

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

Chairman, Ms. 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, Ms. Waterbury, seconded by, Mr. Fisher to adopt the minutes of the May 6, 2009 meeting as submitted. All approved.

**Planning Board Representative:**

**Correspondence:**

Letter of resignation submitted from Mr. DeNofa due to his appointment to Counsel effective immediately.

**Election of Vice Chairman for remainder of 2009:**

A motion was made by Mr. Walsh, seconded by Ms. Canonico nominating Mr. Betesh as Vice Chairman for the remainder of 2009, with no other nominations

Roll Call:

Affirmative: Peterson, Canonico, Walsh, Waterbury, Fisher

Negative: none

Abstained: Betesh

Due to the resignation of Mr. DeNofa a new representative will be appointed by the Mayor

**Unfinished Business:**

**Central Jersey Blood Bank:**

**Adoption of Resolution**

Bl: 3, Lot: 12

A motion was made by Mrs. Peterson, seconded by Ms. Waterbury to adopt the resolution of approval for a new sign for Central Jersey Blood Bank as amended.

Roll Call:

Affirmative: Peterson, Waterbury

Negative: None

Ms. Waterbury stepped down 7:45 pm

**Montessori Academy:**

Continuation of Hearing

Bl: 34, Lots 5 & 7

Mr. Rick Brodsky, Esq. represented the applicant

Mr. Brodsky summarized the previous use variance approval & testimony from last months meeting for board members.

Mr. Brodsky stated that a revised plan was discussed by the engineer and board members last month. He advised that the plan has been submitted, testimony from the traffic expert will be given tonight as well as the Planner & Architect.

Mr. Forrester advised Mr. Brodsky that the 4 members who were not present.

Mr. Forrester marked the following into evidence:

**A-5:** Revised Site Plan dated 5/19/09

**A-6:** Colored rendering of revised site plan

**A-7:** Vehicle Stacking exhibit, handout given to board members

Mr. John Rey, Traffic Engineer, was sworn and accepted as an expert witness.

Mr. Rey described the changes to the design of the site.

- His observation at the Little Silver facility had an enrollment of 62 children with a maximum number of cars stacking at any one time was 9 vehicles in the am drop off period, with 90 children in Shrewsbury they will 13 and 14 stacking spaces in order to operate properly without stacking on White Rd, but he designed the site for 18 cars being able to be stacked on the site.
- Exhibit A-7 shows 23 vehicles being able to be stacked on the site given the critical situation of White Road vs. the Little Silver facility and provided the stacking ability of 23 vehicles.
- The entrance has been widened lane into the site to 22' in order to double stack cars and as the drive bends the width reduces to 18' single stack lane, giving a 23 car stacking ability to avoid cars interfering with White Rd.
- Mr. Rey stated that it is his opinion that if the Montessori school does have an enrollment of 90 students the stacking will be a maximum of 13-14 cars in the am drop off with the ability of 23 cars which is more than adequate.

Mr. Walsh referred to the ability for emergency vehicles to enter the property. Mr. Rey said that this situation is no different than a school which has school buses stacked on the site. If there is an emergency the parents are obligated to yield to the emergency vehicle move out of the way when they have their flashing lights on. He feels that this situation is less complicated than some of the larger grammar or middle schools in the area with 2 dozen school buses stacked in front of the building. The emergency vehicle could even stage itself out on White Rd if necessary when they could not get onto the lot.

Mr. Brodsky pointed out that next door is a parking lot for an additional space to park.

Mr. Rey also pointed out that this school does not have school buses and the applicant will agree to a condition that they will not have any school buses entering or exiting the property.

Mr. Forrester asked if studies were done on the level of service could be? Mr. Rey stated that it would be a level of service "C", which is a good level but there will be stacking due to the drop off & pick up at the school, these calculations are from the Highway Capacity Manual.

**Review of Engineer Report:**

**1.4:** testimony given tonight with respect to the traffic stacking

**2.2:** condition will be accepted that no school buses will be on site

**2.7:** reference was made to exhibit A-6 after a discussion it was agreed that the applicant will provide 2 - 12' lanes & 1 - 4' wide island, board members agreed that 1 lane in and 1 lane out is the best for this site, with the 4' island, the larger lanes will keep the traffic in line with the mountable island, this would be his recommendation to have one vehicle go out at a time, since they have the stacking ability on site.

