

FREEHOLD BOROUGH PLANNING BOARD
MINUTES OF MAY 24, 2017

MONTHLY MEETING

The monthly meeting of the Freehold Borough Planning Board was held on Wednesday, May 24th 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

ABSENT	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
PRESENT	COUNCILMAN GEORGE SCHNURR
ABSENT	MS. ALICE MacCORMACK

Mr. Reich read Item No. 3 on the Agenda as follows:

Approval of Minutes from Meeting April 26, 2017.

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

ROLL CALL

Yes	7	Begley, Bennett, Gibson, Jackson, Jordan, Schnurr, Reich
No	0	
Abstain	0	
Disqualified	0	
Absent	2	Barricelli, MacCormack

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

Application Number: PB-BV-2017-003
Applicant: Anthony and Susan D'Angelo
Location: 40 Brinckerhoff Ave., Block 101 Lot 4.01
Zone: R-7
Request: Bulk Variance Relief

Mr. Bellina explained the applicants are seeking to install a pool in their backyard. The pool puts them over on impervious coverage so they are seeking bulk variance relief.

Mr. Anthony D'Angelo and Mrs. Susan D'Angelo, 40 Brinckerhoff Avenue were sworn in.

Board Attorney, Mr. Ronald Cucchiaro stated he did review the Affidavit of Service and Publication and found the Board to have jurisdiction.

Mrs. D'Angelo explained they have lived in Freehold for 15 years and completed many major renovations to the home. She stated the family would like to put in a pool and explained the pool will exceed the maximum impervious lot coverage. Mrs. D'Angelo reported they are seeking a bulk variance so their contractor can install a 19 ft x 35ft in ground swimming pool, with a sun deck. She stated the lot coverage is currently 39.7% which will increase to 54% including the pool, surrounding concrete and equipment concrete.

Mrs. D'Angelo reported a 4 ft., pool grade, aluminum fence is proposed and she explained how and where the fencing will be. One gate with access to the yard will be installed. Mrs. D'Angelo offered the following new Exhibits:

Exhibit #A-8: Color Photo of fence area

#A-9: Color Photo of back yard

Mr. Cucchiaro confirmed the only relief necessary is for the impervious lot coverage.

Board Engineer, William Wentzien stated the fencing concerns have been addressed with the fence enclosing the entire backyard, not just the pool area. Mr. Wentzien stated he is satisfied with the application. Mr. Wentzien added for reference there is an existing variance for the side yard set back to an accessory building for the framed garage. Mr. Wentzien asked if the intent is to work with the existing grade in the rear yard.

Mr. Michael Brozo, Pool Town was sworn in. Mr. Brozo reported there is a 10 inch height difference from the back of the house to the back of property. The drainage pattern is not affected.

Mrs. D'Angelo stated there is currently no lighting proposed and the existing buffer trees will remain.

The floor was opened to Board Questions.

Councilman Schnurr stated impervious coverage was dealt with several years ago and looked into what other towns do. He stated some town change the impervious based on the size of the lot and felt Mayor and Council may want to review it.

Mr. Jackson had a drainage question, but that was answered in testimony.

The floor was opened to Public Questions.

There were none.

Mr. Jackson made a motion to close Public Questions, seconded by Ms. Jordan. All in favor.

Mr. Begley made a motion approve the side set back and bulk variance for impervious coverage, seconded by Ms. Gibson.

ROLL CALL

Yes	7	Begley, Bennett, Gibson, Jackson, Jordan, Schnurr, Reich
No	0	
Abstain	0	
Disqualified	0	
Absent	2	Barricelli, MacCormack

Mr. Cucchiaro stated the applicant can waive receipt of the Resolution and proceed at their own risk.

Mr. Reich read Item No. 5 on the Agenda as follows:

Carried from April 26, 2017.

Application Number: PB-UV-2017-002

Applicant: Exquisite Caterers

Location: 17-19 South Street, Hudson Street, Block 77 Lot 16

Zone: REC

Mr. John Guinco present for Applicant and Mr. John Liston present for objectors.

Councilman Schnurr recused himself as this is a Use Variance Application.

Mr. Cucchiaro reported the Appellate Division upheld the previous court ruling to uphold the governing body's decision to allow off site parking satisfying the parking requirement. Mr. Liston stated there will not be a petition for certification. Mr. Cucchiaro reported Mr. Guinco sent a letter brief and withdrew it as it had not been sent last week. He continued Mr. Liston had expressed objections that he did not have an opportunity to read it. Mr. Cucchiaro reported the letter was not sent to any of the Board members and Mr. Cucchiaro did not read it. Mr. Cucchiaro stated it won't be entered into the record.

Mr. Cucchiaro entered Exhibits #0-4, a letter from Mr. Liston dated May 18, 2017 and a response from Borough Attorney, Kerry Higgins dated May 23, 2017 will be marked #P-2.

Mr. Cucchiaro explained he is allowing Mr. Liston the opportunity to place on the record his arguments and the authority as to why the Board should issue subpoenas to the listed individuals. There will be an opportunity to respond and ask questions before the Board decides.

Mr. Liston reported a letter was sent to Mr. Guinco, Mr. Cucchiaro and Mr. Reich requesting the Board issue subpoenas for two Borough Patrolmen; Sam Hernandez and Sean Healey, as well as one for Jeff Friedman, Business Advocate for Downtown Freehold. Mr. Liston stated he would like them all as fact witnesses who have observed the conditions on Friday and Saturday nights in the Market Yard Parking Lot. Mr. Liston reported per Borough Attorney, if police officers are used as witnesses, they must be paid. Mr. Liston had no problem compensating them. Mr. Liston asked the subpoenas be issued so they can appear at the next meeting.

