FREEHOLD BOROUGH PLANNING BOARD

MINUTES OF APRIL 26, 2017

MONTHLY MEETING

The monthly meeting of the Freehold Borough Planning Board was held on Wednesday, April 26th at 7:00 p.m. in the Council Room of the Municipal Building.

Mr. Reich stated that this meeting was provided in accordance with the Open Public Meeting Act, by providing a copy of the agenda to the official newspaper and posting same on the official bulletin board of the Municipal Building.

Chairman Reich opened the meeting with a Salute to the Flag.

ROLL CALL

PRESENT	MR. WILLIAM BARRICELLI
PRESENT	MR. CORNELIUS BEGLEY
PRESENT	MS. JAMIE BENNETT
PRESENT	MS. MICHELE GIBSON
PRESENT	MR. GARRY JACKSON
PRESENT	MS. ANNETTE JORDAN
PRESENT	MR. ADAM REICH
ABSENT	COUNCILMAN GEORGE SCHNURR
PRESENT	MS. ALICE MacCORMACK

Mr. Reich read Item 3 on the Agenda as follows:

Approval of Minutes from Meeting March 22, 2017.

Mr. Jackson made a motion to approve the minutes, Ms. Jordan seconded.

ROLL CALL

Yes	7	Barricelli, Bennett, Gibson, Jackson, Jordan, MacCormack, Reich
No	0	
Abstain	1	Begley
Disqualified	0	
Absent	1	Schnurr

Mr. Reich read Item No. 4 on the Agenda as follows:

Carried from March 22, 2017.
Application Number: PB-UV-2017-002
Applicant: Exquisite Caterers
Location: 17-19 South Street, Hudson Street, Block 77 Lot 16
Zone: REC

Request: Bulk Variance Relief, Use Variance Relief and Preliminary and Final Major Site Plan Approval

Board Attorney, Ron Cucchiaro announced this is the 2nd hearing on this application and new notice was provided which he reviewed and found to be acceptable for the board to exercise jurisdiction. Mr. Cucchiaro explained the notice included the additional relief if the applicant chooses to pursue it a variance relief pursuant to Section 70(d)(2) as well as preexisting nonconforming status pursuant to Section 68. Mr. Cucchiaro reviewed the rules for speaking on the record with no interruptions. Mr. Cucchiaro confirmed that any board members who were not at the last hearing, did listen to the recording and are eligible to vote. Mr. Cucchiaro explained per Municipal Land Use Law, Councilman Schnurr is not eligible to participate as it is a use variance application.

Mr. John Guinco of Giordano, Halleran and Ciesla appearing for the applicant.

Mr. Liston from Toms River, appearing for the objectors, the restaurateurs of the Market Yard.

Mr. Liston questioned if the applicant is seeking only a D-1 Variance.

Mr. Cuchiaro stated there are several options open, they depend how the application proceeds and the re-notice does include Section 68.

Mr. Guinco announced since the last hearing, he spoke with the owners of the property and obtained a historical operation of the property. He stated the owners have not updated their permits and licenses for the past several years. Mr. Guinco added the applicant cannot present proof the property would be an active use. He stated preexisting non-conforming structures are located on the property and the applicant (owner) understands they would have to come before the board to obtain a new use variance if they wanted to use the property in the future.

Mr. Cucchiaro asked to confirm the applicant is seeking a D-1 Variance to permit the stand alone parking lot and no longer seeking any variance relief for the asphalt plant because the applicant is conceding it has been abandoned. Mr. Cucchiaro added there will be structures on the property that do not have a use associated with them.

Mr. Guinco confirmed and stated he does not know if the structures comply with the bulk standard. He added they are not impacting the activity of the parking lot and any future use of the plant would be subject to a use variance.

Mr. Cucchiaro offered nonconforming structure status does not need to be pursued as the structures were at one point permitted but are not longer permitted. He stated non conformity is irrelevant if the buildings meet set backs, because they are not in violation.

Mr. Liston questioned if the applicant concedes that any prior nonconforming use has been abandoned. Mr. Cucchiaro believed that to be true.

Mr. Liston asked if there is a height issue with any of the buildings. Mr. Cucchiaro stated that will have to be established and will determine if there is an issue of a nonconforming structure.

Mr. Guinco described the application, what has been testified to so far and the witnesses that would continue testimony. Mr. Guinco explained the purpose of the application to alleviate the over crowding in the Market Yard Parking lot. Mr. Guinco referenced Ordinance 18.6a.010 "The purpose of this chapter is to encourage the development and full utilization of certain lands within the Borough….for parking lot purposes so to as to alleviate congestion in the Market Yard parking area and in other downtown parking areas". He stated his client's goal was to create new parking and actively alleviate the concerns raised about parking in the Market Yard parking lot. Mr. Guinco reported he has several other professional and expert witnesses that will testify on behalf of the applicant.

