

Frenchtown Planning/Zoning Board
Regular Meeting
July 25, 2012

Chairman Eckel called the Regular Meeting to Order at 7:30 P.M. and stated that all the requirements of the “Open Public Meeting Law” have been met. The meeting has been advertised, the Agenda has been posted in the Borough Hall and copies distributed to the designated newspapers.

ROLL CALL

| | |
|------------|----------------|
| Present: | Absent: Suttle |
| Arent | |
| Case | |
| Cooper | |
| Eckel | |
| DenBleyker | |
| Hanley | |
| Hoffman | |
| Myhre | |
| Musolino | |
| Wright | |

Board Attorney Guliet Hirsch and Engineer Thomas Decker were also present.

MINUTES

Gerry Case moved to accept the minutes of the June 27, 2012 Regular meeting. Bruce Myhre seconded the motion. The minutes of the June 27, 2012 Regular meeting were approved by favorable roll call vote with John DenBleyker abstaining.

Sign Application –Block 52 Lot 4.03, 2 Race Street – Eat Cake

Applicant Jennifer Hason stated that she is requesting permission to install an advertising sign. The sign is the same exact sign and location as the Race Street Café. She just flipped the sign over and put her lettering on the back. Ms. Hason showed a picture of the old sign. The colors on the sign are honey melon background and bluish green letters. The colors are not of historical pallet color but she tried to match the colors on the building. She noted that she missed the meeting by a day last month and heard that there were questions on how it was attached to the building. Responding to Chairman Eckel, Ms. Hason noted that she also flipped the sign on the building that said “Café” and put “Yummy” on it. They were not repainting the building so she just flipped it. She also noted that she made a sandwich board which measures 4 square feet and on that board the open sign comes on and off and she takes it in everyday. She was not sure if she was able to leave it out all the time as Maria’s does. She did not know if Maria had a variance for that. Chairman Eckel noted that the sandwich board must be taken in everyday. The sandwich board is made of wood with aluminum over the wood and it is painted. The lighting was existing. They have taken them down but it was an affixed spot light that was on the flower boxes. They removed the flower boxes to redo them. She does not need a light as she is not open at night if that is an issue. Chairman Eckel commented that if they put the light back on, we could capture the lighting requirements now so you would not have to come back to the Board if they put the light back up. As to the items of information, there are 2 items of information on each sign. The projecting sign will measure 16” by 64” and the ordinance

requirements for projecting signs is no more than 25 sq feet so the sign complies. Bruce Myhre noted that the total wattage is no more than 75 watts. Any light would have to be directed on the sign and not projecting off the property or into the windows. On motion by Bruce Myhre, seconded by Warren Cooper and carried by unanimous favorable roll call vote, the Planning Board approved the sign application for Block 52 Lot 4.03 and the following resolution:

RESOLUTION #2012-13

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
GRANTING APPROVAL FOR INSTALLATION OF A SIGN**

WHEREAS, Applicant Jennifer Hason has applied to the Planning/Zoning Board for permission to install an advertising sign on the premises located at Block 52 Lot 4.03;

AND WHEREAS, after considering all the evidence presented, the Planning/Zoning Board has made the following findings of fact at its Regular Meeting on July 25, 2012:

1. The projecting sign and wall sign will read in accordance with the sketch attached hereto.
2. The applicant is using the existing projecting sign which measures 64 inches wide by 16 inches high and placing the newly painted sign in the same location.
3. The projecting sign colors will be a honey melon background with bluish green letters to match the colors on the building.
4. The projecting sign will be illuminated with a maximum of 75 watts and will not shine into any windows or onto adjoining properties.
5. The applicant is using the existing wall sign and placing the newly painted sign in the same location on the building.
6. The signs contain a total of 4 items of information as defined in the Land Use Ordinance #564.
7. The sandwich board will measure 4 square feet and must be taken in each night.

NOW THEREFORE, BE IT RESOLVED, that based upon the foregoing findings of fact and conclusions, the Planning/Zoning Board of the Borough of Frenchtown does hereby grant to the above named applicant, permission to install an advertising sign on the above referenced premises.

I certify that the foregoing resolution was approved on March 28, 2012.

Votes on Adoption of Motion

_____ 8 _____ AYES
_____ 0 _____ NAYS
_____ 0 _____ ABSTAIN
_____ 0 _____ RECUSED

Brenda S. Shepherd, Secretary

Memorializing Resolution – Amendment Request for the River Mills at Frenchtown Amended Final Site Plan approval – Block 34 Lot 1, Block 35 Lot 1, Block 36 Lot 1, Block 38 Lot 2 and Block 14 Lot 52

Bruce Myhre stepped down on this application due to proximity. Chairman Eckel asked for comments or questions on the resolution. No comments were made.