Mr. Guinco stated the basis of described testimony is inadequate and does not relate to the application before the Board. He stated the description provided by Mr. Liston and through conversation, the testimony would go to an issue of enforcement as it may relate to the governing body's resolution. Mr. Guinco stated if the Board decides to issue the subpoenas, it does not eliminate cross examination

and questioning by the Board and members of the public. Mr. Guinco stated there should be some explanation as to the purpose of the testimony.

Mr. Liston stated the Board has the unique opportunity to observe the operation in question through fact witnesses or by visiting the site in person. He stated it is important to hear from police officers and the business advocate to hear what they witness on Friday and Saturday evenings. Mr. Liston added he hopes every board member will take the opportunity to witness for themselves what a D Variance is doing before it is granted.

Mr. Guinco stated the issue before the Board is not how the system is operating, but whether the plan carries out the ordinances and enhances them. He stressed the ordinance that has been adopted by the redevelopment authority encourages the very activity of creating additional parking. Mr. Guinco stated if administration of the parking exercise is not working, that is not the issue before this Board. Mr. Guinco stated applicant addressed the issue of the ordinance to provide additional parking alternatives to relieve the pressure in the parking lot.

Mr. Liston stated he believes it is not being done and the fact witnesses will attest to that. Mr. Liston added the applicant is not living up to the agreement with the governing body and creating additional issues. Mr. Liston added once a variance is granted, it runs with the land and is there forever. He expressed the fact witnesses will provide valuable information.

Mr. Guinco referred to Ordinance which states an off site parking location is permitted. He added the Ordinance was modified in September 2016 to increased the distance of the off site location from 500 feet and land within the same title to ¼ of a mile and the parking arrangement can be through legal instrument.

Mr. Liston stated the Board can put any weight it wants on the facts it hears. He asked the subpoenas be granted so all the facts can be heard. He stated not issuing the subpoenas is to prejudicially effect the objectors right to present their case.

Mr. Cucchiaro agreed the subpoenas are able to be issued. Mr. Cucchiaro asked why Mr. Friedman has knowledge to this case.

Mr. Liston stated because Mr. Friedman has physically observed the operation in the Market Yard on Friday and Saturday nights. Mr. Liston stated Mr. Friedman informed his client (Mr. Kash) has factual information he'd like to place before the Board. Mr. Liston stated Mr. Friedman feels since he holds a quasi public position, he does not want appear to take sides on the matter.

Mr. Cucchiaro confirmed Mr. Friedman approached Mr. Kash stating he made relevant observations and would like to testify. Mr. Cucchiaro questioned if there is an attorney or opinion of SID Board that Mr. Friedman could not testify. Mr. Cucchiaro pointed out Mr. Friedman participated in the last hearing and identified himself as the Business Advocate.

Mr. Liston replied Mr. Friedman felt in the interest of fairness and impartiality he would like to be subpoenaed.

Mr. Cucchiaro stated he has already participated in the hearing and does not see a legal need to issue a subpoena but stated it is up to the Chairman. He added Mr. Friedman is present, wants to testify and

apparently feels there is some impediment to his testifying, although there is nothing in the law that supports that. Mr. Cucchiaro stated he can testify as Jeff Friedman and not as the Business Advocate.

Mr. Liston stated he does not know if he is willing to testify without one and asked in the interest of fact finding the Board issue the subpoena.

Mr. Cucchiaro stated he does not see a reason to issue a subpoena to someone who wants to testify and has not been told by the Special Improvement District that he can't testify. He stated it sets a precedent for the Board to unnecessarily issue subpoenas to people who want to participate. Mr. Cucchiaro confirmed for the record Mr. Friedman is present and feels it should be left up to Mr. Friedman on what he wants to do.

Mr. Liston stated if Mr. Friedman wants to address the Board without a subpoena and he is willing to testify, that is up to him.

Mr. Cucchiaro asked why Officer Healy and Officer Hernandez have information relevant to the proceedings.

Mr. Liston stated they have been present on Friday and Saturday evenings and have observed the business in the Market Yard Parking Lot, in their capacity as police officers. Mr. Liston anticipated the officers would need subpoenas.

Mr. Cucchiaro referenced the letter from Borough Attorney Higgins which stated if the testimony is being sought as fact witnesses, there should be no reference made to their position as police officers. Mr. Liston stated he has not had a chance to speak to Ms. Higgins regarding that. Mr. Liston reiterated they are police officers, they were there as police officers and need to be subpoenaed for any judicial proceeding. He did confirm the town would be reimbursed for expenses incurred by the officers testifying.

Mr. Cucchiaro recommended it be left to Mr. Friedman if he wishes to testify and reserve a decision on the police officers

Mr. Reich opened the floor to Board Questions.

Ms. Gibson asked why only two officers are being called as fact witnesses. Mr. Liston stated it is his understanding these two officers were in the area Friday and Saturday nights.