Mr. Liston asked that he be able to make an opening statement and is being treated unfairly. Mr. Cucchiaro stated it was not an opening statement, but rather a summary of where the hearing is. Mr. Cucchiaro recommended the Mr. Guinco be allowed to continue with his testimony.

Mr. Guinco recalled Michael Geller, who was reminded he is under oath.

Mr. Geller presented new exhibits which were obtained from the Monmouth County Planning Board's Geographic Information Systems Division. He obtained seven aerial views of the property from various years.

Exhibit #A-6 Areal Photo from March 1969
The photo depicts the area in question and Mr. Geller pointed out the areas of interest and adjacent properties as no property lines were visible. Mr. Geller reported there was a building that was supplemental from the railway spur and explained the railway spur created a separation.

Exhibit #A-7 Areal Photo from 1974
Mr. Geller pointed out the area that is on the site plan. He explained the dirt road access which connected Jackson Street to Ford Avenue and the active concrete plant. Mr. Geller also explained the railway building is no longer there.

Exhibit #A-8 Areal Photo from April 1981
Mr. Geller explained the photo shows the field which is the parking lot area and also shows the Holland and McChesney buildings. He added the photo shows access to the buildings occurred from Jackson Street.

Exhibit #A-9 Areal Photo from 1986

Mr. Geller reported the photo shows the same neighboring homes and railroad right of way, the buildings and the access from Jackson Street. Mr. Geller stated the photo appears to show the concrete plant is not operating, no trucks are visible.

Exhibit #A-10 Areal Photo from 1990
Mr. Geller explained the conditions are similar from the previous exhibit photo. He stated the roadway between Jackson Street and Ford Avenue is paved. Mr. Geller stated the concrete plant is visible, but does appear to be operational.

Exhibit #A-11 Areal Photo from 2003
Mr. Geller reported the subject property was now a grass field. He stated is appeared the County Clerk's Office had begun using it for their parking lot, by parking cars on the grass. Mr. Geller stated there is a fenced in area that defines the parking lot from the rest of the property. He added access to the concrete plant structures is from Jackson Street and the plant does not appear to operational.

Exhibit #A-12 Areal Photo from 2011
Mr. Geller identified the grass field, homes on Mechanic Street, the railroad and the main access to the Holland and McChesney plant is from Jackson Street.

Exhibit #A-13 – Photo titled Freehold New Jersey Street View from August 2013. Mr. Geller stated this photo is from Google and depicts the driveway from Jackson Street to the Holland and McChesney buildings as well as the grass field which is enclosed by a fence.

Mr. Geller stated he examined the survey title records concerning any easement for private access and found there were three specific documents.

Exhibit #A-14 – Deed from June 1973
Mr. Geller explained it defines the entire Stavola tract, Block 77 Lot 16, includes the exclusion for the railroad right of way. Referring to Exhibit #A-5 the Survey, shows the railroad easement and the railroad is excluded from the overall property as being for railroad use. He stated that is how the Deed is written.

Exhibit #A-15 – Private Road Crossing Agreement dated May 26, 1955
Mr. Geller explained the agreement is between Alfred J. Holland and Arthur McChesney, partners trading as Holland and McChesney and the Central Railroad Co. of New Jersey. The agreement allows for two crossings over the railroad to gain access from Jackson Street to get to their property.

Exhibit #A-16 – Agreement Between Delaware River Land Co and Borough of Freehold dated June 11, 1973
Mr. Geller explained the agreement described the easement between Jackson Street and Ford Avenue that allowed for the roadway that was paved by the 1980's.

Mr. Geller stated his opinion is the property that is the proposed parking lot was never used as part of the concrete plant. He stated the use of the property was from Jackson Street and eastward.

Mr. Cucchiaro asked what the structure heights are on the subject property. Mr. Geller stated the heights were not determined.

Mr. Liston submitted the following Exhibits
Exhibit #O-1 – Photo of Parking Lot dated March 28, 2017
Exhibit #O-2 – Photo of Parking Lot and Area Adjacent to Parking Lot dated March 28, 2017
Exhibit #O-3 – Photo of Property Showing Drainage dated March 28, 2017

After viewing the photos and in response to Mr. Liston's questions, Mr. Geller stated the photos are of the property in question and they show some rainfall on the black top. He stated it appears the retention basin is full, but he could not tell the elevation or if the overflow structure was used. Mr. Geller reported he did not know who much rain fell on March 28th, but the basin was designed to handle a 100 year rain fall.

