

**BOROUGH OF BERLIN
PLANNING BOARD MINUTES
July 10, 2023**

CALL TO ORDER:

M. McGowan called the meeting to order at 7:00 PM

FLAG SALUTE:

M. McGowan called for everyone to rise and recite the pledge of allegiance to the flag.

SUNSHINE STATEMENT:

D. Pomponio announced that this meeting is being held in compliance with the Open Public Meetings Act and has been duly noticed and published by law.

ROLL CALL:

On roll call vote, the following members answered present to roll call: Mayor R. Miller, Councilman M. Wilkinson, M. McGowan, K. Ryker, D Pomponio, M. Foster, F. Ballak, J. Cole, J. Schumacher, H. Earle, E. Hahn

M. McGowan asked if there were any questions or comments on the minutes for April 10th, 2023, none heard.

MINUTES:

A motion to approve the April 10th, 2023, minutes was made by D. Pomponio and seconded by H. Earle.

Roll Call:

Mayor R. Miller - AYE
Councilman M. Wilkinson -AYE
M. McGowan -ABSTAIN
K. Ryker -AYE
D Pomponio -AYE
M. Foster-ABSTAIN
F. Ballak -ABSTAIN
J. Cole-AYE
J. Schumacher-AYE
H. Earle-AYE
E. Hahn-ABSTAIN

RESOLUTIONS:

**Case No. 23-03
Carriage Place, LLC
Preliminary/Final
Major Subdivision**

A motion to approve Case No. 23-03 was made by H. Earle and seconded by D. Pomponio.

Roll Call:

Mayor R. Miller - ABSTAIN
Councilman M. Wilkinson -ASTAIN
M. McGowan -ABSTAIN
K. Ryker -AYE
D Pomponio -AYE
M. Foster-ABSTAIN
F. Ballak -ABSTAIN
J. Cole-AYE
J. Schumacher-AYE
H. Earle-AYE
E. Hahn-ABSTAIN

**ZONING OFFICERS REPORT:
April, May & June reports**

Chairman McGowan asked if there were any questions or comments on the zoning report, none heard.

OLD BUSINESS:

Ordinance No. 2023

Redevelopment Plan (Block 1100, Lot 4, 6, 7, 8, 9, and 9.01)

Ordinance of the Borough of Berlin, County of Camden, and state of New Jersey Adopting a Redevelopment Plan for Block 1100, Lots 4, 6, 7, 8, 9, and 9.01 on the official Tax Map of the Borough of Berlin in Accordance with the Requirements of the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, et seq.) (“LRHL”)

Mr. Norman and Mr. Dochney stated that The Buckingham Partners and his attorney are present this evening just to give you a little overview, not quite applicants yet. They’re just trying to explain the potential redevelopment of the area.

The attorney, Kevin Shane for Buckingham Partners stepped up to give a brief overview on the possibility of a redevelopment and housing plan. Mr. Shane stated that an MU was signed with the municipality to talk about the possibility of putting this into a redevelopment area and adopting a redevelopment plan. An additional lot was added about a year ago and a concept plan was provided to Mr. Dochney, the borough’s planner, who then drafted the redevelopment plan and introduced it and referred it to the board. Kevin Shane and Bob Dale from Buckingham Partners are here tonight to answer any questions or concerns the board may have related to that ordinance and outline. Mr. Shane then handed out the proposed concept plan. Bob Dale then came forward and explained that they have a very high-level concept plan for this roughly 20 acres with the proposal being, about half the site to be commercial development, primarily retail and the other half of the site to be multifamily apartment development. Mr. Dale explained that they would like to propose that the apartment development be on the southern end of the site and the commercial on the northern end of the site, which is closer to some of the other existing retail and commercial uses. I know we received some

feedback from Mr. Dochney, the Borough's planner, that some members of the board were concerned about having anything other than commercial along the highway. What we would propose to do is to, set all the residential buildings further back in the site on the southern end of the site, but to have a leasing and clubhouse building up along the highway, which would act as both, you know, a buffer for the residential and more of a commercial use. It's where the leasing and marketing activities would occur that would give us some visibility. It certainly helps from a marketing standpoint. It would also be frankly challenging for us to do the residential behind commercial, particularly a retail commercial. The back end of retail shopping centers tends to be somewhat dirty uses. That's where the garbage dumpsters go and where the deliveries happen at the loading base, even from a traffic standpoint, having residential cars in conflict with delivery trucks. Mr. Dale stated from a financing standpoint, it's also much easier for us and cleaner to have those uses separated. They can remain on their own tax lots; we feel that the residential development here is necessary. It's a challenging site from a retail standpoint because there isn't good two-way highway access to the site. You really can only access this site if you're heading southbound. Most retailers want to have a traffic light, want to have even four-way traffic here. We only have one. We've been trying to market the site actively with Metro commercial, going on for two years and haven't had a firm bite yet from a retailer. But we are still committed to doing retail and commercial on at least half of the site. So that's our idea behind the concept plan. I'm happy to respond to any questions or any comments you might have. The attorney for Berlin Borough, Chris Norman asked if they are rentals apartments and Mr. Dale responded that this is a proposal for a rental of one or two apartments. Mr. Dale explained that there would be a coah component to it and under the coah standards you do have to do some three bedrooms and we'd be willing to limit the market rate units to one and two bedrooms and three-bedroom units would only be for the coah compliance. Mr. Dochney stated that doing the calculation in his head right now, he thinks it would be about six three-bedroom apartments would be required to satisfy affordable housing requirements. That total would be on the assumption they maxed out at 275. which gets you about 55 affordable units and then it usually has to be split so it'd be closer to ten three-bedroom units in total. Cause you must do 20% of all the affordable units must be three bedrooms. Mr Norman responded it states 258 then Mr. Dale stated that they proposed reducing the density and are willing to accept a change in the language of the plan, from 275 to 250. I think the concept plan might show more. Mr. Dale then brought up the concern about the generation of school children. He stated that he has provided Mr. Dochney with a memo citing seven or eight studies that literally study every suburban market from Washington DC through New England. The studies are all very consistent with their findings. They were summarized as, one- and two-bedroom apartments, they typically generate between one and two school children for every 10 housing units that newer and typically more expensive multifamily apartments generate lower numbers than that. What we find when we do our developments is when they're school children generation, it typically is in those COA units because the apartments we build tend to be very expensive, very high rents for the local market and those families with school children are typically looking to try to buy a three bedroom house if they have school aged children they can typically do it for the rents that we're getting for one and two bedrooms. The larger multifamily developments generate even fewer school children than the average, I just cited. Lastly, in most cases the tax revenues from new multi-family developments end up exceeding the fiscal impact of the additional school children, Mr. Dale then went on to state that some of the studies, not all those studies looked at the fiscal impacts, but the studies were very consistent in their findings as to what the actual school children generation is. Mr. Dale had some

copies of the highlights of each of them. Mr. Dale also mentions that they have built three large multi-family housing developments in South Jersey. One in Cherry Hill at the corner of Brace and Crescent Road. It's called Evans Mill. Most recent one was completed on the lawn side and a third was in Bordentown on Route one 30. Mr. Dale stated that their experience is very consistent with the studies. There were Thousands of apartments built in Cherry Hill, over the last decade and yet school enrollment in Cherry Hill is down about 10% over that same decade, stated Mr. Dale. Families are just smaller, younger couples are getting married later with fewer children. Mr. Dale also stated that a few of these studies he was reading, is that the average household in the United States is only two and a half people. Another surprising statistic that came out of the study by the Delaware Valley Regional Planning Commission, which studied the entire Delaware Valley and new apartment development is that 53% of all apartments in the Delaware Valley are occupied by a single person, if you follow the math, the findings really aren't surprising. If you look at the bigger demographic picture, stated Mr. Dale. Chairman McGowan asked if there were any other questions, from the board and Mr. Earl asked if the commercial properties are going to be built no matter what or would you wait until there was a tenant? and the residential be built later than the commercial? Mr. Dale stated that they would like to have a tenant or a user for the retail before starting construction. The current property donor, Mr. Lamber intends to build a restaurant at this site, Mr. Dale went on to explain that will be shown on the updated plan. Mr. Dale stated that they are in some active conversations with some others, but you really don't want to build a retail building without a user, or you may just miss the mark and sit there with an empty building. Mr. Ballak asked if about the update on the railroad crossing and is the state still looking to close that off. Mayor Miller answered, yes, the state indicated Harker Avenue will be closed off from pedestrian and road traffic. We don't know when we have petitioned to fight it and I haven't heard otherwise, but I was led to believe they're going through with it no matter what. The state cited that we have way too many crossings from a safety standpoint. Mr. Dale asked Mayor Miller if access from 73 on Harker would still be available and Mayor Miller answered yes Harker wouldn't be able to enter onto Route 30 it would lead back to Cross Keys Road. Mr. Dale did clarify that it shows as a secondary access on the plans. Mr. Norman asked what percent of affordable fees is this set aside you're looking at? Mr. Dale stated that he thinks it was proposed at 15% Mr. Dochney stated that he thinks it requires 20 as it's written, its 15% of rental and 20% for sale. Chairman McGowan asked Mr. Norman if this conversation goes to the public and Mr. Norman answered no this is strictly a redevelopment, the board is just going through a master plan consistency review on this which is where it left off from the ordinance redevelopment plan was first introduced. Mr. Dochney stated that this redevelopment was first discussed in March and then in April there were a few board members not here in April and since we wanted to get their thoughts or any questions about the developer on reducing the density question on the school children and whether, they would guarantee that the residential would be pushed back from route 73 then it got pushed back again a month as the developer couldn't be here last month and wanted to make a brief presentation to you. Mr. Dochney stated that, this is not an approval of a site plan, this is a concept plan and if this redevelopment plan is approved by the council, then a plan very similar to this which they would then have to be designated as a redeveloper through the council and work out a redeveloper agreement and then they come before the planning board with an actual site plan. It would then include all the stormwater management, all parking studies, environmental impact studies, etc. This is a recommendation back to the council on whether or not, the planning board feels this plan is consistent with your master plan. The law allows you to

