

**CALL TO ORDER:** Chairman Shivas called the meeting to order at 7:30 p.m.

**ROLL CALL:** Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

*Members Absent:* Mayor Rubenstein

*Also Present:* Planner Paul Gleitz, Engineer Cory Stoner, Attorney Alyse Hubbard, Secretary Caitlin Phillips

**OPENING STATEMENT:** Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

**FLAG SALUTE:** led by Chairman Shivas

**MINUTES:** April 18, 2024. Mr. Proctor motioned to approve the minutes, seconded by Mr. McElroy.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Smith, Walsh and Chairman Shivas

*Abstaining:* Mr. Serrilli

*Absent:* Mayor Rubenstein

None opposed. Motion carried.

## **RESOLUTIONS**

SP8-2023 Byram Car Wash, 56 Route 206, Block 365 Lot 1.01, VC Zone

*Application for replacement of vacuums and monument sign*

Mr. Morytko motioned to approve the resolution, seconded by Mr. Proctor.

*Ayes:* Messrs. Proctor, Morytko, Smith, Chairman Shivas

*Abstaining:* Ms. Raffay, Messrs. McElroy, Serrilli, Walsh

*Absent:* Mayor Rubenstein

None opposed. Motion carried.

Z02-2024 Catherine Trader, 55 North Shore Road, Block 157 Lot 272, R-5 Zone

*Approval for concrete pad and propane tanks in the side setback*

Mr. Proctor motioned to approve the resolution, seconded by Mr. Morytko.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Smith, Chairman Shivas

*Abstaining:* Messrs. Serrilli, Walsh

*Absent:* Mayor Rubenstein

None opposed. Motion carried.

## **OATH OF OFFICE**

Mr. Gleitz was sworn in as the Planner.

## **SUBCOMMITTEE MEETING**

SP6-2023 Tomahawk Lake, 155 Tomahawk Trail, Block 343 Lots 1, 2, and 3, CR Zone

*Application for amended site plan and use variance approval to use Lot 3 for additional parking, reconfigure the overflow parking area and employee parking area, construct a slide and merry-go-round, and modify a ticket office for larger square footage*

Mr. Walsh said there are a lot of items being proposed, so there's a lot of detail needed in order to deem the application complete, including: confirmation that the septic and porta-john plan is to the satisfaction of the DEP and Board of Health, including details of those approvals; there is inconsistency between the proposed parking capacity and the capacity of the septic, so that needs to be clarified; environmental features included in their plan, especially in sensitive areas around the site; structure dimensions and setbacks; a photo log to identify the buildings that exist and are proposed; an interior circulation plan with dimensions of roadways; a traffic control plan that shows how vehicles will access the property, specifically customer queuing on and off the property; details on the proposed carousel; and the site plan that was approved by Hopatcong, which will allow parking for this site to take place on an adjacent lot in Hopatcong. Ms. Raffay noted everything included in this is related to the checklist and are necessary. Mr. Stoner added along with the environmental resource information on the plans, including wetlands, they need an Environmental Impact Statement. The applicant asked for a waiver, but with the parking, work near the lake, and the septic, that is needed. Ms. Hubbard said at the September meeting, the Board requested a new survey, and Mr. Gleitz suggested ways to do that without going out to survey the property, and the same plans have been submitted. Mr. Stoner said they have addressed certain items. Mr. Walsh motioned to deem the application incomplete, seconded by Ms. Raffay.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh and Chairman Shivas

*Absent:* Mayor Rubenstein

None opposed. Motion carried.

## NEW BUSINESS

### Z06-2024 Brian Kearns, 3 Bank Street, Block 227 Lot 370, R-5

#### *Application for reconstruction and construction of a second story addition to a single-family home*

Brian and Linda Kearns were sworn in, along with Donald Rick, their contractor. Mr. Kearns said they bought the house four years ago. On September 4<sup>th</sup> they had a power failure, and their emergency generator went on fire. The fire went up into the soffit vent, and went across the whole house, so there is a total loss of the house. Because the house is gutted, it's a good time to put two bedrooms upstairs. The footprint of the existing structure matches the proposed. The existing middle-bedroom has French doors, so it's considered a bedroom, but it just leads to the deck. The front kitchen is a small space. When Bank Street was built, they made it too narrow, so the front yard is two feet too small. He needs variances for the front and side setbacks.

Chairman Shivas asked if they are going to tear the rest of the house down. Mr. Kearns said it doesn't need to be torn down because, to put the fire out, the Fire Department needed to cut holes in the roof, and the roof collapsed, so the house is totaled. Chairman Shivas noted when someone tears the house down, it's no longer an addition, it becomes a vacant lot. Mr. Rick said between the water damage, the fire, and the smoke, the house is gutted— all the mechanicals are out of it. The framing on the main part of the house is still okay. The exterior walls will remain. They're not adding two bedrooms, they're relocating them to the second floor. The first bedroom on the second floor will stay, and the other two will match that. Ms. Raffay said on sheet 9 there's a column section of a footing. Mr. Rick said it's on the inside, shown on page 5, in the center of the house. It's holding up the beam that's on the second floor. Ms. Hubbard asked if one bedroom will be an office with two closets. Mrs. Kearns said there will be no closets—it will be an office. She confirmed the septic is approved for 3 bedrooms. Mr. Stoner looked at the Health Department records—January 25<sup>th</sup> of this year shows a County approval for the inspection of the septic, provided they don't exceed 3 bedrooms, with no change in footprint. Chairman Shivas confirmed there is a deck on the first floor. Mr. Rick said there's an existing balcony on the second floor.