Ms. Bennett asked if the police department should be asked to identify people with knowledge of the facts of what goes on in the Market Yard. She stated if we can't separate the two people from their roles as police officers, shouldn't someone from the Police Department identify who the best fact witnesses would be. Mr. Liston stated the two officers were observed there by Mr. Kash. He stated if there are others who observed similar times and the Chief wants to identify them, they will be subpoenaed as well. Ms. Bennett asked if this testimony will be completely duplicative of testimony from the objectors. Mr. Liston stated it will not be, because it is testimony from individuals that do not have an interest in the outcome.

Ms. Bennett asked if the Board is to assume that the lot was not in operation. Mr. Cucchiaro stated the applicant is not given any benefit from being there and operating, but they aren't punished for operating either.

Ms. Bennett confirmed Mr. Friedman is the public figurehead of an entity both the applicant and objectors are part of. She questioned if there is an issue with Mr. Friedman testifying as a head of an organization they are both part of. Mr. Cucchiaro stated there is no legal impediment for him testifying. He added it appears there is an assumption he can't testify because of a conflict of interest. Mr. Cucchiaro stated there could be a stipulation on the record that neither side objects to his testimony.

Mr. Begley asked if the SID and Freehold Center Partnership are the same entity. Mr. Liston did not know. Board Secretary, Joseph Bellina confirmed they are the same. Mr. Begley asked why only these three witnesses can produce relevant testimony; when other witnesses that don't require subpoenas could testify. Mr. Liston stated the witnesses would be testifying in their official capacity. Mr. Begley stated he recommends subpoenas not be issued as testimony can be given by others who are not connected with the town but has witnessed the activity.

Ms. Jordan asked if both sides are members of the Special Improvement District. Mr. Guinco stated his clients were informed they are not members. Mr. Guinco stated he is having a problem with one government agency issuing a subpoena to another government agency's employees to testify at the call of one party before the board. He feels that is a significant discrimination issue. He added there are many cases about tax payers and the inability of the governments that tax them to favor one over the other.

Mr. Begley referenced the minutes from the previous and asked for clarification as to the status of the applicants in regards to the Special Improvement District.

Mr. Barry Fisher, 17-19 South Street was sworn in. Mr. Fisher reported he is the owner of the location and rents to Exquisite Caterers. Mr. Fisher stated he is not a Board Member of the Partnership. A discussion followed and it was determined there is an Executive Board and properties located within the Special Improvement District are members of the Downtown Partnership. Mr. Fisher stated he is not a member of the Executive Board. Mr. Fisher stated he voted at the last Board Meeting which was approximately March 2017 and voted on the budget. Mr. Liston asked if Mr. Esquenazi is a voting member of the partnership. Mr. Fisher stated he does not remember, but he pays a portion of the land taxes per his lease. Mr. Fisher stated he doesn't remember seeing him at a meeting.

Mr. Cucchiaro asked if the Special Improvement District can participate in Planning and Zoning Board hearings if it wants to. Mr. Liston does not know and added Mr. Friedman announced who he was and participated in the last hearing, just not as a witness. Further discussion followed regarding Mr. Friedman's salary and it was confirmed the Government of Freehold Borough does not pay Mr. Friedman's salary.

Mr. Reich stated Mr. Friedman had previously participated during cross examination and feels if he wishes to participate as neutral party and the applicant and objectors agree, he can participate. Therefore a subpoena is not necessary. Mr. Cucchiaro stated the Board can not decide if a witness is neutral, the board can only listen to the testimony. Mr. Reich stated he does not believe a subpoena is necessary for Mr. Friedman and he can present his opinions during public comments or he can be called as a fact witness.

Mr. Liston requested a decision on the subpoenas for police officers. Mr. Reich stated they may not be needed depending how testimony proceeds. Mr. Cucchiaro stated if officers are to be subpoenaed the Board may want to ask the Police Department to determine who is best to provide testimony. Mr. Reich reported a subpoena will not be issued for Mr. Friedman and a decision regarding the police officers will be made at the end of the meeting.

Mr. Guinco stated he had information regarding the buildings on the lot in response to Board member questions. He entered Exhibit #A-17 – Average Height Plan, prepared by Robert W. Smith Jr. on May 22, 2017.

Mr. Liston had no objection to the document.

Mr. Guinco described the buildings on the survey; Two story masonry office building which is 20.5 ft high and a One story masonry office building which is 9.7 ft high. Mr. Guinco described the structures; cement divider/sifter is 7.6 ft high, cement hopper antenna is 69.5 ft. high, cement hopper is 72.4 ft high, antenna on cement machine 91.3. ft and an observation tower of 16.3 ft. He added these are not buildings within the definition of the ordinance, they are structures. Mr. Guinco confirmed structures are not regulated. Per the ordinance, Mr. Guinco read the definitions for a building and a structure. Mr. Guinco reported the buildings are under the limit of 35 ft.

Mr. Liston asked the board engineer if the structures are regulated. Mr. Wentzien replied the height limitation is restricted to only classified buildings.

Mr. Liston called David Zimmerman, LPP. Mr. Zimmerman was sworn and gave his education and professional experience. The Board accepted Mr. Zimmerman.

Mr. Liston asked Mr. Zimmerman how he prepared for testimony and what was studied.

Mr. Zimmerman reviewed the 1980 Master Plan, Re-examinations from 2005 and 2011, Engineers Report dated March 3, 2017, the Zoning and Site Plan Ordinance, the Resolution of Approval adopted February 2017, the transcript of the Board Hearing dated January 2016 and witnessed actual activity of the valet parking and activity of the Market Yard Parking Lot. Mr. Zimmerman stated his personal observations were made May 12, 2017. He entered Exhibit #O-5, Two Aerial Photos from 1912. The photo was obtained from the Monmouth County Planning Board. He explained the photo shows the outline of the subject property and the second page shows the same area, but with a superimposed parking lot.