make any comments that the planning board feels are necessary. Mr. Dochney, the boards planning board stated that the master plan, both the land use element and the economic development plan element, both specifically called for this exact site to be redeveloped with a larger mixed-use project. The housing plan doesn't specifically target this, but it mentions in the future you're going to need to identify sites for new housing development, multi-family development to find ways to get credits on the limited lane you have left for development. Mr. Dochney stated that he feels this is consistent with the master plan. Mr. Ballak then asked if this gets opened-up to the public and Mr. Dochney, the Borough's planner, stated Since it's a referral from the council, it's not an official required taking in terms of approving or denying a site plan application, technically the law does not require you to open to public for comment on this right now but when the council adopts this, that has to be as an ordinance, then there's a public comment. Mr. Ballak then asked if this is prohibited from opening up conversation to the public and Mr. Dochney stated that if you want to hear from the public then that's up to you as a board. Mr. Ballak then made motion to open up to the public and Mr. Ryker second the motion and everyone was in favor. Chairman Mr. McGowan then open up the floor to the public with any comments on this particular redevelopment plan, none seen or heard. Chairman McGowan then proceeded to then asked if there are any comments to put forth to counsel with regards to this application as it is presented, plus or minus 258 apartments, one or two bedrooms. Mr. Cole then asked if 250 or 275 that's in the ordinance that the board reviewed before. The board's attorney Mr. Norman stated that their proposing 258 which is a modification of the original request. Mr. Cole then stated that should be one of our comments going back to council. Then chairman McGowan continue and said this is six to 10 COAH units which would be 15% and Mr. Dochney corrected and stated that this is six to seven three-bedroom COHA units, the plan requires they comply with basically the standards for affordable housing, which 15% set aside for rental and state law requires that whatever their affordable housing, that's 15% of that and 20% minimum of 20% has to be three bedroom. And a maximum of 20 of 20% can be one bedroom of the affordable units. The attorney for the board then stated that it would be about 38 to 39 COAH units. Chairman McGowan then ask there are any other comments to council and Mr. Hahn asked for clarification on the 1.5 school children per unit. Mr. Dochney clarified that he received an email from Mr. Sheehan, with a memo summarizing the findings from several different reports throughout the northeast region. Mr. Dochney stated that he hasn't had a chance to go through and read the individual reports to state them as, yes, this is credible or no, this is garbage. But the testimony they provided is that, of these multiple studies, Mr. Dochney will say at least D V R P C, Delaware Valley Regional Planning Commission is not an industry lobby group they are the regional planning commission for the five counties in Pennsylvania and four in South Jersey that are in Delaware Valley, south of Mercer County and south to Gloucester County. I would take their word as a non-biased opinion. Mr. Dochney stated that his general experience has been that new construction of one- and two-bedroom apartments tends not to have that many compared to say three or four bedrooms in a single-family house. They're not gonna have as many school children over time, say 20 or 30 years into the future, Mr. Dochney went on to explain that it may change as sometimes new construction starts off with high rents and not everything stays luxury housing forever so that might change 20 years from now but a lot of things could change 20 years from now but I would find that fairly credible, that one in two or people who are empty nesters. moving out, looking to downsize and not a single parent. household with five children they're usually not looking for a brand-new construction, one bedroom apartment. Mr. Foster then asked about the monthly proposed cost to lease the one or

two bedrooms. Mr. Dale then stated, on our project in lawn side, which opened about 18 months ago, the one-bedroom rents are currently between 2,000 and 2,200 a month. The two-bedroom rents are over 2,500, they're advertised online. Mr. Ballak then raised a concern about Harker Ave going across and how that may impact the plan. Mr. Ballak stated, you might have been a little surprised by what you heard tonight and what kind of impact that would have. I don't know if counsel would be obligated to address that or how that may play into the future but then also I know from driving down Harker the road is pretty narrow so I don't know if they're gonna be talking about widening Harker or what kind of improvements are gonna be made out on Harker Ave with any kind of sidewalks and stuff like that or is that something later on when they get to the actual site plan application. Mr. Dochney stated that the front of the redevelopment area of that property, I think it was lot four up there, perhaps has limited frontage on Harker. I don't know if you could require them to improve the entirety of Harker from Route 73 all the way down to the railroad tracks as a part of a site plan review. That might be something that could be negotiated into a redeveloper agreement since this is a redevelopment area, it does allow for a wider range of offsite improvements than a typical site plan would. I had no idea that the state was gonna be closing that railroad crossing at Harker Ave so there's nothing in this redevelopment plan right now that addresses that but at the same time, I don't know that changes much because not having done a traffic study that 90% of the traffic going to and from this site and going by the site is all on route 73 and not people coming from downtown Berlin and crossing Harker Ave to go up there but again, I haven't done any sort of traffic study, but my assumption is route Rt 73 is obviously the higher order road here in the hierarchy of streets. I don't know that it changes much other than probably even less traffic would then be going to that Harker Ave entrance, that's proposed on the west side. Councilman Wilkinson, then stated it would probably be less traffic. Mr. Ballak then stated that his only other concern is that on the other end of the development, where you have it coming out between the two buildings, it does look as though the road comes right out at the, the existing business right there instead of picking up onto the one road, there may be legitimate planning issues for that, it just seems like it should be set back further or will it be reconfiguring that so it comes straight out into that road. Mr. Dochney explains that the redevelopment plan allows for one access point from Oak Lane and that doesn't specify where that needs to be. The exact location will be in the future when they come in with a site plan and that could be something to be addressed at that time. Mr. Ballak stated he was just wondering what the reasoning behind the thought was, it to keep the residential back from Rt 73. Councilman Wilkinson stated, that having traveled on that many times in the course of work, better off having your exit back where it is because you're not supposed to be making the right hand turn off at route 73 on to Taunton so if you plan on going onto Taunton off of Rt73, you're supposed to be turning onto oak. If you put the exit right at making the intersection, I think you're probably need a light, people exiting the apartment area to have them back off the area where people coming off at Rt 73 are going to be using it as a jug handle. Mr. Ballak asked if the property owners will get specific notice of this redevelopment plan and Mr. Dochney then explained when the site plan is submitted, they will then send out the 200-foot notification. That could be six months from now or two years from now. Mr. Ballak stated if they follow the municipal website then they will know. Chairman McGowan then asked if any other questions, no questions so he went on to say if there is a motion to send back to counsel with the stipulation of 258 plus or minus. Mostly one to two bedrooms. There will be a component that there will be three, so about six to ten of them will be three-bedroom components to meet the COAH requirement. Total COAH is around 38 to 39. Chairman

McGowan asked if there was anything else to add to it? No response so Chairman McGowan asked for a motion. A motion was made by E. Earl and seconded by F. Ballak.

Roll Call:

Mayor R. Miller – AYE
Councilman M. Wilkinson -AYE
M. McGowan -AYE
K. Ryker -ABSTAIN
D Pomponio -AYE
M. Foster-AYE
F. Ballak -AYE
J. Cole-AYE
J. Schumacher-AYE
H. Earle-AYE
E. Hahn-AYE

NEW BUSINESS:

Case 23-05
Gujjar 1, LLC
33 S. White Horse Pike
Block 1108 Lot 1
Amended Application
Use “D” Variance

Mayor R. Miller and Councilman M. Wilkinson excused themselves since the next two application are under a use variance.

Bob Baranowski, the attorney with the law firm of Highland Lavin Shapiro and Marlton representing the applicant for Gujjar 1, LLC in this matter. Mr. Baranowski stated that this is an amended minor site plan application and a use variance. It's a D two use variance for the coastal gas right up the block at the corner of White Horse Pike and Harker. The proposal is very similar to the one that you've seen about two years ago, to convert the service garage to a convenience store. Retail convenience stores are permitted in the zoning district with the gas station use is not. It's an existing nonconforming use so it's necessary to seek D variance relief from the board to expand the use of the site and to have two principal permitted uses at the site, we are seeking that relief tonight. I have Kris Kluk with us, he is our site plan engineer, Mr. Jim Miller, is our planner, and the owner and operator Mr. Gurender Singh. The site plan is essentially, it's the same as what was previously before the board, but the exception that, the large propane holding tank has been removed, it's essentially the same plan and the aspect of converting the garage to the convenience store two years ago, that aspect of that plan was approved. The aspect that involved the big propane filling tank was not approved. The proposal will be the amendment is to still do the convenience store and replaced the garage with the convenience store and to take the large propane filling tank off the plan. Mr. Baranowski stated that the Collier's engineering review letter that's dated June 6th and the CME planning review letter that is dated June 5th we don't have any issues with any of the comments. Mr. Baranowski stated that they agree to

comply with the comments and to provide testimony as requested. And I think our professionals have had a little bit of a chance to talk and we can address some of the issues that require testimony as we do our presentation, we are seeking to have the eight parking spaces. I think a total of 8.4 was required. Mr. Baranowski explained that a condition of the prior approval was to try to fit a ninth space in there, Mr. Kluk has worked very hard at trying to do that. I don't think that one fits in there, but I think the eight parking spaces would be sufficient for the use and we can give you some testimony on that. Mr. Baranowski went on to comment on the letters in general, we're agreeing to do hairpin striping on the parking spaces as was recommended and the proposal as for as some landscaping along with creating a barrier between pedestrian traffic on the White Horse Pike and the dry vial and putting in the gasoline filling station. We'll work with your professionals to put in the landscaping planters to add aesthetic enhancement to the front and to create that physical separation between the vehicles who are filling up their cars and pedestrians walking along the white horse pike. There will be no utility work associated with the proposal, like running new gas or electric or anything else. Everything is there. We did request a waiver from submitting the environmental impact statement due to the fact it's an existing developed site. The hours of operation will be the same as the gas station so the store and gas station will operate during the same hours, which is 6:00am to 10:00pm on most nights, Monday through Thursday, and weekends just till 11:00pm. There will be two additional employees to handle the convenience store duties to be very minimal delivery box truck type of deliveries for sodas and snacks, things like that. There is a loading zone provided for that and an existing trash enclosure area, the existing trash facilities will be sufficient for the proposed use. Mr. Baranowski stated that the conversion of the service station to the C store will really kind of enhance things, enhance the operations, cars will not be parked there sitting and waiting to be fixed and so forth. Mr. Baranowski feels that it will aesthetic improvement overall to the site. The materials to be used for the building, we are going try to match existing, it's like a brick red facade and we'll replace existing facade signage and the existing freestanding signage just to add some reference to the convenience store. The Borough's attorney, Mr. Norman, sworn in Mr. Kluk, Mr. Miller, and Mr. Singh. Mr. Baranowski then asked Mr. Singh, did I accurately state all the facts involved with the employees and hours and so forth? Mr. Singh responded, yes. The attorney for the board asked Mr. Kluk if his license is still in good standing and Mr. Kluk answered yes. Mr. Kluk then proceeded to go over the plans, we're going to convert the three-day garage into convenience store, which will make this operation much cleaner. You will not see cars parked all over the side. We are providing eight parking spaces and parking spaces underneath the canopy cause it's difficult for drivers to have gas and convenience store. We have considered fuel station places as parking; we didn't use it but that's an option. We are going to relocate the existing cooler or basically we have proposed cooler, and it'll be located on the other side of the building. That's the major change which we have. The closure is going to remain there but we're going to fix the closure because it is in bad shape right now. We do not propose any other improvements. We basically have one handicap parking spot and from this parking spot, there is a doorway to the building. There was some confusion about grading and location of the door, initially we had this door for the building closer to this side, but the owner decided to move it further away, which makes sense and we recently failed to provide new grading plan for that site, but we have all topographic information. These are very minor adjustments, which I have already discussed with your planning board. Mr. Norman asked if this was a new plan with the elevation? Mr. Baranowski responded that it was submitted, and it was in the package that was option one and option two and this is option one. Mr. Baranowski stated that this shows where

the sign would be, generally the facade will be brick as indicated. Mr. Kluk showed the board the area where the landscape planters and the buffer are going between the pedestrian and vehicular traffic. A sidewalk and gas station, so basically the area planters will be someplace over there.

