

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, AUGUST 9, 2018. VICE CHAIRMAN DAVID PRESIDED.

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Local Source, and the Star Ledger.

Pledge of Allegiance was led by Chairman Picerno.

Roll Call: Present: Mr. Schielke, Mr. Grimaldi, Mr. David, Mr. Pantina, Mr. Callelo, Mr. Mazzeo, Mr. Cuppari, Mr. Ladauti, Mr. Jones. Also present were Borough Planner, Kevin O'Brien, Louis Rago, Planning Board Attorney and Mr. Christian Cueto, Planning Board Engineer.

Approval of July 12, 2018 Minutes

Motion was made by Mr. Cuppari seconded by Mr. Schielke. All in favor.

Communications: None

Resolutions: Application #371 Minor Site Plan
East Coast Emergency Lighting
636 North Michigan Avenue
Block 2, Lot 9

Motion was made by Mr. Grimaldi seconded by Mr. Cuppari to approve Application #371, minor site plan, East Coast Emergency Lighting. Roll Call: Mr. Schielke, Mr. David, Mr. Cuppari, Mr. Grimaldi, Mr. Pantina, Mr. Callelo, Mr. Mazzeo.

County of Union, NJ
Galloping Hill Golf Course
21 North 31st Street
Block 184, Lot 3

Mr. O'Brien stated that he has not seen the resolution and has been in touch with the County requesting their update, because if you remember, Mr. Giordano who was in charge of the County automotive facility, said they would consider what we had to say and then they would make a decision. He heard from the engineer and from Mr. Giordano on this about a week ago and earlier this week they sent him another plan which he has not had a chance to take a look at...it takes a few days to get through his work. He would ask respectfully that the resolution be held up so that he can report back to the Board as to what they have actually decided to do but he would do that pending Mr. Rago's approval/suggestion and comment as to whether that is necessary for the resolution or not.

Mr. Rago said, if the Board wants to see what the County plans are and if it is not going to be doable until next month, you can carry this or, again this is strictly our recommendations, we recommended that they comply with Harbor Consultants comments and construct a wall around the above ground tanks, it's on page 2. He said whatever makes the Board comfortable, it can be done either way, we can keep this moving even if they don't do what we are recommending, they are still going to do it.

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Mr. David said it is at the Boards please and he will wait to hear what the rest of the Board thinks. In his opinion, he would move it along because they are not required to do our recommendations. He has an interest, as a Board member in seeing if they made any of our recommendations. Mr. Rago said there should be a spot on the next agenda as to what they have done, if anything.

Motion was made by Mr. Grimaldi seconded by Mr. Pantina to memorialize the recommendations of the County on the Galloping Hill removal of underground fuel tanks.

Roll Call: Mr. Schielke, Mr. David, Mr. Cuppari, Mr. Grimaldi, Mr. Pantina, Mr. Callelo, Mr. Mazzeo.

NEW BUSINESS Application #370 Minor Site Plan
Plastpac, Inc.
30 Boright Avenue
Block 6, Lot 4

Meredith Marcus, Esq. appeared on behalf of the applicant, Plastpac. She said she has 2 witnesses tonight one is Ed Dec, she cleared this with Mr. Rago and Mr. O'Brien that it was OK because Keller did the site plan and Mr. Lanzafama is away. She thanked everyone for changing their vacation schedules to be here. Ed Dec is here to introduce the minor site plan and provide testimony to that fact. The applicant is also present.

Ms. Marcus said this is a minor site plan to install an overhead door at the facility. Plastpac is a tenant of a larger building, they rent one space from Copac so they are a co-tenant. They recycle corrugated plastic. Mr. Greenfeld can explain that further. Plastpac needed this store to move in a large piece of equipment and that was how this started and it is taking up a couple of parking spaces so we relocated those parking spaces and there are no other changes in the dimensions.

Mr. Dec was sworn in by Mr. Rago.

Mr. O'Brien said Mr. Dec has appeared before this Board on countless occasions, he states his license is still current, the Board may wish to consider that as a qualification.

Mr. Edward Dec said he is here on an application for 30 Boright Avenue, Lot 4, Block 6. The site is approximately 5.2 acres and occupied by a building of about ¼ of that area and other impervious coverage for another ¼ so a little more than half, almost 7% of the site is covered by via the building or impervious coverage. The site is a minor site plan because of a new door that is being proposed. The plan he has and he believes every member of the Board has is last revised June 28, 2018 and what that plan shows as far as proposed improvements is in the northeast corner of the site...on the left hand corner of the page. He said there is an elimination of 3 parking stalls and the creation of future parking of additional 5 stalls in the area just to the northeast corner of the building. The reason for the door was to accommodate the machinery that was being brought into the site, they could not bring it in any other way so they had to open the doorway up and instead of closing it up, since they are a tenant, in case they leave they would have to do the same thing ...break down the wall and move it out. They are putting in a garage door, not a loading dock but they will be using that as an egress point for pedestrian and other forklift traffic but it is not made for the purpose of a loading dock, it's really there for the accommodation of bringing in the equipment.

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Mr. David asked Mr. Dec what was the date on the most recently revised plans? Mr. Dec said 6/28/18 but it is 6/26/18...they right hand side of the revision box is the most recent date.

Mr. Dec said on the site plan there is an area of no parking and that accommodates for trucks to come in and do a k-turn and pull into the area and then pull out again so there is not going to be any interference either with our new location, it's not really meant for truck loading and unloading, but for the other existing loading docks which are the two larger ones to the right of the jog in the building and there are three to the left of that which are to the west. He said that is the extent of the approval requested for the site plan.

