

Present: Peterson, DeNofa, Canonico, Betesh, Dodge, Waterbury
Forrester (Attorney)
Cranmer (Planner)
Absent: Stambaugh, Walsh

Chairman, Mrs. Peterson, called the meeting to order at, 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by, Mr. DeNofa, seconded by, Ms. Canonico to adopt the minutes of the October 1, 2008 meeting. All approved.

Planning Board Representative: work continues on the B3 Ordinance & AHMU-8 they have been forwarded to Counsel, waiving any further review by the Planning Board

Correspondence: none

Unfinished Business:

Estella Nails:

Bl: 14, Lot: 13

Adoption of Resolution

A motion was made by Ms. Canonico, seconded by Mr. Dodge to adopt & memorialize the resolution of approval to Estella Nails as submitted.

Roll Call:

Affirmative: Peterson, Canonico, Dodge, Waterbury

Negative: None

Ms. Waterbury recused from Montessori Academy

Vincent S. Mastro Montessori Academy:

35 & 45 White Rd

Bl: 34, Lots: 5,6,7

Continuation of Hearing

Mr. Rick Brodsky, Esq represented the applicant.

Mrs. Peterson asked Mr. Brodsky if he was aware that 2 members did not listen to the meeting tapes and if he will be holding any decision until next month? Mr. Brodsky said yes, and he will bring back his experts in case any members have any additional questions or issues, and he plans to go forward with his application tonight.

Mr. Brodsky explained that this is a bifurcated application and testimony is only for the D-3 conditional use variance at this time, which is a use permitted in the zone conditioned upon certain conditions that the applicant does not meet, and any favorable

decisions made by the board would be conditioned upon approval of a fully engineered site plan approval.

Mr. Forrester explained that the proposed use is permitted with certain conditions:

- Lot size of 5 acres for a school use
- 20' buffering requirements
- minimum lot coverage of 30% where 35.6% is proposed

Mr. Brodsky stated that the 5 acre minimum zoning contemplated a larger, more diverse public school type as opposed to the limited use by Montessori, much less intense; smaller number of students a much less intense use. There are no school teams, no need for fields, and the mission statement explains the intent & programs which are limited.

Mr. Forrester marked the Floor Plans & Elevations as A-2 into evidence.

Mr. Ned Gaunt, Architect, was sworn and accepted as an expert witness. Mr. Gaunt described the traffic flow, the building materials and floor plans and proposed uses for each 1,200 sq. ft. room; in the 8,200 sq. ft. building.

Mr. Betesh asked how far will the building be from the street and how big is the lot? Mr. Gaunt said that it is approximately 36' to the property line, and the lot is -42,000 sq. ft. This lot will give them the additional room that is lacking at the Little Silver facility.

Mr. John Rea, Traffic Engineer, was sworn & accepted as an expert witness. Mr. Rea explained what he was requested to do by the applicant and gave his analysis as to whether or not this site was suitable for the proposed operation of a Montessori School with respect to entering/exiting the site safely & efficiently and its impact to the surrounding area.

Mr. Rea testified that they visited the existing site in Little Silver and performed traffic counts during 6/2008, observed queuing at the Little Silver site during drop off & pick up times, they reviewed the enrollment (62 students 6/2008). Mr. Rea stated twice he went to the White Road site and observed the traffic between 8:00 - 9:00 am checking the traffic flow and gapping on White Road for efficiency during pick up and drop off times. Mr. Rea testified that they did some projections (90 students) for the additional classrooms and students. After analyzing all of the information, his opinion is that the site is suitable and the traffic operation can operate safely & efficiently.

Mr. Rea testified that the hour of drop off is currently 8:20 - 8:40am, but is being expanded to 8:15 am to 8:45 am for a larger window from drop off which will eliminate some of the back up. There was a maximum of 8 cars backed up at the Little Silver site. The traffic flow at the Little Silver site has been in operation for 40+ years and has been successful. He feels that the most concentrated traffic is in the morning because all the parents are dropping off at the time creating more traffic than in the afternoon.

Mr. Rea stated that the traffic counts on White Road between 8:00-9:00 am was 775 cars in two directions with the majority of the traffic going west toward Rt. 35 (425 cars) between 3:00 - 4:00 pm is 705 cars with 330 going west toward Rt. 35.