Mr. Stoner reviewed the variances. He noted the addition is in the middle, so it's not even on the side with the nonconformity. The County approval should go on file for this application. Chairman Shivas noted the overhangs are the maximum distance. Mr. Rick said it will remain flush. Mr. Stoner asked if Mr. Kearns plans to get a new generator. Mr. Kearns said he's considering a permanent generator. Mr. Stoner noted this would be an accessory structure, and reviewed the requirements. Mr. Kearns said everyone was great- the Fire and Police Departments, neighbors, and their church.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Proctor motioned to approve the application as presented, seconded by Mr. Serrilli.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

*Absent:* Mayor Rubenstein

None opposed. Motion carried. Ms. Hubbard explained the appeal period.

### Z27-2023 Nicco Brancaccio, 22 Adair Street, Block 17 Lot 19, R-5 Zone

#### *Application for shed in the front yard*

Nicco Brancaccio was sworn in. He'd like to keep the shed in the front yard. It's temporarily acting as a garage. He's trying to buy the properties behind him so he can build another structure to have a permanent garage. The garage is 3 feet deep; he has a quad, motorcycle, and lawnmower which don't fit. He's using the shed for storage to keep the yard clean. Chairman Shivas asked if he received the Notice of Violation from the Zoning Officer. He asked if the fence is on his property. Mr. Brancaccio said the fence was there before he got there. They're planning on re-doing it. It's a small picket fence. If they have to move it when it's redone they can do that. Mr. Stoner said in 2019 there was an ordinance about the right-of-way strip about pre-existing structures. If it's replaced it needs to conform. Ms. Raffay asked if the shed is in the right-of-way. Mr. Brancaccio said it was originally, but he moved it. It was six inches over, and this past week he pulled it back 1.5 feet, so now it has about a foot between the property line and the right-of-way. It's a 10x10 shed on a gravel base.

Ms. Raffay confirmed the yard is flat, and asked why it can't be in the back. Mr. Brancaccio said he has a motorcycle and quads, so pulling them out would tear up the lawn. He's waiting for the lots behind him to come up for auction. He also has a 5-foot boulder in the middle of the yard. If he moves that, he could put the shed there. Chairman Shivas confirmed the lots behind him are vacant. Mr. Brancaccio said they're owned by the town, and was told he has to wait until they come up for auction. Ms. Raffay asked if there's somewhere on the driveway it could be moved to. Mr. Brancaccio said he could turn the corner, but anywhere else it would be in the middle. He had neighbors say this is a good spot because anywhere else is an eyesore. He has three trees that block it from the back side, and the cars block it from the road. They thought about where it should be put, and this is the most accessible place—this is the part of the yard that will never be used. There's another 20 feet to the

neighbor's yard, but there are pine trees and telephone poles there. Ms. Raffay asked the size of the driveway. Mr. Brancaccio said it's four cars wide and half of it is 2 cars deep, so it can fit 6 cars. Ms. Raffay asked about moving it back towards the house. Mr. Brancaccio said it's an L-shape. Next to the garage there's a deck, which has an access ramp. Ms. Raffay said on the survey it looks like there's 10 feet available at the corner of the driveway, so it's not near the ramp, and it would look close to the house. Mr. Brancaccio said that would have it stick off the house, and you'd be looking at the side of the shed. There's a basketball net near where Ms. Raffay suggested placing the shed. Ms. Raffay said it seems like a large yard. Mr. Gleitz said if it was further back he could put a couple bushes around it. Mr. Morytko said the "L" is paved right on to the road. Mr. Brancaccio said if it's further back, it's just a shed in the middle of the yard. Mr. Gleitz said that's where sheds go. Mr. Brancaccio said he sees sheds in the corner or next to the house. Ms. Raffay said she'd feel better about a variance for proximity to the house. The Board discussed various placements of the shed. Mr. McElroy said this doesn't appear common in this neighborhood to have a shed in the front yard. Mr. Brancaccio said other people have two car garages. Mr. Stoner confirmed the septic system is in the back left. He discussed the placement of the shed compared with the septic.

