

Borough of River Edge/ Municipal Land Use Board

Meeting Minutes

July 27, 2017

PRESENT:

Chair	James Arakelian
Vice-Chair	Richard Mehrman
Board Member	Eileen Boland
Board Member	Lou Grasso
Board Member	Chris Caslin
Board Member	John Monroe
Alt. Board Member	Michael Krey
Attorney	Steve Muhlstock (For Brian Chewcaskie)
Planner	Tom Behrens
Engineer	Robert Costa

ABSENT:

Mayor	Edward J. Mignone – Excused
Board Member	Councilman Vito Acquafredda - Excused
Secretary	Dr. Jeffrey Gewirtz
Zoning Official	Mark Skerbetz - Excused

Opening

The Work Session Meeting of the Borough of River Edge/ Municipal Land Use Board was called to order at 7:30PM on July 27, 2017 by Chair James Arakelian.

Salute to Flag – Board Member Chris Caslin

Sunshine Law (Open Public Meetings Act)

Adequate notice of this meeting has been provided by sending notices on December 23, 2016 to The Record and The Ridgewood News, by posting on the bulletin board in the lobby of the Borough Hall, and filing a notice of the same with the Municipal Clerk.

Roll Call by Attorney Steve Muhlstock

Work Session

New Business

Chair Arakelian stated that the approval of the Minutes of June 22, 2017 would be put on hold for a few minutes so that they could move forward with the application for completeness that was put before them.

- A. MCG Realty - Application #2017-05**
 - 620 Kinderkamack Road**
 - 617/17 – Application for Completeness**
 - a. 3rd floor**
 - b. Off street parking**
 - c. Res dwelling in a C-1 Zone**

Chair Arakelian stated that he would like to hear from the Board professionals.

Borough Engineer Costa stated that the proposal in front of them is for a two story addition on the side of the pizzeria and a one store addition on top of the actual restaurant, so that the applicant would be able to build residential apartments. He reviewed it and there is enough information provided. If approved, aside from a few issues such as sewer, and some other improvements (obviously the parking concern), he deems the application approved for completeness.

Borough Planner Behrens had questions, one issue is the parking, in terms of ownership; and what agreements there are. Another issue is the height variance being requested and to understand what the extent of that variance is. Also to find out whether or not the applicant is going to have some sort of parking analysis done. There was a 2010 parking assessment done, but it was for a different site with a different circumstance.

Chair Arakelian asked Planner Behrens if he deemed the application approved for completeness.

Planner Behrens stated that he would like to address some of these issues with the applicant and see what sort of information they have to make that determination.

Vice-Chair Mehrman stated that he had a question for both the professionals. He asked if either of them reviewed the height calculation for the proposed.

Borough Engineer said No, he did not.

Vice-Chair Mehrman asked if he knew if the height conforms for what is being proposed.

Borough Engineer said No he did not.

Planner Behrens stated that there seems to be some confusion on the plans. If you look at the zoning table it says it does conform, but if you look at the elevations and dimensions there is a discrepancy. The other issue is that the height was calculated regarding the grade of the property, and whether it will impact whatever relief is being sought.

Vice-Chair Mehrman asked if either of them received or reviewed a height calculation for the application.

Borough Engineer Costa said that the applicant's experts said that they don't need a height variance for the actual height, they need the variance for the amount of storage.

Vice-Chair Mehrman said so you are taking them at their word.

Borough Engineer Costa said no, but they have to listen to their testimony on how they actually determined it.

Vice-Chair Mehrman said the Board is not there right now. They are asking whether this application is acceptable for completeness. He also asked if they received a height calculation. So is it Engineer Costa's opinion that they don't need a height calculation to deem it necessary?

Borough Engineer Costa said what he is saying is they can go forward and we can ask questions and then make a determination whether or not they need more information. He doesn't believe that the roof plan is going any higher than the existing building. So he is not sure if they need a height variance for this. The property falls dramatically in the back.

Chair Arakelian said for now let's move past it and they can bring it up during the testimony and if they don't have the answers then they might have to postpone until the next meeting.

Chair Arakelian asked for a motion to deem application complete – Motion by Eileen Boland, second by Chris Caslin.

Roll Call to vote on completeness.

All in favor 6-1 – Vice-Chair Mehrman voted no.

Approve the Minutes of June 22, 2017 – Motion by Vice-Chair Mehrman, second by Eileen Boland.

All in favor 5-0- Michael Krey & John Monroe abstained, they were not at this meeting.

Chair Arakelian asked for a motion to adjourn the Work Session Meeting – **Motion by John Monroe, second by Chris Caslin.**

All in favor 7-0

Chair Arakelian asked for 5 minutes with the Borough Attorney, Borough Engineer & Borough Planner.

Dr. Jeffrey Gewirtz came in for the start of the Regular Meeting at 7:48pm.

Chair Arakelian called to order the Regular Meeting of the Municipal Land Use Board.

Roll Call

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Secretary	Dr. Jeffrey Gewirtz
Board Member	Eileen Boland
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Chair Arakelian stated that the application was deemed complete at the Work Session meeting and asked the Borough Attorney to call forward the applicant.

Mr. Christopher E. Martin from Morrison Mahoney (2001 U.S. Highway 46, Suite 200, Parsippany, NJ 07054) came forward introduced himself, and stated that he is the attorney representing MCG Realty.

Attorney Muhlstock verified for the record that the applicant did provide proof of service on the 200 foot owners; advertised tonight's meeting in the Record; the notice meets the provisions of the MLU Law; and the Board does have jurisdiction to hear the case.

