

Present: Waterbury, Peterson, Canonico, Betesh, Fisher, Clark, DeSalvo  
Forrester (Attorney)  
Cranmer (Planner)  
Absent: Walsh, Stambaugh

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

Mr. Forrester gave the Oath of Office to Mr. Jeff DeSalvo as Alt #2

**Minutes:**

A motion was made by Mr. Betesh, seconded by Ms. Canonico to adopt the minutes of the April 7, 2010 meeting minutes & transcripts as submitted. All approved.

**Planning Board Representative:**

K Hovnanian application still be heard, next hearing on 5/19/10

**Correspondence:**

- Rules & Regulations carried to June 2, 2010
- Annual Reports for 2008 & 2009 reviewed and approved will be forwarded to mayor & council.

Ms. Waterbury suggested that a check list should be added as a requirement for a use variance. Mr. Cranmer stated that there is a checklist pending as part of the codification of Chapter 94. This issue will be further discussed.

Mr. Betesh suggested that additional information i.e.: aerials be supplied by applicants to indicate the proximity of structures within 200' of an applicant's property, item was discussed by board members. It was decided that the board engineer and board secretary should work on the existing instruction sheet, to add some additional information to the existing check list.

***A motion was made by Mr. Betesh, seconded by Mr. Fisher that the Board Engineer and Board Secretary work together to develop an information packet to assist applicants to the Zoning Board in developing the appropriate materials for their application including a request that some indication be included in the application as to the neighboring structures within the 200' to be noticed for the application. All approved.***

A motion was made by Ms. Waterbury, seconded by Mr. Betesh to approve the Annual 2008 & 2009 Report with the condition that a recommendation that a checklist for a use variance application be enacted.

Roll call:

***Mr. Forrester requested that the checklist for a use variance be tabled until the end of the meeting.***

**M/M Lester Hauck:**

99 Alameda Ct.

Bl: 17, Lot: 26

Bulk variance for 1 story addition  
in rear yard - impervious coverage

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

Mr. Lester Hauck, 99 Alameda Ct was sworn.

Mr. Forrester marked the following into evidence:

**A-1:** Survey dated 11/23/93 showing the proposed addition 20' x 10' w/Zoning Officers comments

**A-2:** Photos of existing conditions as taken by the homeowner, rear of the his home, the northern property owner, and from the southern view of the lot.

Mr. Forrester pointed out that the lot is 53' wide with an existing driveway to the south that is 16'.2 wide in the front of the lot and 16'3 in the rear. Mr. Hauck testified that there will be no changes to the existing driveway.

Mr. Forrester asked Mr. Hauck if there is any way he could bring the existing conditions into compliance? Mr. Hauck stated no, all of the surrounding lots are developed. The driveway already exists and the side yard exists. The only variance he is before the board is for an impervious coverage.

Ms. Waterbury asked Mr. Hauck if he utilizing the existing hall which will divide the laundry room and bathroom? Mr. Hauck said yes, the hallway will allow them access to the backyard. He testified that they plan on making the existing bathroom larger in order to accommodate his wife's physical condition which did not allow her access into the bathroom while using a wheel chair or walker. He feels that this would be the best time to convert the bathroom into a more accessible bathroom along with the laundry room.

Mr. Forrester asked Mr. Hauck if he has reviewed Mr. Cranmer's review letter with regard to the impervious coverage? Mr. Hauck said yes, and he has looked into the mitigation by using a dry well system. Mr. Forrester said that the approval will be conditioned upon the mitigation of the impervious coverage.

Ms. Waterbury asked if there were any questions from board members. Board members agreed that the request was straight forward, no concerns.

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

No comments/questions

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

**Board discussion:**

Mr. Betesh stated that the application is straight forward and as long as the applicant agrees to the mitigation he can vote favorably.

Mr. Cranmer suggested that Mr. Hauck contact the Environmental Commission for the use of rain gardens. Mr. Hauck said that he needs to mitigate 837 sq. ft. and the rain garden would take up the back yard. Mr. Cranmer suggested using a combination of dry well and rain garden. Mr. Hauck said that he would look into it.

