary site plan checklist and items 34, 38, 46, 54 and 58 on the final site plan checklist.

The Zoning Board of Adjustment does hereby make the following findings of fact:

1. The property in question is designated on the tax map as Block 22, Lots 9 & 9.01 with a street address of 21 North Second Street, Phillipsburg. The property contains 0.537± acres and has frontage on three streets: Park Square on the north, North Second Street on the east and Aurora Street to the south. The western edge of the property is bounded by Fortuna Alley. The property is located in the Township's R-75 (residential) district where detached single family dwellings are permitted as principal permitted uses on minimum 9,000 square foot lots.

2. The site is currently developed and contains the former and now vacant Delaware Park School, including a paved area on the west side of the school and entry sidewalks on the east side of the school. Access to the paved area is provided from Fortuna Alley and Park Square.

3. The application is seeking preliminary and final major site plan approvals to convert the former Delaware Park School into a multi-family residential building with eight (8) total units. The eight apartments will consist of four two-bedroom and four one-bedroom units. An expansion of the parking area on the west side of the building to create a parking area for the apartment units also is proposed.

4. Improvements to the exterior of the building will include the construction of a new handicapped ramp to provide accessible entry to the building. The plan also proposes to reconstruct the building's existing service area to provide for the parking of sixteen (16) vehicles including one handicap space. Vehicular access to the parking area will be provided from Aurora Street.

5. Additional proposed site improvements include an enclosure for trash and recycling containers; lighting; and landscaping. Portions of the existing concrete sidewalks and entrance walks will be reconstructed. Concrete swales for conveyance of

roof runoff will be constructed at the building's corners.

6. The applicant is seeking a use variance since multi-family residential dwellings are not permitted principal uses in the R-75 district. Bulk variance relief is also sought for maximum lot coverage. 65% is permitted for public buildings/facilities and 50% is permitted for a single family dwelling. Existing lot coverage is 46.7% and 53.5% is proposed. As discussed in greater detail below, the applicant has agreed to reduce lot coverage to the extent possible based upon consultations with the Board Engineer.

7. Existing non-conformities include building coverage. For public buildings/facilities 20% is permitted and for a single family residence 25% is permitted. There presently exists 21.5% building coverage and the same percentage of building coverage is proposed. The Board finds that since this building will be converted to residential use the 25% limitation applies and as such no variance relief is necessary. The minimum front yard setback in this zone district is 25'. The existing front yard setback is 12.2' and no change is proposed.

8. In his report of April 11, 2016, Township Planner George A. Ritter indicates that this application is exempt from the Highlands Act pursuant to Exemption #4: the reconstruction of any building or structure for any reason within 125% of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more.

9. The applicant has submitted a Highlands Exemption Plan. The plan indicates that the net increase of impervious cover is 1, 604 square feet, which is an increase of 15% over the coverage that existed on August 10, 2004.

10. Since the application is exempt from the Highlands Act, it is also exempt from the Township's Checklist ordinance.

11. The applicant offered the testimony of Kevin M. Smith, a professional engineer and licensed professional planner, with Finelli Consulting Engineers and Robert Piccione, Sr., one of the principals of Delaware Park, LLC. Mr. Smith described the site's existing conditions and proposed modifications. He testified that the now vacant school consists of two floors, each approximately 5,000 square feet in size. The applicant proposes to

repurpose the existing building which has been vacant for quite some time and, as noted earlier, construct four two-bedroom apartments and four one-bedroom apartments.

12. Mr Smith further testified that pursuant to the Residential Site Improvement Standards (RSIS) fifteen parking spaces are required and sixteen spaces, including one handicap space, are proposed. The rear area of the building will be reconstructed and provide vehicular access from Aurora Street. A dumpster enclosure is proposed in the northwest corner of the parking area that will be accessible by a conventional refuse vehicle.