Mr. Cranmer pointed out the new "green zone" for dropping off students. His office did a study and they feel that the stacking will be 12 vehicles which is consistent with Mr. Rey's study. Mr. Cranmer feels that the divided entrance/exit is better for this site, and if there is a problem they will have an alternate plan. He would like to see the mountable island with landscaping, which might add some impervious coverage but it will be more aesthetically pleasing.

Mr. Cranmer feels that the 36' wide lane is too excessive and he would recommend 2 - 12' wide lanes with a 4' island, which he feels is safe.

Mr. Cranmer said that he would like to see the landscaping plan.

Mr. Cranmer would also recommend that no signs be in the landscaped area.

All board members agreed.

**2.10:** will comply with double yellow stripe

Mr. Cranmer asked Mr. Brodsky if the applicant will have recorded license for the off site parking with Valley National Bank? Mr. Brodsky said that there will be a written agreement, and they can record the agreement if the board requires.

Mr. Forrester marked the following into evidence:

**A-8:** Architectural - color rendering, prepared by Kaplan Gaunt & DeSantis, 6/10/08 on front with floor plan on back

Mr. Robert De Santis, Kaplan Gaunt & DeSantis was sworn and accepted as an expert witness.

Mr. DeSantis described the proposed building as:

- Traditional style 2 story building
- classrooms are on 1<sup>st</sup> & 2<sup>nd</sup> floor
- drop off area in the front of the building
- administration offices on the 2<sup>nd</sup> floor with 2 classroom
- staff room, music room and 2 classroom on the 1<sup>st</sup> floor
- the entire building will be barrier free with rest rooms in each room
- no basement is proposed
- vertical siding and shingle roof giving a residential character to the building
- elevator is proposed making both floors barrier free

Ms. Alyson Coffin, Planner, was sworn and accepted as an expert witness and testified for the “conditional use variance” hearing.

Ms. Coffin reminded the board of the 3 conditional use variances which have been approved by resolution 2/4/09.

- Minimum lot size where 5 acres is required and a variance was approved for .97 acres
- Minimum buffer of 20’ where a variance was granted for 5’
- Lot coverage of 30% where a 35.6% variance was granted

Ms. Coffin explained that the revised site plan that was presented tonight increased the lot coverage to 40.3% and may go down with the landscaping in the island in the entrance; she feels that it will be between 35.6% & 40.5%

Ms. Coffin stated that additional variances will be required:

- Off street loading zone required where 0 is proposed
- Free standing sign required 20’ where 10’ is proposed
- And additional Perimeter buffer is required which is separate from the original conditional “D” use should be considered of 20’ where 5’ is proposed

Ms. Coffin testified that there are special reasons exists for the granting of the requested variances and they can be granted with no detriment to the health, safety and general welfare of the public. The applicant is proposing a slight intensification to lot coverage as previously approved, with the underlying rational remains unchanged.

Ms. Coffin advised that the resolution gives the reasoning for the variance as the condition of maximum lot coverage of 30% and read the reasoning from the approved

resolution for the “outdoor use” ...”***The lot coverage of 35% is within the 60% allowed in the B1 business zone district, which results in the lot coverage being substantially less than the other permitted uses within the neighborhood in the zone district..***”

Ms. Coffin explained that due to the increase in area for the stacking it has resulted in an increase in the lot coverage to accommodate the additional stacking, but the increase in stacking still is still substantially consistent with the approved lot coverage and remain below the 60% permitted in the underlying zone, and the bulk variances can be granted without detriment, and they are consistent with what was granted under the “D” variance.

Ms. Coffin feels that the loading zone required is not necessary for the operation of the school, but they will provide a dedicated parking space on the site, which if remained unused but it would increase the lot coverage without any benefit to the site or the community.

Ms. Coffin referred to the freestanding sign 20’ required 10’ proposed which is necessary to ensure adequate site identification and is consistent with out signs in the area. The set back for a building in the zone is 15’ and if the sign were set at 20’ it would be behind the building set back.

