

TOWNSHIP OF SADDLE BROOK
ZONING BOARD OF ADJUSTMENT MINUTES
October 4, 2021 Regular Meeting

The Saddle Brook Zoning Board of Adjustment will hold a regular meeting 7:00 p.m. on Monday October 4, 2021 at **(Town Hall 93 Market Street)**

1. CALL THE MEETING TO ORDER

2. FLAG SALUTE

3. OPEN PUBLIC MEETING ACT: adequate notice of this meeting has been sent to all members of the Zoning Board and to all legal newspapers in Accordance with all the Provisions of the "Open Meetings Act", Chapter 231, P.L. 1975.

4. ROLL CALL

Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Champy, Mr. Duffy – Present, Mr. Marz arrived at 7:02. Ms. Murray, Mr. Gatto and Mr. Burbano are absent. Also in attendance are Mr. Pellino the Board Attorney, Anthony Kurus the Board Engineer and Gary Paparozzi the Board Planner.

5. NEW BUSINESS

A.) Jessica & Anthony Fiore, 148 Platt Avenue, Block 506, Lot 3

Applicant requests a 12' x 24' above ground pool in noncompliance with Municipal Code #898, Section 206.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he states that it is and that they may be heard.

Mr. Pellino swears in Jessica Fiore she states her name spells her last and gives her address as 148 Platt Avenue Saddle Brook New Jersey.

Mr. Duffy – Tell us what you would like to do?

Mrs. Fiore – We would like to put an above ground pool in our backyard.

Mr. Duffy explains that the surveyor's name should not appear on the copy of the survey that she had marked up.

Mr. Duffy asks about the distance of the pool from the property line. Mrs. Fiore says that there will be 3 and a half feet from the property line and from the garage.

Mr. Duffy asks where the filter will go and Mrs. Fiore says that she has never had a pool and that it will be closer to the house.

Mr. Duffy – There is an issue about where the filter goes and the setback. There is also an issue about the discharge of the filter when it is backwashed.

Mrs. Fiore understands that the filter will have to be placed in an area away from the property line.

Mr. Duffy – Is there a deck going on the pool?

Mrs. Fiore – No.

Mr. Duffy – The actual structure of the pool is not going to be any closer?

Mrs. Fiore – No.

Mr. Duffy – What about the ladder?

Mrs. Fiore – The ladder is flat against the pool it goes straight up and then angles into the pool.

Mr. Schilp tells Mrs. Fiore that the filter can't go between the pool and the fence and the code for the filter is 6 foot from the property line.

Mr. Tokosh makes a suggestion that they get rid of the stump and the large rock in the yard and move the pool closer to the house and that she should run a hose from the filter out to the street so as not to disturb the neighbor's property.

Mr. Tokosh mentions that if they do move the pool they should give the Board a revised plan.

Mr. Paparozzi – The variance requested is 3.5 feet to an accessory structure if she moves it closer to the deck as long as that distance does not change there is no need for a revised drawing.

Mr. Kurus is satisfied with the answers from the applicant.

Mr. Duffy – May I have a motion?

Mr. Schilp makes a motion seconded by Mr. Tokosh to open to the public All in favor – YES.

Mr. Duffy – Having seen none.

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

Mr. Mazzer makes a motion seconded by Mr. Manzo to approve the application.

Mr. Duffy – There just has to be a correction made on the proposed from 4 feet to 3 and a half to the property line and that the filter will be 6 feet from the property line.

Roll Call - Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Champy, Mr. Duffy - YES

Mr. Duffy asks Mr. Marz to take Mr. Gatto's seat for the rest of the meeting.

B.) Krista & Anthony Breonte, 126 Nedellec Drive, Block 1511, Lot 2

Applicant requests a second floor addition in noncompliance with Municipal Code #898, Section 206.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he states that it is and that the applicant may be heard.

Mr. Pellino swears in Anthony Breonte he states his name spells his last and gives his address as 126 Nedellec Drive Saddle Brook New Jersey.

Mr. Duffy – Could you walk the Board through your application.

Mr. Breonte explains that the house is a small Cape Cod style house and that he and his wife have one child with another on the way. The house is small and they want it to be more comfortable for his growing family. The house has been in the family for 60 plus years and wants to stay there.

Mr. Duffy asks Mr. Kurus if he has any questions.

Mr. Kurus – I had a conversation with the applicant's architect and it looks like they are remaining within the footprint of the existing house except for a front yard encroachments because of the porch but no questions.