13. Sheet four of seven of the plans is entitled "Landscape and Lighting Plan". Six red maple (October Glory) trees are located along the easterly border of the property opposite North Second Street and on the westerly side of the building adjacent to the newly constructed parking area. Along the westerly side of the parking area, a solid hedgerow also is depicted on the plans. Based upon the recommendation of the Township Planner, the hedgerow will consist of leatherleaf viburnum, a native evergreen shrub that provides an excellent four season screen, to be planted 3'-4' apart. It is anticipated that when mature, this hedgerow will be maintained at an average height of no less than 3.5'-4'.

14. Site lighting will consist of two fixtures on the building and two pole mounted fixtures. The height of the these fixtures will be 14', keeping them as low as possible to minimize light spillage onto adjoining properties. (The Township Code permits exterior lighting for a structure such as this to be as high as 25'.) Because these lights are being installed for security purposes they will operate from dusk to dawn.

15. As noted earlier, the applicant has agreed to reduce impervious cover so as to minimize stormwater runoff.

16. Mr. Piccione testified that exterior changes include the removal of some windows, infilling between some of the brick with stucco and modifying the color of the existing foundation so that it blends in better with the proposed improvements. With respect to the interior, all asbestos has been removed and all permits and approvals associated with the asbestos remediation have been submitted by the applicant.

17. Initially, the applicant made no proposal to the Board with respect to affordable housing. At the request of the Board, the applicant agreed to deed restrict one of the apartment units for affordable housing. The form of deed restriction shall be subject to the review and approval of the Township Planner, Board Engineer, Board Attorney and Township Attorney.

18. As noted earlier, the applicant has requested use variance relief to convert the school into eight apartment units. Apartments are not permitted in the R-75 zone district. Mr. Smith testified that special reasons exist justifying the grant of a use variance. Given the size of the existing structure, it would be impractical to convert it to a single family residence. Converting the school to a non-residential use might be a viable alternative, but any non-residential use would be wholly inconsistent with the residential character of the existing neighborhood. If the structure is not converted to apartments it would need to be demolished. This would result in undue hardship to the applicant and also would result in economic waste. In light of the foregoing and the Board agrees that the following zoning purpose would be advanced by the project as proposed:

> To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.

19. Mr. Smith also opined and the Board finds that the existing structure on this site is particularly suitable for repurposing and conversion to apartments. As was noted earlier, converting it to a single family dwelling is impractical and to a non-residential use is wholly inconsistent with the character of the neighborhood. The proposed conversion of this structure into apartments is the best adaptative use of this structure. The conversion to apartments also turns a property that has long been vacant into one that is being utilized and also turns a neighborhood eyesore into an attractive structure that will blend well with surrounding properties. This advances yet another zoning purpose:

> To promote a desirable visual environment through creative development techniques and good civic design and arrangement.

20. With the applicant's agreement to dedicate one of the apartment units for

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these apartments are afforded the same right.

25. It is not anticipated that the headlights from cars and trucks in the parking lot will have any adverse impact upon surrounding properties. The parking area to the west will be bordered by a dense hedgerow that should reduce, if not all together eliminate this concern.

26. The Board finds that the concerns expressed regarding stormwater runoff are misplaced. There will be a minimal increase in lot coverage and no increase in building coverage. If the lot coverage increase can be reduced to zero there should be no change in stormwater runoff. To the extent that lot coverage is increased with a corresponding increase upon stormwater runoff, it will be handled through the utilization of "rain garden".

27. Finally, with respect to the claim of property devaluation, no competent proofs were offered to demonstrate that this claim has any basis in fact. To the contrary, the Board finds that the conversion of the now vacant school, an eyesore, may well have the opposite effect.

28. With respect to the bulk or "c" variances requested by the applicant, one represents a preexisting condition not being altered by the development proposal, namely minimum front yard setback. It will remain at 12.2'. There is nothing the applicant can do to reduce or eliminate this existing non-conformity short of demolishing a portion of the building. For the reasons set forth above, the Board finds that this makes no sense whatsoever.