Ms. Marcus said she would like to clarify something Mr. Dec said. The door that is there and the applicant can testify to this too is a temporary door. They are waiting for this approval to put in something that is more permanent, just so the Board is aware. They need to open up the wall to get the equipment in but then went through their process of doing this before he is going to do anything more.

Ms. Marcus asked Mr. Dec to discuss how any loading trucks and if the circulations in that area is adequate. Mr. Dec said, as shown on the plan, the area immediately to the north of the two longer loading docks to the right of the jog and the three to the left are adjacent to what is called a no parking zone and that is stripped. He said he was told by the applicant that the entire parking lot of the site is going to be repaved and restriped within the next week or two. He said as far as the loading and unloading there was, in the initial site plan, taking into account the turning radius for larger tractor trailer trucks, it will not interfere. What we are proposing will not interfere with their turning.

Mr. Mazzeo asked if Mr. Dec said what the net gain or loss in parking spaces was? Mr. Dec said losing 3, adding 5.

Mr. Cuppari asked Mr. Dec if this application went through the Technical Review process? Mr. Dec said yes by both the engineer and the planner. Mr. Cuppari said there were pallets there today and he said he does not know where they came from but he is sure they will be gone...he wanted to bring that up.

Ms. Marcus said the applicant will explain the pallets.

Mr. O'Brien and Mr. Cueto did not have any more questions for Mr. Dec.

Mr. Yisroem Greenfeld, was sworn in by Mr. Rago. Mr. Greenfeld is a tenant (Plaspac) that rents from Copac. Mr. Schielke said Plaspac is a sub-tenant of Copac and he asked how much space does Mr. Greenfeld have in the Copac facility. Mr. Greenfeld said the whole thing...63,000 sq. ft.

Mr. Greenfeld said regarding the tents on the pallets, they were moved out last week temporarily to be able to do some organization and sorting in the facility because the place was filled up and unorganized. He said it's just how it happened when a new piece of equipment comes in. We were informed yesterday that it was not supposed to be there and today they emptied it out and tomorrow they will come and take it away. He said it was there supposedly for two weeks but they are taking it away two days early because they were informed it wasn't supposed to be there.

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Ms. Marcus asked Mr. Greenfeld if he was keeping the pallets outside? Mr. Greenfeld said as of now we have a place inside where we store them. He said the new doors are being matched to the other 3 loading dock doors that are 250 ft. away. He said there will not be any additional lighting in that area. He said in the proposed parking area, one side is a little bit of grass and on the north side is a fence and the other side of that is the County Park. Mr. Greenfeld said there are no problems with parking on the site, they have another section on the northeast side of the building which is designated for us. Mr. Pantina asked where is that...against the fence? Mr. Greenfeld said it's on the same side on the north all the way to north towards Boright Avenue. All the parking spots that are against the fence on the north side are designated to us.

Mr. O'Brien asked Mr. Greenfeld to tell us about his business. He said we manufacture corrugated plastic boards and we cut them and we sell them as boxes. Mr. O'Brien asked if that entailed shipping them out, bringing in raw materials? He said they receive raw materials and they ship out the finished boxes. Mr. O'Brien asked what type of inbound/outbound traffic do you usually have. Mr. Greenfeld said we receive about 1 trailer per day and we ship out between 7-10 trailers per week. Mr. O'Brien asked how long has Mr. Greenfeld been doing this? He said they started in March, 2014. Mr. O'Brien asked he relocated from another area? Mr. Greenfeld said he relocated from Canada.

Ms. Marcus asked Mr. Greenfeld if the deliveries that he gets now and in the future are they going to be out of this new door? He said no the deliveries that we are getting are at the loading dock...the new one is a ground level door to go outside, until now we did not have a way to get outside the building with a forklift at ground level ...this is the door with ground level access.

Mr. Rago said when you mentioned trailers 1 in per day and 7-8 out per week on average...are they 18 wheelers? Mr. Greenfeld said yes.

Mr. Pantina asked if all the parking spaces are taken will there be any issues with moving the trailers in and out of the loading space? Mr. Greenfeld said they have 3 loading docks on the north side of building and we have 2 more on the southeast side of the building, the two on the southeast side is what we use for inbounds, that is the receiving and that is where we will receive about 1 trailer per day. They come in off Lafayette. Mr. Pantina said that Harbors report mentioned that 258 parking spaces are required and variance request and obviously there are 139 and he understands you don't have the whole site..you are a tenant and you already stated that there are no issues with parking...he asked if the parking on the southeast side of the building yours too? Mr. Greenfeld said he has 5 parking spaces on the southeast side of the building. Mr. Pantina asked if that was OK. Mr. Cueto said parking is based on square footage but depending on the type of use doesn't necessarily mean that they are going to be utilizing every single spot. Mr. O'Brien said this is an existing variance which was granted last time around and the fact that they are maintaining and adding spaces, no relief is necessary in this application.

Mr. Grimaldi said you were going to double your capacity and he asked are you going to double your workforce? Mr. Greenfeld said no.

Ms. Marcus said she just became aware of something earlier, you had mentioned that the owner of the site has an existing variance to put parking on the side of the building so it may be that we will have to come back here if he increases his operations we will come back here and use that variance. If there is an issue with parking or him intensifying his operations, doubling, tripling then we will come back. Mr. Rago asked how many full time employees at present? Mr.

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Greenfeld said we have 3 shifts and the total employees are between 42 and 46 employees. The most that are there at one time are about 25.

Mr. Callelo said yesterday he noticed that there were a few trailers on the side of the building and he asked if they were permanent or temporary? Mr. Greenfeld said it's not permanent but it is there for a little while...maybe a few weeks, they use it for storage to try and keep things organized, things that we really didn't use we put out for storage.