Mr. Tokosh – How high is the ceiling in the basement?

Mr. Breonte – I would say roughly 7 to 7 and a half feet.

Mr. Tokosh – Do you have any intention of putting a bedroom down there?

Mr. Breonte – No.

Mr. Schilp asks if the pool that is shown is still there. Mr. Breonte says that it is not.

Mr. Duffy – Can I have a motion to open to the public.

Mr. Schilp makes a motion seconded by Mr. Manzo to open to the public All in favor – YES.

Mr. Duffy – Having heard no one can I have a motion to close.

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

Mr. Duffy asks for a motion from the Board.

Mr. Schilp makes a motion seconded by Mr. Manzo to approve the application.

Roll Call - Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Champy, Mr. Duffy – YES.

C.) Brian Sheppard, 34 Welcome Road, Block 503, Lot 4

Applicant requests a rear paver patio with an outdoor kitchen and a 14' x 28' in ground pool in noncompliance with Municipal Code #898, Section 206.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he states that it is and that the applicant may be heard.

Mr. Pellino swears in Brian Sheppard he states his name spells his last and gives his address as 34 Welcome Road Saddle Brook New Jersey.

Mr. Duffy – Mr. Sheppard can you walk the Board through your plans.

Mr. Sheppard explains that he has been thinking about this for a few years and since the pandemic hit which kept everyone at home he felt that it was time to make a move. He wants to put in an outdoor kitchen with an in ground pool and a paver patio.

Mr. Kurus – The variances are maximum accessory coverage and maximum lot coverage. The only comment I would have is if the Board grants the variance since the coverage is increasing by more than 1000 square feet they would need to provide grading and drainage to address the increase in runoff.

Mr. Paparozzi comments that he does not see the pool filter on the plan and you might want to see where that is going. There is a vinyl fence on the property and I am not sure if it is Mr. Sheppard's or not.

Mr. Sheppard – It is my neighbor's fence.

Mr. Duffy – You are not fenced in at all.

Mr. Sheppard – I was before the Board and I received approval for the fence but have not done it yet. He explains that the filter will be in the backyard next to the A/C compressor. He says that he believes it is on the drawings and points it out to the Board. He says that he has 3 A/C units 2 on the side of the house and 1 in the rear and the other 2 blocks on the drawing are pool equipment.

Mr. Paparozzi tells him that it has to be 6 feet from the house and 6 feet from the property line.

Mr. Mazzer mentions that he may be able to put it in the corner of the yard.

Mr. Duffy asks where he will discharge the filter and he says he will run it to the street.

Mr. Schilp asks if the fire pit is wood or gas and Mr. Sheppard says it will be gas. Mr. Schilp also tells Mr. Sheppard that if the grill is close to the house it needs to be fire rated.

Mr. Duffy asks for a motion.

Mr. Schilp makes a motion seconded by Mr. Marz to open to the public All in favor – YES.

Mr. Duffy – Having seen no one come forward a motion to close.

Mr. Schilp makes a motion seconded by Mr. Manzo to close to the public All in favor – YES.

Mr. Mazzer makes a motion seconded by Mr. Manzo to approve the application.

Mr. Schilp asks that they stipulate a grading and drainage plan.

Roll Call - Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Champy, Mr. Duffy – YES.

D.) Lorenzo & Angelica Scaduto, 177 Wilson Street, Block 1703, Lot 24

Applicant requests an addition add-a-level and in ground pool with associated hardscape in noncompliance with Municipal Code #898, Section 206.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he states that it is and that the applicant may be heard.

Mr. Pellino swears in Lorenzo & Angelica Scaduto they state their names spell their last and give their address as 177 Wilson Street Saddle Brook New Jersey.

Mr. Duffy asks who will be presenting their application.

Mrs. Scaduto says that she will explain the situation and proceeds to explain that they have lived here for 12 years and they now have 3 children so they bought this new house and with a larger lot and want to do it the way they want so they can stay here for the long haul.

Mr. Duffy asks Mr. Kurus if he has any questions.

Mr. Kurus goes over the variances that they are looking for which include side yard setback, building coverage, accessory coverage and lot coverage. He says that if they are approved they will need to provide a grading and drainage plan. He asks about the height of the fence and they say it will be 6 feet. On the grading and drainage plan also show how much soil is being removed and how much is staying and that there will be no impact on the neighbors.

Mr. Paparozzi mentions the filter and the A/C units are not shown on the plan but there seems to be enough room for them without any code violations.