Ms. Peterson stated that the addition is needed and warranted and the applicant is not asking for a huge addition, it is only what is needed to relocate the washer/dryer and enlarge a bathroom.

Mr. Fisher agreed with all comments.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to approve the application of M/M Lester Hauck as submitted for a 20' x 10' addition, and to allow the addition with the impervious coverage, subject to the applicant mitigating the amount which is over the allowed amount, subject to the approval of the board engineer.

Roll Call:

Affirmative: Waterbury, Peterson, Canonico, Betesh, Fisher, Clark, DeSalvo

Negative: None.

**Resolution 6/2/10.....**

Board Secretary will advise the Construction Department that the applicant has received approvals, subject to mitigation of the impervious coverage.

**Qdoba Mexican Grill:**

Shrewsbury Plaza

Bl: 31, Lot: 1

**Adoption of Use Variance Resolution**

After a brief discussion of the proposed changes:

- Delete paragraphs #14 & #15 -
- Add additional paragraph to refer to the res judicata issue and that it does not apply

A motion was made by Ms. Peterson, seconded by Mr. Fisher to adopt the resolution of approval for a Use Variance only to Qdoba Mexican Restaurant, with the condition of an amended site plan to be submitted, and the deletion of paragraphs 14 & 15 and minor changes as submitted.

Roll Call:

Affirmative: Waterbury, Peterson, Fisher, Clark

Negative: None

Break 8:25 pm to 8:30 pm. All present at roll call.

**Shrewsbury Common, LP Merritt Corp & Cole Grove West LLC:** Use Variance  
*d/b/a: Pops Garage* & waiver of site plan  
Bl: 20/21, Lots: 1/1.01

Mr. Rick Brodsky, Esq represented the applicant.

Mr. Brodsky gave an overview of the application for the board.

Mr. James Kennedy, Kennedy Consulting, 211 Maple Ave, Red Bank, NJ was sworn and accepted as an expert witness.

Mr. Kennedy testified that he designed the site plan in 2006 which was approved by the Planning Board. He stated that there are no site changes that are proposed as part of this application, and he was asked to review some of the typical site plan issues with regard to the 1,500 sq ft tenant space, which was originally approved for retail and now being requested for a restaurant space. He looked at the following:

- Existing utilities
- Existing lighting
- Existing landscaping and the proposed outdoor seating
- Safety involved with the change from retail to a restaurant use

Mr. Kennedy stated that they are proposed outdoor seating for 127 sq. ft. with 10-12 chairs on a scored concrete surface which will pitch into the landscaped bed adjacent to the area, which disconnects the impervious surface from the drainage system, and described the current drainage system. He doesn't feel that adding 127 sq. ft of impervious surface will not have an impact on the function of the existing drainage system.

Mr. Kennedy testified that the existing water line is a 2" water line & a 4" fire main line which are located on the westerly side of the building and serves the tenant spaces, which is oversized for retain uses. There is sufficient pressure to service the proposed restaurant over the mercantile use that existed.

Mr. Kennedy referred to the sewer system is directly in front of the structure, with 1 lateral that serves the structure, and it will depend on where they will be required to install the grease trap, they may have to install a 2<sup>nd</sup> lateral from this tenant space. It will depend on the plumbing sub code official to make the determination. Currently the lateral is of a sufficient size and they will be able to service the kitchen.

Mr. Kennedy referred to the existing lighting. Currently there are shoe box type fixtures out of the view of the building. There is a lighting fixture in close proximity of the proposed seating area. The lighting levels proposed are for pedestrian safety. The parking area they are proposed 2-3 foot candles adjacent to the out door seating area. If there is dining in this area it will be a safe area, but if the operator chooses they may add additional fixtures by adding small bollards in order to supplement the parking area lighting.

Mr. Kennedy stated that he reviewed the refuse enclosure. He stated that normally office/retail use 1 cubic yard of waste per week per 1,000 sq. ft. The food use is difference, but the volume doesn't change significantly, since they will not be throwing food out. They are proposing internal storage for recycling and garbage. During the low utilization that is when the applicant will take out the garbage, the refuse area is located on the westerly portion of the property. The existing refuse area is sufficient to handle the change from retail to restaurant. Recycling area is suitable for the proposed use. The garbage is picked up on a daily basis, and there will not be a change to the pick ups, Monday through Saturday.

