

Christopher Rice gave his credentials which were accepted by the Board.

Mr. Christopher explained the applicant is proposing a single family residence. They are demolishing both structures and building a single family home with an attached garage, one structure. This is an undersized lot. We don't have the proper width. The proposed house will have the same footprint. To avoid having the structure in the front yard, very close to River Road, we attached the garage so it makes an "L" shape very appropriate for a narrow lot. The home will be 2½ stories. It will be well within the building coverage and height allowed. Because the main house isn't overly large we have some living space above the attached garage. It was designed so the structure goes down in height. From the street you will see mostly house.

Mr. Christopher explained the two side yard setback variances. There is 9' on one side and 14' on the other. The garage apartment is only 3' from the property line. We are going to improve both of those setbacks from 9' to 18'. We are going to double it. On the other side, the north side, the garage will be 10' from the property line. That 10' is only for the garage the main house conforms to the 20'. The hardship is we don't have the front yard. If we built the garage closer to the center of the lot you would not be able to turn in the garage. We designed it so you can pull into the garage. It will fit well on the property.

Mr. Gray asked what the square footage of the living space above the garage. Mr. Rice said between 350 and 400 s.f.

Mr. Gray asked what the square footage of the main house is. Mr. Rice said it will be just below 2,000 s.f. on the first and the same on the second.

Mr. Gray asked if he was going to address Mr. Hoffmann's review letter regarding the way the garage is attached to the house. Attorney Aikins said that design is necessary. If you were to fully comply what would the structure look like? Mr. Rice said the space over the garage is not intended to be a separate dwelling. It flows right through and there are no doors either. The "L" shape is because of the configuration of the lot. In Mr. Hoffmann's review he included the definition for an "Attached Residential Building." If we were to take the structure and move it over it would not be an issue but then the garage is in front of the house.

Mrs. Burne asked him to explain where the attachment of the garage starts to the main house. It looks like it is going to be a two family.

Mr. Rice said the walls are flush. Using the floor plan when you walk in the door you turn left to go into the kitchen, you can go through the same door and use the back stair to get to the space above the garage. There is no separate entrance.

Mrs. Burne said 350 – 400 s.f. above the garage. What is going to be above there? Mr. Rice second the second floor plan shows a bedroom with a bath and a sitting area.

Mrs. Morrissey asked about the back of the house. She asked if the pool is going to be the same size. Mr. Rice said the engineer will answer.

Jason Fichter gave sworn. He gave his credentials which were accepted by the Board.

Mr. Fichter said the biggest issue is the side yard setback. We basically are improving the existing situation. The lot is undersized. If we had the additional 25' this structure would be conforming.

Attorney Aikins asked about the design of the garage. Mr. Fichter said this is more geared to residential. This really is one dwelling not two residential dwellings.

Attorney Aikins said Mr. Gerken's letter comments 140-188A setbacks from the top of the bank and any structure within that. Mr. Fichter said this echoes DEP requirements. Approvals have been granted by DEP.

Entered into evidence:

A-4 DEP approval – CAFRA permit

Mr. Fichter said we have received CAFRA approval for construction of the new single family dwelling and additional structures. It is dated February 11, 2009.

Attorney Aikins said in Mr. Gerken's letter he has comments regarding pool fencing. Mr. Fichter said that will be no problem.

Attorney Aikins asked about the location of the filter and equipment. They are going to be next to the AC units. Mr. Fichter said correct.

Attorney Aikins asked Mr. Fichter to give testimony with regard to what the MLUL regarding variances. Mr. Fichter said the intent of the ordinance is served and met. He said he believes it will not be any detriment. It is an improvement over the existing condition. There is substantial buffer on both sides of the property. They will not be disturbed during construction.

Attorney Aikins asked any additional landscaping. Mr. Fichter said there is a beautiful landscape plan.

Mrs. Burne asked when you amend the plan will you also add that deck. Mr. Fichter said yes.

Mr. Gray asked about the 160' X 100' riparian grant. Mr. Fichter said Mr. Hoffmann is referring to the tax map. That is not accurate. The surveyor went to DEP and got the information there. Attorney Aikins said regarding the riparian plan we will submit the grant. Mr. Gerken said send it to the assessor's office.