Ms. Coffin feels that the variances be requested are consisted with the Master Plan & Zone Plan of the Borough.

Mr. Cranmer asked that Mr. Kennedy verify the new numbers that are being requested against this plan.

Mr. Forrester summarized the variances being requested:

- 5’ perimeter buffer
- loading space
- 7 parking spaces in the front of the building
- freestanding sign 10’ set back where 20’ is required
- 18’ landscaped buffer on adjacent property line where 20’ is required

Mr. Forrester asked Mr. Brodsky about the overlap of the two property lines to the north of 6’ .58” discrepancy. Mr. Forrester explained when White Rd was widened and the descriptions were taken from the road and not from the center line of the road. He suggested either a Quiet Title Action or file a Deed from the owner of Lot 3. A parking lot abuts the Lot 3. If it turns out that the property is 6’ closer it will require a rear yard set back variance from the building since it would not be 30’ to the property line, and if the 6.8 ultimately is found to belong to Lot 3 and not the owner of Lots 5 & 6.

Mr. Forrester asked Ms. Coffin if she sees problems with the board granting a variance for a rear yard set back 23’ .2 vs. 30’. Ms. Coffin said no, since it backs up to macadam parking lot. She noted that the lot coverage & building coverage would have a non significant lot change of 41.4% vs, lot area is reduced from .97 to .945 acres.

Mr. Brodsky stated that the seller has indicated that they own the entire piece of land, and it will be settled at the closing.

Mr. Michel Leckstein, Esq. represents the seller of the property, was sworn.

Mr. Leckstein said that they have ordered a Search to investigate the 6' overlap. The description of the site in question was a subdivision from the White property and there is not record as to when White Road was widened. It is the sellers position that the property is 100% their. He feels that if a Quiet Title is started they will never be able to solve this issue. He explained that this property cannot be used for anything else. In the end they will have to come to some financial settlement since they will have property that they cannot use, if it is determined that the adjacent property owner owns the 6'. From a Planning Board perspective this doesn't have affect what so ever on what the board is approving. He doesn't feel that they will never know when White Rd was widened. Mr. Leckstein explained that the Title will be addressed at the closing.

Mr. Forrester explained that they will have to grant a variance for the rear yard set back and the lot coverage. Mr. Leckstein stated that they would like to have the variance granted now rather than later.

Mr. Brodsky stated that they are requesting a variance for the rear yard set back in order to build the building in the proposed "spot" whether the property line 6' shorter than what the survey is showing.

Mr. Cranmer advised that the board issue a preliminary approval only at this time. Mr. Brodsky said that would be a problem because this may never get resolved. Mr. Leckstein said that this is not a planning issue, if the board takes the stand that the applicant does own it, the board should grant the variance for the rear yard set back.

Mr. Brodsky said that the variance can be granted with the condition that there be no expansion to the building, and be applicable only as represented in the approved plan.

Mr. Cranmer feels that the conditional use variance should be modified, but it can be done through this application since the variances were granted for condition that they were not able to meet.

- lot coverage
- lot area

**Bulk variances:**

- rear yard set back
- impervious coverage

Mr. Brodsky said that they will provide numbers for the existing conditions and the exact numbers in the case that the 6' is not the applicants. He would like to have both scenarios set fort in the resolution so there is no confusion.

Ms. Peterson said that the board should go with the worse case scenario that the 6'8" doesn't belong to the subject property.

Mr. Forrester said that the impervious coverage that Mr. Cranmer did his calculations include the 6' 8". Mr. Cranmer suggested that Mr. Kennedy provide the actual amount of square footage of impervious coverage is as to the correct number. Mr. Brodsky agreed.

**2.19, 2.21, 3.3, 3.9:** will comply with and are acceptable to the applicant

**4.1:** Granite block will be used for better aesthetics

Ms. Canonico asked if this user does not provide a loading zone, how that would affect the next owners of the property. Mr. Forrester said that the new owner would have to return to the board if they were not the same use using the approved site plan as this one.

Mr. Forrester reminded the board that this is not a permitted use, it is a conditional use.