Mr. Kennedy testified that when the site was design in 2005 and he knew that a restaurant was going into the center, he would have not done anything different. Everything was is appropriate for the site.

Mr. Betesh asked questions with regard to the refuse. He asked if the garbage comes out the front and across to the refuse area, which is the way the other retail tenants remove their trash? Mr. Kennedy said yes. Mr. Betesh stated that this tenant will be removing food refuse out the front and across the parking lot to the containers. Are the containers segregated with respect to recyclables and food waste? Mr. Kennedy stated that the food will go in with the regular waste, and will be removed once a day except for Sundays. Mr. Betesh asked if there is any means of controlling the odors of food waste? Mr. Kennedy said that it takes longer than the 12 hours to spoil, it is picked up daily, except for the Sunday to Monday morning trash, he will look into what type of containers are being used. He will check into what can be used to control odors that may come out of the container.

Ms. Clark stated that she has concerns with the 2 dumpsters and their location, one being in the parking lot and it is not contained within the refuse area, and both containers were open and exposed to the parking lot. The refuse area looked like it has not been cleaned in a while. This refuse area did not have the containers enclosed within the area with the gates closed; in fact, there is not enough room within the refuse area to hold 2 containers. Ms. Waterbury agreed.

Ms. Kerri Dolan, Site Manager Metrovation, was sworn. Ms. Dolan described the refuse area, which has an 8 yard Single Stream with a recyclable container, which shows that the container is for cardboard, plastic bottle etc. There is a 4 yard container for waste product. She stated that the trash enclosure is too small for 2 containers. They will look into making this area larger if they can. Mr. Kennedy said that he will look into this area in order to widen the refuse enclosure in order to get the containers side by side.

Ms. Clark stated that she would like to see the containers in the enclosure with the doors closed due to the food products going inside, rather than a dumpster out in the parking lot.

Ms. Canonico asked what time is the garbage picked up? Ms. Dolan said that usually between 9:30 - 10:00 am they are the last stop, because the tenants start opening for business. Ms. Canonico said that the garbage from Saturday and Sunday will be picked up on Monday? Ms. Dolan said yes.

Ms. Canonico said that she has concern with the garbage coming out the front with food, liquid, dripping through the front area, past the stores, she feels that the refuse is too far in order to bring the food garbage out, have they considered putting them some where else? Mr. Kennedy said that they use modular roller tote systems that come right out of the closet and they are rolled right out of the store. Mr. Kennedy stated that this tenant space has 1 door, and the tote system is a little nicer, they are not carrying out bags of garbage. They would take the trash out after lunch and after dinner.

Mr. Kennedy stated that they could also install a disposal into the store, which is an excepted practice, and they would accept this as a condition of approval.

Ms. Peterson asked whose responsibility is it to make sure that the doors of the enclosure are shut? Mr. Kennedy feels that it should be the garbage company, and they need to have self closing doors. Ms. Dolan said that it is in the contract that they must close the doors. Ms. Peterson said that they are not closed now. Mr. Kennedy said that they will try and take care of this.

Ms. Waterbury asked if the out door seating area is going over a grassed area? Mr. Kennedy said yes. Ms. Waterbury asked if the concrete will be similar to the existing surfaces? Mr. Kennedy said that he did not know, but it will be an attractive coating. Ms. Waterbury asked where do they stand with the impervious coverage? Mr. Kennedy said that there is another piece of property behind the center, and the Stormwater system is designed to take care of the full increase in coverage regardless of the zoning characteristics, and as part of the site plan application there wasn't an impervious coverage variance. He has only reviewed the drainage aspect of the site. Mr. Cranmer said that 65% is permitted, 52% exists.

A motion was made by Ms. Peterson, seconded by Ms. Canonico to open the meeting to the public, for questions for Mr. Kennedy or Ms. Dolan. All approved.