Mr. Guinco questioned the date of the photographs. Mr. Zimmerman corrected they are from 2012. Mr. Liston stated it is dated 2014. Mr. Zimmer explained the photo is illustrative of the relationship of the subject property to the immediate neighborhood.

Mr. Zimmerman described what he witnessed on May 12, 2017. He viewed operations at the catering facility and the off site parking lot from 6:00 PM to 12:45 AM. Mr. Zimmerman stated he saw 46 cars parked by the valet between 6:00 PM and 8:00 PM for an event that started at 6:45 PM. He added there were also 10 guests who parked in the Market Yard. Mr. Zimmerman noted 17.8 % of the guests did not use the valet and 82.2% used the valet stand. Mr. Zimmerman stated at 6:00 PM 20 cars were already parked in the subject lot and the Market Yard lot was full. He added by 9:00 PM there were spaces available in the Market Yard. Mr. Zimmerman stated he did not witness anyone

other than Aurum guests using the valet stand, except for one family at 8:30 PM. He added at 8:30 PM cones were put out advertising free valet parking.

Mr. Zimmerman stated between 6:00 – 7:00 PM there were two valet jockeys, another was added between 7:00 – 7:45 PM and one ticket man in the booth. He did not see a traffic safety officer on site. Mr. Zimmerman stated Aurum guests started leaving at 11:15 PM with the highest concentration leaving between 12:00 – 12:45 AM. Mr. Zimmerman stated the maximum number of cars in the subject lot was 66 with 4 spaces empty.

Mr. Zimmerman stated the applicant is seeking a D-1 Use Variance and Bulk Variance for coverage and set backs. Mr. Zimmerman noted he will be referencing Cox & Koenig 2017 Edition and NJ Supreme Court Case Price vs. Himeji, 214NJ263 decided in 2013. Mr. Zimmerman explained the parking lot does not conform to Part B of the ordinance because is it not in conjunction with recreation use, it does not comply with all the parking lot regulations of the Borough and it is a not a stand alone use. He stated the catering hall could not exist without the parking lot, which makes the lot an accessory use.

Mr. Zimmerman explained the applicant is seeking 3 categories of variance relief; a D-1 Use Variance, Bulk Variances and Design Waivers. He stated general welfare or public need should be satisfied to grant special relief. Mr. Zimmerman stated in his opinion the application does not satisfy the purposes presented by the applicant's planner. He stated the transportation routes are not relevant. Mr. Zimmerman stated the parking lot is new and is nice. He stated aesthetics cannot impact the Boards decision. He referenced case Burbridge vs. Mine Hill which was a case of an expansion dealing with a nonconforming use. Mr. Zimmerman quoted the case, "In respect to a variance to permit a new nonconforming use, ambiance alone can seldom be a proper basis for special reason. Favorable consideration is appropriate in those cases only if the variance inherently serves the public good. When used to satisfy the special reasons requirement however, aesthetic improvement entails more than mere beautification."

Mr. Zimmerman asked the Board to consider the significant number of Bulk Variances and exceptions that are requested by the applicant. Mr. Zimmerman listed all the requested waivers and variances. He asked how a property can be particularly suitable for the proposed use when so many waivers and variances are needed.

Mr. Liston noted the Ordinance modified the design criteria in September 2016 to increase the distance from 500 ft to ¼ mile and the requirement for common ownership was deleted as long as there was some legal connection.

Mr. Zimmerman stated the subject property has detrimental impact on the surrounding property. He stated the lights are not directional and illuminate on the neighbors property. Mr. Zimmerman observed the buffering and landscaping is inadequate. He stated the landscaping is not the required height and is inadequate. He described the landscaping and stressed it cannot shield car headlights or buffering to the adjoining properties. Mr. Zimmerman pointed out curbing is not provided. Mr. Zimmerman stated the minimum front and side yard should not be used for off street parking. He reported the applicant does require the utilization of the side yard for off street parking. For these reason, Mr. Zimmerman stated the subject lot only functions when all of the Bulk Variances and design waivers are granted. He gave the opinion this is not an optimum site for a parking lot.

Mr. Zimmerman entered Exhibit #O-6, Enlarged Two Photos of Parking Lot, March 2017. Mr. Zimmerman explained the pictures show the position of the parking lot with 10 adjacent dwellings. He pointed out the two house on Hudson Street are as close as possible to the subject lot. Mr. Zimmerman explained in detail how these photos depict all of the issues he previously raised regarding lights, buffering and landscaping. Mr. Zimmerman gave his opinion that the subject lot is a nuisance to the area neighbors and is almost a classic case of incompatible uses, especially during the weekends when people are enjoying their back yards. He stated the property is not appropriate for a parking lot.

Mr. Zimmerman stated there is a parking need in the downtown, but asked what public benefit the subject property serves. He stated this lot serves the needs of the catering facility solely. He added it does not benefit the community at all. Mr. Zimmerman referenced *Price vs. Himeji* and explained if there is a benefit to the general public and not just one business, then special reasons area satisfied.

