

Planning Board Meeting
Regular Meeting of March 18, 2009 at 7:00 pm

The regular meeting of the Planning Board took place on the above date. Chairman McCabe read the Open Public Meeting Act and requested Board Secretary Mrs. Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

Members Present: Mr. Caffrey-arrived at 7:30 pm, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe.

EXCUSED: Mrs. Fowler, Mr. Phalon

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Cory Stoner, Board Engineer, David Simmons, Board Engineer and Board Secretary Mrs. Citterbart.

FLAG SALUTE

CONSIDERATION OF MINUTES

February 2, 2009

Mr. Vandyk made a motion to approve the February 2, 2009 minutes. Mr. White second the motion.

AYE: Mr. Ricciardo, Mr. Elvidge, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

February 18, 2009

Mr. Ricciardo made a motion to approve the February 18, 2009 minutes. Mr. Vandyk second the motion.

AYE: Mr. Ricciardo, Mr. Elvidge, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

March 4, 2009

Mr. Ricciardo made a motion to approve the March 4, 2009 minutes. Mr. Elvidge second the motion.

AYE: Mr. Ricciardo, Mr. Elvidge, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

WAIVER OF SITE PLAN

#PB -02-2009 – Sciascia Photography – Block 402, Lot 13

Applicant is requesting a site plan waiver to utilize a portion of her first floor apartment for her professional photography business. Wayne McCabe from McCabe and Associates, Newton, NJ represented the applicant.

SWORN

**Ann Marie Sciascia
Lauren Arrowsmith**

RECUSED

Chairwoman McCabe

Mr. White assumed the Vice Chairman position.

Mr. McCabe stated: She does not use it for a photography studio. It is there as her administrative facility. She has two other locations. One in Dover, NJ and one in Chester, NJ that are her studios that she uses. She would be using in her living room 3 different desks. They would be used for computer work, accounting and photo editing. We provided information supplemental to the initial materials that was submitted from January 9, 2009. I believe that Ms. Citterbart received photographs of the front and rear entrances to the building and the garage at the rear of the property. We are in receipt of Mr. Dave Simmons review comments of February 12, 2009.

Mr. Soloway questioned: Are you seeking authorization for a home occupation here? Mr. McCabe stated: That is correct. Mr. Soloway stated: Technically this application also can be marked for condition of use approval that is permitted as a conditional use. Mr. McCabe stated: That is correct and also as a site plan waiver. Mr. Ricciardo questioned: Is this business in operation presently? Mr. McCabe stated: It is. Mr. Ricciardo questioned: How long has it been in operation? Ms. Sciascia stated: Since I moved in 3 years. Mr. Ricciardo questioned: How can you be operating a business without having approvals? Ms. Sciascia stated: Because the Zoning Board had contacted me. Mr. Ricciardo questioned: Did you receive a violation notice? Ms. Sciascia stated: Not originally. Mr. Ricciardo questioned: Have you ever received a violation notice? Ms. Sciascia stated: I received a violation notice. What was the date on that? Mr. Ricciardo questioned: Have you been told to cease and assist the operation until you have approval to do so? Mr. McCabe stated: The complaint that was filed shows that it is a breach of the Zoning Act and that she had to appear in court for that. At the same time she was informed that she had to make a filing for approval which we did back in January. Mr. Ricciardo questioned: Is this not a conditional use Mr. Soloway? Mr. Soloway stated: Yes it is. Mr. Ricciardo stated: You would have to have approval to operate a conditional use in that Zone as a home business and you have been operating in violation since 2007. Ms. Sciascia stated: My understanding is that C-1 Professional is zoned for a home office. Mr. Ricciardo stated: You apparently misunderstand what you have just been told. It is a conditional use and has to be approved prior to opening. You opened without having any permission to do so. You have been noticed of violation. You have a court date to appear in court, do you not? Ms. Sciascia stated: Yes I do. Mr. Ricciardo questioned: Then how can you continue to operate a business that is not

approved to operate in the zone? Mr. McCabe questioned Ms. Sciascia: Were you given a cease and assist on notice from the Town? Were you told to stop any operation at all? Ms. Sciascia stated: I don't believe so. Ms. Millikin stated: The Violation Notice stated that it has come to our attention she was in violation of the ordinance and she needed to file Site Plan Approval for that and she failed to file that then the Summons was issued for that reason to bring it court so the Judge could rule her to stop operating. Mr. Ricciardo stated: So it is up to the Judge to determine she has to stop operating even though she has been operating a business that is not in a permitted zone. Ms. Millikin stated: It is in permitted zone but she needed approval to operate.

Mr. Simmons read his report of February 12, 2009.

Comment #1 - Reiterates that the C-1 Zone a personal service business is permitted for a photographic studio.

Comment #2 – Section 20-14.1 b2 states that no floor may be used for both residential and office use unless a separate entrance and hallway provides access from the street to each use. The documents provided do not show whether the zoning requirement is met or not only that 15 % of the first floor is used for the applicant's business. The applicant should address this. Mr. McCabe stated: The photographs that have been supplied to you show the front and rear entrances. The front entrance does front on High Street. The rear entrance is toward the back of the house and leads to the garage which is in back of the house. Both of the entrances provide direct points of ingress and egress into the unit on the first floor and complies with Section 20-14.1p2. Mr. Ricciardo questioned: Does that section also indicate that this has to be self-contained to an area and that it can't be used for both residential and business? Mr. Simmons stated: I will have to check it.

Comment #3 – I did not have any parking calculations on the original documentation. What I did was scale off an older topography map and came up with an approximate footprint of the house of about 40 feet by 35 feet which is about 1400 square feet. Based on the other information by the applicant that they utilize less than 15 percent of the floor area of the apartment of the first floor that comes out about 210 square feet. By the calculations of the ordinance would require 3 parking spaces. The applicant indicated that they have got 2 on-site off-street parking spaces and an existing 2 car garage and one additional space located in front of the garage reserved for her own use. When I did go by and look at the site the garage door was open and they may have to be some material removed from the garage to get 2 cars inside. There are 3 spaces available but no spaces have been allocated or reserved for the tenants on the second floor. Mr. McCabe stated: If you look at the photograph you will see to the left hand side of the garage between the rear fence that surrounds the house, back yard and the garage. There is a parking space there. Ms. Arrowsmith, the owner of the property, has indicated that that space is the one that is allocated for the second floor apartment use. The 3 spaces that are allocated to Ms. Sciascia are the 2 in the garage and the 1 in front do meet the requirements we have to have. Mr. Ricciardo stated: I am a firm believer that every business has to provide its own parking for employees and residents. Who resides in the dwelling with you? Ms. Sciascia stated: My son. Mr. Ricciardo questioned: Does your son drive a car? Ms. Sciascia stated: Not at this time. Mr. Ricciardo questioned: Does he have a driver's license? Ms. Sciascia stated: Yes. Mr. Ricciardo questioned: Does he have a potential for purchasing a car and parking it there? Ms. Sciascia