Mr. Lester Van Pelt, 14 Glorney St., gave his concerns with respect to the times that the trash is picked up at 7:00 am and that the "restaurant" trash can give them problems that they have had in the past with food users with respect to odors and he would like to know if the trash enclosure issues can be addressed before the tenant moves in.

Ms. Dolan said that the enclosure will be addressed, and they will request that the tenants put their trash into the containers. Mr. Brodsky stated that there is enough room so that the enclosure can be widened to accommodate both of the containers.

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

Mr. Karl Pehnke, Traffic Engineer, Langan Engineering & Environmental Services, was sworn and accepted as a traffic engineer.

Mr. Pehnke testified that he was requested by the applicant to review the application for a use variance associated with the tenancy within the Grove West from a traffic, parking and traffic circulation stand point. He has visited the site, reviewed the site plan, architectural plan, reviewed numerous photos of the property, and a parking log which was conducted by the owner of the property.

Mr. Pehnke stated that from a parking and circulation stand point the application does not provide for any changes in access to the site, no changes to vehicular circulation or to the number of parking spaces, and no plans for expansion of the site. The site was approved several years for an 8,000 sq. ft. building, and from a traffic stand point all they want to do is switch out a tenant who does not comply with requirements of the zone.

Mr. Pehnke stated that they use the Institute of Transportations Engineers Publication Trip Generation and they design accordingly, and that is how the site was designed, as an integrated of commercial establishment, the occupancy of this 1,500 sq. ft tenant will have a negative change of traffic patterns to and from the site opposed to other tenants on this site. The site has great access from Broad Street, Patterson Ave and to Meadow Drive through the adjacent property; movement can be made from any direction on this site, and is interconnected with the adjacent property. Access will not change in any material manner. The parking is calculated on 4.5/1,000 sq. ft. giving 179 total parking spaces on the site, 90 spaces located on the western lot. The minimum amount of spaces that were available in the 90 space parking lot were 58 spaces on 10/2/09. He advised that the center is fully leased.

Mr. Pehnke referred to the outdoor seating area for 10-12 seats, which will be located outside the front door, and from a safety opinion this would be an appropriate place for outdoor seating. The location would not impede upon any existing pedestrian circulations or sidewalks in front of the other buildings.

Mr. Pehnke stated that the deliveries are infrequent approximately 2 per week between the hours of 8 am and 10 am, before the center opens at 10 am.

Ms. Waterbury asked Mr. Pehnke about the deliveries to the store. The owner did testify that they would be receiving deliveries via tractor trailers and they would park on the western side of the building. Ms. Waterbury asked if that was a "tight" area to maneuver a track trailer and could he address that issue. Mr. Pehnke said that tractor trailers do come into the site today, and one of the paths is to enter the site make a right and come into the aisle to the west of the building and out to Patterson Ave, this has been tested with a auto turn on a tractor trailer WD50, which is a 42' trailer and it did work, and tractor trailers who are coming onto the site are getting through with no problem.

Ms. Clark asked where the centralized loading space is located? Mr. Pehnke stated that the centralized loading space and trash area is located to the west and north of the 1 32,000 sq. ft. building.

Mr. Forrester asked Mr. Pehnke if he looked at the site from the traffic access from the adjacent site to the south? He explained that he looked at it as a whole; it is interconnected quite well to the adjacent property to the south. They are not common property owners, but he would assume that there is some type of cross access easement in existence, but he has not investigated that specifically. Mr. Forrester said that there is no cross easement or cross authority to get across the property to the south to this site.

Mr. Cranmer said that there isn't a recorded easement but the applicant (Metrovation) did discuss this with Mr. Tomaino to enter into a recorded cross access agreement to formalize this and Mr. Tomaino did not want anything to do with it. Mr. Brodsky stated that their customers come onto this property continually. Mr. Forrester said that this is a horrendous site issue for 30 years, and it has never been resolved with regard to the traffic circulation. Each is traversing properties without any authorizations.

Mr. Forrester asked if Meadow Drive was public or private? Mr. Cranmer stated that it is public for 260' then it becomes private.