Mr. Zimmerman reported the Ordinance identifies 20 nuisances and highlighted three; noise, glare and adverse effect on neighboring properties. He gave examples of each and explained how the lack of buffering and landscaping to shield the nuisance elements or the substantial impact upon the public good rises to the level of an incongruous appearance of the parking lot to the immediate neighbors. Mr. Zimmerman asked the board to compare the location of the parking lot in the proximity of the parking with the adjacent single family residential homes with other parking lots in Freehold. He stated the large parking lot at the Court House is separated from the neighbors by a street so they don't immediately back up to the parking area. Mr. Zimmerman stated the subject lot is unique in its proximity to 10 homes and unique in terms of failure to provide efforts to buffer the nuisance factors.

Mr. Zimmerman stated the bases for the Bulk Variances that are being sought are a function of trying to maximize the number of parking spaces. He stated the property is well suited for a lot, but not with these dimensions. Mr. Zimmerman stated he believes this rises to the level of C-2 Variance, not a C-1 Variance. He stated the application doesn't satisfy the five criteria for a C-2 Variance. Mr. Zimmerman listed the five criteria and explained how they don't comply.

Mr. Zimmerman referenced the Master Plan from 1980. He stated the goals of the plan were to preserve and protect the existing residential neighborhoods and develop a parking authority. He stated the 2005 Re-Examination had the goal of revising the parking standards. Mr. Zimmerman stated many New Jersey towns have built parking garages to provide parking in their downtown areas. Mr. Zimmerman stated the 2011 Re-Examination reaffirms the validity of continuing the REC Zone off Hudson Street. Mr. Zimmerman stated there is recognition in all the master plan updates that there is a need for parking. He stated the need is public parking, not parking exclusive to one business.

Mr. Zimmer summarized his testimony and stated the application didn't satisfy the special reasons criteria, the Coffin criteria for design waivers or the C-2 Criteria for the Bulk and Coverage Variances. He stated he does not think there is a public benefit.

Mr. Liston asked if the application satisfied the negative criteria that will not impair the public good or intended purpose of the zone.

Mr. Zimmerman stated since the application is not hypothetical, it is clear the public good is not promoted by granting this application and it doesn't satisfy the long standing parking need in the downtown area.

Mr. Guinco asked how Mr. Zimmerman can reconcile the governing body's Ordinance 2016/11 and their findings concerning the public need for parking and his conclusion there is no public benefit.

Mr. Zimmerman responded there is a public need for parking. He added this application does not address the public parking need, only its private need. Mr. Zimmerman stated during his own observation several guests of the catering facility used the Market Yard and contributed to the parking shortage downtown.

Mr. Guinco asked if that was based on the one observation he made on May 12th. He asked if any other businesses were open, having events on that evening or if there were any other valet stands operating that night.

Mr. Zimmerman responded he could not say which businesses were open. It seemed to him the American Hotel had an event and there was no valet service offered. He stated those guests were parking in the Market Yard Parking Lot. Mr. Zimmerman stated his observation was focused on the business of the catering facility.

Mr. Guinco asked how an expert witness could determine there was no public benefit when the public lot was not examined. Mr. Zimmerman responded the new catering hall has not diminished the previous need for additional parking. Therefore there is no public benefit. He stated he observed 66 cars parked in the subject lot that were parked by the valet but did not see that as a benefit to the public parking. Mr. Zimmerman did not observe any other businesses offering valet parking at that time.

Mr. Guinco asked if the intent to add the public benefit is solely the obligation of the applicant. Mr. Zimmerman stated he does not know the applicant's obligation, he knows their presence has not reduced the need for parking. Mr. Zimmerman stated there has to be some public benefit for the Board to find positive reasons, which he does not see. Mr. Guinco asked if he was familiar with the Redevelopment Ordinance. Mr. Zimmer stated he is not familiar with the Resolution presented by Mr. Guinco.

Mr. Guinco asked Mr. Zimmerman to confirm the set backs he referred to on Exhibit #O-5. Mr. Zimmerman stated the 3 ft set back is on the south side and confirmed there is a railroad right of way there as well. He stated he does not consider a set back of 3 ft an issue in creating an impact to the overall neighborhood. Mr. Guinco asked if there was a substantial impact to the community that there is a parking lot adjoining another parking lot for which a variance for set back was sought through prior application. Mr. Zimmerman had no problem. Mr. Guinco asked if observations were made regarding fencing along the house. Mr. Zimmerman stated there is tarp on the fence, closest to the residence facing Hudson Street. Mr. Zimmerman referred to the Engineering Report which stated the tarp is flimsy and should be replaced with slats or something more permanent. He explained the tarp does not block glare for headlights across the lot. Mr. Zimmerman confirmed the north side complies with the 10ft setback requirement.

Mr. Guinco referred to Ordinance 2016/11, adopted September 6, 2016. Mr. Liston asked if this is the ordinance that changed the distance of off-site parking and changed the ownership requirement. Mr. Cucchiario stated since this not in the Ordinance Book, it should be marked. Mr. Liston objected the "Whereas" are not part of the codified book because they would not have been available at any time for Mr. Zimmerman to review. Mr. Cucchiario referenced PRB Enterprises, Inc. vs. South

Brunswick and recommended the objection be overruled. Mr. Guinco asked Mr. Zimmerman to review the Ordinance specifically the 2nd, 3rd, 4th and 5th Whereas Sections. A short recess was called to allow time for Mr. Zimmerman to review.