29. The only other bulk or "c" variance required is for maximum lot coverage. It is being increased from 46.7% to 53.5%. Applying the single family residence standard in the zoning ordinance, a maximum of 50% lot coverage is permitted. As noted earlier, the applicant has agreed to reexamine the plan with a view towards eliminating unnecessary lot coverage wherever possible. The Board Engineer opined that at first blush several hundred square feet could be eliminated and perhaps more. The increase in impervious coverage proposed by the applicant is reasonably necessary to provide sufficient parking and other improvements to the site consistent with the proposed use. For these reasons

the Board finds that both the positive and negative criteria for bulk variance relief have been satisfied. The Board further finds that granting bulk variance relief in this regard is subsumed by the proofs associated with the justification for use variance relief.

30. The applicant stipulated that all of the technical comments contained in the Board Engineer's report, dated April 8, 2016, beginning on page four through and including page six will be satisfied.

31. Mr. Piccione testified that he had communicated with the Fire Chief regarding the necessity of a fire isle. If, in the opinion of the Fire Chief, a fire isle is necessary, it will be incorporated into the plans.

At the conclusion of the public hearing the Board voted to grant preliminary and final site plan approval, use and bulk variance relief as more particularly described above with conditions.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Lopatcong, State of New Jersey, that Case Number 2016-05 of Delaware Park, LLC be and is hereby approved subject to the following:

1. The applicant shall consult with the Board Engineer and reduce lot coverage to the extent possible. If the coverage is reduced, the site plan shall be revised.

2. The applicant shall deed restrict one of the apartment units for affordable housing. A form of deed restriction shall be subject to the review and approval of the Township Planner, Board Engineer and Board Attorney

3. The applicant shall address all technical comments beginning on page four through and including page six in the report of Paul Sterbenz, Board Engineer, dated April 8, 2016. In addition, the applicant shall comply with the requirements outlined in section 6.0.c in the aforementioned report by Paul Sterbenz.

4. If, in the opinion of the Fire Chief a fire isle is necessary, the applicant shall incorporate it into the plans.

5. Copies of all applications and supporting data for permits issued by other agencies, responses thereto and copies of all governmental permits are required to be submitted to the Board Engineer.

6. Prior to the issuance of any construction permits all conditions of any approving resolution shall be addressed satisfactorily.

7. Prior to the issuance of any construction permit, proof must be received from the Township Tax Collector or other designated official, that no taxes or assessments for local improvements are due or delinquent on the tract.

8. No work shall be done without permission from and an inspection by the Board Engineer or his designee. No underground installation shall be covered until inspected and approved. The Board Engineer's office shall be notified of all phases of the work.

9. During construction, the developer shall comply fully with all requirements of the ordinances of the Township of Lopatcong.

10. All improvements made on the premises shall conform to building standards and other regulations as set forth in any applicable, federal, state, county or municipal statute, regulation, code or ordinance at the time of the installation of such improvements.

11. All improvements made on the premises shall conform with the plans hereby approved by the Board.

12. The Board reserves the right to withdraw any approval hereby granted in the event there is any deviation from or alteration of the plans hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Board. Minor deviations and field changes may be authorized by the Board Engineer.

13. Any deviation from or alteration of the plans as hereby approved shall render this approval void and of no further effect.

14. The acceptance of this approval by the applicant, its successors and assigns and the performance by the applicants, its successors and assigns of any further work on the project in reliance of this approval shall operate as an agreement by the applicants, its successors and assigns to be bound by the terms and conditions set forth herein.

15. In the event any other required regulatory approval conflicts with or materially alters the terms hereof, or in the event applicant or applicant's successors or assigns fail to post any tax map review fee, review fee, inspection fee or other financial imposition of the municipality, then in any such event, the Board reserves the right to withdraw, amend

or supplant the within approval.

16. The applicant shall pay any outstanding invoices for fees and costs incurred in connection with this application prior to the issuance of any permits.

17. This approval shall be null and void unless the applicant obtains a statement from the Chief Financial Officer of the Township of Lopatcong within 60 days that the applicant has paid all outstanding fees and costs associated with this application and further that sufficient monies have been deposited to pay all anticipated disbursements and finally that deposit monies are not overdrawn from prior applications.