There was a brief discussion on the traffic going through and from the Metrovation site and traffic patterns.

Ms. Peterson feels that this restaurant will be a destination stop not only for people in town but for people..... Mr. Brodsky said that it will be a destination for people in the evening for dinner rather than lunch. Mr. Pehnke said that there will be a component that will come to the site because its there and a component that will draw from the existing patrons on the site, and a large component that will draw from the pass by traffic. Mrs. Peterson feels that the customers from The Grove (East) will drive over to the restaurant. She asked will they use the light at Meadow or the main entrance from Grove West for entry? Mr. Pehnke said that it depends on the driver and where they are coming from. Ms. Peterson feels that the traffic is getting to the point of chaos and the delivery zone is suppose to be in the back of the building and they do not happen there, trucks make their deliveries in front of the stores. The traffic pattern that Mr. Pehnke has

discussed is not functional and she questions the traffic patterns, safety and the location of the loading zone.

Mr. Pehnke said that the center and the driveways are established regardless of the tenant that goes in there will be traffic associated with the store, the driveways will be used and used by people driving to the center the way they are most comfortable. Independent of the use whether the use is approved or not that will occur and it is really not consideration in terms of this particular use of the site. The loading is different for a restaurant vs. a retail use, restaurants do not want loading during their busy times (mid day or lunch time), the loading would occur during the pre morning hours when they are prepping, and not using their staff. What is occurring on the site will continue as is and will not change. Ms. Peterson said that what is being painted is ideal and it is not happening on site, and it should be kept in mind when changing the use.

Mr. Betesh said that he understands that the proposed will not make a distinct impact from what is there, but he understands what Mrs. Peterson is saying that this entire complex Grove East, Grove West, traffic flow, Tomaino property is getting to a point where it is a problem and there should be some focus to find a way to solve these multiple problems for both pedestrian traffic and auto traffic so the properties could grow and flourish.

Ms. Peterson feels that putting in a restaurant use vs. a retail use does change the traffic and pedestrian flow and changes the dynamics of the center. She feels that the traffic will have a major influx during those hours, and that is where he concern is.

Mr. Pehnke said that the overall area is what occurred when the building was approved in 2006, and there were quite a lot of improvements done addressing the concerns that have been talked about tonight, i.e. secondary access to Patterson Ave, increased parking and improvements to the curb curbs. He feels this application is only for a change in tenancy and is excluded in the Ordinance which is the reason why they are here before the board for a use variance. This is a typical customer use which has a synergy with customers that are already on the site and the traffic on Broad Street.

Mr. Forrester stated that this board is not inclined to grant a restaurant use in a shopping center, without a site plan. Mr. Pehnke stated that there is no reason to change the site plan due to the functioning elements on the site. Mr. Forrester stated that if the board feels that a site plan approval is necessary they will approve it conditioned upon a site plan approval and will retain jurisdiction.

Ms. Peterson feels that when Grove West was designed it was designed for retail use, there is no loading area, no back doors for deliveries and it will be a different traffic pattern, and these are her concerns, and she feels they are issues.

Mr. Brodsky said that the deliveries will be during the morning and not during the operation of the restaurant. Ms. Waterbury stated that there are always deliveries being made in Red Bank to restaurants and blocking traffic, she hears that a lot but it is not what she observes.

Mr. Brodsky stated that the perspective of the property owner is for a 1,500 sq. ft. restaurant, there will not be major site plan changes, this property owner has operated The Grove & Grove West and the property owner will not jeopardize this shopping centers, and if they felt that there would be a problem with 1,500 sq. ft. restaurant they would not even consider it. Ms. Waterbury said that the board must look at the next owner, and who would be looking to come into the center. Mr. Brodsky said that only a very specialized restaurant would be able to go into a 1,500 sq. ft space.

Mr. Pehnke stated that he would not have designed this site any different than if it had a restaurant use or not.

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

Mr. Fred Mazzucca, 10 Glorney St., asked where are the tractor trailers going to park and sit waiting for someone to off load the groceries if they are late? Mr. Pehnke said that they will use the parking aisle or the circulation aisle. There are opportunities for them to sit and wait. Mr. Pehnke pointed out the route on the site plan to Mr. Mazzucca.

