

Board of Adjustment

Virtual Meeting

July 7, 2021

Meeting called to order at 7:14pm.

Statement of compliance read by Joel Kenderdine.

Roll Call

Present:

Maria Paola Castro

Basil D'Armiento

Herminio Estrella

Gary Lewis

Daniel Battista

Michelle Brown

Chairman Joel Kenderdine

Also present were Board Attorney Brian Schwartz, and Planning Consultants, Paul Grygiel and Ms. Trahan, Engineering Consultant Dave Testa.

Absent:

Dr. Harry Allen

Roger Graubard

There are 7 voting members present.

Approval of Minutes:

Motion to approve June 2, 2021 minutes made by Mr. D'Armiento. Seconded by Mr. Battista.

All in favor.

None opposed.

Resolutions:

Motion to approve a resolution to retain Phillips Preiss Grygiel LLC as Planning Consultants for the 29 Pearl Street application, SPR 21-001-OJI-29 Pearl Street made by Ms. Castro. Seconded by Mr. D'Armiento.

All in favor.

None opposed.

Resolution approved.

Motion to approve a resolution to retain Phillips Preiss Grygiel LLC as Planning Consultants for BA 21-002 Penalosa 64 Pearl Street made by Mr. Estrella. Seconded by Ms. Castro.

All in favor.

None opposed.

Resolution approved.

New Business:

BA 21-002-Penalozza 68 Pearl Street and 54 Watchung Avenue. The Pearl Street property is actually 68-70 Pearl Street.

Waivers:

Numbers 13 and 17, existing proposed contours. Mr. Testa believes those are provided. Those are okay.

Number 19, 26, and 31 are not applicable to the application.

Numbers 27 & 28 landscaping and lighting had nothing checked although they are proposing lighting on lot 7. Mr. Testa believes these 2 items will be addressed during the hearing.

The waivers have essentially been provided and testimony will be given for items not checked on the list.

John Sullivan, attorney with the office of Vastola & Sullivan is representing 70 Pearl Street LLC, Mr. Luis Penalozza, and L Penalozza LLC. 70 Pearl Street LLC is the owner of 68-70 Pearl Street. Mr. Penalozza and L Penalozza LLC own 54 Watchung Avenue.

Currently 68 Pearl Street has a 2 story building on it. The 1st floor is vacant and they believe it is appropriate for office or retail use. The 2nd floor has a residential apartment. In the past the 1st floor was used as a hair salon and the 2nd floor as a residential apartment.

54 Watchung Avenue has a 1 story building on it which is used as a tavern.

The 2 properties share a common rear lot line.

They are proposing a subdivision, taking a 4,000 sq ft section of 68 Pearl Street and adding it to 54 Watchung Avenue. They need a preliminary and final site plan for both properties. They need a D2 variance or possibly a D1 variance for the Pearl Street property. There are 3 preexisting variance conditions. Two of those will remain and they will not enhance them in any way. One will be eliminated as part of this application.

The new variance needed is a parking variance for the Watchung Avenue property.

The plans submitted are a set plan subdivision plan prepared by Parker Engineering & Surveying consisting of 4 sheets dated February 20, 2020, last revised February 3, 2021. They also have 2 sets of floor plans and elevations prepared by Taylor Architecture & Design dated December 4, 2020, last revised March 3, 2021. They have received Mr. Testa's report dated June 29th, Mr. Grygiel's report of June 23rd, Chief Parenti's report of June 17th, Construction Official Nero's report of June 21st, and Deputy Chief D'Amore's fire report dated June 17th.

The witnesses are Mr. Penalozza, Architect Brian Taylor, Engineer Steve Parker, and Professional Planner Michael Pessolano.

Mr. Penalozza sworn in by Attorney Brian Schwartz.

Luis Penalzoza
291 Duer Street
North Plainfield, NJ

Mr. Penalzoza is the principal of 70 Pearl Street and L Penalzoza LLC. 70 Pearl Street LLC is the owner of 68-70 Pearl Street, owning it for about 10 years. That property currently has a 2 story building, a shed, a garage, and some trailers on it. The 1st floor is currently vacant. The prior use was a hair salon. The 2nd floor is currently an apartment. If the application is granted, Mr. Penalzoza would like to use the 1st floor as an office or a retail use and the 2nd floor as a residential apartment. Mr. Penalzoza has a possible tenant to rent the 1st floor as an office if approved. There is an existing sign on the property. The sign would be changed when he gets a new tenant using the same sign location. Grand Sanitation currently picks up small trash containers once per week curbside. They are proposing an enclosure for trash, either a dumpster or individual cans. Currently the garage is unnecessary for the site. The trailers will be removed from the property.

Mr. Penalzoza and L Penalzoza LLC own 54 Watchung Avenue. Mr. Penalzoza has owned the property since 2002. The current use is a tavern which has been there for over 20 years. Mr. Penalzoza operates the tavern. He wants to continue the tavern use. He wants to subdivide the Pearl Street property so the garage is part of 54 Watchung Avenue and use the garage as a kitchen for the tavern. There is a patio in the rear now and he is proposing adding 10 tables and 40 chairs. He is proposing umbrellas which will be attached to the tables. Currently the tavern does not have a kitchen and does not serve food. He states on a busy night he has 5-8 employees at a time. If this application is approved, he will have 15 employees. Currently during the week, the hours are Sunday-Thursday 5pm-1am, Friday and Saturday 5pm-2am. If approved, the opening hours would change to 10 or 11am, closing time would stay the same. Presently liquor and beer are delivered every 2 weeks by a small box truck. The trucks park in the driveway or in front of the building to unload. The frequency of deliveries would increase to every week by box trucks that would still unload in the driveway or the front of the building. There is currently no on-site parking. It has always been this way since he owned the property. The patrons and employees park in 2 municipal parking lots by the tavern. Most of his patrons walk to the tavern or come by taxi. If approved, the same parking would be continued.

Mr. Testa's report, section B, item 1 is asking for a clarification of what is in the back of the tavern right now. Mr. Penalzoza stated there is a patio with a fence and a garage that is not being used. For item 3, Mr. Penalzoza is looking to add 40 seats outside. Inside the tavern there are 66 seats, ten tables in the bar area. Item 4 speaks about ingress and egress to the outdoor area in the rear of the tavern. You can get to the back area via the driveway. Patrons would have to enter the patio after coming into the tavern. The driveway would only be used for emergencies. Item 5 speaks about obtaining County Health approval for the kitchen and food service, which is understood by Mr. Penalzoza.

Mr. Grygiel's report, item 4 asks about the proposed use of parking on the Pearl Street property. Mr. Penalzoza stated 4 for the 1st floor use and 2 for the residential use. This leaves one extra space. Item 5 asks whether there is any renovation plan to the exterior of the properties. Mr. Penalzoza stated he is looking to redo the sidewalks on lot 10 in front of the tavern, new stucco, lighting, and a new sign. He will improve landscaping at 70 Pearl Street, new parking spaces, and new lighting.

Mr. Schwartz is concerned about the proposal to add patio seating. He does not see a plan that shows that. He asked Mr. Testa if his parking analysis included the addition of 10 tables outside. The existing plan shows a patio and the proposed plan doesn't show the patio. Mr. Testa stated that was part of his

confusion because there were no tables or chairs shown. The parking count is based off the square footage of the inside of the tavern. Mr. Penalzoza believes the occupancy rating from the fire department is either 125 or 135. Mr. Schwartz asked whether this requires an additional variance that wasn't advertised. Mr. Testa stated the exterior dining is not permitted and would require a variance. With the occupancy rating, Mr. Testa doesn't believe expanding outside increases the occupancy rating because this is also based off of bathrooms. Ms. Trahan stated in the zoning code, there is also a standard that's based on the seats available in a restaurant. One off street parking space can be required for 3 seats in a restaurant. This can possibly be the standard that's applied here. Mr. Schwartz agrees with Ms. Trahan. Mr. Schwartz is concerned with the integrity of the hearing because they are not seeing it on a plan, he doesn't think the variance was noticed, and if he were a member of the public and he saw a notice saying the seating capacity for the tavern is going to double while the lot is becoming smaller, he thinks it's a significant change. Mr. Sullivan believes they've noticed every variance required with regard to this application. Ms. Trahan discussed with Mr. Grygiel that the outdoor seating is an expansion, it's an accessory to the tavern and restaurant that's proposed and those are permitted. They do not believe a use variance is required. Mr. Sullivan stated that is his interpretation also and that the outdoor seating is permitted. Mr. Testa stated that's reasonable that it is an accessory use to the tavern, however he thinks seating and methods of ingress and egress should be shown and the fire department may not have realized when looking at the plans that there would be seating in the rear of the property. The occupancy is a function of the fire department and the construction official. There is a fire occupancy rating and a building code occupancy rating. They need to know an accurate count of seats proposed to adequately address those issues as well as how many parking spaces they are short. Mr. Sullivan stated there would be 40 proposed seats outside and there are 66 inside, a total seating capacity of 106. Mr. Schwartz asked Mr. Testa if there is a provision in the ordinance that prohibits outdoor seating. In the B Business zone or the B1 zone, restaurants and taverns are permitted but not including drive in restaurants or refreshment stands where food, drink, or confections are served outside the building or where food is intended to be consumed in cars parked on premises. Basically you can't have a drive-in restaurant or food or drink served outside the building on a permitted restaurant or tavern. Ms. Trahan stated they interpreted that to mean a drive in or a concession stand. Mr. Sullivan agrees with Ms. Trahan's interpretation as does their Planner. Mr. Schwartz agrees with the applicant. It appears the ordinance is trying to prevent people from eating in cars. Mr. Testa does not have an issue with it. Mr. Schwartz would like to ask for revised plans with seating. When the parking variance is considered, the additional seating would require additional parking spaces. Ms. Trahan stated the applicant testified to 40 extra seats. There would be 13 additional parking spaces required. Mr. Schwartz suggested they continue with the hearing and the Board can decide at the end whether they want to see revised plans or whether they want to vote on these plans.

Mr. Testa asked Mr. Penalzoza if there is currently lighting in the rear of the tavern outside. Mr. Penalzoza stated there is no current lighting but there will be new lighting for both properties. The architectural plans show a lighting trellis. Mr. Penalzoza plans to use the trellis for lighting.

Mr. Testa asked if there will be music or bands. Mr. Penalzoza stated there will not be bands and if he puts speakers out there it will not be loud, it will be low music. There will be no dance floor outside.

Mr. Testa stated there was drainage on the plan and asked if had already been installed. Mr. Penalzoza stated it was installed. Mr. Penalzoza stated it was inspected by Howard Klein.

Ms. Trahan stated on the architectural plans there is a second patio that isn't shown on the engineering plans. Mr. Sullivan stated Mr. Taylor will address that.

Mr. Testa asked Mr. Penaloza if the wall around the patio on the plans is intended to be fencing and if it's existing. Mr. Penaloza stated it is an existing 7 ft fence that he will have to lower to 6 ft. There is a door for access to the other property in the back.

Mr. Lewis asked if the back would be used during inclement weather. Mr. Penaloza said no.

Mr. Estrella asked Mr. Penaloza if restaurant services would still be offered during inclement weather. Mr. Penaloza stated yes, just indoors.

Chairman Kenderdine pointed out that there would still be no parking for additional employees of the tavern. There would be an additional use in the off-street parking for the same individuals.

Mr. Schwartz asked about the cross hatched area that would now be part of lot 10 and what it was going to be. Mr. Penaloza stated it will be paved with fencing around. Mr. Sullivan stated Steve or Brian will address this. Mr. Schwartz stated he would like to see a revised plan as to what that will be. Mr. Testa states looking at the architectural plan, it appears it will be brick pavers. Mr. Sullivan states the cross hatching is just to show the portion they are taking off of lot 7 and adding to lot 10. Mr. Taylor's plan shows the use of that area that has the garage that will be converted to a kitchen, the patio area, and a fence toward the rear of that area that will all be part of the restaurant use. There is no parking proposed back there. For the most part it will be the patio.

Mr. Kenderdine asked what is being proposed for behind the patio and kitchen area. Mr. Sullivan stated right now it's mostly a gravel type of driveway. Mr. Parker's plan is proposing lawn area for that space. Mr. Testa stated plan 4 of the Parker plan states planned patio area. Mr. Sullivan states there will be 2 separate lots with 2 separate uses. There area behind the patio, behind the fence will remain as part of lot 7. Right now it is a gravel area and it will be converted to lawn and will be on lot 7.

No members of the public in attendance.

Brian Taylor sworn in by Attorney Brian Schwartz.

Brian Taylor
95 Watchung Avenue
North Plainfield, NJ

Mr. Taylor has testified before the Board before and has been qualified as an architect previously. He is still licensed.

Mr. Taylor is familiar with the site and he prepared the architectural plans that were submitted to the Board. The Pearl Street property is a 2 story mixed use building. The 1st floor is a commercial use, he believes it was a salon. The 2nd floor was a dwelling unit. He believes the apartment was not permitted and they are seeking approval for that. There are no interior alterations planned for that building.

54 Watchung Avenue is an existing tavern with no kitchen. The proposal is to create a new kitchen out of an existing garage which is a separate building behind the tavern and provide a paved patio area adjacent to the new kitchen for outdoor seating.

Mr. Taylor stated originally, they first proposed a covered patio area where the edge of the patio was in line with the edge of the garage. That is the gray shaded area on the plan. Subsequently, Mr. Penaloza wanted to expand the patio, which is indicated in orange as a point of reference on Mr. Parker's plan. It does not go all the way back to the proposed lot line. Between the edge of the patio and the proposed lot line would be lawn area. Mr. Parker would have to update his plan showing this additional paver area on his drawings and is reflected on Mr. Taylor's drawings. None of the patio area is covered with the exception of the garage. At the time, they prepared plans with footings for a future trellis that would provide lighting. They will provide a lighting plan for the trellis. The lighting will be low level lighting for dining and egress purposes.

Mr. Taylor showed the points of egress from the street through the tavern and through the driveway. There are 3 separate exits through the tavern to the street.

Mr. Taylor stated in regard to occupancy, the occupancy is determined by building code, it's the same calculations the fire department would use to determine maximum occupancy and it's based upon use. They will meet all the building code requirements for egress. There are enough plumbing fixtures for the existing bar and the 40 chairs that are planned for the exterior patio.

Mr. Schwartz asked about the proposed lot line between lot 7 and lot 10 and whether it will be closed off. Mr. Taylor stated Mr. Parker can confirm whether there is a fence or not.

Mr. Grygiel asked the architect if there were modifications proposed for the mixed-use building. The architect stated they are not proposing any changes architecturally. There is a free-standing sign that will remain. There is an existing plantar that will be renovated to make it more appealing.

Mr. Lewis asked about the vacant building on the corner lot and what the status was of that. Mr. Testa did not have any information on that other than it's vacant.

Chairman Kenderdine asked if the existing garage was going to be razed or if it will be renovated into a kitchen. Mr. Taylor answered the existing garage will be renovated. Mr. Kenderdine asked how they will get from the kitchen to the restaurant. Mr. Taylor stated it's an exterior walkway. Mr. Taylor stated it is an operations question as to how they will operate in inclement weather with bringing food into the restaurant.

Chairman Kenderdine stated it looked like there were 4 offices on the 1st floor of 68 Pearl Street. Mr. Taylor stated there is no new construction in that space, it is the existing condition of the space. Those existing spaces were labeled as offices.

No members of the public in attendance.

Steve Parker sworn in by Attorney Brian Schwartz.

Steve Parker
East Main Street

Somerville, NJ

Mr. Parker is an engineer licensed in NJ since 1991. He has been an owner of Parker Engineering since 1995. He's testified before this Board and other Boards in Somerset, Hunterdon, and Middlesex Counties as a professional engineer for applications similar to this one.

Mr. Parker's credentials were accepted.

Mr. Parker is familiar with the site and the proposal before the Board. He prepared the engineering plans submitted to the Board. Mr. Parker stated that 54 Watchung Avenue is a property that is irregularly shaped and not much bigger than the building. It is a 2600 square foot lot. They are proposing to change the lot line to make the lot bigger and encompass the garage behind the building. This would increase lot 10 by 4,000 square feet and decrease lot 7 by 4,000 square feet. Currently lot 10 is occupied by the building and the driveway to the right of the building. By moving the lot line back it expands lot 10 and allows the applicant to convert the existing garage that is part of lot 7 into a kitchen and provide an outdoor seating area around that. Right now there are trailers stored on lot 7. It's a gravel area that's been used for parking equipment and vehicles back there. The area not used for patio at 54 Watchung Avenue will become lawn. The trailers will be removed from behind the building on lot 7 and all the gravel will be converted to lawn. The project will result in a significant reduction of impervious coverage. The net change will be about a 6,500 square foot increase of pervious area for the project. The lots will become a little more regularly shaped. The site will be improved by eliminating parking areas and converting it to pervious areas.

For lot 7 they are proposing 7 parking stalls and an enclosure for trash and recycling in the corner of the parking lot. There will be site lighting for the parking areas. The existing sign will remain and will be re-signed and the existing planter in the front will have new plantings.

On page 3 of Mr. Testa's letter under item 27, there is an exterior lighting plan including standards, lighting data, foot candles, not provided for lot 10. They will provide those details for proposed lighting on lot 10.

For landscaping and buffering, item 28 on page 3, they will show that on the plan. There will be new shrubs and plants in the existing planters on lot 7. There isn't too much of an area to provide plants on lot 10. The front of the building is sidewalk up to the curb, behind the building and on the side, there isn't really room to provide any additional landscaping. The 6 ft fence will serve as a buffer between the properties.

On page 5, item 5 regarding the County Health Inspector approving the kitchen would be a condition of approval.

Item 6, they will provide a lighting plan for the trellis.

Item 7, they will provide.

Item 8, will be required to be posted with the Finance Department

Item 9, escrow will be required with the Board secretary.

Item 10, applicant will comply with this as well.

Item 11, the plans were reviewed by the construction official, the police department, and fire department and they had no comments.

Item 12, the applicant will comply.

Item 13, the applicant will comply.

The plan is to connect the new building to the existing sanitary line in the tavern. There will be no extension of utilities. They will use the existing lateral connections that are already there as well as extending the water and electric from the existing building.

On page 6, comment 2 says the plans need to show how the sewer drains from the kitchen will be connected. They will have that included on the plans.

D number 1, the storm drainage and questions about that will be included on the drawings as well.

Comment number 2 under D, he doesn't believe there are DEP permits required. The lot is out of the flood hazard area. This can be discussed with Mr. Testa and if there are DEP approvals, they can secure those. They are not proposing new development or clearing.

Comment F3, on lot 10, there is a dumpster and recycling storage area. The Borough ordinance requires it to be enclosed so they will provide that.

Any other agency approvals will be secured as well.

Mr. Schwartz asked Mr. Parker if there will be a fence between lot 7 and lot 10. Mr. Parker stated there will be a 6 ft board fence.

Mr. Schwartz stated the Board typically will ask for a lot more landscaping than proposed and a condition to approval will be that the applicant provide a landscaping plan subject to approval by the Borough Engineer. He suggested border landscaping inside the fence. Mr. Parker stated they can work with Mr. Testa on that.

Mr. Schwartz asked what is going to take the place of the trailers on lot 7. Mr. Parker stated it will be lawn.

Mr. Testa asked if the parking area for the Pearl Street mixed use is already paved. Mr. Parker stated part of it is paved and what they are proposing is a newly paved parking area. Mr. Testa asked if there is any curbing or Belgium block proposed which is required by borough ordinance. Mr. Parker stated it isn't proposed here because it could cause a problem controlling storm water runoff and snow removal. They did not believe it to be necessary because it's right next to a stream. If it is a requirement, they would request a waiver from that. They can provide wheel stops if there is a concern there. Mr. Testa thinks it can be put in and leave water openings and landscaping could be added on the back side of the parking spaces. He isn't sure how the 12x10 dumpster location will be accessed. Mr. Parker stated it will probably not be a dumpster, it will be cans that would be wheeled out for curbside pickup or would be picked up from the enclosure.

Mr. Schwartz asked about garbage storage on lot 10. Mr. Parker stated right now containers are stacked to the right of the building in the driveway. Mr. Testa indicated in his letter that the Borough ordinance requires that area to be enclosed so they will provide an enclosure for those containers. It will probably be containers and not a dumpster. The enclosure is not shown on the plans. It was brought up by Mr. Testa in his letter and they agreed to provide the enclosure.

Mr. Grygiel concurs there is room for additional landscaping.

Mr. D'Armiento asked for clarification about whether the garage will be connected to the building. Mr. Parker stated there were early discussions about doing that but after Mr. Taylor investigated that, it was determined it would be better as a separate structure. Mr. Parker will correct that note on the plans after discussing it with Mr. Taylor.

Mr. D'Armiento asked if there would be a covered walkway for transporting food during inclement weather. Mr. Taylor stated there were early drawings showing a possible connection but there wasn't a feasible option. The owner opted to leave it as a separate building. He explained that it wouldn't be any different than door dash where the food is covered and delivered to people. He stated it would be an operational problem that management would have to figure out. Mr. D'Armiento stated his concern is that it's set up to be an improper setup if there's no covering. Chairman Kenderdine asked if that would be something that would be looked at by the State for approval for the kitchen. Mr. Testa stated the County Health Inspector will have to approve the kitchen.

No members of the public in attendance.

9:02pm five minute break.

9:09pm meeting reconvened.

Professional Planner Michael Pessolano sworn in by Attorney Brian Schwartz.

Michael J. Pessolano
140 Elmwood Avenue
Bogota, NJ

Licensed Professional Planner in NJ. His license in good standing and he has been practicing for 40 years. He recently testified in front of this Board about a month or two ago.

Chairman Kenderdine accepted Mr. Pessolano's qualifications.

Mr. Pessolano is familiar with the site, the immediate area, and the proposal before the Board.

Mr. Pessolano reviewed the application, visited the site and walked around it and the entire area, reviewed the municipal review memos generated by the Board's consultants, familiarized himself with the applicable provisions of the zoning ordinance and Master Plan, and discussed the application with the applicant and his consultants.

Mr. Pessolano showed exhibit A1 with today's date, prepared by himself consisting of 9 pages. Page 1 is an aerial photo which he did not take. The 8 other pages are ground photos which were taken by

himself. Sheet 1 of A1 is an annotated aerial image which shows the planning setting for his analysis. The photo showed the 2 lots included in the application as well as surrounding land uses. It showed the 2 municipal lots close to the property as well as an industrial building, mixed use buildings, a vacant lot, a commercial building, and residential buildings.

Image 2 shows 68 Pearl Street looking at the front façade and northern façade.

Image 3 is the mixed use building right next to 68 Pearl Street.

Image 4 is the large industrial building adjacent to 68 Pearl Street.

Image 5 is the front of 54 Watchung Avenue and the driveway. He showed where the proposed enclosed trash area and an access door to the enclosed patio area would be. He mentioned improvements to the appearance of the structure and sidewalk replacement.

Image 6 shows the vacant commercial building on the corner of Watchung and Pearl.

Image 7 shows the commercial building that sits over top of the Green Brook in the City of Plainfield.

Image 8 shows the vacant lot across the street from 54 Watchung Avenue.

Image 9 shows the mixed-use building, retail on the ground floor and dwellings on the upper floor.

He evaluated the application from a Planning perspective. There are 2 adjacent lots and 2 separate principal structures, one on each lot and a proposed kitchen area in an existing detached garage that will sit on lot 10 but currently sits on lot 7. There is a proposal to create a patio area behind the existing tavern and provide 40 seats and 10 tables. This would require 14 parking spaces. A parking variance is required. For the existing mixed-use building, the residential component did not go through an approval process and they are seeking to validate that part of the mixed-use building and the ground floor would be an office or retail as permitted by the zone. A D2 variance is required for lot 7. The building is not being expanded but the land available for the use is being shrunk. That is viewed in the case law as an intensification of a preexisting nonconforming use and that relief will be bundled with D1 proofs for creation of a mixed-use building on lot 7.

The project concerns 2 pieces of land and offers the following public benefits. It advances the property upgrade and reinvestment intentions and objectives of the Municipal Master Plan and the area needed rehabilitation. It will also result in more regular lot shapes. It will provide for more attractive appearances of the lot fronts and the interior of the lots. There will be conforming parking for the mixed use building as to the number of spaces and a freshly paved area. A conversion of an extensive gravel area to lawn on lot 7 will increase green space. Unsightly trailers that occupy the rear lot will be removed. Elimination of the rear yard setback deficiency on lot 10 is also a benefit. The tavern occupies almost the entire lot. The patio and dining will give the lot an expansive rear yard. Keeping the building in its place and refreshing it is also a benefit.

For lot 7, the mixed-use building, the proposed reduction of the area of the lot requires D2 relief for expansion of a nonconforming use. The residential element of the mixed-use building was not established through a formal approval process and a D1 variance is required for the validation of that.

The D1 analysis will fortify the D2 analysis.

Relative to a true mixed building where one isn't permitted, a D1 variance is needed and must pass the 4 parts of the Medici Analysis. Part 1 considers special reasons. He believes the general welfare is advanced, albeit slightly, by a housing unit that is near shopping, employment, and transit. It serves purpose A of the Municipal Land Use Law which is to promote the general welfare, purpose E which is appropriate population densities and appropriate locations, and purpose G, mixed use and appropriate location. Purpose I is also advanced by the application relative to the improvement of the property that will make it much more attractive.

Part 2 of the Medici Analysis focuses on the particular suitability evaluation. He finds the site particularly suitable for a mixed-use building by virtue of its condition and the site itself has adequate facilities, not just for parking for both uses commercial and residential but also adequate refuse facilities. Those 2 elements will be upgraded as well as the cleaning up of the site and adding greenery right next to a stream. The 2nd element of suitability is the context. The lot adjoins a large industrial building and it provides for a positive transition between the industrial complex and the mixed residential use to the south. It also reinforces the vitality objectives of the Master Plan and rehabilitation area. That happens because of this conversion at this location.

As to the negative criteria regarding detriment to the public good, he can see no detriments of a substantial nature. The occupied site adds eyes on the neighborhood on a remote corner of Pearl Street. It provides adequate parking so there are no off-site impacts from insufficient parking. Refuse handling and landscaping are being improved.

Part 4 of the Medici Analysis, he does not think there is a substantial impairment to the zone plan or zoning ordinance. The area is characterized by a mixture of residential and commercial uses. The Master Plan designates this area as an area for mixed use. This use blends well in this area in his opinion.

As to the enhanced quality of proof, he does not think there is damage being done to the governing body's intention to not have mixed use here or in the B1 zone. He also perceives a poor and worsening climate for 2nd story commercial spaces in general. That is a change condition that is material to the Board's consideration of enhanced quality of proof. This use speaks to a benefit for a more viable use in this out of the way location. There is a zoning intention to allow upper floor apartments over office uses in the B1 zone. This is generally mirrored by this smaller scale 2 space building which in his opinion is not large enough to be substantially impactful to the operation of the zone plan.

As to the expansion of the nonconforming use, which requires a D2 variance, the essence of this evaluation generally focuses on improvement because you accept that the use is there, whether it was permitted or not before. If you accept that the use is there, improvement is all one to do with preexisting nonconforming uses if it's impractical to eliminate it and start over. All of the benefits listed under the D1 variance would carry forth per the Pullen case where the facts of the application as a whole need to be weighed by the Board in rendering its decision. Particular suitability need not be demonstrated but it was addressed in the D1 analysis. The special reasons are a recitation of the benefits cited in the beginning of his testimony, advancing the goals for improvement articulated in the Master Plan, more regular lot shape, more attractive appearances for the property, conforming parking for the mixed use, conversion of gravel to lawn on a fully developed site near a stream, and elimination of the rear yard deficiency on lot 10. These aspects promote the general welfare, which is purpose A of

the Municipal Land Use Law and promote a desirable visual environment pursuant to Land Use Law Purpose I. The Burbage case noted that for D2 variances, aesthetic improvement alone is sufficient for the D2 variance.

As for the negative criteria, he sees no detriments that would rise to the level of a substantial nature. Adequate and improved facilities and more green area characterize the lot 7 part of the application. He sees no substantial impairment of the zone plan or zoning ordinance from a smaller lot for this relatively small building. The general intent of the zone is still being fulfilled.

As for the C relief, the bulk relief, lot 7 at 68 Pearl Street is still conforming even with the shrinking lot size so no bulk relief is required. Lot 10 exhibits a nonconforming front setback and a nonconforming side setback which are longstanding conditions not of this applicant's creation. Neither are being made more nonconforming so he believes they can be readily granted under the C1 hardship standard due to the location of the building on the lot.

As far as impact on the neighborhood, the public good, he sees no detriments of a substantial nature. This is a continuation of an existing condition. As to the impairment of the zone plan or zoning ordinance, this leaves 2 deficiencies that have existed for years and in no way interferes in his opinion with the overall intent of the B1 zone to host business uses here.

The other element of bulk relief concerns a parking shortfall. Lot 10 proposes to accommodate 40 new seats for dining on the new patio area. A tavern and a restaurant are permitted uses. 14 parking spaces would be required but none are provided on the property. He believes this relief can be granted pursuant to the CQ Analysis in which the benefits of the application as a whole need to be found to substantially outweigh the detriments. The same benefits applicable to the application as a whole carry forward. There are more than adequate parking resources in his estimation that exist in close proximity in addition to the 2 Plainfield lots which experience a regular turnover of spaces. He sees no detriments of a substantial nature here. The combination of food with alcohol is commonly encouraged in zoning ordinances and makes sense here. He sees no substantial impairments of the zone plan or the zoning ordinance from the parking relief. It will allow a permitted restaurant to add to the quality of life in the area, the quality of food choices, and it will allow for these permitted uses to promote the general welfare as intended by the zoning ordinance itself.

The benefits of the application as a whole, including the parking relief, clearly and substantially outweigh any detriments and he believes the Board can comfortably approve this application with the plan revisions that have been discussed and modifications and oversight by Mr. Testa. He thinks it is an overall good application and worthy of Board approval.

Mr. Grygiel asked Mr. Pessolano if his opinion remains the same whether the seats inside the building and/or outside that the parking variances be granted on the C2 criteria based on adequacy of parking in the surrounding area and other options for transportation to the restaurant facility. Mr. Pessolano stated the tavern had a parking shortfall to begin with and has functioned and been absorbed by the community. He believes the C2 test has passed by all the merits of the application.

Mr. Grygiel asked Mr. Pessolano with regard to the D1 or D2, if it's his opinion that the mixed-use aspect is not really integrated with the parking shortfall on the existing tavern site. Mr. Pessolano stated lot 7 carries its own weight with parking supply right on the lot.

No other questions from the Board.

There are no members of the public in attendance.

Chairman Kenderdine expressed concerns with the proposed drawings. He asked the Board if they felt comfortable in allowing Mr. Testa to review and approve these issues. There are issues with landscape and lighting that were not addressed with the plans.

Mr. Testa added they don't have the layout of the tables, the size of the tables and how they will be situated. Does the Board want a plan showing the layout of the tables and the chairs? He doesn't think they have an accurate count of how many seats are in the existing tavern to know how many parking spaces they should have currently that they don't have. They don't have the landscaping or the dumpster enclosure.

Chairman Kenderdine stated he didn't see an area on the drawings where the restaurant trash is currently. He asked Mr. Taylor if there is a dumpster at the end of the driveway. Mr. Taylor stated there is a dumpster at the end of the driveway and it will be enclosed. Mr. Schwartz stated they should add a condition that they will show revised plans for enclosures for garbage cans on both lots subject to the Borough Engineer's approval.

Chairman Kenderdine asked the Board if they wanted the applicant to come back with updated plans before voting for approval or can the Borough Engineer handle the changes.

Ms. Castro also added that once revised plans are submitted showing table and chairs, police and fire may have comments on the plans.

Mr. Estrella asked what the flooring is going to be in the patio area. Mr. Penaloza stated it is pavers. Mr. Estrella then asked Mr. Testa if they have to worry about drainage with the pavers. Mr. Testa stated the plans show some trench drains and dry wells installed to handle increased run off from the paver area. He did not see calculations for the dry wells. He doesn't know if approval was obtained from Mr. Klein previously. Mr. Testa did not inspect it so he does not know what is there. He stated it's something they could provide as far as calculations as to what was constructed. The pavers are already installed.

Mr. Schwartz stated it's up to the Board as to whether they want to bring the applicant back to see revised plans and limit the hearing on questions that come up on revised plans or whether the Board's prepared to vote based on the plans they have and if it's approved, allow the Borough Engineer to administratively review all the changes required by conditions. The Board could go either way depending on whether the Board wants to see the plans before voting or whether they are satisfied that they know enough to make a decision and they leave it to the engineer to fill in the details.

Chairman Kenderdine stated he thinks Mr. Testa has identified the issues they are concerned with and he is confident Mr. Testa can work with the applicant's consultants to develop appropriate final plans. He doesn't have a problem moving forward with approving the plans with conditions if Mr. Sullivan agrees.

Mr. Sullivan agreed.

No Board members had problems with this.

Mr. Sullivan does not see any substantial detriments. The mixed use on lot 7 and the tavern use on lot 10 are not inconsistent with the uses in the surrounding area. They are consistent with the Master Plan. This is a less intense use overall than what might be otherwise permitted in the zoning district. Mr. Pessolano indicated the mixed use is consistent with the Master Plan. The tavern and restaurant are permitted uses in the B1 zoning district. Special reasons were noted that advance the purposes of the Municipal Land Use Law. The aesthetics of both lots will be improved by the façade improvements, additional landscaping, and the replacement of the sidewalk along Watchung Avenue. The Pearl Street lot will have parking that will support the uses on that site. That's important for a residential type site because it will be overnight parking. The addition of landscaping and fencing are benefits to the application. The removal of trailers and the addition of the lawn area is an improvement. There will be a reduction of impervious coverage by taking away the gravel area. The site does not have parking now. Even though tables and chairs are being added, there is sufficient parking with the two municipal parking lots within walking distance. This is not an unusual aspect of a downtown business. For all of those reasons they ask the Board to consider granting the application with all of the conditions discussed.

No comments from the Board.

No members of the public in attendance.

The public meeting is closed.

Mr. Schwartz stated this application covers every kind of relief this Board can be asked to give. It starts with a subdivision approval. Two lots are being reconfigured. Site plan approval is necessary whenever there are exterior modifications of a commercial structure. There are 3 different kinds of variances. A D1 variance is a use variance, it has the highest enhanced burden of proof on an applicant. A D2 variance is often a deviation from a condition on a conditional use. It requires 5 affirmative votes. That's why Mr. Pessolano talked about special reasons under the Medici case and the property being particularly suited for these uses. Those are the criteria for any kind of D variance. Bulk variances are primarily existing. Some of them are being relieved by removing the trailers. The C or dimensional variances are not important in this application. The conditions are obvious, ones that relate to Mr. Testa's memorandum. They want to see engineering plans that are consistent with the architectural plans in terms of showing detail of the seating area and the patio, how there's going to be a connection between the kitchen and the patio, how many tables are going to be on the patio and where they are going to be located. They want to see more landscaping. The applicant will need to address the garbage enclosures which is a requirement of the ordinance. There will be no new signage unless it complies with the Borough's sign ordinance. The applicant will replace or repair all sidewalks and curbs that are in need of replacement or repair according to the Borough Engineer's approval. The fencing on lot 10 needs to be decreased to 6 ft, subject to the Borough Engineer's approval. Trailers need to be removed from lot 7 and that area will be lawn. The operation of the tavern and the patio will strictly comply with the Borough's noise ordinances. Revised plans will show better detail for the configuration of the tables and patio and the manner of connection between the kitchen and patio area. All construction will comply with our SIS standards. Construction will comply with the revised plans. The applicant will pay all fees required by section 22-132.4 and 133 of the Borough's ordinance relating to development fees. Revised plans will be submitted in both paper and electronic format. No CO until all conditions are satisfied. Satisfaction of the conditions will be subject to the approval of the Borough Engineer and subject to approval of all other governmental agencies having jurisdiction over the application.

Motion to approve the application, which includes the variances, site plan approval and preliminary and final subdivision approval subject to the conditions made by Mr. D'Armiento. Seconded by Mr. Lewis.

Ms. Castro – yes

Mr. D'Armiento – yes

Mr. Estrella – yes

Mr. Lewis – yes

Mr. Battista – yes

Ms. Brown – yes

Chairman Kenderdine – yes

Motion has been approved.

Mr. Kenderdine believes this will be a benefit to North Plainfield.

Mr. Penaloza thanked the Board and he will do his best to satisfy the community.

Motion to adjourn made by Mr. Estrella. Seconded by Ms. Castro.

All in favor.

Meeting adjourned at 10:08pm.