Mr. Baranowski then asked Mr. Kluk if in the review letters, technical comments and so forth, we have no problem addressing those, correct? Mr. Kluk stated no issues. Mr. Baranowski asked if there are any other questions on the plans. Mr. LaRosa wanted to clarify that they are requesting a variance from nine spaces down to eight. Mr. Kluk confirmed that is correct. Since there were no other questions from the board for Mr. Kluk, Mr. Miller stepped forward with his testimony, part of which addresses the request for the variance to have eight spaces. Mr. Miller then gave his qualifications, for the record, Mr. Miller is a licensed professional planner in the state of New Jersey certified by the American Institute of Certified Planners as a certified planner. He has a master's in city and regional planning from Rutgers University, both certification and license are current and was the borough's planner for some years in the past. Mr. Miller then testified that this is a property which is in the C2 commercial district. The zone permits a variety of business and office uses, service uses, but it does not permit the service station use, which is currently on the property. The surrounding area is also zone Z two and the surrounding land use patterns call for several uses that are similar in impacting character to this one. There's a convenience store across the street. There is a Meineke facility on the adjacent corner and there's a pizza shop so basically, it's at the end of the town of the boroughs business district where there's a lot of highway-oriented type uses as opposed to the more pedestrian oriented uses in the balance of the district. So, in terms of the relief we're requiring, this evening, is a D two variance to modify a preexisting non-conforming use. We also have two bulk variances. One is to allow a 25.5-foot side yard setback where 40 is required and 35.5 is existing as our engineer explained that's to accommodate the transfer of the cooler from the one side of the building to the other also the variance for the parking spaces where nine is required and we're proposing eight. So basically, that's the relief we're seeking. A preexisting non-conforming use. The requirements for that type of variance are more relaxed than they are for typical D variance. I would also add that the bulk relief can be subsumed within the D variance and can be argued simultaneously, a legal decision called *pricevgi*. Mr. Miller stated that they must show that the relief they are seeking would advance the purposes of municipal land use law. Mr. Miller believes there are three purposes that this relief would advance purpose. A, to encourage municipal action and to guide the appropriate use of development of all lands in this state in a manner will promote the public health, safety, morals and general welfare purpose g to provide sufficient space and appropriate locations for variety of agricultural, residential, recreational, commercial and industrial uses at open space, both public and private according to the respective environmental requirements in order to meet the needs of all New Jersey residents and that those citizens rather, those are both purposes that deal with the appropriateness of the site and also purpose eyed to provide a desirable visual environment through creative development techniques and good civic design and arrangement. Mr. Miller proposal enhances the aesthetics of the property in question. Mr. Miller then stated the positive criteria, which are the special reasons that would justify the relief for seeking with a pre existing, non-conforming use. Mr. Miller went on to say, there is a case law that states, basically that you can justify the expansion or modification of preexisting non-conforming use if that expansion serves to modernize the use and allow it to accommodate to current real estate or marketing trends and the basis for that is it would be unfair to burden the use and not allow it to accommodate to the changing conditions

within the marketplace. Historically, service stations provided repairs, but as cars have become more highly specialized and there's the growing trend towards electrical vehicles, all these different trends have meant that there's a growing pattern of converting repair facilities to convenience stores basically because there just isn't as much demand for the, the repair services there has been historically and the use is evolving so that instead of combining the service station aspect where the fueling takes place with repairs, it's now more common to accommodate that with some sort of convenience store. It's not the kind of convenience store, like Royal Farms, which has a much more extensive product line than this type of store would have. This is basically something where if somebody stops for gas, then pops in to get a snack or whatever. Mr. Miller went on to explain that what this variance basically does is allows this service station to accommodate that type of customer by enhancing its convenience, their operation and in consistent with the trends for this type of use around the state. Secondly, it's also another justification for modifying the preexisting nonconforming use is if the modification results in an aesthetic enhancement to the property and Mr. Miller thinks that the already heard testimony from the engineer, that one of the benefits of this application is that by removing the repair facility, you also remove the need to store vehicles that are awaiting repair and those vehicles tend to stack up along the parking lot, the edge of the parking lot and they're just not aesthetically as appealing and the overhead garage doors and the character of a garage isn't as appealing or consistent with the aesthetic character of the main street as the convenience store facade would be. Mr. Miller states that there is a significant aesthetic enhancement that comes from this application and finally, he believes that the app, the site remains appropriate for the use given the character of the surrounding land uses. Basically, Mr. Miller has an identical but more intensive example of the same use across the street with the royal farms and other automobile oriented uses like the pizza shop and the Meineke business so basically it's consistent with the character of this immediate area of the commercial district so for those reasons, Mr. Miller believes that the application meets the positive criteria in terms of the negative criteria, we have to show that there's not going to be a significant or substantial impairment of the public welfare or the zone plan and zone ordinance in terms of the general welfare prong of those criteria usually that's a function of how the use affects the surrounding uses. Mr. Miller went on to explain that other commercial uses within the C2 district and as I've already testified there are very similar in their impacting character. So, I think that the intensity of the use is going to be reduced by this conversion from the repair facility to the convenient, more banded convenience store for those reasons, Mr. Miller believes that there's not only a substantial detriment to the public welfare, but there's an enhancement because of this application. In terms of the impairment of the tender purpose of the zone plan, Mr. Miller stated, the most significant factor in that regard is that this use by converting the service station repair facility to convenience store is making this use this, this dual use of the repair and the, and the fueling more consistent with the zoning than it had been historically because the convenience store is, is a permitted use within the district, which permits retail and service uses. This application is going to make the facility more consistent with the underlying zoning than it is currently. Mr. Miller stated that alone advances the zone plan and zoning ordinance. It certainly doesn't impair it in any way. Mr. Miller thinks it's consistent with the master plan and the extent that it is making the use more consistent with the underlying zoning and for those reasons, I believe there is no substantial impairment in the intent or purpose of the zone plan and zoning ordinance and that the application was satisfy both the positive and negative criteria. Mr. Miller also wants to give some specific testimony regarding parking. The deviation from the parking standards is 0.4 spaces and I believe that deviation is

fully justified by two factors. One is that there are probably going to be a few customers who are going to park within the canopy where the fueling stations are to access the convenience store, which generates at least probably parking comparable to the 0.4. Secondly, this type of convenience store doesn't generate the kind of activity that a Wawa or Royal farm would generate. It's a much more lowkey operation. The trips in and out are quicker because there isn't as much diversity in the product line. You're only going in there to get a snack or something. Whereas if you go to Royal Farms or a while, while you might be waiting in line to get a sandwich and there is a more extensive array of goods, so you're in the store longer and basically from what Mr. Miller observed over the years, this type of use just doesn't generate the same amount kind of traffic as, as a typical retail use would generate. Mr. Miller feels that the eight spaces is more than sufficient. Mr. Miller asked if there were any questions and the engineer for the Borough, Mr. LaRosa, asked, as far as employees go, how many total employees are expected. Mr. Miller answered two or three at a time. Mr. LaRosa stated that all the items in his letter were addressed this evening and a degree to comply with all the requirements, the engineering, the grading, the regrading, the turning template for the parking and the circulation. The borough's planner, Mr. Dochney added in terms of actual comments to be addressed in terms of the landscaping along the frontage, Mr. Dochney would like to see both along the frontage where the desks are, as well as a little bit of screening for the frontage where the five parking spaces are. Mr. Miller replied on the southwest corner of the property. Mr. Dochney then agreed that they can work with his office and the landscape architects and make sure that they meet the criteria for the sizeable planters and not going to Home Depot and getting a couple of quarts size flowerpots and putting a handful of those out there. They're substantial that they do act and kind of mimic the feel the brick and knee wall along all downtown of the White Horse Pike here. Even though this is outside the C one, it's in the C two. It is to some extent an extension of the downtown and sort of at that gateway into the downtown so they can provide sizable planters in, in lieu of actually digging up the asphalt to plant trees there, that's what we would be looking for, explained Mr. Dochney. Then Mr. Dochney went on to say that the only other comment is in spite of everything that Mr. Miller just said, I am not entirely sure how much of it was really necessary because looking back at the resolution from two years ago, virtually everything they're proposing right now was already approved by this board, for the D one variance to expand or the D two to expand as well as the D one variance to allow multiple permitted use multiple uses on the same site that was approved by this board two years ago. The only thing that was denied in that application was the propane tank on the north side of the site and they removed that, so this application is them being conservative and making sure they get whatever approvals they need and is on record. This is an amended site plan that went along with the previous variance as opposed to a brand-new variance where the criteria were necessary. The amendment was also the condition of approval to provide a ninth parking space so that is an actual new variance that's necessary. Mr. Dochney then went on to say, that a new D-one variance or D-two variance was necessary because the conditions are, they're proposing now seem to be, other than the loading area in the parking spaces seem to be identical to what this board approved two years ago in terms of taking out the service station and expanding that into a convenience store. That deferred to Chris in terms of the legal requirement there, but the resolution expresses that was already approved. Mr. K. Ryker asked if the ninth spot was on the original application, that was approved, and Mr. Dochney explained it was approved subject to them working with Anthony to develop a ninth spot. Mr. Miller then stated that it's not possible, from the plan, we have optimized the perimeter of the property with parking. You can't really put