Mr. Rea gave an analysis of the site observations, the traffic signal at Rt. 35 operations at 120 second traffic signal cycle during peak hours (30 cycles per hour) during 8:15-8:45 am there are 15 changes of the light and the queuing during any traffic cycle was 10-15 cars, which would bring the que 200-300' and there driveway location is approximately 400' from the intersection, so it would take 20-30 cars to reach the site, which is the exception and not the rule.

Mr. Rea concluded that the site is properly situated for this operation and the driveway located 400' from the intersection is sufficient and during the normal routine operation of traffic on White Road the traffic should not be blocked. If there is any blocked traffic they would have to wait 5-10 seconds to exit until the que starts moving again. He feels that the parking and circulation is adequate with the counter clock wise loop system where 18 cars can be stored on site up to the location of the stop bar or 15 cars before there would be a back up into White Road. This operation is working at the Little Silver site with a 1/2 window and he feels that this will work at the Shrewsbury location with the additional time in the am and in the pm. The proposed 17 parking spaces are adequate for the staff & any parents coming into the building.

Mr. Rea stated that Valley National Bank has given the school permission to use their parking lot during "non banking hours" for special events or open houses, giving them an additional 24 parking spaces, letter marked into evidence as A-3.

Mr. Rea stated that it is opinion that the use is appropriate based upon the Traffic Analysis going into and off the site and will operate safely & efficiently and he is confident, if the board approves the application, the board will find that the site will work safely & efficiently.

Mr. Brodsky asked Mr. Rea if his analysis was based on 90 students which the school has never had in 40 years, and it was his testimony that the site can handle more than 90 students and would work with a lower number as well? Mr. Rea said yes, and he reminded the board that they have factored in siblings, absenteeism, and car pooling.

Mr. Betesh asked if the whole school starts at 8:20 am?

Mr. Michael Bradbury answered questions with regard to start times, and advised any child could come at any time; they do not have a set time for each child. Mr. Rea answered questions with regard to the extended drop times and pick up times and that it will have some type of positive impact on the traffic flow and decreasing the queuing.

Mr. Betesh asked if the June dates are good indicators of what will happen during November, December & February? Mr. Rea said that they are routine days of business and he did observe White Road and the circumstances will be indicative of other days,

since the counts that he based the counts on were done on two separate date, but his observations were done in September & October of 2008.

Mrs. Peterson referred to the other driveway entrances along White Road that will be impacted from the additional traffic, could there be some type of signs to indicate not to block the entrances along White Road into the site.

Mrs. Peterson referred to the western bound traffic waiting to go north onto Broad St. and they have no where to go, cars that need to make a left are now going into the on coming traffic, this has been since the timing of the Dunkin Donuts lights were changed. Mr. Rea said that he did observe that but it did not que back to the driveway, he will go out and observe the 11:20 pm to 11:40 pm time period and the 3:20 to 3:40pm time period to make sure that the driveway is not impacted during those hours.

Mr. Rea address the additional traffic that will be turning into the west bound traffic, he stated that the additional time which has been allotted to the drop off & pick up time will add 2 cars per cycle to the que extending it from 10-15 to 12-17 cars per cycle, it will have an impact, but he still feels that the driveway is sufficiently far back that it will impact the area only a few times.

Mr. Rea said that he has already anticipated the expansion to 90 students as opposed to the 60 students now in Little Silver, he feels that beyond the 90 students that it would be the schools burden to come back to prove that it is working properly and they would have to convince the board if they wanted to add anything additional without creating an additional impact.

Mr. Cranmer asked Mr. Rea to provide as estimation as to what the distribution would be for vehicles approaching & leaving the site to the east and west bound. Mr. Rea said yes he would supply that within the 10 days. Mr. Cranmer asked Mr. Rea about the growth rate for 10 years. Mr. Rea said he would look into it. Mr. Cranmer asked if 18 vehicles were queued on site, will an emergency vehicle be able to circulate the site? Mr. Rea said yes, the driveway is 18' wide leaving room, if at the time of site plan, he could widen the driveway to accommodate a by pass lane to 20'.

Mr. Rea answered questions with regard to making a left hand turn; he feels that the car will have to wait. The driveway entrance/exit is 25' wide enough room for a car coming in and one going out.

Mr. Forrester marked the Traffic Report, 9/16/08 as **A-4** into evidence.

Ms. Alyson, Coffen, Planner, was sworn and accepted as an expert in Planning.