Mr. Smith asked the use of the garage. Mr. Brancaccio said the previous owner cut the garage off, and built a living space down there. Mr. Smith asked if the shed could go in front of the garage. Mr. Brancaccio said it would block the entrance to the house; he also has a van he parks in that part of the driveway. Mr. Serrilli asked if he plans to reclaim the garage. Mr. Brancaccio said he's hoping to buy the properties in the back and so something there. Mr. Serrilli asked the timeframe. Mr. Brancaccio said as soon as possible. Chairman Shivas confirmed the lots behind him go to another road. Mr. Brancaccio said he's planning to build a one bedroom one bathroom home with a two-car garage. Ms. Hubbard confirmed this would be on separate lots. Chairman Shivas confirmed he would have access to that garage. Ms. Raffay said this is not relevant to this application. They can't assume that will happen. Mr. Brancaccio said it's a third of an acre lot, with road runoff to the left where the water pools, with a small yard on the side, and no backyard. Mr. Walsh said there are constraints on the property, which limits the placement of the shed. This may justify the placement of the shed; but the Board members don't like it right near the road. If the shed was reoriented and/or pushed back and landscaping added, the proposal would be better. Ms. Hubbard noted issues with backing up if the shed was moved back.

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Mr. Smith confirmed they can't approve things temporarily. Mr. Brancaccio said it's eight feet from the road and one foot from the right-of-way. Mr. Stoner wants the map updated to show the location when finalized. The wood border needs to be included in these measurements. Ms. Hubbard said if this gets denied it would need to be moved to a conforming location or a significantly different application needs to be submitted. Ms. Raffay said as presented she doesn't support this. There's enough places closer back to the house that she may be okay with. Mr. Proctor asked if it was placed in the "L" but moved back a bit for screening, if that would be okay. Mr. Gleitz said if they're doing a planting strip they want at least 8-10 feet, otherwise the plants would die. They would also need to make sure the soil is good. Mr. Proctor confirmed the fence is not on his property. Mr. Brancaccio said there's no fence in the backyard. The Board noted he shouldn't move the shed until after the next hearing. Mr. Brancaccio confirmed additional photos would be helpful. Ms. Hubbard noted staking out the placement of the shed would be helpful too. Mr. Stoner recommended taking photos up and down the street. Mr. Gleitz said if he's proposing landscaping it should be included, along with the species. Mr. Walsh motioned to carry the application to 06/06 without further notice, seconded by Mr. Proctor. Chairman Shivas opened to the public and no one spoke so he closed to the public.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

*Absent:* Mr. Serrilli

None opposed. Motion carried.

## **NEW BUSINESS**

### SP1-2024 Byram Waterloo LLC (Starbucks of Byram), 33 Route 206, Block 36 Lot 40, VB Zone

*Application for preliminary and final site plan for development of Starbucks coffeehouse with drive-through*

Ms. Raffay noted she listened to the recording of the last hearing. Messrs. Walsh and Serrilli noted the same. Ms. Lazzara said they updated the plans from the last hearing on 04/04, including changes to the landscaping and the south façade, which now has verticals and fake windows. They also removed some signs, and widened the drive isle and the bypass lane. They put in lights and bollards. They ask that the pylon sign be removed from the application for now, and they will speak to Byram about it. They are withdrawing variance requests for this sign.

Jason Engelhardt of Langan Engineering at 1 West Broad Street, Bethlehem PA was sworn in. He has testified at Boards in New Jersey, including Roxbury, Newton, Mount Olive, Netcong, Sussex, and Wantage. His license is in good standing and he was deemed an expert. He noted the biggest change in the plan is they widened the bypass lane from 10 to 12 feet. They reduced the size of the drive isle, and added bollards. They added landscaping near the pylon sign. They removed seven directory signs- four one-way signs and three thank you signs. Mr.

Engelhardt reviewed sheet LP-101 for landscaping. He noted Mr. Gleitz had a concern with one of the species, so they will change that out. Regarding lighting, they added three acorn style lights, and eliminated one bollard light to help with the ADA spaces. The architect added fake windows and vertical boards along the façade of the building on Waterloo Road. Ms. Raffay said regarding the stormwater report, their limit of disturbance is right under an acre, which is the limit of the major stormwater permit. She asked how the landscaping changes affect the stormwater. Mr. Engelhardt said as he understands it, just planting without grading is not extending that disturbance. Mr. Stoner thinks this is satisfactory if they're not regrading anything. Their improvements will need to tie into the DOT improvements for stormwater requirements. Chairman Shivas said some of the drainage is going into the system on 206, so that's a negotiation with the State. Ms. Lazzara said they have an application with the State. Mr. Stoner said they're increasing impervious coverage. Ms. Raffay said she'd feel more comfortable with a condition of approval that a survey is done with the limit of disturbance and silt fencing. Mr. Stoner agreed they should stake the limits of disturbance. Mr. Engelhardt said they have a soil erosion permit. Mr. Gleitz noted the landscaping is around the periphery rather than also including the parking lot. Mr. Engelhardt understands after 15 spaces they would need an island break, and they have 17 spaces, but it's more efficient from a parking point of view. Mr. Gleitz asked about planters in the front. Mr. Engelhardt said he discussed that with the landscape architect, and the challenge is they have five feet of walkway to work with along the front, and they don't want to impinge on that access. The façade looks good on that side, so providing foundation plantings or planters would be a challenge. Mr. Gleitz said they're trying to stay under the limits, and they're trying to maximize their lot, but it seems like with that circulation and building size, they're giving up some building and parking separations and landscaping requirements. He asked if they're fitting too much on the site, or if they think these are just minor tweaks. Mr. Engelhardt thinks they're minor; they are constrained, but the building is not larger than existing. Mr. Gleitz asked that they change the barberry to a less invasive plant. He confirmed the cladding of the building is hardiplank, with brick on the lower half. He confirmed they thought adding the windows and vertical lines were enough to upgrade the façade. Mr. Engelhardt noted that side is only 50 feet. Mr. McElroy said there's a Sussex County letter that disapproved a submission. He asked if those revisions are represented on the plans now, since they don't know what that was disapproved for. Mr. Engelhardt said he met the County on site. One of the access points is on their road. They're going to the County Planning Board meeting on Monday; a waiver is needed for the driveway location. They provided additional site distance drawings but it doesn't change the plans submitted.