The proceeding reopened at 9:50 PM.

Mr. Cucchiaro entered Exhibit #A-18, Resolution Adopting Ordinance #2016/11.

Mr. Guinco asked if the clauses are an admission by the Governing Body that there is a need for a solution to the parking issues Mr. Zimmerman referenced in the 1980 Master Plan. Mr. Zimmerman replied he did not get that. Upon examination, Mr. Zimmerman stated he did not analyze the businesses around the Market Yard to determine if they have on-site parking. Mr. Zimmerman confirmed the applicant is providing spaces for itself, not the public, so no public benefit can be found. Mr. Cucchiaro asked if the applicant would provide spaces for use by non Aurum customers. Mr. Guinco acknowledged they would. Mr. Zimmerman stated his conclusion does not change because the lot is not always open, so the public can not utilize it.

Mr. Guinco questioned Mr. Zimmerman on his Master Plan testimony. Mr. Zimmerman stated the Master Plan recommended a parking structure in the downtown area and did not recall any plan for the expansion of surface parking. Mr. Guinco quoted the plan "The expansion of surface parking can be most easily effectuated adjacent to the Market Street parking area and however is mentioned the expansion of surface parking in essence removes taxable commercial or residential property and therefore the long range costs of surface must be considered." Mr. Zimmerman stated that does not change his opinion. Mr. Zimmerman reported he did not study if there were other locations between the catering hall and the subject lot.

Mr. Guinco confirmed Mr. Zimmerman considered the subject lot an accessory use. He asked if the REC Zone Ordinance listed accessory uses. Mr. Zimmerman responded it did not list permitted accessory as use but did list permitted uses. Mr. Guinco referred to Section 18.68.030b which stated parking lots are permitted in conjunction with recreational uses which stand alone providing the parking lot area complies with the redevelopment regulations. Mr. Zimmerman determined the use is accessory because parking is a classical accessory use and he acknowledged the ordinance states it should be on the same lot, but in a practical sense it is still an accessory.

Mr. Guinco referred to Section 18.68.010. Mr. Zimmerman read the section. Mr. Zimmerman stated he does not believe providing a parking lot for the sole use of the catering facility alleviates congestion in the Market Yard Parking Lot. Mr. Zimmerman stated an additional study would need to be done to see if the subject parking helps with congestion if opened to any cars, not just cars for the catering hall. He added he did not see anyone denied valet service on May 12th.

Mr. Guinco asked if the construction of any parking lot would aid in alleviating the congestion in the Market Yard. Mr. Zimmerman stated he understood the subject lot was a prerequisite to get approval to open the business, not to address present parking needs. Mr. Guinco asked how the testimony was analyzed to justify the C Variances. Mr. Zimmerman responded the C Variances were a function of the desire to maximize the greatest number of spaces on the site, not a function of peculiarities of the site that limited its development. When asked if it was reasonable to maximize parking that can be provided Mr. Zimmer responded the Board will have to answer that question. He stated the applicant has not satisfied the burden required for a D-1 Variance, C-2 Variance or Design Waiver. Mr.

Zimmerman stated he is aware of an additional 15 spaces in the subject lot but does not deem them or any available spaces a benefit to the public.

The floor was opened to Public Questions.

Mr. Jesus Guerra, 10 Hudson Street asked why Mr. Zimmerman did not speak to him regarding the noise or lights.

Mr. Zimmerman confirmed he did not speak to Mr. Guerra.

Seeing no further questions from the public, Mr. Begley made a motion to close Public Portion, seconded by Ms. Jordan. All in Favor.

Mr. Cucchiaro asked what standard Mr. Zimmerman wants applied to the issue of accessory use. Mr. Zimmerman stated there is more to the D Variance than just a failure of the application to comply with all the development regulations in the ordinance and just as if a detached garage were located two lots away from a house, that is an accessory use to the house. He continued the garage would have to get a D-1 Variance from the Zoning Board to be permitted. Mr. Zimmerman stated that example is illustrative of what is before the Board. Mr. Cucchiaro confirmed the applicant is seeking a D-1 Variance.

Mr. Cucchiaro questioned if Mr. Zimmerman's opinion would change regarding benefitting the public if a number of spaces in the subject lot were available to non Exquisite guests. Mr. Zimmerman stated the previous testimony was they provide valet parking free to anyone, but he observed the free valet parking was only promoted after 8:30 PM and provided for their own customers. He stated they are trying to be a good neighbor, but the reality is it is not effective.

The floor was opened to Board Questions.

Mr. Begley asked how providing parking spaces anywhere, are not a benefit to the businesses connected to the Market Yard. Mr. Zimmerman replied the problem is the Municipality is trying to accommodate new businesses, this one in particular, by changing ordinances. He stated there was a parking deficit prior to this business and he does not think the subject lot addresses the chronic parking problem. Mr. Zimmerman stated the applicant could expand the lot to an acre and not need as many variances. He stated the lack of a sufficient size parking lot is determinative of the fact the applicant is looking for variances. Mr. Begley asked if the problem is the number of spots or the exclusivity of the lot. Mr. Zimmer stated it is hard to narrow it down, because the applicant is failing on three counts (D-1 Variance, Design Waiver and Lot Coverage). He would say the D-1 Variance is of paramount importance.