Ms. Coffen testified that she prepared an analysis for a use variance for 90 students and 10 staff member on .97 acres, which was previously approved to construct a 7,050 sq. ft. of medical offices with 47 parking spaces, in a mix use area and described same.

Ms. Coffen read the permitted uses in the B1 zone, and advised that educational uses are permitted within the B1 as a conditional use subject to the following conditions: minimum lot size of 5 acres, where .97 acres is provided, minimum buffer of 20' where 5' is proposed on the western property line, lot coverage of 30% where 35.6% is proposed, and a D3 variances is required.

Ms. Coffen testified that special reasons do exist for the approval of the D3 variances which can be granted without detriment to the health safety & general welfare of the public: general welfare is advanced since the proposed use is an inherently beneficial use, which is recognized as a beneficial use by the State of New Jersey. The provision of an inherently beneficial use is a special reason for the granting of the use variance since the use advances the general welfare.

Ms. Coffen referred to the balancing test is a specific procedure determined by 3 steps: Establishing the magnitude of the public interest at stake, which the use is a smaller size private education use, which provides a service to a specific segment of the population. Since the enrollment is anticipated to be 90 students, which would benefit from the facility at any given academic year. The second step would be to identify significant detrimental affects that would ensue from the result from the grant of the variances.

It is her opinion there are no detrimental affects that would ensue from the grant of the requested variances. The proposed school is located within a business zone, in which schools are conditionally permitted. The potential detriments of this use would include traffic, odors, visual impacts and most of these are not situations which are impacted by the nature of the variance relief. The site will operate, with this use, safely and efficiently as the traffic engineer testified to. There are not significant odors related to an educational use. With regard to noise there will not be any significant noise associated with the use. The majority of the use that is related to the educational use is indoors and there will not be any detrimental impact caused by the noise of children at play outdoors. There will not be any visual detrimental impact to the public. The buffer variance is being requested to the west and there will not be a detriment to a commercial use with regard to a decreased buffer next a commercial use. There are no significant detrimental impacts resulting from the location of a Montessori School on the site.

Ms. Coffen testified that the third test is to weigh the positive and negative criteria to determine whether the granting of the variance would cause a substantial detriment to the public good. She stated that the Supreme Court stated that the balancing of the negative & positive criteria while properly making it more difficult for municipalities to exclude inherently beneficial uses, it permits such exclusion when the negative impact of the site is significant. It also preserves the right of the Municipality to impose appropriate conditions upon such use. In this case, the positive criteria are substantial and that the use is an inherently beneficial use which provides educational benefits to residents of the area. The negative impacts associated with the requested variances are minimal and have been accommodated through the design of the building and the site to be visually consistent with the surrounding business zone, therefore there is no substantial detriment associated with the use. She feels that the variances can be approved without detriment.

Ms. Coffen stated that the site plan will prove that it is attractive, safe, provides everything that the school would need to function and will have no adverse impact on the surrounding properties.

Ms. Coffen stated that the principal deviation is the lot area. A minimum of 5 acres is required and the site is -1 acre and the intent of requiring a large lot for an educational use is to ensure that there is adequate land area for the associated outdoor recreational facility i.e. athletic fields, this school is a small specialized school and does not require the large outdoor fields, and the site would provide the adequate area for the use, at this intensity despite the deviation of the lot area requirement. The buffer area is consistent with a previous approval for the site, which provides a 5' building set back where 20' is required, the adjacent property that would be affected is a parking lot, and they will not deviate from the full 20' buffer to the east. The lot coverage or 30% allowed is scaled for a 5 acre lot and is appropriate for a larger school with fields, this site is less than 1 acre and could not be reasonably developed with any commercial use with a 30% coverage. The underlining zoning allows 60% for a permitted use. The 35.6% is consistent with the intent of the conditional use standards with amply play areas and landscaping, and can function within this less than 1 acre.

Ms. Coffen stated that it is her opinion that the proposed development can be constructed on the site, and accommodate any problems associated with the use despite the deviations from the variances, and does not comply with the conditions of the Ordinance. The approval would not be inconsistent with the intent and purpose of the Master Plan or Zoning Ordinance. The Ordinance permits this use, conditionally within the Zone, which indicates the use is most appropriately located with the B1 zone. The nature of the deviations relates to intensity and the scale of the use on the site. The use is scaled to this site and will not impair the intent & purpose of the Ordinance.