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Ms. Raffay noted at the last meeting, Mr. Smith brought up circulation conflicts. Mr. Smith said they haven't changed anything. At the 206 entrance there are people coming out of the site, coming around the bottom of the site to the drive-through, people entering from 206, and there is cross traffic happening in one corner.

Lizanne Kile from 7 Penn Plaza Suite 1510 in New York was sworn in as a Senior Store Development Manager for Starbucks. Ms. Raffay asked about the operations, the length of time it takes to order, and how that affects a queue. Ms. Kile said that's a hot topic for them; since COVID everyone wants to use the drive-through, unless they decide they want to sit down inside. They spent a lot of time counting steps, for instance with the placement of their ovens versus the bakery case, and how many steps it takes to get from one to another and to a customer. They want to quicken the pace, so they're making every effort to move equipment, and add improvements in the store that customers won't notice, such as gravity fed ice so "partners" don't need to go to the back for a bin and bring it back. They measure the time from when the customer gets to the window, picks up the order, and leaves. On average they're under a minute. They place their car length in the queue at 7 cars so they have time to make each drink. They're made-to-order; everyone likes coffee differently, so it takes time. They want to get people out from the window in under a minute. Ms. Raffay confirmed there are seven cars between the order screen and the pick-up window. She asked how long a customer is willing to stay in line if they see a line at the drive-up; at what point are they turning away? Ms. Kile said their "unlock" has been mobile order and pay; if someone has the app, they can order the drink or meal ahead of time, and it's quicker to order it, pick it up, and leave. Ms. Raffay confirmed that means parking and walking in. Ms. Kile said some people still don't know what they want so they go to the order board. It's up to the customer, but anywhere beyond about 10 cars, they'll see people going inside. Ms. Raffay confirmed that means 10 total cars, three beyond the seven in line. She noted the site is laid out for 18 cars, and asked if that's excessive. Ms. Kile said they're very happy about that. Ms. Raffay said it sounds like it's not needed, because people won't use it because it's not needed. They've studied people's habits for a long time, so they don't need 18 spots, but more like ten. Ms. Kile said they'd rather be conservative and have more than less; having less causes more issues. Ms. Raffay noted this is almost double. Mr. McElroy asked what the percentage is of people that are not using the drive-through at all, but using the mobile app. Ms. Kile said it varies, but it's between 40-45%. Mr. Proctor confirmed the next nearest location is in Succasunna. Mr. Smith noted there's one in Newton; Ms. Kile said there's also one in Chester. Mr. Proctor said they're pulling a lot of people that might not want to travel that far. He asked Ms. Raffay what the benefit is of reducing the number of

spots. Ms. Raffay said she's looking at if the site is too intensive with driving, parking, and circulation. If they don't need that much, they could re-orient the building and improve the façade. Mr. Morytko noted the number of people ordering makes him look at the ratio of parking versus driving customers. Ms. Hubbard asked what the 1-minute means; Ms. Kile said that's when they get to the window to pick up the product. Ms. Hubbard confirmed that means if there's 7 cars and each takes a minute, that's about seven minutes. Chairman Shivas confirmed they pay where they pick up the product. Ms. Raffay asked if they considered dual-ordering. Ms. Kile said it didn't fit; they'd need much more circulation. In conjunction with the landlord, they have their own vendors with their own civils, and they laid this out to the best of what they need operationally and for safety. Chairman Shivas asked about entering on Waterloo Road, and needing to circle around a few times to exit; this seems like a lot of driving. Ms. Kile said it's safer that way. Ms. Lazzara said they've had their engineers review this and they've looked at it for months. Mr. Morytko noted most people would go on 206. Mr. Smith asked the hours of operation. Ms. Kile said they plan to be open Monday through Saturday 5:30am-10pm and Sunday 6am-9pm. Mr. Gleitz asked the percentage of traffic that's going to be on 206 versus people pulling off of 80. Ms. Kile confirmed she didn't look at that from an operational standpoint. Ms. Raffay asked if they plan to advertise on Route 80. Ms. Kile said if they're available they'd try to do it, but there's a lot of rules for the blue highway signs. The closer you are the better opportunity you have to get on it. Ms. Raffay noted national numbers were discussed for traffic last time. Mr. Smith noted there's a sign off Waterloo that says drive-through, which may confuse people, making them think it's only a drive-through, even though there's also parking. Ms. Kile said it's guidance for a driver. Mr. Smith said if he doesn't want to get into the drive-thru it's not immediately clear that he can get into the site other than the drive-through. Ms. Kile said it's one-way. Mr. Morytko said the only entrance that way is dual-use but it's labeled as drive-through. Ms. Raffay said if that sign wasn't there she could see people trying to cross the hatching in front. Mr. Walsh suggested "drive-through and parking" for the sign. Ms. Lazzara said as soon as people get in, there are markings that direct them to the drive-through. Mr. Morytko confirmed this is typical of Starbucks.