Mr. Cranmer reminded the board that this applicant will also be subject to the affordable housing fee. Mr. Forrester agreed.

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

No comments/questions

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

Mr. Brodsky indicated that he did not have any further testimony or witnesses, and he is asking that the board move on the application.

**Board discussion:**

Ms. Canonico stated that the revisions are nice from the original submission, and she like the ability of the stacking 24 cars. She feels that it is a good use for the community and would have no problem granting the variance, with the condition that no school buses will be used.

Mr. Walsh also feels that it is a good use for the area, but still has some concerns with the traffic patterns. He likes the stacking, but it is a tough area to have cars backed up.

Mr. Betesh agrees with the comments made, a good addition to the community. He knows that it will be difficult getting in and out of the driveway, but that is the nature of the property, but as long as the stacking is sufficient, he feels that the users of the property will have the same issues as everyone else. The applicant has made

accommodations as well as to be expected and subject to all of the conditions discussed he would be in favor of the approval.

Mr. Fisher concurs with all of the comments made and is in favor of the application.

Mrs. Peterson said that there have been modifications, on the applicant's part in response to the board's comments. The ingress/egress is an important change and she feels that it will help going in and out. She feels that it will enhance the area and it's a good use of the property.

**Mr. Forrester summarized the findings of fact::**

- property is located in the B1 zone
- development did not comply with all of the requirements for a conditional use
- conditional use variance should be attached to this approval
- site plan provides for reasonable development of the site in which various zoning and design requirements cannot be met, but can be reasonably addressed
- Exhibit A3- provides for an 18' perimeter buffer along the easterly property line with a 28' driveway entry with 20' aisle widths with an island to bank space for an additional egress if found by future usage to be necessary to be preferable design
- An overlap of 6.8 from adjoining Lot 3 as deeds to Lot 3,5,6 describes the 6'.8" as part of their lot area, which resulted from a widening of White Rd in 1900's in the description of the Lots from the road edge and not the center line. If the 6.8 is ultimately found to be part of Lot 3 the proposed lot would not meet the minimum rear yard set back on Lots 5 & 6 and would reduce the size of the lot for development. If the variance for the 6'.8" is granted it will not materially impact the application as the rear lot lines in Lots 5 & 6 abut a paved parking area of a commercial use.

**Variances:**

- 5' perimeter buffer on the western lot line where 20' is required
- 12' x 35' loading area will not be required
- 7 parking stalls shall be permitted in the front yard
- location of the free standing sign, 16' 10" from the curb line and 10' from property line provided that the sign is situated outside any driveway site lines
- buffer along the eastern property line 18' where 20' is required
- If Lots 5 & 6 are found to be 6' 8" less a rear yard set back of 23'.2" where 30' is required, conditioned that the building existing no further into the rear yard set back as proposed on the present site plan
- Lot coverage maximum coverage 44.0% where 30% is permitted
- Lot area of 41,180 sq. ft where a minimum of 5 acres for a conditional use is required (or)
- a maximum of impervious coverage does not exceed 18,112 sq. ft. regardless of the size of the lot coverage
- all of the outstanding items in Board Engineer letters 4/30/09 & 6/1/09

- size, location of the site together with the proposed use and development presents extraordinary exceptional circumstances for the unique characters which prevent the applicant from complying with all of the bulk & design requirements of Zone & Land Development Ordinance

**Conditions:**

- compliance with the design requirements as set for in the Board Engineers letter dated 4/30/09 & 6/1/09
- approval all governmental agencies
- post inspection fees & Performance Guarantees & escrow deposits
- school buses or other similar commercial student transportation will be prohibited
- the morning drop off window shall be a minimum of 30 minutes
- enrollment in the school shall be limited to no more than 90 students
- rear play area shall remain grassed and shall not have any play or recreational equipment
- a long term maintenance manual for the storm water management facilities & porous pavement
- a mountable island dividing the egress/ingress lanes
- prior to a building permit a Deed Restriction filed with Monmouth County Clerk prohibiting the site from any other education use other than approved by this board or 90 students without bringing the site into compliance with all of the conditions for educational uses
- payment of Affordable Housing Fees if applicable
- payment of property taxes & assessments
- payment of all permits
- payment of all outstanding fees
- publication of the decision of the board
- final site plan shall not be signed & building permits shall not be issued until all conditions are met
- approval does not approve any variance from sign requirements or zone requirements not specially dealt with at this board
- site plan with variances granted by resolution 4/12/04 for a medical office building be vacated upon taking the applicant applying for Building Permits.
- recordable licensing agreement for off site parking with Valley National Bank Bl: 34, Lot: 4 - 465 Broad St.