stated: Not at this time. Mr. Ricciardo stated: The answer is yes in the future he may own a car. Ms. Sciascia stated: He might in the next year. It's not possible right now. Mr. Ricciardo questioned: You have tenants upstairs. How many bedrooms are in that unit? Ms. Sciascia stated: Three. Mr. Ricciardo questioned: So you have a potential for 2 adults and 2 children? If 2 adults have 2 cars that is 4 cars already and no space for clients. You do have clients visit your site? Ms. Sciascia stated: Very rarely. Mr. Ricciardo questioned: Where would your clients park if everyone is home at the same time? Ms. Sciascia stated: I rarely have clients to the house. I have other locations. Mr. Ricciardo questioned: In a rare instance where do they park if everyone is at home? Ms. Sciascia stated: We have not had an issue because the apartment upstairs has been vacant for over a year. I have a location in Chester where I meet my brides that has parking for at least 20. I have the parking available at my house if someone does stop by. There is also on street parking. Mr. McCabe stated: The owner has allocated 3 parking spaces to Ms. Sciascia, 2 in the garage and 1 in front. If she does have in the future that her son finds a job, puts together enough cash to buy a car that could be stored in the garage along with hers. If there was a client to come by to see her at the house that they could park in front of the garage and enter the building through the rear entrance which has a walkway. Yes there is sufficient off-street parking. It is already allocated to the tenant by the owner. Mr. Ricciardo questioned: Will you ever have more than one client at a time? Ms. Sciascia stated: No. Mr. Ricciardo questioned: What kind of photographs do you do, wedding, portraits, etc.? Ms. Sciascia stated: Mostly weddings and portraits but I do not do them at the house. Mr. Ricciardo questioned: If you are going to do photography of a wedding and the bride comes and the mother comes in separate cars. Where do they park? Ms. Sciascia stated: I would meet them at the Chester location. My son has special needs. He is not an average 17 year old. The chances of him getting a car next year is slim to none. Mr. Ricciardo questioned: You never have more than one client at this location? Do you ever have any other functions at this location like gatherings, etc.? Ms. Sciascia stated: No. Discussion ensued.

Mr. Soloway stated: The question was raised on Section 20-14.1 b2 of Mr. Simmons report. You had a follow up question regarding this. Mr. Ricciardo stated: Does that have to be totally separate from the living quarters? Mr. Soloway stated: This entire section is not applicable to this application Section 20-14.1 b2 deals with joint occupancy office and residential buildings under the section discussing permitted uses. This has been submitted as a home occupation which is permitted as a conditional use not as a permitted use. I would submit under the ordinance to say different use in a joint occupancy office and residential building. A home occupation is a conditional use is required to satisfy the standards in Section 20-20.2. Mr. Soloway read the ordinance. Discussion ensued.

Mr. Ricciardo questioned: So you have to provide parking off street? Mr. McCabe stated: There is a third spot in front of the garage. Mr. Ricciardo questioned: Is there sufficient parking for the tenants and potential clients? Mr. McCabe stated: Yes. Discussion ensued.

Mr. Simmons went on with his report.

Comment #4 – The applicant indicates that the owner of Block 403 Lot 1 is going to allow the applicant an area of 25 feet wide by 52 feet deep for additional parking. Which on the survey map is owned by Federici. The area is not paved and covered in straw like material. The actual

area outlined for parking is approximately 12 feet wide by 52 feet long which would provide room for 2 vehicles. Section 20-8.4 of the ordinance requires off street parking be paved, curbed and have screen painting for lights and vehicles to shine on to adjacent residential buildings. The parking on the Federici property does not meet these requirements.

Mr. Simmons: I also note in the December 30, 2008 letter from Mr. Federici, the owner of Block 403 Lot 1, that there is no monetary consideration for the parking space area. It was not clear he offered the additional spaces on Lot 1 for the long term or permission to use these additional spaces could be withdrawn at any time. The applicant should clarify. It is not clear whether it is a long term, short term or temporary. Ms. Sciascia stated: I could have that clarified. I know because it's not paved it's not for clients but I could park there and make my parking spaces available to anyone should they need it. It wouldn't be available unless he didn't own the property and the house is not for sale.

Mr. Soloway stated: Any approval that the Board might give for that parking would have to give some mechanism put in place to make it permanent. The only way to do that is to record something. Mr. Ricciardo questioned: A restriction on that deed? Mr. Soloway stated: Correct. I don't know that Mr. Federici would be willing to do that. Mr. Elvidge questioned: If it was approved with a conditional use, that conditional use goes along with that property forever, correct? Mr. Soloway stated: Yes. Mr. Elvidge questioned: Unless we only made it conditional on this particular situation? Mr. Soloway stated: The conditional use would be this home occupation and only with this photograph operation. You can appropriately limit this so it is made clear that is applicable only to the applicant before this Board. I know that variances lasts forever but here you are dealing with a home occupation, you are dealing with a specific occupation, you are dealing with a specific set of facts relating to parking and representations relating to customer traffic or the lack of customer traffic. It would be appropriate to, if the Board was in mind to grant an approval, to set it up in such a manner that it is clear that it does not survive this applicant.

Mr. Simmons went on with his report.

Comment #5 – Documents submitted don't detail any lighting for night use of the subject property or the additional parking on the Federici property.

Mr. Ricciardo questioned: What are the hours of operation? Mr. McCabe stated: 9:00 am to 5:30 or 6:00 pm the latest. This is only by appointment.

Comment #6 – The applicant will have to address handicap access to the subject property with the Town's Construction Official. From the pictures I understand that from the studio part they would be going in the back door. The photos show steps and no ramp for handicap access.

Comment #7 – The applicant is not proposing any exterior signs for the subject property.

Comment #8 – There is no existing sidewalk on Academy Street to allow people to walk from the parking spaces to the sidewalk on Route 94 to reach the front door. The pictures do show some paver area to go to the steps. There is no light over the rear door or garage.