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

Ms. Christine A Cofone, Planner, was sworn, and was accepted as an expert witness in Planning since she has testified before the board previously.

Ms. Cofone stated that she is familiar with the application and visited the site. She has reviewed the Zoning Ordinance and Master Plan inconjunction with this application. She stated that they are seeking a D1 and not inherently beneficial use, and she will demonstrate that this site is suitable for the proposed use.

Mr. Forrester marked 8 photos as A-6 into evidence.

Ms. Cofone described A-6 row 1, as the community garden, which many restaurants have shown interest to use. The owner is frequently approached by other food establishments and this operator could have gone elsewhere because there are other locations in Shrewsbury. This is a great fit because the existing community garden is one of the reasons to render this suitable for this use. The operator intends to use ingredients from the garden for the food for the restaurant and to become involved in the community.

Mr. Forrester feels that the operator and the not the use would utilize the use.

Ms. Cofone said that the operator of the use is going to use the community garden.

Mr. Forrester stated that once the board grants the variance it will exist, whether it's Pops Garage or another user using the 1,500 sq. ft. Ms. Cofone stated that if another user was to go in and use more than 1,500 sq. ft. they would have to come back to the board.

Mr. Forrester stated that Ms. Cofone must answer why this particular use is suitable because of this particular operator. Ms. Cofone said that she will answer that.

Ms. Cofone said that the applicant intends to use the community garden and you may or may not rest your decision on that. If she was voting on the application that is one factor she would consider, but not the basis for her vote. It is something that should be considered.

Ms. Cofone stated that restaurants do have a synergy and it works with the sensor across the street, they are requesting to have a restaurant in a "life style" center, it is not a radical concept to have restaurants and retail establishment within the same center. There is adequate parking available to have the retail and restaurant render the site particularly suitable. There is excellent highway access, and she feels that this will bring people to the site and it will be used for cross stretch as well, especially at the dinner hour. For all of those reasons the site is suitable. Restaurants are not permitted in any zone so there isn't an opportunity that they could look at a site elsewhere where this would be permitted. She understands that once the restaurant is approved for this site, and someone else wanted to come in and have a larger restaurant they would have to come back to the board.

Ms. Cofone said that the positive criteria are satisfied. She stated that they have a burden to demonstrate that 1 or more of the purposes of the Municipal Land Use Law are advanced. It is her opinion that there are 2 purposes that would be advanced by this application:

- (g) to provide sufficient space in an appropriate locations for a variety of uses, agricultural, residential, recreational to meet the needs of New Jersey citizens. This is an appropriate use for an appropriate location for a restaurant

- (i) to promote a desirable & visual environment to create a development techniques in good civic design arrangement.

She feels that the outdoor seating will bring curb appeal as demonstrated at DJeet and Star Bucks, they are well used and it infuses into a shopping center vitality and brings curb appeal to the center.

Ms. Cofone addressed the burden of proof with respect to the negative criteria, you must be satisfied that if you were going to grant the variance, that the benefits of the granting of the variance would outweigh any detriments. She feels that the benefits will outweigh the detriments. Section 94-3, prohibited uses, states restaurants are prohibited, not only in the B1 Zone, but in any zone, and she read the section into the record. It is here

opinion that there will not be a negative impact on the Borough Zone Plan if a restaurant is permitted to go into this location.

Ms. Cofone addressed the 2<sup>nd</sup> item would be the impact on the public good. The trash can be designed on site and Metrovation will solve the trash problem on the site. This problem needs to be solved and will be overcome and having a restaurant will not have a substantial detriment on the public good. This is only 1,500 sq. ft. This restaurant will not substantially alter the character or the patterns that this shopping center is exhibiting today. There will be 38 seats inside and 12 seats outside. This restaurant will be limited by its own space as to what kind of impact it will have on the public good.

Ms. Cofone stated that from a planning point of view this site is particularly suitable for a restaurant. There is no planning reason why we would want to separate, in this life style center, restaurant from retail uses. The positive criteria is satisfied and the negative criteria is satisfied, and the variance relief that is being requested can be properly granted without a substantial detriment to the public good.