**Approval:**

A motion was made by Mr. Betesh, seconded by Mr. Fisher to amend the prior variances in accordance with the findings for the lot size & lot coverage and to grant the bulk variances that have been identified and subject to all of the conditions listed for the application for: Vincent S Mastro Montessori Academy for a private school of 90 students by Mr. Forrester.

Roll Call:

Affirmative: Peterson, Canonico, Walsh, Betesh, Fisher

Negative: None

**Adoption of Resolution:**

A motion was made by Mr. Betesh, seconded by Ms. Canonico to adopt & memorialize the resolution of approval as amended.

Roll Call:

Affirmative: Peterson, Canonico, Walsh, Betesh, Fisher

Negative: None

Ms. Waterbury returned 9:15 pm

**James Whalen & Shelby Mills:**

**Continuation of Hearing**

Bl: Lot:

Mr. Forrester announced that all board members are qualified to listen to this application

Mr. Whalen remained under oath.

Mr. Whalen advised that he revised his plans to lessen the mass in the side yard set back. He explained that if he did use dormers it would take away the use of the master bedroom and bathroom by lowering the ceilings.

Mr. Joseph C Feltz, architect, gave his professional & educational background and was accepted as an expert witness in architecture.

Mr. Feltz described the additions to the Whalen application

- first floor will be expanded in the kitchen area in the rear of the house
- 2<sup>nd</sup> floor will be added over the existing den and single car garage, with a sitting area, walk in closet , bathroom and master bedroom with a small deck off the rear
- a small column will be used to support the deck on the second floor.

Mr. Feltz explained that the existing structure (garage) is set back 10' from the main face of the house. The mass of the addition is on the second floor. The right side elevation shows the addition being set back the 10', and is only 16' wide. The gable on the front of the house breaks up the front of the house, with a small cantilever to break up the front of the house.

Mr. Feltz feels that this proposal will fit into the existing neighborhood and he doesn't feel that this would be a detriment.

Mrs. Peterson asked what are the changes? Mr. Whalen said at this time there aren't any changes. If the board would rather see the roof line lowered by 1' he would do it, but it would create a step down into the addition. Mr. Feltz said the addition is not exceeding the current height of the house, but he could lower the roof angle.

Ms. Waterbury said that she did have a concern with the existing house being so close to the property line and adjacent neighbor leaving a 2'.99 set back. Mr. Feltz suggested using a hip roof in the rear of the house to soften the look on the side.

Mr. Whalen said that he spoke to his neighbors and they did not have any concerns with the proposal.

Mr. Feltz suggested the following:

- using the hip roof in the rear of the house
- reduce the angle of the roof
- bring the floor down a small amount in order to maintain the building line in the front of the house

Mrs. Peterson asked what is going over the existing den? Mr. Feltz referred to the floor plan and advised that it will be a large walk in closet with a window to soften the look on the front of the house, a small linen closet and small sitting area. This area would be considered a transition area before going into the master bedroom is. Other than the 1 addition for the kitchen (50 sq. ft), the addition will be over the existing footprint of the house.

Mr. Fisher asked what variances are being requested:

- side yard set back for the 2<sup>nd</sup> floor
- side yard set back for the sports court - play area
- rear yard set back for the sports court - play area

Ms. Waterbury stated that she has no concerns with the variances being requested for the sports court area due to the street that the applicant lives on and she does like the hip roof and changing the angles that were suggested by Mr. Feltz. Mr. Whalen stated that the attic area will be for mechanicals. Mr. Feltz stated that changing the roof line 12-16" would avoid the step down into the master bedroom.

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

There were no comments/question

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

**Board discussion:**

Mr. Fisher has no concerns with the application either way the applicant would like to proceed.