it within the area where the surface pumps are and so there wasn't really an option to add a nice space. Mr. Miller stated to comment on, Chris's comment, because we didn't have a compliance plan and because there were some changes to the plan, we thought for the sake of the record and to have a clear resolution going forward was better to put all the testimony on the record. Mr. Ballak then asked if there were any other kind of restrictions or comments that we imposed in the prior the old plan, that we need to carry over. The board doesn't have the old plan in front of them to see if there were other conditions that we had. Mr. Miller stated that the landscaping. Mr. Ballak then stated to come back to amend a plan from A to Z and not have the old plan in front of us. Mr. Dochney then stated that he probably has the prior plan in here in his folder, but the only conditions in the previous resolution of approval are that the 1000-gallon gas propane improvements as is accepted from the approval. The minor site plan along with the variance relief to permit conversion of the auto repair shop to a convenience store within the existing building subject to coordination with the planning board engineer on the provision for the addition of a ninth parking space and coordinating with the board planner on the provision of additional landscaping those were really the two conditions were the ninth parking space and the landscaping along the frontage. Mr. Miller then commented that they have addressed. Chairman McGowan then asked if there were any other questions and Mr. Earl asked to clarify the trash enclosure, is it suitable. Mr. Earl stated that it looks sloppy and then you see these facilities where there's cardboard just piled up, the question is more for Mr. Dochney, is that appropriate? Just one, like you always see the second one just landing on a parking lot, and it looks terrible. Mr. Dochney commented that he has seen some that are bad. At a lot of the smaller gas stations Mr. Dochney has seen smaller dumpsters. I don't know if Anthony knows more about an adequate size for a trash enclosure. The Borough's board engineer, Mr. Larosa then stated with the retail frequency end of this thing, the concession there, the food mart end of it, you had testified that you're going in, you're buying soft drinks, getting a snack. I would suppose that would create less trash than if you had like a Wawa, which again has a ton of stuff in and out. A ton of cardboard, a ton of trash generated, even for people that are there to get gas, toast some stuff out as you going to get their coffee and stuff. We will work with Chris to make sure he develops a trash enclosure that's going to look good and it's going to be adequately sized to accommodate use. Mr. Ballak asked if that had to do with the frequency of pickup. Mr. Kluk stated that they will make sure the size and the aesthetics of the enclosure are addressed and any other issue can be resolved through the frequency of pickups. Mr. Dochney then stated that the other thing in terms of the volume of trash, the size necessary is also somewhat dependent on how frequently they're getting deliveries of boxes of things. A convenience store like this is mostly non-perishable items and not things where they're going to be taking it with them. I don't know how they come, you get cans of Pringles or bags of chips and other things come packaged but it's not going to be anywhere near as frequent as Royal Farms or wall walking, getting daily deliveries of chicken and roast, beef and cheese and other perishable items and the little assortment of fruits and veggies they have in that little center aisle. Mr. Kluk stated, there is no cooking, no preparing sandwiches or food. Mr. Dochney stated that two years ago there were no prepared foods, they are all pre-packaged and Mr. Kluk said correct it is still the same. Mr. LaRosa stated no sandwiches or anything like that and Mr. Kluk again agreed, no packages not even coffee. Chairman McGowan asked if there were any other questions from the board and Mr. Hahn asked about the trash pickup and if there is only one entrance right into the parking lot for pick up. Mr. Kluk asked Mr. Miller to address that on the plan for the trash pick. Mr. Miller explained that the radius is appropriate for picking up the trash from the enclosure. The template

that exists right now is serving. Mr. Hahn then asked if there were two ways to get in. Mr. Kluk stated that there are three points of ingress and egress and then Mr. Miller pointed them out on the plan. Mr. Kluk stated they will provide the template to show on the plan how it works. Chairman McGowan then opened it up to the public there were none seen or heard, and he then asked for any final comments from the board and Mr. Pomponio asked if this was still one variance on the table and that's the parking for eight not nine? Mr. Baranowski explained that there's a lot of existing deviations, but there's two new variances. One is parking, the second is to have a smaller setback on the southern property line because of the cooler being relocated. Mr. Dochney stated that the setback was covered by the prior. The attorney for the board verified that it is one variance, the landscaping and coordination with Mr. Dochney's office and with Mr. LaRosa regarding the trash enclosure details, no prepared foods and add the term template. Mr. Baranowski asked if they could ask that the revalidation of the setback because if someone reviews the resolution, they want to make sure it is clear. The attorney for the Borough's board said, absolutely. Chairman McGowan asked if there is a motion for this application, A motion was made by F. Ballak and seconded by D. Pomponio.

Roll Call:

Mayor R. Miller – EXCUSED
Councilman M. Wilkinson -EXCUSED
M. McGowan -AYE
K. Ryker -AYE
D Pomponio -AYE
M. Foster-AYE
F. Ballak -AYE
J. Cole-AYE
J. Schumacher-AYE
H. Earle-NAY
E. Hahn-AYE

Case 23-04

**White Horse Pike/Jackson Road
Block 1400 Lot 1.12
Use D Variance
Site Plan Waiver**

Richard Wells from the law firm of Archer and Grinder on behalf of the applicant, Whitehorse Jackson came forward to give a brief statement about the application, while handing out sized copies of their exhibits. Mr. Wells went on about the application for White Horse Jackson LLC. Mr. Wells explained that the use variance relief to convert the existing vacant PNC bank building into a member only or social club for the enjoyment and professional practice of the game of pool. This is with respect to the property located at 180 3 South Whitehorse Pike. It is identified as block 1400 lots one and 12. It is also in the borough's C2 commercial zone. District notice of this application was published in the Courier post on June 29th and was served to all those on the certified 200-foot list provided by the borough. And proof of those notice materials was also provided to the board secretary and solicitor for review. We therefore submit to you that we are squarely before this board's jurisdiction this evening as a zoning board of adjustment.

Mr. Wells explained the exhibits that were previously submitted. They are also pre-marked, and he does have several copies available for members of the public. Mr. Shane Bernat, who is the owner and applicant for the property, was sworn in by the Borough's planning board attorney, Chris Norman. Mr. Bernat stated that he is the owner of White Horse Jackson LLC, and the subject property for approximately a year but within that year Mr. Bernat has attempted to sell it and have not received any offers on the building. Mr. Bernat also has some experience in real estate, sales, and development. Mr. Bernat is a pool player in the American Pool Players Association league, for about three years. Mr. Bernat explained that this is the largest covering body of amateur pool in New Jersey and nationally. Mr. Bernat stated that he usually practices and plays at the Wood Brier, where we play regularly and there are no reserving tables, it's on a first come first basis. There are roughly over a hundred teams that play in the surrounding area. Mr. Bernat stated that the difference between going to play at the wood brier versus the setting that I am trying to create is, we're looking at being able to reserve specific table time so whatever date you know, you can already preschedule your table time so that you know that there's availability there and the equipment going to be a little bit better than what you'd find at a bar, the correct space between tables, the correct size of the tables, everything up to the APA regulation. Mr. Bernat confirmed that this is for hobbyists, semi-professional, anybody who wants to get involved in the sport, somebody who takes it seriously enough to have a membership. We will be proposing to have roughly six to seven tables in the facility that are seven feet by three and a half feet tables. Mr. Wells then stated that this would require some space. It's not your average commercial storefront and this property that you own and you're proposing to convert, does it serve your unique space requirements? Mr. Bernat answered yes to both questions. Mr. Wells went on to ask if Mr. Bernat will need to alter structurally, the interior or the footprint of this building at all to serve those needs. Mr. Bernat responded, no. Mr. Wells asked Mr. Bernat if this was formally used as a bank, Mr. Bernat confirmed, yes. Mr. Wells then asked based on your real estate experience previously, is this something that you would call kind of a specialty property. Mr. Bernat responded, absolutely, they're difficult to modify to turn into a different use, that you typically have a large vault typically encased in concrete, it's very difficult to remove so you either have to plan around it and try and utilize that space in the best way possible or obviously the highly costly way of doing something would be to remove it completely. Mr. Wells then asked Mr. Bernat, this specialty property obviously focused on a bank, how long, based upon your knowledge as an owner, has it been vacant? Mr. Bernat stated Six, possibly seven years.

Mr. Wells asked about the surrounding area of this property on the White Horse Pike and Mr. Bernat responded that there is a diner down the street, a Rite Aid across the street, two convenience stores nearby, a brewery, Pizza shop, are there a few fast-food places, dunking Donuts, and then generally the surrounding areas is bordered by other small commercial retail shops. In Mr. Bernat opinion, as a pool player, as a hobbyist pool player, these surrounding uses to be compatible with Mr. Bernat use and that's because his intend is to patronize those or patronize those uses. Mr. Wells asked for an overview of how that relationship would work. Mr. Bernat stated that it's a social setting when you're shooting pool involves food and drink and the surrounding businesses will obviously garner the patronage from the pool players that are visiting the court. Mr. Wells stated that six to seven pool tables are exhibits and you will focus on exhibit three. It's two sheets, which is an architectural rendering of the proposed interior. The

interior does show kind of like a bar and a lounge area, correct? Mr. Bernat stated that Mr. Wells was correct.

Mr. Wells stated that Mr. Bernat is not planning to have any type of liquor license here at all, correct? Mr. Bernat agreed, there is no club license, bartenders, or servers. Mr. Bernat verified that there would be no commercial kitchen, not even a microwave, so no food being prepared. Mr. Bernat stated that there is no liquor license, it would be a BYO. Mr. Wells then stated that this would be a professional environment that would not have a liquor license, but they can bring their own beverages and it could be alcoholic if choose and that is why the limits members over 21 and the goal is to practice and compete, and Mr. Bernat agreed. Mr. Wells then asked if someone under 21 wanted to come in are they required, to be accompanied by a 21-year-old member and Mr. Bernat stated, yes. Mr. Bernat agreed that there will be written rules and regulations. There will be plans in place for self-govern for anyone member that drinks a little more then they should and that is consistent with other social clubs, that they frown upon this, that we reviewed in preparing for this. Mr. Bernat's intent is to create a sense of community so that no one wants to be the person kicked out for drinking too much, in fact, that's, that's an offense that would terminate your membership so any disturbance about drinking too much, causing a scene, being louder than you should anything outside of a professional pool environment is grounds for terminating membership, Mr. Bernat agreed. Mr. Bernat also advised that there will be no smoking inside the pool hall; the smoke-free Air Act prohibits you from just deciding one day to allow people to smoke inside. Mr. Wells asked how the members will access the pool hall. Mr. Bernat responded; every member will have a digital key card, using their phone. Mr. Bernat can tell who is entering the building and when they enter the building. The peak hours would probably be around 6pm. Mr. Wells then asked on a good night, do you think the last few people would be trickling out around 10 or 11pm, and Mr. Bernat agreed. Mr. Wells asked if that is what is going to be scheduled during the week hours and Mr. Bernat responded, yes, league play is already set and it's two teams per table is how it works. Each team has five shooters, shooting that night so it's already pre-scheduled. Those tables that would be strictly used for league, but we will have tables still reserved for our members that do not actively play in a league so if you would like to become a member but have no interest in shooting in a league, you would still be able to go there and practice and play without interruption from the leagues. Mr. Wells then asked, during those league times, when you have scheduled or preset league play, does everyone show up at once and play at once or is it staggered. Mr. Bernat responded; it's typically staggered. Usually, people come in at different times could be coming from work or going home or maybe they're eating, so most of the time they don't arrive at the same time and most people aren't leaving at the same time. The way it works is if you shoot, you may stick around for a little bit, but you'll typically leave. So, the leaving is also staggered as well. Mr. Wells asked when you have that league play, especially when you're playing at your current locations, is it typical for members to either carpool together or to use ride share services, things like that. Mr. Bernat responded, yes. Mr. Wells asked if a lot of the members from this area, Mr. Bernat responded, yes. Mr. Wells then went on to say that Saturdays and Sundays, it's your intention to have some open member pool opportunity on Saturdays, Mr. Bernat responded, yes, there may be 15 or 20 people that typically will show up and you just play in a rotation, two people are playing against each other on a table, one person loses it goes to the next person in line and that just continues until obviously people start to leave or as if people come in. Mr. Wells asked if those six to seven tables are all going to be used for