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Daniel Fitzpatrick and Gary Bender at 373 E. Route 46 in Fairfield from Spectro Lume were sworn in. Mr. Fitzpatrick said he's been with the company since 1986 in a sales and management capacity. He's a member of the Illuminating Engineers' Society. He has not been before other Boards. Mr. Bender has been with Spectro Lume since 1972; he's been before Boards in Roxbury, Mount Olive, Randolph, and Hillsborough; he was deemed an expert. Mr. Bender said when they do a lighting design they start with dark sky because most Boards want it. They supplement jobs with acorn-style lighting. With dark sky lights, 100 percent of the light is below 90 degrees. They have individual LEDs. They brought in a sample light structure. They noted there's about 25-30 LEDs in one; they're regressed. These are more efficient. Ms. Phillips asked if the sample light is an exhibit; Ms. Hubbard suggested having a photo of one submitted. Ms. Lazzara submitted **Exhibit A5**, a photo depiction of the lighting fixture. She also submitted **Exhibit A6**, a cutoff luminaire packet. Mr. Bender explained the cutoff area and the angles where light can be seen. At different cutoff areas, more light is lost into the area, such as the surrounding neighborhood. Mr. Bender submitted **Exhibit A7**, globe and acorn light data. They submitted **Exhibit A8**, a comparison of the cut-off luminaire and the acorn light, and reviewed efficiency. Having lights spaced out evenly help the eyes. Chairman Shivas asked what lights they're using on the side of the building. Mr. Bender said they're up-down lights; they help with the driveway and give the building definition. Ms. Lazzara asked where acorn lights are appropriate. Mr. Bender said they're used in town planning like residential developments and parks. Ms. Lazzara asked why they're not appropriate for the parking area. Mr. Bender said it's difficult to get a smooth job in a parking area. Most developers don't want a lot of poles. Ms. Lazzara asked what lighting is appropriate for safety. Mr. Bender said it's almost always a horizontal luminaire. Ms. Raffay asked what it would look like if the lights were at the 15 foot maximum rather than 25 feet. Mr. Fitzpatrick said they'd need to add more poles; likely around 20. Ms. Raffay asked if there was another light that could be used to reduce the amount of poles while meeting the height; 15 feet sounds like something a lot of towns require. Mr. Bender noted if the pole is shorter it's in people's line of sight, so it being taller makes them less visible. Mr. Gleitz asked if they've been to the QuickChek and seen their lighting plan; he asked if their dark sky compliant. Mr. Bender said there's light being thrown off the property dramatically; he saw a photo of it last night. Mr. Gleitz confirmed he didn't measure the light. He asked Mr. Bender to explain dark sky compliance. Mr. Bender said you're not throwing light above 90 degrees. Mr. Gleitz asked if that's zero light, or if there's a percentage you're allowed to be over and be compliant. Mr. Fitzpatrick said when the dark sky movement started 15 years ago, they'd allow light above 90; about 5 years ago they tightened up their standards and now they're saying no light can go above 90. Mr. Gleitz said the QuickChek was developed in the last 6 years; the requirement was for down-facing acorn fixtures to be dark sky compliant and they met those standards. He asked if they have been to the CVS nearby— they have the same design. He confirmed they haven't looked at the Wawa plans. He noted they were able to work with three developers on this, and they are closer to what's allowable. Is it impossible, impractical, or not preferred to take the same approach on this site? Mr. Fitzpatrick said it would be impossible with the stricter requirements for