Mr. Betesh has no concerns with the application either way the applicant would like to proceed.

Mr. Walsh has no concerns with the application either way the applicant would like to proceed.

Ms. Waterbury likes the hip roof on the rear of the house to reduce the house.

Ms. Canonico agrees with the hip roof and would like to see the hip roof to soften the roof line. She is also in favor of the sports court in the rear due to the traffic on the street.

Mrs. Peterson likes the hip roof on the rear to soften the look of the house. She has no concerns with the sports court due to the street traffic and the future development in the neighborhood; she could approve the variances that the applicant is seeking.

Mrs. Peterson asked if the application is going to amended?

Mr. Whalen said yes, but he would like to keep the gable above the roof line of the den, but he will not have any difficulty with bringing it down 12-16”.

A motion was made by Mr. Fisher, seconded by Ms. Waterbury to approve the application of James Whalen & Shelby Mills as amended for a hip roof and lowering the roof line 12-16”.

Roll Call:

Affirmative: Peterson, Canonico, Walsh, Betesh, Fisher, Waterbury

Negative: None

**Resolution 7/1/09.....**

**New Business:**

**BHA, Inc**

*t/a Sal's Deli*

Bl: 70.01, Lot: 2

**Use variance**

expansion of non conforming  
use to allow tables & chairs

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

Ms. Kerry Higgins, Esq. represented the applicant.

Ms. Higgins advised the board that Mr. Mel Cohen owner of Sals Original & Sals Pizza was before this board for the expansion of the Sals Pizza operation and a resolution was granted on January 7, 2009 granting the use of Sal Pizza formerly Javin Brewin Coffee.

Ms. Higgins explained that Mr. Cohen has been given the opportunity to expand Sals Pizza adjacent space to allow for seating and wait service. The same use will continue in Sals Pizza and only seating will occur in the adjacent space. She explained that the pizza end of the business has been a success and has many requests for seating and when he cannot accommodate them his customers are leaving. He now would like to accommodate the requests of the community which have been expressed to him.

Mr. Mel Cohen, owner of Sals Pizza was sworn. He explained that the variance which was granted in January has been very successful. He is drawing the customers into the pizza shop from the community and not from the shopping center, this is a family community and they want to be able to sit down and eat dinners especially on a Friday and Saturday night. This would be a family style restaurant that would service the community in addition to the pizza. The use in the Sals Pizza will continue as it exists today, and now that he has the availability of more space he would like to have the seating for the use that was previously granted. Mr. Cohen stated that with this expanded seating of 40-50 seats he can now have birthday parties, corporate lunches as well as the regular lunches.

Mr. Cohen testified that he will have the same hours of operation 11:00 am to 10:00 pm as it currently exists. He will have approximately 8 additional employees.

Ms. Higgins asked Mr. Cohen if he has any problems with parking for any of the uses he currently runs? Mr. Cohen said no, the parking lot is used mainly by Sals & Sals business in his area of the shopping center. Staples have their parking area on the opposite end of the mall.

Mr. Higgins stated that in the future Mr. Cohen is anticipating moving Sals Original Deli into the former Golf Store, since he has been in his current location for 16 years the owner of the shopping center advised him if he moves Sals next to the pizza shop he will have 3 stores in a row and be more convenient. He will have the same kitchen and food as he currently has. This will be the next step for Sals Deli. He understands that there are some issues going on with the landlord and the town with respect to the parking area and those issues will be addressed.

Mr. Fisher asked Mr. Cranmer why are we holding this issue against the tenant? Mr. Cranmer explained that the landlord is now out of compliance with the site maintenance ordinance and they are under court order. This is similar to if they did not pay the taxes on the site. Mr. Forrester explained that this is one of the only mechanisms to make sure that things get done on the site. Ms. Higgins will also use the approval of this use variance to go to the landlord for a speedy resolution on this issue.

Mr. Forrester asked Mr. Cohen since the resolution previously granted restricted the use “..for preparation and sale of pizza, pasta dishes, and easily prepared casual foods customary associated with a pizzeria use”. Mr. Cohen said that is what he is doing and he can live the language in the previous resolution.