Attorney Martin stated that he appreciates Attorney Muhlstock stating that and when the Board was the Board of Adjustment they gave notice, and then when it became the MLU Board they gave notice again, and essentially they got lost in the sauce and they had to re-notice, and thanked the Board for hearing the case.

Attorney Martin stated that just as an overview, the existing site is a restaurant with a side pizzeria and a preschool at the rear of the facility, and in the middle is a wholesale parts store - He also stated that even though it is a retail designated store the actual use is 90% delivery of part to gas stations, so they are not having a lot of walk ins. The preschool is Monday through Friday closing at 6:00. You don't have the preschoolers parents driving, what you do have is employees coming to be there for daycare and teaching, but they are gone by 6:00pm and not there on the weekends. What the applicant is proposing is three apartment units to level out the existing school facility that comes towards Kinderkamack and drops off over the restaurant. These apartments would be over the restaurant and it would be 3 rental units and additional parking would be 6 spots. The C-1 Zone is commercial. If you have 8-6 and 9-5, all commercial use at the property, it is the applicant's position that it would be more of a parking intensity and intensify the use then what is proposed. Also, if all the businesses overlap in terms as the type of business, hours of business and the use of the business there would also be more of a concern as to the circulation of parking. Here it would be young professionals or empty nesters, so there wouldn't be any surcharge for a lot of kids in the school system. It is also people who wouldn't be back until the evening. So the parking spots that are left free by the individuals or employees of the school would be open for parking. With that he called forward Architect Scott Laurie to be his first witness; Gary Gorski, the property owner will be his second witness and Mia Petrou who is the Planner, will be his third witness.

Architect Scott Laurie came forward and was sworn in by Attorney Muhlstock and gave his certification number, and his background and credentials.

Attorney Martin asked if Mr. Laurie had done an analysis of the building owned by MCG Realty and was he contacted by the principal to address a possible addition to the property?

Architect Laurie replied yes.

Attorney Martin asked him if it would change the footprint in any way.

Architect Laurie said no it would not.

Attorney Martin asked Architect Laurie to explain to the Board what he did in terms of the desire of the applicant.

Architect Laurie explained where the apartments would be and that there would be a one story added across the base and a two story across the southern end of the building.

Attorney Martin asked if there would be any grade change.

Architect Laurie explained that the grade is really sloped to the rear and there is a 10 foot drop from front to back of the property, not the building.

Attorney Martin asked, as the building now exists, is there a height difference from the back of the building to the restaurant area in the front.

Architect Laurie said yes and explained that from the Kinderkamack side it is about 24 feet high but from Sanducci's it is about 14-15 feet high.

Attorney Martin asked if you went from the top of the restaurant all the way back is it the same height. Is there a change?

Architect Laurie said yes that if you go to the back behind the restaurant it jumps up.

Attorney Martin asked if the three units are to be above the restaurant section, and not placed in the back section where it jumps up.

Architect Laurie said that is correct.

Attorney Martin asked Architect Laurie to show the Board where exactly the units would go. Architect Laurie explained that the two one bedroom units would be the same height as the back part of the building above the restaurant and that the third unit (2 bedroom) would be slightly higher and it would sit over the pizza shop directly and a small section over Sanducci's and it's an elevated section. And the rest would go across south bound on Kinderkamack Ave.

Attorney Martin asked if he had done work on this property before.

Architect Laurie stated yes he had.

Attorney Martin asked to the North are there any other buildings on the same side of the street.

Architect Laurie said yes a little further up.

Attorney Martin asked is the height of that building higher than what is anticipated with the new proposed addition

Architect Laurie said he did not know.

Attorney Martin asked is it, from his view of the neighborhood, consistent with what he designed.

Architect Laurie said yes.

Attorney Martin asked why they made it a different height.

Architect Laurie said it is sort of an evolution and that they were trying to get a mix in the units. They also thought that a better unit would be an upper level. Also, if they could do a one two bedroom, it would have some better marketing advantages as well as more amenities.

Attorney Martin asked if in his experience was it better to have a boxy look.

Architect Laurie said no, that they try to break it up as much as they can. Try to do different heights and roof lines. He stated that was his objective here.

Attorney Martin asked about the materials being used.

Architect Laurie said that they would be similar materials being used.

Attorney Martin asked about spotlights and would they be shining in people's houses.

Architect Laurie stated that there would be no spotlights, no new signage out front.

Attorney Martin asked if there would be an intensity on the outside of this structure based on these drawings.

Architect Laurie said no.

Attorney Martin asked about screening for any kind of mechanicals.

Architect Laurie said yes that there would be mechanicals for these units because there would be heating and air conditioning. There will be a power pit on the southern end but you won't see it. The existing units now, not only can't be seen from the street, but are hidden by the power pit. This is a slightly higher power pit than the ones that are up there now and will be raised up a little. The ones that are being put in for these apartments are residential so they are very small.....probably be 3x3 and 2 feet high.

Attorney Martin asked about penetrations, since they are small units will the penetrations (such as HVAC) be of significance.

Architect Laurie said no, you won't see anything large.

Attorney Martin asked about parking, and if Architect Laurie was involved when the property was being considered for a restaurant.

Architect Laurie said no.

Attorney Martin asked if he was aware of that application.

Architect Laurie said yes.

Attorney Martin asked Architect Laurie did he review the prior application as far as parking.

Architect Laurie said he reviewed the site plan.