Mr. David said you operate 24 hours and 7 days per week. Mr. Greenfeld said 6 days per week. Mr. David said he thought you said you had the entire facility but then he heard some comments about you only occupy a portion of the facility? Mr. Greenfeld said we have roughly ½ of the building, the building is 122,000 sq. ft. and we have 63 sq. ft. Mr. David asked who is responsible for maintain the property? Mr. Greenfeld said the landlord. Mr. David said he visited the property today and the fact that his property is in an industrial zone is no excuse for the condition of the property, along Lafayette Avenue towards the rear the vegetation look like it was possibly 10 ft. tall. He said there are significant issues with maintaining the exterior of the property and that needs to be addressed. Mr. Greenfeld said we do pay for it... it is included in our maintenance fees.

Mr. Rago asked Mr. Greenfeld if he has mentioned the condition of the outside of the property to the landlord and Mr. Greenfeld replied yes.

Ms. Marcus said there are several things that have come up during this process and they are attempting to address with the owner.

Mr. Rago asked if they thought something will happen? Based on your appearance here might this get rolled into cleanup? Mr. Greenfeld said some of the stuff yes, the landlord is redoing the pavement on both sides of the building and that will definitely make the place look more presentable and we are going to be more organized in the back of the building and the sides which was the reason why we took the temporary tent to get a little bit more space in the building for a couple of weeks to re-organize which will help...in regards to the grounds, on the south side of the building and the west side of the building there is not much that was ever done to it and he does not know what he intends to do about it?

OPEN THE MEETING TO THE PUBLIC

Motion was made by Schielke, seconded Cuppari to open the meeting to the public on Application #370 Minor Site Plan.

No one wished to speak

Motion was made by Schielke, seconded Cuppari to close the meeting to the public on Application #370 Minor Site Plan.

Mr. Grimaldi said he would approve this application, we are getting plus 2 parking spots he is benefiting the property for his facility so we keep a company functioning in here. He understands the point about not building a wall back in just in case the equipment has to get services and it would be his cost to take the wall apart and put it back together again...it is a minor change in the overall site. It is good news to hear that the landlord is going to pave and

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stripe ...and maybe as part of that the 10 ft. tall leaves will get knocked down to a reasonable height. He said he sees no detriment to the township.

Mr. Ladauti asked about the dropped trailers...do they have to be removed?

Mr. O'Brien said outdoor storage is not permitted so these are not allowed to be there, the Borough has always been reasonable when things are there for a short time for a specific purpose, we are not sicking enforcement on them but on the other hand if the Board feels that this is a legitimate problem you may want to make a note of it in your resolution tonight and ask for a report or an update prior to the resolution being heard next month and give the applicant an opportunity to get things cleaned up.

Mr. Rago said as far as conditions Kevin and Christian have some modest conditions in their reports, we normally make it subject to what is in the reports unless the Board choses differently. He had one condition that the pallets be stored inside.

Ms. Marcus said if it helps, the applicant says that they will be removed when they pave. Mr. David said that doesn't mean they will be removed permanently.

Mr. Rago asked when will the paving be done? Ms. Marcus said next week they will one side and the following week the other side. She said by the resolution they should be gone. Mr. Rago asked if the trailers will be put back? Mr. Greenfeld said no.

Motion was made by Mr. Grimaldi, seconded by Mr. Pantina to approve Application 370, minor site plan for Plastpac with the condition of no outside storage with an update to the Board prior to the next planning board meeting. ROLL CALL: Mr. Schielke voted yes, Mr. David voted yes, Mr. Cuppari voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Ladauti voted yes, Mr. Callelo voted yes, Mr. Mazzeo voted yes and Mr. Jones voted yes.

NEW BUSINESS: Application 5-17 Variance
Frederick & Carol Stauder
20 Brasser Lane
Block 68, Lot 17

Mr. Andrew Podberezniak and Mr. Craig Stauder were sworn in by Mr. Rago.

Mr. Podberezniak said he a licensed architect in New Jersey and is representing his clients Frederick & Carol Stauder.

Mr. Schielke wanted to clarify that Mr. Craig Stauder is the son of Frederick & Carol Stauder and the house is in the name of his parents.....they helped him buy the house buy he lives there.

Mr. Podberezniak said at the present time 20 Brasser Lane is a small split level house which had basically a one car garage and little tiny living room on the lowest level. Their son lives there with his girlfriend and 3 kids and recently his parents moved in also. He said they need a bigger place to get together, they have no TV room or family room so they decided to get rid of the garage, open up the wall and create a bigger family room. The existing garage door they would put a double French door, get rid of the wall in between and that would be a nice big space for some couches and a TV. There are 7 people there. At present time we have 2

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parking, a single family house requires 2.5 spaces and we are providing 3 spaces, 2 spaces in the front and 1 space on the side of the house. If you look on his drawings there is a site plan that shows all 3 spaces. They are seeking 2 different variances, one is for removing the garage and creating a family room and the second one for the size of shed that was built in the back yard. The existing shed that was built was 12 x 12 x 12 ft. high, the existing requirements are 10 x 10 x 10 ft. high. He said his client went and picked up the application, filled out the forms, got the approvals, built the shed and then there was some kind of confusion between the Construction Department and the Zoning Department and he was informed he was only able to build a 10 x 10 but it was already too late, the shed was already built....that is the second variance we are seeking.

Mr. Schielke said you pulled a permit for the shed but you did not pull a permit for the garage? Mr. Podberezniak said correct. The garage is done.