Mr. Tokosh asks if there is a lot of rain and they need to drain water from the pool where will they send it.

Mr. Lorenzo says that he will send it out to the front because the property behind them is Fair Lawn and he doesn't want to have any problems.

Mr. Tokosh asks if the pool will be heated and they say they are not sure at this point.

Mr. Schilp mentions the wires in front of their house and Mr. Scaduto says they are guide wires holding up the pole and that they have spoken to PSE&G about getting rid of them.

Mrs. Scaduto asks if they could make the pool larger if they want and Mr. Pappozzi tells them they would need to come back to the Board because they are already over on the accessory coverage and a larger pool would increase the coverage even more.

Mr. Pellino suggests they can carry the application and come back next month with new plans.

Mrs. Scaduto says that they will stay with the 12 by 25 because they do not want to wait any longer.

Mr. Duffy – Can I have a motion to open to the public?

Mr. Schilp makes a motion seconded by Mr. Manzo to open to the public All in favor – YES.

Mr. Duffy – Having seen no one can I have a motion to close?

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

Mr. Duffy – Can we have a motion?

Mr. Schilp makes a motion seconded by Mr. Champy to approve the application with a grading and drainage plan.

Roll Call - Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Champy, Mr. Duffy – YES.

E.) Chefler Foods, LLC, 400 Lyster Avenue, Block 1009, Lot 9

Applicant requests to use the rear/east side of the property for truck parking with exterior improvements consisting of new timber curbing, gravel paving and landscaping.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he states that it is and that the applicant may be heard.

Attorney Charles Sarlo who is representing the applicant steps forward.

Mr. Sarlo – Chefler Foods is a manufacturer of mayonnaise, oils and vinegar. The purpose of this application is to improve the rear lot and continue to use it for truck parking. The improvements being proposed will be beneficial for the applicant the environment and the residents that border the property.

We have engineer Andy Raichle to go through the site plan that was submitted and the improvements.

We filed an OPRA request to see what was on file some records were found others were not. I need to go through a historical perspective to tell you how we got to where we are. Chefler Foods is a single user tenant so they are the only ones in the building and do not own the property. They've been there since July 2017 and have a long term lease. The property owner is CLB Properties. Based on the information we have they developed this property in 1974. It's a townhouse residential zone so at that time they would have gotten a Use Variance. In 1974 they would have had to obtain site plan approval at that time. In 1991 there was another site plan application made by the property owner to use the rear parking lot for construction truck parking. Unfortunately through the OPRA request the resolution does not exist. It is presumed the approval was granted and the reason I say is because my client took tenancy in 2017 there was a letter from the property owner to the tenant that said the commencement date for this application is July 2017 and by the way one last thing we have to do meaning the landlord is to remove the construction trucks from the back parking lot. It is circumstantial evidence but it comes from a reputable property owner that owns a lot of industrial property throughout northern New Jersey and there is an application from 1991 to use the rear parking lot there is no resolution that we could find but there is a letter saying that he will remove the trucks the sort of thing he sought approval for. That letter is part of the application. It's clear that in conjunction with a Use Variance in 1974 site plan approval would have been granted whether or not that site plan approval allowed parking in the rear of the building is unknown but in 1991 that application in conjunction with the letter seems to indicate that parking was allowed. To support that I have a series of Google Earth images over the years from 1979, 2007, 2010 and 2014. I

can mark them as exhibit A-1 a series of 4 Google Earth images. You can see the 1979 image shows a partial of the building and to the right is the rear lot where you can see it is a parking lot. It doesn't look like trucks or tractor trailers but it is an organized parking lot for this building. In 2007 there is a different use and it is believed that this was used for Marcal.

Mr. Mazzer asks if there was a change in tenancy at that time because it went from all cars in the 1979 photo to no cars and all trucks.

Mr. Sarlo – I can't tell you all the tenants only what I could piece together but it was obviously built for an industrial use and maybe the tenancy changed and in 2007 all the employee cars fit in the front lot but yes there are trucks you can see. In 2010 some additional trucks and in 2014 for the most part the same as 2010. This again is all before my client took tenancy of the property. This site was at one time used for a technical school whether that was in 1979.

Mr. Duffy says that it was a technical school in 1979 and up to around 1990.