18. The applicant shall certify to the Board Engineer that all requisite governmental and regulatory agency approvals required before the start of construction have been obtained.

19. The within variance shall expire within one year of the date of entry of the determination of this Board unless construction shall have commenced or the applicant has applied for an extension.

CERTIFICATION

I, Phyllis D. Coleman do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Board of Adjustment of the Township of Lopatcong at a duly called meeting of the Board of Adjustment held on _____.

_____

Phyllis D. Coleman

ROLL CALL:

AYES: Members DeGroff, Horun, Devos, Bittone, Larsen, Vice-Chairman Rutledge, Chairman Gary
NAYS: None
ABSTAIN: Chairman Gary

NEW BUSINESS:

- Dr. Mahesh C. Mangalick – 285 Route 57, Block 95, Lot 33 - Use Variance in the HB Zone for a home Yoga and Meditation Studio – Denial §243-88 B & C.

Chairman Gary: Yes sir.

Attorney Peck: Thank you Mr. Chairman. Good evening members of the Board, professionals. Uh, for the record, my name is Mark Peck. I'm an Attorney with the Florio, Perrucci, Steinhardt and Fader Law Firm, here on behalf of Dr. Mahesh Mangalick who's here tonight seeking Use Variance approval. As the Chairman stated, to operate a, uh, home-based Yoga and Meditation Studio; the property is located at 285 Route 57. Uh, you may, if you can place yourself on Route 57, right when you're heading east, uh, you have the strip mall would be on the right hand side. This is a single family residence surrounded by farmland on the other side; it's just past the elementary school. Uh, it's Block 95, Lot 33; it's in the Highway Business Zone, uh, where this proposed use is not permitted, which is why we're here tonight. Uh, the property itself is approximately 7/10 of an acre, just under. Uh, and again as I just indicated, bounded by Route 57 to the south and farmland on the other three sides. The property itself contains a two story single family residence with a detached garage on site; access to the garage is from a driveway, uh, that is located on the adjacent farmland. Uh, we do have permission from the, uh, property owner who is here tonight and can testify on the record. But we will, as a condition, um, we will enter into an access agreement where we will Indemnify and hold the adjacent property owner harmless; uh, and that of course would be subject to Ms. Caroperso and her, uh, compatriots in the, in the estate to their satisfaction and to the Boards satisfaction. Um, and this driveway has been in existence, well since, from review of the deeds, since 1927. Uh, it's been associated since this, uh, lot was carved out of the, the farm. Um, the application was deemed complete last month; we did provide the necessary affidavits, publication of service; so the Board does have jurisdiction to hear the application; and we were fortunate, after last month's meeting, to meet with Mr. Ritter and Mr. Sterbenz, and we appreciate them taking the time to do so. And we did review the application and ironed out some of the, some of the issues. Uh, the only testimony I'm prepared to put on tonight is from Dr. Mangalick and the testimony will show that there's going to be absolutely no soil disturbance associated with this application. There's going to be no new construction; no alterations to the structure; there will be no employees, just Mr. Mangalick will, will do this himself. Uh, you'll see from the exhibits and we did distribute, uh, one with some photographs on it, which I think we can mark as A-1.

Attorney Sposaro: I have already.

Attorney Peck: Okay, great. Uh, and you'll show on the testimony, will show, uh, that the driveway parking area can accommodate six vehicles, more than six vehicles. Uh, the hours of operation will be limited from 8 am to 9 pm; not that it's going to be continuous, you know, from 8 am to 9 pm, but that's when he would, would receive, uh, clients. Generally, he plans to just, it's one on one Meditation and Yoga Training, but there is, you know, the, the opportunity to go, to have up to six customers. Uh, but we would stipulate that we would, in no instances, have no more than six customers. Uh, you'll see that this, uh, application does advance the purposes of zoning; uh, specifically, uh, Subsection 2G of the Municipal Land Use Law, which, uh, seeks to promote a variety of agriculture, residential, recreational, commercial and industrial uses. Um, Meditation and Yoga Studio certainly falls within the diversity of uses contemplated by the Land Use Law. Uh, I believe this site, and, and the testimony will show that this site is well suited for the use. It's on Route 57; it's across from a commercial strip mall already. Um, you know, but for this application, the fact that Dr. Mangalick actually filed it and the fact that he may be Attorney Peck (Con't): applying down the road for a sign, probably no one would ever know it existing if you're having one or two people showing up sporadically for meditations. Um, there's going to be, not even no significant detrimental impact to neighbors or to the zoning scheme. I submit, it's going to have no impact to the neighboring properties or the zoning scheme. So, I believe that the testimony will show and you will see that this, uh, that this application is, is worthwhile and should be granted. So without any further adieu, I'd like to call