Mr. Gray said you also are going to need a variance for the garage. You only asked for the side yard setback. Attorney Aikins said this is really not an attached residence it is an essential part of the single family residence. It does not have a separate entranceway. Attorney Cramer said could we get a deed restriction. Attorney Aikins said yes. Mr. Gray asked if a variance is needed for that. Mr. Gerken said he doesn't think so. It is all part of the same building. There is no kitchen or entrances it is not a separate building.

Mr. Slocum said #7 in Mr. Hoffmann's letter the front garage and guest structure. Is that what you're talking about? Attorney Aikins said yes. It does not function as a separate residence. It is a bedroom over the garage.

Chairwoman DeSarno said the large trees to the right of the property will it stay? Mr. Fletcher said it will stay.

Mr. Gray asked if during construction all the vehicles will be on the street or on site. Attorney Aikins said there is a paved driveway and that is a starting point. They can park to the right and left without impacting the neighbors. Mr. Fletcher agrees with that.

Michael Webster was sworn.

Attorney Aikins said you and your wife are the owners of the site. Mr. Webster said yes.

Attorney Aikins said you instructed Mr. Rice to prepare the plans. Mr. Webster said yes.

Attorney Aikins said you asked him to prepare the plans for the room above the garage. Mr. Webster said yes.

Attorney Aikins asked if the tree at the northeast corner be staying. Mr. Webster said yes.

The application was open and closed to the public.

Mr. Gray made a motion to approve the application subject to the submittal of an as-built survey, plot plan and landscape plan. Mr. Slocum seconded the motion, which was unanimously approved by a roll call vote. (Messrs. Gray, Slocum, Mesdames. Burne, Draper, Morrissey and DeSarno voted yes.)

#BOA6-2009 – Date application complete: March 23, 2009

APPLICANT: ISLAND SCOOTERS, LLC

PROPERTY: 2209 Highway 35, Block 807, Lot 2, OP-2 zone

RELIEF REQUESTED: Use

Attorney Cramer reviewed the file and stated the Board had jurisdiction to proceed.

Mark R. Aikins, Esq. appeared for the applicant.

Attorney Aikins said this application has gone through the TRC process. The existing site has been vacant for some time. We are asking for a waiver of site plan.

Sworn by Reporter Arnone:

Gregory Bentley
Glenn Gerken
Cheryl Bergailo

Entered into evidence:

- A-1 Jurisdictional Items
- A-2 Survey of property prepared by Charles C. Widdis last revised April 20, 2009
- A-3 Signage plan prepared by FastSigns

- BOA-1 Engineering plan review prepared by Glenn Gerken dated April 16, 2009
- BOA-2 Planning plan review prepared by Cheryl Bergailo dated April 21, 2009
- BOA-3 Wall Township Bureau of Fire Prevention plan review last revised May 20, 2009
- BOA-4 Engineering plan review prepared by Glenn Gerken dated April 15, 2009

Attorney Aikins asked Mr. Bentley to describe his business and what his plans are for that business in Wall Township. Mr. Bentley said it is a motor scooter shop, just new scooters.

Attorney Aikins asked how he found this site. Mr. Bentley said he has lived in Brick & Wall and is familiar with the site.

Attorney Aikins asked for the history of this site. Mr. Bentley said it was a gas station for most of the time. It is vacant now. It is on the north side of 35. It is next to the ice cream store.

Attorney Aikins said you are just going to use the south half of the site. Mr. Bentley said yes.

Attorney Aikins asked how does your business work from opening to closing and what will happen at the shop at this location. Mr. Bentley said he sells only new scooters. They greet customers and show them the product. We sell accessories as well. We also service the scooters.

Attorney Aikins asked what is your estimated number of customers on a daily basis. Mr. Bentley said maybe five or six.

Attorney Aikins asked for the hours. Mr. Bentley said Monday thru Friday – 9:00 A.M. – 7:00 P.M., Saturday – 9:00 A.M. – 6:00 P.M. and Sunday – 10:00 A.M. – 4:00 P.M. He said they cannot sell on Sunday because of Motor Vehicle.

Attorney Aikins asked about employees. Mr. Bentley said probably four.

Attorney Aikins asked how the site would function. Mr. Bentley said there would be two entrances and parking would be along the fence area.

Attorney Aikins said the survey shows a stone area will that be paved. Mr. Bentley said yes.

Attorney Aikins said you are proposing a number of other site improvements. He asked what is proposed with the planter. Mr. Bentley said we would basically clean it up. Attorney Aikins asked if they submitted a plan to Ms. Bergailo. Mr. Bentley said yes. Attorney Aikins asked if the building was in need of improvements. Mr. Bentley said the entire place will be an open showroom.