the dark sky; it's not a law, it's a suggestion. Mr. Gleitz confirmed the exhibits are for separate types of fixtures. He asked if this is the most efficient acorn type. Mr. Bender said it's pretty efficient; some are slightly better or worse; these are comparable. QuickChek has a decent fixture. Mr. Gleitz said in the engineer's response to his memo, it was mentioned that they're the same height at the lights on Waterloo. He asked if street lights and parking lights serve the same purpose and if they'd design them the same way. Mr. Bender said parking and street lights are similar. He would probably design them in a similar way. Mr. Gleitz asked if the heights would be the same. Mr. Bender said he would need a specific intersection. Mr. Gleitz said the Waterloo and 206 intersection. Mr. Bender said he would. Mr. Fitzpatrick said the lights there are around 28 feet and that's the PSE&G standard. Ms. Raffay asked about the light trespass on the property lines, referring to the lighting plan. Why do they need a waiver for some of the foot candles? Mr. Bender said these fixtures have backlight shields. Without compromising the job there's nowhere else to put the poles. The bollards were placed to help with pedestrians. Ms. Lazzara said some of the bollards were at the request of the Fire Marshall. Mr. Fitzpatrick said if they lower the poles, they lose light further out, which creates light and dark spots. Mr. Bender said they added the acorn lights to add some pedestrian-scale in the driveway and crosswalk. These are 9 feet and half the lumens of the ones in the parking lot. Mr. Gleitz asked if the 15-20 additional lights means fixtures or poles. Mr. Bender noted this would be a total of 15, so ten would be added. This would be fixtures and poles. Mr. Fitzpatrick said they have one fixture per pole. Mr. Gleitz said at QuickChek, some of their lights have dual fixtures on a pole, so there's just as much coverage with half the poles. Mr. Fitzpatrick said this makes it glary. Mr. Bender said adding a second fixture at the same location only adds light there, not spreads it out. Mr. Fitzpatrick said a lot of lighting at QuickChek comes from the canopy lights. Mr. Bender said the acorn light throws light at 180 degrees. Ms. Raffay asked about the color temperature. Mr. Bender said they have it at 4,000; most communities like that. Mr. Gleitz said the only time color is handled is with message boards. Mr. Fitzpatrick said the QuickChek looks to be 4k. He noted they're supplying about half the new LED streetlights to PSE&G in New Jersey with the same company, and they've settled on 4k as their color. Chairman Shivas said people won't be there long enough to see the lights. Ms. Raffay said they will when they drive past. Ms. Raffay and Mr. Smith noted warm is better.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Matthew Flynn at 101 Gibraltar Drive in Morris Plains was sworn in as a Planner. He has testified at about 100 Boards including Hopatcong, Parsippany, and Roxbury. His license is in good standing and he was deemed an expert. He noted for building footprint they're allowed to go up to 40% and what they're proposing is only 5.1%. They could have a much more intensive development; visually what they're proposing is much less. They're taking the pylon sign out of the discussion. They're proposing two wall signs, one on each frontage and one on the north side. They're proposing two logo signs and one Starbucks sign. They don't have loading spaces designated, which is common for this land use and user. They have a place that will be used for loading; this would be used for a short duration. Mr. Gleitz asked about the landscaping; Mr. Flynn said the overall configuration allows for landscaping throughout the property, so it helps with the layout. Mr. Gleitz noted there's not landscaping between the building and the parking lot.

Mr. Gleitz noted the pylon sign counts for the number of signs but is not being considered as part of the application. There are ongoing discussions about whether the signs need variances or not, which haven't been resolved. For the number of the signs, they will assume there will be a freestanding sign, but they're not sure what the dimensions or details will be. This may require them to come back for another hearing, or there will be a determination that that's not necessary. Ms. Hubbard if the sign is removed they lose all rights and they have to either put up a conforming sign or go to the Board. The Zoning Officer won't be able to review this sign. Ms. Lazzara said they can talk about it more, but it's not appropriate here. Mr. Morytko said if the decision is based on if it's conforming or not, this would be the place to decide it—there's no other place that would be determined. Ms. Hubbard said the content likely needs a variance regardless because they're not allowed to put drive-through on it. Ms. Lazzara said they're willing to take that off. Ms. Hubbard said it should have their business name and address. Chairman Shivas noted they would also need a variance if they made it bigger. Ms. Lazzara said they're not planning to made it bigger; they're just discussing if it's pre-existing non-conforming. Ms. Hubbard said to be pre-existing non-conforming you have to be a permitted sign prior to the zone changing, which they don't know if they received a variance or if when it was constructed if it was permitted in the zone. If they have that, they have the protections of maintaining the sign. Ms. Lazzara said they didn't want to eat up the time because this is a legal discussion.

Mr. Gleitz reviewed the variances for signs. Mr. Flynn said they're a national, recognizable land user and their products are used continually, which adds to the familiarity of the experience. If something breaks down, the sign is an electric element, and they have something ready to replace it. Ms. Raffay confirmed this is the sign people order at; there's a pre-menu board, a digital display order board with a canopy, and another menu board. Mr. Flynn said the impact of this development will be substantially less than what could go here. This zone permits restaurants with drive-throughs, bars, community residences, offices, pharmacies with drive-throughs, and