Attorney Sposaro: Yeah, I just have one,

Attorney Peck: Yes sir.

Attorney Sposaro: um, the note from the reports that there is an existing apartment within the principal dwelling; uh, and my understanding is that all appropriate permits were secured for that apartment?

Attorney Peck: That's correct.

Attorney Sposaro: Is it your understanding that that apartment will remain?

Attorney Peck: That's correct. Yes, received, uh, Variance Relief for, for that, I don't know how long, I forget, I have it in my folder; 20-30 years ago.

Dr. Mangalick: Uh, yes, approximately (inaudible) from the Board.

Attorney Sposaro: Okay. Um, and I also take it from your comments that in light of the existence of six parking, uh, six parking spaces in addition to the detached garage and that no site improvements are being proposed. That you're also seeking a waiver from the need to secure Site Plan approval, is that correct?

Attorney Peck: That is correct. Thank you.

Attorney Sposaro: Thank you. Call your first witness please, I guess you already did.

Attorney Peck: My first and only witness. Dr. Mangalick, please.

Attorney Sposaro: Sir, would you just raise your right hand please. Do you swear and affirm the testimony you'll give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Dr. Mangalick: Yes sir.

Attorney Sposaro: Uh, would you state your name please and spell your last name for the record?

Mr. Mangalick: Mahesch Mangalick, last name Mangalick.

Attorney Sposaro: And spell it please.

Dr. Mangalick: M-a-n-g-a-l-i-c-k.

Attorney Peck: Dr. Mangalick, do you reside at 257 Route 57?

Dr. Mangalick: Yes sir, I do.

Attorney Peck: And how long have you lived there?

Dr. Mangalick: I bought the home in 2001 (inaudible).

Attorney Peck: And why don't, why don't you tell the Board what it is that you're proposing to do; how your Yoga and Meditation Studio will operate.

Dr. Mangalick: Well, I'm 75 years old now, and have been practicing Yoga and Meditation ever since I was a little child. And at this point, I am very familiar, I understand, know the science of meditation and how it can benefit the practice, Practitioner of Meditation in ways that no other practice can help. Essentially, we, better qualities of life; enjoying compassion, happiness and being calm.

Attorney Peck: And you

Dr. Mangalick: Remaining calm.

Attorney Peck: And you

Dr. Mangalick: And I wish to then, at this point, at this age, share this knowledge with those in the community; especially cause I've spent like 12 years or 16, almost 16 years here, so why not?

Attorney Peck: And, and so just for the record, um, you would be the only person providing this instruction, correct?

Dr. Mangalick: Yes sir.
Attorney Peck: And you will have no other employees?

Dr. Mangalick: No, I would not.

Attorney Peck: And you're willing to stipulate that the hours of operation would be from 8 am to 9 pm?

Dr. Mangalick: I do. Yes, I will.

Attorney Peck: And you don't expect there'll be a continuous from 8 am to 9 pm?

Dr. Mangalick: There's no way at this point I could work that hard. Most, uh, likely, the way it will work is, uh, the session will go on for about an hour. I do need to take a rest afterward; and the next one might begin another half an hour to an hour later. So within that time period, even if it was one after another, how many can I work with?

Attorney Peck: And, and your intent is to work, uh, one on one, correct?

Dr. Mangalick: That's the way that I really feel, how I can (inaudible).

Attorney Peck: And, and you would stipulate to no more than six people at any one time at your business, correct?

