

**TOWNSHIP OF ROBBINSVILLE ZONING BOARD OF ADJUSTMENT MEETING  
TOWNSHIP OF ROBBINSVILLE, MERCER COUNTY, NJ  
WEDNESDAY, FEBRUARY 6, 2008 7:30 P.M.**

**MINUTES**

**Present:** *Mr. Gibeault (Acting Chair), Mr. Kreig, Mr. Siekerka Ms. Carbone, Mr. Bihl, Mr. Kirkpatrick and Mr. Michael Griffin*

**Absent:** *Chair Perhacs and Mr. Lynch*

**Also Present:** *Mr. West, Township Engineer; Mr. Herbert, Sr., Esq. (sitting in for Mr. Herbert, Jr., Board Attorney); Ms. Kooper, Planning Consultant; Ms. Post, Board Secretary; and Ms. Persicketti, Recording Secretary*

Roll call for the above Board members was called and the Flag Salute took place.

**“Adequate notice of this meeting has been provided as required under Chapter 231 P.L. 1975 specifying the time and place with such notice as being sent to the *Times of Trenton* and the *Messenger Press* and posted in the Municipal Building Public notice meeting bulletin board.”**

**Correspondence**

There was no correspondence given.

**Board Comments**

There were no Board comments given.

**Public Comment**

No public came forward. However, Ms. Post stated that the Employee Appreciation Dinner will be held on February 13, 2008 from 5:00 p.m. to 8:00 p.m. If you have not already responded, please call Marcy at the Recreation Department if you will be attending or not attending the dinner.

**Minutes**

*December 12, 2007* - No discussion. A motion was made to approve the minutes as read by Mr. Kreig and seconded by Mr. Kirkpatrick.

ROLL CALL:

AYES: Kreig, Kirkpatrick, Griffin, Carbone, Bihl and Gibeault  
NAYS: None

There being six (6) “AYE” votes, therefore, the December 12, 2007 minutes were approved as read.

**Resolutions**

**ZB2007-15 – Sharbell Building Company – Approval of Preliminary/Final Site Plan**

Mr. Herbert stated that this resolution is on hold until the next meeting for further clarification.

**ZB2007-16 – The Bank – First Washington – Approval of Use/Bulk Variances and Interpretation for Sign.** Three votes need to be taken on the matter: use variance, ordinance interpretation, bulk/variance and design waiver. Ms. Post indicated that changes were made to the resolution, page 6 (language added). A motion was made by Ms. Carbone to adopt Resolution ZB2007-16 (Bulk/Height Variance and Design Waiver) and seconded by Mr. Kreig.

**ROLL CALL: (Bulk/ Height Variance and Design Waiver)**

AYES: Kreig, Carbone, Gibeault, Kirkpatrick, Griffin

NAYS: None

There being five (5) “AYE” votes, this portion of the resolution for bulk/height variance and design waiver was adopted as read.

A motion was made by Mr. Kreig to adopt ZB2007-16 (Use Variance) and the motion was seconded by Ms. Carbone.

**ROLL CALL: (Use Variance)**

AYES: Bihl, Kreig, Carbone, Gibeault, Kirkpatrick and Griffin

NAYS: None

There being six (6) “AYE” votes, this portion of the resolution for use variance was adopted as read.

A motion was made by Mr. Kirkpatrick to adopt Resolution ZB2007-16 (Interpretation Ordinance) and Mr. Kreig seconded the motion.

**ROLL CALL: (Ordinance Interpretation)**

AYES: Kirkpatrick, Bihl, Carbone, Kreig, Griffin and Gibeault

NAYS: None

There being six (6) “AYE” votes, this portion of the resolution for ordinance interpretation was adopted as read.

**ZB2007-17 – Lifetime Brands – Approval of Bulk Variance for Sign**

A motion was made to adopt Resolution ZB2007-17 by Mr. Kreig and seconded by Ms. Carbone.

**ROLL CALL:**

AYES: Bihl, Carbone, Kreig, Griffin and Gibeault

NAYS: None

There being five (5) “AYE” votes, ZB2007-17 was adopted as read.

**ZB2007-18 – Mercer Mobile Homes – Approval of Bulk Variance and Preliminary/Final Major Subdivision.** Mr. Herbert stated this resolution needed to be held due to comments made by the applicant’s attorney. The resolution is still in the process of being defined.