**Review of Board Engineers letter:**

**1.5:** Applicant will comply and that the intended restaurant use shall not be a stand alone use.

Mr. Forrester marked the following into evidence:

**A-1:** Cooking/Seating area shows 108 seats and there are 24 outdoor seats in the existing pizzeria for a total of 132 seats

Ms. Canonico asked if it was his previous testimony was that he wanted the pizzeria to augment Sals Deli and he didn't want a restaurant and that he wanted the board to grant him the ability to serve slices and take out as an additional enhancement to what he was doing?

Mr. Cohen said yes, but as the business grew and the opportunity of the adjacent space opening up and the requests of the community he feels that this would be for the community. He needed the pizza for the customers and he needed to service the younger people for his catering business. Things have changed. He would not be serving food from Sals Deli but the menu would be similar, and this would be an enhancement to the Deli as well as the Pizzeria.

Mr. Cranmer asked if there will be 1 door for both? Mr. Cohen said there will be an archway between the two and the front door will be separate from the pizzeria. There will be a hostess seating and the archway will be for the servers coming from the kitchen.

Mrs. Peterson asked if they will still be having the B.Y.O.B.? Ms. Higgins said yes, there are regulations and customers can only be in beer and wine, they are currently doing it in the pizzeria and they will continue it in the restaurant area.

Ms. Waterbury asked if Mr. Cohen were to move the deli would be 1 tenant, pizzeria & seating area would be a separate tenant? Ms. Higgins said correct. There will not be any change to the façade or signage, with no additional outdoor seating.

Mr. Cranmer asked what are the peak hours of operation? Mr. Cohen indicated 11:00 am to 3:00 pm for lunches, 5:00 pm to 8:00 pm for pizza/dinners. Mr. Cranmer asked what is open in the shopping center after 8:00 pm? Mr. Cohen said that the Japanese Restaurant, Boston Market, Staples and Spirits, all of the others are closed.

Mr. Betesh asked if the Golf Store is big enough for Sals Deli to go into? Mr. Cohen indicated that he currently has 2,700 sq. ft., and he will go into 5,200 sq. ft. The line up in the shopping center would be Sals Deli, seating area and then pizzeria? Mr. Cohen said that is correct.

Mr. Forrester explained that this expansion is for the pizzeria only, if another use wanted to go into the space, they would need to serve the same menu with the same number of tables.

Mr. Cranmer said that there are 132 seats how many times would he expect them to turn over? Mr. Cohen said on a Friday/Saturday night twice, which the parking will accommodate.

Mr. Cohen explained that he will be using plastic plates and he will be eliminating a lot of garbage and recycling.

Mr. Cranmer asked what type of delivery trucks will be used and how many deliveries does he expect to have? Mr. Cohen said that it is a small box truck, every 3 days and they use the rear of the building, and they do not have any problems with deliveries, in the delivery area.

Mr. Cranmer asked if there is adequate refuse within the proximity of the stores? Mr. Cohen said that they have 3 containers, 1 for cardboard, 1 for garbage and 1 for grease. He doesn't feel with the new space they will have as much paper waste as they have now, they do have adequate for the containers. Mr. Cranmer asked about rodent control? Mr. Cohen stated that he has someone who comes in every week.

Mr. Frederick Kniesler, Jr., Licensed Planner in NJ, was sworn and was accepted as an expert witness in Planning.

Mr. Kniesler explained that the applicant was granted a restaurant use and moving tables and chairs only into the new space. The new space will remain as it is today, no new front door, no new bathrooms, just seating.

Mr. Kniesler said the only physical improvement will be a divider in the center of the room to break up the space and an archway into the pizzeria, which can easily be put back up if the uses change.

Mr. Kniesler said that by putting seating in the new space will bring this use into more of a conforming restaurant use, and by granting the variance in January makes the restaurant a permitted use and they will be expanding the use. The circulation of pedestrians will be much safer in terms of circulation of diners and patrons coming in.

Ms. Canonico doesn't feel that this board granted a restaurant use back in January. Mr. Forrester said that it does fit the definition of a restaurant use, but it was a restricted menu. Ms. Higgins agreed with Mr. Forrester and they will continue to comply with

those restrictions. Mr. Kniesler stated that if this space was available in January they would have had this discussion back then.