Mr. Pantina asked when was the pool and deck put in. Mr. Stauder said the pool was put in last April and the deck was put in right after and all that was approved. Mr. Podberezniak said the pool and deck went through zoning and received approval. Mr. Stauder said it was approved for the shed, he built it and he had them come back down to fill out...there was a mistake...and I filled out another zoning permit, I did not have to pay for it...I just had to fill one out because there was a mistake and he found out after he was told he could go 12, he said it must have been a mistake, I was wrong, I gave you the wrong information....so that is why I added the shed to this variance.

Mr. Grimaldi asked when was the original permit for the shed approved? Mr. Stauder said it was October, 2017 because I wanted it built before the winter, he applied in October and it was built in 3 or 4 days and then found out later on that he was told it was too high. It is 11'4.

Mr. Grimaldi asked when was the garage converted into a living space? Mr. Stauder said November or December of 2016. He said originally he was going to buy the house next door at 26 Brassier because I was trying to get 7 people to live in the house. He said he closed on his house October 31, 2016.

Mr. Pantina asked if the garage was done after that?... and Mr. Stauder replied yes. He said the house was vacant for 3 years and he started working on the house in November and it was done in April. Mr. Pantina said you bought the house, you owned the house and then the conversion was made and now it is 2 years later.

Mr. Rago asked Mr. Stauder asked if he was there with his 3 children, girlfriend and your parents moved in after you bought the house? Mr. Stauder said yes. Mr. Rago asked how many total bedrooms were there in the house when you bought it? Mr. Stauder said there are 3 bedrooms over the garage area. He asked what does his parents use for their kitchen use....is there a separate kitchen? Mr. Stauder said there is only 1 kitchen.

Mr. Schielke asked when did your parents move in? Mr. Stauder replied 4 or 5 months ago.

Mr. Rago asked if Mr. Stauder did the conversion work himself.....and did you pull any permits like electrical, plumbing? Mr. Stauder said yes did the work himself, there was no plumbing in there. Mr. Rago asked Mr. Stauder what was his occupation and he replied carpenter.

Mr. Mazzeo asked even though the shed is oversized, does it meet the set-back requirements? Mr. Podberezniak said all the set backs are met. Mr. Pantina said we don't have anything that

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shows that, the survey doesn't show it, it just shows the shed on the lot. Mr. Podberezniak said because when the survey was done there was no dimensions. Mr. Pantina said the site plan does not show it either.

Mr. O'Brien said just to correct the record...on March 9, 2017 Mr. Herbert denied a zoning permit at this property to change the garage into a living space and that application had been submitted on the March 1, 2017 under the name of Fred and Craig Stauder, so as of March 2017 there had been a denial to change the garage. Following that there was a zoning permit request of September 11, 2017 followed by a possible revised application on November, 2017 for a shed and the dimensions are 12 x 12 x 11 and that was denied by the zoning officer on November 15, 2017. Both of the items in front of you have denial letters.

Mr. Schielke asked if there was a discrepancy in regards to the shed between the first application and the second application....as the applicant stated?

Mr. O'Brien said all he has is the paperwork in front of him that is part of the record, Mr. Stauder in past meetings has made statements about permits being issuedhe has requested copies of those permits but he has never seen them. If he has something to offer us tonight then that would be part of his case.

Mr. Stauder said he turned everything in, there was a letter from him....he came down and picked up everything ...

Mr. David said everything was approved in regard to the shed. Mr. Stauder said he did deny the zoning for the garage but the shed was all approved. He said picked everything up and walked into his office and asked how high can I go and he said 12 ft.....so he went and built it...later on it came back that....he got a letter stating that he had crossed off approved and it was denied so he had to come back in and fill out another zoning permit, no charge.....Mr. Herbert said he must have made a mistake...he also does Springfield and he must have go the two mixed up.....because if he would have told him 10 ft. then he would have built it 10 ft....and that was the whole mix-upso once he denied it I did not get the approved plans.....and that is why he is here now.....he already had the variance going for his garage and he had to hold it up because he first told me I only needed a building permit and I did not need a variance so later on when he found out he needed a variance for anything over 10 x 10 and over 10ft. high...and that is what held up the process and he had to add the shed to the garage variance.

Mr. Grimaldi said so you brought the house in October, 2016, it was empty for 3 years, you are a woodworker and you probably went in and thought you had an opportunity to make a decent looking house.....so he assumes the house needed to be fully renovated? In the back yard we are looking at all the concrete and existing deck, existing above-ground pool and existing shed. When you go there what did the back yard look like....just grass? Mr. Stauder said there was a 10 x 10 shed off the back of the house, and a concrete patio. Mr. Grimaldi said the lot is not a tiny lot, 169 ft. deep and you had ample opportunity to put an addition right out the back and maintain all variances and get the living space that you need. Mr. Stauder said that was definitely the goal to go up and add 2 bedrooms but it was a financial situation where we were trying to make due but the goal was to go up and add bedrooms. Mr. Grimaldi said if that is still your goal and if you are taking out that type of reconstruction of this property then part of that should be that it's get brought into compliance because if there is physically no restraint to the property, you have added other amenities to the property and you have 4 adults living in the house and likely the same amount of cars, having a garage would be a handy thing to have...he

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is a little perplexed that just the immediateness of just doing this without any permits, you are in the business and you know permits are required.

Mr. Podberezniak said there is a section in the zoning that mentions garage conversions, it is very ambiguous but it basically says that existing attached and detached garage shall not be converted to any other permissible use unless the owner can comply with requirement of sub section B. He said Sub Section B basically says that new construction every dwelling unit must provide off street parking for at least 1 car who shall not be within the front yard set back.....so the way he understands that if you remove the garage, as long as you provide additional parking space not in the yard setback, that means on the side of the house you are complying with this and that is what he basically did, he put a parking space on the side of the house. Mr. O'Brien asked for the citation number? Mr. Podberezniak said it is 197-22. Mr. O'Brien said Chapter 197 was removed in November, 2015. Mr. Podberezniak said he spoke with the zoning officer and he did not say that.