**ZB2008-01 – Joseph & Colette Accardi – Denial of Bulk Variance.**

A motion was made by Mr. Kirkpatrick to adopt ZB2008-01 with the denial of the bulk variance and the motion was seconded by Ms. Carbone.

**ROLL CALL:**

AYES: Bihl, Kirkpatrick, Carbone, Kreig, Griffin and Gibeault

NAYS: None

There being six (6) "AYE" votes, ZB2008-01 was adopted.

Application ZB07-10-01 – James Kenna

Block 28.01, Lot 1

1 Vahlsing Way

Zoning: R1.5

Public hearing for Height Variance

The applicant is requesting approval of a variance to allow the construction of a six (6) foot high fence in the front and side yards of a corner property. The Township ordinance permits a maximum height of 3 foot in the front and side yards abutting the front yard.

Mr. Herbert, Sr., read the Affidavit of Service and stated that proper notice has been given and the Board had jurisdiction on this application.

Mr. Kenna was sworn in by Mr. Herbert, Sr.

Mr. Kenna said that he did not understand the need for certified mail and the information was sent via regular mail for the prior public hearing. For this meeting, the material was resent properly. Mr. West stated that Mr. Kenna had to present his application again because the last meeting never took place because the Board did not have jurisdiction. Mr. Kenna gave the Board and the public the explanation and reasons for the variance. The applicant lives along Route 526. Due to the traffic volume and the fact that he has children, he wanted to have a privacy fence. The property has a side yard (corner lot) that is considered frontage. **Exhibit K-1 Kenna Drawing** was marked into evidence. The applicant wanted to install the fence one foot off the property line along the southwest end. The fence is approximately 30 feet off the road to where the property line ends. Landscaping (trees) has to be provided. **Exhibit K-2 Broad Panoramic Camera Shot of Property in Question** (from Robbinsville-Allentown Road) was marked into evidence. Acting Chair Gibeault stated that the application had two issues: the sight triangle at the corner and additional landscaping along the frontage of Route 526.

Mr. West stated that with respect to landscaping, there are two shrubs at the intersection of Vhalsing and Robbinsville-Allentown Road, which are in the sight triangle. He wants those shrubs removed. The applicant agreed to work with Mr. West and supplement existing landscaping to break up the solid wall of the fence.

A motion was made by Mr. Kreig to open the meeting to the public and Mr. Kirkpatrick seconded the motion.

Anne Garrison, 7 High Street, Allentown, said that she complained for many years about the lack of screening to fencing along Robbinsville-Allentown Road. She suggested a living fence so the fence does not show from the road. At this time, Mr. Herbert requested Ms. Garrison to repeat her address and Ms. Garrison became very defensive about it towards Mr. Herbert.

Mr. Kreig made a motion to close the meeting to the public and Mr. Siekerka seconded the motion. All in favor.

Mr. West noted that the applicant agreed to his conditions. The existing vegetation needed to be supplemented.

Mr. Kreig moved to approve ZB07-10-01 – James Kenna to allow for a variance to permit the construction of a 6 foot high fence along the front and side yards of the Kenna residence as per the fence on the drawing marked into evidence as K-1, subject to the applicant removing the shrubs in the site-triangle as described by Mr. West. Also, the applicant agreed to work with Mr. West to supplement the existing landscaping along Route 526. Mr. Carbone seconded the motion.

**ROLL CALL:**

AYES: Bihl, Carbone, Kreig, Siekerka, Kirkpatrick, Griffin and Gibeault

NAYS: None

There being seven (7) “AYE” votes, ZB07-10-01 – James Kenna was approved.

Acting Chair Gibeault “thanked” Mr. Kenna for coming back to reinstate his application.

Application ZB07-09-01 – Crossroad Storage, LLC

Block 38, Lot 6.01

Circle Drive & Robbinsville-Allentown Road

Zoning: RR

Continued Public Hearing from the 1/2/08 Meeting for Use Variance and Bulk Variance

The applicant has since bifurcated its prior application, which was originally requested for a use variance, site plan and subdivision approvals, and is currently pursuing approval for a use variance, height variance and bulk variances to construct 2 story self-storage buildings totaling 100,000 s.f. which includes an apartment and office space and a two-story office building totaling 12,000 s.f. including a 3,000 s.f. bank with a drive-thru.