Mr. McCabe stated: The front entrance is for second floor tenants and the rear is for the clients. Mr. Ricciardo requested a site plan to see the flow of the unit. Mr. Caffrey, Mr. Vandyk, Mr. White feel confident with the plan. Mr. Russo questioned: On parking I want to verify that Ann Marie Sciascia will be the only employee? There would be no clerical help or administrative or anything? Mr. McCabe stated: That is correct. Mr. Russo questioned: Has that always been the case in the two years that you have been operating? Ms. Sciascia stated: No. I did have help at one point. I do not now. Mr. Russo questioned: Do you have any interest or desire to have any type of photography classes or instruction? Have you ever had that type of activity in the past? Ms. Sciascia stated: I have had one class there one time. They had to take advantage of street parking. Mr. Russo questioned: Was that the February 2007? Ms. Sciascia stated: Probably. Mr. McCabe questioned: You are not going to be running any classes there anymore? No tutorials or anything like that? Ms. Sciascia stated: No. I had two classes there. Mr. McCabe questioned: Were they one day classes? Ms. Sciascia stated: They were 3 hour classes. Mr. Ricciardo questioned: What times were they? Ms. Sciascia stated: They were during the day. It was a lunch time. It was for the Professional Photography Association. Mr. Soloway questioned: You have other locations, do you have classes there? Ms. Sciascia stated: I can. I don't plan on staying at this location very long.

Mr. White questioned: Have we satisfied the parking requirement? Discussion ensued.

Mr. Elvidge stated: You are just on a fringe of this being a home occupation. The only thing is that it makes it possible is that the use is minimal. I think you do need some improvements on the site in terms of making it accessible for anyone to get out of the vehicle, down a sidewalk, and to the back of the residence. You have to allow for individuals to walk there with some type of sidewalk area.

Mr. McCabe stated: In discussing this with my client, I wish to amend the application. There will be no visiting, no hours kept, and nobody there to have consultation. It will take place at Dover or Chester. She will only be there to do the accounting work and basic corporate work. She will be there to work at her desk on the computer and to do the photography on the computer to make the wedding books. There will be no hours kept and no visitation or consultation. It will be done in the other two locations.

Mr. Ricciardo questioned: Mr. Soloway do we have to approve anything if she puts a desk in her living room? Mr. White stated: No. Mr. Soloway stated: The ordinance does not directly address that. It does imply that some authorization is required. If the applicant is indicating that she is now withdrawing not to allow customers on the premises. What she seems to be saying that in her apartment she is will have a couple of desks where she is going to do her books and work on her photography, take phone calls, make phone calls, do mail. Mr. White and Mr. Ricciardo agree that the Board does not have to approve. Mr. Ricciardo stated: My only concern is that you are stating that is going to be the situation. Your history of not abiding by the ordinance and notices that you have received that you were in violation give me doubt that is actually what is going to occur. If there is not board action necessary, we will continue to do what we have to do. Mr. Soloway stated: Based on what the applicant is saying and her withdrawing the application, Board approval is not required. Mr. McCabe stated: In this regard

if it is going to be determined that there is no need for an application to be filed that you direct counsel to prepare a resolution to that effect that can be adopted by this Board and submitted to the Municipal Court as evidence that we did make an application and the determination was formally made by this Board that based upon the representation that was made and the type of activity that are going to go on there that will be conducted by Ms. Sciascia so that she can document that this Board has decided that no site plan is needed and the type of use is one that does not require Board approval, so that she can address that with the Courts. Mr. Ricciardo questioned: I disagree with that. Why should we give her a letter stating what she did in the past, which was illegal, is now forgiven because she is not going to do it anymore. Mr. Soloway stated: What Mr. McCabe is looking for is some realization that she has been here. It might be a good idea to do a resolution. I would make clear in the resolution exactly what we just discussed. That the applicant has stipulated from this day forward that there will be none of this. Mr. Ricciardo stated: I will take your advice.

Mr. Soloway stated: Motion would be to accept the withdraw of the application based on the representation of the applicant for whatever photography business she does on site would be limited to office work, work on photography will not involve at any time any customers on premises or employees on premises a finding of the Board based upon those representations the conditional use approval is not required.

Mr. White opened the floor to the public.

Dennis Becker, 116 Main Street. The ordinance that states: No floor may be used for residential and business unless a separate entrance hallway etc. I was in attendance at this workshop. I came through the front door, then the living room. You have to walk through the living quarters to get to where you are going to sit with the clients. Mr. Soloway stated: That goes to whether she violated the Zoning ordinance when she conducted those classes. That is not an issue before this Board. That is an issue for the Municipal Court. What is being represented to this Board is that will not happen in the future. Mr. Becker stated: The location in Chester is owned by Samantha Goldberg, 44 Main Street. I got a copy off a page on her website. It does not say anything on there about Sciascia Photography. I don't see how you could drive half an hour to meet with a client. As far as the parking, I can't tell you how many instances I have one client over sometimes two and occasionally three cars. The parking is a major issue. My business had a site plan. The Board made me put 3 parking spaces in on top of my 2 car garage and 2 cars that can park behind the garage. Mr. Ricciardo has a valid point about parking. I have notarized statements here from past employees that states she encourages new clients to her new office and not drive down to Chester. There are plenty of places to rent downtown. We have a Master Plan and a Visionary Plan and we spent all this money and did all this work and we are just going to let people open up businesses. This town is going in a visionary direction.

Ms. Sciascia stated: My location is 50 Main Street in Chester not 44 Main Street in Chester. The employee that he is speaking about is a woman that I fired and now works for him. He polices. He is my major conflict issue and I am his major conflict issue. That is where these issues are coming from. Mr. McCabe stated: I represented Mr. Becker and did his site plan. He has one point of the studio is for shooting there. She does not have a studio in her apartment. That is not the situation. He does all his business there. He sees everyone there unless it is on

the site. There were certain things that were required for Mr. Becker. In this instance, there will be no more visitation of clients at this house. If she wants to meet with a client, it will have to be at another location. Mr. Soloway stated: She is not to conduct business with public involvement in this location. If she violates that, she will be in violation of the Zoning Board and I assume she will be sited.

Mr. Vandyk made a motion based on the representations made and the finding that no approval is needed from this Board. Mr. Caffrey second the motion.

AYE: Mr. Elvidge, Mr. Vandyk, Mr. White, Mr. Caffrey

NAY: Mr. Ricciardo, Mr. Russo

Chairwoman McCabe returned to the Board.

OLD BUSINESS

#PFSPV 4-2007 – Kohl's – Block 303, Lot 26.05, 11 North Park Drive. Amendment to previously approved plans regarding installation of an emergency generator. Mr. James Fox, Esq. from the firm Morris, Downing and Sherred represented the applicant.

Lawrence Bozik, Civil Engineer, Dresdner Robin, 7 Doig Road, Wayne, NJ, License is current. The Board accepted Mr. Bozik's qualifications.

SWORN

Mr. Scott Uher, 28126 Delport Road, Pepper Pike, OH. Business address is 1300 Shaker Boulevard, Cleveland, OH. I am a licensed architect in the State of Ohio, work for Richard Bowen and Associates. Licensed architect engineer in State of NJ. I have appeared before Planning Boards on a National basis in various states as well as the Borough of Lodi, NJ. My license is current. Mr. Fox stated: We would like to use him as our expert solely for the purpose of the generator. The Board accepted Mr. Uher's qualifications.

Mr. Fox stated: We did not require notice and we do not need any variances or waivers. I have posted the revised site plan. The highlighted portion is the footprint of the building and represents the post location of the generator. This is an emergency generator and will only be used in an emergency. Mr. Bittle detected some discrepancies with the emergency lighting plan and he wanted a little more power in the event of an emergency. This was not part of the original site plan. This emergency generator would be gas driven and will be tested once a month for one hour. We have representatives of Kohl's that will indicate that will be done on a Tuesday at 10:00 am.

Chairwoman McCabe questioned: Mr. Simmons you see no significant issues with this generator? Mr. Simmons stated: I have been in contact with Mr. Fox and Mr. Bozik and they did submit a revised site plan based on my report of March 11, 2009. Most significantly they noted on the plan it is a 60KW generator. I believe it is a diesel generator. It is only going to be

a 120 gallon tank underneath the generator with no other fuel stored on site. It will be on a concrete pad. There are only a couple of items that I would suggest. There is a DEP requirement that calls for under New Jersey Statute 13:1 g-1 for a maximum decibel level of 65 decibels during the day and 50 decibels with a machine like this to operate between 10:00 pm and 7:00 am. The information that was submitted with the applicant's package basically was part of the standard testing shows that the decibel level is around 78.5 decibels at 23 feet away. But the property lines to the rear of those houses along Mill Street is considerably further and what the applicant is going to have to is upon installation and utilize a critical silencing muffler and a sound insulating enclosure. In order to comply with the State Laws they would have to retrofit it with additional insulation to silence it appropriately.

Mr. Fox stated: We have done preliminary testing and as you know we don't have the generator yet. We have to rely upon the specifications. It is at about 60 decibels at the property line based on the specifications we have received. We are not adverse to the requirement in the resolution which indicates that we will have to do whatever is required to satisfy the Town's requirements and the State requirements. When we get the generator on site what we will expect is that the construction official will come out and inspect the decibel levels and will do whatever is necessary.

Chairwoman McCabe questioned: Mr. Simmons is there any requirement for Kohl's to provide a containment area for the diesel tank? Mr. Simmons stated: I will defer that to one of the Kohl's representatives. It may be what I refer to as a day tank generator. It may be a double wall tank. We should check with them.

Mr. Fox questioned: Mr. Uher you heard the concerns about the fuel tank associated with the generator, could you address those please? Mr. Uher stated: You have to look at the specifications to determine if in fact it has containment but this is a standard configuration for a generator. The tank is double walled and has safety provisions. Mr. Soloway states: Under item 6 states: Is designed as secondary containments single top. What does that mean? Mr. Uher stated: I believe that means that in the event of a failure that it would be contained. This is a standard installation and is designed to be safe. If we found that it was not compliant or cause for any concern we would take provisions to do so. I don't believe it is anything but A-typical. Mr. Fox questioned: Have you done any work for the decibel level for this proposed generator? Mr. Uher stated: Yes. Mr. Fox questioned: Have you found any data in that regard? Mr. Uher stated: We have determined through our calculations determined that a distance of 23 feet. The manufacturer's data indicates 78.5 decibels. Our calculations at the distance of 175 feet to the nearest property line that the decibel would be 60.9 decibels which is within the allowable of 65. Mr. Fox questioned: This proposed generator will be on a concrete pad correct? Mr. Uher stated: Correct. Mr. Fox questioned: It will not take up any parking spaces or anything of that nature so that the space is available next to the building, right? Mr. Uher stated: Correct. Mr. Fox stated: How does the emergency testing work? Mr. Uher stated: I want to make a correction on that. The NFP requirements are that the generator be exercised 30 minutes at least once a month. Kohl's plan is to have the generator tested on the second Tuesday of every month at 10:00 am. That will be for a half hour. Mr. Soloway stated: I would suggest to the Board the applicant does not have any problem with it if it be appropriate to put a condition in the resolution not limiting them to second Tuesday at 10:00 am but just to make clear that any

exercise or testing of the generator takes place during regular business hours between 9:00 am and 5:00 pm. Mr. Fox stated: They can set a timer and it will go off as set. Chairwoman McCabe questioned: Is it possible on the pad similar to that which is depicted in the photograph that you supplied with the area that the generator is going to go? Is it possible to build a curb lip around just as a containment just in case because there will be diesel storage? Is that possible or does that eliminate it being installed because there is a lip there? Is there an issue with that? Mr. Uher stated: My only concern with that is it would be creating a pond that the generator would sit in. Discussion ensued.

Chairwoman McCabe opened the floor to the public.

Mr. Henry Palmerantz, 155 Mill Street. I have some concerns where they are measuring the tank to the back of their property and begin at my property. At 60.5 decibels that does not take into account the question I had about the HVAC that is on the roof that would also be generating in the neighborhood of 60 decibels. I realize this is not going to have a paupet but the sounds. We hear the same sounds coming all the way from Home Depot that are loud. We hear the beeping of trucks and the constant running of diesel engines. When you start to add all the noise it becomes quite a problem. I have problems with all the representations that were made in this project. Mr. Ricciardo has concerns about the cemetery. There is no cemetery. It has been wiped out. It is flat to the ground. There are no monuments there. Mr. Martin's representation that he has been taken care of it for 50 years. He doesn't even own it. It is still owned by the original owners passed on to their representatives. So much has gone on. The question I asked at the meeting of the Kohl's representative last time was "how much would we see of the building? Ten feet we were told. I see from the ground to the top. It is well over 40 feet. Behind us is the loading dock. We have 210 feet of property adjacent to it. We hear the trucks. Trucks don't pull in, they back in. Then the diesel engines often will stay. We were told there would be no work at night. There is work at night. There are so many things that were represented that were never done. I personally have fears about everything you grant them. Why isn't this indoors? I work for a number of schools. All the generators are indoors. If they have to be exhausted, they are exhausted to the outdoors. That would create no decibels. Why can't that be done? We asked the same question about the HVAC that is on the roof. It was cheaper to put them on the roof than putting the units away from the properties along Mill Street. We see three of them immediately behind our house. We were told about blasting which went on longer than expected. We were not told about having to bust out and grind up every piece of shale on that property. So much noise has been endured by our neighborhood. The value of our homes looking behind our houses has been diminished. Why put something else there that is going to diminish the value of our property? I will be going to seek some reduction in the value of my property because of this construction. I was hoping we were going to see a lot of jobs going to this community but Kohl's brought in their own people, non-union people to work from all over. My expectations were that this would not only generate a lot of business prior to its existence. It appears that they are hiring locally now. I have a hard time trusting them. I think they represented a lot of things to you that they trusted and they haven't met that trust. I would ask you to look carefully and consider whether this should be inside that loading dock, possibly the same area as it would be outside and that it be done there.

Mr. Fox stated: In response to that, we are here for the discreet question of this generator. We did not propose this generator. This generator was required by Mr. Bittle. That is why we are putting it there because he felt it was necessary to service the emergency lighting. In terms of additional decibels, once again we are going to do whatever it takes to satisfy the statutory and ordinance requirements for decibel levels at the property line. That is the law. We have not asked for a waiver. We can't sit here tonight and tell you with precision because we don't have the generator yet. It has not arrived. We will accept a proposal or a provision in the resolution that requires us to satisfy those requirements and have Mr. Bittle come out and do whatever he feels is appropriate. We are not interested in adding to the noise.

Mr. Palmerantz stated: That is the same representation we had about the HVAC units on the roof. We can't tell you know how that is going to be then what happens when all this starts up and the HVAC units exceeds the sound. The issue is that you need to put a generator there. My question is why does it have to be outside? Mr. Fox stated: We will comply with the noise ordinance. If there is a problem with noise emanating from the building we are required by law to meet those requirements.

Mr. Ricciardo questioned: Mr. Fox the gentleman from the public indicated that the cemetery has been totally wiped out. Is Mr. Martin here that he can tell us whether that is a fact or not a fact? Mr. Fox stated: I don't know that this was part of this application.

Mr. Kenneth Martin, 24 Circle Drive, Newton, NJ. I have been the custodian of all that property since 1959. When I came here there was only one tombstone laying down. It never was up. That is the only thing that was ever there that I know of since 1959. To fulfill the ordinance, we put a fence around it. All during construction we stayed completely away from it. What you see is what was always there. Most of your own lawns haven't turned green yet. I will agree it does not look very nice but neither does my front lawn.

Mr. Ricciardo stated: I think the question is: Was that cemetery disturbed during the construction process? Mr. Martin stated: No. Mr. Ricciardo questioned: You have put the fence up that was required by this Board? Mr. Martin stated: Yes.

Mr. Ricciardo questioned: In regard to working at night, is that because of the construction and the schedule to meet the deadline? Mr. Fox stated: I would have to ask the project manager or Mr. Martin can address that. It was a difficult winter. Mr. Martin stated: Not by us. Our arrangement was the site work. That was not done after that. Correction, the last day of black topping we did work a little over but it wasn't late. It was probably 8 o'clock at the most. So far all the other outside work and blasting was all done during the day.

Mr. Simmons stated: About a year ago I did receive a call about the cemetery. Mrs. Millikin asked me to go and check it out. I did go out and personally inspected the cemetery. I did see the stones were laying down. I did not look like it had been disturbed. When our inspector went out to update our performance bond the inspector found the black vinyl fence around the cemetery was mostly constructed but still had to finish the access gate plus the bottom rail.

Mr. Ronald Huddy, 171 Mill Street. Originally when there was a determination made that there was no need for a generator and now there is a need. What had changed to require it now? Mr. Simmons stated: My understanding is that some of the building code requirements require in an emergency if there is a loss of power for certain amount of light to be present for people who might be in the store at the time of a power failure to have safe egress. When they went to test the safety light that was in the store with a light meter there was certain areas of the store that did not meet those requirements in order to provide that safe egress. To remedy that a generator has been proposed in order to have enough power to power up the interior lighting system. Mr. Huddy stated: I work in the industry and emergency lighting is a key factor in those industries. Aside from operating machinery and other equipment, the majority of the equipment have emergency back up batteries. I would ask that someone double check the calculations and make sure that a battery system would not provide for the needs and that the diesel generator is needed. I know you could increase the system. I have been too much larger plants and they have battery backups. They are much more user friendly and you don't have periodic testing. Is a diesel generator really needed? I am not convinced at this point in time that a diesel generator is the way to go.

Mr. Fox stated: Perhaps our architect can respond.

Mr. Uher stated: The design that we had originally for the store for the emergency lighting system we believed to be compliant with the building codes. There ended up being a difference us, the design professionals, Kohl's, the contractor, with a difference of opinion, and the building department. We have done several stores. This requirement for the emergency generator at the time is now being introduced to the project is a solution that has to be done in this manner in order to address the problem. We could go into a battery back up system which would enable replacing all the lighting fixtures. With battery back up it becomes a cost prohibitive situation and also becomes one where you get a lot less power back up than with an emergency generator which goes with full power. Our options are limited both spaciously and design wise. The solution that we have implemented is cost consideration, space consideration, and we will make provisions to be within the code. Mr. Fox stated: Mr. Uher did you have discussions with Mr. Bittle, the construction official, about this proposed remedy? Mr. Uher stated: Yes. He is in acceptance as well as the electrical inspector.

Mr. Elvidge questioned: What is the difference between the standard that it has to be held to at this site versus Kohl's throughout the nation? Is there something different if they have the same type of installation? Mr. Simmons stated: I did receive a copy of the code Mr. Bittle is referring to, but I sent that over to Mr. Fox's office for his professionals to look at. Off the top of my head it called for along the path of egress for a one foot candle worth of light for safety. Mr. Bittle met out on the Kohl's site with his light meter and also the contractor's light meter to take double readings to make sure the meter was reading accurately. There was some areas like the changing rooms that there was a partition where the lighting did not meet those requirements. They actually field tested it and they came up with this deficiency. That was the basis for his discussion on this matter. Mr. Fox stated: That all transpired within the last three weeks. There was no other remedy available to Kohl's. Kohl's said to work with us on a remedy and this is the remedy they came up with.

Chairwoman McCabe stated: Please don't tell us that there was one petition in one dressing room that prohibited one foot candle of light. Mr. Simmons stated: I am not saying it is just one location. I just gave an example. I was not there. Mr. Fox stated: We are really beyond that. Kohl's does not want to argue to point. Chairwoman McCabe stated: Mr. Fox that is not the issue here. Mr. Elvidge stated: It makes me mad in terms of some of the standards were held to. Is it the difference in leaving a room with one light on or two lights on? You can still find your way out. Chairwoman McCabe stated: My issue is that this issue was not found earlier. Mr. Ricciardo questioned: I raised this question once before. Why wasn't the lumineers discussed during the review of the plans at the time they were submitted and prior to being approved? I wanted to know why at the eleventh hour it was determined that there was insufficient emergency lighting for the people that occupy that facility to exit. It should have been done long before the eleventh hour. It should have been done during plan review and if it met the International Building Code Act that is required in the State of New Jersey it should have been done a long time ago. How long on the fuel capacity of that generator will it run without being refueled? Mr. Uher stated: The requirement I believe is 2 hours. The emergency code requires that emergency lighting be provided for a duration of time upon emergency situation. The diesel generator and the tank are sized to accommodate that code. Mr. Ricciardo stated: If the code requires an emergency back up lighting runs for an hour or two hours that is how this generator was sized? That is how the tank and the fuel capacity were sized? Mr. Uher stated: That is correct. Mr. Ricciardo questioned: At the maximum it will run is whatever the code requires that emergency lighting be on? Mr. Uher stated: That is correct. Mr. Fox stated: That would be the minimum that it would run in an emergency. Mr. Ricciardo questioned: What is the maximum amount of time it would run on the fuel capacity? Mr. Uher stated: The maximum would be for Kohl's to opt to turn down the generator once everybody is safe. Discussion ensued.

Chairwoman McCabe stated: I am appalled this was not caught earlier. I apologize to you from the Town of Newton that you have had to go through this. I am apologizing to the neighbors that this is even suggested because of the error made.

Mr. Huddy questioned: If the power goes out how are the emergency lights supplied? Mr. Ricciardo stated: Battery back up. Mr. Huddy stated: You are telling me that it is going to cost you prohibitive to re-wired every back up ballad? Mr. Uher stated: We have to add substantially more light. What was determined by the Building Department was that the levels we were achieving were not in compliant. Mr. Huddy stated: I would double check the calculations. How long would you expect it to take to evacuate the store once the lights go out? Twenty minutes, an hour? Mr. Fox stated: The lights won't go out.

Mr. Palmerantz stated: I don't think Mr. Huddy's question was answered any better than mine has been answered so far. Will someone turn off the generator after a half hour or 45 minutes? Or will it run for the 24 hours worth of fuel? Mr. Fox stated: The generator will run until one of three things occur. The lights come back on, the generator goes off. Someone turns the generator off or it runs out of fuel. If the lights go out because of a fire, the firemen or someone at the store is going to turn the generator off once the building is clear. We cannot tell you when that is going to occur. The generator only runs when the lights are off or when it is being tested. How do you put it inside? You will have to ask the architect. Chairwoman McCabe questioned:

Is that a possibility to put it inside? Mr. Uher stated: It is a-typical. I know you can go and find examples of indoor generators. It is not required to be inside the building. We have made statements to address the objective requirements of the code and noise consideration. Mr. Fox stated: Is it advisable to have 120 gallons of fuel inside? Mr. Uher stated: I don't believe it is. That is one of the arguments. The store was planned for the stock that needs to be done and the merchandising that needs to be done. If we were to put the project in rewind and had known this a year and a half ago maybe those provisions would have made more sense at the time. Where we are at right now we are doing the best we can to address the requirements that are being proposed. Mr. Fox stated: I would like to remind the Board that we are using in some ways in hind site right now. Chairwoman McCabe stated: We understand that. This complies with the code. This is not a generator that will be running all day long. This is an emergency generator that will run a half hour in the middle of the work day and hopefully never again. This will not have any affect on anything.

Mr. Steve Kelmer, 21 Diller Avenue. How is the Kohl's store heated by natural gas? Mr. Uher stated: Yes. Mr. Kelmer questioned: Why is the generator not being run by natural gas? Then you will have no problems with fuel spill. I don't know if they run quieter. They may and they may be less air pollution. Mr. Uher stated: A natural gas generator was not permitted by the Building Department.

Mr. Anwar Quarmout, 45 Woodside Avenue. I think it is unfair to Kohl's, the owners and the neighbors that this thing had to be brought up now. I think maybe an investigation to the competence of the building inspector for his review process. I think that this is something that they never considered part of their budget. Also part of the application in the beginning the neighbors would have had more input on putting inside versus outside. I think is heartbreaking to have to deal with this now. I don't think it was considerable. I don't think anyone can budget \$20,000 or more for this generator. This is something that could have been prevented.

Chairwoman McCabe closed the public portion of the meeting.

Mr. Soloway stated: The conditions that were discussed were the compliance demonstrated after the fact to the satisfaction of the Construction Official and I would add the Town Engineer in compliance with the DEP and Newton Noise Ordinance for regulations of any testing of the generator take place only between the hours of 9:00 am and 5:00 pm Monday thru Friday. That there be a double walled tank or have a containment unit to the satisfaction of the Town Engineer. The motion would be to approve this as an amendment to the prior preliminary and final site plan approval with those conditions. And the standard conditions including the condition that all prior conditions remain in full force. Mr. Fox stated: We have no objection.

Chairwoman McCabe questioned: What did the client have to pay to come to this Town and before this Planning Board? Ms. Citterbart stated: \$200 application fee and \$500 escrow.

Mr. Ricciardo questioned: What is the delivery date for the generator? Will it be here before you open the store? Mr. Uher stated: Yes, but it won't be fully installed. Mr. Ricciardo stated: The applicant has been gracious enough and accommodating. We are putting too many conditions

on the applicant. Mr. Fox stated: Mr. Bittle did work out a temporary plan. It will not hold us up.

Mr. Ricciardo made the motion that we recommend to the governing body that that all application fees and escrow fees involved with this particular hearing be reimbursed to the applicant. Mr. Caffrey second the motion.

AYE: Mr. Elvidge, Mr. Vandyk, Mr. White, Mr. Caffrey, Mr. Russo, Mr. Ricciardo, Chairwoman McCabe

#PB-03-09 Barn Hill Care Center – Block 101, Lot 1.01, Property Address 249 High Street. Amendment to previously approved plans re-installation of an emergency generator. Mr. James Fox, Esq. represented the applicant. Carried to April 15, 2009.

Lance Cooper, owner of Freelance Electric, New Jersey License #14555.

Mr. Fox stated: To get you up to date the build out is complete. All but one of the performance bond has been released. The Developer's Agreement has been satisfied. It is being used by patients. We are here tonight to ask for a minor revision for final site plan so we can add a 400KW diesel powered emergency generator. In front of the building there is currently a generator in the building under the first floor. We propose to move it outside and put a brand new generator. This is an emergency back up. It is only tested once a month and only used in the event of an emergency.

Mr. Fox stated: I would like to give you some information from the manufacturer of the generator marked Exhibit A-1. Mr. Cooper stated: This is in response to the memorandum from Harold Pellow's office.

Mr. Fox questioned: Mr. Cooper could you show the Board where the generator is supposed to be located? We do have a plot. Mr. Cooper stated: The generator would be located to the right of the main entrance in a grassy area. Mr. Fox questioned: Will that be on a cement pad? Mr. Cooper stated: Yes. Mr. Fox questioned: That is a diesel powered generator? Mr. Cooper stated: Correct. Mr. Fox questioned: Can you describe the fuel tank? Mr. Cooper stated: The fuel tank is a double wall tank so if the interior tank does break the second wall does have the capacity to hold fuel. There is also an alarm in there. If the fuel does get into the secondary wall an alarm will notify you of the leak. Mr. Fox questioned: Why is it that the Barn Hill applicant is requesting permission to put this generator in at this time? Mr. Cooper stated: My company did the work on the addition. The 22 or 24 new patient rooms and the upgrade of the existing electrical service. One of the things we needed to do when the new patient rooms were done was add emergency lighting connecting to the existing generator. All the engineering was provided to me. We installed the lights and ran the circuit as per the existing engineering. At the end of the job when we did an emergency shut down for the Certificate of Occupancy purpose the existing generator did not meet the expectations of what was necessary to meet the code. We had that serviced. There was another power outage and they were without power for 4 hours when the generator failed to operate. That is what brought their concerns to me. The owners approached me about installing a generator to back up the entire building. Chairwoman McCabe

questioned: The current generator, what was that backing up? Mr. Cooper stated: That was backing up the emergency lighting in the old building and miscellaneous outlets throughout that area, some refrigeration units, freezers, walk in cooler, etc. In the new section it was operating the fire alarm panel, powering the nurse call system and miscellaneous emergency lighting. Chairwoman McCabe questioned: It was not powerful enough to handle the new addition? Mr. Cooper stated: Correct. Chairwoman McCabe questioned: Why can't it be placed inside to replace the old generator? Mr. Cooper stated: They would need to put an addition on the building to put it inside the building. It is a very large generator.

Mr. Fox questioned: Have you been in the building when the old generator was turned on? Mr. Cooper stated: Yes. Mr. Fox questioned: Does it make a lot of noise? Mr. Cooper stated: It is extremely loud. The generator is in the right hand center of the existing part of the building underneath. When the generator turns on it resonates through the whole building through the floor. It was installed 30+ years ago. The sound levels for the patients far exceed what the new generator will do being located outside.

Mr. Ricciardo questioned: Why is the generator located in front of the building and not the rear? Is it because of the existing electric panel? Mr. Cooper stated: It is due to the location of the new electric service. This generator will be tied in the main electrical service. Mr. Ricciardo questioned: Is there a transfer switch? Mr. Cooper stated: Yes. We are going to disconnect the power from the main switch. That power is going to go to the transfer switch first, connect to the generator, and connect back to the system. This will back up the entire building. Mr. Ricciardo questioned: This is because the existing panels and switch gears are located in that general vicinity. By going outside the building there is no way to get to the back of the building and connect to where we need to connect and go through the building.

Mr. Fox stated: Mr. Simmons did suggest landscape screening. We are in the process of purchasing that. Chairwoman McCabe stated: I think landscaping can be done so it looks natural. Mr. Cooper questioned: Landscaping meaning decorative fence? Chairwoman McCabe stated: And green plantings. One of the concerns Mr. Pellow's office had was the trees and the pruning because of fire hazard. We can plant shrubs that won't grow up and get into the generator. They are looking forward to not running extension cords when there is a power outage in the building.

Chairwoman McCabe questioned: What is the topography like there when you are driving up to the space? How high is this generator going to be? Mr. Cooper stated: From above curb line the generator will be 76-1/2 inches high. The concrete pad is 6 inches thick. It will be almost 80 inches high. Chairwoman McCabe stated: We need to talk about a landscaping buffer. Mr. Simmons questioned: What size fuel tank are you going with? Mr. Cooper stated: The 706 gallon tank. Mr. Simmons stated: That adds another 37 inches to the height. Mr. Simmons questioned: They are pull-out doors right? Mr. Cooper stated: They are not swing out doors, they are removable panels. You want to have a 3-foot clearance to work on it. Mr. Simmons suggested a board on board fence. Mr. Simmons stated: It might be the type where they would have to put some sleeves in the ground and the fence panels are removable.

Mr. Ricciardo questioned: Where did you get the dimension of the tank? Mr. Simmons stated: It is entitled OE7823, Install Drawing Type II DW Tanks. The middle chart on the right hand side the first numbers are metric and the second are gallons. The one line where it says Total Tank Capacity 2672 (706). If you go above that, the Dimension A 940 ml or 37 inches. You are looking at something roughly about 10 feet. Mr. Ricciardo questioned: This is the type of generator that the tank comes assembled right on it, correct? Mr. Cooper stated: Correct. This would be something that if we dictate that we want smaller fuel tank, they would give me the dimension for the tank. Mr. Ricciardo questioned: Why do you want such a big tank if it runs at 5 gallons an hour? Mr. Cooper stated: Based on our calculations, this generator will with everything running in the building will run at about 65% of the capacity. At 65% of the capacity with this size fuel tank it will run for 24 hours powering the entire building.

Mr. Ricciardo questioned: What is on the left side of the building parking spaces? Mr. Cooper stated: There are patient rooms to the left side of the main entrance, a parking area and then there is a walkway that leads around to the end of the building. Mr. Ricciardo questioned: At the center court on the right side you have a load and delivery area. Mr. Cooper stated: Now you have the addition on there.

Mr. White questioned: Does this unit have to be test run once a week? Mr. Fox stated: This may be a different standard because it is a medical facility. Mr. Cooper stated: They will do a test run once a week for 15 minutes. Once a month they have to manually do a load test. Mr. White questioned: What is the decibel rate in this unit? Mr. Cooper stated: What they have given me at the 155 feet is estimated at 69 decibels from the property line. Mr. White questioned: How about the patient rooms behind it? Mr. Cooper stated: At 23 feet it is 82 decibels. Chairwoman McCabe questioned: What is inside the building in that area? Mr. Cooper stated: The waiting area. Mr. Ricciardo questioned: Where is the mechanical equipment room? Mr. Cooper stated: Down in the basement in the corner. Discussion ensued on location of the generator.

Mr. Simmons suggested: Looking at the plan if you eliminated the two parking spaces that are close to the generator re-curbed them and made them a lawn area you would have more room to put the generator. Removing parking spaces may trigger a variance. Chairwoman McCabe stated: Would the Board consider issuing a variance if needed? The Board agreed to give a variance. Mr. Fox stated: The applicant is not required to do this. They need to upgrade the system. I am not authorized to give up parking spaces or place the generator in a different location. The applicant is convinced that it won't interfere with the patients. We have not noticed for variance or waivers.

Mr. Soloway stated: Mr. Fox probably did not notice properly for this and if it does get carried that can be cured also. Mr. Fox stated: We did notice for variances. Mr. Soloway stated: Legally we cannot proceed because there is no proper notice. Mr. Fox stated: You suggested that my client be willing to discuss a conforming application. Mr. Ricciardo stated: You may conform but I would like to see the landscape plan which includes the buffering which is not provided on here. Mr. Fox stated: We will be more than happy to accept the provision in the resolution that says it would be to the satisfaction to the Town Engineer. Mr. Ricciardo stated: I would much rather see it before this Board than to leave it to the Town Engineer. Discussion ensued.

Mr. Fox stated: I would like clear guidance on what to discuss with the owner. Mr. Ricciardo stated: Possible relocation of the proposed generator to two possible locations, one is across the street in the grassed area, or reduce the parking in front of the building and put it there so there can be sufficient buffering around the entire generator. Mr. Fox questioned: Can we have only one instead of two. Chairwoman McCabe stated: All possibilities are on the table. We do not have enough information to make an informed decision. Mr. Soloway stated: The Board's concerns are that the existing proposal is too close to the patients building in terms of noise, and that the current proposal is situated near an area where it can't be effectively screened. Mr. Cooper stated: The powers that be from Barn Hill are aware of where the generator is going to go and that the unit is large. They are concerned with the sound level for the patients. Am I going to be required to do site plans for both locations in addition to a landscape plan? Mr. Ricciardo stated: No.

Mr. Fox stated: I will agree to adjourn until next month and come back to address those issues that were raised. I must reserve a right to request a vote in the event my client's refuse.

Mr. Elvidge stated: At the next meeting I would want to look at the location and giving up a parking space or two and buffering that spot. Chairwoman McCabe questioned: Is the Board agreeable to listen to that solution? The Board agreed. Mr. Fox questioned: We are talking about moving it farther away from the building and moving it to the two parking spaces.

Chairwoman McCabe opened the floor to the public. With no public coming forward this part of the meeting was closed.

#PB-04-2009 Newton Inn – Block 303.01, Lot 4.01. Property Location: 8 North Park Drive. Amendment to previously approved plans. Applicant is requesting an upgrade to existing exterior lighting on the Holiday Inn Express. Kevin Kelly, Esq. from Kelly and Ward, Newton, NJ represented the applicant.

RECUSED: Mr. Elvidge

Mr. Kelly stated: This is an application to change light bulbs. This is the approval that you granted in 2005. There were lighting issues in our submission. That is what we are here to amend. If you look at Mr. Simmons' report of February 11, 2005 it did contemplate that there would be additional lighting in the future. This is just an upgrade. Mr. Simmons has reviewed it accurately. I would like to ask Ms. Moch some questions.

Helen Moch, 38 Fredon-Marksborough Road, Fredon, NJ. Mr. Kelly questioned: You are the general manager of the Holiday Inn Express in Newton, correct? Ms. Moch stated: Yes. Mr. Kelly questioned: You are familiar with this application? Ms. Moch stated: Yes. Mr. Kelly questioned: What is the reason for this application? Ms. Moch stated: The Holiday Inn Expresses across the nation are going through a re-launch and this is one of our hallmarks that they would like us to do. It is for decorative purposes. Chairwoman McCabe questioned: You are not changing the light fixtures, just the color? Ms. Moch stated: Just the color. Mr. Kelly questioned: What is the color? Ms. Moch stated: Blue. Mr. Kelly stated: Mr. Simmons said

that it does not add to the illumination of the parking lot or sidewalks. He asked about the hours of operation for the proposed lights. Ms. Moch stated: At nighttime when it is dark, after sunset and just before dawn. Mr. Kelly stated: I was unable to find the reference in the prior approval. Chairwoman McCabe stated: Because of the hotel business the lights were required to be on all night. The reason you are here because Ms. Citterbart has the authority to issue a waiver except when it comes to lighting, correct?

Mr. Soloway stated: Technically this is an amendment to the prior site plan approval. I think in Mr. Simmons' report there was a specific item in the condition section of the approval indicating that light bulbs would be 100 watts maximum. These are going to be 150 watts. Mr. Kelly stated: Not all of them are 150 but I agree with the rest. Mr. Ricciardo questioned: The light fixtures are rated to take 150 watt? Mr. Simmons stated: Based on the catalog, yes.

Chairwoman McCabe opened the floor to the public. With no public coming forward this portion of the meeting was closed.

Mr. Vandyk made a motion to approve to change the light bulbs to blue. Mr. Caffrey second the motion.

AYE: Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Mr. Caffrey, Chairwoman McCabe

EXECUTIVE SESSION 10:38 PM

Mr. White made a motion to go into Executive Session to discuss pending litigation. Mr. Ricciardo second the motion. The motion to adjourn to executive session was approved with a unanimous "aye" vote.

RECUSED: Mr. Elvidge

Mr. Ricciardo made motion to Adjourn. Mr. Vandyk second the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 11:00 pm.

The next regular scheduled meeting will be held on April 15, 2009 at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

EXHIBITS

Exhibit A-1 - Information from the manufacturer of the generator from Mr. James Fox.