

Frenchtown Planning Board
Regular Meeting
February 26, 2020
7:30 P.M.

Chairman Randi 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.

OATH OF OFFICE – William Sullivan

Chairman Eckel noted that William Sullivan is not here this evening. He added that there will mostly be a change in the liason to the Planning Board in the near future as William Sullivan is unable to attend a lot of meeting.

ROLL CALL

Present:	Absent:
Cooke	Herb
DenBleyker	Sullivan
Dougherty	
Dragt	
Eckel	
Myhre	
Reino	
Tomko	

Chairman Eckel announced that Jeanne Herb had to TEACH AT CLASS AT Rutgers this evening.

APPROVAL OF MINUTES

Regular Meeting – January 22, 2020

John DenBleyker moved to accept the minutes of the January 22, 2020 reorganization and regular meeting, Brad Myhre seconded the motion. The minutes of the January 22, 2020 reorganization and regular meeting were approved by favorable roll call vote with John Dougherty abstaining.

Executive Session – January 22, 2020

Gordon Dragt moved to accept the minutes of the January 22, 2020 executive session meeting, Brad Myhre seconded the motion. The minutes of the January 22, 2020 executive session meeting were approved by favorable roll call vote with John Dougherty abstaining.

PUBLIC COMMENTS

Chairman Eckel opened the floor for public comments. Hearing no comments, she closed the public comment session.

2020 CENSUS PRESENTATION – Allison Jackson

Allison Jackson was not present for the meeting. Chairman Eckel tabled this item to the next meeting.

MEMORIALIZING RESOLUTION #2020-11 – ZONING INTERPRETATION/USE VARIANCE – BLOCK 15 LOT 11, DARCY LODGE F&A MASONIC #37

Attorney Hirsch noted that the Resolution to be adopted this evening is dated February 13, 2020 at the top which includes the comments from Darlene Green and Steven Gruenberg. On motion by Mike Reino, seconded by Gordon Dragt and carried by unanimous favorable roll call vote, the Planning Board approved Memorializing Resolution #2020-11 as follows:

FRENCHTOWN BOROUGH PLANNING BOARD

RESOLUTION NO. 2020-11

DARCY LODGE #37 F&AM

BLOCK 15, LOT 11

RESOLUTION MEMORIALIZING ZONING INTERPRETATION

WHEREAS, Darcy Lodge #37 F&A Masonic is the applicant (the “Applicant”) and the owner of Block 15, Lot 11 (the “Subject Property”); and

WHEREAS, on or about October 25, 2019, the Applicant filed an application for zoning interpretation and on or about December 3, 2019, filed an application for use variance, as an alternative to the application for zoning interpretation;

WHEREAS, the Applicant granted an extension of time to the Board for decision on completeness to December 11, 2019 and also granted an extension of time for decision to January 22, 2020;

WHEREAS, the application was deemed complete subject to certain temporary and permanent waivers granted on December 11, 2019; and

WHEREAS, the Frenchtown Land Development Ordinance requires public notice both for requests for zoning interpretation and use variances, and the Applicant provided public notice to property owners and publication of notice, with an affidavit of service and publication being provided to the Board prior to the public hearing; and

WHEREAS, a public hearing was commenced and completed on January 22, 2020, and the Board voted to approve the request for zoning interpretation subject to conditions stated in the record; and

WHEREAS, the Board received and reviewed the following review letters from its consultants: December 7, 2019 zoning ordinance interpretation and use variance application – Report # 1 from Board Engineer, Robert J. Clerico, P.E. (attached hereto as Exhibit A); January 15, 2020 Planning Report, review letter # 1 – interpretation from Board Planner Darlene A. Green, P.P., A.I.C.P. (attached hereto as Exhibit B); and Planning Report review letter # 1 use variance from Board Planner, Darlene A. Green, P.P., A.I.C.P. (attached hereto as Exhibit C);

WHEREAS, the Applicant was represented during the public hearing by Steven P. Gruenberg, Esquire and testimony was offered during the hearing by Gordon Long, member and counsel to the Applicant, Jennifer Hason, on behalf of Edible Underground, Jeff Brownell, outgoing Treasurer of the Applicant and Elizabeth McManus, the Applicant's Planner; and

WHEREAS, the Board Professional Planner, Darlene A. Green, P.P., A.I.C.P. testified under oath during the hearings and said testimony is considered part of the record in this matter; and

WHEREAS, public comments were offered during the public hearing by William O'Brien, Mike Kosinski, Kandy Ferree; and

WHEREAS, the Board makes the following findings of fact and conclusions of law:

1. **Zoning.** The Subject Property is located in the R-1 residential zone where fraternal lodges and charitable uses are not permitted uses or conditional uses.
2. **Non-Conforming Use of Subject Property.** The Applicant established through the testimony of Gordon Long, that the Subject Property had been utilized for over 50 years, either by the Applicant or a predecessor lodge, as a fraternal lodge with its primary function being fundraising for various charitable entities, including local entities such as Frenchtown Fire Department, Frenchtown Rescue Squad, and the Angel Fund contributing to specific cases.

- a. The Applicant, like other fraternal lodges, has engaged in various fundraising activities, including a monthly pancake breakfast, as well as renting out its kitchen and hall to various community organizations for activities such as karate classes and quilting.
 - b. As a result of the fundraising activities, as established by Applicant's outgoing Treasurer, Jeff Brownell, the Applicant is able to cover approximately \$1,000 per month in average operational costs as well as make substantial contributions to various charitable entities, and is qualified as a 501c10 exempt fraternal organization, with fraternal activities which are exclusively religious, charitable or educational in nature.
3. Utilization of Kitchen by Edible Underground.
- a. The Applicant indicated that a notice of violation had been issued by the Zoning Officer stating that it was possible that the current use of the Property, including the kitchen lease and meal preparation and pick-up by customers of Edible Underground, constituted an extension or expansion of a legal non-conforming use, prohibited by Frenchtown Borough Land Development Ordinance § 305B.
 - b. Both Mr. Long and Jennifer Hason, owner of Edible Underground, testified concerning the lease of the Applicant's professional kitchen in the building on the Subject Property. The use currently involves meal preparation for pick-up, which is arranged for, and usually paid for, on-line. Currently, prepared meal pick-up occurs one night a week, Monday night, for approximately two hours. This activity involves two employees and generates a maximum of five vehicles on site during the two hour prepared meal pick-up period. Other traffic to the site in connection with Edible Underground's use, involves one box truck for vendor delivery per week and an additional box truck every two weeks. Edible

Underground compensates the Applicant with an hourly fee for the use of its kitchen. Edible Underground's use of the kitchen and prepared meal pick-up service does not involve any consumption on the premises nor does it involve the sale of any retail products on site other than the packaged meals. The packaged meals include, but are not limited to meals, desserts, soups and baked goods that are packaged for take-away. Edible Underground utilizes the kitchen other catering (either for Mason events or off-site events) or for specialty cakes/desserts. The Applicant also indicated that no site improvements or building expansion, as well as no signage on the building or on the site was necessary for Edible Underground's packaged meal service use.

- c. The Applicant indicated that it supported a small expansion of Edible Underground's packaged meal service to a total of two days per week, with each day involving an approximate two hour pick-up period.