Attorney Aikins asked if the customers would be allowed to take a test drive. Mr. Bentley said we do not allow test driving. That would not occur.

Attorney Aikins asked about outside storage. Mr. Bentley said we do not propose any outdoor storage. Everything will be inside. There may be one or two scooters out for display. Everything is indoors.

Attorney Aikins said the building will be ADA compliant. Mr. Bentley said yes.

Attorney Aikins asked about deliveries. Mr. Bentley said the scooters will be delivered on trucks with lift gates. They are delivered in card board boxes which are broken down and taken away. Attorney Aikins said delivery trucks will never be on 35 only on the side. Mr. Bentley said yes.

Attorney Aikins asked how the site lighting will function. Mr. Bentley said there are two existing light posts and we are proposing one additional. Attorney Aikins asked where the third will be. Mr. Bentley said along the fence. Attorney Aikins asked if there will be any lighting on the building. Mr. Bentley said no. Attorney Aikins asked when the lighting will be on. Mr. Bentley said from dusk to 10:00 P.M. Attorney Aikins said it will go off after closing; it will not be on all night. Mr. Bentley said correct.

Attorney Aikins said you are going to reduce the extent of the paving and expand the green area. Would you be willing to work with the Board Planner? Mr. Bentley said yes.

Attorney Aikins said you will submit a re-paving and re-stripping plan. Mr. Bentley said correct.

Attorney Aikins said the parking spaces proposed meets the requirement. Mr. Bentley said yes.

Attorney Aikins said there is no existing signage correct. Mr. Bentley said correct. Attorney Aikins said the ordinance allows a maximum of 50 s.f. You would not have more than 34 s.f. on the building. Mr. Bentley said correct. Attorney Aikins said no variance for signage. Mr. Bentley said correct.

Mrs. Morrissey said since it was a former gas station what about the tanks. Attorney Aikins said the tanks were removed. The existing site is part of a superfund site. The owner is seeking no further action from DEP.

Mrs. Morrissey asked if there will be an impact on wetlands. Attorney Aikins said not from this site.

Mrs. Morrissey asked about the dumpsters. Attorney Aikins said toward the southwest corner of the property.

Mrs. Morrissey asked if there were any problems with drainage. Attorney Aikins said he visited the site there is a catch basin along 35 it seems to pick up any excess rain water. No change to that is proposed.

Mrs. Morrissey asked about additional landscaping. Attorney Aikins said he would submit a plan with regard to the planter.

Mrs. Morrissey asked how many scooters would there be inside. Mr. Bentley said maybe 25.

Mrs. Morrissey asked Mr. Gerken about the waiver from site plan. Mr. Gerken said what they have submitted is adequate. Anything the Board needs should be on the plan. Attorney Aikins agreed.

Chairwoman DeSarno said what if she came to the store and wanted to try out the scooter before she bought it. Mr. Bentley said no for insurance reasons. You are not allowed to test drive it.

Mrs. Morrissey asked if they had a photo of the exterior of the Long Branch location. Mr. Bentley said yes.

Entered into evidence:

A-4 Three pages of photos

Chairwoman DeSarno said we spoke about the pylon sign, have you discussed this? Attorney Aikins said since the sign conforms it is hard to say that a conforming sign come down. Maybe we can slide it a little toward the south. The square footage is only 16 s.f. Chairwoman DeSarno suggested lowering it. Attorney Aikins said slide it and bring it closer to the ground. Mr. Gerken said that sign is about 40 s.f. not 16 s.f. The building sign is 16 s.f.

Mrs. Burne said would you be willing to not put that sign in at all. Mr. Bentley said that is our only exterior sign. I would rather have it lower.

Alison Coffin, Planner, was sworn. She gave her credentials which were accepted by the Board.

Attorney Aikins asked if she was familiar with the application. Ms. Coffin said yes.

Attorney Aikins asked if she had the opportunity to review the evidence. Ms. Coffin said yes.

Attorney Aikins asked Ms. Coffin to talk about the site functions. Ms. Coffin said there will be limited modifications to the building. It is an existing developed site. The site contains an ice cream store. It is a commercial site along 35. It is in the OP-2 zone. Scooter sales are not permitted in the zone so a use variance is needed. The site is just north of the circle. The surrounding facilities are commercial. This will be a low generating use. The proposed use is small scale and will not generate much traffic. The existing building can accommodate the use. There is no adverse impact on the surrounding properties. There will not be much traffic or noise. It will enhance the aesthetics. This would be consistent with the character of the area.