Mr. Grimaldi asked Mr. Podberezniak if he was involved in this project in November, 2016? Mr. Podberezniak said no he has been involved since 2 months ago. Mr. Grimaldi asked Mr. Stauder if he knew about this variance as a gentleman moving into the township, in 2016 you knew about that section he just pulled up? Mr. Stauder did not have that in his mind. Mr. Podberezniak is not saying he had that in his mind.

Mr. Pantina said the bottom line is we have a letter dated May 23, 2018 from Frederick and Carol Stauder on proofs of why a variance may be issued and taking in what you had just gave testimony to, variances are to be given out for hardships, no personal hardships, property hardships. The property is big enough for any type of addition going up or going back and the ordinance requires a garage. You may have found something outdated for conversions but as far as what you have provided here in this document, as far as a hardship, unfortunately personal hardships don't cut it. Mr. Podberezniak said we provided the adequate amount of parking spaces so there is no issue with off street parking. The only thing is that he needed a bigger space to be together with his parents and the children. Mr. Pantina said the owner stated that the goal was and probably still is to put an addition on up and back. Mr. Podberezniak said that is for bedrooms because the way he understands is that the kids will eventually live there full time. Mr. Pantina said and at that time the garage will still be converted. Mr. Podberezniak said that yes because it would act as a family room. Mr. Stauder said if he could do it now he would but it is always a money situation and that is the biggest problem. Mr. Podberezniak said Mr. Stauder said he was definitely foolish doing it on his own without permits and he is trying to rectify this. Mr. Pantina said he understands we are all residents and we all have issues but you have to understand we have ordinances for a reason and we are here to oversee and obtain and to make sure the Master Plan is in compliance.

Mr. David said what he finds offensive is that you are in the business and you just decided to go ahead and make these changes without getting the appropriate permits or finding out if you needed permits, and that is hard to overlook.

Mr. Grimaldi asked when you purchased the house, it's been vacant for 3 years...was it a foreclosed house and did it lose its CO?

Mr. Grimaldi asked if we have a house that is vacant for 3 years and it is in what kind of disrepair we don't know... and the gentleman is testifying that the walls were basically gone already, which could be a code violation because you need a fire rated wall between the garage

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and the living space and the gentleman gets right into the house.....before a vacant property gets occupied again do we have anything in our statute that someone has to look at it again.

Mr. O'Brien said he can't answer that questions specifically.....maybe our zoning officer can answer that.

Mr. Podberezniak said when he purchased this house he remembers that he called him in because he was planning to put upstairs additional bedrooms and they discussed how the house was not in good shape but it was not like an abandoned house....it had a garage.....and then he had not heard from him in a long time but he came back and the house looks beautiful...he just needed that family room bigger and decided that he did not need the garage.

Mr. Schielke said the testimony earlier was that the garage was in huge disrepair, the wall was not safe and was coming down and that is why he did this back in 2016. Mr. Stauder said there was only 2 studs up...there was no sheetrock on the walls. Mr. Podberezniak said maybe the wall between the garage, not the entire house. Mr. Stauder said everything was flooded out, everything was moldy...there was 6 inches of water in the basement because the sump pump didn't work.

Mr. Grimaldi asked if they can ask the Zoning Officer if he knows if there is an ordinance regarding the occupancy of a vacant property?

Mr. Herbert was sworn in by Mr. Rago.

Mr. Herbert said the only policy that we have in place is that you have to get a fire CO inspection....you have to fill out an application and there is a fee and he walks through and makes sure that all the proper smoke detectors are working properly.

Mr. Grimaldi said that more than likely our fire official walked through the property and Mr. Herbert said no, if an application is not submitted we only know about the sale when there is a closing date and someone properly applies, if they didn't know about the rule and they don't apply, which he believes is this circumstance, it was overlooked but once he obtains building permits, yes then there is code enforcement by building but the initial on a closing is only a smoke detection application and an inspection. Mr. Grimaldi said so the fire chief would have walked through the property?....Mr. Herbert said yes IF he received an application. He said in this case it was vacant and he does not know what he would do. Mr. Grimaldi said he can't see him walking through and neglecting the fact that there is not a fire rated wall between the garage and living space. Mr. Herbert said he would probably give him time to do this.

Mr. O'Brien asked if the Borough receives a list of land transactions from the County so the Borough knows which properties have changed? Mr. Herbert said not that he is aware of. He said he knows they should record a deed and then it goes to the tax office but he has never seen anything in the building department regarding that. Mr. O'Brien so the only way that your department gets notice that the property has changed hands is if that property owner makes an application.....Mr. Herbert said yes for a zoning permit...correct. Mr. Herbert said even for the fire inspection they apply at the fire department, not at the building department and he believes that is why we want our certificate of occupancy ordinance.

Mr. Mazzeo said isn't there a check on that when there is a closing, especially if there is financing involved, that comes to the closing. Mr. Herbert said that is between the lawyers.

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Mr. Grimaldi said you as the Zoning Officer would have known that this property was vacant...Mr. Herbert said yes I was aware of that but he did not know that it was sold....he is not notified that it is auctioned or when it was sold.