Dr. Mangalick: Yes, correct.

Attorney Peck: And let me show the Board a photograph, unfortunately we were unable to get it blown up bigger; we'll mark this as A-2, um, is this your residence?

Dr. Mangalick: Yes that is, uh,

Attorney Peck: And this is a view from Route 57?

Dr. Mangalick: A view from Route 57 from the shopping center that you mentioned.

Attorney Peck: Yes. So I don't know if this may, you know, as you drive Route 57 corridor, if you recognize, uh, this property.

Attorney Sposaro: You'll mark that as A-2.

Attorney Peck: I will mark it on the back.

Attorney Sposaro: While, while you're, you've already marked it, am I, am I correct that since the, uh, sessions will not be back to back, there'll be a gap in between that will allow if there were as many as six people there, they would be leaving and they'd move their cars so that there wouldn't be any overlaps, is that correct?

Dr. Mangalick: I don't expect that to be happening.

Attorney Sposaro: So there'll be no

Attorney Peck: He wouldn't have people coming and going at the same time in the driveway.

Attorney Sposaro: You will not?

Attorney Peck: Will not.

Attorney Sposaro: Okay. Thank you.

Attorney Peck: And

Chairman Gary: A, a quick question, the hours of operation, would that, would that mean at 9 pm you would still receive another, um, client?

Dr. Mangalick: No, no.

Chairman Gary: 9:00 is the cut off, so, okay.

Member Horun: And is this seven days a week or Monday through Friday?

Dr. Mangalick: Well, I mean, again, at this point I have not really set any days, however the weekdays is what I plan to do. I do need the weekend for myself.

Attorney Sposaro: I should note, just so the, the record is clear, Mr. Peck indicated that the Use Variance is being applied for this property is in the Highway Business Zone. If what was being proposed here was not part of a residence, it would be a permitted use. The only reason that Use Variance Relief is necessary is that the applicant intends to continue to reside in the premise and this becomes an effective home occupation and home occupations are not permitted. But the underlying use itself it a permitted use.

Attorney Sposaro: And Dr. Mangalick I'm gonna ask you to take a look at a photograph that we just marked at A-3. Does this show the parking area behind your house, adjacent to the garage?

Dr. Mangalick: That is space that I'm going to have the cars park.

Attorney Peck: And this photograph shows three cars parked with a significant amount of space between them?

Dr. Mangalick: I couldn't find any more to come in for me to take the pictures.

Attorney Peck: So we'll put that in. And, again, from another view, A-4. That's also your

Dr. Mangalick: The same,

Attorney Peck: Same parking area?

Dr. Mangalick: same, same, uh, view. Except of course from a different angle.
Attorney Peck: Correct. And you took these photographs?

Dr. Mangalick: I did.

Attorney Peck: Within the past month?

Dr. Mangalick: Within two weeks, yes.

Attorney Peck: Okay, very good.

Attorney Sposaro: And they accurately represent the conditions that exist out there?

Dr. Mangalick: Yes sir.

Attorney Sposaro: Thank you.

Attorney Peck: Okay, I don't believe I have anything further; I don't see any public here, but certainly, uh, if the Board has questions. Mr. Ritter?

Mr. Ritter: Well, the only thing I'd add to, uh, what was said earlier is that, uh, the Use Variance is triggered because of the fact that it is essentially being placed into a residential structure, which is not permitted within the district. Uh, and he meets all the criteria for a home occupation, except for the amount of square footage of the house that's being allocated in his sketch. He's showing about 600 square feet; 500 is the max.

Attorney Peck: We'll, we'll actually stipulate that the use will only occur in the living room, which is approximately 400 square feet.

Mr. Ritter: Then it will drop all, that's correct. So that eliminates that. Um, and, uh, I would second what Mr. Sposaro said, that is in the HB District except for the fact that this is in a home it would be considered a permitted use in the district.

Chairman Gary: Does the Board have any questions or any discussions?

Member Horun: I, I guess the only question is about the parking. Um, are, are there any issues in terms of the surface of the parking area, anything like that, or is that okay?

