

**MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, June 6, 2019
TOWNSHIP OF MANALAPAN – Courtroom
Manalapan, NJ 07726**

Chairman Stephen Leviton called the meeting to order with the reading of the Open Public Meetings at 7:30 PM followed by the salute to the flag.

Roll Call: Janice Moench

In attendance at the meeting: Terry Rosenthal, Larry Cooper, Mary Anne Byan, David Schertz, Robert Gregowicz, Stephen Leviton, Eliot Lilien, Eric Nelson, Adam Weiss

Absent from the meeting: Mollie Kamen

Also, present John Miller, Esq., Zoning Board Attorney
Brian Boccanfuso, Board Engineer
Jennifer Beahm, Board Planner
Nancy DeFalco, Zoning Officer
Janice Moench, Recording Secretary

MINUTES:

A Motion was made by Mr. Cooper, Seconded by Mr. Schertz. To approve the Minutes of **May 16, 2019** as written.

Yes: Rosenthal, Cooper, Leviton, Byan, Schertz, Gregowicz
No: None
Abstain: None
Absent: Kamen
Not Eligible: Nelson, Lilien, Weiss

RESOLUTIONS:

A Motion was made by Ms. Byan, Seconded by Mr. Cooper to approve the Resolution of memorialization of approval for **Application ZBE0632EX, Crown Car Wash (second extension of time).**

Yes: Rosenthal, Cooper, Leviton, Byan, Schertz, Gregowicz
No: None
Abstain: None
Absent: Kamen
Not Eligible: Nelson, Lilien, Weiss

A Motion was made by Mr. Rosenthal, Seconded by Mr. Cooper to approve the Resolution of memorialization of approval for Application **ZBE 1808, David's Lawn and Landscape Design**

Yes: Rosenthal, Cooper, Leviton, Byan, Schertz, Gregowicz
No: None
Abstain: None
Absent: Kamen
Not Eligible: Nelson, Lilien, Weiss

A Motion was made by Ms. Byan, Seconded by Mr. Gregowicz to approve the Resolution of memorialization of approval for **Application ZBE1911, Divya Menon**

Yes: Rosenthal, Leviton, Byan, Schertz, Gregowicz
No: None
Abstain: None
Absent: Kamen
Not Eligible: Cooper, Nelson, Lilien, Weiss

******At 7:35 PM Board Member Eliot Lilien arrived at the meeting*****

PUBLIC HEARINGS:

Application No. ZBE1822

Applicant: J & J Commercial & Industrial Properties
Proposal: Warehouse
Request: Preliminary & Major Final Site w FAR
Location: 500 Madison Ave.
Block/Lot: 72/7.04 & 7.05
Zone: SED2W

Peter Licata, Esq. of Sonnenblick, Parker and Selvers, PC was present to on behalf of the applicant. The applicant was before the Board to present a Site Plan and FAR application with Bulk Variances. The witnesses that were present to give testimony were:

- Mr. Page, Project Engineer
- Mr. James Higgins, Professional Planner
- Victor Iorio, Principal of the applicant (if necessary)
- Mr. Collins, Project Architect (if necessary)

Mr. Miller swore in Mr. Kevin Page, Professional Engineer. Mr. Page is a 1973 graduate of North College of Engineering. Mr. Page has his own firm for 24 years that handles consulting work for various clients, including municipalities. Mr. Page is a licensed Engineer in good standing and the Board accepted his credentials. Mr. Page was the project engineer on the subdivision and other properties developed on site. Mr. Page gave a brief history of the subdivision located at block 72 lot 7.04 and lot 7.05. The property is located in the SED20 Zone originally called the SED20/W, designed for warehouses. The proposed warehouse on lot 7.04 is 47,500 sf. The warehouse building proposed on lot 7.05 located is 54,000 sf. Office and warehouse are proposed on both lots. There will be one or two tenants per building. The use for the tenants will be warehousing and distribution as permitted in the zone. At such time when the applicant should have a proposed tenant, he will apply to the Township for a zoning permit to confirm the use. If the use is not permitted, variance relief would be required.

Mr. Licata asked Mr. Page to give the Board an overview on the working of the site. Mr. Page referred to drawings, previously submitted to the board, dated May 9, 2018 and revised on May 22, 2019. Mr. Page marked two exhibits.

- A-1: Aerial Photo showing the site from Google Maps taken after 2014
- A-2: Street Aerial photo from Google Maps taken after 2014

There is a heavily wooded buffer separating the lots from the neighbors to the north and west. Mr. Page referred to lot 7.04 and described the proposed driveway will run northerly. This driveway will lead to the office area where the passenger vehicles will park. There is a separate driveway entrance for the loading area in the rear. The site will be 20 percent office and 80 percent

warehouse. Lot 7.05 will have the driveway on the south end for passenger vehicles to be parked. The northern end will have the truck parking. The two loading areas on the lots will be back to back. This proposal will allow the loading areas and noise levels to be a distance from the residential area. Mr. Licata explained the mass and size of the building itself acts to abate noise that emanates from the loading area. Mr. Page explained the variances relative to how the propose site.

1. 200' required from a residential zone; the proposed is 172'
If the applicant were to comply with the ordinance, the loading area would back up to the residential area.
2. A 50' setback from the parking area to the property line is required; the proposed will have 25' in a location and 30' in another location.
3. A 75' setback is required from the loading area to the property line; on lot 7.05 90' is proposed; Lot 7.05 they applicant proposed 58'
4. The ordinance requires the height of the building is to be no more than 10 percent above the standard 35'. The building height of 38' is proposed.
5. The ordinance requires employee parking spots to 9x18 and the visitor parking spots to be 10x20; the proposed stalls for the building are 9x18.
6. The ordinance requires the Floor Area Ratio 25 percent of the lot size. On lot 7.04 ~ 25 percent is allowed and the proposed is 19.3 percent. For lot 7.05~ 25 percent is allowed and the proposed is 24.4 percent.
7. Total Lot coverage consists of the building, parking and sidewalks. The ordinance specifies 60 percent. Lot 7.04 is 46.9 percent and lot 7.05 is 54 percent.
8. Signage. Each building has one signed proposed. There are two sign wavers requested. Mr. Page explained he felt the ordinance was written in anticipation of the sign being located on Highway 33. The ordinance states the bottom of the sign must be 8' from the ground. The applicant proposed the sign to be 2' off the ground. The ordinance requires 10" lettering on the sign and the applicant is asking for 8" lettering.

Ms. Beahm felt it was important for the Board to know the relief the applicant is seeking regarding the building height is a "C" variance being the relief being is below the threshold.

There are dumpsters and generators shown on the site plan in the rear. Mr. Page explained there would be at least one dumpster depending on the tenant. There is a chain link fence around the concrete base to the rear as well. As per Ms. Beahm's request, the applicant will modify the chain link fence to three concrete walls. The actual number of dumpsters will depend on the type of tenant. Some tenants may require a dumpster for cardboard only. The applicant will work together with the Zoning Officer, Planner and Engineer for the specific permit. The same will apply for the proposed generator. Should the tenant be a light use, there will be a small emergency generator. If a larger generator should be required, the applicant will file appropriate permits and consult with the Planner and Engineer. The generator and dumpsters will be located in the rear of the loading dock area. The neighboring area will be buffered by the mass of the buildings.

Mr. Licata asked Mr. Page to explain the easement in the northeast corner of the property. Mr. Page explained in the process of planning the original Madison Avenue subdivision the applicant was approached by the water utility asking for an easement being in the future they would like to run water to the area. Prior to the subdivision being completed the water was run from Highway 33 up Madison Avenue and extended to the North. The Boy Scouts of America recently approached the applicant asking for an access easement to their camp. Currently the Boy Scouts use residential streets to gain access to the camp. The applicant has offered to provide the Boy Scouts an easement for them to create a driveway. The amount of pavement used in the easement was included in the FAR requirements.

Mr. Page described the five different detention basins and the pitching in further detail. The applicant will be providing a topographical survey. The buildings will have water run to them and be complete with sprinklers. The natural gas in the street will provide the heat in the buildings. The health department has permitted the septic designs. The lighting on the buildings will go on at dusk and go off at 10pm. The security lighting will remain on from dusk to dawn. The landscaping will be on the perimeter of the property. The ordinance requires the applicant to have plants in the parking lot. The applicant is requesting a waiver and has agreed to place the plants on the perimeter of the property. Mr. Page explained he is in receipt of the Planning and Engineering reports. The applicant does not object to comments in the reports. Mr. Page referred to the CME report dated June 3, 2019 and addressed items in testimony.

Mr. Boccanfuso explained the applicant has addressed everything in the reports and he is comfortable with the plan as currently constituted. The one outstanding item is an updated survey. The plan is based on an older survey. An updated survey will be a condition of the approval. If the updated survey should require substantial changes to the design, the applicant would have to come back to the Board. Mr. Boccanfuso recommended the Board to establish a timing window for the maintenance cycle of the generators. Anytime between 12pm and 3pm Monday through Friday. The applicant and Board members agreed. Mr. Boccanfuso asked the applicant to provide testimony regarding the fire report. Mr. Page explained the Fire Bureau expressed concerns on a sprinkler system in the building. The proposed building will be complete with sprinklers. The Fire Bureau also mentioned running an access road around the back of the property. The applicant feels the building is more secure without an access road around the rear and the access road is unnecessary.

Ms. Beahm explained Mr. Page testified to a majority of the variances requested in detail with the exception of the FAR and she takes no exception to the relief requested. It is a better design. Strict compliance would have more of a negative impact on the surrounding properties than the proposal as is. The applicant has tried to keep the activity and the buildings as far away from the lot lines as possible. Ms. Beahm agreed with Mr. Boccanfuso regarding the landscaping and explained the easement to the rear will be a success for Manalapan Township. The easement will create the ability to take traffic off local residential streets.

Mr. Lilien asked Mr. Page what the exterior of the building would consist of. The building will be concrete with tilt up panels.

Mr. Cooper asked how high the trees are on the residential side of the property. Mr. Page explained the trees are 40' or higher. Mr. Cooper expressed concern for the view of the residents. Mr. Page explained the residents would not see the proposed warehouses. Mr. Cooper asked if there would be signage on Highway 33. Mr. Page explained there would be no signage on Highway 33.

Mr. Licata called Mr. Higgins to give testimony. Mr. Miller swore in James W. Higgins. The Board accepted his credentials. Mr. Higgins explained he reviewed the application, plans, visited the site, reviewed the zoning ordinance, and reviewed the expert reports on this application. Mr. Higgins also sat in on a recent meeting with the township professionals. Mr. Page briefly reviewed the bulk variances. The application fits the C2 criteria where the benefits of granting of the variances outweigh the detriments. The application does exceed the Floor Area Ratio requirement however the aspect of the Floor Area Ratio for Manalapan Township does not pertain to the intensity use of the site. The nature of this use requires more paved parking and loading area. The extent of the variance is minimal however; it provides a substantial improvement to the function of the site and does not increase the intensity of use. The site can accommodate the use.

The applicant is under on both building and lot coverage. This use was what the zone was intended. Ms. Beahm takes no exception to the relief requested and Mr. Boccanfuso agreed.

Mr. Miller asked for the proposed FAR requirement on the record. The requirement for the zone is .5. Lot 7.05 is 0.652 and Lot 7.04 is .0583.

Mr. Licata had nothing further. The Board members had no further questions.

Chair Leviton opened the meeting to the public for comment or questions regarding the application. Seeing there was none, Chair Leviton closed public.

Mr. Miller listed the following conditions:

- The hours of generator maintenance would be 12pm to 3pm Monday through Friday
- Updated survey
- Site to be fully equipped with sprinklers
- The dumpster area will consist of three concrete walls and a concrete base. There will be at least one dumpster.
- An updated wetlands report will be provided
- Applicant will work with the Township Engineer for the easement.
- Applicant will work with the Township's tree expert with regard to landscaping. The applicant requested a waiver for the landscaping and has agreed to provide the landscaping on the perimeter of the property instead of the parking lot.

Mr. Licata stated the applicant agreed with the conditions set forth. Mr. Licata clarified the applicant would be able to obtain permits prior to the recording of the easement. The easement process may have a different timeline. Mr. Miller agreed. Mr. Boccanfuso asked if the applicant would agree to the easement being recorded prior to obtaining the Certificate of Occupancy. Mr. Licata explained the timing is not dependent on his client. It would require the participation of others. The easement area will be shown on the site plan. Cooperation would also be a condition of the approval. If the applicant is in violation of the approval, the town can take action as it relates to the permits. The applicant put on the record and in good faith, they intend to comply. Mr. Boccanfuso and Mr. Miller accepted it.

A Motion of Approval for Application ZBE1822 was made by Mr. Weiss and Seconded by Mr. Nelson.

Yes: Rosenthal, Cooper, Nelson, Weiss, Lilien, Leviton, Byan
No: None
Abstain: None
Absent: Kamen
Not Eligible: Schertz, Gregowicz

The Board took a short recess at 8:45pm and resumed at 8:50pm.

Application No: ZBE1907

Applicant: Re-Hold, Inc.
Proposal: Contesting Zoning Officer's decision to deny new tenant
Request: Appeal of Zoning Officer's Decision
Location: 300 Bridge Plaza Drive
Block/Lot: 3.03/9.04
Zone: C2

Application No: ZBE1908

Applicant: Peplemover, LLC
Proposal: Contesting Zoning Officer's decision to deny new tenant
Request: Appeal of Zoning Officer's Decision

Location: 90 Bridge Plaza Drive
Block/Lot: 3.03/8.02
Zone: C2

Chair Leviton explained next case was different from the typical variance cases the Board has heard in the past and Mr. Alfieri has consented to hear both applications at the same time. Chair Leviton asked Mr. Miller to advise the Board according regarding the next cases.

Mr. Miller explained the applicant is not requesting variance relief. The applicant is appealing Zoning Officer, Nancy DeFalco's determination in each of the cases. Under NJSA40:55D-70A only a Zoning Board of Adjustment in the state of New Jersey has jurisdiction to hear an appeal of a Zoning Officer. This is strictly an appeal of Ms. DeFalco's determination. After the applicant presents the case, the Board vote would to determine if the decisions determined by Ms. DeFalco were correct. Mr. Miller explained Mr. Alfieri has agreed to consolidate the two matters Peplemover, LLC (ZBE1908) and Re-Hold, Inc. (ZBE1907).

Salvatore Alfieri, Esq. of Cleary, Giacobbe, Alfieri & Jacobs, was present on behalf of the applicant. Mr. Alfieri explained the applicant was present to appeal two of Ms. DeFalco's decisions on condominium units that the applicant owns. The applicant is the principle owner in two separate entities that own separate unit, that are the subject of the appeals.

Mr. Miller swore in applicant Michael Volovnik. Mr. Alfieri asked the applicant to give testimony on the companies and the relationship the applicant has with both. Mr. Volovnik explained he is the principle corporate officer of Rehold Incorporate Mr. Volovnik is the managing member and sole officer of Peplemover, LLC. Both companies own units within a condominium complex. The complex is named Bridge Plaza Office Condominiums located on Bridge Plaza Drive. Each unit has different square footage and has a different type of use. Mr. Volovnik explained the predecessor company received original approval in 1986. Mr. Volovnik acquired ownership of the already approved development in 1996. Mr. Alfieri asked for the status of the project when the predecessor company took ownership. Mr. Volovnik explained two out of six buildings had approval. One building was complete, one building was semi-complete and the remaining buildings were not yet constructed.

Mr. Alfieri referred to a resolution of final site plan for Bridge Plaza dated 1986. The approval was for six units built in two phases.

Mr. Volovnik obtained Board approval for a day care center. In 1986, four buildings consolidated into one building for the day care named Manalapan Montessori. Mr. Volovnik received his first Certificate of Occupancy in 1997 for the day care center.

Mr. Volovnik advised phase I was completed in the year 2000. Mr. Volovnik owns five units out of approximately twelve units in phase I. Mr. Alfieri asked if the applicant had a medical tenant occupy any of the units. Mr. Volovnik explained he had medical tenants occupy unit 410, 420, 430, 300, 310, 320, 200,210. The tenant Meridian occupied three units for 12 years. The remaining medical uses were dental, general medicine and a gynecologist. The resolution did not list any conditions or restrictions on medical uses.

In 2002, the applicant received approval for phase II that consisted of three new buildings. The master deed and bylaws of the condominium association were amended to incorporate the new buildings into the project. All the units in phase I and phase II are governed by the same master deed and bylaws under one association.

The applicant testified four out of the five units he owns in phase I are currently vacant. Units 300,310 and 320 were combined in one building, previously occupied by the medical user, Meridian Health.

In phase II the applicant owns seven units. LabCorp occupies two units, a dentist occupies three units, an urologist occupies a unit, and one unit is vacant since June 2012.

The applicant testified that he has tried to rent and sell the units. During the last eight years, the applicant had a substantial amount of inquiries to occupy the available units. Prior to committing to a lease with a potential client, the applicant would inquire with Manalapan Township to confirm the use is permitted. The applicant testified that no matter what type of potential use he would bring to the zoning office, the zoning officer would deny the tenant. The applicant began asking for formal requests in writing to advise why the use would be denied.

Mr. Alfieri previously submitted to the Board an email from Thelma Wilson Phillips to Ms. DeFalco dated March 15, 2018. Ms. Wilson was a prospective tenant for the applicant. The proposed use was to help autistic children become acclimated into the community. Ms. DeFalco issued a denial due to insufficient parking. In January of 2019, the applicant (under Re-Hold Inc.) submitted another application for a perspective tenant as a medical use at 300 Bridge Plaza Drive. This unit consisted of three units and was previously leased by Meridian Health. The request was denied for parking.

The applicant obtained copies of an approved application for a dentist located at 500 Bridge Plaza Drive. The applicant does not own 500 Bridge Plaza Drive. An accountant previously occupied the unit prior to the dental approval in 2017.

Ms. Beahm explained to the applicant that she was having a hard time following the testimony. Chair Leviton explained he had no knowledge or documentation of the dental practice at 500 Bridge Plaza Drive. Mr. Weiss explained he was having a hard time following the testimony for 300 Bridge Plaza Drive, 500 Bridge Plaza Drive and other units mentioned in testimony.

Ms. Beahm and Mr. Alfieri discussed the resolution for final site plan that Mr. Alfieri testified to earlier. Ms. Beahm was inquiring about the preliminary resolution because the final resolution did not provide the necessary information Mr. Alfieri did not have the preliminary.

Ms. Beahm explained the testimony given by the applicant on the history of the buildings was bringing some confusion to the Board members.

Mr. Alfieri explained 300 Bridge Plaza Drive was built and occupied by Meridian Health. The applicant proposed a medical use in the same building, after years of vacancy. The permit was denied with the explanation of insufficient parking in the complex. Fifty one percent of the units are medical uses. Mr. Alfieri questioned how one medical user could receive an approval and another medical user would be denied. Mr. Alfieri explained under the condominium law there cannot be any discrimination between similarly designed and constructed units. Mr. Alfieri asked why one medical use is unable to replace another medical use. How does the Zoning Officer determine which units are to allow the medical user? What criteria is the decision based on? Mr. Alfieri explained his client feels the rules are not be applied consistently amongst all of the units.

Mr. Miller explained Ms. DeFalco's decision was based on the ordinance not the condominium law. The condominium law is not relevant to Ms. DeFalco's determination.

Ms. Beahm explained Ms. DeFalco is only able to enforce the ordinance not interpret the ordinance. Section 95-3.2B1(c) states, "Buildings of mixed office use may include one third medical/dental floor area. If medical/dental uses

exceed one third, every user's parking must be calculated independently." The applicant testified earlier that there is fifty-one percent medical use at the site. This would require the parking to be calculating independently.

Mr. Alfieri asked if there have been any variance applications for the site. Ms. Beahm explained since she has held her position with the Board there has not been any applications for parking variances on the site.

Ms. DeFalco explained, in the past, when a medical vacancy was proposed with a new medical use ("Like for Like") the permit was issued. Ms. DeFalco began to receive complaints regarding the parking, which required her to look further into the parking. In 2018, Ms. DeFalco created a chart for the applicant showing all of the tenants. This chart showed the applicant was significantly under parked.

Ms. Beahm explained the Zoning Office is not in a position to take liberties in terms of what the ordinance states. Only the Governing Body has the ability to modify what the ordinance says. The site is currently over on the medical use. Any future tenant will require a variance for parking. The site is significantly under parked and an additional user will exasperate an already critical situation. The applicant had the opportunity to come to the Board for relief and chose to appeal the Zoning Officer's decision. The application for a variance is still an option for the applicant.

Mr. Miller explained Roger McLaughlin, Township Attorney sent an email to the applicant in October 2018. Mr. McLaughlin explained in the email the matter had come to his attention and based on his review he recommended the applicant apply to the Zoning Board for variance relief. Mr. Miller agreed with Mr. McLaughlin's findings.

Mr. Miller addressed earlier testimony by Mr. Alfieri when he implicated Ms. DeFalco was discriminating against the applicant by denying a use permitted at the site. Mr. Miller explained the ordinance is clear the applicant is over the restriction for the parking where it is fifty-one percent medical. Mr. Alfieri explained he and his client understand the ordinance and are present to appeal the Zoning Officer's decision.

Mr. Weiss asked Mr. Alfieri to give more testimony based on the discriminatory acts Ms. DeFalco allegedly took. Mr. Alfieri explained there is a sentence in the condominium law that states

"No law or ordinance or regulation shall establish a requirement concerning the use, location, placement or construction of buildings or other improvements which are or may thereafter be subjected to this act, the condominium act, unless such requirement shall be equally applicable to all buildings and improvements which are or may thereafter be subjected the act"

Mr. Weiss explained the issue is then with the ordinance not with Ms. DeFalco's decision. The ordinance clearly states at thirty-three percent there will be a separate calculation for parking. Mr. Weiss states the factor are present to trigger the ordinance to calculate the parking on an individual basis he is unclear on how the applicant is viewing this as a discriminatory denial by the Ms. DeFalco. Mr. Alfieri and Mr. Weiss discuss the issue in further detail

Mr. Miller made mention that the condominium law NJSA 46:8B-29 is not relevant to this case. Ms. DeFalco made her decision based on the ordinance.

Ms. Beahm explained 300 Bridge Plaza Drive has 150 parking spots and the required amount of parking is 247 spots with six vacant units. For 90 Bridge Plaza Drive 40 parking, spots are required and 90 are existing. The sites are 150 parking spots short based on the current users. Ms. DeFalco cannot continue to grant the permits. Ms. Beahm supports Ms. DeFalco decision, as it is consistent

with the ordinance. She advised the Board of the applicant's choices going forward.

Mr. Alfieri agreed with Ms. Beahm however, he states the township approved the condominium complex that is grossly under-parked under the ordinance. Ms. Beahm explained the site was built as general office.

Mr. Alfieri explained it is unfair to the unit owners. The tenant is unable to occupy a unit until they apply for a variance.

Mr. Weiss explained there is a difference between a medical use and a general office use.

Ms. Beahm and Mr. Alfieri discuss the medical parking requirements, general office use and the ordinance in more detail.

Mr. Alfieri introduced a map of the site to the Board in order to provide a visual tool. The map was a layout of Phase I prepared by John Ploskonka in 1997. The map was marked as Exhibit A1. The applicant confirmed this exhibit is an accurate depiction of what is constructed. Mr. Volovnik used the map to explain and identify the site. Meridian Health occupied 300 Bridge Plaza for 12 years. The appeal the applicant is currently seeking is for this same unit. The applicant explained he had numerous buyers for the unit over the past eight years however, all of the applications were denied from the zoning office.

Ms. DeFalco explained the first application came to the zoning office for 300 Bridge Plaza in 2018 that was denied. The second application was made when the applicant was making application to the Board.

Mr. Alfieri introduced Exhibit A2, a Preliminary and Final Site Plan designed by Design Tec Engineering date February 2, 2002. This is for Phase II. Mr. Volovnik explained and identified all of the buildings in Phase II. The applicant owns seven units in Phase II.

Mr. Alfieri explained 80 Bridge Plaza was approved for psychotherapy. Also located in Phase II, 81 Bridge Plaza was approved for a medical use on December 19, 2018.

Mr. Alfieri explained his client took the total square footage of the all of units within Phase I and Phase II added the medical use units square footage and then divided it by the total amount of units. The applicant arrived at 51 percent medical usage and 16 percent vacant units.

Chair Leviton asked Ms. DeFalco to describe the parking situation when she went out for site view in response to a complaint received by her office. Ms. DeFalco explained she saw parking along the curbed islands where there were no parking spaces.

Mr. Miller advised the Board the applicant has completed their testimony and Ms. DeFalco has no further comments. The Board's charge is to determine if Ms. DeFalco has made the correct decisions, based on the facts presented.

Chair Leviton went out to the public for questions or comments to the Board or the applicant. Seeing there were no public comment, Chair Leviton closed public.

Ms. Byan asked if the Board were to consider the previous zoning permits when making a decision. Mr. Miller advised the previous permits are not under appeal. The applicant as evidence brought in the prior permits.

Mr. Schertz asked Ms. DeFalco if she has come across situations similar to these applications, where the site is under-parked. Ms. DeFalco explained she is

finding the retail uses are going out and uses that demand higher parking come in.

Ms. Beahm explained the Planning Board would be undertaking the Master Plan this year. If parking is becoming a global issue, the Planning Board can review the standards. If appropriate, recommendations can be made to modify standards to the Governing Body.

Mr. Alfieri explained retail is moving to recreation and other uses that were not contemplated when the shopping centers were built. Office space, were always contemplated.

Ms. DeFalco explained office space is not as desirable as it was in the past. The offices are turning over for medical use.

Mr. Rosenthal explained even if the ordinance was not strictly applied in the past, there no reason to move forward in non-compliance.

Mr. Miller advised the duty of the Board was to determine if Ms. DeFalco's determinations were correct. There were two appeals filed and Mr. Alfieri and his client agreed to consolidate the files. The motion and vote will apply to both applications.

Chair Leviton opened the meeting to the public for comment or questions regarding this application. Seeing there were no questions or comments, Chair Leviton closed public.

A Motion to affirm the Zoning Officer determination for Applications ZBE1907 and ZBE1908 were correct was made by Mr. Weiss. Mr. Nelson Seconded the motion.

Yes: Rosenthal, Cooper, Nelson, Weiss, Lilien, Leviton, Byan, Schertz, Gregowicz
No: None
Abstain: None
Absent: Kamen
Not Eligible: Schertz, Gregowicz

Chair Leviton opened the meeting to the public being there were no comments
Chair Leviton closed public.

Ms. Moench confirmed Ms. Byan and Mr. Rosenthal will be absent for the August 1, 2019 Zoning Board Meeting.

ADJOURNMENT:

A Motion was offered by Mr. Cooper to adjourn the meeting at 10:15 pm. All were in favor.

Respectfully Submitted,

Janice Moench

Recording Secretary

RECORDED COMPACT DISCS OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.