Mr. Sarlo – The purpose here is to show that the back area which is gravel it was overgrown with weeds has been used for parking both cars and trucks. We want to make improvements to the rear lot that the engineer will go through for the benefit of the stream and the residential neighbors so I've asked for an amended site plan approval because I believe there's evidence that site plan approval was given. We are before the Zoning Board because the initial application that was submitted the Zoning Officer, Planning Board Engineer and Mr. Paparozzi's letter say that it is an expansion of a nonconforming use. It's hard to say with definitiveness what an expansion of a nonconforming use is. The Zoning Officer gave a CO for this application. The application at that time basically said industrial manufacturing warehouse use and incidental tractor trailer parking. The Zoning Officer said when reviewing it that incidental has to mean a limited number of trucks and you are looking to park a lot of trucks. This Board is familiar with accessory uses and the statute says what is an accessory use it's incidental and customary defines an accessory use. The terminology incidental for the CO application is consistent for what it is being used for. Incidental means an accessory use and clearly tractor trailers are accessory to the principal use of manufacturing and warehousing. I don't think you can dispute that with a manufacturing and warehousing operation you are not going to have tractor trailers. The side loading dock has 9 spaces and that is what your Zoning Officer said is I consider meaning minor in nature in his opinion to deny. To me it's arbitrary it is a rational basis how he came up to 9 saying let's count loading docks but it's arbitrary because was there only tractor trailer parking at the loading docks or also in the back. I can represent to you my client believed based on the representation made by the property owner when he took tenancy and in his lease. This area since 1979 maybe since 1974 when it was developed has been used for parking. I don't think the expansion of a nonconforming use is this parking lot if anything it would be for the number of vehicles. It's hard to establish that because there is no set number in the application and there is nothing established in the Certificate of Occupancy in terms of the number of trucks. If this was a site plan application we would be before the Planning Board. What we are asking for is 13 regulated spaces rather than parking them haphazardly along with buffers, curbing and remaining on gravel that the engineer will go through. Two other points refrigeration trucks it's a food product the Town Ordinance regulates refrigeration trucks and we stipulate we will comply with that ordinance. We will park them as far away from residential as possible and they will not be operated on a continuous basis. They operate for a 2 hour time frame during loading and unloading where it would be on. We would stipulate that those refrigeration trucks while they are active would only be parked at the loading dock. They might be parked there overnight or on weekends but they would not be active in terms of the compressor being on in the rear parking lot. That is consistent with the ordinance park as far away from residential as possible, operate them for 2 hours with a noise limit of 65 decibels to the property line. There may be a concern about sleeping in the trucks. All the trucks are owned by Chefler Foods most of them are out on the road during the week and will come back on a Friday to park until they reload on Monday. Some have local routes and may be back the same day. The number of trailers may vary up to a maximum of 13. With regard to the sleeping the company does not have any trucks with sleeper cabs. There's no contract trailer operators or trucks so we can stipulate to that also.

Mr. Mazzer asks if the trucks are owned by Chefler Foods and if they are going to be renting out space for trucks to park as an additional business.

Mr. Sarlo says that they are owned by Chefler and it will be stipulated.

Mr. Schilp asks if there are straight trucks being used as well as tractor trailers based on the diagrams in the site plan.

Mr. Sarlo replies that there are and the reason why is because if there were all tractor trucks parked head on to the stream there wouldn't be enough room to turn around and maneuver. A refrigeration truck may come back empty and find a parking spot in the back it parks the compressor is off the next morning he may pull up to the loading dock turn on the compressor and has 2 hours to get loaded and then off onto the road.

Mr. Tokosh asks if all the trucks are identified as "Mike's".

Mr. Sarlo explains that yes they are and that is their top brand of product that they sell.

Mr. Paparozzi mentions that he did not receive a survey and the proposed site plan has parking for 9 trailers but Mr. Sarlo has alluded to 13.

There is some discussion between the Board and the attorney about the number of trucks and that the only survey provided went to the Board Engineer.

Mr. Sarlo brings up the engineer to further explain about the number of trucks and the site plan.

Mr. Pellino swears in Andrew Raichle he states his name spells his last and gives his address as 26 Columbia Turnpike Florham Park New Jersey.

Mr. Sarlo questions Mr. Raichle to establish his credentials as an expert witness. The Board accepts him as an expert witness in engineering.

Mr. Sarlo brings up the exhibit A-1 of the 4 aerial Google Earth images and Mr. Raichle testifies that he is the one that put it together and that it had 3 Google Earth images and the 1979 aerial which came from historicaerials.com.

Mr. Sarlo enters into evidence a colored rendering of the site plan that was provided to the Board in their packets. The rendering was done by Mr. Raichle and is entered as exhibit A-2. It is one sheet dated May 4, 2021.