conditional uses. There's a lot of things that could go here that would be more intense. This is replacing a vacant building; this is an efficient use of space and they're proposing a good amount of landscaping. Adding the fake windows will be in line with what's in the area. Mr. Flynn reviewed design waivers. Mr. Gleitz said based on the circulation plans, there's not a lot of room to stack what's needed. He reiterated there's no loading space. Chairman Shivas confirmed that the loading area is for after hours. Mr. Gleitz said this doesn't meet the same standard of the public good as something beneficial like a hospital. He asked how specifically this benefits the public good. Mr. Flynn said Purpose A doesn't need to be inherently beneficial; they're replacing a vacant building. The VB zone wants pedestrian activity and that goes towards it. Mr. Gleitz said that could be said of any proposal at any time—does replacing any building meet Purpose A? Mr. Flynn said if it's a permitted use, replacing something that doesn't keep with what the town wants. Mr. Gleitz said banks are permitted. Mr. Flynn said it's empty—it's bringing under-utilized land back. Mr. Gleitz asked what makes this particular site good for Starbucks. Mr. Flynn said the easy accessibility from a main road and the small-scale nature of this use—this fits on the property well, using the footprint. Mr. Gleitz noted for design waivers, it would include things that are impractical or cause a hardship; he doesn't think these waivers would be because of a hardship, it's more because complying would be not possible. Mr. Flynn said it's also because strictly complying wouldn't have a benefit, so the intent is met. Mr. Gleitz asked regarding the lighting, it seems like it can be done but it's not preferred. Mr. Flynn said it meets the standard of reasonable-ness. The comparisons of QuickChek and Wawa are different land uses. A Starbucks is more pedestrian-oriented; they're not getting gas here, pulling up in their car, getting out. Mr. Gleitz noted the CVS. Chairman Shivas said you can pull up at a Starbucks—there are parking spaces. Mr. Flynn said the purpose of the VB zone is the pedestrian quality of this area. Mr. Proctor confirmed the light poles are about the same height as the building. Ms. Raffay said she likes the sidewalks, but this site is set up to accommodate cars. The breakeven point is 10 cars before people go park, but 18 is allowed, and the site is intensified because of the cars, rather than to accommodate people. Chairman Shivas said the Dunkin' Donuts had the right number of spaces the first couple of years but it got overwhelmed. He'd rather see an empty driveway than cars backed up on 206. Ms. Raffay said the testimony was that consumers will decide when the line is too long and not go. Chairman Shivas asked what happens if you ordered online. Ms. Raffay said they'd go in. Chairman Shivas said that's not easy, when looking at what needs to be done to get out of the car. Ms. Raffay said there was testimony that eighteen spaces is almost double what's needed. They could change the site if that's the case, re-orienting the building. She feels they forgot the pedestrians. Mr. Flynn said it's more pedestrian-friendly to have this than having it maxed-out and having people driving in and out because there's no room. Having it more contained will make it look neater. Ms. Raffay said the focus is on the drive-in. Mr. Flynn said the focus is on the aesthetics. Ms. Raffay said then the façade needs more, she's seeing a drive-through. She likes the windows and vertical lines. Mr. Flynn said the one side is 50 feet, so you drive right past it and don't know you missed it. If you drive on 206 you see the building the whole way. Ms. Raffay said northbound on 206, you see the drive-through façade. Mr. Morytko said he doesn't understand the argument of it only being 50 feet, because what is the front? The side they're discussing as the architectural focus is shorter. He agreed the argument that this is pedestrian-friendly lands wrong—there's one pedestrian entrance. Mr. Walsh agreed, but noted he'd rather have more queuing of cars than less. They've heard testimony about promoting pedestrians, while stacking eight more cars than what's needed. Mr. Flynn noted another element of the VB zone is providing car and pedestrian oriented services, and feels this does both. Mr. McElroy said there's the ordinance definition, and the reality. No one is walking on the street to Starbucks. The pedestrian activity taking place is people parking and walking in and out. Chairman Shivas said there are people that walk down Waterloo Road, so they may see more than what's there today. Mr. Flynn said this will be a greater contribution for pedestrians than what's there today.

Chairman Shivas opened to the public. Lisa Shimamoto was sworn in. She lives down the street, and sees people walking to QuickChek. They used to walk there when it was across the street, and to the pizza place. She thinks it's a beautiful building and it would be beneficial. Mr. McElroy noted the drive-through aspect isn't as concerning because he thinks most of the activity is cars. Chairman Shivas closed to the public.

Mr. Proctor asked about the sign discussion. Mr. Gleitz said if it's a motion for approval, it should include stating the dimensions and details and any relief necessary for the sign will be discussed later. The applicant is arguing they have vested rights in the sign as-is, so they should be able to switch the logos and paint it, but they need to research this. Mr. Morytko noted since they may not be able to talk about the sign later, he wants to note the area of the sign is three times what's allowed. The intent of the zone is to not have a sign that size, and it's nearly twice as high as signs approved in the area. Chairman Shivas recommended they bifurcate the sign from the application. He noted he'd like them to come back regardless. Ms. Lazzara said they're not saying they will absolutely come back; she thinks they're overstepping their legal rights. They've asked for it to be removed from the discussion. Chairman Shivas asked how they would show that on the site plan. Mr. McElroy said they can't finalize the site plan until it's done. Ms. Lazzara doesn't want it to be a condition that they come back. Mr. Stoner noted they can't sign the plans until this is resolved. Steven Polhamus, another attorney representing the application, noted this is two separate issues. If they bifurcate the application, they may need to come back before

the Board. They feel it's inappropriate to condition it on the site plan approval. As the sign stands today, it can be there. Ms. Hubbard noted they haven't proved it's legally existing. Mr. Stoner confirmed it will be taken off the sign plans, and showing that it's an existing sign on the plans. Once the sign issue is resolved, they will submit new information.