On motion by Robb Arent, seconded by Bruce Myhre and carried by unanimous favorable roll call vote, the Planning Board approved Memorializing Resolution #2012-14 as follows:

FRENCHTOWN BOROUGH RESOLUTION NO. 2012-14
RIVER MILLS AT FRENCHTOWN
LOT 1 BLOCK 34, BLOCK 35, LOT 1, BLOCK 36, LOT 1,
BLOCK 38, LOT 2, AND BLOCK 14, LOT 52
RELIEF FROM CONDITIONS OF FINAL SITE PLAN APPROVAL

WHEREAS, Frenchtown Bridge Street, LLC (the “Applicant”) is the owner of property located in the Borough of Frenchtown and designated on the Borough tax maps as Block 34, Lot 1, Block 35, Lot 1, Block 36, Lot 1, Block 38, Lot 2, and Block 14, Lot 52 (the “Property”); and

WHEREAS, the Applicant was granted final site plan approval on August 24, 2011 (the “Final Approval”), memorialized by Resolution No. 2011-15 (the “Resolution”) adopted on September 28, 2011; and

WHEREAS, by letter dated June 28, 2012, from Thomas J. Smith, III, Esq., to Guliet D. Hirsch, Esq., attorney for the Borough of Frenchtown Planning Board, the Applicant requested amended Final Approval in order to modify Condition No. 6 of the Resolution, which condition, in part, requires posting of a performance guarantee for public and private improvements in accordance with N.J.S.A. 40:55D-53 prior to any disturbance, clearing or construction on the Property; and

WHEREAS, the Planning Board considered the Applicant’s request for amended Final Approval at a special meeting on July 11, 2012, which meeting was duly noticed as required by law;

WHEREAS, the Applicant appeared at the July 11, 2012, Planning Board meeting through its principal, George Michael, and through counsel, Thomas J. Smith, III, Esq., of Harris & Harris, and presented the testimony of Thomas McAllister, the Applicant’s intended construction manager; and

WHEREAS, the Planning Board received and reviewed the following, both of which are part of the record and are attached hereto as exhibits:

A. June 28, 2012, letter from Thomas J. Smith, III, Esq., to Planning Board Attorney Guliet D. Hirsch, Esq., copied to the Planning Board’s secretary and distributed with the agenda for the July 11, 2012 hearing (Exhibit A) and

B. McAllister Construction Co., Inc., proposal for site work and construction dated July 11, 2012, addressed to George E. Michael & Co., Inc., distributed to the Planning Board members and marked Exhibit A-1 at the public hearing (Exhibit B); and

WHEREAS, Board Member Myhre recused himself and did not participate in the review or decision at the hearing; and

WHEREAS, the Planning Board, after considering the testimony and the exhibits referenced above and giving appropriate weight to them, makes the following factual findings:

(1) **FACTUAL FINDINGS**

(a) **The Property and Approvals.** The Property is approximately 124,418 square feet in size (net tract area) and consists of five separate and adjacent tax lots located north of Bridge Street, south of Third Street and between the Delaware River and Harrison Street in the R4-A zoning district and within the Frenchtown Village Center Plan overlay district.

(b) **Relief Requested.** The letter attached hereto as Exhibit A requests amended Final Approval and modification of Condition No. 6 of the Resolution and proposes posting of inspection fees and posting of a performance guarantee in an amount determined sufficient to guarantee installation of soil erosion and sediment controls for tree clearing, grading and filling as authorized by a Department of Environmental Protection (DEP) stream encroachment permit due to expire in September 2012 (the "Permit"). In testimony, Mr. Michael indicated that more extensive site work, including retaining wall and some foundation construction may be necessary to satisfy DEP hardship criteria. Edward McAllister, identified as the construction manager, provided Exhibit B, a proposal itemizing anticipated grading and construction activities, installation of retaining walls and of stormwater lines and headwalls. Mr. Michael agreed to post a performance guarantee, in an amount to be determined by the Planning Board's Engineer in accordance with N.J.S.A. 40:55D-53, for all construction activities to be performed to satisfy Permit requirements. He further agreed to provide his engineer's cost estimate and a marked plan on which all proposed activities are identified. Mr. Michael then asked that, prior to submission of the plan and posting of the performance guarantee, the Applicant be permitted to commence tree clearing.

(c) **Additional Relief Identified.** In discussion, it was pointed out that Condition 4.a of the Resolution requires layouts approved by utility companies prior to any construction on the Property. Mr. Michael stated that those plans have not been developed and are not necessary for the activities presently contemplated.

(d) **Conclusions.** Based upon the testimony presented, the Board finds that the relief requested, as modified in testimony, is one of timing and partial performance, not of substance, and that the requested relief can be granted without amendment of the Final Approval, provided there is strict conformance with all of the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED by the Frenchtown Borough Planning Board, by motion duly made and seconded on July 11, 2012, that timing relief from Condition 4.a and that partial relief from the requirements of Condition 6 of the Resolution are hereby approved.

(2) **CONDITIONS.**

(a) **Tree Removal.** The Applicant may cut trees and prune trees and vegetation prior to delivery of a performance guarantee for the activities hereby authorized, provided the Applicant complies with paragraph 3.b. and 3.d. of the Resolution to the extent those provisions are applicable to the limited scope of work authorized by this resolution. Those conditions are:

3.b. The trees to remain along the east property line between 2nd and 3rd Street shall be pretreated prior to construction, and follow-up care shall be provided during and at the completion of the project. DIEHARD Mycorrhizal Inoculants and Microflora Stimulants – <http://www.horticulturalalliance.com/DIEHARDRootReviver.asp> or approved equivalent shall be used to pretreat the trees prior, during and at completion of construction. The applicant shall retain the services of a NJ Certified Tree Expert to design and implement a tree care program. The tree remediation plan shall be submitted to the municipal landscape architect for approval prior to construction.

3.d. Prior to the start of construction the Applicant shall field-mark the limits of the work space to determine the limits of tree pruning required by the construction of the project. The limits shall be approved by the Borough Landscape Architect prior to the start of any work. The Applicant shall retain a NJ Certified Tree Expert to supervise the work. All pruning shall follow the tree pruning standards of the International Society of Arboriculture. The Applicant shall exercise caution when pruning existing trees along the D&R Canal Towpath. The pruning must be completed and approved by the Borough Landscape Architect prior to the start of construction.

In any event, no trees shall be cut and no pruning shall take place until the Applicant has marked the limits of cutting and pruning in the field and the Borough's Landscape Architect has inspected and approved the limits of disturbance.

(b) The Applicant shall provide plan(s) on which all of the proposed activities and improvements are clearly indicated and shall provide its engineer's estimate of the cost of those improvements to the Borough's Engineer for a determination of the amounts of performance guarantee and inspection fees to be provided. No site activity other than that authorized in condition 1 above shall commence prior to delivery of the performance guarantee and inspection fees.

(c) **Other Governmental Approvals.** This approval is conditioned upon the Applicant's obtaining all permits and/or approvals required for the limited construction authorized by this resolution from municipal, county, state and/or federal agencies. All such permits shall be presented to the Construction Code Official in conjunction with the application for the first construction permit, which construction permit shall not be issued unless all permits have been issued and determined to be in full force and effect. Additionally, no site disturbance shall occur until all such permits are obtained and presented to the Board Engineer for verification purposes.

(d) **Proof of Tax Payments.** The applicant shall provide proof that all taxes have been paid up to date prior to adoption of this resolution memorializing relief from conditions the final site plan approval.

(e) **Up-To-Date Escrow Payments.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished within thirty (30) days of the adoption of the within resolution and within thirty (30) days of any written notice of escrow account deficiency. Failure to abide by this condition shall result in all applicable approvals automatically terminating and becoming null and void.

(f) Except as modified by this resolution, all conditions of Resolution No. 2011-15 remain in full force and effect.

Voting Record

On July 11, 2012, a motion to grant partial relief from the conditions of Frenchtown Borough Planning Board Resolution No. 2011-15 received the following vote:

Those in Favor: Arent, Case, Cooper, Suttle, Wright, Hanley, Musolino and Eckel

Those Opposed: None

Recused: Myhre

The above memorializing resolution was adopted on July 25, 2012, by the following Board members eligible to vote:

| MEMBER | YES | NO |
|----------|-----|----|
| Arent | X | |
| Case | X | |
| Cooper | X | |
| Eckel | X | |
| Hanley | X | |
| Musolino | X | |
| Wright | X | |

Attest:

Brenda S. Shepherd, Board Secretary

Bruce Myhre returned to the meeting.

Interpretation and Variance Application – Block 54 Lot 6, 9 River Road - Brian Marsh (completion review and possible public hearing)

Julie Hanley stepped down on this application due to proximity.

Guy DeSapio, Attorney from DeSapio Law Offices of Eleventh Street representing Brian Marsh, noted that he has just provided the affidavit of service to Board Attorney Hirsch. He noted that Mr. Marsh and his son Anthony Marsh will be witnesses.

Attorney Hirsch recommended addressing the completion determination of the application. Engineer Tom Decker who is sitting in for Engineer Robert Clerico noted that Engineer Clerico issued a memo dated July 24 based on plans and documents he received on Friday. The first few

comments dealt with information requested from the applicant. That has been submitted to the Board. As to Item 4, we now have a letter from the zoning officer dated today. Those completion items have been addressed. Attorney Hirsch added that she has reviewed the affidavit of service and notice and they are in order so the Board has jurisdiction to consider this application. The notice was issued for the June 27, 2012 meeting of the Board and on that date, we opened the public hearing and made an announcement that the application was carried to tonight's meeting. On motion by John DenBleyker, seconded by Robb Arent and carried by unanimous favorable roll call vote, the Planning Board deemed the Interpretation and Variance Application for Block 54 Lot 6, 9 River Road, complete.

Attorney DeSapio stated that he represents Brian and Patsy Marsh who live at 9 Old River Road. This property is located in a flood zone. Mrs. Marsh is 65 years old and has serious medical problem. She has COPD (Chronic Obstructive Pulmonary Disease). As a result, she uses oxygen which requires electricity to run. In addition, the house is not on the public water system, it is on a private well so when there is no electric, they have no water in the home. Recently over the last couple of years, there have been power outages that have occurred which are not necessarily related to floods. When these outages occur, it creates serious risk for Mrs. Marsh. On occasion, she has had to be relocated. On other occasions, they have brought in a temporary generator on wheels that they bought at Home Depot to provide electricity so that she could be safe. Mr. Marsh finally concluded that it would be prudent to purchase a permanent generator for \$4,000.00 which runs on propane gas. It would get hooked into the electrical panel. Mr. Marsh proposes to install that generator on a three foot high wooden platform. You will hear testimony on how the platform will be built with 6 x 6's with four concrete piers put in the ground and the platform fastened there and then the generator will be bolted to the platform. You will hear testimony that he is proposing to locate it on the side of the house between two other utilities, the air conditioning unit which sits virtually flat on the ground and the propane units which can serve as the source of power for the generator. Those propane units are virtually located on the ground. The generator would be located between the propane and air conditioning units. You will also hear testimony that they chose that height for more protection in the event of flooding. But, basically, the generator needs regular attention. It needs to be started periodically to make sure it will function and it needs to be serviced so a level of 3 foot high creates a safe environment to service that generator. They chose that location for height because it is directly adjacent to the basement wall where the electric box is. The generator has to be hooked up into the electrical box in order to run the electricity in the house. That is the convenient and prudent way to hook it up. If there was ever a flood that would rise to basement level, that generator would not be able to run because the electric service would have to be turned off. The generator on three sides has open grill panels that are used for air flow in connection with operation but also it would permit flood waters if they rose to the height of the platform to pass through the unit. We feel that this installation is proof that the height proposed complies with Section 5.1-3, the utility section of your flood prevention ordinance, which reads:

Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Attorney DeSapio noted that we feel we meet the standards because it has vents on three sides. We applied to the zoning officer and never got a denial letter until just recently. At the time he went to the zoning officer, he gave him the old ordinance number and told him he needed a variance. First, we want an interpretation and we feel the interpretation can be that it is a utility,

water can not accumulate within it, it complies with the ordinance and as long as it is anchored appropriately that protects the health, safety and welfare, it should be permitted.

Attorney DeSapio will present another witness. If you determine we need a variance, a second witness will testify that if we put the generator at the height the zoning officer says it must be, it will create all sorts of problems that are not reasonable. One is that stability of a platform 7 feet above the grounds with a 450 lb generator is not reasonable. Number two is how do you get up there to service the unit once a month. It is not safe for the property owner. Also, how do you run propane lines 7 feet in the air to service the generator which will not be in operation if the basement is flooded where the electric panel is located. It does not make sense and it is unsightly. We feel we will be able to satisfy the conditions of a bulk variance because it is a utility, a safety improvement and the location proposed by the applicant is best to meet all the objectives of the ordinance.

Attorney DeSapio introduced Mr. Marsh as the first witness. Attorney Hirsch swore in Mr. Marsh. Mr. Marsh stated that he lives at 9 Old River Road, or 9 River Road. He has lived there 20 years. Patsy Marsh lives with him. She is 65 and has numerous health problems including COPD, diabetes, amongst other problems. COPD creates difficulty breathing which affect her heart. She supplements her breathing with an oxygen compressor which runs off of electricity. In the short term, we can use tanks but basically, we depend on the compressor. We need electricity for that and to keep water running in the house. The house is on a private well so when there is no electricity it is an extreme safety hazard. The electricity has gone out other than during flooding. On Halloween last year and we were out of electricity for 3 or 4 days. Also, we were out of electricity for Tropical Storm Lee. That is what led us to our decision. We decided to get a permanent affixed generator so we could live there temporarily for 3 days or so if the electricity goes out. Mr. Marsh noted that he purchased the generator for about \$4,000.00. Marked as Exhibit A-1 is a picture of the 17 KW generator purchased. The generator weights over 400 lbs. One side of the generator in this Exhibit does not have vents. The other sides have vents. Open areas. Marked as Exhibit A-2 is a diagram furnished by the supplier of the generator. It shows various side details and vents on the sides of the generator. Marked as Exhibit A-3 is the technical information received with the generator. He presumes that the vents on the generator would permit water to pass through the generator. When he purchased this generator, he identified the most reasonable location which is next to the propane tanks because it has to be attached to propane. Marked as Exhibit A-5 is SM Norkevich survey map of the property, dated 7/27/88 and revised to 6/27/12 which is part of the application. Marked as Exhibit A -6 is a copy of the survey showing the approximate location of the generator. It would be located to the left side of house toward the back. He took all the pictures and they accurately depict the location. Marked as Exhibit A-7 are pictures showing the proposed location of generator to the propane tanks to left and the air conditioning units and the generator will be placed between the two. All the pictures used to testify have been taken by me and accurately depict what is being testified to. Those propane tanks have been there since he has been here and they have been anchored since 2005. Anthony Marsh, his son, anchored them. Previous to 2005, they were not anchored. To the left of that is the air conditioning units that service the house. Responding to Attorney Hirsch, Attorney DeSapio stated that it looks like he skipped an Exhibit number being Exhibit A-4. Attorney Hirsch stated that it will just be skipped. Marked as Exhibit A-8 are photographs of the same area at different angles. Mr. Marsh stated that the energy source for the generator is propane. The generator would be attached to the propane tanks to the right. His proposal is to install the generator on a platform. It would be secured with concrete footings so it would not shift and the generator would be anchored to the platform. Marked as Exhibit A -9 is a sketch prepared by Mr. Marsh's son, Anthony Marsh, showing 4

diagrams. The top left diagram shows the location of the tanks in relation to the foot print of the house. The top right diagram shows the generator mounted on the platform with illustrations of the footings. The generator is approximately 4 feet long. The diagram shows the foundation piers. Responding to Attorney DeSapio, Mr. Marsh noted that someone did construct the platform. The legs of the platform are 6 x 6 posts. Marked as Exhibit A-10 is a picture of the platform. Marked as Exhibit A-11 is a picture of the platform showing the posts with a yard stick showing how high the platform is. Mr. DeSapio asked Mr. Marsh how the generator gets hooked into the electrical service in the house. Mr. Marsh noted that there is a second electric box connected to the house in the basement. That is below the level of the first floor. Mr. Norkewich shows on his survey the ground level and the elevation of the third floor of the house. The proposed height of the generator is to facilitate the electrical hook up to the service in the house. He wants to keep the connection as uncomplicated as possible. Mark as Exhibit A-12 is a picture of the electrical box in the basement. Responding to Attorney DeSapio, Mr. Marsh noted that the generator has to be serviced and tested periodically. Mr. Marsh added that he decided to place the generator there because he has lived there a long time and it does not flood that high in that location. It is convenient for the propane and electricity. Part of the decision making of the height is relative to the fact that it has to be serviced. He is older and he may be climbing up there to service the generator. He does not want to take a chance of falling. He does not want to locate it 7 feet up because he needs to service it and it would be unsightly. It would not be that visible from the road but it would be more unstable if it were higher. Having no other testimony, Attorney DeSapio asked if the board has any questions.

Chairman Eckel asked if the platform would be treated wood. Mr. Marsh responded in the affirmative. Mayor Cooper asked if Mr. Marsh has made any other physical changes to the home to accommodate Mrs. Marsh. Mr. Marsh stated that they have installed bars in the bathroom and shower and he created a first floor shower so that the house would be safer for Mrs. Marsh so she does not have to go upstairs. Responding to John DenBleyker as to the highest flood elevations for the major floods, Mr. Marsh noted that he had 18 inches of water in the first floor in 2005 and 2006. Other than that, they never had water in the house. In the event that the water enters the basement and reaches the height of the electrical panel, the electric would be turned off. If the water reaches the electric panel level, the generator would not be used. Responding to John DenBleyker, Mr. Marsh noted that the topography at ground level is 116 feet and the flood elevation is at 122.7 feet from the 2012 FEMA map. That is 6.7 feet above grade. The generator is proposed at 3 feet above grade. The generator would be at 119 feet, about 3.7 feet below flood elevation. The electrical box is below the level of the generator. The generator automatically turns on when there is no power. John DenBleyker asked if the power is shut off, will the generator try to turn on. Mr. Marsh did not know the answer to that question.

Attorney DeSapio introduced Anthony Marsh as the second witness. Attorney Hirsch swore in Anthony Marsh. Anthony Marsh stated that he lives at 1733 Durham Road in Buckingham, PA. Anthony Marsh noted that Brian Marsh is his father. Anthony Marsh added that he owns a landscape construction business in Buckingham. He is licensed in NJ and PA to do construction. His company builds outdoor living spaces, brick patios, stone walls, swimming pools out of concrete and work with engineering plans all the time. He has built gazebos and wooden decks three stories in the air. He has been doing that for 22 years. He has assisted his parents with this proposed project. Responding to Attorney DeSapio as to the dimensions of the generator, Anthony Marsh submitted as Exhibit A-9 a quick sketch of the generator on the platform that we built and anchored into the ground. The sketch was designed to show the zoning officer roughly what they were doing. It shows the approximate location on the house in relation to other utilities that are there, propane tanks that were anchored down and the air conditioning unit. He

anchored the propane tanks after the one major flood in 2005 and they have not moved. Anthony Marsh testified that the generator is just shy of 2 ½ feet by 4 feet, approximately 30” by 44” and he believes it weights about 450 lbs. They selected that location because it is right next to where it needs to be, adjacent to the propane tanks which is the fuel supply and the electric panel which is on the other side of the wall. It makes sense not to put it further away. No one wants a generator in the front yard for aesthetic purposes. The platform is constructed with pressure treated lumber with 5/8 inch plywood cut to two sheets roughly 3 x 4 feet in size, glued together with an epoxy and screwed together making it 10/8 inch piece of wood so it is not coming apart. The first sheet is bolted onto the legs with 3/8 inch galvanized bolts. So the first sheet gets screwed to the legs, the second sheet is epoxy to the first screwed down and laminated. It makes the wood impossible to come apart. The legs are 6 x 6 pressure treated posts braced by 4 by 4s. There is a fifth leg to be installed in the middle for the center weight. You can see it in Exhibit A-9 on the bottom right hand corner. He tested the soil and it was compact enough that if he bank pored the 3500 psi concrete that would be secure. He plans to put galvanized bolts in the legs to hold it in the concrete. It would take a lot to pull it out of the ground. He planned to put them in 30 inches. Originally we were planning to put the generator on the ground. Then, we thought why not try to save an expensive generator if flood waters come up a little higher. It is an attempt to conserve and not ruin the generator. That is the reason we are putting it on a platform. We have brought generators on wheels to the house to help his mother. That is worst because if it floods, the generator will float away. Anthony Marsh noted that the generator will be anchored to the platform through the holes in the generator. He will use lag bolts through the platform. It will not be able to come off the platform. He added that on three sides of that generator, there are grills. In the event that flood waters come that high those grills would relieve hydrostatic pressure. It would not move any more than a car. The contact part of car is the tire part touching the ground like sitting on 4 baseball size contacts. A car would move before the generator. It will not move and it will be safe.

Anthony Marsh stated that if the electrical services were turned off, the generator has a transfer switch. And when the power company JCP&L stops feeding the house, that generator would turn on and feeds the house via the electric panel because all the arteries stem from there. You could also take separate leads and run them to everything you want in the house. This is better so it only comes on and energizes the panel when it detects loss of power from the power company. If the panel is turned off, it would not come on. He has installed numerous generators. Periodically, maintenance is required. His father or someone else would have to look at the oil and air filters, the digital read out needs to be looked at monthly. There is another piece that has to be serviced by a service technician on the top of the generator. It starts itself on it own and goes through paces. Attorney DeSapio noted that the zoning officer stated that the generator would have to be 7 feet off the ground. He asked Anthony Marsh why that is not a good idea? Anthony Marsh stated that they would not be able to see it. It is probably a lot less stable. It is hard to break a 3 foot 6 by 6 piece of stick. But, if I put one up in the air, it becomes like a pool cue and you could snap it over your knee. Also, it would be more difficult to connect to the energy source and electric but also it would be more costly and it would be an economic hardship. The flow of liquid propane up hill is not as reliable. The generator could shut off. The reason for locating it where it is proposed is because it is not feasible to run it on the other side of the house. We could put it on the ground but he would like to save an expensive piece of equipment through some of the moderate floods. One time it just crested the road and his parents did not have to vacate. He wants his mother safe. When she has to go to hotel, she has a bad heart and gets stressed out. She does not want to leave her house. Attorney DeSapio noted that Anthony Marsh is done testifying and asked if the Board had any other questions. Engineer Tom Decker asked if the generator is rated for submersion. Anthony Marsh stated that it is not and

they will take the risk. If it goes under water, it may not work again. Engineer Tom Deck stated that the official weight is 455 lb. He added that there is one accessory noted and that is the advance nexis wire remote. He read the following: Remotely controlled generator functions with the advance model LCD display in addition to remote testing the generator set the exercise cycles and maintenance reminders. Anthony Marsh noted that it is expensive and they did not buy that but they still have to see the unit. When it is not starting, you need to see what is going on. You may have to add oil, etc. You can still turn the unit on without a remote. Engineer Decker stated that a lot of the testimony given answers the questions in Engineer Clerico's review. Responding to John DenBleyker referring to Exhibit A2 where it indicates 45 inches away from house, Anthony Marsh noted that this is recommended but it is not by code. You have to keep it up from an ignition source. It may be 4 feet from the fuel. He already checked into the code and the vent has to be 15 inches away and the vent is on the other side anyway. The hot outlet can not be anywhere near where it can catch on fire. It is like a house grill, you do not want it too close to anything. A house grill is hotter than this. The vent is toward the backyard toward the air conditioning. The air conditioning unit will be downgraded from the generator and the exhaust of the generator will shoot out over the top of the air conditioning units. To get the building permit, we have to comply with code requirements for space, etc.

Attorney DeSapio stated that this concludes our presentation. He would like an interpretation that it is a utility and that water can move through it and it complies with the ordinance. If a variance is needed, we have met the reasonable conditions.

Attorney Hirsch informed the Board that the first decision the Board has to make is to interpret ordinance #678 which is the current flood damage ordinance. It supersedes what is in the main ordinance book and Ordinance #581. Mr. DeSapio's letter to the Board suggested that it is not a substantial improvement as defined in that ordinance and on that basis, it is not subject to flood hazard ordinance. You have Mr. Barczyk's review letter that in his opinion the provision of the ordinance that applies to utilities which is section 5-3 applies here and for that reason, the generator needs to be set at the appropriate elevation. You also have a review letter from Engineer Clerico who offers the view that the generator is new construction and is covered by the ordinance. This is a model ordinance adopted by Frenchtown. You are required to have one in place to keep the flood insurance program in place. When you look at ordinance is not perfect. My interpretation of it is as follows:

1. Section 4.0 deals with when you need a permit to do something in the flood hazard area. The language in section 4.1 is before construction or development begins within any area of special flood hazard as established in the ordinance. Any construction and any development is covered by the ordinance. That is her recommendation to the Board. The question of whether it is a substantial improvement or new construction does not come into place. The definitions are there but it does not help us answer the question because they are not cited in Section 4.1. As noted by Mr. Barczyk, there is a section of ordinance that deals with utilities in flood hazard area. The applicable one is 5.1-3 where it states electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating in the components during conditions of flooding. That is the requirement and the reason why Mr. Barczyk denied the zoning permit. If you take the position that a permit is required under the ordinance, you would be agreeing with Mr. Barczyk and then you would move to the second part of the case which is the request for variance. You heard testimony on both parts of the case together. There are two sections of the ordinance, we heard testimony on all the criteria that you are required to hear in order to grant a variance. In this case, there are more specific criteria for granting an ordinance than a bulk

variance. In Engineer Clerico's letter, he is giving you an interpretation. There is a series of 11 criteria in one section and then a summary section, variances can only be issued upon showing of good and sufficient cause. Determination is failure to grant would result in exceptional hardship to the applicant and determination to grant a variance will not result in increase flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as indentified in a previous section or conflict with existing local laws or ordinances. In the earlier section 4.4-1 subsection 4, you need to be concerned whether there is a danger that the materials will be swept onto other lands to the injury, whether there is a danger to life and property due to flooding or erosion damage, whether the facility is susceptible to flood damage and the effect of such damage on the owner and the importance of the services provided by the proposed facility to the community. Attorney Hirsch stated that you have heard testimony on all the required criteria. If she can offer any other assistance, let her know.

Chairman Eckel noted that the first thing the Board needs to do is to determine whether this is new construction as recommended by Engineer Clerico in his letter. Attorney Hirsch stated that her interpretation is different and that any construction or development is subject to the ordinance. Mayor Cooper stated that we understand this to be construction because of the footings and the 6 x 6 lumber being used to support it. Attorney Hirsch responded that it is correct because the ordinance has specific criteria. Responding to Mayor Cooper as to if it was left on the ground, Attorney Hirsch stated that it would be considered development under this ordinance. Robb Arent stated that the rational of this model ordinance is that the flood insurance program is a federal program even though you get the policy from private insurance companies. It is underwritten by FEMA. To be able to keep the borough in the program, we needed to pass a model ordinance. The intent of which is to avoid putting additional claims into flood area. The rational of putting it 6.7 feet in this situation is not to keep the generator from running but to prevent water from entering the generator and creating an additional claim. Mayor Cooper stated that if we fail to comply with those requirements, we are subject to possible rejection of claims by FEMA. John DenBleyker commented that we are given the ability to grant variance if it meets the criteria that Attorney Hirsch was talking about such as exceptional hardship which would be danger to Mrs. Marsh. They may give us leeway to grant a variance if it meets the criteria that Attorney Hirsch said. Attorney Hirsch stated that as part of the model ordinance, variances are allowed to be granted without putting the Borough at risk of losing flood insurance. Chairman Eckel stated that if we were to do that we must document very clearly why we are granting a variance. Bruce Myhre commented that it would be reasonable to assume that if it floods at this elevation, it would destroy the generator. John DenBleyker responded that we heard testimony that they are willing to take the risk of losing the generator because they need it for health reason and if they put it at the higher level it would be unsafe for another family member. Once you go over 6 feet, you have to comply with OSHA regulations. Chairman Eckel added that if you go up 6 feet with the propane line, it may potentially be unusable in an emergency situation. Last thing you want to be doing, when you need a generator because you lost power is climbing up a 7 foot ladder to look at an LED screen to determine why the generator did not come on. It would make it less useful. Jerry Hoffman stated that once you go 7 feet you are talking about using steel for the platform, adding railing etc. It would probability be 3 times the size then. Doug Wright commented that it makes sense to have them do what they want to do. Chairman Eckel stated that we have to determine if it is construction or development. Attorney Hirsch added that you have to determine if is it subject to regulations under the ordinance. If you said no, it is not regulated, it is the end of the case. Chairman Eckel commented that the way she reads the ordinance and as indicated in Planner McKenzie's memo, it does fall under the flood ordinance and we need to consider it as construction relative to the ordinance and then move on to the variance phase.

On motion by Warren Cooper, seconded by Gerry Case and carried by unanimous favorable roll call vote, the Planning Board considered the applicants proposal to be construction subject to the flood ordinance.

Attorney Hirsch recommended that the Board determine the critical criteria for granting a variance. She reviewed the criteria as set forth in Section 4.4-1 subsection 4 of the ordinance. As to the general variance conditions, you need to show good and sufficient cause, determination that failure to grant the variance would result in exceptional hardship to the applicant, determination that granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in section 4.4-1 subsection 4 or conflict with exiting local laws or ordinances.

Chairman Eckel stated that we have heard testimony on several items such as items will not be swept away, danger to life and property due to flooding and erosion damage was covered, susceptibility of the proposed facility to flood damage and they have indicated that in a major flood they know they will lose the generator and accept that risk but in the alternative putting it up 7 feet would make it unusable, availability of an alternate location is not feasible because it is at the highest point on the property. As to the general provisions, Chairman Eckel noted that the applicant has demonstrated that given the health situation in the house, this is a critical piece of equipment for the welfare of Patsy Marsh. Not having power and water is a real hardship because Mrs. Marsh needs oxygen. And, to raise the generator up 7 feet would also create a dangerous situation to service and maintain the generator. The applicant has addressed the points that would allow us to grant the variance and allow them to construction anchors for a 3 foot platform to put the generator on so it would be available in an emergency situation.

On motion by Warren Cooper, seconded by Robb Arent and carried by unanimous favorable roll call vote, the Planning Board granted the variance for Block 54 Lot 6 based on the points outlined above.

Attorney Hirsch recommended that a letter be issued to the zoning officer that the variance was approved and construction will be in conformance with the plans. She will have a memorializing resolution for next month's meeting. Chairman Eckel noted that Secretary Shepherd will direct the zoning officer to allow the applicant to proceed.

Julie Hanley returned to the meeting.

New Business

(a) Bylaw Review

Chairman Eckel noted that Doug Wright will be finalizing the bylaws. There were a few other changes suggested at the last meeting particularly under order of business, open to the public for comments/questions and under 1:6 c it will read. The minutes will include a list of board members and professionals in attendance.

Warren Cooper stated that we have a borough website that can accommodate the posting of agendas, minutes, etc. He thinks we should post the planning board agendas and minutes. Subsequent to a brief discussion, the Board agreed that the minutes should be posted after they are approved. Mayor Cooper stated that it does not have to be put in the bylaws.

VOUCHERS

Brenda Shepherd, Board Secretary, presented the following vouchers for approval:

VOUCHER LIST 7/25/12

| | | |
|--------------------|---|-------------|
| Archer & Greiner | Professional Services for General Representation through 6/30/12 | \$ 342.20 |
| Elizabeth McKenzie | Professional Services for General Representation (COAH) through 6/30/12 | \$ 1,087.50 |

ESCROW ACCOUNT – BLOCK 59 LOT 7.01 - Julie Hanley

| | | |
|-----------------------|--|-----------|
| Van Cleef Engineering | Professional Services for Hanley through 5/31/12 | \$ 438.75 |
| Archer & Greiner | Professional Services for Hanley through 5/31/12 | \$ 180.00 |

ESCROW ACCOUNT – BLOCK 34 LOT 1 – George Michael

| | | |
|------------------|---|-------------|
| Archer & Greiner | Professional Services for Michael through 6/30/12 | \$ 560.00 |
| Archer & Greiner | Professional Services for Michael through 6/30/12 | \$ 1,020.00 |

On motion by Warren Cooper, seconded by Bruce Myhre, and carried by unanimous favorable roll call vote, the Planning Board approved payment of the above bills list.

CORRESPONDENCE, COUNCIL REPRESENTATIVE REPORT AND OTHER RELATED ITEMS

Robb Arent noted that at this coming Council meeting on August 1, the Ad Hoc sewer committee will present the final report to Council. There will be a power point presentation. We had a public presentation for input and only 3 people attended, one being David Miller from North Carolina.

Robb Arent also reminded everyone that the night of August 1st at 6:00 pm, George Michael will be having a ground breaking ceremony and turning over the property along the river to the Borough.

Mayor Cooper reported that the Borough is moving forward with doing the emergency creek restoration with the opportunity to get grant money after Hurricane Irene which shifted the bends in the creek.

Robb Arent reported that the new sewer plant is being constructed. They have dismantled the DPW storage sheds and are starting to do excavation for the clarifier and then at the DPW site.

Responding to Doug Wright as to the George Michael project, Robb Arent noted that the plans have been submitted to the engineer and all the numbers have been created. Brian Bosenberg has been down to look at the marked up trees. One resident complained about the cutting of the trees. Mr. Michael could have cut them at any time. There is a preconstruction meeting tomorrow. Mayor Cooper added that he signed the agreement that the Council amended. It looks like there is an understanding on what the guarantees will be.

ADJOURNMENT

Gerry Case moved adjournment at 9:25 PM, and Robb Arent seconded. The motion passed on favorable voice vote.

Brenda S. Shepherd
Secretary, Planning/Zoning Board