Mr. Forrester asked Ms Cofone what is a “life style” center? Ms. Cofone stated that it is a center with a mix of uses, i.e. The Grove East is a life style center and the Grove West is an extension of that center and will become a life style center.

Mr. Forrester stated that the Planning Board through their review of the Zone Plan & Zoning Ordinances have never allowed restaurants and never allowed one in this particular location. Ms. Cofone said that there is the “enhanced proof” which they will have to satisfy. Despite the prohibition of no restaurants, she cannot think of a shopping center without a restaurant in it. There are 3 restaurants in the Staples Center, and 8 in the Shrewsbury Plaza and in Shrewsbury Village there are 3 restaurants. She feels that since the Planning Board has not made the recommendation that restaurants be permitted, she feels that they would be allowed on a case by case basis to maintain the integrity of the Borough.

Mr. Forrester pointed out that the review of the Master Plan did not change the Ordinance without respect to restaurant, and did not recommend changes. Mr. Brodsky said that is why we are here, and the Borough Counsel did not make the recommendation to change, and the reason why restaurants exist is not that the Borough agrees that restaurants should exist it is based upon where they should exist.

Ms. Cofone said that the review of the Master Plan was only a reexamination and she could not do a comprehensive review and it was silent on that issue of restaurants. Counsel did not recommend the change to the Ordinance nor a recommendation to for a re examination report endorsing restaurants. But the applicant can proceed to secure a “D” variance for a restaurant. Ms. Cofone feels that if counsel does not want restaurants they should take the parking standards out of the Ordinance, and they have not done that.

Mr. Forrester stated that this board must determine whether or not this use for this particular property does not violate the Zone Plan or the Zoning Ordinance, and if there are any special reasons, and any conditions can be imposed on the approval. The board also must identify the negative aspects and what impact the approval would have on the Zone Plan and Zoning Ordinance, and the enhanced proofs as to why to why it should be approved.

Mr. Brodsky said that this is not a new use that is being introduced into Shrewsbury; it is relevant when the board is considering the application. Mr. Forrester agreed.

Mr. Brodsky stated that he would like to bring Mr. Chris Cole into testify next month. He would also like to address some issues that the board represented.

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

No comments/questions.

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

Ms. Waterbury stated that she has some questions for the architect, with respect to some of the materials. Additional testimony on the noise levels, the infiltration system, refuse area, and additional lighting in the seating area, as well as the dumpster area.

A motion was made by Mr. Fisher, seconded by Mr. Betesh to carry this application to the June 2, 2010 meeting without further notice. All approved.

***A motion was made by Mr. Betesh, seconded by Ms. Canonico to go into Closed Session for pending Litigation & Red Bank Volvo Litigation, with no formal action to be taken. All approved.***

A motion was made by Ms. Peterson, seconded Ms. Canonico to close the Closed Session and reopen public portion. All approved.

**Continuation of Checklist discussion:**

Mr. Forrester explained that there was a motion tabled in the early part of the meeting was with regard to making a recommendation a use variance checklist or instruction sheet adopted. Mr. Forrester asked Mr. Cranmer that he understands that there has been zoning changes proposed. Mr. Cranmer said that there is a new checklist which was formally included into the Codification portfolio which when it is adopted will replace the checklist that we currently have, and the new checklist will cover use variance application. Ms. Waterbury asked if the motion made earlier should be withdrawn since a new one will be put in place? Mr. Cranmer agreed. Mr. Forrester asked when was the codification? Mr. Cranmer said that the checklist was drafted in 2005, the Planning

Board along with the former Mayor Siciliano have been working on the codification of Sections: 94-5, 6, 7& 8, the draft is currently under review by the Planning Board.

A motion was made Mr. Betesh, seconded by Mr. Fisher withdrawing the motion for the Engineer and Board Secretary to work together on a checklist. All approved

A motion was made by Ms. Peterson, seconded by Ms. Canonico to adjourn the meeting at 11:10 pm. All approved.