Mr. O'Brien said doesn't the Borough have a registry of foreclosed homes and we keep an eye on them for maintenance purposes? Mr. Herbert said yes and this particular property I was aware that it was vacant. Mr. O'Brien asked when a property is conveyed....doesn't it come off that list?...is there some communication, because the banks are paying the Borough a fee. Mr. Herbert said yes they have to register the property and maintain the exterior. Mr. O'Brien said when the bank sells it, isn't it to their advantage to let the Borough know that it's not our problem anymore, you have to go after somebody else. Mr. Herbert, by our vacant and abandoned ordinance they have 30 days to notify us that they are no longer responsible and they are supposed to forward the information of the new owner....Mr. O'Brien asked if he gets that on a regular basis.....Mr. Herbert said we usually just get a letter saying they are not responsible and then we send a letter back, even though you don't own the property, you are still responsible because under ordinance number so and so you did not properly notify us by telling us who the new owner is.

Mr. David said we obviously have to tighten up some things in the Borough and we can address that later but with regards to this specific case.

Mr. Schielke said, while Mr. Herbert is still under oath, he would like to ask a questions.... The applicant brought up that there might have been a miscommunication or misunderstanding in regards to the height of his shed initially when he applied and then afterwards...could that have happened? Mr. Herbert said yes that was true at the time.

Mr. Stauder said he is at 20 Brasser and is the lowest point and the drain basins are right there in front of his driveway ...and when he was doing this his neighbors said his house gets hammered constantly at any flash flood because they don't open the dam in Cranford a lot....or quick enough. He said he raised the door 4 inches to 7 ft. and he still gets at least once a month, last Saturday and the Friday before, he had water 4 inches up the door, the whole driveway and he is the only one on his street in the middle that gets 4 or 5 inches on a doorhe can show you video on water pouring in the door....so if he needed to have a garage door it would be 4 inches lower and everytime we get these flash floods and they don't open the dam...his whole garage and the family room gets soaked, sheet rock everything it gets that high...he can show videos.

Mr. David said he gets it but he does not know if that is a valid hardship.

Mr. Grimaldi said he understands Mr. Stauder's inconvenience with it but he would also suggest to him that if it is a garage...you could pour a 6 to 8 inch curb on the inside of the garage, make it continuous and get a 6-8 inch barrier around the inside so the water would not be entering into your living space. The way you have it now it is getting flooded and is not only entering into a garage area, its entering into a garage, a family room and there are stairs at the other end of that family room which could be going down into the basement so you have created a situation that is possibly more harmful to the house than if it was a garage.

Mr. David said to Mr. O'Brien in regard to the parking, the architect presented some old code but do you know....he is kind of surprised that there was not a variance needed for parking in the front yard set-back because obviously with the garage being eliminated you havethey are claiming that one spot was moved to the side but you have multiple spots sitting in front of

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where the garage used to be and he thought that was a violation of the code in terms of parking in the front yard set-back yet that is not listed. Mr. O'Brien said it is standard practice for single family residences to have parking forward of a garage and anything forward of a house line or a garage line is considered the front yard so that tandem parking is an accepted practice ...its allowed in the ordinance however in this case, there is now no garage so what does that parking get tied to and since a garage is required under the ordinance and this is why the applicant is here because they removed the garage....they removed that space...so his guess is that their testimony is that they are trying to mitigate that by showing a space to the side and the two spaces in the driveway which would normally occupy that spot by virtue of them being in front of the garage. Mr. David said right but the garage is gone so he is trying to clarify on is providing one spot to the side of the front yard set-back adequate under the existing code...they have quoted an older code....Mr. O'Brien said that code doesn't exist.

Mr. Mazzeo said the question is are the 2 spots that they indicate qualify as parking spots? Mr. O'Brien said the 2 spots in front of the former garage....he believes do qualify because as soon as we start not qualifying them...there are too many circumstances that could get in the way. The side spot goes into the side yard setback, a parking area by itself does not violate those setbacks but if this were a garage it would be a new structure and it would be within that setback....whether you allow that would be up to you.

Mr. Pantina asked if that side spot is OK within the drainage easement...does it take away any space that anything can be in on the survey? He said there is a drainage easement on the easterly side that is 5 ft. and since the side parking space takes up pretty much all of the side yard between the house and the lot half of it is a drainage easement....he said so is that where that curb is that was installed now?...like it parallels the two spots in the front and they kind of curves out.....that's located in the easement too...is that an issue? Mr. O'Brien said that it is an issue if someone needs access to that easement they have full authority to rip out whatever is there.

Mr. Podberezniak said the side parking is done with pavers and they could be picked up and put back down, it is not asphalt.

Mr. Grimaldi asked if the existing bathroom behind the ex-garage there when you got there? Mr. Stauder said yes.

Mr. Callelo asked if the wall that was removed...between the garage and the family ...do you know if it was a main bearing wall? Mr. Stauber said there are two supports there. Mr. Podberezniak said that is a main wall and he installed beam with....once we go for construction permit, he has to verify and rectify there has to be a bigger beam but first we have to go through this.

Mr. Mazzeo asked does it mean that you can't have a shed in town that is larger than 10 x 10? Mr. O'Brien said yes or higher than 10 ft. Mr. Mazzeo said so any type of storage accessory site/structure the maximum is 10 x 10 x 10.

Mr. Rago said on your plan you have the family room and the garage entitled "new family room"...that wall does not exist....he is assuming that total area is where your parents spend most of their time. Mr. Stauder said yes we get together in that room. Mr. Podberezniak said there is not enough space in the bedroom so they go down to the TV and the couch. Mr. Rago said is it a family room and a bedroom. Mr. Podberezniak said it is just a family room....there

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are no beds. Mr. Rago asked where do they sleep and Mr. Podberezniak said one of the bedrooms upstairs.

Motion was made by Schielke, seconded by Mazzeo to open the meeting to the public on Application #5-17. All in favor.

No one wished to speak.

Motion was made by Cuppari, seconded by Ladauti to close the meeting to the public on Application #5-17. All in favor.