Mr. Guinco asked if storm water management facility referred to as the basin was working properly based on the photos. Mr. Geller stated yes, it was designed to hold the water and release it a slow rate.

Mr. Cucchiaro asked if there was an objection to moving Mr. Liston's photos into evidence. Mr. Guinco had no objection.

The floor was opened to Board Questions

Ms. Bennett asked if the Borough prohibits multiple primary uses on a single lot.

Mr. Geller stated he did not think that was prohibited, but the Planner would answer the issue. Mr. Cucchiaro added the applicant is no longer proposing multiple uses on the lot.

Mr. Barricelli asked when the concrete business ceased operation.

Mr. Geller stated from the aerials, the best he could tell was 1990.

Mr. Jackson, Ms. Jordan, Mr. Begley, Ms. MacCormack, Ms. Gibson and Mr. Reich had no questions.

The floor was opened to Public Questions.

There being none, Mr. Baricelli made a motion to close Public Questions, seconded by Mr. Jackson. All in favor.

Mr. Guinco introduced Mr. Nicholas Silvestri, Vice President and Owner of Carcierge Valet was sworn in. Mr. Silvestri gave a brief history of the company and listed other clients his business services. He was accepted as a fact witness, not an expert witness. Mr. Silvestri described his operations in the Market Yard Parking Lot. He explained customers are greeted and cars are taken to the parking lot on Hudson Street. Mr. Silvestri explained signage is displayed and staffing is predetermined by the number of expected guests. He explained the equation was worked out with Downtown Freehold's Jeff Friedman which dictates two valet for the first 100 people and one valet for every 50 after. If extra staffing is needed, Mr. Silvestri will provide. Mr. Silvestri stated he feels his operation in downtown Freehold is successful based on the tips the valets make. Mr. Silvestri felt he could continue to run a successful business in the Market Yard Parking Lot.

Mr. Cucchiaro asked who else employees his services in Freehold.

Mr. Silvestri listed The American Hotel, Metropolitan Café, Federicci's and Court Jester. He explained a second stand is located outside The American Hotel when events are held and additional staff is added. Mr. Silvestri explained the valets park the cars based on which stand they working at, Aurum valets park at the Hudson Street Lot, whereas valets at the Hotel will park in another lot. Mr. Silvestri explained no one is turned away and they service any car that wants to be parked out of both stands. He reported the event locations let him know how many people are needed.

Mr. Liston asked the distance from the Aurum facility to the Hudson Street Lot.

Mr. Silvestri did not know.

Mr. Liston questioned his knowledge of the lease between Stavola and Exquisite Caterers.

Mr. Silvestri stated he is not aware of the details regarding the lease or any agreement between Stavola and Exquisite Caterers. He stated he has never seen a lease. Mr. Silvestri stated he is putting only Aurum cars in the lot on Hudson Street. He confirmed all cars in the Hudson Street Lot are guests of Aurum. He stated there is signage that directs Aurum customers to utilize the valet, but does not require that.

Mr. Cucchiaro asked Mr. Guinco if there will be testimony in regards to what the proposed parking policy will be. Mr. Guinco responded yes.

The floor was opened to Board Questions.

Mr. Begley and Ms. MacCormack had no questions.

Ms. Jordan asked if she was going to Metropolitan Café, the valet would park her car on Hudson Street. Mr. Silvestri responded yes, no one gets turned away.

Mr. Jackson questioned the que system and how cars are stacked.

Mr. Silvestri explained staffing helps control stacking. He stated he typically has more than the required valets and they try to push past J & H Dinette so their spaces are not blocked. He stated it is not perfect, there are many variables and they are always trying to improve the operation.

Mr. Barricelli asked where the cars from the American Hotel valet stand are parked.

Mr. Silvestri explained cars from the American Hotel are parked at the Sheriff's Lot, the County Clerk Lot on Mechanic Street and on the other side of Mechanic Street. He explained it was not his decision to use those lots, he was told to use them although he could not recall who told him they were available for use.

Ms. Bennett asked if the Hudson Street Lot has ever gotten full. Mr. Silvestri replied no.

Ms. Bennett inquired about his business agreements for the two valet stands.

Mr. Silvestri explained he has two agreements which have the same parameters, one with Aurum and one with the Market Yard businesses. He stated the parameters of the agreements were worked out with Jeff Friedman.

Ms. Bennett asked how it is decide where the cars are parked.