Attorney Martin asked based on your review did you determine the amount of parking spaces present on the property as opposed to the parking spaces that were deemed to be present on the property.

Architect Laurie said he had two employees go down to site, they came back and said the parking was different. He said he had them go back down, and he knows that they are not engineers nor surveyors but they can mark parking spaces strip by strip and that is what his plans show.....parking spots that are down there now strip by strip.

Attorney Martin asked Architect Laurie if he was aware of what was approved previously for the property.....how many spaces.

Architect Laurie started counting and Attorney Martin said let me refresh your recollection was it 31 approved by resolution.

Architect Laurie said yes.

Attorney Martin asked how many were present based on his review.

Architect Laurie said 40 spaces. They are legitimate spaces.

Attorney Martin asked how many were required when the restaurant was first approved.

Architect Laurie said 72.

Attorney Martin how many are required if the Board approves these three units.

Architect Laurie said 78.

Attorney Martin said based on your review of the property and conformance with your design of these particular units do you find that there is sufficient parking.

Architect Laurie said yes he believes there is.

Attorney Muhlstock asked Mr. Laurie, you didn't number the parking spaces on your drawings, the 40 you said exist.

Mr. Monroe said that the numbers 37-40 are in the front of the building.

Chair Arakelian showed Attorney Muhlstock from the plans he had.

Attorney Muhlstock did not have the same plans, and asked if the plans had been revised and what the last date of revisions was.

Architect Laurie said June 9, 2017.

Attorney Muhlstock asked Architect Laurie what size the stalls are.

Architect Laurie said 9x18.

Attorney Martin asked Architect Laurie if that was generally the size for small parking in Bergen County.

Architect Laurie said yes.

Borough Engineer Costa asked if you go out to the sight today, the parking spaces are striped, and you're saying there are 40. There are physically 40.

Architect Laurie said yes.

Attorney Martin asked what type of individuals did you design these units for – large families.

Architect Laurie said no, mostly for couples or single people, not families.

Borough Planner Behrens asked as far as the units go, is it for the property owner, for rental, for sale. As far as the types of units they are.

Architect Laurie said they are rental units.

Attorney Muhlstock stated to Architect Laurie that his plans indicate that there is a verbal agreement with the adjacent property owner for shared use of parking. How many spaces would be lost if this shared parking arrangement did not exist.

Attorney Martin said he would like to enter into Exhibit A-1, which is a letter of agreement on shared parking.

Attorney Muhlstock stated that they would mark this agreement as Exhibit A-1, which is a letter of agreement between MCG Realty, LLC & Hanna Realty, LLC dated July 27, 2017. Attorney Muhlstock read the agreement.

Attorney Martin said that it does not remove the question that the Borough Attorney asked concerning the number of shared spots. How many are there.

Mr. Monroe said it says 12 in the letter.

Attorney Muhlstock said so it would be 28 and 12.

Architect Laurie said that is correct.

Chair Arakelian said just to be clear these are not dedicated spots to this property, they are shared spots between the two properties.

Attorney Martin said that would be testimony for Mr. Gorski.

Mr. Monroe asked when the Board was hearing the application for the apartments that are now under construction on Kinderkamack it was his understanding that the parking was 2.3 per unit, maybe it is in our code, but he does remember it being 2.3, not 2. They will still have to get a variance no matter what. This is not going to change anything, because they are still going to be under the number, but he wanted to bring it to their attention.

Planner Behrens said that no matter what the Borough standards are what supersedes that is the NJ Residential Site Improvement Standards and what they require for a two bedroom is 2 and for a one bedroom the requirement is 1.8. So they are correct that it is 6 additional spaces required.

Dr. Gewirtz stated that the fact that this is a mix use building, and there has already been a variance granted for the commercial activity on the lot, which is 40 spots for their business.

Chair Arakelian said because this is a new application the old variance goes by the waste side. This is a whole new understanding of the parking based on what is going to happen now, not what happened in the past.

Dr. Gewirtz asked if the Board is considering parking on both the commercial and the residential and are they to disregard what is in existence. They are asking for a variance from 78 down to 40 and not just the 6.

Chair Arakelian said that is correct.

Attorney Martin said the applicant's position is that it is an additional 6 and the 31 that was approved there is actually 40. It was 31 for 72 spots that were required, but it was previously granted for good reason and what they are saying is that they are already in that window of 31-40 anyhow. It's a persuasive argument.

Attorney Muhlstock said yes it is an argument and you could consider the prior variance, but you are correct this is an expansion of the variance that was previously granted. It is pre-existing.

Borough Planner Behrens stated that the discrepancy is the number being calculated for the NAPA Auto Space. He further stated that he calculated it as a retail space, but they are now being told that it is a wholesale space, and that is where the discrepancy is. Technically prior to the restaurant going in it was for 84 spaces, the resolution says that. They are being told now that the spaces are to be reduced because NAPA is a wholesale as opposed to a retail operation and that is up to the Board to distinguish whether to accept that or not.

Mr. Krey asked what defines that.

Borough Planner Behrens stated that a retail store is essentially that any one of us could go in there and buy windshield wipers. They made testimony that 90% of their business is wholesale. It is for the Board to deliberate on and decide if that is enough to sway them.

Chair Arakelian said let's go back to the testimony and then the Board can go back to question and answers.

Attorney Martin said his witnesses will clarify those issues. Attorney Martin asked Architect Laurie if the addition of these 3 units would intensify the trash and recycling.