Attorney Sposaro: It, it appears from the photographs that this area is gravel, it's compacted, looks like it's been there for an awfully long time. Given the, the relatively light level of traffic that's proposed here, if we start requiring paving then we've got to deal with drainage and it becomes a can of worms. And I, I think the professionals were of the view that it just wasn't warranted given the situation. Mark,

Attorney Sposaro (Con't): maybe you can, uh, just uh, give us some additional information about the, uh, the access agreement; what's proposed here. You mentioned it

Attorney Peck: Yes, well, Ms. Caropreso is, is here, so if you're done with Dr. Mangalick.

Attorney Sposaro: Does, does anybody have any questions?

Member Bittone: I just have one. (Inaudible) will be just for Mr. Mangalick or would it survive him?

Attorney Sposaro: It would go with the property, but I think this use is so unique it would be difficult to find someone, uh, that could replicate what he is doing here.

Dr. Mangalick: Well, should you go ahead here and grant me this, you are most welcome to come as a student of Meditation and this is a book that I wrote, you're welcome to it, if anybody is interested on the subject.

Attorney Sposaro: Thank, thank you very much.

Attorney Peck: Well I guess I'm gonna have, this is a hybrid public comment, uh, witness.

Attorney Sposaro: Please.

Attorney Peck: Call, uh, Ms. Caropreso.

Attorney Sposaro: Mam, would you raise your right hand; do you swear, affirm the testimony that you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Ms. Carpreso: Yes.

Attorney Sposaro: State your name for the record, spell your last name please.

Ms. Caropreso: Lucene Caropreso, C-a-r-o-p-r-e-s-o.

Attorney Peck: Good evening Ms. Caropreso, thank you for being here tonight. Um, you represent the estate that owns the surrounding property?

Ms. Caropreso: Yeah, I'm one of 12 or 13 (inaudible).

Attorney Peck: Yes, and, uh, the Mangalick driveway runs through your property, correct?

Ms. Caropreso: Yes.

Attorney Peck: And if we are able to work out an Access Agreement that's agreeable to you and the rest of the estate, that would indemnify and hold the estate and any successors and anybody with an interest in

Attorney Peck (Con't): the property, hold them harmless from any liability should an accident with injury occur on your property, uh, would that be acceptable to you?

Ms. Caropreso: Um, that's what we're thinking. I, I have an appointment lined up with an attorney to review whatever it is that you, that you, that you write on Tuesday.

Attorney Peck: Right. So basically so the Board knows, I'm going to prepare an Access Agreement. I believe the Attorney Sal Di Fazio, out of Flemington,

Ms. Caropreso: Mm hmm.

Attorney Peck: if you're familiar with him. So I'll get that, uh, out by Tuesday and obviously is a condition of any approvals should the Board be so inclined; the agreement would have to be, uh, agreed to by the estate.

Attorney Sposaro: And, and it would be subject to our review and approval as well, but if the parties have agreed to it, I don't see it as an issue. Just keep me in the loop on that.

Attorney Peck: Absolutely, I'll copy you on any correspondences.

Attorney Sposaro: Okay. I do not have any questions of this witness, does anyone?

Chairman Gary: Anyone?

Attorney Peck: Do you have anything to add Ms. Caropreso? Thank you very much for

Chairman Gary: Hold, hold, hold on a second please. Jess do you have, you got something?

Member DeGroff: Does that property, the property that, uh, (inaudible) owns, is that half, half of the right-of-way now for that driveway?

Ms. Caropreso: According to the survey that, um, Mr. Mangalick, and also when I looked at the tax map, um, it looks like the farm property is, um, Block 95, Lot 34, and it looks like it wraps around three sides of his house. So, on the right hand side there's a strip and that is the, the part that has the access.

Member DeGroff: Yes.

Ms. Caropreso: Um,

Member DeGroff: But is the right of way in the deed?