4. The Use by Edible Underground is Substantially Similar to the Legal Non-Conforming Lodge Use.

- a. Although the owner of a lawfully created preexisting nonconforming use is allowed to continue it and to do necessary maintenance, the owner may not enlarge or modify the use without a variance, except where the change is negligible or insubstantial. When it appears that a use has changed from what it was at the time of the adoption of the ordinance, the question then becomes whether or not the present use is substantially similar to the use that existed at the time of the ordinance's adoption. If the use is substantially similar, it will be permitted. If instead there has been an illegal extension of the use, it will not be permitted absent a variance.

b. The Applicant's Professional Planner, Beth McManus, P.P. A.I.C.P., testified that the lease of the Applicant's professional kitchen by Edible Underground, for preparation of packaged meals for pick-up by customers one or two nights per week, for approximately two hours per night, and use of the kitchen constituted a use which is substantially similar to the legal non-conforming fraternal lodge use. Ms. McManus stated that the basis for her conclusion was that the purpose of the food activity by Edible Underground was similar to the monthly pancake breakfast offered regularly by the Applicant as well as the other regular fund-raising activities of the Lodge and was designed for the same purpose, that is, to support the charitable activities of the Lodge. Secondly, the packaged meal service by Edible Underground continues the low level of activity associated with the legal non-conforming fraternal lodge use, specifically noting the limited traffic, deliveries and employees involved with the use. The Board Planner, Darlene A. Green, did not disagree with this assessment. The Board agrees with this basic conclusion based upon testimony and evidence in the record on the application.

NOW, THEREFORE, be it resolved by the Frenchtown Borough Planning Board, by motion duly made and seconded on January 22, 2020, that the request for zoning interpretation that the lease of the professional kitchen on the premises by Edible Underground, or a similar entity, under the terms and conditions listed below, constitutes a substantially similar, and thus permitted continuation of the legal non-conforming fraternal lodge use of the Subject Property.

The terms and conditions discussed by the Board prior to vote include:

1. This interpretation permits the lease of the professional kitchen for Edible Underground, or a similar entity, for food preparation and sale to customers for take-out by customers a maximum of two times a week, about two hours for take-out per night.

2. No site improvements, building expansion or any type of signage on the building or on the site is permitted in connection with the use.
3. There shall be no on-site food consumption or seating inside or outside of the building for this purpose.
4. There shall be no retail sale of food products other than take-out of prepared meals and products associated with Edible Underground as described herein, or a similar entity's use of the Darcy Lodge.
5. The use by Edible Underground, or a similar entity, is in service of, and in connection with, the continued use of the Subject Property by Darcy Lodge or any successor lodge/fraternal organization.
6. The Applicant shall replenish the Planning Board escrow account within fifteen (15) days of the emailing of a written request to the Applicant's representative, pursuant to the requirements of the Executed Escrow Agreement.

VOTING RECORD

On January 22, 2020, a motion to approve the zoning interpretation received the following votes:

Those in favor: Cook, Denbleyker, Dragt, Eckel, Myhre, Reino and Tomko.

Those opposed: None.

The above memorializing resolution was adopted on February 26, 2020 by the following members eligible to vote:

MEMBER	YES	NO
Cook		
Denbleyker		
Dragt		

Eckel		
Myhre		
Reino		
Tomko		

Attest:

Brenda S. Shepherd, Board Administrator

RIVER MILLS REQUEST FOR EXTENSION

Attorney Hirsch stated that the matter before the Board is a request by River Mills for an extension of time to comply with two resolutions adopted last year: one granted Site Plan approval and the other granted Minor Subdivision approval. There are two separate resolutions, both of which had deadlines in them. Resolution 2019-10, Site Plan, was adopted on February 27, 2019; and Resolution 2019-13, Subdivision, was adopted on June 26, 2019. When the Board adopts a resolution, that is generally the end of the Board’s and its consultants’ responsibility. After that it is the applicant’s responsibility to deal with the deadlines, to take whatever action is required, to obtain any reviews required by the Board’s engineer or anyone else. If a deadline is approaching the applicant has to come and ask for an extension of time to complete the conditions of approval. Attorney Hirsch added that right before the January meeting, it came to our attention that the Building A lot was being marketed for sale. This was a cause for concern, as it was clear that little had been done to ensure that the conditions put in place would be met. So Brenda Shepherd sent a letter on January 22, 2020 asking for proof of compliance with the resolutions. She received a response on January 31st from Dave Shafkowitz, attorney for the applicant. At that time, Mr. Shafkowitz submitted various plans and documents on the status of the conditions that were open at that time. On the Amended Site Plan Resolution, Condition #2 required the applicant to create a record set of plans within 90 days of adoption of the site plan resolution (which deadline was May 27, 2019).

Attorney Dave Shafkowitz stated that they had explored that issue with Tom Stearns who was the landscape consultant at that time and it looks like everything was submitted on March 20, 2019.

Attorney Hirsch stated that she would not go into the substance of what happened, nor whether the applicant had complied with the deadline. That deadline was for the record set of plans to be created, signed and delivered to the Borough Hall. She said that the applicant had asked for more time on that, and the Board granted an extension to June 30th. Her file shows that plans were submitted on June 17th, but the Board still does not have a signed reference set of the amended site plan.

Another condition with the deadline required a draft engineer’s estimate to be submitted by the applicant 30 days after the signing of the reference set of plans. As the reference set is not signed, that deadline has not come yet.

The Minor Subdivision Resolution had a number of conditions with deadlines. Condition #2, similar to the one in the Amended Site Plan Resolution, is a requirement to submit a record set of the approved subdivision plan within 90 days of the adoption of the Subdivision Resolution: that deadline was September 26, 2019. Attorney Hirsch's file shows that the applicant made submissions on June 6, 2019. She is not sure that these were in response to the resolution, and there have been more recent submissions.

Condition #3 required the applicant to submit a subdivision plan. The law requires either a plan or a deed to be recorded to create the subdivision. So, in order to create a lot, one not only has to have Planning Board approval but deeds that contain all the requirements the Board has set forth, or a subdivision plat, which is a map that is recorded at the Hunterdon County Registry of Deeds. Only when these things have taken place is there a new lot. Until there is a new lot, there is nothing to sell. The deadline on Condition # 3 was to record the plat or deed 190 days from the adoption of the subdivision resolution, which brings it to January 2, 2020. The condition stated that the subdivision approval would expire unless it was extended. So now the applicant has asked for an extension.

Condition #4 required the amended site plans to be recorded with the deed to the property within 21 days of adoption of the resolution, or July 15th, and this has been complied with as of yesterday.

Condition #7 required an amended redevelopment plan and replacement of the letter of credit within 30 days of adoption of that resolution, the deadline for which was July 26th. That condition stated: "Or the approval is deemed null and void." That was something requested by the Borough attorney. However, despite the language in the resolution, we still have the authority to consider a request for an extension. The Board can grant an extension as requested by the applicant, grant a shorter or a longer extension, or it can refuse to grant the extension. Conditions can be imposed on the extension. Attorney Hirsch, Planner Green and Engineer Clerico will recommend some conditions for the Board to consider.

Attorney Hirsch stressed that if the Board does not grant the extension, the effect would be to nullify all the work the applicant, consultants and Board have done. The application becomes null and void. The applicant would then be forced to file a new application, submit new documents, and the Board would hold new hearings. The Board would consider the entire application again, then would have to vote to grant or not grant approval. Municipal Planning Boards do not ordinarily refuse to grant extensions unless there has been a major zoning change that has affected the project, which is not the case here.

The most serious current concern with River Mills is that the affordable housing units in Building A are to be constructed according to a phasing schedule. The project's market rate units are tied to the phasing schedule for the low and moderate rate units – not only the units in Building A, but those in the entire project. This remains true even if Building A becomes a separate lot under different ownership. Attorney Hirsch stated that we are close to having a very detailed form of deed for a lot, a deed that will include all the state-required housing restrictions and the phasing schedule, after we have written the final condition. That will be the last step before the deed or plat is recorded. By the time we are finished, there will be detailed deeds for Building A as well as for the remainder of the property. These will be recorded immediately, in order to protect the Borough's housing plan, and also will allow the applicant to market Lot A.