league play or is the number lower, Mr. Bernat responded, no, it's a lower number, out of those we're looking at only using four tables max for lead play and the other are used for practice. Mr. Wells then stated that around 30 people on a Saturday for open play may show up, what about your peak times, let's say Thursday night you have a scheduled league time games are going well, roughly how many people would be on site for that based upon using, around four tables for league play. Mr. Bernat responded, possibly, 40 people. Mr. Wells went on to ask about parking on site. The site has 35 parking spaces associated with the building, right and that's not a shared parking arrangement, that's exclusively your parking lot. In our application we capped our membership at a hundred. That of course happens to work out with the borough's parking ordinance, but did you just arbitrarily pick that cap or do a hundred members work with the number of tables that you have. Mr. Bernat responded that the number of members came from the number of tables that we have. Mr. Wells then stated, there's no guarantee that you would even reach a hundred members, let's say were approved tonight, you're able to open tomorrow for some reason. How many members would you anticipate would show up this weekend, purchase a membership and play. Mr. Bernat responded, maybe forty. Mr. Wells then brought up the tournaments for the site. Members use ride share services, you have the correct parking capacity for the site, but you know, league play. When I hear something like that, I think of one major event, per month or something like that where everyone shows up, it's an all-day tournament, kind of like a softball tournament or something like that. Is that how league play works in pool? Mr. Bernat stated, no, then Mr. Wells went on to ask, if it is more consistent where you have scheduled, ongoing competitions that are tracked over time. Mr. Bernat responded, yes. Mr. Wells then stated there is not going to be an event once a month, once a year, whatever it is, where all hundred members show up all day, stay at the site and play nonstop. Mr. Bernat agreed. Mr. Wells then asked if music was going to be played at the site, Mr. Bernat said yes but the building is vacant, it is very echoey and hollow inside however, while you are inside the building currently, you do not hear traffic on the White Horse pike as you're inside. That's how well the building is built and insulated. Mr. Wells then went on to say based upon that experience of just seeing what the building can insulate and your desire to lower the music to a level where you can talk, you don't seem to have any problems with noise here, Mr. Bernat agreed. Mr. Wells then went on about the waste disposal there is, no commercial kitchens, no servers, no bartenders, no food prep but the business members are probably going to throw away some trash, is this something where you expect to need to construct a large dumpster to handle the trash or is this site currently based upon your understanding, the regular bar trash service. Mr. Bernat said the regular bar trash service. Mr. Wells then asked if for any reason that is not sufficient, would you have any hesitations hiring a private hauler. Mr. Bernat agreed to hire a private hauler if necessary and that private hauler would be during normal business hours, it wouldn't be two or 3:00am. Mr. Wells stated that Mr. Bernat is not advertising to the public, it's not a bar, it's not a restaurant so does he need a large signage at this place? Mr. Bernat responded by saying, no, the anticipation is to just utilize the current signpost that exists that was serving the PNC sign previously. Mr. Wells then went on to say that the sign must go through historical commission review. Mr. Bernat stated, yes, he is aware of that. Mr. Wells then went on and said in general, you don't propose any neon signage, changeable copy, blinking, bright or obnoxious, sign and Mr. Bernat responded no it would be consistent with the aesthetics of a private social club. Mr. Wells then went on to say if approved, that would be part of a separate application that you would agree to file as a condition of any approvals, Mr. Bernat agreed. Mr. Wells then stated in terms of general property maintenance, how is that going to be handled, are

the members responsible for shoveling snow and things like that, Mr. Bernat answered, no, everything will be handled professionally. Mr. Wells stated that includes landscaping, snow removal, all exterior maintenance, Mr. Bernat answered, correct. Mr. Wells also stated that the exterior in general, Mr. Bernat don't plan to change the facade from an aesthetic standpoint Mr. Bernat stated, no, he went on to say the nighttime Dropbox that currently exists will probably be removed and the area that housed the ATM that's currently actually like semi boarded up. That will have to be obviously addressed and to make look cosmetically appealing. Mr. Wells then brought up when people hear pool hall some may have a negative connotation as far as excessive drinking, excessive smoking, bike gangs, all that stuff. Is that the type of atmosphere that you're planning to promote here, Mr. Bernat answered no, this is a facility, that's being created for the pool player that takes the hobby seriously, it is no different than any other sport for instance pickleball, they go to the pickleball courts, they're not just doing it in the backyard for instance. if you're paying the membership to go there, you're going there because you enjoy shooting pool, you enjoy practicing and improving and you want to do so in an atmosphere where you're not being disturbed by people that are overly consuming alcohol or in a smokey environment. Mr. Wells then asked since this is a membership-based program, is it Mr. Bernat intention to partner with the borough, have open houses consistent with their community events and line up opportunities for the public to come in and play and check the facility out and it's not going to be completely walled off, Mr. Bernat stated that is correct. Mr. Wells then asked if Mr. Bernat would like to add anything else and he responded that he thinks everything was pretty much covered then Mr. Wells stated that the board planner's report was reviewed, we tried to address all questions via testimony. The only thing that came up was whether we would agree to a shade tree easement along the frontage of the property, we're happy to agree to that. Mr. Bernat agreed that is correct. I think the frontage is a little bit limited to where that could go, but if the borough wants a shade tree easement, we'd be happy to do that and work with the borough separately there. I have no further questions for Mr. Burnett, operationally. Mr. Wells stated he will save his closing remarks to address the D variance criteria, for the end of the application. The borough's attorney, Chris Norman, and Mr. Dochney, the borough's planner both asked about the hours of operation. Mr. Bernat stated that the intention is a 24 hour facility as far as usage, its more perk and a availability to have but I don't see high usage at any hours that would be unreasonable, then Mr. Wells asked if the board was to require as a condition of approval, would you be willing to limit the last scheduled play time to something like 10:00 PM to ensure that testimony we said about trickling out at 11 would be accurate. Mr. Bernat then responded by saying the problem with that is the matches are not timed. So sometimes matches could last two and a half hours if everybody plays rather quickly, sometimes they go four and a half hours and if you can't get the matches in because you have to leave, that would be defeating the purpose of having it as a private club. The idea is to get everyone out as quickly as possible because people do have work. It is only a hobby; this is not something that they're doing to make a living so everybody does like to leave as early as possible. I'm just saying that there are times that it may extend, and I don't want to agree to something that I can't promise. The borough's engineer, Mr. LaRosa, then asked, would people be able to come anytime at night because they have the key pat on their phone to get into the facility and play pool, Mr. Bernat answered, yes. Chairman McGowan asked if Mr. Dochney or Mr. LaRosa had any other questions, the Borough's planner Mr. Dochney answered, not specifically about the operations but with this being a D one-use variance, they will have to address the positive and negative criteria and I think Mr. Well said he's going to provide some follow up. Mr. Wells then answered by saying, no, that was

operationally we just want the board to understand how this is proposed to work. We want to address all comments by the board and the public just before giving the summation. The boroughs planner then stated, I think you already provided this answer without stating it specifically. Part of the positive and negative criteria is showing site suitability. So, my question is, how did you identify this site for this use, it sounds like you already own the property. So, you've been seeking out a site and then you go out to that specific site because you identified this as the ideal spot for your pool league. Mr. Bernat stated, that is correct, the irony there is that the aesthetics of the building itself match a private social club setting, it has a very stately appearance to it and a very high-end look to the building itself, which is suitable. Mr. Dochney then asked if there were any other properties in the borough or even in the region that was looked at. Mr. Bernat responded by saying, the inside must be open, you can't have a lot of obstructions because you need a lot of room for the tables themselves in the walk around area in order to shoot without obstruction. Mr. Wells also stated that the downtown element, the community element is important to being able to foster this, this membership community that you're trying to create. Mr. Bernat said that is correct. Mr. Wells also stated that the ability to patronize the other businesses to have them nearby to walk downtown community feel is what's important to your membership base and that's something that you can't achieve in a warehouse facility. Mr. Bernat stated, absolutely. Mr. Bernat is not aware of any other private pool clubs that operate in warehouses. Mr. Dochney went over the positive negative criteria. They have shown that there's special reasons for this, which is the first part of the positive criteria. Special reasons are one of three things. They can either show that there is a hardship that they really can't use the property for one of the permitted uses. I don't think that's what they're trying to say here. Second, is that the proposed use is inherently beneficial. I don't think that's their testimony here either and I wouldn't consider this an inherently beneficial use either but they're not going that route. The third way of showing special reasons is that the proposed use will promote the general welfare by advancing the purposes of zoning. Then the second prong of that positive criteria is showing that this site is particularly suited for the proposed use. There is case law that suggests part of the suitability means that they need to show that this site, this building makes more sense as a private club pool hall than it does as one of the permitted uses. The negative criteria is they have to show that through granting the variance, it's not going to have a substantial detrimental impact on the community. That means the quality of life of nearby residents and businesses, or the aesthetic character of the community as well can be a consideration and that it doesn't substantially impair the intent and purpose of the zoning plan, which that means both your, zoning ordinance itself as well as the master plan. Private club or a pool hall is not listed as a permitted use anywhere else, that's usually the first thing I would look for in a use variance is you're proposing this site, is it clearly permitted somewhere else, the zoning ordinance wants it to be somewhere else, That's not necessarily the case here and in the master plan, the land use element or economic development element, we did not consider pool halls and that just didn't, wasn't something that came across our brains when, when deciding what sort of uses need to be added or taken away from the, the zoning ordinance. I will also note, this is in the historic district, so any signage changes would have to go before the historic commission for their review since they are not proposing any exterior changes right now, I don't believe that any review of this site planners must go before the Historic Preservation Commission. If they were proposing an exterior change, they would have to go before that body. The removal of the ATM structure probably, it's a very large structure, I don't have any drawings to see what they're doing. Mr. Wells answered by saying, the ATM is just a flat wall insert so it would be removing that wall insert machine and then

breaking that off there. There wouldn't be any change to the breaking façade. Mr. LaRosa, then Borough's engineer, went on to say, engineering wise we had counted spaces out there existing as like 33. The spaces are all over the place, as far as the size and the sizes of the spaces typically need to conform. I understand that you're not looking to make any site improvements, but you will need to provide ADA accessible spaces handicap. So, there will be restriping required which gets you into the space of having to restripe and you would need to make the requirement of the minimum 33 spaces. I did not run through and do a calculation. I didn't run in through and do the design, but I kind of questioned whether you could fit the 33 spaces here. We did request as part of the letter that a layout be provided but we didn't receive that. So that's something that we would require. Mr. Wells responded by saying, our exhibit A two has the spaces as laid out on the site, which include 30, 35 and two 80 a space. Mr. Dochney stated that it shows 31 and Mr. Wells said that was the original site survey. The applicant submitted with the application and in response to your letter we had an updated survey prepared that's A two that lists the 35 spaces properly dimensioned and with 35 provided including two ADA a spaces and 33 required. Mr. LaRosa then went on to say, if I assume that these all meet township requirement days, you could double air pin, which this doesn't show up. I would need some time to review this, make sure it conforms but if you're seeking approval that you will make sure that this conforms to any requirements, engineering wise, et cetera. Another suggestion is that especially tonight driving it after it rains that we've had the parking lot is in sum at disrepair. Something should probably be addressed if you're looking for approval there, potholes, and things like that. It could be fixed maybe a seal coating and then striping, if you want to keep the appearance of the lot up and of your business up, it's probably a good idea to address that. None of those things would trigger anything as it relates to stormwater quality or anything else like that. It's basically just cosmetics to take care of. I'm sure that the people that live in the area would help to upgrade that particular property and it's something that should be considered. That's all that I have as it relates to the engineer. Chairman Mr. McGowan asked about how is the policing going to work. You stated that it's going to be a 24-hour facility that people can have access to, is somebody going to always be there, a representative of yourself or the company or the club or if not, how is security handled? Should something get out of hand inside, spill out to the outside. Mr. Bernat responded by saying, security will be used, there will not be somebody there at all times, but we will be using security systems and cameras to monitor what goes on there, essentially it's self-governing to the degree, we will have this written in our rules, regulations, by laws that if you are caught being overly intoxicated, if you are involved in any type of violent altercation of any kind, it obviously the police may be involved but other than that you will be removed and not welcome back and your membership will be forfeited. Chairman Mr. McGowan asked, does the police department get notified that something is going on down there? The camera is not being monitored a hundred percent of the time but in a setting like this, should something occur, how does that information get out? Does it fizzle at itself and then you see it on the camera the next day and handle it or is somehow it gets taken care of at the point of when it occurs? Mr. Bernat responded that it would be the former essentially unless I am made aware of any product on the market that would produce other results. Chairman McGowan then asked, being a members only per the testimony, but you have mentioned on the weekends, open pool, does that mean non-members can come in, if the public wanted to come in and give it a try, are they allowed in or is open pool still for the members but open pool slots so they can come in first come first serve. Mr. Bernat responded, we're looking at having open houses so that the community can come in and experience it and see if it may be even something that somebody that hasn't experienced pool

before says, hey, this looks cool, maybe I would be interested in joining. Chairman McGowan then asked if any other questions from the board and Mr. Pomponio had a few questions, Food and drink you explained is bring your own, is there any limits to that? In other words, just beer, hard liquor or is it strictly bring whatever you want? Mr. Bernat said it is whatever you want. Mr. Pomponio asked if the building is two stories and Mr. Bernat said yes and then Mr. Pomponio asked if all tables are on the first floor and Mr. Bernat stated that four tables are downstairs on the first floor. Those are the tables that would be primarily being used for league play during league hour, during the league hours of operation. The three then we were looking at having two to three tables upstairs and that's very much so the more private area for the members as well as the lounge area up there. Mr. Pomponio asked if Mr. Bernat plans on keeping the clock and maintaining it because that building is not a historical building, but it is a very old building. It's kind of like a landmark of some point in entering Berlin. The clock has become somewhat of an icon. We've taken up donations and so we've had it repaired in the past when PNC was there. So that's the reasoning for my question. Keep it in working order and, and aesthetically in good condition? Mr. Bernat responds, absolutely. Mr. Pomponio then asked if there was any way instead of a 24 7, could do last call, last session, that would allow the facility to close like two or something. Mr. Bernat responded by saying, the basis behind the 24 7 access is almost like a 24 7 gym. It's really appealing to the person that has either difficult work hours or for somebody who can't sleep as far as the 24 7, we don't see that being like a rowdy scene after 11 o'clock and as far as the sessions that we're talking about, again, league plays only usually runs to about 11 o'clock, give or take a little bit. That's not something that will be running during the 24 7 access. Where there is a lot of people, it's really catering to the pool players that thoroughly enjoy the hobby and want to practice when they have availability, this is essentially giving people the opportunity to practice that don't have the availability of having a pool table at their home. Chairman McGowan asked if there were any other questions from the board and Mr. Earl asked, there was a note about the 50, the building's 5,200 square feet but you're renovating 3,600, is that correct or what's the other space left for? Mr. Bernat responded by saying over the lobby area there is a drop ceiling from the outside it looks like it would be two stories but it's not. Even inside, you have a ceiling, it's a little bit raised in the lobby area but that goes all the way up. So, as far as the footprint of the building would be 5,200 square feet but it's not fully usable. Mr. Hahn asked does this private pool hall concept exist anywhere else in the area, Mr. Bernat stated not currently, then Mr. Hahn asked about the cost of the membership, Mr. Bernat responded around \$85.00 a month, it's to eliminate everybody that wants to come in. If you have it at \$15 a month, anybody can join. This is your premier place to practice and shoot and play pool. Mr. Hahn asked if there are no employees, how are the table getting cleaned. Mr. Bernat responded, the facility will be cleaned professionally by a cleaning company, and I would be the owner operator and I shoot pool like three nights a week so I would be there almost all the time and even if I'm not shooting, I'm still probably going to be there. Mr. Cole then asked if everyone playing in the league is required to be a member. Mr. Bernat responded that there's the cap, the way it would work is if you house your team there, then the captain will have to be a member and then it would be based on a guest fee you have to be registered and apply, but you would pay essentially a discounted price strictly for that purpose because you're affiliated with either the APA or the vca, which is the two premier leagues in our area. Mr. Cole then asked, theoretically instead of the hundred members that you're front around, could it be 500. You said there's a hundred teams, five guys per team. Theoretically between a member and a guest, there could be 500 people floating around in there. Mr. Bernat states, no, because the guest fee, if you will, does

not consider membership and the number of tables, the amount of shooters will limit the amount of people in there at one time regardless. Mr. Cole said your intent to take the lead play out of bars and put it all there. Mr. Bernat responded, no, actually what we're looking at doing is adding to, what we're finding where this concept really developed from is the shortage that we're currently experiencing with facilities to shoot to shoot out of there is most of the pool tables were housed in your dive bars and they are slowly but surely closing up shop I either that or being purchased and being renovated into a sports bar or something and the tables are being removed. So, there is a gradual shortage that's been occurring and that's really where this idea came from. Mr. Hahn stated without the private aspect of it. there are successful poles halls around here. Mr. Bernat responded by saying there's one down in Somerdale, south Jersey billiards and there's a couple but they are a little far, AC Billiards Club down in Egg Harbor Township and then there's also Burlington Private Billiards Club up in Burlington. Those are like the three in the area. Mr. Ryker then asked if those are 24 7 hours of operation establishments. Mr. Bernat responded, no, I believe, I can't speak for sure, but it would be my understanding that they operate more under the hours of a bar because most of them I believe have bars in them and surf food as well.

Mr. Ryker then recap, by saying the number of pool tables downstairs would be four and that would mostly be the league and you said it would encompass two teams of five shooters so 10 people per table and then you have three tables upstairs so what would be, if every table was completely full, the maximum number of occupants inside the building. Mr. Bernat responded by saying, downstairs you would have 40 and upstairs it would vary obviously because it's not being used for league play, they are being reserved strictly for the person who doesn't shoot in league and would like to go practice. If we occupy every table with league, then again that kind of takes away from that person's private membership that they can go there anytime and practice the way they'd like to. Mr. Ryker said he will address the elephant in the room. If the board asked for not to be a 24 7 operation and to have an agreeable time for occupancy, how would that impact your business model and would that be something that you would be up for conversation. Mr. Wells answered by saying, the short answer is yes, open to that discussion and understanding that it's probably more focused on closing time. I think the opening time would also be reasonable, it wouldn't make sense to close at midnight and open at 1:00 am, that obviously would not make sense. So, we would have a reasonable opening time just consistent with the hours that most people would use it. I think you mentioned few people use it in the mornings so overall we would be agreeable to having that conversation closing at an hour that the board finds appropriate, consistent with other businesses in the area and then ensuring that the schedule is adjusted so that the last games are started around that time. Mr. Ryker stated, in looking at some of the establishments that we have in town that are pretty heavily frequented, for instance, they close at 11 o'clock on the weekends and there's a reason why there's this many people in the public that are here in the room, older building been vacant. I think the fact that you want to keep the facade the way it is and to the questions that Dan asked, there is a lot of benefit here. If you truly want to be part of the community, I think you have to be respectful of the community. As a member of other social clubs, I can tell you that this self-governance aspect with alcohol, specifically the police are not typically called, it's something that just stays inside. The members try to make sure that they do the best that they can to monitor that, but things do spill outside. So, for the folks that are sitting here in the room looking at the drawings that you're provided, I think it's a very cool concept. I think that if I backed up to this establishment, it'd be great to see that it's being used but if I have young kids, I would have an issue with the fact that there could be

people in the parking lot or two or three o'clock in the morning, so, if there's an opportunity for you to surely be a part of the community and we can work something out and granted the public are going to come up and probably echo some of my sentiments, I think we could probably find a compromise here. Mr. Wells then asked Mr. Bernat if that was agreeable, and Mr. Bernat agreed. Chairman McGowan asked if any more questions and Mr. Cole just one more comment and I don't know with the change of use from this, would that open up anything with occupancy maximums, with fire code and that kind of stuff that they have to. Mr. Dochney stated they'd be subject to whatever the fire marshals' review is so, I don't know what the occupancy limit is on this, but usually fire code occupancy is much higher than what the parking requirement's going to be. So right now, their parking, is 35 so that they're basically capped at about a hundred members or occupants at a time. Cause that's how that meets your parking code. The fire code could be 200. It all depends on how easily people can get in and out, that's more of a life safety issue. Having people can cram in the building and safely get out in the event of a fire and not something addressing whether the practical, the functionality of the building really can handle that many occupants but they would be subject to any commercial business that is reviewed by the fire department too, that would provide a max capacity, if they exceed that then there'd be subject to fines and things like that. Chairman McGowan then open it up to the public.

PUBLIC PORTION:

Barry Basile from two East Taunton Avenue stepped forward and the borough's attorney Chris Norman swore him in. Mr. Basile concern is going to be the noise since he lives 25 feet from the building along with the 24 hours access for members and no employees to watch over the site. Mr. Basile also brought up the issue of the parking lot and the potholes that are sinking. Christina Hoffmann from 55 Summit Avenue in Berlin came forward and Mr. Norman swore her in. Mrs. Hoffmann then handed out some photos and Mr. Norman marked the photos as exhibit 01. Mrs. Hoffmann is the chairperson of the Historic Preservation Commission, also known as the PC of Berlin Borough. Mrs. Hoffmann then went on to explain that the PC consists of seven regular members, two alternates, all appointed by the mayor with the advice and consent of the Borough Council. The Borough of Berlin is a certified local government that has shown a commitment to preservation that has been recognized by the New Jersey Historic Preservation Office and the National Park Service. Mrs. Hoffmann went on to explain the actions are guided by the Borough's Historic Preservation Ordinance, which can be viewed online by going to the Borough's website, clicking on government code book chapter 28, also with the advice of the towns appointed consultant Margaret Westfield, who was a historic preservation architect. Mrs. Hoffmann explains the purpose of the commission is to safeguard the heritage of the Borough of Berlin by preserving the elements of its cultural, social, economic, and architectural history. Mrs. Hoffmann stated that she is here tonight to learn what action is proposed, and she feels what she has heard is in accordance with the ordinance. Mrs. Hoffmann stated that she wants to go on the record because this is a prominent historic structure and I wanted to educate all who may not know if the applicant's need to come before the PC and submit a certificate of appropriateness for any changes affecting the outward appearance of this building as it is in the historic district in addition, she stated that she is here to offer the applicant assistance in answering any questions, helping research any historic features of the building and or its neighborhood and with the spirit of cooperation and hope that the borough's history can be

preserved to be enjoyed by us and future generations. Nicholas Kay from one East taunton, who is the first house directly across the side of the bank. Mr. Norman then sworn in Mr. Kay. Mr. Kay main concern is that he has a five-year-old and a three-year-old, so noise is a big issue for him, and not just noise with cars and everything like that, but if people aren't allowed to smoke inside, they will be outside, bringing their own alcohol. Mr. Kay stated that his kids' rooms are right up on that front so, anything like that they're going to see. My concern is safety, especially with driving, if there's byo then there's a chance for DUIs. Mr. Kay stated that their house is the one that the car drove up and took out their front porch so I'm trying to make sure that doesn't happen again. Mr. Kay said he knows they bought that house knowing that there's a potential that there could be a business there, but I just think we need to have something that fits something for the community, the hours being preferably, even 11 o'clock. Mr. Kay stated, having access from your phone, his concern is, 11 o'clock at night and there's nobody there, who's to say a guy that's a member doesn't bring 12 people to just come play pool and being byo, that is his major concerns. Mr. Kay stated the issue really is safety for the neighborhood, the street. Mr. Kay stated that traffic's already bad there, especially at rush hour, it's not going to help with that. Mr. Kay just wanted to make sure that people understand that there's a lot of people on that street, a couple neighbors that aren't here today down from me have three kids about the same age so, children's safety is first and foremost a priority. Thank you. Jose Middle initial w last name Hernandez and reside at 161 South White horse pike, formerly known as the Joel Bo on Tavern. Mr. Norman sworn Mr. Henandez in. Mr. Hernandez concerns is not so much the membership, but the guest and that's where there's a lot more questions that remain unanswered so if there are several members and they will be allowed to bring guests, I think that creates a problem. Mr. Hernandez understands that they're not going to smoke in the building and that's great, but where are they going to smoke, are they going to smoke outside on the sidewalk in front of the place in the parking lot next to the gentleman's house. Mr. Hernandez stated that the fact that there is not going to be any control about alcohol in essence. Mr. Hernandez thinks that the concept has merit. but a 24-hour facility is going to be allowed, people are going to be allowed to drink. It's really a bar without a liquor license. Mr. Hernandez stated that the fact that there's not going to be no one to monitor that alcohol consumption, even in a place where your byo and I could be wrong and I'm a lawyer in my practice, but I don't do zoning work, I'm a trial lawyer, but I think that ABC will probably impose some kind of restrictions on places where you have to bring your liquor. Mr. Harnandez concern is basically 24 hours of alcohol consumption and the limited number of members. Mr. Wells then spoke and said he believes the testimony was that the guests must actually be members of the league, so it's only during league play so there's not random guests. The testimony was that this is the only quote, unquote guest would be another member of a different pool coming in. Mr. Hernandez then repeated and said so members are not allowed to bring anybody except for membership during tournaments. Mr. Wells answered that is the idea, during the pool play. Mr. Hernandez commented, when there's no league play, only members are going to be permitted in the building. Mr. Wells responded, Otherwise, of course, perspective members, if you're trying to get somebody to join, you obviously are not going to bring them in. The testimony was also that you would have certain open public events consistent with fairs, parades, things like that, so that the public could come in, but otherwise its membership. Mr. Harnandez stated that the other thing that he thought about is can he get a permit to stay open late, but he is very concerned about the alcohol consumption without any monitoring in the place where these people are going to be smoking outside, walking outside in a 24-hour setting. It just raises a lot of concerns for me. Mr. Norman asked Mr. Dochney are properties in C2 zone allow

restaurants. Mr. Dochney responded, Yes, it is a commercial zone, the residences are behind it, but this isn't a commercial zone and in my review letter on page two, I've got a list of everything that is currently permitted in the zone that would come before you as a buy right site plan as opposed to a use experience, retail sales at any building, less than 25,000 square feet. Service businesses, offices and banks, funeral homes, medical services, veterinarians, restaurants, and sidewalk cafes as long as, they don't have a drive through health clubs and exercise centers, including dance studios, residential uses, if they're pre-existing borough uses utilities, childcare, micro- breweries, distilleries and performing arts centers are all permitted uses here. Mr. Norman then asked would you expect some of the conditions to be like a restaurant, but also there's certain things the restaurant has responsibilities for to the public, obtaining security and whatnot. There are some there with the rights come some responsibilities. Mr. Dochney responded, certainly any restaurant, any bar, that's their responsibility too, to manage their patrons. Mr. Dochney then went on to say but the understanding of that, somebody does get unruly, they call the police so, they're not necessarily personally responsible for everything that goes on there, but there's an expectation that there's a manager, there's employees that are overseeing what's going on and they would be the ones responsible for calling the police or whatever authority is necessary or telling somebody they have to leave kind of thing. You know, the bartender telling somebody you've had enough, you got to go. Chairman McGowan then asked if there were any other questions from the public and Linda Hand from 10 East Taunton Avenue, came forward and Mr. Norman sworn her in and then Mrs. Hand asked if they applied for the five-year tax abatement and if they plan on applying for it in the future, Mr. Bernat answered no. Mrs. Hand then asked if there is an ordinance regarding private clubs in the borough and if yes, she would like to know what the hours are. Mr. Dochney stated that off the top of my head, he doesn't know but I'm not sure if there is a borough wide requirement on how late operate hours Mr. Norman then responded by saying there's no zone that allows private club parcels. Mr. Dochney then stated that there's a kind interesting aspect that there is no zone that currently lists a private club or billiard hall, whichever term you want to use as a permitted use. But the schedule of parking requirements does have a parking requirement for a private club, which is where we got one parking space for three members. But otherwise, in terms of hours of operation, I don't think there's anything in the boroughs code right now that says a private club is limited to the hours of 8:00am to 12:00pm or anything in that regard at the same time, Mr. Dochney doesn't know off the top of his head what the hours are of a bar such as Filomena or Ollie Gators up the street that, that came in here earlier this year to expand. I don't know if they're allowed to stay open until 2:00am or 1:00am or midnight or if they have hours of operation or set by themselves or if there's borough code that says bars must close by midnight. I know a lot of towns do have that. City of Philadelphia, I think it's two o'clock in the morning as the latest bars are allowed to be open serving alcohol at least. I don't know what borough's code is in that regard. Mrs. Hand then stated that another concern that she has is there is a strip of land that runs behind my property that is, was owned by PNC Bank it's an extension of their parking lot, but it's grass. It's not parking right now so, it could be extended parking for them, that is a concern. Chairman McGowan asked if anyone else from the public would like to come up and Joseph Richards, 119 Ellis Avenue came forward and Mr. Norman sworn him in. Mr. Richards then stated that he is an active member of the pool league and there's a lot of bars that are trying to get rid of their tables, so he feels it's a great thing that Shane's doing, trying to open this up. Mr. Richards feels that this will help the town out with taxes and everything. Mr. Richards feels this is a good idea. Mr. Richards went on to say it has a system where its membership only and the members, the guests,

that he was referring to, can only be brought in if they're a member of the pool league so you can't bring in Joe Schmo and 13 of his friends. Mr. Richards stated he just wanted to say he thinks it is a good idea. Mr. Norman then asked if Mr. Wells has a draft of regulations for the code of conduct for members and how it's going to operate and membership because that is what the board has a lot of questions about and how that's all going to work, that might be helpful. Mr. Wells then answered by saying, the short answer is that's still being drafted based upon the results of this evening, we understand that feedback, of course would be received and want to incorporate that feedback and operating procedures, we do have a few responses, but I don't want to interrupt the public portion or cut it short. Chairman McGowan then asked if there were any other questions from the public and Mr. Anthony Burton from two East Taunton Avenue came forward, and Mr. Norman sworn him in. Mr. Burton stated that he sent a piece of paper to the board about having the public parking in the back because the bank used to have public parking, any time and for instance July 4th, there was like 10 parking space people parking back there and about 15 or 20 at the Rite aid across the street, anytime there is a parade, they have no place to park and Taunton Avenue, has no parking in front, White Horse Pike has limited parking, and Jackson Road has a small little parking spot then they start jamming my little parking lot. then it happens to other neighbors. Mr. Burton stated that the 24 7 he doesn't really care for, he wouldn't care if they did it from six o'clock in the morning until like 10 o'clock at night and then if they must go a little longer to 12, fine allow, but not all the time. Mr. Burton feels they should curtail the hours. Heather Corcoran, that lives on three Jackson, the single-family home right next to the bank and probably compose most of the property adjacent to it. Mr. Norman sworn her in. Mrs. Corcoran then said, it is better than what I had previously thought coming in here, but I am concerned like many others, about the 24 hour, we have three kids, one of them is an adult now, but we have our neighbor on the other side of us that have three young children and 24- 7 just seems a little overkill, like many others, Mrs. Corcoran feels 11 or 12 would be late enough. Mrs. Corcoran is not concerned about noise but whenever there's alcohol involved, there's going to be some bad stuff and our houses are right but as far as somebody said about them going further back with the parking, Mrs. Corcoran doesn't think they can because she believes that is all runoff every time it rains hard, it's a lake so she doesn't think anybody could actually make the parking lot bigger. Mr. LaRosa then made a comment that they would have to come back to the board for approval of any type of site improvements. Mrs. Corcoran main concern is the late nights and alcohol. Chairman McGowan asked if there were any other questions from the public none heard or seen so they closed the public portion.