Mr. Rago said the pool is not an issue...the variances that we can discuss are the shed in the side yard....and he believes we heard testimony that there was some confusion....something was built and Mr. Herbert indicated that was probably the case. The shed is one issue and the expansion of the family room is the second issue. Mr. David said he it is the removal of the garage to expand a family room. He asked Mr. O'Brien if there was a variance needed for the space in the side yard? Mr. O'Brien said no.

Mr. Mazzeo said we spent most of our time here tonight figuring out how we got here but not a lot of time discussing the merits of the variance.....I guess that leaves it up to us ifhe said he is in the construction industry and you have to know you have to go for permits.....what are we supposed to be doing as a Board, there is an enforcement portion of this and then there is the consideration of a variance....do we pretend it never happened?

Mr. Rago said we have to assume, in situations like this that it is not built, what would we do if this was not built...we have a garage there and we have a shed there....the shed is an easier call....the question is with the garage...would the 3 proposed parking spaces make up for the loss of the garage/expansion of the family room on the first floor. The reasons that we have heard for that are pretty much for personal reasons for the larger family and Mr. and Mrs. Stauder to try and remain on one floor as much as possible and a larger room for 7 people...that's the main reason...it is personal which doesn't mean it's totally improper...whatever this Board does, in the event this Board ultimately approves this application one of the major conditions is going to be between now and the time this Board memorializes this or votes on it....the proper inspections need to be made with regard to the construction...maybe everything is fine given the fact that Mr. Stauder is in the trades...maybe it's not but that would have to be verified that everything down there is up to snuff. He asked if the Board heard enough with the regard to the shed to grant relief given the possibility of a miscue and did you hear enough as far as the expanded living space? It is there, the work was done and has to be inspected regardless unless the Board says no we are not going to approve thisthen it is up to code enforcement to see that the wall is put back and the garage is reinstated....that is not up to us we can only base on the issues of what we heard. He said to be fair there was testimony about there were other areas on this property where an addition could have been built without variances, that is a factor, it's a pretty decent size lot, the house is situated in such a way that it is not awkward, someone could go up and back and they would need to do something with that concrete deck so that is doable and that came out during the hearing so it is not as though this situation was the only one that would fly to expand the living space in the house....that's on a negative side. But you are not bound because it is done...it is unfortunate that we are here and it puts everyone in a very difficult spot....it puts the applicant in a very difficult spot because they are now living with this and it puts us in a spot because we are asked to approve something that has been done and there may or may not be legal reasons for it...maybe practical reasons but.....

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Mr. Mazzeo asked does the fact that this condition, this garage renovation or elimination is something that is seen not only on Brassier Lanea couple of doors down there are quite a few and also throughout town. He doesn't see the garage itself being closed causing the variance and he thinks if it came in front of the Board before it was built, it's the shed that is a clear cut variance.

Mr. Rago said the shed is a clear cut variance, the garage is because they are removing a garage and a garage is required for a car. Mr. O'Brien said a garage is required for all single family homes. Mr. Rago said getting rid of the garage creates a variance so if they hadn't done this our view would be OK...have we heard enough to say fine take the garage out and make an expanded family room.....they have done it already so it's.

Mr. David asked is this a vote up or down for the application in it's entirety? Or can the 2 variances be separated and one approved and the other not approved. Mr. Rago said yes the 2 variances can be separated, the shed could be dealt with, he would assume relatively cleanly, you can deal with the shed, you can deal with the garage separately. There would probably be 2 votes on that....this is not a package deal because one seems to be totally removed from the other. Mr. Rago asked Kevin if he had a different perspective from a planning point of view? Mr. O'Brien said he agrees with counsel. Mr. Rago said you can deal with the shed and then deal with the garage issue in terms of....we have not heard anything about other homes on the street...Mr. Mazzeo said there is a home directly next to it that has no garage.

Mr. David said if anyone read Mr. O'Brien's report you would know exactly what it says to that. Mr. Rago said we haven't heard....this hasn't been the typical variance presentation.

Mr. David read part of Mr. O'Brien's report, under the garage required it says "with the exception of the home immediately east of the Stauder property all of the other 18 homes on Brassier have garages, the applicant proposes a change to the character of the neighborhood, is the Board concerned by this change, each application to the Board is judged by its own unique circumstances but a savvy applicant can look to other examples of non-conformance". Mr. David said that is something to consider.

Mr. Grimaldi said the garage getting converted into a living space has ebbed and tided over the years in Kenilworth as far it's been made a large deal at times and he knows there was a couple of times it was getting clamped down on....people were just doing it.

Mr. David said from his perspective the timing is everything in that the number of cars that people have these days is significantly greater and he is sure each of us has driven through the Borough and found front yards that are now just cement or pavers or whatever and so it is just an entire parking lot. Mr. Grimaldi said there is a lovely example right on the Boulevard. Mr. David said that is not necessarily to state whether this should be considered or not but it is something that he has concern for. Mr. Grimaldi said it changes the view and the look of the character of the properties.

Mr. Schielke asked if we can split them apart and Mr. Rago said yes we should. Mr. Rago said we should take the shed firstMr. David said so you are saying we should split them apart? Mr. Rago said yes because they are so divergent.

Motion was made by Mr. Grimaldi, seconded by Mr. Schielke to split them apart. All in favor.

Motion was made by Mr. Grimaldi, seconded by Mr. Pantina to approve the pre-existing shed due to testimony given tonight and as long as it gets inspected and our township officials feel it is fine. Roll Call: Mr. Schielke voted yes, Mr. David voted yes, Mr. Cuppari voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Ladauti voted yes, Mr. Callelo voted yes, Mr. Mazzeo voted no, Mr. Jones voted yes.