A motion was made by Ms. Canonico, seconded by Mr. DeNofa to open the meeting to the public. All approved.

No comments/questions

A motion was made by Ms. Canonico, seconded by Mr. Dodge to close the meeting to the public. All approved.

Mr. Forrester announced that the application will be carried to the **12/3/08 meeting** without further notice. He will be bringing his witnesses back for any questions board members may have.

Ms. Waterbury returned.

M/M Michael Michalski:

Bulk variances for new home

113 E End Ave
Bl: 58, Lot: 18

Mr. Forrester announced that he has reviewed service and finds it to be adequate and the board has jurisdiction to hear this matter.

Mr. Michael Michalski, 113 E End Ave was sworn
Mrs. Amy Michalski, 113 E End Ave was sworn

Mr. Michalski testified that he was denied a zoning permit to allow him to construct a new single family home at 113 3 End Ave due to the need of variances.

Mr. Forrester marked the following into evidence:

A-1: Survey, prepared by Control Layouts, dated 8/26/08 showing the existing dwelling to be raised and the proposed dwelling

A-2: Architectural Elevations prepared by the homeowner

A-3: 4 photos - preexisting home & empty lot

Mr. Michalski testified that he is proposing a new 2 story single family home. He stated that he is requesting the variances due to the uniqueness of the lot, the existing lot is undersized R3 requires 100' where 90' exist. He explained that there are developed existing lots on either side and to the rear making it impossible to buy more land to create a conforming lot for square footage.

Mrs. Peterson stated that the applicant is also seeking a variance for a front facing garage door. Mr. Michalski said that is correct. She also referred to the building coverage of 15% permitted 18% proposed, maximum impervious coverage 20% permitted, 21.6% proposed. Mr. Michalski said that is correct.

Mr. Michalski testified that he would like to build a 2 story single family home for his growing family. He had planned on a basement but due to the water table in the area he could not do that, so he added an unfinished storage/play room above the garage.

Mrs. Peterson referred to the comment "existing lot was non conforming with area & width frontage, once the existing dwelling is removed for whatever reason a non-conforming..." Mr. Forrester said that the pre existing non conforming dwelling was allowed to be continued; once the house is taken down it doesn't exist any longer. There is no right to allow it to continue once it is removed. They would either have to comply with the Ordinance or establish a unique reason that would separate it from any other lot, which doesn't allow them to comply with the zoning requirements.

Ms. Waterbury said that the preexisting structure probably would have had variances associated with it. Mr. Forrester said that the existing probably had building & lot coverage issues. The 90' lot would have difficulty complying with the front facing garage. The variances would be for building & coverage issues. If the applicant wanted to expand the existing house with porches or additions then the board would be concerned with the amount of expansion was reasonable.

Mr. Michalski said that originally it was his intent to keep the existing structure, but after his inspection several issues were identified i.e. mold issues, water damage, termites and a structural issue with the deterioration of the footings and foundation. It was more cost effective to take the house down, than to repair the issues mentioned.

Mr. DeNofa referred to Mr. Donlon's comment that a "non conformity variance is required", is that a 5th variance. Mr. Forrester said no, the board doesn't grant variances for the size or width of the lot because they exist, they are recognized only. Prior to the removal of the non conforming structure they had the right to continue the existence, they do not any longer. They are seeking variances for impervious coverage, front facing garage, building coverage.

Mr. Betesh said that they cannot comply with the lot size or width, but they could comply with building & impervious coverage, which would require a structure smaller than what existed? Mr. Forrester could not answer that.

Mr. Forrester explained that the lot size & frontage existed prior to the zoning requirements. Mr. Cranmer suggested that a certificate of non conformance should be issued, since variances will not be granted.

Ms. Waterbury explained that the size of the home is consistent with a full size lot, and they are meeting the side yard set back for the R3 zone. The height of the building is proposed at 34' with 2 steps to the front, where the zone allows 35'. Other homes in the neighborhood were improved in the same manor as the applicant is proposing, and asked the applicant if they had rooms over their garages? Mr. Michalski didn't think so, but he has a lower roof line. Ms. Waterbury doesn't have any concerns with the footprint of the building since they are complying with the side yards, but she has concerns with the height over the garage adding mass to the building and not be consistent with the other homes in the neighborhood.