Mr. Begley referred to Exhibit #O-6 and questioned the height need for buffering plants. Mr. Zimmerman stated the applicant complied with the required deciduous trees but not with requirement for a buffering plants being 4-6 ft high. He explained the plan shows 52 shrubs and only 20 are on site. Mr. Zimmerman stated the trees should be 10 ft to provide proper buffering or put on what was on the landscaping plan. He added if the plan was followed he would not change his opinion on the buffering and the lighting.

Ms. Jordan stated the applicant is probably waiting to make the additional changes until this application is settled. Mr. Zimmerman stated he could only base his opinion on what he observed.

Ms. Jordan asked if there was a negative impact on the parking downtown because the applicant provided the needed parking. Mr. Zimmerman stated his observation was some of the catering hall guests parked in the Market Yard lot. Ms. Jordan asked if some of the guests that valet parked could have been going to another business downtown. Mr. Zimmerman stated all of the cars in the subject lot were valet parked cars and he observed they were all associated with the catering facility.

Mr. Reich asked what time he was at the Hudson Street lot on May 12th. Mr. Zimmerman replied he went back and forth but concentrated the first two hours on the Market Yard to see how the valet stand was functioning. He described how he went back and forth and witnessed the how the cars leaving the subject lot were impacting the neighborhood. Mr. Reich asked if he witnessed any cars being parked in the subject lot. Mr. Zimmerman stated he witnessed cars being parked by valet jockeys prior to 6:00 PM. Mr. Zimmerman confirmed he could not determine where the patrons of those cars went.

Mr. Jordan asked if it is the applicant's responsibility to solve the parking issue downtown. Mr. Zimmerman stated he does not know a catering facility that does not offer valet parking and the Borough required the parking be provided. Mr. Reich stated that did not answer the question. He asked if it is the applicant's responsibility to solve the chronic parking problem. Mr. Zimmerman replied no. Mr. Reich confirmed the applicant's responsibility is to provide parking for their business which potentially does not compound a chronic problem. Mr. Zimmerman replied a percentage of the patrons park in the Market Yard Lot.

Mr. Jackson, Ms. Bennett and Ms. Gibson had not questions.

Mr. Reich asked if there is no auxiliary parking lot and no requirement to find offsite parking, where are the parking spots coming from. Mr. Zimmerman could not answer. He gave his opinion that downtown Freehold is not an appropriate place for a catering facility. Mr. Cucchiaro stated the governing body believed it's appropriate and if the Mr. Zimmerman is asking the Board to disagree with the governing body that is engaging in a legislative act, which the Board does not have jurisdiction on. Mr. Zimmerman replied he spoke out of turn and asked that be forgotten.

Ms. Bennett referred to the Borough Resolution #128-15 which stated other considered uses for this property would be found deficient in parking. She asked if there was anything that could have been done that would not have further burdened the Market Yard if they did not provide the off site parking plan that they funded on their own. Mr. Zimmerman replied he is constrained by the application which does not meet the variance requests. Ms. Bennett asked how making some accommodations for parking are done to keep a property from standing vacant is not a benefit to the public.

Mr. Liston stated Mr. Zimmerman's testimony is focused on the subject lot where under these circumstances the parking lot is not a permitted use. Mr. Cucchiaro asked if it is not a permitted use or it is not a permitted use if it doesn't satisfy all the bulk standards. Mr. Cucchiaro stated parking lots are a permitted use under certain circumstances. Ms. Bennett stated it is disingenuous to separate there is a business owner who provided a solution to a problem the governing body has acknowledged but has not solved. Ms. Bennett asked what else could have done. Mr. Zimmerman stated he could not answer, then suggested building a parking garage. Ms. Bennett agreed that would be wonderful, but does not see how one applicant can be asked to solve the parking problem.

Mr. Reich asked if the free valet parking signs that came out at 8:30 were at the valet stand. Mr. Zimmerman responded no, they were on several cones throughout the Market Yard. He stated the

previous cones were blank and did not promote the valet service or the business. Mr. Reich asked if the general public would know the valet service was only for Aurum customers. Mr. Zimmerman stated they wouldn't know the opposite either, that is for anyone.

Mr. Reich asked if there is an acceptable growing period for new plantings on a new site. Mr. Zimmerman responded Ordinance requires plants be 4-6 ft at planting. He added holly is a slow growing plant. He recommended a 10 ft. Arborvitae trees be planted instead. He confirmed the landscape plan shows 52 holly trees at 3ft and the lot currently has 20 1ft high plantings.

Mr. Liston excused his witness and entered the following Exhibits.

Exhibit #O-7 – Freehold Borough Resolution Adopting #128/15

Exhibit #O-8 – Transcripts of Hearing dated May 4, 2015

Exhibit #O-9 - Transcripts of Hearing dated May 18, 2015

Exhibit #O-10 – Transcripts of Final Hearing dated June 22, 2015

Mr. Liston stated his four clients will testify, Mr. Friedman will testify and asked about the issue of the subpoenas for the police officers.

Mr. Reich asked if the testimony expected from the police officers will be duplicative. Mr. Liston stated he understands their observation is from a different night and he is not sure what will be different or the same. He stated he would like the opportunity to present the testimony and let the Board decide if it is duplicative. Mr. Liston stated he would like each Board Member to make their own observations on a Friday or Saturday night. Mr. Cucchiaro asked if the four clients and Mr. Friedman will be testifying to different nights and events. Mr. Liston stated yes. Mr. Cucchiaro stated the Board will have the benefit of multiple nights of observation. Mr. Liston begged the Chairman to not cut off the objectors because it begins to look like they are getting short changed. Mr. Reich stated he is not cutting them off, he is merely discerning if they can be asked to appear as fact witnesses without calling their occupation into question. Mr. Liston stated Mr. Friedman has agreed to testify without a subpoena.