Attorney Aikins asked about the signage on site. Ms. Coffin said existing is about 40 s.f. Regarding the planter sign if we moved it most of the area is asphalt and the areas not paved are within the ROW. There is another sign on site not being used. They may be able to get permission to use that. Attorney Aikins said if permission is granted would it be appropriate for southbound traffic. Ms. Coffin said yes.

Attorney Aikins asked if they can stay within the 50 s.f. allowed. Ms. Coffin said yes.

Chairwoman DeSarno asked about the height. We have an issue with the height.

Mr. Gray said looking at the photos of the signs the total looks way more than 50 s.f. Information on the signs is not allowed. Attorney Aikins said whatever the requirements are we will comply. Mr. Gray said ok.

Attorney Aikins said we are talking about a fully conforming sign. Chairwoman DeSarno said she understands the need for signage but she doesn't like the height.

Mrs. Burne said the sign you have on the building we don't want a business to come into town and no one knows you are there. Put the number and address so you can see it. Too much signage is not good in my opinion. I don't think it is necessary to have that pylon sign. You have signage on the building that is sufficient. Mrs. Draper said somebody going by at night might not know where the store is.

Mr. Gray said this is a great use for the site. Our only issue is the sign. I would prefer a lower sign. The only advantage to not having the pylon sign is more signage on the building. It is something to consider. He said he would prefer the signs on the building. He said he would prefer the pylon sign on the ground.

Attorney Aikins said one of the intentions is not to light the building signage. There has to be some signage that is illuminated. The ice cream store has made application for an illuminated sign. The pylon can definitely be lowered. It will have a maximum height of 10'. That is a sufficient reduction in height. If they have 40 s.f. sign then we have 10 s.f. on the building. That is not excessive signage. There will also be landscaping in that planter.

Chairwoman DeSarno said that is ok with her.

Mr. Slocum said overall he realizes there is a sign issue. I personally don't have a problem with the sign. The fact that it is being lower would make it look better.

Chairwoman DeSarno asked do you rent the scooters for the day. Mr. Bentley said no rentals.

Mrs. Draper asked about the other pole that is going to be removed. Attorney Aikins said it will be removed.

Mr. Gerken said whatever you decide regarding the signs put it on the plans.

Chairwoman DeSarno said she would like Ms. Bergailo to see the rendering of the sign and landscaping.

The application was open and closed to the public

Mr. Gray said maybe we should see what the signs would look like. Attorney Aikins said we would not exceed the requirements just reduce the height. This is the key season for Island Scooters. The height and square footage will comply.

Attorney Cramer said the overall height would not exceed 10'. Attorney Aikins said correct.

Mrs. Morrissey said signage has also been an issue. She asked Mr. Gerken what his recommendations are. Mr. Gerken said that is something the Board has to decide. He said it is difficult for him to say something because it is a conforming sign. It conforms to the ordinance.

Mrs. Morrissey asked about the signs on the building. Attorney Aikins said other than the 10 s.f. sign nothing else will be on the building.

Mr. Gray made a motion to approve the application subject to the signage conforming to the 50 s.f. The 40 s.f. sign not to exceed 10' in height. Mrs. Morrissey seconded the motion, which was unanimously approved by a roll call vote. (Mr. Gray, Mesdames. Morrissey, Burne, Draper, Mr. Slocum and Mrs. DeSarno voted yes.)

9:15 P.M. the Board recessed.

9:20 P.M. the meeting resumed.

Chairwoman DeSarno recused herself on the Squan River Group (Harpoon Willy's) application.

CARRIED APPLICATION

#BOA19-2008 – Date application complete: June 20, 2008. Carried from August 2, 2008, September 17, 2008, November 12, 2008, December 3, 2008, February 4, 2009, March 18, 2009 and April 1. 2009.

APPLICANT: SQUAN RIVER GROUP (HARPOON WILLY'S)

PROPERTY: 2655 River Road, Block 886, Lot 1.02, R-30 zone

RELIEF REQUESTED: Use

Timothy B. Middleton, Esq. appeared for the applicant.

Attorney Middleton gave a brief overview. He said there are only six members here this evening and if this comes to a vote I would like to have seven members.

Mrs. Morrissey said next meeting will be July 1, 2009.

Mr. Steinberg, Esq., representing some of the neighbors, said he thought the next meeting was June 1, 2009. If we don't finish with our planner this evening there will be a problem.

Entered into evidence:

A-10 Amended Preliminary and Final site plan prepared by R.C. Associates dated January 19, 2009

BOA-12 Planning plan review prepared by Cheryl Bergailo dated January 29, 2009

BOA-13 Engineering plan review prepared by Glenn Gerken dated February 4, 2009

Attorney Middleton said this has been carried because the Board did not always have a quorum. He said he has people here tonight that are in favor of the application and he would like them to be able to speak so they don't have to come out again.

Attorney Middleton explained the applicant is requesting permission to locate a deck in the rear of the existing restaurant. There will be tables for 44 patrons. The Board has heard testimony from the Architect, Planner and Engineer. The applicant put on the record that the restaurant is a pre-existing non-conforming use. It is next to McCarthy's Marina and several office buildings. The applicant agreed to expand the buffer. The applicant has received leases from McCarthy and Bahadurian for additional parking spaces. They said they would repave the parking lot and formalize it. There will be additional plantings on site. At the second meeting the applicant requested permission during the weekdays be open until 10:00 P.M. and on the weekends until 11:00 P.M. That has been modified to 9:00 P.M. on weekdays and 10:00 P.M. on the weekends. If you have been to the restaurant when you walk in the front door to the right there is a room that holds 25 people. The applicant, because of parking, will stipulate on the record that room will be closed when the deck is open. That was done in response to parking. Even if the Board was to approve this application the case does not end here the applicant would have to request permission from the Township Committee to serve alcohol on the deck. The liquor license is for Harpoon Willy's. The Township Committee is the legal authorizer. They need approval before liquor is served outside. The liquor license runs from July 1 thru June 30. The neighbors have raised issues regarding parking and noise. The applicant has gone out of his way to satisfy that. Even if you grant this use variance the liquor license is regulated by the Township Committee. If there are any problems they can revoke permission to serve liquor outside.

Mr. Kociuba, previously sworn, said he was involved with the revised plans. We have made a number of changes. The largest change is the elimination of five parking stalls on the north side of the building. Those five parking stalls are the closest to the dwelling. We will plant 7' – 8' Leyland cypress trees to enhance the buffer. It has a sufficient buffer but we will add to that.

Mr. Kociuba explained there will not be much headlight glare. The trees provide additional buffer. We had 74 parking spaces and that will go back to 66. There are currently 63 on site. We are increasing three on Old Bridge Road, two spaces along River Road that we are going to add and three to the stone parking. We are going to formalize the parking.

Mr. Kociuba said it would be less of an impact on the adjoining properties. In addition to eliminating or closing the small room there are 25 seats the applicant is agreeing to not utilize during the time the deck is open. That would change the parking. There will be a total of 95 parking stalls instead of 103, reducing the parking deficit and enhancing the amount of parking. There will be 12 extra spots at the marina for employees and 25 at the office complex. There are agreements for those parking stalls. Peak usage does not coincide.

Mrs. Morrissey asked what the maximum occupancy is. Mr. Kociuba said the total existing is 120 seats in the restaurant with the deck it will be a total of 141 seats.

Mrs. Morrissey said regarding the parking agreements what is to stop them from rescinding them or selling the buildings. Attorney Middleton said these run with the land. Mr. Gray said they run with the land. Attorney Middleton said as an example if I were to buy Mr. Kociuba's building the lease would run with the land. Mr. Gray asked how long. Attorney Middleton said

five years, three open terms of five years each. He explained if we don't have a lease then the application with the Township Committee regarding the liquor license would be subject to the leases.

Mr. Slocum said it runs with the land? Attorney Middleton said McCarthy wants to sell the property he is going to buy the obligations also. It runs with the land. It will be renewed every five years. We would agree to it being put into the resolution. Attorney Cramer said any approval would be subject to obtaining all these leases.

Attorney Middleton explained this is unique. The Board of Adjustment deals with zoning issues and the Township Committee has to renew the license every year.

Attorney Steinberg, representing the neighbors, asked if these leases have been filed. Attorney Middleton said his client will identify them and give you a copy.

Attorney Steinberg said these spaces are not in Wall. Mr. Kociuba said correct.

Attorney Steinberg said there is no site plan or plot plan. Mr. Kociuba said not on this application.

Attorney Steinberg asked what will designate those parking spaces for Harpoon Willy's only. Mr. Kociuba said those spaces will be open when necessary. The marina closes at 5:00 P.M. The marina parking is for employee parking. Attorney Steinberg said what if there is some sort of conflict. What if those spaces are not available to the employees? You are assuming that there will be extra parking. Mr. Kociuba said there is an existing agreement.

Attorney Steinberg said there is another office building under construction. Mr. Kociuba said it is open. Attorney Steinberg said it is fully occupied. Mr. Kociuba said yes. He said being in the area after hours he can't say that he has ever seen more than one or two cars in the parking lot.

Attorney Steinberg asked what specific spots are dedicated for Harpoon Willy's. Mr. Kociuba said the lot to the south of the building. Attorney Steinberg said if there is available parking it can be used. Attorney Middleton said there will be a designated area close to Harpoon Willy's. Attorney Steinberg said you are just assuming that those parking spaces will be available. Mr. Kociuba said he is familiar with the area. That building is office and has been for 25 years. No one parks there after hours or on weekends.

Attorney Steinberg said you are not going to use the small room off to the side when they are using the deck. Who is going to police that? Mr. Kociuba said the owners and the Police Department. Attorney Middleton said when we renew our liquor license if there are problems they can close the deck.

Attorney Steinberg said is it zoning or code enforcement. Attorney Middleton said when a liquor license is granted there may be stipulations, hours of operation, live music, etc. Attorney Steinberg said you indicate that you are going to shut the outdoor deck 9:00 or 10:00 P.M. Mr. Kociuba said no patrons on the deck at 9:00 or 10:00 P.M. Attorney Steinberg said the deck would be close after that time. Attorney Middleton said they are off the deck at that time.

Attorney Steinberg asked if it was a permitted use in this zone. Mr. Kociuba said it is a residential single family zone. Attorney Steinberg said this is a pre-existing non-conforming use and the applicant wants to expand. Mr. Kociuba said yes.

Attorney Steinberg asked when was the last Master Plan update. Mr. Kociuba said 2005. Attorney Steinberg said it was also updated in 1999. Mr. Kociuba said yes.

Attorney Steinberg asked how this was reviewed in the Master Plan review of 1999 and 2005. The Master Plan did not change the zoning for this property. Mr. Kociuba said that is correct. He said due to the location of the parking lot for the office and marina there exists a transition. The addition of the outdoor dining area will enhance the use. This will provide outdoor dining for Wall residents. That is a benefit to the neighbors and residents of Wall.

Attorney Steinberg said if this site was vacant would you recommend this use. Mr. Kociuba said it has been there for more than 80 years that is not a fair question. It was there before the residents.

Attorney Steinberg asked about negative criteria. Attorney Middleton asked Mr. Kociuba if the Board granted this with the variances do you think it would have a substantially negative impact. Mr. Kociuba said no we have provided testimony, no substantial negative impact on the neighboring properties. The parking situation will be improved.

Attorney Middleton asked if the additional buffering would be negative or positive. Mr. Kociuba said it is positive. Any buffering would be a benefit.

Attorney Middleton asked if there is any real negative impact to the adjoining properties. Mr. Kociuba said the only one he can see is the noise associated with the business operation. We are not expanding the kitchen. It is as it exists today. No increase in traffic or deliveries. There will be no live music or outdoor PA system. All noise will be in accordance with the ordinances of the Township. The changes will not have any negative impact.

Attorney Steinberg said 44 people dining outside are not going to create any more noise than what exists. Mr. Kociuba said no detriment.

Attorney Steinberg said what after all of these improvements the applicant were to increase the area. Attorney Middleton said then we don't have outside dining. Mr. Kociuba said it is possible but it is not the intent of this application. Attorney Steinberg said it can continue in its present state without this. Mr. Kociuba said it could.

Attorney Steinberg said the applicant would benefit most. Mr. Kociuba said the applicant would gain some benefit. It is the patrons of the area that use the restaurant. Attorney Steinberg said all Township residents use this. Attorney Middleton said you will hear from my client. They have continually been asked about outdoor dining. Wall Township does not have outdoor dining.

Attorney Steinberg said is there a buffer requirement between the subject and residential. What is it? Mr. Kociuba said 75'. There is 7' existing. Attorney Steinberg said it will remain that

way. Mr. Kociuba said it will be 20' - 25' in the area where the five parking spaces were. Attorney Steinberg said you can't comply with the 75'. Mr. Kociuba said no.

Attorney Steinberg asked about impervious coverage. Mr. Kociuba said the existing impervious coverage is 42.3%. Attorney Steinberg said you are increasing the impervious coverage. Mr. Kociuba said by 3%.

Attorney Steinberg asked how the gravel spaces are counted. Mr. Gerken said anything gravel is impervious coverage. Attorney Steinberg asked how you formalize parking on gravel. Mr. Kociuba said when you have a gravel parking lot over time they become less defined. Attorney Steinberg asked about lines. Mr. Kociuba said we are not proposing any. Attorney Steinberg asked about paved aisles. Mr. Kociuba said the gravel has less impact.

Attorney Steinberg asked about CAFRA permits. Attorney Middleton said we don't need one. Attorney Steinberg asked if the parking was paved would you need it. Mr. Kociuba said no.

Attorney Steinberg said the spaces will be 9' X 18' not 9' X 19' which is required. Mr. Kociuba said 9' X 18'. The gravel area would be 18' deep.

Attorney Steinberg said in 1986 the Board of Adjustment denied an application similar. Have you seen that? Mr. Kociuba said yes.

Attorney Steinberg said in that application they were proposing an outdoor deck with 40 patrons you are proposing 44 patrons. Mr. Kociuba agreed. Attorney Middleton objected this is a legal argument. Attorney Cramer said don't get into case law this evening. Provide a brief to the Board. Attorney Steinberg said his previous opinion is this case is subject to res judicata. In 1986 this same application was made.

John Harkrader, 2649 River Road, asked do the employees come out at 5:00 – 5:30. Attorney Middleton said the applicant will testify regarding that.

Mr. Harkrader asked if Friday is a weekday. Mr. Kociuba said weekends it will close at 10:00 Friday & Saturday.

Mr. Harkrader said when you tell the people to get off the porch will you send them into the room that holds 25. Mr. Kociuba said at that time things will be winding down.

Mr. Harkrader asked where all these parking spaces are coming from. Mr. Kociuba said along the showroom area. Mr. Harkrader said there is still a problem. Mr. Kociuba said he is very familiar with the McCarthy operation. The parking on the hill they have to provide that for NJDOT. Mr. Harkrader said the McCarthy problem should be solved first.

Kevin Schuerman, River Road, asked about serving food and noise. Mr. Kociuba said no music outside. Attorney Middleton said no live music.

Mr. Schuerman said we are the closest property. There is a vacant resident lot next door to us. He asked if the liquor license is denied you will not go forward. Attorney Middleton said correct.

Mr. Schuerman said you will be open until 10:00 P.M. on the weekends. Attorney Middleton said yes.

Mr. Schuerman said people will be outside from lunch time.

Mark Brosnan, 2603 River Road, said this restaurant been here for over 80 years maybe 100 years. It is a historical site. The parking at the marina it is my understanding that there are not that many employees. How many at the marina? Mr. Kociuba said five or six. Mr. Brosnan said they are giving 16 spots and they close at 5:00 in the afternoon. Mr. Kociuba said to the best of his knowledge.

Mr. Brosnan said a lot of times on the weekends he has people at his home for a bar-b-que and they are there until 9:00 – 10:00 P.M.

Jack Pekarchik, 2650 River Road, said he lives two houses down on the opposite side. He asked if there is already a parking agreement. Attorney Middleton said yes.

Mr. Pekarchik said when people are out on their boats in the summer they are driving to the lot and they don't come back until maybe 9:00 – 10:00 P.M. Are you aware they block that parking off sometimes? Mr. Kociuba said he doesn't know of that. Attorney Middleton said they will investigate that.

Mr. Gray said the Board would like to see the parking agreements in writing.

Attorney Cramer said the next hearing will be July 15, 2009.

Attorney Middleton said he would like the chance to rebut any testimony.

Ms. Bergailo said could the applicant look at enclosing the north side of the deck. That may help limit views and noise.

Attorney Middleton waived the time limits.

RESOLUTION TO BE MEMORIALIZED:

ROBERT & KRISTIN COMAN - #BOA4-2009

Block 800, Lot 54

Slocum/Draper

There being no further business to come before the Board, a motion was made, seconded, and unanimously approved to adjourn the meeting at 10:40 P.M.

Respectfully submitted,

Betty Schinestuhl