Mr. Cuppari said he does not like how this is being done and he doesn't think anyone does but in his mind sometimes he looks at it like you do what you want with your space. He understands there are quality codes and things like that and we don't want to encourage these things and we want to keep quality in the neighborhood. He is thinking why do we have this ordinance....why do you have to have a garage? He said one of the reasons is because you want to make sure each property has sufficient for its residents and not rely on the public street. He is not sure if you are going to make some sort of decision you can say that maybe these three spots are accommodating for at least that portion of the reason why we are doing this...that's as far as he has gotten this far....he has seen a number of these in other places and he doesn't want to encourage something that isn't....especially since it's already been built....he understands sometimes people need spacefor them it's better utilization but they should have come here first and we could have had this discussion. He said it is frustrating for him because this is happening after.

Mr. Pantina said there are a lot of question marks, from the beginning of the time line it was vacantwhat was going on....what did it look like...what condition was it in....there was no inspection by the fire department or building when it was done. The owner did certain improvements at the time even before the conversion...just what was there....again no inspection no CO...was it done to building code? Nothing was checked and then the conversion was done and again no permits, no inspections and no oversight from the Borough....and then as to how we got here with the parking spot. It seems that even if you come up to speed, OK it's there now we don't even know if it's to code...we don't know if anything is in code....we don't know if they were in code before he bought it and we surely don't know if it's up to code now, aside from the fact that you need the variance again there is no hardship in his opinion. He said there a lot of question marks and it's a tough decision for the Board.

Mr. David said someone has to establish either a motion to approve or deny the garage variance.

Mr. Schielke asked the attorney if this gets approved, it gets approved....if it gets denied are we....the applicant stated down the road wanted to some more work on the house are we able to put something in the resolution to maybe give them a little bit of time so there is no enforcement immediately.....like maybe we would like the building department to give them a year to rectify things and do the second floor addition?

Mr. Rago said if the applicant said that within 6 months he is going to start on another bedroom or two upstairs then I think that a way to split the baby would be to say we are going to deny your....either approve it for a six month time frame which is kind of awkward or we are going to deny it however we strongly recommend, because we are not in charge of enforcement, that no enforcement commences until such time as the appropriate addition is....

Mr. David said he would caution against that, it should either be a straight up approval or a straight up denial....to give someone a six month approval...it will be even further built and

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utilized and if the Board at that time says it has to come out it will be all the more difficult. Mr. Rago said it had to be discussed.

Mr. Mazzeo along that thought say someone we move to approve it with the condition that when and if, with no time frame, any type of building applicationwhatever is done to add to it.....a garage must be added at that time or the space shall be re-converted to the garage. Mr. Rago said he has been involved with cases where that has been done, especially if the applicant agrees to it....there is no time limit though....it would have to be phrased along the lines of when and if there is an addition to the house, which you maybe can do without a variance, at such time as the appropriate permits are issued to make those bedrooms habitable the former garage shall be immediately converted back to garage space. There is an enforcement issue so long as Bob or someone tracks that...if someone comes in a year from now or six month from now for a building permit to add on then someone in Bob's office is going to have to remember that it's one of the conditions. You wouldn't want to have both, you wouldn't want that garage to be permanently taken away if they add on anyway. Mr. Mazzeo said on the flip side, if we deny it what is the enforcement on something like this? Mr. Rago said the zoning and construction enforce that, the basically indicate to the applicant that the space has to be reconverted and in the event it happens fine...if it doesn't happen then he is assuming it would be sent to the Municipal Prosecutor. We don't get involved in that.

Mr. Pantina said if we don't get involved with that, then whichever way the Board goes is it understood that this property has to be inspected by all the code officials...like now. Mr. Grimaldi said whether it's approved or denied he thinks it has to be. Mr. Rago said if its denied they can file an appeal but even if it's denied, assuming someone is going to live there for another couple of months while things are happening it should be checked out, in terms of fire and mold, either way it should be checked out to make sure it's safe.

Mr. Rago said the motion is to deny with the inspection provision so a yes is to deny and a no is to not deny.

Motion was made by Mr. Grimaldi, seconded by Mr. Pantina to deny Application 5-17 because the property is not the standard 50 x 100 very tight lot, there is property available to it, the homeowner had opportunity and walked into this with his eyes open looking at the property and he is in the business and could figure out what needed to get done before the property was purchased and could have come into the economic realization at that point whether it was the house to buy or not for his personal situation, an addition should be very feasible to go off the back of this property to give them more public living space in the house, it sounds like it needs more bedrooms then public living space...they can be added and that the property doesn't have a hardship that is connected with it, there is enough property and a number of things have been added to the property and we have to have conditions that the property gets inspected because the homeowner testified that there is mold and there are 7 individuals living there and it should be verified but he will leave that to the construction code officials. **Roll Call: Mr. Schielke voted yes, Mr. David voted yes, Mr. Cuppari voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Ladauti voted yes, Mr. Callelo voted yes, Mr. Mazzeo voted yes, Mr. Jones voted no.**

Mr. Rago said he will do a resolution approving the shed and denying the garage variance.

Mr. David said to Mr. and Mrs. Stauder as you just heard your application for the removal of the garage has been denied and the variance for retaining the shed has been approved. The resolution will be memorialized at our meeting next month.

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Comments for the Good of the Board

None.

Open Meeting to the Public

Motion made by Mr. Cuppari, seconded by Mr. Pantina to open the meeting to the public. All in favor.

No one wished to speak

Close Meeting to the Public

Motion made by Mr. Jones, seconded by Mr. Ladauti to close the meeting to the public. All in favor.

Adjournment

Motion to adjourn was made by Mr. Jones, seconded by Mr. Pantina. All in favor.

Respectfully submitted by:
Kathleen Moschitta
Recording Secretary