Mr. Herbert reviewed the Affidavit of Proof of Service and Publication Notice and found that it conformed with the notice requirements and the Board had continued jurisdiction in the matter.

Mr. Roskos, Esq., appeared on behalf of the applicant.

All witnesses were sworn in by Mr. Herbert as follows: Marty Katz, P.E., PLS, of Princeton Junction Engineering; Geoffrey Brown, P.E., of Princeton Junction Engineering; John McDonough, P.E., of Pennoni Associates; Karl Pehnke, P.E. & Traffic Expert; Mr. West and Ms. Kooper. All of the witnesses with the exception of Mr. Pehnke were previously sworn and gave their credentials.

Mr. Roskos stated that he presented exhibits which were previously marked as B-5 (Board exhibits) and A-9 (applicant’s exhibits) at the last meeting. **Exhibit A-10 – Original Proof of Notice** was marked into evidence. Mr. Roskos noted that the applicant appeared before the Board on 01/02/08 with a revised plan and addressed the Board’s professional comments. However, the Board gave additional input that evening in addition to receiving public comments. Therefore, the applicant redesigned the site and as a result, the application was bifurcated. One comment was made to

eliminate the third building, which has been removed. Mr. Roskos submitted a letter regarding the use variance, dated January 22, 2008 to Mr. Post, which was marked as **Exhibit A-11**.

Mr. Roskos requested that the Board close the public portion of the meeting to understand the revisions of the plan and the bifurcation. The meeting would reopen to the public after the evidence was presented. Mr. Kreig made a motion to temporarily close the meeting to the public to allow the applicant to present evidence and testimony as to the revised plan, with the understanding that the meeting will be opened again to the public at the conclusion of the applicant's testimony. This motion was seconded by Mr. Kirkpatrick.

Mr. Roskos indicated that with his January 22<sup>nd</sup> letter, he submitted supporting documents in connection with the modified application. In addition to deferring the site plan and subdivision aspect of the application, the applicant is also deferring the sign plans and bulk variances associated with the subdivision application including the fence.

Mr. Roskos gave a brief overview of the plan revisions. The number of storage buildings was reduced to two; one driveway along Circle Drive was eliminated, and the remaining driveway was relocated further east, away from the single-family homes. The proposed office building and bank have been relocated to a more central location on the site to be further away from Circle Drive and closer to Mercer Corporate Park. The height of the buildings has been reduced with the office building being 39' 7" to the peak and the storage building being 39' 10' inches. The landscaping will be augmented and berms will be created.

Mr. Roskos directed another letter to Ms. Post dated January 25, 2008, which delivered additional supporting documents, which was marked into evidence as **Exhibit A-12**. This exhibit includes a Competitive Analysis Summary, which reviews proximate existing storage facilities within a five mile radius of the property and an accompanying map; "Line of Site" Drawing depicting the view for an automobile driving on Robbinsville-Allentown Road in front of the proposed facility; and Colorized Architectural Renderings depicting the site as viewed by a motorist at the intersection of Circle Drive and Robbinsville-Allentown Road.

Mr. Roskos received review memorandums from the town, which were marked into evidence as listed:  
**B-6 – Mr. West's Memorandum dated 1/23/08**  
**B-7 – Mr. Wilson's Memorandum dated 1/25/08**  
**B-8 – Mr. Wilson's Memorandum dated 1/31/08**  
**B-9 – Ms. Kooper's Memorandum dated 1/31/08**

At this time, **Exhibit A-13 – Conceptual Site Plan, dated 01/15/08 prepared by Princeton Junction Engineering** was marked into evidence. Mr. Katz referred to the site plan and stated that the concept was the same. The objective was to create a site that resembled an equestrian farm (meeting house in the front with the 3 barns). The building was moved further north not to be too close to the intersection (240 ft. from Circle Drive). A landscaping berm will be provided along Route 526 and Circle Drive to be approximately 6 feet high. One driveway from Circle Drive was eliminated. Parking will accommodate the office building, bank and storage facility. Two renderings were shown to the Board. One showing no berm – **Exhibit A-14 Buildings Without Landscaping** and **Exhibit A-15 – Perspective Architectural Renderings With Berms, prepared by the Gedalia Group, Inc.**, were marked into evidence (both A-14 and A-15 were not dated). **Exhibit A-16 – Line of Site Drawing -**

Reference Map depicting vehicles on Robbinsville-Allentown Road. The site slopes from west to east. **Exhibit A-17 – Elevation of Proposed Office Building** as marked into evidence. **Exhibit A-18 – Elevation of View of Mini Storage Building** (barn like) – was marked into evidence.