Mr. Proctor motioned to bifurcate the sign from the application, seconded by Mr. Serrilli.

*Ayes:* Ms. Raffay, Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

*Absent:* Mayor Rubenstein

Ms. Raffay said they didn't discuss the height of the lighting poles or amount of light. She asked what the lighting time is. Ms. Lazzara said the lights go off after the store closes. Mr. Proctor noted this different lighting could provide a different atmosphere that's more lit up. Ms. Raffay said there's an intensity of lights in some spots. There are some places where the foot candle is over seven. She asked about the lights at the property line. Messrs. Gleitz and Stoner noted the deviation in what's allowed for the lights. Ms. Raffay said QuickChek looks good and Dunkin' Donuts has been improved; things are filling in, and this is an opportunity to continue that. Mr. Gleitz said they work hard with other sites on this. Chairman Shivas asked where they can put ten more poles. The five lights spreads things out. Mr. Gleitz said the light experts for the other three sites made it work. Chairman Shivas said the light here will be less intense. Mr. Gleitz said it's not about the intensity, but the height and type of fixture. They decided awhile ago they want lower lights and a certain style. Chairman Shivas said they could do things differently; they could have less lights with more intensity. Ms. Raffay said that's not their decision—they have an ordinance they're supposed to use. Chairman Shivas said the Planning Board can overlook the ordinances—they should give the best thing for the town. Ms. Raffay said they did this at CVS and it worked, why not here. Mr. Gleitz noted they have landscaping design standards to get better landscaping, they changed the lighting standards to make that better. These standards are there to make national chains fit in the context of what Byram has wanted for the last 20 years. To Ms. Raffay's point, we can see that it's starting to work. Pieces are being filled in, and sites are being improved with a cohesive look. He thinks the parking lot could be designed to meet their standards, or they could make things less intense. Mr. Stoner noted they did the downlit lights in the back of QuickChek for the residents. Mr. Smith said the acorn light aesthetics looks nicer, but the light itself will work better. Mr. Serrilli said his experience has been down lights provide better lighting than acorns. More light is more distracting; down lights are easier on eyes. Ms. Raffay asked about having them be 15 feet and reducing the amount of poles by adding two lights on one pole. Mr. Serrilli said the testimony was that only adds a few feet. Ms. Raffay said that was for acorn lights. Mr. Serrilli said that's for both. Mr. Gleitz noted the Board can't redesign the lighting, they have to accept it as proposed or not. Mr. Morytko said he likes the acorn lights but is not sure where that would work. It's a lot of pavement, with a lot of poles which would make it cluttered. He likes them out front. Mr. Walsh said the aesthetics of the acorn lights is not as important as having fewer poles. Ms. Lazzara noted there are lights on the building. Ms. Hubbard confirmed the building lights will remain on over night. They're on a timer.

Ms. Raffay said she wanted to hear more about the side on Waterloo, and having it look more like a front façade. The Board reviewed the conditions including outside agency approvals, light timing, and notes about the sign. Ms. Lazzara noted the lights are photo-cell timers. Mr. Romano remains under oath. He it's turned on about half an hour before opening. If it's dark, the lights come on, if it's not, they stay off. They set the timer to turn off at close, whether or not it's dark out. Mr. Gleitz reviewed the variances, including the number, type, area, and size of signs; setbacks; and the loading space. Mr. Stoner confirmed the loading area is a design waiver. Mr. Gleitz reviewed the waivers including landscaping standards and entrances; lack of trees in the parking area; additional parking spaces; lack of landscaping for the loading space; lack of screening; lack of foundation plantings; and exceeding foot candles and height of lights.

Mr. Walsh motioned to approve the application including the variances, waivers, and conditions as summarized by the Board professionals, seconded by Mr. McElroy.

*Ayes:* Messrs. Proctor, McElroy, Morytko, Serrilli, Smith, Walsh, Chairman Shivas

*Nays:* Ms. Raffay

*Absent:* Mayor Rubenstein

Motion carried. Mr. Romano thanked the Board for staying late.

## **REPORTS FROM COMMITTEES**

*Architectural Review Committee:* Ms. Phillips said this was left on to see if there are updates from the Council. Mr. Proctor said there hasn't been a meeting. Chairman Shivas said this should be left on the agenda.

*Environmental Commission:* Mr. McElroy said he missed the meeting.

*Open Space:* Mr. Morytko said there's been no meeting.

*Township Council:* Mr. Proctor said there's been no meeting.



**OPEN TO THE PUBLIC**

Chairman Shivas opened and closed to the public.

**ADJOURNMENT**

A motion to adjourn the meeting was made at 11:25pm by Mr. McElory, seconded by Mr. Proctor. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips