

Township of Manalapan

Department of Planning & Zoning

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Planning Board Minutes

Reorganization and Public Meeting

January 9, 2020

The meeting was called to order by Acting Recording Secretary Lisa Nosseir with the reading of the Open Public Meetings Act and the TV Disclosure Statement at 7:32 p.m. and followed with a salute to the flag.

Mayor McNaboe then administered the Oaths of Office of Mr. Fisher, Mr. Kastell and Mr. Shorr. After the members were sworn in and joined the dais, Ms. Nosseir continued with Roll Call of the members:

In attendance at the meeting: John Castronovo, Todd Brown, Barry Fisher, Alan Ginsberg, Daria D'Agostino, Kathryn Kwaak, Jack McNaboe, Barry Jacobson, Steven Kastell, Brian Shorr

Absent: Richard Hogan

Ms. Nosseir read the Resolution Authorizing an Executive Session to discuss personnel matters; the Motion for such Executive Session was moved by Mr. Fisher and seconded by Ms. D'Agostino. Roll call for Executive Session was taken and agreed to by all and commenced at 7:37 pm. The Board exited the dais and held the Executive Session behind closed doors. Executive Session was closed at 7:49 and the Board returned to the dais.

Ms. Nosseir requested a nomination for Chairperson.

NOMINATIONS FOR CHAIRPERSON – Ms. D'Agostino offered a Motion nominating Kathryn Kwaak and seconded by Mr. Fisher. All were in favor.

Chairwoman Kwaak then presided over the meeting and called for a Motion for Secretary.

NOMINATIONS FOR SECRETARY - A Motion was offered by Mr. Brown nominating Daria D'Agostino as Board Secretary, seconded by Mr. Fisher. The Resolution was adopted by unanimous vote. None were opposed.

NOMINATIONS FOR VICE CHAIRPERSON - A Motion was offered by Ms. D'Agostino nominating Todd Brown as Vice Chairman, seconded by Mr. Fisher. The Resolution was adopted by unanimous vote. None were opposed.

RECORDING SECRETARY - A Motion was offered by Chairwoman Kwaak and seconded by Mr. Fisher nominating Lisa Nosseir as Recording Secretary. The Resolution was adopted by unanimous vote. None were opposed.

2020 MEETING SCHEDULE - The Planning Board meetings will be held on the second and fourth Thursday of the month. There will be one meeting in November and one meeting in December. A Motion was offered by Mr. Fisher and seconded by Ms. D'Agostino to accept the meeting schedule for 2020. All voted in favor. None were opposed.

ADMINISTRATIVE OFFICER - A Motion was offered by Chairwoman Kwaak and seconded by Mr. Fisher nominating Nancy DeFalco as Administrative Officer. The Resolution was adopted by unanimous vote. None were opposed.

BOARD ATTORNEY - A Motion was offered by Mr. Fisher and seconded by Mr. Brown nominating Ronald Cucchiaro, Esq. of Weiner Law Group, LLP as Board Attorney. The Resolution was adopted by unanimous vote. None were opposed.

BOARD ENGINEER - A Motion was offered by Mr. Fisher seconded by Mr. Brown nominating CME Associates, Brian Boccanfuso as Board Engineer. The Resolution was adopted by unanimous vote. None were opposed.

BOARD PLANNER - A Motion was offered by Mr. Fisher and seconded by Ms. D'Agostino nominating Leon S. Avakian, Inc., Jennifer Beahm as Board Planner. The Resolution was adopted by unanimous vote. None were opposed.

Mr. Cucchiaro sworn in Brian Boccanfuso, Professional Engineer of CME Associates and Jennifer Beahm, Leon S. Avakian, Inc.

Chairwoman Kwaak stated for the record that the designated newspaper for the 2020 Manalapan Township Planning Board is the Asbury Park Press.

MINUTES:

A Motion was made by Mr. Fisher, Seconded by Mr. Castronovo to approve the Minutes of December 12, 2019 as written.

Yes: Castronovo, Brown, Fisher, D'Agostino, Kwaak, McNaboe, Jacobson, Kastell
No: None
Absent: Hogan
Abstain: None
Not Eligible: Ginsberg

RESOLUTION: PFM1837 ~ Stavola Asphalt Company
Woodward Road and Route 33
Block 7232 / Lots 1.02 and 1.03
Final Site Plan and Final Major Subdivision

A Motion was made by Mr. Castronovo, Seconded by Mr. Fisher to approve the Resolution for Planning Board Application PPM1837, Stavola Asphalt Company, as written.

Yes: Castronovo, Brown, Fisher, D'Agostino, Jacobson, Kwaak, McNaboe, Kastell
No: None
Absent: Hogan
Abstain: None
Not Eligible: Ginsberg

Applications: PPM1823 ~ Countryside Developers, Inc.
Manalapan Logistics Center
203 HWY 33 ~ Block 78 / Lot 12.02
Preliminary and Final Major Site Plan
Carried from October 24, 2019

Mr. Cucchiaro stated that new Planning Board member Brian Shorr was not present for the applicants previous hearings, as well as being a trustee of the Four Seasons development, therefore he will need to be recused from hearing the application to avoid a conflict of interest.

Salvatore Alfieri, Esq. represented the applicant, Countryside Developers, Inc., "Manalapan Logistics Center" this evening. This matter was carried from the October 24, 2019 Planning Board meeting. Mr. Alfieri stated that all the witnesses are present this evening. He stated that at the last meeting, Exhibit A6 was marked in which were blurry emails from Mr. Sherman. Mr. Alfieri emailed clean copies to the Board. Mr. Cucchiaro stated that this is a replacement and should now be Exhibit A8.

Mr. Alfieri said that since the last meeting, they met with the Environmental Commission and received a report dated November 11, 2019 which had very minor comments which we have agreed to address. On December 20, 2019, our engineer submitted a comprehensive letter that outlines the responses to the various professional reports. Our engineer, Ms. Algeo, submitted revised plans that she will testify to.

Mr. Cucchiaro swore in Raymond Walker, a principal with Maser Consulting and Division Director for the Geo-Environmental Group and a certified expert in environmental issues. Mr. Alfieri asked Mr. Walker to describe his roll for the applicant. Mr. Walker said he was asked to secure the necessary NJDEP Wetland Permits for the project. There were a number of approvals issued by the NJDEP under the Wetlands rules currently for this project. In 2013, a LOI was issued which verified the wetlands on the property. That LOI was extended in 2018, again verifying the wetlands on the property. The LOI classified the wetlands as intermediate resource value with an associated 50' wetland transition area. We currently have pending before the NJDEP certain permits for minor road crossing, stormwater outfalls and what we would call a transition area waiver for the 50' transition area.

Mr. Alfieri said that recently, information came to light that resulted in Mr. Walker meeting with the NJDEP to discuss the LOI and/or permits and the buffering. Mr. Walker said we have a permit application currently pending before the NJDEP for certain wetland permits in addition to a transition area waiver averaging plan which addressed the 50' buffer. The NJDEP called us and verbally notified us that due to a recent reclassification of the stream on the site as a potential foraging habitat for bald eagle. They wanted us to increase and enhance the transition along the adjacent waterway. We currently have revised the plan to provide a greater than 50' transition area. In addition, some of that transition area is currently farm field, so we prepared a landscape plan to enhance that transition area for a foraging habitat for bald eagles. That application will be submitted to the NJDEP on January 10, 2020. On the new site plans you will be able to see the additional landscaping.

Mr. Alfieri asked Mr. Walker what is the nature of the permit that would be issued to support and approve the lines? Mr. Walker said there would be certain wetlands permits for a minor road crossing, a permit for stormwater outfall, wetland permit for the filling of a ditch on the property. In addition, there would be an approval of the modified transition area on the property. Mr. Alfieri asked if he communicated with the NJDEP as part of the revised design? Mr. Walker said we have been coordinating the changes with the DEP and we have been verbally assured that what we are proposing would be acceptable.

Mr. Cucchiaro said we have the LOI that was referenced that gave the original applicable buffer areas. Is there something that has been issued from the DEP which formally revised to take into account the foraging area to specifically identify the bounds of the new buffer area? Mr. Walker said no, we have nothing in writing from the DEP aside from a verbal request that we make these changes to the site plan. Mr. Cucchiaro said what is the protocol to make sure that what is now depicted on the plan is accurate? Mr. Walker said basically we are giving them everything we possibly can and what is available on the stream corridor and enhancing that. That is the conversation we've had with them. Mr. Cucchiaro said for our purposes, we have a revised plan now with a revised buffer area, but we don't have anything that says there is a new LOI from the DEP that confirms that this is what the buffer area is. Is there something eventually coming? Mr. Walker said we are submitted the revised plan tomorrow to the DEP and we expect to have that approved within 30 days. A wetland permit will be issued for the minor road crossing, filling of the ditch, stormwater outfall as well as the modified transition area.

Mr. Boccanfuso asked Mr. Walker about the modified transition area as it pertains to the change in the resource value of the freshwater wetlands, could you describe that a little bit - what would the difference be from the previously issued LOI which requires a 50' transition area, to what is required now, also addressing how that is going to be modified in connection with the proposal. Mr. Walker said under the existing LOI that we have that classified the wetlands as intermediate resource value with a 50' wetland area. If it is reclassified by the DEP as exceptional resource value, that would a 150' transition area. There are provisions in the rules that are known as special activity waivers for transition areas, or hardship waivers, that the DEP indicated that we would be eligible to apply for to modify the transition area as it is currently shown in the site plans with the associated enhancement of the transition area. Mr. Cucchiaro asked is anybody eligible for this, or is there something special that makes you eligible, vs. any other site? Mr. Walker said anyone is

eligible so long as you meet the standards, which are that the function of the transition area as it currently exists, would be the same, or enhanced based on the plan that we are submitting to the DEP currently. Mr. Boccanfuso asked what factors do they weigh in considering whether you meet that standard. Mr. Walker said they look at the current condition of the transition area which is currently a farm field which has very little vegetation, so we are providing additional trees and shrubs which will enhance it. Ms. Beahm said this would be helpful if there was plan up that we could look at - is there a plan we can see? Dr. Walker pointed to Exhibit A9, site plan. If you look to the right, you can see the waterway with the associated wetlands. The white dashed line represents the wetland boundary on that stream channel. The vegetated area between that white line and the internal access road, the area in between that would be the transition area. The areas in dark green are the areas that are going to be replanted with trees and shrubs and the yellow line which borders the entrance road to the site would represent the limit of the new transition area. Ms. Beahm asked what is the width of the transition area? Dr. Walker said it varies anywhere from around 50' - 150'. It is not uniform. Ms. Beahm said so we are taking wetland complex that the DEP is reclassifying which traditionally requires a 150' buffer, but in certain instances, you are still maintaining a 50' buffer which would be associated with intermediate resource value because of the location of your entrance drive and your buildings, correct? Dr. Walker said no - the reason is that we have two existing LOI, each of them classified a wetlands of 50'. We have submitted an application based on the site plan to the DEP. The DEP recognizes now, after almost eight years, that they should have told us years ago about the 150' buffer. They are willing to entertain an application that allows us to document that the function of that transition area, even though it is less than 150', would still have the same functions than what it does now. Ms. Beahm said but if the road and building weren't where it is proposed, you could probably revegetate more than 50', which she's sure the DEP would be happy to accept. Dr. Walker said that is not what they told us. They recognize that they should have reclassified the wetlands when they reissued the LOI in 2018. They recognize that failing to do that, they put a certain hardship on this project and they are willing to entertain this as an alternate. They do issue these on a regular basis. Dr. Walker has to demonstrate that the function of that transition area is better, or the same as what it would be. Mr. Boccanfuso asked is the hardship that the DEP feels that they should not have reissued the LOI in 2018 consistent with the 2013 LOI? Dr. Walker said there is a section in the transition area rules that allows you to again demonstrate that if you cannot sustain the standard 150' buffer, if you are asking for something less, as long as you can demonstrate that the function of that transition area is going to be the same or better than

what it is now, in terms of the species you are trying to protect, than it qualifies for that transition area waiver. A hardship implies that you have no other alternative.

Ms. Beahm said how exactly will you demonstrate this? What are you providing to them to show that? Dr. Walker said we are revegetating a large area that is not forested. Right now it's basically farm field with no vegetation which means very little habitat value for bald eagle. Once we provide some landscaping and trees, that will provide a better habitat for foraging. Mr. Cucchiaro said we are not here to supplant the DEP in their view process, they have the ultimate jurisdiction, but it is his understanding that there has been absolutely nothing sent in any written format at all between the DEP and the applicant to discuss this issue. Everything has just been conversations that we have to discuss in a hearsay format. No one send an email? No one confirmed a conversation? Dr. Walker said its been a verbal conversation at this point. Once we submit the application to the DEP and have the approvals, then we'll have something in writing. Mr. Cucchiaro wanted to confirm that there is no document from the DEP that the 150' buffer is accurate? Dr. Walker said that is correct. Mr. Boccanfuso requested that any written approvals be sent to the Board for their review.

Mr. Jacobson said the Environmental Commission would feel more comfortable to see something in writing. Dr. Walker said he reviewed this plan with Environmental Commission.

Mr. McNaboe said he believes as a whole, this is the first time we are hearing about the foraging area. Can we go a little deeper into that, and show where this area was first found. Dr. Walker explained that there is a lake further up and bald eagle forage fish. There are eagle nests in Howell. At some point, someone noticed an eagle along this lake and based on that report, the DEP then reclassified this stream as well as the associated lake as potential foraging habitat for bald eagles. There is no nest, they are simply foraging there. Mr. McNaboe said if we have the wetlands and the eagles foraging, etc. and you are asking for less of a distance to this - are we not encroaching on a habitat? Dr. Walker said the birds will perch on trees along the lake looking for fish. Mr. McNaboe said do you have an expanded map that would give us more of an idea where the foraging area is, if it isn't physically on your property? Mr. McNaboe said there are two larger lakes on the other side and he's trying to figure out if you are talking about the smaller lake on a property contiguous to this property, or are we talking about something further away? Dr. Walker said if we have this offsite lake that the DEP has identified as a potential foraging habitat for eagle, and there is a stream

that goes into the woods, DEP will look at the vegetation types, say a maple, they will trace that maple vegetation around that foraging habitat and classify that as potential foraging habitat for the birds.

Ms. D'Agostino asked about the stream that is present - is that stream classified? Mr. Walker said it is not classified as a category one stream, it's a FW2 stream. It doesn't have any type of special classification, under the flood hazard rules, it has a normal corridor associated with it and that is shown on the site plan. Ms. D'Agostino asked is that where the 150' comes in? Dr. Walker said the 150' starts from the wetland boundary, not from the stream.

Mr. Ginsberg asked is there any reason why cannot modify your plan to allow for 150' boundary? Dr. Walker said from the DEP standpoint, as long we can demonstrate that the function of this transition area is not going to be any less than what currently exists, they we meet the standards of their rules. Dr. Walker said you can always modify a plan.

Mr. Brown asked what is the purposes of the 150' vs. 50'? Dr. Walker said under the freshwater wetland rules, wetlands that are classified as intermediate resource value have an associated 50' transition area. If the wetlands are determined to be habitat for an endangered species, they have 150' transition area. The intent is if endangered species are more sensitive, you provide a wider buffer towards the habitat of that species. Mr. Brown asked how do you demonstrate to DEP that your 50' will be good enough vs. 150'? Dr. Walker said there is a standard 150' buffer or transition area that is all agricultural. We are going to provide to you something less than 150', but it is going to have trees and shrubs, so it's going to have an enhanced value. If there is a nest on the site, you have to stay 250', but for foraging, animals are rather tolerant. The fact that you have bald eagle here now, indicates that they are pretty tolerant. Mr. Brown said he understands, but he would prefer to see 150' all the way around.

Mr. Fisher asked about the chemicals being spray on grass and trees and wanted to know if any of that would drain down to the stream. Dr. Walker said this area would be a conservation area, so there will not be any cutting of trees or spraying of weeds.

Mr. Kastell asked Dr. Walker if he has taken into consideration that the 50' buffer is right on the entrance road to the facility. Would the trucks create a disturbance? Dr. Walker said generally the eagle will forage by the lake. A truck coming in at the entrance will most likely not affect the eagles down by the lake. The eagles are going to go where there is food.

Mr. Cucchiaro said in the absence of any correspondence between anyone, has the DEP reached out to the applicant? Who received the call from the DEP? Dr. Walker said Ryan Anderson from the DEP called Kevin Jameson from our office; Kevin had submitted the application. Mr. Cucchiaro said the DEP, without seeing any plans, gave an informal, initial opinion that they were ok with the reduced buffer? Dr. Walker said they gave us guidance. They recognized that we had a site plan before the Board, they recognized that we would not be able to provide a standard 150' transition area, but they also recognized that the transition area was already compromised by the fact that it was farm field. It is not unusual for them to allow a less than 150' transition area, if you provide some type of enhanced landscaping. Mr. Cucchiaro said did they have something in front of them about what you were proposing - did they have the site plan? Dr. Walker said yes, they had the site plan in front of them which shows the standard 50' transition area, and it also shows the minor road crossing, the stormwater outfalls and filling of the ditch.

Ms. Beahm said to Dr. Walker that there is an understanding that you are not able to provide 150' buffer because of the site plan application pending before this Board, correct? Dr. Walker said the DEP has this plan in front of them as part of a permit application. Ms. Beahm said what she heard is, part of the reason that they are entertaining a less than 150' buffer, is because of the fact that you are unable to provide the 150' based upon the site plan pending before this Board. Dr. Walker said no, the way it should be referenced is the reliance that we had on the original LOI - in other words, you are allowed to rely on these LOIs for a period of five years. We relied on the DEP to provide us with accurate information that the standard transition area would be 50'. We submitted a permit application to the DEP now adhering to the 50' transition area. They now change their mind and say we made a mistake, it should have been 150'. The DEP is saying we understand you had a certain reliance on that 50', so we will entertain this type of transition area waiver. Ms. Beahm said so, they are aware that this plan has yet to be approved by the Board, correct? So there is the potential for modification to the plan that would enable you to provide the full width transition area. Dr. Walker said there is always a potential for modification.

Julia Algeo, engineer for the project from Maser Consulting was next to testify. Ms. Algeo referred to Exhibit A10, a letter from Maser dated December 20, 2019 reviewing the professional reports. Ms. Algeo referred to Exhibit A9, the Site Plan. She wanted to point out to the Board previous Exhibit A1, which is at a larger scale. Exhibit A11 is at 100 scale dated August 22, 2019 which allows you to see the whole property.

Ms. Algeo explained some of the changes they have made since the original submission are: we reduced the banked trailer parking from 100 trailer to 20 trailer spaces. Additional landscaping was added to screen the trailer parking spaces. The approximate locations for the transformer and the generator pads were added for both of the buildings within the truck courts. An evergreen ground cover vegetation was added. Ms. Algeo continued and said in response to concerns raised at the hearing that a truck may enter the site and on the odd chance that all of the docks are taken, we created two parallel temporary truck parking spaces within the truck courts - one for each building 15' x 75'. Additional landscaping and a 6' solid fence was added to the rear of the site for the entire length of the parking lot to screen the parking lot for building B from the adjoining residential lots to the south. Additional landscaping is now proposed within presently open agricultural areas of the township stream corridor buffer and the DEP zone and the wetland buffer. These areas will be planted with deciduous and evergreen trees and a native upland wildlife forage and covered meadow mix. These areas will be protected by a conservation easement. A conservation easement was added along the entire southerly boundary. The yellow line represents the conservation easement line which will run along the property. The area of the conservation easement that we are proposing is 24 acres, which is about 28% of the total lot area. Foundation plantings were added to three sides of the buildings. The monument sign was eliminated from the plan. Directional signs were added along the easterly driveway to direct cars and trucks to the parking and loading areas. We did submit a written point by point letter to the professional reports.

Mr. Boccanfuso asked if the fence would be along the curb line of the parking area? Ms. Algeo said its probably setback 8' or so from the curb line. Mr. Boccanfuso said given the topographic change from the proposed elevation of the parking areas compared to the residential uses to the south, will that fence provide any aesthetic benefit whatsoever? Ms. Algeo said what it will do is help screen the parking area. The landscaping will provide a more aesthetic benefit.

Ms. Beahm referred to the letter on page 14 regarding the trash and recycling. If these compactors are going in loading bays, how does that impact the availability of an actual loading space for a tenant? Ms. Algeo said the tenants who are leasing the space will know how many loading bays they have available to them and they will also know that the compactor is for their use. Ms. Beahm said you don't have a user yet or whether its one - four users and the compactor could be taking up the

bays. Ms. Beahm said she would like to see the compactors on the site plan. The amount of bays will have to be written into the resolution. Ms. Beahm suggested Ms. Algeo showing the Board a worst case scenario.

Mr. Cucchiaro said the access drive that is depicted in the new submission looks like part of the access drive is within the 150' buffer, or within the required buffer area, or at least the grading associated with the road way. Ms. Algeo said the road has not changed. The only things that have changed as it relates to the physical improvements is what she testified to. Mr. Cucchiaro asked if the grading is within the new 150' foraging area, the required municipal buffer or both? Ms. Algeo said we are seeking the waiver for the grading within the township stream corridor buffer has not changed. The grading is within 150' of the wetlands. Mr. Cucchiaro said absent approval from the DEP, what's depicted right now would not work. Ms. Algeo agreed and said the plan requires DEP approval. Mr. Cucchiaro said if there is no DEP approval, that road will have to be reoriented. Ms. Beahm rephrased it and said the question is, if the DEP does not allow you to reduce the buffer from 150' to something less than that, the road as proposed would have to be moved, correct? Ms. Algeo said her understanding is that the buffer is 50' and the DEP has asked for supplemental plantings within the area surrounding to compensate. Ms. Algeo said it is physically within 150' of the wetlands. Mr. Cucchiaro said that is not permitted unless you receive some approval from the DEP to reduce it. Ms. Beahm said let's just say the DEP would not allow you to reduce the buffer to less than 75'. Mr. Walker said what he presented is what we are applying for right now based on the guidance we received from DEP in terms of this transition area waiver. There are other permitting options. If we cannot get the 150' buffer reduced, do we have to move our access road? The other option is that we can ask for general permit 10 to cross that transition area and secure that approval in that manner. There are various permitting options that we have to make this plan work.

Mr. Cucchiaro said since you have no permits, this plan is not permissible. Isn't there a hash mark on the submitted plans in the grading area? Ms. Beahm said on sheet 3 of the site plans, there are two dashed lines, one is she is assuming 150' because the line is not labeled on the plan, but it basically covers a good portion of your access drive and even cuts off the corner of the back building, but again, the line is not labeled. Mr. Cucchiaro said is our understanding correct of what is depicted on sheet 3? Dr. Walker said this project is contingent upon received a number of approvals. Mr. Cucchiaro said he's not talking about permitability, he's not talking approvability, he is asking for somebody here to explain the hash line on sheet 3 to see if we whether

we understand it correctly, because it appears to go right into the grading area and the building. Is that correct, or are we fundamentally misunderstanding the submission?

The Board took a five minute recess for the professionals to review the plans.

Mr. Cucchiaro asked about the hash line on sheet 3 and what does it represent? Ms. Algeo said the dashed lines appear to be offset lines and they are not labeled. They probably weren't labeled because they aren't pertinent, but they are offset from the wetland line by 75' and 150'. Mr. Cucchiaro asked if the hash line represents where the 150' buffer comes out? Ms. Algeo said it is offset from the wetland 150', yes. Mr. Cucchiaro said so under the new DEP interpretation of the required buffers, that is where the 150' buffer comes out, absent your team achieving a reduction. Ms. Algeo said absent the permit, yes. Mr. Cucchiaro asked do we have a sheet that shows where you want the buffer to be? Ms. Algeo said the conservation easement is her understanding where the final should be - it's shown in yellow on the map. Mr. Cucchiaro said that pulls it out of where the grading is? Ms. Algeo said the conservation easement line would be deed restricted and that would ultimately be the limit of the DEP jurisdiction and in essence, the buffer. Mr. Cucchiaro said is that in one of the sheets you submitted in December? Ms. Algeo said yes all of the sheet shows the proposed conservation easement. It is between the access drive and the wetlands. Ms. Algeo pointed out the area on the exhibit board. The heavy yellow line would be the new conservation easement line and that would all be deed restricted. Mr. Boccanfuso said there is grading within the area that is designated as a conservation easement. Ms. Algeo said the area is currently farmed and what they are going to do is improve the area and then revegetate it with either the deciduous tree or the native meadow mix that is on the plan and it would be protected and deed restricted. Mr. Cucchiaro said that it is currently within the 150' buffer, you are pulling it back to a 50' buffer, but still within that 50' buffer, there is going to be grading, correct? Ms. Beahm said the width of the conservation easement is not a consistent 50', correct? Ms. Algeo said yes it is variable. Ms. Beahm said she scaled out a section that is about 60', and then other sections that were over 100', but in the area that is closest to where that basin is, adjacent to the access drive, that is where the grading and the filling would take place inside that area. Ms. Algeo said it is correct that the conservation easement as we depict on the plan, will provide a variable width buffer from the wetland and the areas that we are grading, but they will be stabilized and those areas that are currently farmed. They will be revegetated and protected by a conservation easement. Ms. Beahm said

the conservation easement traverses the entire property from Route 33 South. The width of the conservation easement is not a constant width; it varies. It is less than 150' from the wetland line in almost every instance, but the area where there is disturbance, its about 75'. Mr. Cucchiaro said it looks like there is a portion of a structure that was within the 150'? Ms. Beahm said in the corner of the back building. Ms. Algeo said we are going to build, grade and revegetate beyond the conservation easement line, so that area will be protected forever. Mr. Cucchiaro said if the DEP does not approve your various applications in the way that you are asking, does that have an impact on stormwater management? Ms. Algeo said no, but Ms. Beahm said in fairness, there is a portion of the 150' buffer that clips that basin. If they don't reduce that buffer from 150', that basin as designed would have to be modified and moved. Ms. Algeo said yes, as would other things. Mr. Cucchiaro asked if it would impact ingress and egress? Ms. Algeo said as Dr. Walker had stated, there are various permits that could be granted. Mr. Cucchiaro asked is there enough information that this Board has, that if you were not granted those permits, does the access drive change in any manner? Does the location change? Ms. Algeo said yes. Mr. Cucchiaro said there is a portion of a structure that is within the 150' buffer - if the permits are not granted, that structure would have to be moved in some manner. Ms. Algeo said yes. Mr. Cucchiaro said the moving of the structure changes the plan in some manner, but does that also change stormwater management because it would be in a different location? Ms. Algeo said the plan would different if we didn't get our DEP permits.

Mr. Jacobson asked about the southern border of the property, you said there would be a 6' fence and vegetation to help shield the property owners on the southern side which topographically, are a little elevated. How high would that vegetation grow to so they sufficient block their view? Ms. Algeo said the intention of the fence and planting is to buffer the parking area. Ms. Algeo said it would depend upon the species how tall they would get. She reviewed the landscaping plan to confirm the species. Ms. Algeo said there are a variety of evergreen trees, blue spruces that run along the fence line and she believes they would provide a good screen from the parking lot.

Chairwoman Kwaak asked if the trash would be in enclosures, or just loosely placed? Ms. Beahm said these are not traditional dumpsters, it is a compactor, which is a self contained unit in and of itself and based on the design, the loading areas are in between the buildings. Ms. Beahm said the compactors need to be located between the two buildings so they are screened from residential and the roadway.

Ms. D'Agostino had a question regarding the area that abuts the streets of Chandler and Astor and the homes back there towards the southern portion of the property. Will any runoff from the stream corridor area affect the homes in any way? Ms. Algeo said no, it will not. Ms. D'Agostino asked if the vegetation is going to compensate any type of area of wetlands that is there? Ms. Algeo said all of the runoff from the development is going to be picked up by storm sewers, collected and then taken to the basins. The basins are discharging to the tributary and/or to the brook after they attenuated and treated and the flow of these waterways runs in a northerly direction, so there will be no impact at all to the residents along the southerly property.

Mr. Ginsberg said the runoff runs in the northerly direction - would it impact any of the properties to the north? Ms. Algeo said the streams run in a northerly direction and no it would not impact any of the properties to the north. The basins have been designed to meet the attenuation requirements, meaning that the stormwater would be held back and released at a slow rate so therefore no, there would be no impact.

Mr. Castronovo said to Ms. Algeo that you mentioned that the monument sign was going to be removed, why? Ms. Algeo said there was a monument sign proposed and it was the applicants choice to remove it. Mr. Castronovo said how will truck drivers know where they need to make the entrance? Ms. Algeo said by the site address, I suppose. It was something that the applicant felt that they wanted to be removed from the proposal.

Mr. Fisher asked about the possibility of solar panels on the roof. Ms. Algeo said the applicant testified that it would be up to the tenant whether solar panels would be provided or not. Mr. Fisher asked about the idling trucks. Ms. Algeo said there would be signs stating no idling.

Mr. Cucchiaro asked Ms. Algeo if the applicant asked for a waiver for design waiver relief, correct? Ms. Algeo said that is correct.

Mr. Cucchiaro swore in Norman Dotti, acoustical engineer. Mr. Dotti had a number of exhibits he wanted to introduce to the Board:

Exhibit A12 - an aerial photograph of ambient sound test locations.

Exhibit A13 - is a series of four graphs on ambient sound levels.

Exhibit A14 - a sound level contour map showing projected sound levels from on site truck operations from surrounded areas.

Exhibit A15 - a sound level graph showing sound from truck operations on Route 33.

Exhibit A16 - sound level graph showing truck operations on the site with the inclusion of the latest change for the trailer storage area.

Mr. Dotti prepared the report that was submitted to the Board. He was asked to study the projected sound from the site operations. He did two things, he did an ambient sound study, in other words, what is out there now without any operations from this site taking place. That affects what people are going to hear. A12 shows the overall area around Route 33 and the four numbered pointers are locations where he set up his environmental sound monitoring instruments. Those operated for three days around the clock at each location September 5 - 7, 2019 and what we are showing here for each of the four locations is on an hour by hour basis, what is the range of minimum to maximum sound level. What we are displaying here is a metrical DBA, the a-weighted sound pressure level, which is a measure of sound that gives the instrument a measure that correlates very well with how people hear sound. The sound levels that are out there now, principally from motor vehicle operations are above the limits that this proposed site is allowed to generate at in a neighborhood area. Mr. Dottie referred to A13 which shows the comparison of the State limits for day and nighttime operations.

Mr. Dottie continued and said obviously we cannot measure sounds from a site that is not in operation yet. We can apply engineering and there are a multitude of standards and equations that are used in the profession. There is an International Standards Organization and 9613-2 shows how to do calculations to take into account distance and terrain and buildings in the way, etc. We use a commercial software product to do that. We start a CAD file that gives us locations of road and buildings and elevation contours and then we add to that sound data on the sources. The sources in question are the trucks. How do we know how loud a truck is? One way we know over the 47 years that he has been practicing, he's measured trucks at warehouses and distribution centers, etc. He cross-checks it with the Department of Transportation which has a transportation noise model and that's a program that is oriented around traffic noise and he uses their data for heavy trucks under acceleration. The data will give us sound level information for the trucks. There are various truck routes and the calculation is set to give us the maximum sound level at every point, not the average, but the maximum. Wherever

the truck was on the entire set of routes that generated the highest momentary sound level, that is what is shown on Exhibit A16 graph. The red line on the 50 contour is our limit. With homes down along Chandler and Astor Drive, we are projecting sound levels 30-35-40 DBA from the operation – the limit is 50. An analogy would be he has a speed limit on a road that is 50 MPH; he's allowed to drive 50 MPH. Now we know from our ambient studies though that traffic if we continue the speed analogy, there is traffic out there doing 70 MPH, but he's only allowed to do 50. You can go out and enforce it, and you can call the county and they will come out and do the measurements. If someone has a complaint about the noise, there is a mechanism that this can be enforced by, up to and including – and he's seen it happen – where they can shut down a site if they do not comply. There would also be very substantial daily fines.

Mr. Dotti said the maximum sound levels for this proposal meet the nighttime standard and do it by 5-10 DBA lower than what they are permitted to output. Mr. Alfieri asked would the proposed site be fully compliant with the sound levels that are allowed? Mr. Dotti agreed that the international standards and the Township regulations are fully compliant.

Chairwoman Kwaak announced that this application would be carried to February 27, 2020. Mr. Alfieri said hopefully by then the applicant would have received their DEP permits. Michael Lipari, Esq. who represents the Village Grand at Battleground Association and Ronald Gasiorowski, Esq., counsel for David Kleyn, et al, agreed with the carried dated of February 27, 2020. There will be no further notice to property owners. Members of the public are invited to stop by the Planning Office and ask Ms. Nosseir to see the submitted plan and file.

Chairwoman Kwaak announced that application PMS1933 – Charles Viviani will be carried to the Planning Board's January 23, 2020 meeting. There will be no further notice to property owners.

Application: **PFS1507B ~ Meals by Aurora, LLC**
 Stacar Properties
 330 HWY 9 ~ Block 8 / Lot 3.01
 Amended Preliminary and Final Site Plan
 Carried from December 12, 2019

Stuart J. Moskovitz, Esq. represented the applicant this evening. Mr. Moskovitz stated that Rachel Ozana, the applicant for Himalayan Salt Cave was scheduled to testify this evening, as was Gary Dean, architect of Dean & Dolan. Both the applicant and Mr. Moskovitz reached out to

both people and he was promised by Ms. Ozana that she was coming. Mr. Dean was problematic as he didn't want to come back for whatever reason. As far as Ms. Ozana is concerned, she told him this afternoon that apparently her mother is in the hospital in Brooklyn. Mr. Moskovitz said he is not going to represent one way or the other to the Planning Board as to whether that was true. Mr. Troyan drove by her house tonight and saw her car in the driveway. It is out of his hands at this point. However, he believes he can clear everything up without them. Mr. Troyan is here and he can hopefully fill in the blanks.

Mr. Moskovitz said there was a misunderstanding regarding the Dean & Dolan report and he was partially responsible for that with respect to the two photographs. Chair Kwaak announced that Mr. Fisher is stepping off the dais and recusing himself from this application. If you read the report, those photographs in the front that show the parking lot, he explained that was not intended to be a depiction of the parking lot when he was there; he was simply using those photographs to show you where the parking spaces were. As far as the six spaces are concerned, Mr. Troyan will speak further to that matter.

Mr. Cucchiaro said Carter Troyan remains under oath. Mr. Moskovitz asked Mr. Troyan when the construction for Himalayan Salt Cave began. Mr. Troyan said roughly about 21 months ago. Mr. Cucchiaro said if that is true, that would be pre-approval. Mr. Moskovitz said maybe. Mr. Cucchiaro stated they didn't get approved until February 14, 2019 - how could they have started construction 21 months ago? Mr. Moskovitz said he believes it was nine months ago in February. Mr. Troyan said he takes it back, it feels like two or more years and they still don't have a CO. Mr. Moskovitz asked Mr. Troyan in August 2019, was it under construction? Mr. Troyan said after they got approved first, yes. Mr. Troyan said after they got their permits, they started construction. Mr. Moskovitz asked him if he goes to the dry cleaner every day and if he saw the construction underway and he said yes. Mr. Moskovitz asked if they had construction vehicles? Mr. Troyan said they had pick-up trucks, delivery trucks and there is a huge storage container in the back of the lot. Mr. Moskovitz said the dry cleaner is a drive thru, correct? But you also have clients parking in the lot as well, correct? Mr. Troyan said yes. Mr. Moskovitz what is the most you can remember of people parking in the lot for the dry cleaner at any given time? Mr. Troyan said two cars and there is one delivery truck and most of his employees commute by bus from Freehold. Mr. McNaboe so that's five spots for the dry cleaner.

Mr. Moskovitz asked Mr. Troyan what time Himalayan Salt Cave is supposed to open and he said about 10:00 am. Mr. Cucchiaro said he needs to understand - how is it that you are going to testify to how the Salt Cave is operating? You are not the owner of the spa - what is the source of your knowledge that we would take this information from you rather than the owner? Mr. Cucchiaro said she testified during the hearing that the spa was going to be open between 9:00 - 8:00 on weekdays and approximately 10:00-6:00 on the weekends. Are you going to say something different tonight? Mr. Troyan said he has a lease with her and if the Town fines someone, they won't fine her, they will fine me. Mr. Moskovitz said are you aware what happens if more than 21 spaces are used, so that people are parking either on Franklin Lane or at Dunkin Donuts? Mr. Troyan said he is fully aware of what happens, first he would receive fines from the Town by allowing more spaces than were permitted, and number two he would be violation having his clients parking on Franklin Lane or in Dunkin Donuts. Mr. Moskovitz said what would happen if you got fined? He said he would sue the tenant for lying to him and breaching her lease of seven spaces, that is all she is allowed. Mr. Cucchiaro said none of that is part of the MLUL testimony. We are here tonight because the applicant, Meals by Aurora, is required to have a certain number of parking spaces under the Ordinance and they do not have the spaces therefore relief is necessary. We took testimony at the prior hearing and she gave us some very detailed information about cars and food and what she needs. The issue became less of about what she needed, and more about what was already taken up between Carter's use, which you have an approval for, and Himalayan Salt Cave, which had a previous approval. The problem became that we didn't have the people who were there for those approvals because the applicant was seeking to use spaces that the prior approval had already allocated towards the spa. We needed to hear from the spa why it is that she did not need those spaces and there would be enough spaces for what Meals by Aurora would need. And we also wanted to hear from the expert who had prepared the submission. So we don't have the expert, and as a matter of law, the MLUL requires experts to be subject to cross examination, under §10 of the MLUL and we cannot even consider the submission because he is not here. He is the one who prepared the report and he is not here. There is a resolution of approval for the spa - even if you are entirely correct about what is necessary, we cannot change the number of spaces that were in that resolution. It is difficult enough doing it in the context of a different application, we could do it if she was here. We can't change the number of spaces that we talked about in that resolution. Mr. Cucchiaro said he watched the broadcast again. There was a lot of testimony and several times she mentioned she needed 11

spaces and she was going to have nine people. At the very end, Mr. Castronovo did an excellent job of going through every single room and who was going to be there, and when they were going to be there, etc. and we came up with 21 people. And Mr. Moskovitz, you did an excellent job because you said, 21 people includes kids and let's take the kids out of it. It then turned out to be 15 people and the testimony was 15 parking spaces at most, and that is what wound up in the resolution. If that applicant were here, and there were also statements that she was anticipating being up and running and by the time that the vacant space was going to be filled, we were going to have some information. We had a noticed public hearing where an applicant came and after a lot of very deliberate questioning and analysis, that is what we came up with. We can't change her approval - she's not even here. It was very clear at the very end, 21 people max, 15 cars at max at one time would be necessary. That applicant has rights under her resolution that we cannot take away from her.

Mr. Moskovitz said you wouldn't be taking any rights away from her for several reasons. The resolution talks about parking spaces in two locations. The back page item number 10 says 15 people. The front of the resolution says that she would find 15 spaces acceptable. Nothing granted her 15 spaces and by the way, nothing granted a number of spaces to any applicant on this building. There are no designated spaces which means she is bound by the lease which says seven spaces. The Planning Board cannot grant her more than she is entitled to under the lease. Mr. Cucchiaro said that is absolutely false; we are not bound by your lease. Mr. Moskovitz said you're not bounded, but she is - you can't grant her more than the lease permits. Mr. Cucchiaro said we can require more than what your lease does. Mr. Moskovitz said yes, but you didn't; you said 15 spaces. Mr. Cucchiaro said you stated the end of the meeting, and we accepted your argument that it is less than 21 people, it's 15, 15 cars and the resolution states that she would not need more than 15 spaces. Mr. Cucchiaro stated the ultimate problem is that she is not here; there is a due process problem. Mr. Moskovitz said there is not a due process - you are not taking anything away from her, there are no designated spaces. Mr. Cucchiaro said we cannot in the context of a different resolution when this person is not here, change what we granted her. What we do have if you so want to exercise it under the County Municipalities Act, you do have subpoena power. Do you want us to subpoena her, we can certainly do that and get her here for the next meeting. Mr. Moskovitz said and she'll tell you some other grandmother is in the hospital or something.

Chairwoman Kwaak agreed with Mr. Cucchiaro that the resolution that we issued for the spa, said 15 spaces when all was said and done because she also watched the broadcast again. Mr. Cucchiaro said the math was fuzzy, but she was at 9 people and 11 cars for most of the hearing. But at the end we did a good job to get a better understanding how it would be used if it was at max and it was the 21 people because it included children, and we knocked that down to 15 because the kids don't drive. We also accommodated Carter's request because previous to that, the five spaces associated with the dry cleaners were to be exclusively dedicated the dry cleaner; we lifted that restriction so that there was a little bit more flexibility. We acknowledged that the last piece was going to be problematic, but we didn't have to deal with it that night. Chair Kwaak said the dry cleaner has five spaces, the spa has 15 - that leaves one spot. Mr. Moskovitz said you can't ignore the lease for this reason - whatever the resolution said she can use, she can't. You can give her the permission to use them, but she doesn't have that permission to use because of her lease and he doesn't believe for a moment when he read the resolution, which he didn't get until the night it was memorialized. Had he gotten it in advance he would have said this has to be clarified. Mr. Cucchiaro said the resolution was emailed to him prior to memorialization. Mr. Moskovitz said there are 21 spaces there. We all knew there was a third unit and it is inconceivable that a tenant could only have one parking space; you are basically saying you can never rent that space - he would have never agreed to that. Mr. Cucchiaro said there was testimony at the hearing was that the Salt Spa might actually use that space in the future for storage; Chair Kwaak agreed and said that is what she said in the video. Mr. Moskovitz said she was never going to use it for storage. Mr. Cucchiaro said so she lied? Mr. Moskovitz said it wouldn't be her only lie. Mr. Troyan said it's not her space. Mr. Cucchiaro said you were all here - and nobody said no, don't listen to her, she's a liar? Mr. Moskovitz said she doesn't have a lease for that space. We have a tenant that has to go in there and you can't put any tenant in with just one space. Mr. Cucchiaro said but you just said that Rachel lied, we were all here. Mr. Moskovitz said no, you said unless she lied - he didn't say she did. Ms. Beahm said you said, 'it wouldn't be her first lie'. Mr. Moskovitz said well yes that it true. Mr. Troyan said but she has no lease for that space. Mr. Cucchiaro said it is getting difficult to understand what it is we should be accepted, and not accepted. Obviously you have a business dispute with her because she refuses to come tonight and we're going to change what is in her resolution. Mr. Cucchiaro said the Board can certainly make it's own mind up.

Mr. McNaboe said let's do some math work. How many spaces do we need for Meals by Aurora? Mr. Moskovitz said four. Mr. McNaboe said well that's 25 spaces and we only have 21. Mr. Moskovitz said you have assigned 15 to the spa. Mr. Cucchiaro asked Mr. Troyan how often are you at five filled spaces? Mr. Troyan said in a course of a week during our busiest times which is 5:30 pm. Mr. Cucchiaro asked what is going on at 5:30 pm for Meals by Aurora? Ms. LaMarca said she mostly does deliveries, so she doesn't know. Mr. Cucchiaro said you have to know - what was going on at 5:30 pm today in your business? Ms. LaMarca said it's not that type of business. Mr. Cucchiaro asked for a two minute break for Mr. Moskovitz to speak to his client.

Ms. LaMarca said her business is meal planning so she delivers her food. She doesn't expect people to come in. The morning can have some people come in for the pre-made sandwiches. Mr. Cucchiaro said so at 5:30 pm you do not expect a lot of foot traffic. Mr. Troyan said his other peak time is 12:30-1:00 we max out at two cars because the drive-thru is busy. Mr. Cucchiaro asked Ms. LaMarca do you expect to be busy at 12:30? Ms. LaMarca said not really, again most of it is deliveries with her own car. Mr. Cucchiaro said no matter what, there is one spot open because $15 + 5 = 20$ and there are 21 spots. That one spot will be available for your delivery vehicle. Mr. Cucchiaro said based upon the traffic that you are getting and the fact that Mr. Troyan's five spaces are not exclusive to him, would it be your belief that having one spot that you can use and the few spots, absent 12:30 - 1:00 and after 5:30, it would accommodate your business model? Ms. LaMarca asked so how many spots is that giving me? Ms. Beahm said one spot. Mr. Cucchiaro said one spot for you personally, but in the absence of 5:30 and after, and 12:30 -1:00 there are probably two or three that are available. Ms. LaMarca said well that works because that is giving me four spots. Mr. Cucchiaro in terms of the spots that you would need all day, how many would you need? Mr. Moskovitz said he is asking you how many spots are going to be occupied the whole day. Ms. LaMarca said one, my car. Mr. Cucchiaro said so there is one spot that you need all day and if there are two-three spots available in Carter's five spots, with the absence of post 5:30 and 12:30-1:00, would that work for you? Ms. LaMarca said yes that would work.

Mr. McNaboe asked about the grab & go - is that part of your business plan or is that something that you are trying out? Mr. McNaboe said that part of your business is going to cause the traffic. Ms. LaMarca said that is usually in the morning when people are going to work, from 5:00 am - 10:00 am. Mr. McNaboe said would that include Saturdays? Mr. McNaboe said the spa opens at 9:00 a.m. If they have a party

booked at 9:00 and use all 15 spots this could be a problem. Mr. Troyan said the drive-thru is busy on Saturday mornings. Mr. Troyan said the majority of his Saturday traffic is usually not in the mornings. It is more towards the later afternoon on Saturdays.

Mr. McNaboe asked would the grab & go end around 10:00? Ms. LaMarca said we're not that busy on the weekends. Mr. McNaboe said we're trying to get 5 + 15 + 4 to equal 21. When Aurora opens at 5:00 am it is not a big deal for the spa since it doesn't open until 9:00. He said when there are three businesses that have nothing in common with each other that share a parking lot that would be used at different times.

Mr. McNaboe asked are you entering into the record that you are going to be closed on Sundays? Mr. Cucchiaro swore in Matthew LaMarca, co-owner of the business. We would like to be open on Sundays and if it turns out that it is a slow day, we will close on Sundays.

Mr. Boccanfuso said he believes they have worked out the logistics of the parking and there is not much from an engineering standpoint.

Mr. Castronovo asked do we need to follow up with the questions that Chief Hogan had last time regarding upgrading the proper utilities? Mr. Cucchiaro said those are permitting questions that fall under the State construction code and his department has jurisdiction over that.

Mr. Boccanfuso had a comment in his letter regarding whether a grease trap would be required. Mr. Moskovitz said he thinks he testified that they are putting a grease trap in.

Chairwoman Kwaak opened the floor to the public for questions and seeing none, it was closed.

A Motion to grant site plan approval with ancillary variance relief for application PFS1507B was made by Ms. D'Agostino and Seconded by Mr. Castronovo.

Yes: Castronovo, Brown, D'Agostino, Kwaak, McNaboe,
Jacobson, Kastell

No: None

Absent: Hogan

Abstain: None

Not Eligible: Fisher, Ginsberg, Shorr

Mr. McNaboe stated that Board struggled with this application and we have business in the middle of Town and we realized there a lot of constraints on that property. We have made a lot of concessions for you to be prosperous. You have three tenants in the building. Make it work.

PUBLIC PORTION:

Chairwoman Kwaak opened the floor to the public for any non-agenda items. Seeing there were none, the public section of the meeting was closed.

CORRESPONDENCE:

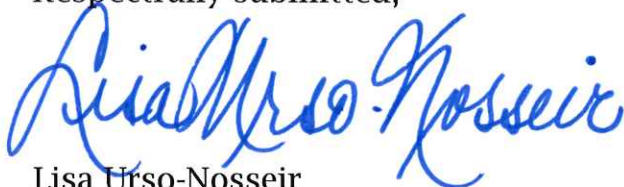
Chairwoman Kwaak pointed out that the future tentative applications are listed on the Agenda. They will be put on the Agenda accordingly and the next meeting will be January 23, 2020 at 7:30 pm.

Mayor McNaboe thanked the Board in advance for volunteering their time in 2020. He thanked the Board for taking the time to read the resolution voted on this evening with short notice and that we will avoid doing that again in the future.

ADJOURNMENT:

A Motion was offered by Ms. D'Agostino to adjourn the meeting at 10:30. All were in favor and none were opposed.

Respectfully submitted,



Lisa Urso-Nosseir
Recording Secretary

A RECORDED CD OR DVD OF THE MEETING IS AVAILABLE FOR PURCHASE BY CONTACTING THE PLANNING BOARD OFFICE.