Mr. Wells then came up and stated that he and Mr. Bernat were discussing some of the comments during public comment and I think we'd like to just respond summarily to them. So first and foremost, noise obviously is a concern. This business, whatever business goes there, whether it's a distillery, a restaurant, a health club, a fitness club, they're, they're all governed by the same noise standards. Those standards get increasingly quieter after 10:00 PM to the point of basically conversational, I won't go into the specifics of decal levels and things like that, but the, the state effectively has noise requirements that apply to whatever business is there regardless of whether it needs a use variance, a site plan permitted, not permitted, those noise requirements apply. So, our testimony was that obviously we are confident we will not be a nuisance, we're confident we can comply with that. Mr. Bernat has testified that the music is not desired to be loud enough to cause that disturbance because the focus is on the game and the team conversation and practice so we do take those concerns seriously in the event there's anything

else that we can do to address them. Mr. Bernat is confident he can do that, another part of being a neighboring business owner and member of the community is communicating with neighbors, they do not intend to shut ourselves off from immediate neighbors, people down the street, people down the block. Anybody who might have an issue that we need to address it will be handled. Mr. Wells said, the second is the 24- 7 access. Knowing that distiller distilleries and breweries are permitted in the zone, state law required to close at 2:00am Our testimony again was that for the most part, these tournaments are going to be over at 11. Mr. Wells stated, by removing 24 7 access, if there is a demand really for 24 7 access, we'll come back and request relief from that condition. But I think we'd like to be consistent with kind of the most intense use in the district, which would be a brewery or distillery that would require last call at 2:00 AM and the testimony here was that majority of play would be over at 11. The important thing that I want to clarify, and I was talking with Mr. Bernat, that it is not a single wave of starting to stop, that it is staggered so that testimony of play is going to trickle out at 11:00 PM is not going to be everyone inside the facility saying, okay, game is done. Everyone is heading outside at 11:00pm, that's the last longest that a game is going on for the last few people at that table. another member who's a spectator or two are trickling out at that time. So, in an abundance of caution, because Mr. Bernat has said that the games could potentially go a little bit longer, we'd like consideration for what the latest allowable and arguably more intense use would be in the district, which would be a brewery or distillery having a last call at 2:00am in the event that's a problem. We will come back and request the applicable relief as far as opening times. Mr. Bernat has indicated that around 7:00am would be an appropriate opening time but if someone really desires a 5:00am opening time or something like that, we will request that relief from the board. The other issue that was brought up was security and I think in addition to the membership vetting process, Mr. Bernat, and I would like to say on the record, if it's correct, would agree to have a manager on site during operational hours, Mr. Bernat stated, correct. That manager would be tasked with enforcement of the rules, the bylaws, but just general keeping things in order scheduling, keep making sure the teams are doing what they're supposed to do. Kind of keeping an eye out. If anyone has one too many in the event a tournament gets heated, that same person will be tasked with diffusing and reporting the situation. Mr. Bernat agreed. That is probably going to be more than one person, but that's something that Mr. Bernat is going to identify through the membership process. Mr. Bernat stated that is correct. Mr. Wells stated, then with respect to the bylaws, the procedures, the operating procedures, the membership criteria, we are seeking to incorporate the feedback, things like the management position, the hours into those bylaws, those membership requirements, and we can absolutely provide those to the board for review. Mr. Wells doesn't think it would make sense to kind of adjourn to another meeting and then publicly have a discussion on the bylaws, but we want to make sure that the operating procedures, the membership terms and conditions match up and address the board's concerns. So, we're willing to provide those and adjust them as necessary to ensure that those concerns are met. Mr. Wells addressed the comment on lighting and the lighting would not be on 24 7. There is no neon or flashing lighting that would be added to the signage. The signage will have to comply with historic preservation requirements for that district and with respect to the comment from the woman from the historical society, Ms. Hoffman's offer to help Mr. Burnett. One thing that he brought up to me was that he wants historical pictures of the borough inside the bank. One thing we didn't mention was that you're keeping the vault, Mr. Bernat stated, yes, so you're not changing the inside, it's going to have that old school feel. You want pictures from historic Berlin in, in the building. You're going to be coordinating with Ms. Hoffman and the Historic

Preservation Commission about signage and that's an offer that you'd absolutely love to take up. Mr. Bernat stated, yes. Mr. Wells stated that he summarily addresses the public comments on that and we're happy to address any follow-up comments from the board as well prior to just having our, our closing remarks. Mr. McGowan then asked if there were any other questions, comments from the board or the professionals. Mr. Ballak had a comment to our professionals as far as with this establishment, are you going to have to be required to have a mercantile license and then if there is problems of it being a nuisance, is there a procedure for either this board or to counsel or something to revoke the mercantile license or something if it's an ongoing nuisance. Mr. Dochney said he doesn't know of any land use board that has a jurisdiction over mercantile licenses but if you made it some sort of condition of approval that their variance is subject to maintaining a mercantile license, then the removal of that mercantile license by whatever board, whether that's the, the borough council or some other entity, I don't know who does that, but that could then void their variance approval. Mr. Wells then chime in by saying, I was actually going to be a little bit more harsh on that, so there's two requirements, the mercantile license and the zoning requirements so this board has the authority to enforce all the conditions imposed and then on top of that, if there are significant nuisance complaints made, the mercantile license at the borough level can also be another layer of enforcement. So it's, if you want to them together in the resolution, that's fine, there're already kind of those two layers of enforcement available. Chairman McGowan asked if anything else from the board and Mr. Ryker asked if they would be agreeable to restricting key fob access after a certain time. Mr. Wells said, yes it wouldn't be restricted key fob access, it would just be closed. Mr. Ryker asked what time that would be, and Mr. Wells stated It would be the 2:00 AM time consistent with breweries and distilleries. Mr. Ryker then said that breweries and distilleries seem to be a little vague in their presumption. Cause the statues from the borough are a little ambiguous to us. Mr. Dochney didn't know off the top of his head. Mr. Wells then stated, the requirement is that they can't serve a beverage past 2:00am so if you get a beverage at 1:59am and it takes you 10 minutes to finish it, you're allowed to stay on premises and finish the beverage, but they're not allowed to serve past 2:00am. Mr. Ryker then asked what the jurisdiction of that statute is, I know we referenced Philadelphia at 2:00am but the majority of the establishments, including the breweries and things of that nature were closed. Mr. Dochney stated that he doesn't think Berlin Brewing stays open past 10 in any week. Mr. Norman then commented that a different regulatory scheme is a use variance application. You can control the hours as you see fit. Mr. Ryker then said that he thinks the concept is not the issue of the public or the board and we want to see that building be occupied and preserved in the nature that it's currently in. I think it's about finding a solution from a community member standpoint. We want to see this succeed; we want to give it the opportunity. I think it's just a matter of what is the best resolution that we can find here but I think we do need to unilaterally agree to those terms while we're here right now for the sake of everyone's time before we proceed to a motion. Mr. Ryker then said it sounds like you are requesting a 2:00am time. Mr. Wells stated, yes, that was the testimony. It sounded like the board would make that a condition and we thought just being consistent with other permissible uses in the district would be a good way to go rather than just kind of picking a time. Mr. Ryker then said, our problem is, that permissible uses in the district and the timeframes in which their hours of operation are permitted currently in use, the fact that we don't really have any pool halls in the area looking down towards somerdale, I believe they're open until 3:00am. Mr. Wells said they are not requesting that and Mr. Ryker then said, I think the opinion of the public is how can we, from 10:00pm to 2:00am, how can we try to somehow meet in the middle and maybe that's

somewhere on the week, weekends where there's some later permissible hours but during the weekdays, school days, workdays, things of that nature is there a compromise that can be made. Mr. Wells said there can, but I think Mr. Bernat's also worried, about the oddball, which is what we're trying to do here, the testimony is not going to change that by 11:00pm most of the people are out Monday through Thursday, we're talking about the oddball that, want to be disingenuous with that. So that's, you know, if there's a solution that the board's going to impose and that's the only thing we have to do, then so be it. But operationally that's what we've experienced. Chairman McGowan then stated that the applicant is looking for the hours of 7:00am to 2:00am what's on the table right now rather than the 24 -7 Mr. Wells said that is correct. Mr. Ryker asked if we have any establishments in town that operate past 11:00pm besides maybe a gas station or Wawa and then Mr. Earl stated, I don't think we know the answer, but if it were a restaurant with a liquor license, so that would be a liquor license is an entirely different process of approval. I understand that, but it could be a restaurant and if they were granted liquor license, it could be until 2:00am we believe, based on that. Mr. Dochney responded, I don't know the borough's code in terms of hours of operation for bars and restaurants. If there is something in the borough's code that says all places that serve alcohol must stop by 1:00am then they would abide by that if they don't have a liquor license and it's a byo. Mr. Earl then went on to say, I see it a little differently. I understand the resident's concern. Private clubs are not unique, they're Elks Club, they're Moose Club, they're American Legion clubs, those are common, I'm not saying it's the same, but they have bylaws in the police themselves. I'm familiar with many of them that run quite well, we were talking about the noise, it could be a restaurant. Restaurants are governed at 2:00 AM could be a brewery, could be a distillery. It's a prime business on that the borough needs other than being developed. I'm worried that we're really focusing on restricting something that we really may need. That fits to the master plan where it says encourage redevelopment and new development. The borough's existing commercial card. So, that's my appeal that we need to stick to that, and will there be downsides, pros, and cons. Mr. Wells then said, I did confirm with Mr. Bernat that most of the play would be trickling out by 11:00pm Is there any reason someone would start a game that late, and Mr. Bernat said no, so if it's a condition of approval that no games begin at 11:00pm or later, we're also agreeable just to help control that flow. Mr. Ryker then asked to reiterate, the league, are they primarily on Friday, Saturdays and Sundays or are they spread throughout the week. Mr. Bernat responded that it is spread out throughout the week. It's primarily Monday, Tuesday, Wednesday, and sometimes Thursday. Chairman McGowan then said, it is potential condition of the approval or not approval is that again, just further redefining it for the board so that we can summarize this in the way that we can vote one way or another, make a motion one way or another, no earlier than 7:00am. Games will not start any later than the latest game. 11 o'clock and then close the doors by whatever the standard is in the town by two o'clock or whatever the ordinance may be that would be something you would consider. Mr. Norman then went on to say, other conditions I have, there'd be a manager on site during operating hours. The applicant would submit the bylaws for re review and approval. Our office could look at that in conjunction with Chris's office. Compliance with the HPC for any changes to the sign compliance with the mercantile license, membership cap at a hundred shade tree easement, no liquor license, no smoking, no onsite cannabis consumption and restriping the parking lot. Mr. Dochney said that if it would require HC review and approval, they're taking out the ATM that they're restoring the facade of the building. Mr. Wells is going to double check that requirement. Mr. Bernat said, I am more about keeping the aesthetics of the building the way that it is, than modifying it. Mr. Dochney said, since planning on restoring the facade to just flat and

matching the material, it might technically require their report. Mr. Wells said he will lump that in with the sign and, and make sure it's addressed. Chairman asked if there was a motion from the board. A motion was made by H. Earl and seconded by F. Ballak.

Roll Call:

Mayor R. Miller – EXCUSED

Councilman M. Wilkinson -EXCUSED

M. McGowan -AYE

K. Ryker -AYE

D Pomponio -NAY

M. Foster-AYE

F. Ballak -AYE

J. Cole-AYE

J. Schumacher-AYE

H. Earle-AYE

E. Hahn-AYE

CORRESPONDENCE:

NONE

GOOD OF THE ORDER:

NONE

ADJOURNMENT OF REGULAR MEETING:

A motion to adjourn the meeting was made by J. Schumacher and all in favor at 9:55pm

cc: Bill Behnke, Fire Marshall
Stacey DiVello, Escrow Financial Department
Al Hallworth, Construction Official
Michael Bernardins, CTA Tax Assessor

CORRESPONDENCE:

NONE

PUBLIC PORTION:

None seen or heard.

GOOD OF THE ORDER:

NONE

ADJOURNMENT OF REGULAR MEETING:

A motion to adjourn the meeting was made by J. Schumacher and all in favor at 9:20pm

cc: Bill Behnke, Fire Marshall
Stacey DiVello, Escrow Financial Department
Al Hallworth, Construction Official
Michael Bernardins, CTA Tax Assessor