Ms. Higgins asked Mr. Kniesler where are the handicapped spaces? Mr. Kniesler said that there are 4 handicapped spaces directly across the aisle of the store with a handicapped ramp in front of the store. He feels that there is sufficient parking he has viewed the parking lot on several occasions and there hasn't been any problem.

Mr. Higgins asked Mr. Kniesler are there any additional special reasons for granting the variance other than those stated in the original variance, other than expanding & improving it to give the space a more appropriate use of the pizzeria by the public. Mr. Kniesler said that is correct, and they are not impacting the light, air and open space and the visual environment will be improved by having consistency with 3 store fronts working together. He also feels that this use would promote the general welfare, of the Master Plan and Zoning Ordinance of the Borough of Shrewsbury. This use is particularly suited for the space as presented.

Mr. Kniesler also feels that there are no negative aspects to this application, no impacts on the surround neighborhood, and it is contained within the shopping center. This use would be a benefit to the town since it is providing a family gathering place. The use is already in operation therefore there wouldn't be any detriment; they are providing seating for the current operation.

Mr. Kniesler advised that the shopping center owner has already started the process of addressing the site plan issues which the Borough has on the site.

Mr. Cranmer asked Mr. Kniesler if he has evaluated the current level of parking lot lighting on the site? Mr. Kniesler said that he was on the site at 9:00 pm and it was fine.

Ms. Higgins was asked if there will be sufficient garbage receptacles with the increase of use? Mr. Kniesler said that there already is a garbage receptacle in front of every store, and they are not changing the number of out door tables, they have 2 tables and they are not proposing any additional seats. Mr. Kniesler said that he feels that the customers will now be self contained within the restaurant which he feels will lessen the amount of outside trash. Mr. Cohen feels that his operation will bring in more customers and will increase the security for other patrons in the shopping center.

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

No one in audience

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

**Board discussion:**

Ms. Waterbury stated that she did not have any objections to the applications.

Ms. Canonico feels that this is an opportunity for the business. She still doesn't feel that the board granted the use for a restaurant, and now there will be 3-4 restaurants in the shopping center.

Mr. Fisher doesn't have any concerns with the application.

Mr. Betesh doesn't have any concerns with the application; he likes the idea of the expansion in the shopping center. This will encourage others to develop, and he feels that the use will be good for the Borough.

Mr. Walsh agrees with all comments made. The use will enhance the shopping center.

Mrs. Peterson feels that during the economic times we face some tough decisions but expanding this non conforming use will be beneficial to the site and to the community.

Ms. Higgins read from the use variance which was granted "...the proposed use falls within the definition of a restaurant contained in the Zoning Ordinance". She explained that was the board's finding then and she would never make it her interpretation as to what the board decided.

Mrs. Peterson asked if the approval is conditioned that the owner taking action on the site plan? Mr. Forrester said that it could be made a condition that he complies with....

Mr. Cranmer stated that the condition should be that building permits not be issued until the owner is in compliance.

Ms. Higgins would like to amend the condition because compliance means that if he has one thing outstanding, she would like to amend the condition to read "at the discretion of the engineer that he is in substantial compliance".

***Mr. Cranmer stated that the approval could be worded the "conditioned upon the completion of site repairs and acceptance of same by the Borough". Ms. Higgins agreed.***

Ms. Waterbury feels that the condition that the pizzeria & seating area be considered as one entity. Ms. Higgins agreed and advised that is how the application indicates; if not there would be 2 separate uses.

A motion was made by Ms. Waterbury, seconded by Mr. Walsh to approve the application of Sal's Pizzeria, for seating with the following conditions:

- condition that the site repairs be accepted by the Borough Engineer
- 2 uses are considered 1 entity
- approval from the TRWRA for the increase

Roll Call

Affirmative: Peterson, Walsh, Betesh, Waterbury, Fisher

Negative: none

Abstained: Canonico

**Resolution 7/1/09.....**

A motion was made by Mr. Betesh, seconded by Ms. Waterbury to adjourn the meeting at 10:43 pm. All approved.