With respect to Ms. Kooper's memorandum, the parking requirement misinterpreted the ordinance and requested more parking than necessary. The applicant was in agreement with the rest of the memorandum. Ms. Kooper requested more landscaping, which the applicant has provided, but would like more detail at the next scheduled meeting. Mr. Roskos indicated the applicant will work with the town regarding the landscaping issues.

Mr. Brown said that regarding the sewage, there will be 12,000 s.f. of office, which will generate 1,500 gallons per day, the apartments will generate 350 gallons per day and the office/storage will generate 125 gallons per day.

Karl Pehnke, Traffic Expert, gave his credentials and was sworn in by Mr. Herbert. **Exhibit A-19 – Traffic Impact Study dated September 10, 2007** was marked into evidence. The project will generate traffic onto the roads. The mini warehouse self storage was considered a light traffic generator. The office will generate approximately 14 trips during peak hours. The bank will generate 42 trips in the a.m. hours and in the p.m. hours will be approximately 84 vehicles entering the site and 94 vehicles exiting the site and on Saturdays there will be approximately 79 entering and 77 trips exiting. A single driveway will be located on Circle Drive. Mr. West said that Mercer Corporate Park (realign driveway) will appear before the Board for a flex building. A left turn lane will be on West Manor Way. There will be levels "B" and "C" class service at the intersections (control delay). Mr. Roskos said that self-storage Ordinance No. 142-59 provides that self-storage facilities (mini warehouses) should be a minimum distance of 5 miles from the existing self-storage building. There is no traffic rationale that supports this position. Ms. Donato objected and gave her reasoning. Mr. Roskos stated the applicant asked for a variance from the provision. Mr. Herbert overruled the objection made by Ms. Donato. (Mr. Herbert never seen such an ordinance, and it has questionable validity. He would not want to defend the ordinance in Superior Court.)

Mr. McDonough stated that he reviewed the revised plans. Ms. Donato questioned as to what Mr. McDonough was going to testify to. Mr. Herbert indicated that Medici (positive and negative criteria) has to be discussed when discussing the revisions of the plan. Testimony has to be given as to what the new revisions are.

Mr. McDonough broke his testimony into four parts and gave a re-cap. (A-3 was referred to). The site is a gateway to the community located on a corner lot. The bank on Circle Drive has been shifted based on the comments made by the Board and public at the last meeting. Landscaped buffering and a berm has been added (maintaining a rural setting/structure). (Exhibit A-14 was referenced – the architecture of the building was shown without landscaping or berming).

Mr. McDonough stated that the Master Plan speaks on point with the type of treatment in Exhibit A-15. **Exhibit A-20 – Master Plan Update, page 44** was marked into evidence. The applicant is seeking three areas of relief: (1) use variance (D) – non-residential use in a residential zone; the Medici v. BPR Co., 107 N.J. 1 (1987) - benchmark case where the courts have articulated the test which applies for a use variance to consist of four parts: (1) Are there special reasons to support the variance (applicant's feels that there are special reasons – testified previously: purpose A, general

welfare, purpose I and purpose N – flat site suited for development); (2) Is the site suited for the use – “yes” per the applicant; (3) Negative Criteria – can a variance be granted without substantial detriment to the public goods – “yes”, per the applicant; (nearest water body is 250 feet away); (4) Can the variance be granted without the substantial imperiment to the Township Zone Ordinance. (At this time, Mr. McDonough read sections from the Ordinance – regarding mini-warehouse storage and a 5 mile radius of another facility). There are no traffic or safety concerns on site. The Medici standard looks at the impact on the Master Plan. Medici reconciliation – the 2007 Master Plan omitted the land use from the RR zone Mr. McDonough feels that the site in which the applicant is appearing before the Board was overlooked when considering the Master Plan. Saddle Brook Realty v. The Board of Adjustment, 388 N.J. Super. 67 was referenced because the area is evolving due to Mercer Corporate Park and the Wittenborn property. Mr. Wilson will be at the site plan hearing per Mr. West.

Mr. Kreig asked that a meeting should occur between the Board members and the Township Architectural Consultant prior to the site plan application. Some Board members did not agree with the views of the Township Architectural Consultant. Mr. West stated that this request will be accommodated. Ms. Carbone agreed. The applicant stated that with the revised conceptual plan, there are 2 bulk variances, which are being requested. Mr. McDonough stated that the variances are intertwined with the uses. The applicant is seeking relief from the building coverage variance of .5 percent over the ordinance allowance to constitute a deminimus variance. Relief is also being requested from Section 142-13e(3) for the maximum impervious coverage ratio (.15 is allowed and .30 is being requested – double the ordinance requirement). The “D” variance is justified with the use being proposed.

Mr. Roskos stated that he gave the Board the Notice of Public Hearing, which states the application’s proposal as follows: use variance approval for the storage facilities with an apartment and office together with the two-story office building and 3,000 s.f. bank included; seeking relief from the ordinance provision – technical requirement where one cannot have two principal uses on a lot; seeking variance relief from the proximity (D-1 variance); not seeking the height variance relief (no 4 in the Public Notice); and seeking relief from items 5 and 6 for the bulk variances.

Mr. West stated there is one existing public storage in Washington Township, which is “Washington Storage” on Route 130. Mr. Roskos stated that Ms. Donato was retained by Washington Storage to oppose the application. The applicant’s site is located approximately two miles away from Washington Storage and is on the far edge of town. Mr. McDonough brought up the Exxon Co. v. Bernardsville Board of Adjustment (service station). At this time, Ms. Donato objected and questioned the validity of the ordinance. She feels that the applicant stated that they would only testify to the revisions, and Ms. Donato stated that the applicant revisited all of the criteria all over again. Mr. McDonough feels that there was a line in the Exxon case which was important. Mr. Kreig stated that the Board allowed the applicant and the public wide latitude in putting on their evidence to support their case. Mr. Kreig disagreed with Ms. Donato in that she feels that the applicant is challenging the validity of the ordinance. He feels that the applicant is trying to seek variance relief from the ordinance and set for the reasons why the relief is appropriate. Mr. McDonough referred to Exxon Co. v. Bernardsville Board of Adjustment, 196 N.J. Super. 183 (Law. Div. 1984). This case was a denial by a Board of a variance against a separation standard and was overturned by the courts because they found no reasonable basis for the denial of the variance. (Mr. McDonough read the court’s decision for overturning the case out loud). Mr. McDonough feels that the Exxon case is on point as to what the applicant is proposing. In the immediate area, the surrounding properties are non-residential use. Ms.

Kooper stated that the Master Plan Subcommittee spoke at great length about possible uses, especially the Wittenborn tract which was recommended for rezoning to allow non-residential uses. It was also recommended that the farmhouse be preserved to consist of non-residential with the understanding that the entire area was changing. The vista and viewshed gateway when entering from Allentown Township would be preserved. The applicant's property was not discussed in the Master Plan discussions, per Ms. Kooper.

Mr. Roskos indicated that he did not want the cross examination to be prolonged and wanted the questioning to be focused on the material covered on the revision part of the testimony, not the first meeting which took place.

Ms. Donato, Esq., was present for both meetings and feels that the cross-examination is to get to the truth and not filibuster.

Listed below is the cross examination of the following witnesses that took place by Ms. Donato (summary thereof):

**Mr. Brown's Cross-Examination:**

Mercer Corporate Place is located in a different zone, but still part of Robbinsville Township. The applicant's parcel is a corner lot of a larger tract of land which extends from Circle Drive to 195. Ms. Donato stated that the description of the parcel is relevant to the rezoning and part of a larger tract. Mr. Herbert asked Mr. Brown to testify to the zoning of the contiguous property. Mr. Brown replied that the zoning is "RR". Mr. Brown, however, was uncertain about the size of the "RR" tract. Robbinsville-Allentown Road is a county road and there will be a future dedication for road-widening along that road, (per Mercer County) said Mr. Brown. Mr. Brown indicated that the coverage has been increased due to the dedication. Mr. Roskos objected to Ms. Donato's line of questioning because whether the road is a deed of easement or a deed of dedication, he is uncertain of how that relates to the relief the applicant is seeking. Ms. Donato responded that the applicant was seeking a lot coverage variance. Testimony given by Mr. Brown at the prior meeting was that the applicant is giving the land up in dedication along Robbinsville-Allentown Road and Circle Drive; therefore, they have less land and should be able to violate the ordinance because they have less land. Ms. Donato felt that her question posed to Mr. Brown was fair. Acting Chair Gibeault stated that the variance is before the Board, who will make the decision on it.

The two buildings before the Board will be looked at as a concept plan. Acting Chair Gibeault stated that there is a concern with a bifurcated plan.

At this time, Mr. Herbert told both attorneys that there should not be arguments between them. The Chair or he will make a ruling. Mr. Herbert proceeded by stating to Ms. Donato that a subdivision application is not before the Board. The only items before the Board is the variances, which have been identified previously and the questioning of cross examination should stick to only those issues.

Ms. Donato stated that she heard Mr. Kreig state that the Board gives 'great latitude' for questioning. The response was that the Board does give great 'latitude'. Mr. Kreig replied that the Board gives great 'latitude' for testimony to allow the applicant every opportunity to put on its case. Mr. Kreig feels that Ms. Donato's line of questioning is unfocused, and does not address the issues at hand.

There were many public members wishing to give their comments, who have not been heard. He would like for Ms. Donato to focus on the application as presented and move forward.

Ms. Donato asked Mr. Brown that if the roadway is widened and the dedication is used, would there then be a physical change. Mr. Brown responded in the affirmative.

Variances were referred to as “internal” will be deferred.

Mr. Katz’s (Cross-Examination)

Mr. Katz gave his credentials to Ms. Donato. Ms. Donato asked Mr. Katz if he testified to the Master Plan on zoning change for this parcel. Mr. Katz said no. Ms. Donato had no more questions for this witness.

Mr. McDonough’s (Cross-Examination)

Mr. McDonough gave testimony at the last hearing with respect to the positive and negative criteria. At the hearing (tonight) listed the changes. One building has been eliminated and no square footage has been eliminated. The buildings are two-story self-storage buildings. Acting Chair Gibeault stated that the Board was aware of the fact that the buildings got larger. Due to the reduction of one building, there was not a reduction in square footage. Higher intensity use on a corner lot was discussed. Ms. Kooper stated that language was incorporated in the Master Plan which supported higher intensity uses at intersection created nodes for commercial uses, and the 2007 Master Plan discussed this topic and it still stands that the Township is interested in promoting commercial development at key intersections. The applicant’s application was not identified in the 2007 re-examination. Visibility depends on the direction of travel. The Master Plan does not recommend the parcel for any change and that is why Mr. McDonough went through the entire process of the Medici Standard. Page 40, of the Master Plan (Wittenborn Property) discussed the gateway entrance into Robbinsville and a discussion of the Wittenborn property was discussed to include design standards and the maximum size of a footprint for a building should be 10,000 s.f. The applicant’s building are as follows: larger building 25,000 s.f. Ms. Kooper stated that the reference for building square footage was for the purposes of the Wittenborn property. The justification for the use variance was that the Master Plan Reexamination is being looked at that the gateway should be commercial per Ms. Donato. A campus setting was discussed in relation to an integrated site. Allowance of storage facilities was discussed. Ms. Donato stated that the only place self storage is permitted is in Town Center per the Town Ordinance and those requirements should apply to the applicant’s property. Mr. Herbert replied that the requirements for a self-storage facility is in a unique zone, separate and apart from the area and have little applicability. Mr. Kreig replied that the variance request is based off the existing zoning for the parcel land, not the zoning applicable to some other area of the municipality.

A brief recess was taken at 10:10 p.m. and reconvened at 10:20 p.m.

Acting Chair Gibeault stated that there is some confusion as to why some of the questions are being asked by Ms. Donato. Mr. McDonough said that zoning is looked at per the MLUL and it is operated in a legal framework. The Wittenborn property is located in a zone called rural-residential transition district which is an RRT-1.

Ms. Donato would like to present a planner and two other witnesses regarding her testimony. Mr. Herbert stated that a recent case came down called the Columbia case where there can be a limitation placed on cross-examination presentation to a reasonable period of time.

Ms. Donato referred back to the Saddlebrook case which Mr. Donough testified earlier to. Illes v. Edison Township Zoning Board of Adjustment, 203 N.J. Super.59 (Law Div. 1985) was referred to by Ms. Donato in which the case states what constitutes a border area in a transition and granting variances for that purpose. Mr. McDonough was not familiar with that case. Mr. McDonough stated this application warrants a use variance. Ms. Donato raised the question of whether the use variance satisfies the criteria of suitability and whether it satisfies the test for what constitutes rezoning. Mr. McDonough feels that there is a positive fiscal impact with the application.

Mr. Roskos stated that Mr. Pehnke is not a witness who needs to be cross-examined by Ms. Donato. Ms. Donato replied that she had a few questions for Mr. Penke.

The number of a.m. and p.m. trips generated for the zone use would be four vehicles (four houses). Robbinsville-Allentown Road is a county road. Ms. Donato and Mr. Pehnke discussed the levels of service again.

At this time, Ms. Donato finished her questioning of the above-listed witnesses.

Acting Chair Gibeault stated that the public has been waiting and has a right to voice their opinion regarding the application.

Mr. Kreig made a motion to open the meeting to the public and Ms. Carbone seconded. All in favor.

The comments will be limited to the use variance and a time limit of 5 minutes per person was set by the Board.

#### Public:

Frank Panzitta – Block 38, Lot 9, 3 Circle Drive, Robbinsville said that he is a organic farmer with a 20½ acre property. He is looking for more customers to come to his farm. He is in favor of the application and Circle Drive needs to be repaired. This application will offset some of the taxes which will become a benefit. Mr. West recommended in his memorandum to reconstruct the road in the site plan for the length of the applicant's property including the culvert. The town has plans to reconstruct the remainder of the road up to Potts Road.

Ann Garrison, 7 High Street, Allentown, said the Allentown Master Plan contains an open space of which the application is one of the sites. The Allentown Master Plan contains elements in Washington Township because according to the National Historic Preservation Act of 1966, historic sites also include the setting of a historic site (Washington Township has not cooperated). A transitional zone per Ms. Garrison was to be a transition from the historic district in Allentown as well as a transition into Washington Township. She feels that rezoning needs to be taken into consideration, especially the Wittenborn property, which is not zoned commercially. Acting Chair Gibeault stated that the Board is aware of this factor. Ms. Garrison said Breza Road has two bridges on it. Two-thirds of the traffic coming into Allentown is killing their businesses, which was stated in a study performed in March of

2005. Two intersections in Allentown are failing because traffic is being increased. She feels that a Planning Board member came and testified to influence the Board's decision. Ms. Garrison said that the Board is made up of good people, but are under a lot of pressure. Ms. Garrison feels that the State has to consider mitigating the impact on historic sites and one avenue is to obtain more preservation money, which could benefit Washington Township.

Greg Westfall, 12 Johnson Drive, Allentown, is the Chairman of the Environmental Commission and a member of the Crosswicks Doctor's Creek Greenway Planning Group. He said that Mr. McDonough mentioned consideration of what is around the given property. The properties around are rural and are zoned rural residential. The Greenbelt goes across three areas to include Washington Township. Mr. Westfall stated that Mr. West said that the town is working to preserve the Kulp property, which is south of the applicant's property. The Greenbelt is the area between the Allentown, Upper Freehold and Robbinsville to Route 195 excluding the Corporate Park property. The town participated in the Crosswick's Doctor's Creek because Mr. West and two other members including Kevin Schick (Township Environmental Chair) were participants. The township contributed financially and it was developed as a grant from DEP as well as six different towns, which participated to protect the historic and scenic areas; protect the water quality and streams; and to protect and create areas along stream corridors for public recreational trail access. Mr. Westfall sees the application as part of the Greenbelt.

Keith Becker, 73 Potts Road, Upper Freehold Township, said that the gateway is a vista and its fails the Medici Standard on every point. The application is not appropriate because the gateways have high visibility. He feels that the highest aesthetic value is not to put warehouses on sites, but to preserve land. The land is rural. Variance "D-1" is the most difficult to obtain. The six foot high fencing was not shown in the picture for the warehouse. The area is changing on one side and it is not a suitable use of land because of the zoning and the negative criteria. He submitted a report entitled "Knowing What You are Chasing" by Leonard W. Hamilton, Ph.D., Rutgers University as **Exhibit P-1**. (Mr. Becker was not speaking as a qualified professional planner). Mr. Herbert feels that if there is any testimony about factual comments, they should be under oath. Mr. Becker said the project will cost Washington Township money, including loss of space and neighbor's good will. If the property is successful, it will cost more money per Mr. Becker. Mr. Becker stated that there is a violation of 142-59 (1999) – no mini warehouse within a five mile radius. The transition is rural and once it is gone, it cannot be brought back.

Acting Chair Gibeault stated that it is 11:05 p.m. Mr. Kreig recommended that the Board adjourn the meeting, resume at the next scheduled meeting and leave the public comment period open until all of members of the public have had an opportunity to speak at the conclusion of the public comment. Ms. Donato would be able to call upon her witnesses and testify. Ms. Donato said that she left out one of the witnesses (Mr. Ricca – principal) to be cross examined.

Mr. Roskos agreed to extend the deadline beyond February 29<sup>th</sup>. The next scheduled meeting of the Board would be the first Wednesday in March of 2008. Ms. Donato and her witnesses will be unavailable during that time frame. Mr. Roskos was willing to give an extension to April of 2008 and at that time, Ms. Donato's witnesses would be available. Mr. Kreig felt that Ms. Donato could make arrangements to have another attorney appear on her behalf. She stated that she was a sole practitioner. Mr. Kreig said that the application should be heard at the next scheduled meeting, and if Ms. Donato and her witnesses are present, then okay; if not, then so be it. Ms. Donato feels that the suggestion is unfair and is applicant oriented, unreasonable and not considering all of the

circumstances because it is a use variance and a major change in zoning. Mr. Herbert said that the application was first heard on January 2, 2008. Ms. Donato was aware that the meeting would be continued at the February 6, 2008 meeting. It is unfortunate about her vacation schedule, but if she has a problem with the meeting being resolved in March rather than April, she can make an application to the court and he will be willing to comply. Mr. Roskos noticed for the December 2007 meeting. Mr. Roskos's witnesses have appeared. Mr. Roskos is willing to work on a special meeting between February 6, 2008 and March 5, 2008 meeting. Ms. Donato stated that cross-examination did not begin until 9:40 p.m. Mr. Roskos replied that there were substantial changes since the January 2, 2008 meeting and the presentation had to be made to reflect such. The delay was not on Ms. Donato's part and she never asked for an adjournment per Ms. Donato.

The applicant has agreed to extend the action until the next scheduled meeting. Ms. Donato and her witnesses will be invited to continue her cross-examination. Mr. Kirkpatrick feels that it is not right to continue an application over four months and it is unreasonable to ask to extend to April of 2008.

Mr. Kirkpatrick made a motion with the applicant's agreement that the Board extend and carry to the next meeting and maintain the open public session as recommended by Mr. Kreig and invite the objector's attorney and her witnesses to attend the meeting and make her case at the next scheduled meeting (March 5, 2008). The motion was seconded by Mr. Kreig.

ROLL CALL:

AYES: Bihl, Carbone, Kreig, Siekerka, Kirkpatrick, Griffin and Gibeault

NAYS: None

There being seven (7) "AYE" votes, the above motion noted by Mr. Kirkpatrick stood.

Mr. Roskos said that he extended the time within which to act to the March 2008 meeting. Ms. Donato wanted clarification as to whether cross-examination of Mr. Ricca will be allowed at the next meeting. Acting Chair Gibeault said "Yes". Public comment will be first and then cross-examination.

A motion was made to adjourn the meeting by Mr. Kreig and seconded by Mr. Griffin. All in favor. Meeting adjourned at 11:15 p.m.

Respectfully submitted,

Phyllis Persicketti  
Recording Secretary

**ADOPTED: MARCH 5, 2008**