Mr. Silvestri confirmed someone coming to a restaurant would not be parked in the lot on Hudson Street even if they came to the Aurum Valet stand. He reported he is only supposed to park Aurum cars in the Hudson Street Lot, but the valet drivers will not turn anyone away. Mr. Silvestri stated the three auxiliary lots that are used are open public parking lots at that time of day and the lots are filled in the order of Sheriff's Lot, Clerk's Office and finally auxiliary lot. He stated these lots are rarely all full.

Mr. Reich asked if all three lots are full, do cars get parked in the Hudson Street lot.

Mr. Silvestri stated as of now, his understanding is he is not supposed to park any cars in the Hudson Street Lot unless they are Aurum customers. Mr. Silvestri stated his staff assigned to the Aurum Valet Stand park their personal cars are parked in the Hudson Street lot and staff assigned to the stand outside the American Hotel park in one of the three lots. He added no valets park their personal or customer cars in the Market Yard Parking Lot.

Mr. Reich asked how many staff member would be needed if the valets had to verify the destination of every car entering the Market Yard while valet service was occurring, stopping cars to ensure Aurum guests are not parking in the Market Yard.

Mr. Cucchiaro stated he does not believe under any scenario that could be required or permitted.

Ms. Bennett asked if there is any business reason such as liability insurance, that the valet company can not park the cars from either client together.

Mr. Silvestri stated no.

Ms. Gibson asked if the valet service was ever allowed to cross park cars or was the Hudson Street Lot always restricted to Aurum customers only.

Mr. Silvestri stated he honestly does not remember. He could not remember a time there was not a conflict.

Mr. Cucchiaro asked if the client said the Hudson Street Lot could be opened to others to alleviate the parking problems, there is nothing on the Valet Company's end from preventing that from happening.

Mr. Silvestri stated there is nothing.

Mr. Liston asked how many cars on Friday or Saturday night are parked in the Aurum Lot.

Mr. Silvestri referenced a spreadsheet he created which tracks the activity. He stated 30 to 50 cars are parked on Friday and Saturday nights. Mr. Silvestri explained his company is not paid on a per car basis, rather per attendant. He explained the number of attendants provided depends on the size of the parties that are scheduled. He stated in most cases 3 valets are posted at the American Hotel and 3, 4 or more are posted at the Aurum stand.

Mr. Silvestri was asked to read the data from the spreadsheet. Mr. Guinco objected. Mr. Liston stated he would like to know how full the Hudson Street lot gets. Mr. Silvestri read the data:

Friday	Saturday
3/3: 13	3/4: 36
3/10: 0 (closed)	3/11: 34
3/17: 36	3/18: 40
4/8: 34	

Mr. Liston asked how many times the cars have gone over 35 spaces.

Mr. Silvestri responded three times, the most parked was 40.

The floor was opened to Public Questions.

Mr. Jeff Friedman, Freehold Center Partnership Corp. Mr. Friedman confirmed any discussions had with Mr. Silvestri were part of valet meeting with other people present. Mr. Friedman asked if there are supposed to be two valets as a base, plus 2 more valets for 50-150 guests and 3 more valets for 151-199 guests and 4 more valets for parties of 200 and over for both valet stands.

Mr. Silvestri stated he puts on the number of valets as requested from the establishments. Mr. Silvestri explained the requests he gets are for how many valets are needed, not how many guests are expected. Mr. Silvestri stated he is aware of the agreement among all the members that attended the meeting.

Mr. Jay Lopez, Little Bit of Cuba Dos asked if the valet stand is allowed to block a parking spot with a cone. Mr. Lopez presented a picture on his phone from Friday, April 21, 2017 at 7:30 PM showing a cone in a 20 minute parking space.

Mr. Lopez was informed he must email the picture so it can be marked into evidence. The phone picture was shown to the board. The picture was marked Exhibit #P-1.

In response to Mr. Lopez's question, Mr. Silvestri stated his drivers are not allowed to block public parking spaces in the Market Yard.

A motion was made by Mr. Barricelli to close the Public Questions, seconded by Mr. Jackson. All in favor.

Mr. Liston asked how the valet drivers get back and forth from the stands to the lots.

Mr. Silvestri responded they run.

Mr. Guinco called Ms. Allison Coffin, LPP & AICP. She gave her credentials. Ms. Coffin was accepted as an expert witness.

Ms. Coffin presented her study and analysis of the lot, describing the parking lot area and nonoperational concrete plant. Ms. Coffin explained the current parking lot has been used as a parking lot prior. She reported this lot is located in an REC Zone which encourages the use of a parking lot. Ms. Coffin explained the applicant is seeking a waiver for the curbing requirement. Ms. Coffin read Section 18.68.040 which indicates all of the requirements for the REC Zone do not apply for stand alone parking lots, so the additional coverage should not be counted towards the required coverage. Ms. Coffin noted Section 18.68.050 has the standards for the REC Zone for parking areas. Ms. Coffin stated this parking lot complies with that requirement as well as the second requirement of having a set back of 10 ft from any residential zone and with landscaping.

Ms. Coffin reported her analysis for granting a D-1 Variance. She stated the parking lot serves a public good and supplies parking for the Center Core Redevelopment area. Ms. Coffin stated the Center Core Redevelopment Plan has objectives which specifically address parking. She read the goals and approved parking solutions. Ms. Coffin explained a purpose of the REC Zone is to provide parking for the Freehold Center Core area. She stated according to the ordinance, it can be exclusive to one user. Ms. Coffin stated the proposed parking lot addresses the need for additional parking to support the Freehold Center Core Redevelopment Plan by providing 70 spaces by valet from within the Freehold Center Core area. She stated there is no land available within the Freehold

Core area to provide new parking. Ms. Coffin stated the site is suited for a parking lot and the location is easily accessible for valet with little impact on the residential streets.

Ms. Coffin explained a waiver is sought for the lack of curbing and determined the lot is designed to allow water to flow freely off the edge. She explained curbing would impede the flow of water. Ms. Coffin explained curb stops could impede snow removal.

Ms. Coffin addressed impervious coverage. If relief is needed, she explained it is a matter hardship and can be granted under the C1 standard. Ms. Coffin explained the existing site has impervious coverage of 65 %, which exceeds the 25% of the REC Zone so the lot could not be provided without increasing the permitted coverage. Ms. Coffin explained the proposed 6% increase could be seen as minor, with the lot by itself being below the 25% limit of the zone, and 6% coverage for the entire lot. She added the lot does not have access to the plant area and the applicant has no plan to reinstate use of the plant.

Mr. Cucchiaro confirmed there are structures that are not associated with any use and are on the same lot as the parking lot. He asked how the structures, which are not part of any use, still exist.

Ms. Coffin stated they are not used. They are not associated with the parking lot. They are not contemplated by this applicant as being used. She stated the parking lot is associated with a use in the Market Yard.

Mr. Cucchiaro stated the structures which are not associated with anything get subsumed from the granting of the D Variance when considering the positive and negative criteria. Mr. Cucchiaro asked what the non-conformities are.

Ms. Coffin stated under the worst case scenario; the set back requirement for front and side yards are 25ft and the side yard is 10ft to a residential zone, 4 ft to the railroad and 21 ft frontage to Hudson Street. She stated also the impervious coverage is at 71.2% and the requirement is 25%.

Mr. Cucchiaro asked if it is a hardship to take a section that is paved and create something pervious to bring the percentage closer to an allowable amount.

Ms. Coffin does not see a physical obstruction to it being done. She added there is no detriment in that it has been designed to handle storm water run off, it is a small increase beyond the existing 65% and does allow for the appropriate use of this portion of the site.

Mr. Cucchiaro asked if the buildings were inspected and if they are unsafe structures.

Ms. Coffin does not have information on that.

Mr. Cucchiaro asked if this ordinance permits parking lots and the only items that require the D-1 Variance is the set back, impervious coverage and curbing requirement.

Mr. Coffin agreed. It is close a conditional use variance, but it is not a conditional use.

Mr. Liston asked the dated of the most recent Master Plan Ms. Coffin reviewed.

Ms. Coffin did not have the date of the plan.

Mr. Liston asked what the special reasons are for granting a D-1 Variance.

Ms. Coffin explained it satisfied a need for parking, it is suited to provide the use, it is zoned in which parking lots are permitted and advances specific purposes of the Municipal Land Use Law, Sections A, G, H and I.

Mr. Liston asked if this is the only place a lot could be located in proximity to the Freehold Center Core area.

Ms. Coffin stated she did not do a complete review for available parcels. She stated others might be possible, but it would need relief and they may not be in a zone that contemplates the parking lots the way the REC Zone does. Ms. Coffin stated she has visited the lot twice; this evening and once before the parking lot was paved.

Mr. Liston asked if it would be better use more the property to eliminate the subsumed C variances, specifically the set back variance to the residential properties.

Ms. Coffin stated this parcel in unusual. There would be problems tying the two sides of the property together and getting around the deeds allowing access over private roads.

Mr. Liston asked how far the Hudson Street Lot is from the Exquisite Caterers Site.

Ms. Coffin does not know the exact distance. She did not know if it was more or less than 500 ft.