Attorney Peck: I can represent, it's not, I haven't been able to locate an actual right of way that grants the owners of Mr. Mangalick's property the right to use, that there is a 50' right of way that was originally proposed in 1927 to be a roadway dedication and that's continued on all the deeds. But I was just unable

Attorney Peck (Con't): to locate any formal easement or right of way. It's just kind of, over the last eighty years, eighty-five years, it's been used as a driveway.

Ms. Caropreso: Yeah, it's been a courtesy use.

Attorney Peck: Yeah, so that's why we're, we're saying we'll formalize the arrangement.

Member DeGroff: Thank you.

Member Horun: And, and part of that area is the parking area itself that would be?

Ms. Caropreso: It doesn't, it doesn't like it. It looks like it comes us and then the parking would be behind, so this would be on, on your property.

Attorney Peck: If you look at it Exhibit, um, A-1, the, there's a, a section of the survey that's copied and that shows the parking area, it's on the Mangalick property but the driveway itself is on the adjacent property.

Ms. Caropreso: Right.

Attorney Sposaro: Thank you Mr. Peck.

Chairman Gary: Thank you. Anyone else from the public? I assume not.

Attorney Peck: So that concludes our testimony and,

Attorney Sposaro: Thank you.

Attorney Peck: you know, we submit that this is a very low impact use or have not effect on the neighbors and subject to working things out with the neighboring property owner to make sure that they're protected, um, we think the Variance is warranted and hope you'll agree.

Chairman Gary: Any

Planner Ritter: Just one comment before the Board votes is that if the Board decides to approve this, could the applicant just on a sketch similar to what he did here just mark the parking area and just turn that in as part of the approval

Attorney Peck: Sure.

Planner Ritter: so we know where it's gonna be?

Mr. Mangalick: Yes I will.

Planner Ritter: Yeah, no, that's fine, that's, that's all.

Chairman Gary: Is there any further discussion, uh, from the Board?

Attorney Sposaro: If, if someone so inclined, this would be a motion to approve the application for a Use Variance, uh, for a home occupation, uh, subject to the stipulations and limitations set forth by Council on the record. They would be hours of operation, 8 am to 9 pm; there would be, uh, Yoga and Meditation classes offered no more than six students at any one time; the classes generally run approximately one hour and did not back to back was to avoid any problem with, uh, parking. The applicant would be the only person that offers, would be the only instructor, the conditions would be securing and finalizing an access easement providing our planner with a, a marked up sketch showing exactly where the parking is to be located and the standard conditions that are contained in the resolutions that I prepare. I think that covers it.

Chairman Gary: Is there a motion?

Motion by: Member DeGroff

Member Horun: Is there also something about the, the amount of area?

Planner Ritter: Yeah, I was gonna, that's what I was just, he, he should also submit just a revised sketch cutting the den off just to show the area that it's going to be occupied in, that's all.

Attorney Peck: Great, we'll do that.

Attorney Sposaro: I believe the testimony was it would be limited to the living room and that's approximately 400 sq. ft.?

Attorney Peck: Correct.

Attorney Sposaro: Thank you. Anybody want to make that motion?

Motion by: Vice-Chairman Rutledge **Seconded by**: Member Bittone

ROLL CALL:

AYES: Members DeGroff, Horun, Devos, Bittone, Larsen, Vice-Chairman Rutledge, Chairman Gary
NAYS: None

Attorney Peck: Thank you very much.

Attorney Sposaro: Thank you Mr. Peck. Nice to see you.

Attorney Peck: I think, hopefully again, I'll be seeing you next month.

Chairman Gary: Moving on, payment of bills. Uh, I move that we, uh, I make a motion that we pay, uh, the bills that are before us.

Motion by: Chairman Gary Seconded by: Member Larsen

ROLL CALL:

AYES: Members DeGroff, Horun, Devos, Bittone, Larsen, Vice-Chairman Rutledge, Chairman Gary
NAYS: None

Chairman Gary: Seeing that there is no one from the public here, anymore, I would obtain a motion to adjourn.

Motion by: Vice-Chairmen Rutledge **Seconded by:** Member Bittone
ALL IN FAVOR: AYE
NAYS: NONE

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