Ms. Waterbury referred to Mr. Cranmer's letter dated 11/5/08 and the mitigation of the additional storm water run off and she doesn't feel that roof leaders etc may not be plausible in this area and asked what he would suggest for mitigation. Mr. Cranmer said there is about 5' to the water table, as per soil borings submitted dated 10/8/08 and placed on a plan dated 10/27/08. There is adequate room to install to a dry well for the two front corners and there are other mitigation strategies that are available, in the BMP Manual he has already spoken to the applicant. Mr. Forrester stated that the mitigation would be left to the approval of the Board Engineer.

Ms. Waterbury asked if the applicant would consider lowering the roof line on the garage? Mr. Michalski said that he would rather, especially since he cannot have a basement and he plans on a play room for the children. He doesn't know how it would look lowering the roof line. He stated that the previous house did have a side yard set back and he has now complied with that set back rather than apply for another variance.

Ms. Waterbury feels that the house will fit into the neighborhood, but she does have a concern with the height of the roof over the garage, and the house is being brought into more conforming. Ms. Waterbury said that she knows that it is common for homes in the area to have a front facing garage.

Mr. Michalski presented photos of other homes into the neighborhood with 2nd floors and front facing garages. Mr. Forrester marked the photos as A-4 into evidence.

After a discussion of the height of the proposed garage, a straw poll vote was taken and there were 3 members who didn't have a problem with the roof and 3 members would like to see the roof line lowered, members felt that the applicant should return next month with a possible redesign of the height of the garage, if it is possible, to try and bring the roof down to establish some "visual relief".

Mr. Dodge no concerns, Mr. Betesh no concerns, Mr. DeNofa no concerns
Mrs. Peterson would like to see the roof a little bit lower, Ms. Canonico would like to see it a little lower, as well as Ms. Waterbury.

Mr. Dodge asked if all of his neighbors were noticed, and they have had ample opportunity to review it? Mr. Michalski said yes, and his neighbor was going to come in support of the application, but he had to work.

Mr. Forrester explained to the applicant that he would bring a resolution next month and he can explain to the board as to the findings from his architect if the roof can be lowered and then the vote to approve or deny the application could take place.

A motion was made by Mr. Betesh, seconded by Mr. Dodge to open the meeting to the public. All approved.

No comments/questions.

A motion was made by Mr. Betesh, seconded by Mr. Dodge to close the meeting to the public. All approved.

Mr. Forrester announced that the application will be carried to the December 3, 2008 without further notice.

Break 9: 12 pm to 9:22 pm All present at roll call

Ms. Canonico left for a professional conflict.

M/M Christopher Hile

Bulk variances for new garage

95 Silverbrook Rd

Bl: 60, Lot: 9

Mr. Forrester announced that he has reviewed the service in this matter and finds it to be adequate and the board has jurisdiction to hear this matter.

Mr. Christopher Hile, 95 Silverbrook Rd, was sworn.

Mr. Forrester marked the following into evidence:

- A-1: Survey/with addition prepared by James Daley, showing the proposed garage
- **A-2**: Architectural Plan, 4 pages prepared by James Daley, showing elevations

Mr. Hile testified that he is seeking permission to construct an attached 2 car side loading garage with a storage/studio above and 1 story addition for a family. He stated that the garage over the garage will be unfinished until he can finish it for a play room for the children; and it will also be used to expand his existing bedroom, his closet area & add a new master bathroom. All of this is being done to give his family additional living space and storage that he needs.

Mr. DeNofa asked if the only variance he is requesting is for impervious coverage, which would increase the coverage by 2.3% or approximately 939 sq. ft. Mr. Hile said that he is not opposed to mitigate the additional storm water as indicated in Mr. Cranmer's letter.

Ms. Waterbury noted that his building coverage will be less than the maximum amount and the 2 car garage would be adding the majority of the coverage to the lot, plus the additional driveway for backing up. She likes the layout of the new garage which will work nicely with the house and the neighborhood. The positioning of the garage into the center of the lot will help to conceal it from the neighbors.

Ms. Waterbury asked if the driveway and apron will remain stone? Mr. Hile said yes for now and for a few years it will remain.