Architect Laurie said no because the residential units would probably have one small bag a week.

Attorney Martin said would the trash/recycling be in the northeast corner and was there screening.

Architect Laurie said yes to both questions and that there is a fence so they wouldn't require any additional screening.

Attorney Martin asked him to go back to the elevation sheet, two of the three apartments will be a second story. So they will be two stories and that is within the code.

Architect Laurie said yes.

Attorney Martin said the additional story will be three. So you have the two that will be within the two and a half and the third one will be a three, which requires a variance, and that is for storage.

Architect Laurie said that is correct.

Attorney Martin asked how do you see the height, and how did you calculate the height.

Borough Engineer Costa said before they get into height. The ordinance was recrafted many years ago, because many people were building big houses. You average the grade 6 feet out and you run around the building and wherever there is a break in the building you take the grade 6 feet out. He stated he did a quick calculation and their average grade is 49-50, and the finished floor (which they do not show on their plans) which looks like, with the grades in the front, 56 give or take.

Architect Laurie said yes.

Borough Engineer Costa said from your finished floor you're going up, so is it 35.

Architect Laurie said yes.

Borough Engineer Costa said your 6 feet short, so your average height is 41 roughly. If you are 35 from 0 from the finished floor which is 56, your average grade is roughly 50 you have 6 feet. So you would need a variance and you would need in excess of 10%. Right.

Borough Planner Behrens said it would be a D-6 variance, based on that calculation.

Borough Engineer Costa asked Architect Laurie to explain what was sticking out on his drawings on the top of the building.

Architect Laurie said that it is a graphical error.

Vice-Chair Mehrman said that the question he asked of the Board Professionals was did either of them receive a height calculation. The answer was no.

Borough Engineer Costa said he wanted to question the witness and looking at his elevation it looks as if it wasn't exceeding the existing building height, so therefore, he is not sure it would require a variance if it wasn't going over. Not sure if it would be an expansion at the same level, it may not require a variance.

Vice-Chair Mehrman asked wouldn't it be proper to have a hard calculation by the applicant for everybody to review.

Borough Engineer Costa said no question.

Vice-Chair Mehrman said ok, end of case.

Dr. Gewirtz asked can you still consider this (additional variance) that's not put forth before the Board and hasn't been noticed, without the proper calculation? Can you still consider this?

Attorney Muhlstock said yes the notice specifically said any and all other variances that may be necessary and they also asked for a "use" variance. If they hadn't asked for a "use" variance and just asked for a bulk variance then he would agree that the notice is defective.

Attorney Martin asked Architect Laurie if you take off the third story and make all three apartments one level is there any need for a D-6 variance.

Architect Laurie said no.

Borough Planner Behrens said it would seem to eliminate the need for it, you would still have to deal with the top of roof issues which shows 35 feet and change.

Borough Engineer Costa said what the finish floor to that height would be.

Architect Laurie said it would be 24.

Vice-Chair Mehrman said you would still need the calculation.

Borough Engineer Costa said they would have to submit the calculation, no question about it.

Chair Arakelian said is it your testimony that it is 30 feet correct 24.6.

Architect Laurie said that would only be to the second floor.

Borough Engineer Costa said they would need to do the calculation roughly somewhere around 30 and he didn't think there would be a height variance on that.

Attorney Martin said if the applicant chose to design all 3 apartments on one level (he would have to talk to his client about that), then he believes there wouldn't be any need for a "use" variance on that.

Attorney Muhlstock said but you aren't asking for that now.

Attorney Martin said no not now, but there were a lot of numbers being thrown around.

Attorney Muhlstock said they are still dealing with the entire application as submitted.

Chair Arakelian said lets finish up testimony so we can go to question and answer.

Attorney Martin asked Architect Laurie if he had found any circulation problems in terms of the use of this property with the three apartments and traffic.

Architect Laurie said no he did not. He said he is not a traffic engineer, but it is logic, it would be minimal traffic. It would be people going to catch a bus, or walk down to the train station to catch a train and be back at night.

Attorney Martin asked Chair Arakelian if there were any questions.

Chair Arakelian said he was going to the Board Professionals first, let them ask their questions, then to the Board and then he will open it to the public.

Borough Planner Behrens said his primary question was the building height calculations.

Chair Arakelian said if there is action done tonight they can make it part. No you can't.

Attorney Muhlstock said no you can't, if anything it would have to be carried to see those calculations.

Borough Planner Behrens said you would want to see the extent of relief being read, and they want that to, to understand what the actual figures are.

Borough Engineer Costa said the only question he has is on the letter of agreement that was brought into exhibit concerning the 12 parking spots. He believes that the original resolution said 31 parking spaces. So if you have 40 you lost a few spaces along the way.

If you have 40 and your down to 28. The original paperwork had 31, so he doesn't know how the neighbor got 12. He went on to say that one of the original approvals granted a variance of 84 parking spaces required and the Board approved 31. The architect testified

he has 40, with the shared spaces. Now the neighbor is sharing 12 of them. So 40 minus 12 is 28.

Attorney Martin said Mr. Gorski could explain it and would ask him when he is called to testify.

Borough Engineer Costa said if that is the case then you have 3 missing and if that is not the case then you have more then you were granted. He also said if you take off the top then you don't need the variance and then you will have three one bedrooms. Then that will drop the parking requirement slightly lower.

Borough Engineer Costa said if the neighbor decided to put a fence up what would be used and what could be used. He said he thinks what was discussed is that you could put parallel parking on some of those spots and then you could come up with some additional spaces.