Mr. Liston stated the police officers require a subpoena and would not ask them to come as volunteers because they are full time employees of the Borough. Mr. Liston stated if they are subpoenaed they must appear. Mr. Reich acknowledged that and stated the Borough Attorney has recommended that if they are testifying as fact witnesses, they should do so without their occupation called into play. Mr. Reich stated they are people of the public who are confirmed to be at the site in question on a night giving testimony about. Mr. Liston stated they were there in their capacity as police officers and questioned how that fact can be put aside. Mr. Reich responded someone else who is not a police officer, that was verified as being there could testify as a fact witness. Mr. Reich asked if the testimony is supposed to hold more weight because they are police officers. Mr. Liston responded no. He stated the only way the police can testify is with a subpoena. Mr. Liston stated if the Chairman wanted to reject the subpoena request, it was his prerogative.

Ms. Jordan asked if there was a certain incident the officers would be testifying to. Mr. Liston replied no. He stated the officers were on patrol and observed in the area. Mr. Cucchiaro asked when. Mr. Liston replied it was the weekend of May 6th, either the Friday or Saturday. Mr. Liston stated if the Chairman did want to give the objectors a fair shake, then that was up to him. Mr. Cucchiaro stated this has become habitual and asked the record reflect Mr. Liston preferred he not speak as Mr. Liston was speaking over him. Mr. Liston stated the Chairman is going to do what he's going to do because

the statute provides the Chairman make the decision. Mr. Cucchiaro stated every time something happens in the hearing that Mr. Liston doesn't like, there is a statement the Board is being unfair and discriminatory. Mr. Cucchiaro stated for the record every aspect of this hearing has complied with the requirements of the Municipal Land Use Law. Mr. Liston did not disagree with but stated he needs the subpoenas to get the officers to appear. Mr. Cucchiaro instructed Mr. Reich a decision can be made either way or he could defer his decision after hearing the testimony at the next hearing and see if it is necessary. He noted he does not believe there can be an examination of them without referencing their role as police officers.

Mr. Reich stressed Mr. Liston should try to make his case through the testimony of his other witness. Mr. Reich stated the point of the police officers testimony is to provide fact witness of what they observed during the night they were in the Market Yard Parking Lot. He stated the four objectors will be making similar observations, but perhaps from different nights. Mr. Liston replied the objectors are interested parties and he would like to bring in neutral fact witnesses and have identified the two police officers. He added he needs the subpoenas or they won't come. Mr. Reich acknowledged the subpoenas are needed for them to appear, he is not convinced they are needed to come. Mr. Liston represents as an officer of the court and as a lawyer for the objectors he stated he needs them. Mr. Liston asked Mr. Reich to do whatever he thinks is right.

Mr. Reich stated he will defer at this time until the next meeting. He stated he did not receive Mr. Liston's letter or the Borough Attorney's response prior to the meeting. Mr. Reich stated he would like to hear the testimony of the objectors and if he feels it is necessary to subpoena the police officers, he will do so. Mr. Reich stated the Chief of Police should identify which officers have knowledge of the facts of the Market Yard.

Mr. Cucchiaro recommended the letter brief from Mr. Guinco should be provided to the Board and Mr. Liston. He also recommended a copy of the application be transmitted to the Police Chief asking if they have an interest in participating and if they do they are welcome to come to the next hearing. Mr. Reich agreed and stated that might alleviate the need for a subpoena if they present themselves. Mr. Liston stated that would be terrific, especially if they have a Traffic Safety Officer.

Mr. Guinco asked if there are any police reports Mr. Liston will be relying on. Mr. Liston stated there are not. He is not aware if any reports that were issued. He stated all he has is the names of the officers and the fact they were in the area on Friday or Saturday the weekend of May 6th.

Mr. Cucchiaro recommended to Mr. Guinco to get his amendments to the memo completed in a timely manner. Mr. Guinco agreed.

A discussion followed regarding continuing the hearing and other applications. It was determined this application would be carried. Mr. Guinco stated he is obligated to continue to proceed because of the restrictions of the Certificate of Occupancy for his client. He stated Mr. Liston indicated if there was delay, his clients would agree to not pursue a remedy. Mr. Guinco asked if Mr. Liston can't attend on June 14th, he asked if they would have that representation. Mr. Liston stated yes and Mr. Liston asked it be carried to June 28th. Mr. Liston stated he and Mr. Guinco would like to discuss other issues pertaining to this case. Mr. Reich confirmed continuation to June 28th is not possible.

Mr. Cucchiaro stated the application of Exquisite Caterers, LLC, DDYB, LLC and William H. Stavola, Inc. will be carried to the Board's June 14, 2017 Meeting at 7:00 PM. There will be no

further notice to property owners. All files are available at the Zoning and Planning Office during normal business hours for review.

The floor was opened to Public Comments.

Mr. Begley made a motion to close Public Comments, seconded by Ms. Gibson. All in Favor.

Mr. Begley made a motion to adjourn, seconded by Mr. Jackson. All in Favor

Meeting adjourned at 11:15 PM.

Respectfully submitted,

Joseph B. Bellina