Mr. Betesh asked if he has considered any other configuration for the driveway or back out area? Mr. Hile said that he has not due to the narrowness of the area, he already parks 2 cars in the rear and what is shown on the plan is existing. Mr. Hile presented photos of the driveway and parking area. Mr. Forrester marked them into evidence as **A-3 1-2-3.**

A motion was made by Mr. Betesh, seconded by Mr. DeNofa to open the meeting to the public. All approved

There were no comments/questions.

A motion was made by Mr. Dodge, seconded by Mr. Betesh to close the meeting to the public. All approved.

There was a discussion of the proposed addition of the application and all board members agreed that this was a minor variance and all of the other requirements are well within the zoning requirements of the Borough and due to the amount of space that is available this application is approvable.

A motion was made by Mr. Betesh, seconded by Mr. DeNofa to approve the application to M/M Christopher Hile, to allow the impervious coverage to exceed the required maximum of 20% by 2.89%, subject to conditions listed in Mr. Cranmer's letter dated 11/5/08.

Roll Call:

Affirmative: Peterson, DeNofa, Betesh, Dodge, Waterbury

Negative: none

Resolution 12/3/08

Ms. Canonico returned to the board.

BHA, Inc. t/a Sal's Deli:

Staples Plaza
Bl: 70.01, Lot: 2

Appeal/in alternative expansion of
non conforming use & waiver of site
plan

Mr. Forrester announced that he reviewed the service and the board has jurisdiction to hear this matter.

Mr. Forrester stated that this is an appeal of the Zoning Officer's decision for the proposed use and in the alternative a use variance.

Mr. Forrester marked the following into evidence:

A-1: Resolution for Sarah Madden t/a SAMIKA INC

A-2: application/summary of use/floor plan

Z-1: Mr. Donlon's letter of denial dated 9/14/08

Mr. Jerome Donlon, Zoning Officer, gave a summary as to the reason why he denied the application to Sal's Deli.

- Existing resolution had strong & specific language as to what the approval was given for with regard to the use and conditions of approval

- Page 7 of the resolution, item #9 ***“nothing in this approval was intended to grant any variances to permit on premises food preparation or food handling other than as stated herein and is consistent with the testimony as contained in this resolution of the proposed use as for the sale of coffee and coffee related products”***.
- The resolution states that the use is a coffee shop

Mr. Donlon feels that he could not approve the proposed use as being consistent with the language of the approved resolution.

Mr. Edward McKenna, Esq. represented the applicant.

Mr. McKenna said his client would understand if the board agreed with the Zoning Officers interpretation, and they are not insinuating that Mr. Donlon made a mistake. He would like to discuss as to whether or not he would have to give testimony on a higher level.

Mr. McKenna gave an overview of what Sals currently does on site. He will have Mr. Cohen owner of Sals give testimony as to why he would like to take over the adjoining space known as Java Brewin. Mr. McKenna stated that Mr. Cohen has had many requests for pizza for catering jobs, but he cannot do pizza because he doesn't have a pizza oven, and he would like to supplement his business and he would also like to put in a stove along with the pizza oven to cook pasta. There are 24 seats in the store and 4 outdoor seats.

Mr. McKenna said that he did represent the previous owner and it was represented that it would be a coffee shop with some food products to be served. This application is basically to install 2 pizza ovens and a stove in the existing facility. This is not going to be a pizzeria which is what many of the board members thought, but it is not the intent. The intent is to supplement the catering business in order to provide pizza. In the alternative you would be able to order 2 dinners and a pizza, which is the intent of what Sals Deli wants to do, only to supplement their existing facility. Sals is a full service catering business without pizza and with Javin Brewin immediately next door he can cook the pizza and bring them into Sals and reheat them for delivery.

Mr. Mel Cohen, owner of Sals Deli, was sworn.

Mr. Forrester asked Mr. Cohen if he agrees with Mr. McKenna's comments as to what he wants to do, and would he adopt that as his testimony? Mr. Cohen said yes.

Mrs. Peterson asked if the board should first determine if they are going to uphold the decision of the Zoning Officer? Mr. Forrester said yes.

Mr. Betesh asked if it is the intention to put pizza ovens in the Javin Brewin site? Mr. McKenna said that is correct. Mr. Betesh asked if there is any thing stopping him from putting pizza ovens into Sals other than the lack of room? Mr. Cohen said that the pizza oven are 8' long and he would need 2, and his entire kitchen is 16', he doesn't feel that he could do it. Mr. Betesh asked if other things could be moved to Javin Brewin in order to install the pizza over and be in compliance? Mr. Forrester feels that from Mr. Donlon's point of view the answer would be no, because of the interpretation of the resolution that only limited foods i.e. muffins etc.