Mr. Liston referenced Title 16.24.030.a12 which pertains to parking lots and read "A site plan shall be filed with the zoning permit application for off street parking facilities are required or permitted under the provisions of this chapter in connection with the use or uses for which application has been made. Such off street parking space shall be provided within 500 feet of the building which it is intended to serve. In the case of off lot parking, the parent lot and parking lot shall be owned by the same individual in fee simple and that a covenant running with the land shall be recorded with the County Clerk specifying that neither lot may be separately sold." Mr. Liston asked if Ms. Coffin was familiar with the lease agreement.

Ms. Coffin stated she has not read the lease.

Mr. Liston explained the lease states it is cancellable by the landlord on 60 days notice and asked if that fact has any effect on Ms. Coffin's opinion to the suitability of this property.

Ms. Coffin stated no, it would still remain suitable for a parking lot. She stated it doesn't change the D-1 Variance opinion, the benefit that can be provided and added it does not change the suitability of the lot for this parking lot. Ms. Coffin stated the cancellation of the lease would not impede the ability for this parking lot to support the community, but it might impede the ability for this applicant to use the parking lot. Ms. Coffin added that does not mean that somebody else couldn't get a lease for the lot once it exists.

Mr. Liston expressed several scenarios of what could happen if the landlord chose to cancel the lease. He stated the off site parking is linked to the site so it could not be sold off separate and that is essentially the same thing that can happen under the lease.

Ms. Coffin stated yes, but believes the intent was the reverse. She stated it was intended to ensure there is no use without parking rather than a parking lot with no use. Ms. Coffin stated she was not aware of the specifics of what the Redevelopment Authority approved for this use. She stated there may be something in the approval that requires them to find alternative parking.

Mr. Liston asked about the buffering and set backs of the parking lot.

Ms. Coffin stated there is 10 ft. set back which is what is required for a parking lot in the REC Zone and there is landscaping proposed within the set back as well as fencing. She confirmed stand alone parking lots have a set back of 10 ft. Ms. Coffin explained the set back variance is for the side lot and frontage. Ms. Coffin reported a set back of 25 ft is not a better planning design because half of the parking would be lost.

Mr. Liston asked what effect the granting of this use variance would have on the zoning ordinance since it is not a permitted use.

Ms. Coffin stated she does not believe it will have a negative impact. She added in total the use is anticipated in the zone, it is explicitly permitted except for the fact that some waivers are needed for curbing and possibly coverage. Ms. Coffin confirmed it may be possible to use more of the entire lot to move parking further away from the residents. She explained to do so would require the cars being rerouted through residential areas to get to the other side of the lot or an easement would be needed to cross the cross access agreement providing access from Jackson Street. Ms. Coffin stated four residents abut the parking lot. She stated to provide a 25 ft set back to those four residents, 35 parking spaces would have to be eliminated. She added the residents are protected and does not agree with eliminating 35 spaces to provide a 25 ft set back. Ms. Coffin stated the lot could not be expanded further north as that would require crossing over the access road.

Mr. Cucchiaro asked Ms. Coffin if she testified that there is an exclusive right to use this property by Exquisite Caterers.

Ms. Coffin answered no she did not. She believes the intent of Exquisite Caterers was to make sure that since they were creating a demand of 70 spaces, they had 70 spaces provided. She added the ordinance allows it to be exclusive. Ms. Coffin stated there was a difference between the ordinance requirement and the need that was identified by the traffic expert, although she is not certain.

Mr. Guinco stated it was his understanding the Resolution from the governing body 57 spaces are needed and 70 spaces are provided.

Mr. Cucchiaro asked if her testimony would change if the additional spaces above the 57 required were used to alleviate general parking in the Market Yard general parking.

Ms. Coffin said the lot would still have a significant public benefit by providing parking and would more than offset the catering hall.

Mr. Cucchiaro asked if this property has distinguishing features.

Ms. Coffin stated it does, not only is it adjacent to the Freehold Center Core area, but it has the cross access easement which separates the two sections of the property and has a separate access to Hudson Street. She stated the unique features lend it well to be a parking lot. Ms. Coffin reported there may be properties within the zone with comparable amounts of open space but not as good access from the Market Yard area. She stated the access certainly is a distinguishable feature and in her opinion reduces the impact on the nearby roadway.

Mr. Cucchiaro asked Mr. Liston if the existence of a lease which can be terminated short term or long term, impacts the positive or negative criteria.

Mr. Liston stated it does because it makes the fact that all the benefits are illusory. He stated they can disappear in 60 days. He added there is no case that says that. Mr. Liston referred to the stipulation in the ordinance from the governing body that states if the lease is cancelled, Exquisite Caterers as to shut down.

Mr. Cucchiaro referenced Section 18.68.010 (REC Zone) under the 050A Section, which states parking may be located on lots which are not part of the project site and which are reserved for use by the project. Mr. Cucchiaro asked how one section can be relevant without reading the entire ordinance and looking at all sections.

Mr. Liston stated the Land Use Procedure section headed as Design Criteria makes it a design criteria and perhaps it belongs in the other section. He added it has an impact on what the governing body thought ought to happen with offsite parking that is remote. He stated it is clear in the section previously referenced that it shouldn’t be done in a way that it allows it to suddenly end.

Mr. Cucchiaro made it clear sometimes these “nuggets” are placed on the record and they come out in trial. Mr. Cucchiaro stated he is asking the questions to help him understand Mr. Liston’s legal arguments. He is not arguing the matter or disagreeing with him.

Mr. Liston asked Ms. Coffin if she understands Exquisite Caterers is only allowing that lot to be used for its parking. He stated that’s what was put on the record at the last meeting.

Ms. Coffin stated that is not what she heard tonight. She stated she heard that someone told the valet the Hudson Street Lot was not to be used for parking for people who are not from Exquisite Caterers, but he did not say who told him that. Ms. Coffin added the exclusivity in question does not change her opinion of the lot being a public benefit.

The floor was opened to Public Questions.

There being none, Mr. Jackson made a motion to close Public Questions, seconded by Ms. Bennett. All in favor.

The floor was opened to Board Questions.

Mr. Begley asked if there is still a concern of the building height.

Ms. Coffin stated there is no building in the parking lot and she does not have the heights of structures that exist. She stated there is no change to them. She stated the applicant is requesting they be subsumed in the D Variance. Mr. Guinco added the buildings have been there and haven’t changed. No amendments are proposed and have no effect on the parking lot.

Ms. Bennett asked to confirm the D-1 Variance is for set back, impervious coverage and curbing and does it apply to only the parking lot section of the lot. Mr. Cucchiaro explained if approval is granted, what is being asked for is what is approved. Any future changes will need to be brought before the board.

Ms. Bennett asked what the term of the lease is and if there are any prerequisites prior to termination.

Mr. Guinco stated the lease is irrelevant to the application because the development authority has addressed that issue with a condition that has been accepted by the applicant and they have relied on that to open the business and develop the parking lot. Mr. Guinco added the lease with the property owner is what permits the use of the site. Mr. Guinco stated it is not before the board to consider whether or not there is a contract condition, but rather if the application satisfies statutory and ordinance requirements, which he feels the applicant does based on the testimony.

Mr. Guinco called Mr. Todd Coleman, traffic safety officer for Aurum.

Mr. Coleman was sworn. Mr. Coleman explained he is present at events and works with the valets to ensure traffic flow and no parking problems arise. Mr. Coleman advised he is a Detective with the Long Branch Police Department and has been there 20 years. Mr. Coleman explained it is his contractual obligation to be present or provide other police officers in his absence. Mr. Coleman described his duties on an evening with himself arriving 60 minutes prior to the event, ensures the valet lane is properly set, cars are queued with no obstructions to the traffic flow and is present at every event.

Mr. Cucchiaro stated for the record whether this satisfies any element of the Resolution from the governing body is not anything this board can adjudicate. Mr. Guinco stated this testimony is to show the care and concern the applicants have put into this operation.

Mr. Liston asked how long he has been employed by Exquisite Caterers and was asked to describe his duties and what he has observed.

Mr. Coleman stated he has been employed by Exquisite Caterers for several years and has been at Aurum since they opened in 2016. Mr. Coleman explained he encourages everyone coming to Aurum to use the valet and explains the police will ticket cars parked in the Market Yard. Mr. Coleman explained he attended the NJ State Police Academy, has directed traffic for 20 years and investigated traffic accidents.

The floor was opened to Board Questions.

Ms. MacCormack, Mr. Barricelli, Mr. Jackson, Ms. Jordan, Mr. Begley and Ms. Gibson had no questions.

Mr. Reich asked if Mr. Coleman had any input as to when the number of valets need to be increased.

Mr. Coleman stated he does not. He explained his function is to maintain safety. He does not control how many valets are at an event. Mr. Coleman stated if safety were being compromised, he would ask the valet to call their boss to ask for more help.

Ms. Bennett asked if he heard the testimony provided by Mr. Lopez, regarding the coned off parking space.

Mr. Coleman stated he did hear the testimony. He stated when he is out there, no spaces are blocked.

The floor was opened to Public Questions.

There being none, Mr. Jackson made a motion to close Public Questions, seconded by Ms. Jordan. All in favor.

Mr. Guinco called Mr. David Esquenazi, partner of Exquisite Caterers and Aurum.

Mr. Esquenazi was sworn in. Mr. Esquenazi described the parking policy; being when the lot is open the valets are allowed to park any cars in the Hudson Street lot. He reported his company is solely responsible for the expenses of that lot including snow removal, lighting, maintenance and insurance. Mr. Esquenazi stated anyone utilizing the lot other than his guests do not contribute the operational expenses. Mr. Esquenazi stated he had looked for other properties in the area. He explained Monmouth County released the lease to Exquisite Caterers so they could utilize the lot. Mr. Esquenazi explained Monmouth County's lease also had the 60 release option and they are not concerned with it.

Mr. Cucchiaro asked for clarification on the use of the Hudson Street lot and if the lot is exclusive to Aurum patrons.

Mr. Esquenazi explained when Aurum is open, the lot is open. When there are no events, the lot is locked per the lease agreement. He stated when it is open, valets can park any cars there even if they are not Aurum guests. Mr. Esquenazi explained his valet stand is not open until 30 minutes prior to the event. Mr. Esquenazi confirmed anyone that valets from his stand will be parked in the Hudson Street lot, it is not exclusive.

Mr. Liston asked if he were granted approval, would he accept as a condition when the lot is open, anyone can park there.

Mr. Esquenazi stated yes.

The floor was opened to Board Questions.

Ms. Gibson, Mr. Jackson, Ms. Bennett and Ms. MacCormack had none.

Mr. Begley asked if the applicant is letting other parks there, why does it need to be a condition.

Mr. Cucchiaro explained if it is a condition of the Resolution, it is required, no matter who owns it or if applicant changes his mind.

Mr. Begley inquired if Exquisite Caterers is part of the Market Yard businesses that agreed to help facilitate off site parking for everyone that uses the Market Yard.

Mr. Esquenazi stated yes and added he has offered his lot as well. He stated he attended the meeting where the idea is to expand the Market Yard lot in the residential area. He stated the businesses want to use the Hudson Street Lot until any expansion happens. Mr. Esquenazi explained if Aurum is open there would be no fee, but there would be fees incurred if Aurum is not open.

Mr. Cucchiaro confirmed the Hudson Street lot would be available even if there is no event at Aurum. Mr. Esquenazi responded yes.

Ms. Jordan asked if there is cost incurred when valets use the Sheriff's lot, Clerk's Office lot or Mechanic Street Lot and if so does the Freehold Center Partnership pay for that.

Mr. Esquenazi stated he is the only one that pays for private parking. All of the other lots are used at no expense.

Mr. Barricelli asked if the other businesses have ever inquired using the Hudson Street Lot when Aurum is closed.

Mr. Esquenazi stated no one has reached out to him. He added they know is phone number and know how reach him.

Mr. Reich referenced the pictures of the storm drain previously marked for exhibit and asked if the required inspections are taking place.

Mr. Esquenazi stated the pictures looked like that because there was no grass seed. He explained Freehold Soil Conservation instructed them not to seed until early April and stated there is now seed and hay down. Mr. Esquenazi the basin was inspected after the recent storm and is currently empty.

Ms. Jordan asked if the operation and maintenance manual for the retention basib, as well as who is responsible, has been provided as was previously indicated.

Mr. Geller stated it has not been submitted as it would be a condition of approval.

The floor was opened to Public Questions.

Mr. Wally Zuber, 13 South Street asked if Mr. Esquenazi is getting "hammered" because of the business that he runs or the lot he constructed.

Mr. Esquenazi was instructed by his attorney not to answer.

There being no further public questions, Mr. Jackson made a motion to close Public Portion, seconded by Ms. Gibson. All in favor.

Mr. Guinco stated he did not have any more direct witnesses.

Mr. Reich suggested carrying the application to May 24th as Mr. Liston is not available for May 10th meeting.

Mr. Cucchiaro stated the application of Exquisite Caterers LLC & William H. Stavola Inc., Application: PB-UV-2017-002 be carried to the board's May 24, 2017 hearing at 7:00 PM at Freehold Borough Municipal Building. There is no need for public re-notice.

Mr. Reich encouraged the board to read the notice from the most recent Historic Preservation Meeting presented.

Mr. Begley made a motion to the close the meeting, seconded by Ms. Jordan.

Meeting adjourned at 10:13.

Respectfully submitted

Lynn Cannon