Attorney Muhlstock said you're right, I am looking at the site plan approval application 2010-01, memorialized June 17, 2010. In fact 31 spaces were proposed, but it also indicates in this resolution that at least two of the spaces measured 9x24 and it doesn't indicate what the other spaces measured. So it's possible over time the spaces that were supposed to be a little bigger, possibly because of access into them, that's why there is a discrepancy.

Attorney Martin said he doesn't believe all 12 of the spaces is dedicated to one, and they lost 12 although it is an issue that needs to be clarified. He believes there could be a "use" of 12 by the applicant's property. He also said if it were 6 spots for two one bedroom units and one two bedroom unit then it would be reduced if they were going to be three one bedroom units. So it would be reduced to 5.4 spaces.

Attorney Muhlstock said he was going to mark the 2010 resolution as Exhibit A-2 and he would get a copy to Attorney Martin.

Mr. Caslin said to Attorney Muhlstock if you need a copy of these three resolution I have them and passed them over to him.

Chair Arakelian asked Borough Engineer Costa if he had any other questions.

Borough Engineer Costa asked if you were to go on top of pizzeria how that structure would be supported. He said if he remembers correctly that use to be a shed.

Architect Laurie said they would do what they have to do to make it secure, and it would have to meet State Code.

Chair Arakelian asked Mr. Monroe if he had any questions.

Mr. Monroe said no.

Chair Arakelian asked Ms. Boland if she had any questions.

Ms. Boland said yes and asked as far as the shared parking, what is the other use that is sharing the same parking. Is it the same “use”.

Attorney Martin said he believes it is a restaurant but that Mr. Gorski could answer that question.

Chair Arakelian asked Mr. Grasso if he had any questions.

Mr. Grasso did not.

Chair Arakelian asked Mr. Krey if he had any questions.

Mr. Krey wanted to know if there would be a visual impact with this. There are residential properties behind, so from their prospective what impact would a three story have on them.

Architect Laurie said that they would never see it. He showed how the site line would not allow it.

Vice-Chair Mehrman asked what about coming down Kinderkamack.

Architect Laurie said yes you would see it coming down Kinderkamack, but he was asking about the residents behind, and they won't see it.

Chair Arakelian said that what he believes was being asked was would it be visible from Kinderkamack Road.

Architect Laurie said yes it would.

Borough Planner Behrens said he had a question concerning the third story bump out – you have a neighboring property to the left does that impact significantly concerning sunlight.

Architect Laurie said no it is minimal at the very least.

Chair Arakelian asked Mr. Caslin if he had any questions.

Mr. Caslin asked about ventilation, specifically the pizzeria and whether or not it would be ventilated through the residential apartments.

Architect Laurie said they would have to do a mechanical study and there are different codes. They would do that when an engineer became involved.

Mr. Caslin showed that there was a discrepancy in the amount of windows that Architect Laurie was showing on his plans and what was being shown on the plans that the Board had.

Borough Planner Behrens stated that the plans had been revised and that due to the fact that there is no personnel in the office right now on a daily basis, there may have been a mix up of who got what, and that they should check the date on the plans (June 9, 2017).

Attorney Martin said that unfortunately there has been personnel changes and that they had delivered multiply sets of complete plans to everyone and at that time there was no one in the office to take the plans, but they were delivered.

Chair Arakelian said that they could make an exception on this because really they are just windows.

Mr. Caslin asked if there are any windows in the back, because the plans show elevations from the north, south and west but do not show from the east.

Architect Laurie said no, there are no windows in the back.

Dr. Gewirtz said that there is a window that was added on the south drawing within a bathroom and that it is not represented on the south elevation.

Architect Laurie said that would be the east elevation.

Dr. Gewirtz said yes that's what I meant there is no east elevation.

Architect Laurie said they did not do an east elevation because you would mostly see the back of the existing building and then this small little thing so they did not represent it.

Dr. Gewirtz asked about the laws concerning residential affordable housing units, would there be a need to have any additional units.

Attorney Muhlstock said no.

Borough Planner Behrens said that it is 5 or more units that would require affordable housing.

Dr. Gewirtz said he wasn't sure if it was occupancy based.

Borough Planner Behrens said it's a good question, they could propose they all are, but that is not the case here, and they are not required by law.

Vice-Chair Mehrman said he had a few questions for Mr. Martin and asked him if he was going to present any engineering testimony.

Attorney Martin said he wasn't planning on it.

Vice-Chair Mehrman said ok so the site plan as shown with the count and sizes all there is.

Attorney Martin said that is correct. He also said he didn't believe there were going to be any questions concerning run-off issues or issues that would require any kind of civil engineering analysis.

Vice-Chair Mehrman asked Mr. Martin if he was planning on presenting a Planner, because if he was then he would hold some questions for her.

Attorney Martin said he was and also the owner of the property.

Vice-Chair Mehrman said to Architect Laurie from his testimony he said that he was proposing the residential within this commercial zone because there are marketing advantages.

Architect Laurie said no I said because it would be a mix of units. The use was driven by his client's desire to have a mix use building.

Vice-Chair Mehrman said for what advantage.

Architect Laurie said the advantage was a mix in the types of apartments – putting in a two bedroom so that there would be a little mix in the market.

Vice-Chair Mehrman said so the purpose of this was to get a “use” mix by putting in residential within the commercial.

Architect Laurie said no what he was talking about was putting in one two bedroom apartment.

Vice-Chair Mehrman said he believed he stated that there where would be no new signs.