Ms. Canonico asked if the pizza area would be open to the public? Mr. Cohen said yes, it is his intent to service or add on to his catering business. He doesn't have any seating in Sals and his customer's seat outside on the benches outside the store or eat in their cars. He would like to keep the 24 seats in Javin Brewin so he can send his customers down there to eat their lunch. He is only offering the right to sit down and eat; no service is available, only over the counter.

Ms. Waterbury said that the floor plan is similar to another pizzeria in town. Mr. Cohn said that he displays the food in Sals and he must be able to display the pizza as well. Ms. Waterbury feels that this is not what was expressed. Mr. McKenna said that the kitchen area is to prepare pizza with 80% of the pizza's going out with the catering jobs. Mr. Betesh said that is hard to determine, people will be going in to order a slice and sit down. Mr. McKenna said that the demand that they are aware of is such that he is seriously inhibited because he doesn't have the ability to deliver pizza with his catering jobs. The desire to obtain the space is because it is almost immediately adjacent to his space. He can cook the pizza and bring them to Sals where there are heating facilities and deliver the food. The secondary use would be to do no more than what existed there, which was to buy a pannini or muffin; you can buy it, and sit down and eat it. He is not looking to expand it or to convert it from what was already there. The product will not be a muffin or a cup of coffee.

Mr. Cohen feels that very little business will be done after 7:00 pm, but they will make pizza and they will take orders for sandwiches and deliver them as a catering situation after 7:00 pm for the new store. It's just an extension of their business, and adding onto their menu, which people have asked for.

Mr. McKenna said that if Javin Brewin were open you could purchase a muffin, coffee or sandwich etc., and either eat it there or put it in a bag and leave or have it delivered. There are tables inside and outside that were approved with the approval.

Mr. Betesh asked if the pizzas will be prepared in the Javin Brewin space? Mr. McKenna said yes. Mr. Betesh said now the board must determine if Mr. Donlon's denial was appropriate and it does state in the resolution that you cannot prepare foods. Mr. Betesh said that there is clear language that states no food preparation. Mr. Betesh said that it would be easier if the board didn't uphold the zoning officer's decision, and he doesn't feel that is possible. Mr. DeNofa agreed with Mr. Betesh, he feels that Mr. Donlon's

opinion based on the resolution that this board passed stands, and the board must uphold that and switch over with this issue. Ms. Canonico agreed. Ms. Waterbury agreed.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to uphold the denial of the zoning officer's decision to deny the zoning permit based upon the prior resolution.

Roll Call:

Affirmative: Peterson, DeNofa, Canonico, Betesh, Dodge, Waterbury

Negative: none

Resolution 12/3/08.....

Mrs. Peterson asked what will be made on premises in the new store? Mr. Cohen said pizza, but they will have refrigeration that will allow them to store some of the food that is prepared and available at Sals Deli and they will heat up the food.

Mr. Forrester gave his concerns over the existing Sals Deli and if any conditions were placed upon the use that was given 15 years ago.

Ms. Canonico said that is the reason why the board placed very specific conditions onto the resolution for Java Brewin and she feels that they are very close to being a restaurant, with pizza, chicken parm, tables, and hot foods.

Mr. Forrester said that the definition for a restaurant is "tables with consumption of food on premises", and this definition was applied to AJ's Deli when their application was presented to the board for the expansion of a non conforming use, because it was a retail use.

Mr. Betesh said that at Java Brewin there was no cooking, except for heating of sandwiches. Ms. Canonico pointed out that there was minimal garbage, which was a concern, minimal seating and minimal hours of operation.

Mr. McKenna agreed this was all in conjunction with a coffee shop, and unfortunately the franchisor went under and they had to close, even though she wasn't selling the coffee but rather the food. The food was purchased over the counter and you would sit down at the table and eat, which is exactly what Sals wants to do at the site.

Mr. Betesh feels that the making of muffins and the heating of foods and the ability to sit down and eat the food has opened the door and could allow the board to allow a very similar use as to what is being requested here. Ms. Canonico said that she doesn't agree, it is not similar at all.

Mr. Forrester read the definition of a restaurant into the record.

Mr. McKenna feels that according to the definition that Mr. Forrester read, they do have a variance for a restaurant. Board members disagreed, the variance was granted with very limited types of foods to be served.

Mr. McKenna said that the applicant would agree to certain conditions that the board would place on the approval. Is this going to be Mels Pizzeria, no its not. If a customer purchased any type of food isn't it wise to allow them to walk 30' and allow them to sit and eat in another store, with no waitress service, he feels that this would be a smart use of space.

Mr. Forrester said that he is not sure as to what was originally approved for Sals, he would bet that it did not include "on premise consumption", because they would have it. Mr. Dodge feels that the board should move on pass speculation. Mr. Forrester said that the board needs copies of what established the use. Board members asked how would that impact the new store? Mr. Forrester said that it may impact this because it would be the same entity running both stores. Ms. Waterbury feels that if Mr. Cohen sells both uses, the pizzeria could stay and so could Sals under different entities.

Mr. McKenna said that a condition could be placed on the approval that both businesses could only operate by common ownership in conjunction with Sals, because that is what they are representing. If someone wanted to buy the pizzeria, there would be a restriction that only the owner and operator of Sals is the person permitted to use the space of Java Brewin, which would solve the problem of 2 owners. Mr. McKenna suggested that if Sals stops operating then the pizzeria has to stop operating.

Mr. Betesh suggested that the applicant apply for a pizza restaurant. Mr. Forrester stated that his opinion is that if the board approves the site for anything other than cooking that is what you are doing.

Mr. Forrester said that the operator of Sals could operate the new space in accordance with whatever approvals existed for his current operation. If the applicant indicates that they are going to extend that to additional square footage it has to be tied to the original operation. Mr. Dodge said that is correct; and he feels that letting Sals use the tables in the pizzeria is questionable.

Mr. Betesh asked is the board willing to allow all of the food stuff that is currently being prepared at Sals to be served over the counter, and consumed in the premises, this is as close to a restaurant as you are going to get. He doesn't have an objection.

Mr. McKenna said that not having table in Sals is a deficiency and he wants to be able to his customers sitting in their cars or outside on the bench, to go to an existing seating area. Mr. Dodge said buying the food in one store and walk down the sidewalk and go into another building that is not on site where it was prepared.

Mr. Forrester asked from a planning perspective does it make to have a retail sale of prepared food for off site consumption or a limited on site consumption? Mr. Cranmer said that if you have a restaurant there is higher parking demand vs a store where you are buying prepared foods. He explained that the garbage is different there will be perishable material stored on site.

Mr. McKenna explained that there is an existing approved use with 24 seats 2 stores away from Sals and served food products. His client has another store 30' away serving the same products except they have a demand for a food that they can't make. They would like to install a kitchen in the new space and in conjunction with the use, if anyone in either location wants to sit down and eat in the existing table & chairs they would like to have that ability.

Mr. Betesh said that we are looking at a non waitress restaurant and any other way that it is painted its coming out the same way.

Mr. Forrester said that the board has determined that Mr. Donlon's denial will stand and what is proposed is not in accordance with the resolution. He feels that the board must make a decision as to whether or not they are going to grant a variance for what the applicant would like to do.

Mr. McKenna suggested that he try and locate the Sals approval and in conjunction he will address some of the boards concerns i.e. dumpsters, which he already has. Will he need another refrigerator, that answer is no they will keep the refrigerator in the existing facility. The shopping center already has restaurants including Sals with no residential homes around it, and there is restaurant uses across the street.

Mr. Forrester said that there may be good grounds to grant a use variance, and he pointed out that the notice was already given for a use variance in the alternative.

Mr. Betesh feels that the denial of the appeal is appropriate and this use is beyond the scope of the prior resolution, but there may be grounds to grant this use.

A motion was made by Mr. Betesh, seconded by Mr. DeNofa to open the meeting to the public. All approved.

Mr. Robert Arena, owner Rosina's Rest, gave his reasons why he support the denial of the Zoning Officers decision. Mr. Arena read a lengthy statement into the record with regard to a high volume pizzeria, traffic & the extended hours of operations. He would encourage the board to request a new use variance.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to close the meeting to the public. All approved.

Mr. Forrester announced that this matter will be carried to the **12/3/08 meeting** without further notice.

A motion was made by Ms. Waterbury, seconded by Ms. Canonico to adjourn the meeting at 11:00 pm All approved.