Planner Green noted that the phasing requirements are set forth in the Affordable Housing Ordinance #595 for this development. The phasing requirements in that ordinance are standard: the developer gets to build 25% of the market rate units before having to provide the Mount Laurel units. When he gets to 25% plus one market rate unit, the requirement kicks in. The basic idea is that the market rate units receive Certificates of Occupancy behind the Mount Laurel units so all the Mount Laurel units would be built and given COs before more market rate units are completed.

John DenBleyker asked if the project had reached the point where a Mount Laurel unit is required.

River Mills Attorney David Shafkowitz responded that the project had experienced a great deal of frustration pursuing compliance. There were changes to the phasing schedule in the Second and Third Redevelopment Agreements. In all likelihood, all four affordable units will be built at one time, when Building A is constructed. This creates problems for a project already suffering from the collapse of the first developer. There have been discussions with this Board about an amendment to the phasing schedule.

Attorney Hirsch responded that to her knowledge there had not been any application to the Board for a variance from the phasing requirements. In order to get a waiver or modification of the phasing requirements the applicant would need a variance from this Board.

Attorney Shafkowitz stated that the prior developer went through a process in which the phasing schedule was adjusted. He had been told that the Fair Share Housing Center had to review such changes. Board Planner Betsy McKenzie had been working with River Mills to investigate this process. Mr. Shafkowitz wondered why the Second and Third alterations to the Redevelopment Agreement had changed the phasing schedule in the Ordinance.

Attorney Hirsch replied that the Redevelopment Agreement does not modify the Ordinance. The only way to modify an ordinance is by adopting a revision. However, she said that neither his client nor their predecessor had applied for a variance from the phasing schedule. She said she would like to be told if a Resolution did not reflect what the Board had done, but any change would require that the Board adopt a new Resolution. Mr. Shafkowitz said that his client would be making an application for that change.

Mayor Myhre stated that the governing body had adopted documents that had a phasing schedule so that when the developer hit 25% of the market rate units the affordable units would be built. This applied to the previous developer as well. It was done this way because the original developer wanted all the affordables in one building. So, it was crucial that the permits are pulled for Building A to coincide with the percentage of market rate units being completed.

Attorney Shafkowitz said they had been told that the town was subject to a settlement agreement with Fair Share Housing, and that's why these issues have to be addressed. He now understands that the proper procedure is to seek a waiver of the requirement, but it had not been presented to them that way originally.

Chairman Eckel wanted to know the procedure in the State of New Jersey when a site plan is revised. Attorney Hirsch replied that changes would be reviewed by the appropriate consultants – for example, changes to the landscape plan would go to Brian Bosenberg's office. It is the applicant's responsibility to see that they receive the review letter.

Attorney Shafkowitz stated that he had e-mails from the consultants approving the plans, but is now being told that the consultants have not seen the plans. The experience they had with the Fourth Amendment to the Redevelopment Agreement was frustrating. They thought it had been fully negotiated, but we are still negotiating it. They have made attempts to submit the Revised Subdivision Plan, and was told they would receive reviews that never came. So we made our revisions and resubmitted, and are still waiting for comments. They came to what we thought was an understanding on what construction costs ought to be, and now things are changing again. So from their perspective, it is exasperating. We are asking for additional time to get everything completed. Joe Gartner has met with the consultants, complied with all the comments for changes to be implemented as the buildings are built. Some of the buildings are under construction and the changes have already been implemented.

Attorney Hirsch interrupted Mr. Shafkowitz to say that for everyone's protection, when the applicant receives a request for a change, send an e-mail confirmation so everybody has a record of it.

Joe Gartner commented that when he met the landscape consultant on the site, things would be discussed but there is no documentation. It is frustrating.

Chairman Eckel remarked that the discussion was getting into things that weren't pertinent to the applicant's request for an extension of time. She asked how many housing units were to be built in total, including Building A. Joe Gartner responded that there were to be 30 units.

Ms. Eckel asked how many units had been built and received COs. The response was 6 units.

Chairman Eckel stated that the reply would suggest that we need affordable housing units soon. They are required at 20% or 25% of the market rates so that means the developer can't close on another unit. Planner Darlene Green noted that the developer could go up to 25%, which is around 6 units. If they have 25% plus one, that is 7. They can't move forward. In fact we should be very careful. Technically, the developer cannot get another CO. Chairman Eckel observed that, if the developer sells Lot A, the developer won't be able to move forward until the new owner – someone not tied to the applicant in a business way – builds the affordable units. Mr. Gartner replied that they couldn't move forward on Building A themselves until they sold other units in the subdivision. They had been very clear to Borough Council about this. The prior developer had permission to build Building G (the one they are building now) prior to constructing Building A. Building permits were in hand, and these permits came with the project.

John DenBlyker asked how many units were finished, or in the process of completion. Mr. Gartner replied that 6 units are finished and 3 are in process, for a total of 9. We are trying to do a Fourth Amendment to the Redeveloper's Agreement that would enable us to construct Buildings G and D, then construct Building A before building anything else. Attorney Hirsch pointed out that this would be a major change from the phasing requirements as they stand now.

Attorney Shafkowitz noted that these conversations have been going on for the past year. Joe Gartner added that he would be happy to forward emails that he has on the matter.

Attorney Hirsch stated that the applicant could negotiate whatever it wanted with the Council, but they still had to come to the Planning Board for a variance if they want to build that many additional market rate units out of sequence. She also commented that she would have a hard

time recommending to the Board that the variance be granted unless the applicant had worked everything out in writing with the Fair Share Housing Center. That means having an executed agreement with the Fair Share Housing Center. Attorney Shafkowitz stated that he had discussed the matter with the Fair Share Housing Center. Attorney Hirsch responded that the Board doesn't have this from the Fair Share Housing Center. She further instructed the applicant not to come to the Board asking for such a major phasing change unless they have everything in writing from the Fair Share Housing Center. That is the only way the Borough can protect itself from the Mount Laurel remedies. It's a slippery slope. Once you let a developer get out of sync on the phasing requirement, the next developer comes along and says "me too."

Attorney Shafkowitz stated that they were dealing with a project that has failed once and may fail again. They are trying to get it completed. Maybe the original developer should have agreed to develop one or two of the townhouses as affordables, because then the phasing requirement could have been met. This developer bought the old application with the four units in the one building. He said he thought he knew where the Second and Third amendments came from: the Fair Share Housing Center had blessed the changes, and that is why Building G is being built, why the permits had been granted when this developer bought the property. Obviously, the developer is not going to make the required deadline. They have to rely on other people to review what they send. The big issue is tracking down the plan submitted back in March of 2019, seeing if we can get the professionals to sign off and get the documents recorded. The plan for the subdivision was submitted back in June, submitted again more recently, and we are now waiting for comments. Then, we can add the deed descriptions and record it. The subdivision deed is complex because of the separation of Building A. It seems now that getting that deed approved is attached to other issues he can't control. This should be done in a couple of weeks, but it would be more realistic to say the next 30 to 60 days, because he has to rely on other people to review.

Mayor Myhre stated that there has to be coordination between what Attorney Hirsch needs to work out for the Planning Board, and what the Borough attorney has to work out. He wants to state for the record that the most essential thing now is to see that the residents of Frenchtown are not stuck with no affordable housing units. This is going to be an issue. We have to find a way to get those affordable units built. He understands that there are complications to the site; he understands that this applicant took over a project that failed. But, we must have those units.

Attorney Hirsch replied that a lot of coordination does exist at this point, and that all three attorneys have talked to each other. She and Albert Cruz know what each other is doing, and there will eventually be a satisfactory form.

Attorney Shafkowitz stated that they really wanted to get this done tonight, but maybe between himself, Ms. Hirsch and Mr. Cruz, they could figure out the relationship between the Ordinance and the Fair Share Housing agreement that was done for the Third Amendment. He has to figure out why the permits were granted, why Fair Share Housing approved it, yet it didn't come here for an amendment or waiver. He said this would be critical to the project. If they leave here today without figuring that out, he doesn't know what to do. Mr. Gartner noted that there's the two or three units we thought we could build and deliver, but even those may not be delivered now.

Attorney Hirsch noted that a variance would be required before they build any more market rate units, and it would also require the Fair Share Housing Center to sign off.

Attorney Shafkowitz said he wanted the Board to be aware that they were working on the presumption that they had something that they may no longer have. He is trying to illustrate the difficulty of dealing with a troubled project that he's trying to get finished. Mr. Gartner stated that when they bought the project they went back and forth about low income, middle income and so on. They thought the Third Amendment was the ruling power, letting them construct Building G. Attorney Hirsch responded that she didn't have a copy of the Third Amendment. She has trouble believing that that document let River Mills off the hook, that it allowed them to think they didn't have to come back to the Planning Board, that they had relief from the phasing. She asked Mr. Shafkowitz to point to the language he was relying on. Mr. Gartner stated that the building permits had been issued. Planner Green commented that the Borough could issue the building permits but it cannot give you Certificates of Occupancy. Attorney Hirsch said what that does is to create a class of purchasers who now come to Planning Board meetings to say "this isn't fair. I sold my home, my suitcases are at the door, I'm ready to move in, but they won't give me a C. O." You don't want to get to that point.

Chairman Eckel observed that the applicant was looking for an extension, and Attorney Hirsch could give them some guidance. Planner Darlene Green has some comments she'd like to make before we move forward.

Darlene Green said she didn't know how much time Attorney Shafkowitz thinks his client and consultants need to comply with everything in the two resolutions. That will indicate when we can get the two deeds resolved.

Attorney Shafkowitz said that the only thing he still had to finish was incorporating the comments from Engineer Clerico onto the Subdivision Plans. After that he has to finish the Redevelopment agreement with Mr. Cruz. He said this wouldn't take long, but he wants to ask for as much time as the Board would consider, say 60 days from now. If compliance is recording the subdivision deeds, all that will be out of his hands by Friday and he would wait for comments. Engineer Clerico said he had given Mr. Shafkowitz his comments two or three days ago. Attorney Shafkowitz said he had not received them. Mr. Clerico said he had an e-mail response.

Attorney Shafkowitz asked Mr. Clerico if there was deed language he needed to incorporate. Mr. Clerico said the attorneys would provide that to him. He further said that the exhibits indicate what is being restricted or conveyed, and the conditions of approval. The conditions of the Minor Subdivision approval; and the map condition was for the purpose of having a recorded map that showed what and where everything was. There is some interconnection between the original property and the new lot to be created. Pedestrian access is restricted to certain sidewalks, but there are rights of the public to walk through the property. The way it's being suggested now is just blanket agreements where people can pretty much walk anywhere on the property. For the subdivision, it's the descriptions of the parcels, and what pieces of the puzzle go with each parcel. Mr. Clerico said he had not made any comments, he just wants to know the approved documents are being attached to the appropriate deeds. He wants to be sure that each deed conveys what it is intended to convey. If the River Mills surveyor was confused by some of it, Mr. Clerico would meet with him.

Mr. Clerico further said that the issue with the estimate is that two plans are being referred to. Number 2 was date-stamped in June. The original engineering plans, the landscape plans, were changed by the amendment. He really had few engineering comments. There were changes to

lighting, landscaping, and all the hardscape. He only looked at it from the standpoint of an estimate. At some point we need a complete set of plans we can sign off on.

Attorney Hirsch stated that if the applicant said they need 60 days from tonight, the only thing we do by giving them less time is push them to come back midstream and ask for another extension. She thought 60 days was reasonable. Chairman Eckel added that if they were ready in 30 days the deed could be recorded then.

Attorney Hirsch said she would leave it in Mr. Shafkowitz's hands to set up a meeting to review the Third Amendment. The request before the Board is to extend the deadlines in Resolution 2019-10 and 2019-13 for 60 calendar days from today, with conditions as discussed. Among those conditions is: the subdivision will be perfected by two deeds with appropriate restrictions in them dealing with affordable housing and the other requirements in a form approved by the Planning Board and Borough attorneys and the Borough Planner. Attorney Shafkowitz wants to confirm the items the Board wants its attorney and the Borough Attorney to review. He also asked that when consultants make comments, that the comments agree.

Chairman Eckel noted that the Board is ready to construct a motion and asked Attorney Hirsch to for recommendations and conditions for this approval.

Attorney Hirsch stated that a lot of progress had been made on the deeds over the last few days. The applicant got comments from her and from Attorney Cruz within a period of five hours. One of the conditions is that the subdivision will be perfected by two deeds reviewed by the Borough and Planning Board attorneys and the Board Planner. The Planning Board confirms that the phasing as per the ordinance is still in place. The Board is not an enforcement entity, but it is critical to give some attention to enforcing the affordable housing requirements. In addition, there will be the usual Planning Board conditions, such as keeping the escrow up to date and so on. Engineer Clerico observed that recording the deed is contrary to current Condition #3 re the map. Attorney Hirsch said that they would modify that as part of the extension approval.

John DenBleyker moved to amend Resolution 2019-10 and 2019-13 to grant an extension of 60 calendar days from today for the applicant to comply with those resolutions as amended by recommendations from the Borough Attorney and Planning Board Attorney and as discussed tonight. Gordon Dragt seconded the motion. Chairman Eckel asked if there was any further discussion. Responding to Maggie Cooke, Chairman Eckel replied that the affordable housing units are all in Building A. Having no other comments or questions from the Board, Chairman Eckel called a vote on the motion. The Planning Board approved the motion by favorable roll call vote with Paul Tomko abstaining.

OASIS REALTY, LLC SITE PLAN: COMPLETION AND POTENTIAL PUBLIC HEARING

Chairman Randi Eckel noted that Maggie Cooke will recuse herself from this application due to proximity. She then stated that the Board will do the completion review first. She turned the meeting over to Richard Mongelli, Esq., attorney for the applicant.

Mr. Mongelli stated that his client Jonathan Perlstein, principal of Oasis Realty, is present, along with Engineer James Ciglia and Architect and Planner Michael Burns. They are going to review Board Engineer Robert Clerico's report on completeness, dated February 22, 2020, and will answer any questions the Board has.

Attorney Mongelli added that they had provided the Board a list of waivers. They would additionally like a temporary waiver on Item 12.

Chairman Eckel noted that there was one open item, #18 in Engineer Clerico's report. The Board is inclined to see it as an appropriate waiver because the applicant proposes a rehabilitation of an existing building.

Engineer Clerico stated that the initial application in November was limited to one side of Kingwood Avenue. The current application includes a unit within an existing building on the other side of the street. So this application deals with both sides of the street.

Chairman Eckel stated that in a previous application several years ago the Board was concerned about the natural features on the other side of the street, but as this application deals with an existing building, we could grant the waiver as requested.

Engineer Clerico stated that his letter includes a listing of documentation, and new documentation. He referred to page 8 of his report, which contains his recommendations. Chairman Eckel replied to Mr. Clerico that he made some additional technical comments toward the end, things to consider on the application, but not actually completion issues. Engineer Clerico noted that if an item is waived now and information is needed later, the Board can go back and request it.

Vice Chairman John DenBleyker made a motion to deem the application complete, granting the requested waivers for Items R,T,V,W,X; 20, 22,25 & 33; temporary waivers for 11a,b,& c; 12 & 46; and partial waiver for 18. Gordon Dragt seconded the motion. The Planning Board approved the motion by favorable roll call vote.

Chairman Eckel stated that the Public Hearing can now begin once the Board determines whether the application had been properly noticed. She referred to Attorney Hirsch.

Attorney Guliet Hirsch stated that Mr. Mongelli has provided affidavits of service and the newspaper notice and these are in order. The Board can begin the public hearing. She said that she would swear in all the witnesses before testimony begins. The witnesses, Engineer James Ciglia, Architect and Planner Michael Burns and Architect and Oasis Realty's principal, Jonathon Perlstein, stood and were sworn in by Attorney Hirsch.

Attorney Mongelli stated that his client proposes to construct five 2-bedroom apartments at 5-11 Kingwood Avenue and one 2-bedroom apartment across the street at 4 Kingwood Avenue. He said he would introduce the applicant's Engineer, James Ciglia, and ask the Board to accept him as an expert witness. Mr. Ciglia will then walk through the current conditions on the site. After that, Oasis principal Jonathan Perlstein will discuss the architectural details and floor plans for the project. Then, the applicant's Architect and Planner Michael Burns will testify as to the floor area ratio (FAR) variance for the five units at 5-11 Kingwood. There is a question as to whether the Board will require a use variance across the street. The applicant is going to make a case that a variance is not required but is prepared to provide all evidence required for a use variance, if necessary.

Mr. Mongelli noted that they had reviewed Mr. Clerico's report of February 2, 2020, and Mr. Mazzucco's report as well and Engineer Ciglia will provide testimony.

Engineer Ceglia stated that he is the owner of Site Works Consultants, LLC, the civil engineers that prepared the site plans before the Board. He has a degree in Engineering from Penn State and has been licensed in New Jersey for the past 35 years. He has previously testified as an expert witness in New Jersey. Chairman Eckel stated that the Board accepts Engineer Ceglia as an expert witness.

Engineer Ceglia stated that his testimony would reference two sites, 5-11 Kingwood Avenue, and 4 Kingwood Avenue. Both sites are in the R4B Zone and the Village Center Rehabilitation Zone. Site-specifically, 5 – 11 Kingwood Avenue has frontage on Kingwood Avenue and Creek Road; No. 5 currently houses a pizzeria and office, and No. 11 is a hardware store. No. 4 is a general store. The rear part of No. 4 is vacant. In the rear of No. 11 is a shed, and behind No. 5 is a walk-in freezer. There is a parking lot for 13 cars. On the other side of the street is a parking lot with two-way access. Both sites are located in a flood hazard area along the creek. The hazard area at Nos. 5 – 11 is limited to a small section, but at No. 4 Kingwood Avenue, the entire site is within the flood hazard area. Electric service is from Kingwood Avenue, overhead. Water, gas and sewer come off Creek Road. This project proposes to remove the existing shed, relocate the dumpsters, construct five apartments above the existing buildings, construct additions at ground level for access to the second floor units. Some walks would be relocated.

Ms. Eckel asked how moving the dumpsters would affect the number of parking spaces. Mr. Ceglia said the action would add space.

Mr. Clerico noted that the plan shows the buildings encroaching on the street right-of-way; the engineer responded that it was the freezer box in back. Mr. Clerico also observed that the site plan relies on a survey made by and for someone else. The survey states that it is not based on deeds or a title search. He asked Mr. Ceglia if he thought it was accurate; Mr. Ceglia said he thought it was accurate.

Engineer Ceglia referred to Sheet 1 of the Site Plan. Twelve of the 13 spaces are for the property's use. It is proposed to relocate the dumpsters along Creek Road behind the freezer box. Other site improvements include walkways, bike racks and trash receptacles. Grading will be minor. They are not proposing any stormwater management because they are reducing the impervious cover. One space in the parking lot will be handicapped accessible. Curbs and bollards already exist. Gordon Dragt noted that the new dumpster pad is out in the Creek Road right-of-way, so trucks collecting trash will be maneuvering in an area that is already narrow. The dumpsters take over the road. It seems like a strange place to put them. Ms. Eckel asked Mr. Ceglia to explain why they chose to move the dumpsters from a fairly hidden location to what is essentially the main entrance to the area. She asked if there was any reason not to keep them where they are. Mr. Ceglia replied that they could keep the dumpsters where they now are.

Chairman Eckel commented that the landscape plan shows a lot of fencing to block off the proposed new location. Jonathan Perlstein responded that he had thought of relocating the dumpsters for the convenience of the apartments. If the issue is important to the Board, he will put them back as they were. When asked about the effect of this on parking, Mr. Perlstein said it was not important, as there was more parking than required.

Mike Reino referred to Mr. Perlstein's remark that there was more parking than needed. He could see that this was true for the residential units, but what about the three businesses? Mr. Perlstein replied that there was parking on both sides of the street. It could be allocated in any

way desired. He took into account the needs of the tenants. All residential parking could go on the other side of the street. Mike Reino commented that the parking issue is critical, as parking can be a nightmare there. It overflows into the park. He has seen delivery trucks for the hardware unable to make the turn into the lot. Mr. Perlstein agreed that it wasn't right for his property tenants to park in the Borough park. The pizzeria is the big offender. Hardware customers tend to park as close to the store as they can get. He repeated that there was more than enough parking on site. Planner Darlene Green noted that this was one of the reasons for the resubmission. The original submission was under the old rules that required parking for non-residential uses. This requirement has been removed, so the applicant needs only 10 spaces.

Engineer Ceglia next turned to Sheet 6 and the lighting plan. They took lighting measurements in the parking lot. When they put the addition on the back the lighting there now will be replaced with something more efficient. There will be two lights at the front corners. There are two lights on poles that light the street. There is a street light in the park, and another pole in the parking lot. This fixture is to be lowered. Attorney Guliet Hirsch asked whether the plan clearly showed which lights were being removed or added; Mr. Ceglia noted that this information was on Sheet 6, Lighting and Fixtures. Chairman Eckel asked if there were details showing what the fixtures would look like. The engineer showed the information and Chairman Eckle replied that the fixture shown was modernistic. She asked the height of the fixtures on the edges of the buildings, and the response was that they are 12 feet high.

Engineer Clerico asked the applicant to speak about the flood plain and other various flood designations. He asked if they had applied for a Letter of Interpretation from the DEP. The first page of such a letter was provided, but not the rest of it. The base flood elevation is 123.' Engineer Clerico noted that it is not clear whether the lot across the street is different. He asked the applicant to elaborate. Mr. Ceglia replied that Sheet 2 showed the flood information. It shows the FEMA 500-year flood line. There is also a flood height line and a FEMA AE Zone line – the 100-year flood area. Mr. Clerico pointed out that the sheet shows a FEMA line, but not a base flood elevation. The engineer said that the line in question showed the 100-year flood.

Mr. Clerico said it is critical to know what all the measurements represent when we come to that discussion. His question relates to the COAH unit in the southern end of the existing commercial building. There is no flood information on that. FEMA regulations say, for a major modification of a commercial building, they allow one to do one of three things: flood proof the structure or elevate it, or be in compliance. A residential building must be elevated or compliant. A lot of what the applicant is depending upon is based on uncertain elevations. We have to know that flood elevation. Mr. Ceglia replied that the plan in question was done for Shale Cliff, to show existing features.

Attorney Hirsch stated that the plan will be marked as Exhibit A-1, "Existing Conditions Plan, Shale Cliff at Frenchtown," dated January 26, 2009.

Engineer Clerico asked if this was the same document as the one he referred to in Item J of his report. Mr. Ceglia said it was. He added that it showed elevations, the Flood Hazard Area and also the line of the floodway. Engineer Clerico asked if, based on the documentation provided, the applicant can tell us if the existing building meets the FEMA base flood elevation, and tell us, under DEP regulations on conversion of commercial space to residential space, at what elevation that floor has to be. Mr. Ceglia stated that the floor is at 124.88', which is 1.88' above the base flood elevation, but below the New Jersey Flood Hazard elevation. Mr. Clerico stated that the applicant's testimony is based on what is shown on the plan. Does that building comply

with the FEMA base flood elevation, but not the DEP flood hazard elevation? Engineer Ceglia responded that the building conforms to the flood insurance regulations but not to the NJ Flood Hazard.

Engineer Clerico told the Board that the flood insurance regulations are the ones you are required to enforce to get flood insurance for your town. That's a FEMA requirement. The DEP is another entity. Mr. Ceglia said he anticipated that they would need DEP approval for the project, so their intent is to go back for another pre-application meeting at DEP to find out what the requirements are for this site, and to comply with whatever they are.

Chairman Eckel stated that, other than comments made in the past few minutes, they had nothing to indicate what the first-floor elevation (height) of Kathee's General Store is, nor any document indicating whether the building is compliant. Engineer Ceglia agreed, saying further that they did not want to go through the DEP process (time, money and frustration) only to find out that the Board did not like the concept. So he is aware that if the Board approves, subject to DEP and FEMA approval, they will come back if they have problems with these agencies. He hopes the Board is willing to consider the application with the significant condition of these approvals. They need to have the COAH unit, and if that means they have to raise the floor to meet base flood elevation they will do so. DEP approval would do them no good if the Board does not approve the project.

Attorney Hirsch asked for confirmation that they would agree not to construct the five units until they have DEP approval for the other one. Mr. Ceglia agreed.

Attorney Hirsch asked what would happen if the DEP changed the required elevation of the building in such a way as to affect the building height. Mr. Perlstein said that would not happen because their building was one and a half stories with an attic. If forced to elevate, they would lift the floor and ceiling without changing the height or look of the building. Mr. Clerico said that a condition of approval could be that they go and get all the necessary information, and DEP approval, and note it on the plan before the Board signs off. The issue of the floor raising and ADA accessibility would also be included. Jonathan Perlstein commented that the floor would only have to be raised 3 feet, maximum. If necessary, for ADA accessibility, he could put a lift or ramp at the entrance. Engineer Ceglia said that to the extent that resolving these issues results in changes to the physical structure, they would have to come back to the Board. Their hope is to go to DEP with the Board's approval in place, subject to conditions. They can't build the 5 units without building this affordable one.

Jonathan Perlstein said that there had been three floods: 2004, 2005 and 2006. At the worst case, it floods up to here, indicating a certain line. Engineer Clerico having asked where Mr. Ceglia's flood elevations came from, Mr. Ceglia said they came from his meeting with DEP. Mr. Clerico noted that he was quoting verbal testimony rather than documentary. Mr. Ceglia responded that the information was in a letter. Attorney Hirsch asked that the letter be identified. Mr. Ceglia stated that it was noted as page 2 of the August 26, 2019, NJDEP Flood Hazard Determination Letter. The Board has page 1 of this document.

Having no other testimony from Engineer Ceglia, Chairman Eckel asked if the Board or consultants had other questions.

Planner Darlene Green noted that in the applicant's testimony, they were making improvements in Creek Road, but the submission packet did not include any letter from the Borough granting

permission to do that. Should permission be a condition of approval? Mr. Ceglia agreed that they would ask for that permission. If and when the Board approves, they would then submit to the Mayor and Council.

Planner and Architect Michael Burns stated that the new apartments on the second floor are an intensification of use rather than an expansion. Planner Green said that in the variance list was a note saying the applicant needed a loading variance, but she doesn't think they do. Engineer Ceglia agreed, saying that the new ordinance took care of that.

Planner Green asked if detailed testimony would be given on the affordable housing unit; Mr. Ceglia said that Mr. Perlstein would be doing that.

Planner Green also referenced Comment #25 re Lighting Sheet #6, saying that it did not give information about such ordinance lighting requirements as foot candles, fixtures, etc. Depending on what is planned, variances might be needed. Mr. Ceglia said they would submit the requisite information, and that it would seem to be an appropriate condition. Comments #26, #27 (bollards and lights) and #28 (landscaping) could be treated the same way.

Chairman Eckel commented on landscaping, saying she strongly suggested that vinca minor (periwinkle) be removed from the plan as it is considered an invasive species in New Jersey.

Engineer Ceglia said that they would comply with #28, #29 #30 and #31. As for #32, dealing with signage for Edward Jones and Napoli, they planned to keep the existing signs. #34 deals with signage for the residential tenants. The applicant does not plan anything at this time. If they do plan such signs, they will submit a sign application.

Comment #35 deals with the dumpster; they have agreed to keep it where it is and will work with Planner Darlene Green on fencing or screening. #36 is about the bollards, and they will comply with the comment. He said that they have Mr. Mazzucco's memo as well, and they have no objection to complying with that. Mr. Ceglia asked Engineer Clerico if they had replied to all of his comments.

Engineer Clerico said Item G is a request for temporary waivers on providing property lines. He will force the issue of the survey. He must be able to see easements, access rights to others, restrictions on the property, if any. He must be able to see exactly what property falls within the easements. If there are problems, an approval could be null and void.

Mr. Ceglia stated that, starting with Item G and continuing to Items H, I, J, K, M and N, they will comply. Going to page 10, they would comply with 2A. They have not discussed 2B, the construction along the west side of the building. They had not planned on a curb there. Mr. Clerico noted that there was a curb up to the building that then ran along the building. He asked what was to be done in that location, where the freezer unit is. Chairman Eckel observed that a curb tight up against the building would protect the building from damage by vehicles. Engineer Ceglia replied that a curb would not do much, it couldn't get close enough because of the meters. They would put blacktop down instead of the current weeds and dirt. Referencing to #4, Mr. Ceglia commented that Engineer Clerico had proposed bollards instead of bumpers, and they would comply. They will comply with #6a, b & c; and #7 has already been discussed and compliance agreed.

Jonathan Perlstein remarked that he liked bollards. Several times vehicles have slammed into these buildings, damaging them, and this won't happen with bollards.

Engineer Clerico asked for the details on parking. Mr. Perlstein replied that it was all existing. Mr. Clerico said he would require something on the order of what was supplied for the other side of Kingwood Avenue. That would be a condition of approval.

Attorney Hirsch stated that a condition would be a fully revised site plan in accordance with whatever DEP approval is granted. This would be subject to review by Planner Darlene Green, and by other Board professionals as necessary.

Chairman Eckel noted that the Board stops taking testimony at 10:30 pm, and it is now 10:15 pm.

Attorney Mongelli noted that there will be another 15 minutes of testimony.

Mr. Mongelli called Jonathan Perlstein to walk the Board through the architectural details on both sections of the project.

Mr. Perlstein stated that he is a licensed architect in New Jersey, and has maintained his current office for 20 years. Chairman Eckel said that the Board accepts Mr. Perlstein's credentials.

Mr. Perlstein stated that the idea of the project was to work with the existing buildings at 5 & 11 Kingwood Avenue. #5 Kingwood is a one-story, nondescript box. From the two structures they will create a cluster of buildings of a size and scale typical of Frenchtown. He wanted to avoid building on the roofs of the existing structures so as not to disturb the tenants or disrupt the functioning of the mechanical systems. Mr. Perlstein described the arcade designed to give an old-world feel to the buildings and shade them while retaining visibility for the commercial tenants' front windows. He made a point of reducing the visibility of the third floor. The preferred siding material is a Hardie product resembling cedar shingles. Mr. Perlstein noted that the Board had recently approved the use of a Hardie product at River Mills. Attorney Hirsch asked if the building materials were listed on the plans and Mr. Perlstein said that they were on the elevations.

Mr. Perlstein said that, in planning this project, he had considered it as a gateway into Frenchtown. The National Hotel is the focal point of the Kingwood Avenue approach, so this building is lower, and frames the view of the hotel. The façade is broken into a series of bays to break up the building's scale. The floor plan is straightforward. There will be three small stair lobbies, each front unit having its own entrance. There will not be much change to the ground floor. The second floor will have a simple plan: kitchen and living room. A stair leads up to the bedrooms, which are all on the third floor. These are two-bedroom units with bath.

Chairman Eckel observed that the plan shows a sidewalk continuing around the side of the building and down Creek Road. A sidewalk would be good, as people walk there. Is that to be done? Jonathan Perlstein said the space available was very narrow, and he would prefer it to be asphalt. Besides, he thought it was more pleasant to walk on the other side of Creek Road.

Engineer Clerico wanted to clarify some facts for the record. On Sheet A2 it appears that the second-floor addition would fall within the right-of-way as it is currently represented. Mr. Ceglia

said that the new work would not be any farther into the right-of-way than the existing building is.

Chairman Eckel mentioned a letter from Board Architect Christopher Pickell ,dated January 14, 2020, and asked if the applicant had received the letter. The applicant's consultants reviewed a copy of the letter.

Engineer Ceglia said he would like Mr. Perlstein to speak about the floor plan of the affordable unit at 4 Kingwood. The first-floor plan of 4 Kingwood Avenue, by Oasis Architecture, dated February 20, 2020, should be marked as Exhibit A-3. It shows the footprint of the Kathee's building and the space as it now exists.

Attorney Hirsch said she wasn't sure the floor plan of the unit was part of the application. Chairman Eckel said that the version the Board had was not current, and asked the applicant to describe the changes that had been made. Jonathan Perlstein replied that they had reduced the size of the bathroom, pushed the laundry out of the bathroom to the hallway, and modified the floor plan of the kitchen. The unit is 866 square feet, ADA accessible, and has a lot of privacy. All the rooms face west or south: there are no windows onto the parking lot side, just the entry door in the front of the building.

Planner Darlene Green asked if the unit was to be low-income. Jonathan Perlstein said it would be whatever the town says it had to be. Ms. Green said they ought to discuss the potential use variance issue that might be triggered by this residential use.

Engineer Ceglia said he would address the issue in testimony. In their opinion no use variance is required. Mr. Ceglia went on to quote from Architect Pickell's letter: "I find this project to be thoughtfully designed and the proposed architectural treatment compatible with the neighborhood." In terms of items in the architect's report, they will comply with Paragraph 3 dealing with street furniture and lighting. They will comply with Paragraph 4. On page 4, Mr. Pickell assumes that any tenant signs will require sign approval, the applicant agrees. Another issue is the electric meters. He asked Jonathan if they were to stay; Jonathan said that they would stay as they are his tenant's meters. They are not shown on the plans, but will be added.

Mr. Mongelli said he was ready to introduce Michael Burns, the Planner and Architect. Chairman Eckel stated that the Board recognizes Mr. Burns as a qualified professional as he has appeared before this Board several times.

Planner and Architedt Michael Burns stated that he had been asked to speak on three items. The first is a variance for the floor area ratio (FAR). The maximum permitted for the site is 0.691 or 12,651 square feet. The applicant proposes 0.78, or 14,312 square feet. Therefore, we need to show that the site will accommodate any problems associated with the larger FAR, such as the relationship to neighboring properties. That issue is addressed in Mr. Pickell's report in which he states that the scale of the complex is appropriate and the architectural character is a good fit with the neighborhood. The property is located on the southeastern edge of the Village Center Zone, and as such creates a visual landmark, a gateway to the eastern approach. Mr. Burns said he thought that the way the building is designed, the added FAR will enhance the building's stature as a landmark and gateway. The other issue, intrusions into the yard setbacks: with the exception of the old right-of-way for Creek Road, the building does conform to the setback requirements. Assuming the right-of-way issue is resolved by Council, Mr. Burns said he thought that the setback issue was addressed.

With respect to the issue of visual compatibility, Mr. Burns referred to Christopher Pickell's letter stating that the building was a good fit. Another issue often triggered by FAR increase is parking. This project meets the parking requirement for its uses and the parking lot across the street can accommodate any additional parking required. Thus, the request for an increase in FAR is reasonable, and we have demonstrated that it won't have a negative impact.

Mr. Burns next spoke on the issue of the building height waiver. The permitted building height is 35' and the proposed height is 35.5.' He doesn't think anyone will be able to discern a difference. In addition, Table 6 of the Ordinance states a height waiver may be permitted at the discretion of the Planning Board to promote the historic character of the Village Center. It promotes varying the heights of new buildings within the Village Center. Mr. Burns referred to the idea of the gateway and visual marker to the eastern entrance to the town, and reminded the Board that it had the discretion to allow the height waiver.

Mr. Burns' final issue is whether a use variance is required for the affordable unit. In the Village Center Zone Use Requirements, Paragraph 4 discusses newly constructed or substantially rehabilitated buildings not directly fronting on Bridge, Lott or Race streets or Trenton or Kingwood Avenues. Such buildings may contain residential units on the ground floor level. In this case the construction of the apartment in the rear part of the building would indicate substantial improvement which is typically triggered by the cost of the improvement being 50% of the value of the structure. As we are discussing the issue of raising the floor and ceiling to accommodate the flood hazard issue, the cost of improvement will definitely meet or exceed 50% of the value of the structure. Also, the building does not front directly on Kingwood Avenue, it fronts on the parking lot. Finally, the intent of the ordinance in not having residential use on the ground floors is so as not to interrupt retail activity on the street. In this case, the apartment is at the rear of the building, and the portion of the building immediately on the street is to remain retail space, so this plan meets the intent of the ordinance. Given that, Mr. Burns said he did not think a use variance would be required. This use is also in line with the Hunterdon County Growth Management Plan which provides for a range of housing options for existing and future county residents, and an increase of affordable housing options. Under the State Development & Redevelopment Plan, this would contribute to the revitalization of one of the state's cities and towns. It conserves the state's natural resources by reusing an existing building and infrastructure. Another goal of the state plan is to provide adequate housing at a reasonable cost: obviously this project contributes. Another plan goal is to preserve and enhance areas of historic, open space and recreational value. This project will preserve and enhance the cultural value of the town by repurposing existing buildings within the Village Center.

Attorney Hirsch asked Mr. Burns to provide her a copy of the document from which he read his testimony. She also said he should state that the apartment meets the purposes of the Land Use Law, paragraphs B, D, G and J. Mr. Burns noted that it addresses five goals of the New Jersey Smart Growth Plan, which are: reducing land, energy and resource consumption by reusing structures; reducing automobile dependency in that the project is within walking distance of the center of town; increasing housing and transportation options, obviously the affordable housing in it increases those options; balancing jobs and housing; this mixed-use property will contribute to that. Finally, revitalizing cities and downtowns, this project will contribute to the revitalization of the Village Center.

Mr. Mongelli asked for questions from the Board.

Gordon Dragt stated that the affordable apartment faces the parking lot. Will there be some kind of planting to screen the unpleasant view? Jonathan Perlstein responded that all the windows face away from the parking lot and toward natural scenes.

John DenBleyker had a question about parking. The applicant testified that the pizzeria would use the parking lot across the street. Do we have to tie that parking with an easement? The applicant could sell that property and the parking goes with it. Mr. Mongelli noted that they were not required to have those spots as there was adequate parking on the same side of the street, so they don't think they need any cross-parking easements or restrictions on a property sale. Planner Darlene Green confirmed that the Borough's ordinance requires parking for each site, on site.

John Dougherty stated that when the Board had heard the ArtYard project and parking lot, they had not been able to separate the parking lot from the development. That is because that parking lot was necessitated by the ArtYard building. That is not the case here. Each lot satisfies its own parking requirement.

Planner Green asked how the Board ensures that when we approve this, we tie the two properties together so that the applicant is not able to get certificates of occupancy for the five market rate units without building the affordable one. Mr. Mongelli stated that they could not build the five without final approval from DEP to build the affordable unit. They are inextricable. So the resolution approving the application will specify that nothing is built until all the units can be built. We agree with this concept.

John Dougherty stated that Sheet 2 of 8 says that the tax lots are to be merged. Does this have any bearing? Darlene Green said she was in favor of the merger because otherwise there were so many nonconforming issues because the buildings almost touch the lot line. Merging the lots does not affect the affordable requirement. Responding to the Board about when the merger takes place, Attorney Hirsch noted that it would be a condition of approval. Chairman Eckel noted that the merger decreased the number of variances required. Attorney Hirsch added that it also solved the problem of access agreements between the two lots. She said some testimony should be given about the other variances and waivers needed.

Chairman Eckel stated that the time is now 10:30 pm, and further testimony is required.

Attorney Mongelli stated that the testimony just requested had been given earlier in the hearing, and was on the record. He did not think positive and negative criteria were needed for waivers. Attorney Hirsch noted that justification must be given for each exception being requested. She cannot write a resolution without that information.

Chairman Eckel said that, given the hour, she suggested that the public hearing be carried to the March meeting where the remaining issues would be tidied up. The Board has not heard from the public, and people are present. There is no time now for the Board to discuss its thoughts on the testimony, and we don't want to rush things. The resolution will be complicated, and we want to be sure we capture everything. There is no need to re-advertise the public hearing and the public hearing will be carried over to the March 25th meeting at 7:30 pm.

Maggie Cooke returned to the meeting.

NEW BUSINESS

New Planning Board member for the Environmental Commission.

Chairman Eckel noted that we will need a new Planning Board representation for the Environmental Commission. If anyone is interested, let her know. She will also reach out to Jeanne Herb.

APPROVAL OF VOUCHERS

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

VOUCHER LIST 2/26/20

Archer & Greiner	Professional Services for General Representation through 1/31/20	\$1,260.00
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ESCROW ACCOUNT – BLOCK 3 LOT 1 & 2 AND BLOCK 10 LOT 1 – Country Classics - Site plan

Maser Consulting	Professional Services for Country Classics through 1/28/20	\$ 181.25
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Maser Consulting	Professional Services for Country Classics through 1/27/20	\$ 600.00
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Maser Consulting	Professional Services for Country Classics through 1/10/20	\$1,517.00
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B.W. Bosenburg & Co. Inc.	Professional Services for Country Classics through 1/31/20	\$ 2177.50
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Archer & Greiner	Professional Services for Country Classics through 1/31/20	\$ 560.00
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Hunterdon County Democrat	Notice of Decision	\$ 19.01
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ESCROW ACCOUNT – BLOCK 3 LOT 1 - Country Classics Redevelopment

Albert Cruz	Professional Services for Country Classics Through 12/31/19	\$ 64.00
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ESCROW ACCOUNT – BLOCK 55 LOT 14 – ArtYard – Inspection fees

Maser Consulting	Professional Services for ArtYard through 1/10/20	\$1206.00
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Maser Consulting	Professional Services for ArtYard through 1/27/20	\$130.00
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ESCROW ACCOUNT – BLOCK 55 LOT 14 – ArtYard – Attorney fees

Albert Cruz	Professional Services for ArtYard Through 12/31//19	\$432.00
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ESCROW ACCOUNT – BLOCK 17 Lot 5 & 6 – Oasis Realty – site plan

Archer & Greiner	Professional Services for Oasis Realty through 1/31/20	\$ 40.00
VanCleaf Engineering Assoc.	Professional Services for Oasis Realty Through 12/31/19	\$ 37.00
Maser Consulting	Professional Services for Oasis Realty Through 12/20/19	\$1,627.50

ESCROW ACCOUNT – BLOCK 34 Lot 1 – River Mills at Frenchtown

VanCleaf Engineering Assoc.	Professionals Services for River Mills Through 12/31/19	\$74.00
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ESCROW ACCOUNT – BLOCK 34 LOT 1 – River Mills at Frenchtown - Subdivision

VanCleaf Engineering Assoc.	Professional Services for River Mills Through 1/31/20	\$211.25
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ESCROW ACCOUNT – BLOCK 15 LOT 11 – Darcy Lodge F&A Masonic #37

Maser Consulting	Professional Services for Darcy Lodge through 1/28/20	\$ 433.75
VanCleaf Engineering Assoc.	Professionals Services for Darcy Lodge Through 12/31/19	\$518.00

ESCROW ACCOUNT – BLOCK LOT – Nelson Inspection fees

Maser Consulting	Professional Services for Nelson Through 1/27/20	\$37.50
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On motion by Brad Myhre, seconded by Grodon Dragt 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

Mayor Myhre announced that the Borough Council will hold a special meeting on Saturday, February 29th starting at 9:30 am. The discussion is on the proposed PILOT for Country Classics. He added that the mailer was not sent by the Borough and it contains a lot of misinformation. There will be a powerpoint presentation on the project, the Borough's debt in outstanding bonds, the affordable housing settlement agreement and the proposed PILOT to get a sense of what the public is thinking about. There will be professionals. This is a new concept to the Borough. There will be a different structure for the rental then the for-sale units. Mayor Myhre added that the Borough never had a PILOT. A PILOT is a general use to get redevelopment. There cannot be an appeal and it counts on income each year. We are hoping to have the site built out to reach our build out estimate quicker. The consultants will give a rundown of valuations.

Mayor Myhre discussed the school aid cuts to Frenchtown Elementary School. The PILOT proposal will give revenue to the school but that alone will not offset the funding cuts. The

school board is examining doing a shared middle school. They are already sharing services. The Municipality has not seen an aid increase and this is putting pressure on everyone.

Chairman Eckel noted that she did not get the Annual Report done yet that goes to Council. She will work on it and bring it to the Planning Board for approval.

ADJOURNMENT

John DenBleyker moved adjournment at 10:39 pm and Mike Reino seconded. The motion passed on favorable voice vote.

Brenda S. Shepherd
Planning Board Secretary