Architect Laurie said there are no plans for any new signs.

Vice-Chair Mehrman asked about the HVAC screening, and is it true from both Monroe and Kinderkamack – that it won't be visible.

Architect Laurie said that was correct, it wouldn't be visible.

Vice-Chair Mehrman said if it turns out that some of it was visible would they come back and screen it.

Architect Laurie said yes they would come back and screen it, but he doesn't believe it will be necessary.

Vice-Chair Mehrman asked about A-1 (The shared parking). What is the permanency of this document, especially if any of these buildings change hands?

Attorney Martin stated that it is in perpetuity and there would obviously have to be a more formalized document. There is a verbal agreement that has been unchanged for years. He believed that getting something in writing was needed, but getting a hold of the other party wasn't as easy as he thought it would be. But once he got a hold of him, he overwhelmingly agreed with continuing the relationship with the sharing of the parking, and that is essentially to memorialize the verbal agreement. If there is a change of ownership then that is something that would have to be addressed in a more formal document.

Vice-Chair Mehrman said so there is a possibility that it could be revocable.

Attorney Martin said maybe not revocable but it could be without any power. It would be something that would have to be more formal by filing with the County Clerk.

Attorney Muhlstock said if you were to look onto this application favorably that document would have to be recorded - absolutely. Absolutely you would need a recorded document that runs with the land - that binds.

Attorney Martin said he agrees.

Attorney Muhlstock said it would be like a deed restriction, because any purchaser of those two properties would have to abide by that agreement.

Borough Planner Behrens said just to clarify would that be a condition they would need to furnish for the application – would that be a condition of approval.

Attorney Muhlstock said sure.

Attorney Martin asked if there is currently the parking of 31 spots as per Exhibit A-1 with these additional 6 spots how would the Board look at it with the current conditions that are now present. The Board may require certain parking requirements that may or may not involve an easement, one aspect is yes and one aspect is no.

Chair Arakelian said are both people that signed A-1, are they both willing to sign a deed restriction on the properties. Because without it the Board is approving an addition and if this goes away are they going to take the addition down?

Attorney Martin said he agreed. You can look at it as to the parking that is in existence now, 31 in the past, 40 present now - if there is sufficient parking with the additional 6 or if there is not will there be with this particular agreed upon easement.

Chair Arakelian said it seems that right now the way it is, without some sort of acclimation from the other property owner that he is willing to do a deed restriction, it shouldn't be considered.

Attorney Muhlstock said Mr. Martin are you saying that you would be willing to submit the application to this Board without the 12 spaces.

Attorney Martin said well there would be 31.

Attorney Muhlstock said forget how many, the Board has testimony that without the shared agreement you lose 12 spaces. Would you want this Board to consider that?

Attorney Martin said that is one aspect of the review, if the Board was willing to give an inclination that that would be appropriate. Their position is that there are 40 actual spots, if 31 were approved on A-2 (which is the 2010 resolution), they are actually 9 spots over what is approved, and there are 6 that are needed. They are well within reason of complying with the variance.

Attorney Muhlstock said no not so quick. A-2 said you have a variance for 53 parking spaces and at that time you needed 84, you only provided 31 so you can't use that as the good Doctor said, this is under parked to start with.

Dr. Gewirtz said you are putting words in my mouth, I just wanted to know if we had to accept that or if we had to start over.

Attorney Muhlstock said the question is from this point would you want the Board to consider this application without considering the 12 spaces which are on the southern part of the rear parking lot.

Attorney Martin said he would like the ability to have a discussion with the owner.

Ms. Boland said you are counting 40 without the share, but she believes the 40 is including the share.

Attorney Martin said that he believes Mr. Gorski could speak better to that. Mr. Gorski was involved in the agreement and is at the meeting, and he will call him next.

Ms. Boland said that the way the spaces are numbered it is including the 12.

Attorney Martin said yes it would include the shared arrangement.

Chair Arakelian said that they will get back to the parking issue when the owner of the property testifies, but he does have a few questions.

Vice-Chair Mehrman said he wasn't done. He asked when Sanducci's was granted outdoor seating was there any seating added to the total.

Attorney Martin said no.

Vice-Chair Mehrman said so whatever seats there were outside they were removed from the interior.

Borough Engineer Costa said from his recollection they were supposed to drag 16 chairs out and put 16 chairs. He also stated he has never seen the chairs go back in. He further stated that he knows that the applicant is spending a lot of money, and there are a few things going on. Number one is the second story coming off or not coming off. If it is they are going to have to do the height. The second thing is the parking, and it seems like everyone is going back into the parking and he thinks they need to figure out what the parking is and what the parking demand is. They need a parking engineer, expert, or traffic engineer to say ok between 7-8 or 8-10 this many parking spaces are needed. Between this time and this time this many people for Sanducci's; this many people for the drop off; and you should look at it as shared parking. Whether or not these additional units are going to benefit either building. At that point come back get it in writing or don't get it in writing, then you have 31 parking spaces when they put the fence up or with the shared parking you have 40, can they take 12, they can only take 6, he doesn't know. But those are the answers they need or they're going to be going around in a circle all night.

Chair Arakelian said he agrees with Borough Engineer Costa.

Attorney Martin asked if he could speak to his client for a minute.

Chair Arakelian said he would like Architect Laurie to finish up first.

Vice-Chair Mehrman said he had one more question. Mr. Costa pointed out that there are other approvals required. One is the Fire Department. Do we have a report from the Fire Department?

Attorney Muhlstock said he did not see anything.

Chair Arakelian said he believes they received a copy of the application and in the past they always get an opportunity to come.

Vice-Chair Mehrman said that since they are looking at a “mix use” The Fire Department should go look at it and give it its blessing or not. Let them say they have concerns or don’t worry about it.

Dr. Gewirtz said it should be both the Fire Department and the Police Department.

Chair Arakelian said that they would invite both of them to the next MLU Board meeting.

Vice-Chair Mehrman said he was done with Mr. Laurie now, but he wants to reserve the right to recall him.

Chair Arakelian said he had a questions about the sprinkler system in the building as it exists right now. Is there a sprinkler system or just a hood system.

Architect said he doesn’t remember.

Chair Arakelian asked if there were any other questions – there were none. He then said he was going to open the meeting up to the public, and asked for a motion to open the meeting to the public.

Motion to open the meeting to the public - Motion by Dr. Gewirtz, second by Mr. Caslin.

All in favor 8-0

River Edge resident Brett Urban came forward and stated that he lives at 590 Center Ave. in River Edge. He stated he has a public reading he would like to take later versus just questions and answers.

Mr. Urban said he heard a lot of things and needs clarification on parking and the number of spots and that he heard a lot of numbers from 78 to 40, 84 to 53 and without the 12 spot they are down to 28. He wanted to point out a few things.

Chair Arakelian reminded Mr. Urban that he was just going to ask Architect Laurie questions.

Mr. Urban stated that one of the things Architect Laurie pointed out was the use of the parking spots and when they would be used. Mostly talking about the facility and of NAPA being more of a wholesale rather than a retail. Also, they talked about some of the

other business in the building and their usage. He thought it interesting that they were only focusing on when people might work and when they don't because we live in a global economy today and it's a global workforce.

Attorney Muhlstock reminded Mr. Urban that he is only to ask questions, not making statements because he hasn't been sworn in and he will have his opportunity to make a statement at the end of the application.

Mr. Urban asked if the tenants, who will be renting the apartments, will they be required to work specific hours.

Architect Laurie was unsure of the question.

Attorney Muhlstock said he is asking how he knows when the tenants are going to be home and when they aren't going to be home.

Architect Laurie said he didn't know.

Mr. Urban said so the statement you made earlier about when the spaces would be used and when they wouldn't be used is invalid then, right?

Architect Laurie said he didn't say that.

Mr. Urban said oh maybe it was the gentlemen sitting next to you who said it.

Chair Arakelian asked Mr. Urban to please be specific.

Architect Laurie said he did not make a specific statement about when tenants would be home and when they wouldn't.

Mr. Urban said you did talk about how these apartments would be used – one bedroom; two bedroom and that it would be for one person, maybe a couple. Would that be restricted to only those?

Architect Laurie said it is not a restriction, it's just that those units wouldn't take any more. He said because of his experience with other units like this they are usually single use apartments. He stated that a two bedroom apartment has a little more flexibility.

Mr. Urban said you said a two bedroom could have a little more flexibility but he would argue that a one bedroom could have that flexibility as well because anyone could use the living room for sleeping.

Architect Laurie said yes, but he was giving the general use history of apartments such as these.

Mr. Urban said you mentioned that most likely the use would be people running for the bus, or running for the train, if that was the case wouldn't that make the argument invalid that those cars wouldn't be there during the day.

Architect Laurie said that it's not that they would or they wouldn't. If people were leaving during the day they would take their car. He stated he doesn't know the specifics of who is going to occupy the space so he can't answer it specifically. If someone was going to run for the bus or the train (like his son) they wouldn't have a car.

Mr. Urban said he commutes into the city by bus and by train and he has two cars in his driveway.

Chair Arakelian said it still needs to be a question.

Architect Laurie said he can't answer that.

Mr. Urban had questions about the lighting, specifically security lighting and are there requirements for security lighting for residential.

Architect Laurie said that there is no requirement for exterior lighting on the building, the only place it is required is at an exit.

Mr. Urban asked if there were any usage statistics for the parking today from the current tenants.

Architect Laurie said he couldn't testify to that.

Mr. Urban asked Architect Laurie if he was a patron of Sanducci's.

Architect Laurie said yes.

Mr. Urban asked if he had trouble finding parking.

Architect Laurie said no.

Mr. Urban said I live down the street and I do.

Architect Laurie said I go once a month for lunch.

Mr. Urban said I go for dinner so maybe that's why.

Mr. Urban asked do you find the exit out of there to be satisfactory.

Architect Laurie said he is not a traffic expert but the exits exist and they service the building.

Mr. Urban said he has some questions around the ventilation and such from the Pizza Kitchen and Sanducci's - would there be a requirement to move the ventilation systems and where would they go.

Architect Laurie said that they would only do that during construction. The mechanical code is very specific and the building code is very specific, so if they had to be rerouted they would be rerouted.

Attorney Muhlstock said but the question is are they capable of being rerouted. For instance if they had to be rerouted to the north side of the building would it impinge on the driveway that goes up.

Architect Laurie said if they had to they would provide a shaft.

Chair Arakelian said he sees the gentlemen's concern with garlic smell or whatever may be coming from the exhaust.

Borough Engineer Costa said you need to look to the person on your right. Weren't you involved in that Mr. Mehrman many years ago with the exhaust system?

Vice-Chair Mehrman said he might have been, but he doesn't remember.

Chair Arakelian said if it has to be rerouted then it has to be redone and it is his understanding that they have new technology to get rid of any of those issues.

Architect Laurie said yes, and that he does about 15 restaurants a year and there is always a way to vent and that's an honest answer. When you do apartments over parking you have to be able to vent the parking. You can vent safely.

Borough Engineer Costa asked if you do have to do that do you have permission from your tenants to allow that to happen - Mr. Gorski said yes.

Mr. Urban said he didn't hear anything about fire escapes are there plans for them.

Architect Laurie said that they have stairways out, fire escapes are not required.

Mr. Urban said so there would be no requirement to put fire escapes up.

Architect Laurie said no.

Mr. Urban asked if he could flip through the drawings and he said this area that you drew an "X" on - this does not exist today, but was it proposed.

Architect Laurie said no it was a graphing error.

Mr. Urban said you mentioned the impact of the view and you pointed to this area in the back of the parking lot. Have you assessed the impact to the street below?

Architect Laurie said you wouldn't see it.

Mr. Urban said he would disagree because he lives down the street and he sees the building.

Architect Laurie said I didn't say you wouldn't see the building. He said this property drops off back there. How far.

Mr. Urban said about 15 feet.

Architect Laurie showed him that with the sight line he wouldn't be able to see it.

Chair Arakelian asked for a motion to close the meeting to the public.

Motion to close the meeting to the public - Motion by Mr. Monroe, second Vice-Chair Mehrman.

All in favor 8-0

Chair Arakelian said that before Attorney Martin goes to his next witness he knows that there will be a carryover, so does he want to bring in his next witness to go to the carryover or does he want to continue on to the carryover and when he gets all the answers, particularly with the height and parking, it could be properly addressed as opposed to bringing everyone back in again. He is leaving it up to Attorney Martin.

Attorney Martin said he appreciates it, but he thinks it's better that the Board get an overall feeling of all the information properly submitted at one time. Does he think the application is complete to go before the Board – absolutely. Are there good questions that the Board has raised in terms of issues that are presented and need further review of these questions – he thinks so.

Chair Arakelian reminded Attorney Martin that there is a 10:00pm curfew on these meetings, so that would give him about 40 minutes for his next witness.

Attorney Martin asked if he could have two minutes to speak with his client to make sure he agrees with his position to carrying it because they could do more testimony, there will be more questions.

Chair Arakelian said he would give him two minutes.

Chair Arakelian said recess is over at 9:25pm.

Attorney Martin said that there are a few material issues they would like to respond back to the Board on, so they are asking for a break.

Chair Arakelian said that the next meeting is the fourth Thursday in August, which is August 24th, and the meeting after that would be September 28th. He stated that the Board was trying to break up the two meetings a month having the simple and quick applications on the second Thursday and the more extensive applications on the fourth Thursday, so the Board can dedicate that time to this application.

Attorney Martin said that they would like August 24th with no further notice required.

Attorney Muhlstock said no further notice is necessary to the public and he wanted to make sure that they are waving any time restrictions under the statute by carrying the matter.

Attorney Martin said absolutely.

Chair Arakelian said he wanted to go back to something that Borough Engineer Costa or Borough Planner Behrens mentioned about a traffic study.

Borough Engineer Costa said what he thinks they need is a shared parking analysis because they have different uses at different times during the day. Obviously a variance was granted for what is there today, but they could add these three things and it could be the straw that broke the camel's back. Also they're in August what is that going to tell them, probably nothing because there are a lot of people away. Also in two to three weeks they are going to be paving Kinderkamack Road so unless you have wings and feathers you aren't getting near this gentlemen's building.

Attorney Martin said in that light they could always come back and request to move it back, but to keep it moving they would like to keep August 24th.

Chair Arakelian asked if there was anything else.

Borough Planner Behrens said that he thinks they just need height calculations, the parking analysis and deciding what they are going to do with the building – these are key right now.

Mr. Krey said on another note the parking calculations that were in the engineering study versus what was presented was that 90% of NAPA was delivery to gas stations and it was more wholesale as opposed to retail. He stated that he and his wife both go in there to buy retail as well as the Pizza Kitchen. He asked if they could give some presentation that would support that. If there is any documentation that they can show that it is more of a

wholesale rather than a retail and some explanation as to why the Pizza Kitchen doesn't have any parking spaces associated with it.

Chair Arakelian asked Attorney Muhlstock if he was going to have Brian notify the Fire Chief and the Police Chief, inviting them to attend the meeting if they wish. Chair also said he was going to request some sort of answer as to sprinkling the building and what the plans are for a sprinkler system, especially over where the commercial kitchens are.

Attorney Martin said he understood.

Ms. Boland asked if they could just request questions and comments from the Police & Fire Chiefs so they don't have to come to the meeting.

Chair Arakelian said yes, Brian will take care of that.

Vice-Chair Mehrman asked Attorney Muhlstock when you speak with the Fire & Police Chiefs will you make sure they get a copy of the drawings so they can look at it before they get to the meeting.

Attorney Muhlstock said of course.

Chair Arakelian thanked everyone for coming and said he has nothing else.

Mr. Monroe asked if they will get a new set of drawings.

Chair Arakelian said they are probably downstairs but he will talk to the secretary and get them.

Chair Arakelian stated he wanted to entertain a motion to adjourn.

Motion to adjourn the meeting - Motion by Dr. Gewirtz, second by Ms. Boland.

All in favor 8-0

Meeting was adjourned at 9:29PM

Minutes submitted by: Carol Byrne

Approved on: September 14, 2017