Mr. Raichle – We have a historically present gravel parking lot. The proposal is to refresh that parking lot. That involves scarifying and tilling it adding the gravel leveling it out and compacting it. We are proposing to provide a timber curb along the perimeter of the parking lot and pull the parking lot back. Areas of green represent areas of existing gravel being pulled back and replaced with grass. The last thing is arborvitae screenings in the corner. We are proposing 9 straight line box trucks parking perpendicular to the building and 4 trailer parking spots a total of 13 spaces.

Mr. Kurus asks Mr. Raichle to go through the access to the parking lot.

Mr. Raichle explains how the trucks enter the property by coming in off of Midland Avenue through an easement that borders the railroad property.

Mr. Paparozzi mentions that the easement is not shown on the survey.

Mr. Raichle says that they can produce the easement.

Mr. Schilp asks how far the easement goes.

Mr. Sarlo says that it is a common easement use by all the industry along the railroad tracks.

Mr. Schilp asks if they have the easement and Mr. Sarlo produces the easement and enters it as exhibit A-3. It is a license agreement that is good until 2050.

Mr. Duffy asks if it was granted for them to use as parking as there are 4 to 5 trailers parked along there every day.

Mr. Sarlo – The license agreement does talk about that little lot for 4 trucks.

Mr. Duffy – Up against the fence along the property line?

Mr. Schilp – No we're talking about the driveway coming in from Midland Avenue. When you go in that driveway there are always tractor trailers parked on that road.

Mr. Paparozzi says he saw them parked tandem from one end to the other.

Mr. Sarlo asks if they were Chefler trucks and he says yes.

Mr. Pellino reminds the Board that they are giving testimony and that they should go one at a time.

Mr. Schilp says that there are always 4 to 5 trailers parked in the roadway and it is difficult for fire trucks to get by. He asks if the easement says they are allowed to park trailers on that roadway.

Mr. Sarlo – No that is a common easement for egress for everything along there and they would stipulate that there would be no tractor trailers parked along the easement.

Mr. Schilp asks how they would get tractor trailers back there without backing all the way in. He also questions how if trucks are parked in the lot how tractor trailers are going to get in and out and says that there were no turning templates provided to the Board.

Mr. Raichle says they will provide turning templates.

Mr. Schilp – Is that area going to get cleaned up back there. There's cans of diesel fuel and garbage the whole area is a mess.

Mr. Schilp says that he has some pictures he took that he would like to present as an exhibit.

Mr. Pellino states that to be fair to the applicant the photos need to be identified and they should be marked ZB-1 through 7.

Mr. Duffy marks the photos ZB-1 through ZB-7 and Mr. Schilp goes through and describes what each photo is.

ZB-1 Is a picture of the back of the lot east side of building 3 hoppers some kind of refrigeration unit junk, garbage and bottles that are stored and strapped but no bollards around them.

ZB-2 and 3 are the north side of the building with a tractor trailer with the pipe coming down and under the train tracks with a spill of what was being pumped.

Mr. Sarlo interrupts and says they will clean up the property but that they are here for the use of the rear parking lot and that there was a Use Variance granted in the 70's for industrial purposes because of the rail line.

Mr. Pellino tells Mr. Sarlo that it used to be a school that was attended by the Chairman.

Mr. Sarlo says that it was one point in time and that all the applications that were submitted with this application indicate it was industrial manufacturing and warehouse.

Mr. Duffy – In the 1979 photograph you said that the cars were for the employees. There wasn't an employee structure at that point all of those cars at that time would have been students in that school. There was no manufacturing I can attest to 6 years I attended school there for 2 years I have a brother that was there for 2 years prior to me. I have a number of friends so be clear on it.

Mr. Sarlo responds that he had heard that but in his application that an application dated June 1991 filed by the property owner it says present use industrial warehouse vacant rear land area and this is when they were going to formalize the use of the rear parking lot for their construction vehicles.

Mr. Pellino – I just think that the point being industrial use we believe doesn't go back to the 70's it may have begun in 1991.

Mr. Sarlo then states that in the same document from 1991 the question is how long has the current use existed on the property and the answer was since 1974. I know I didn't write it my client didn't write it obviously we got first-hand knowledge of it.

Mr. Duffy – I want to finish putting the pictures into the record and stop on the pictures for the moment then go to Mr. Paparozzi and then go back to what we are speaking about here.

Mr. Schilp – ZB-4 and 5 are the same thing they depict the back of the building and further north there is another big machine back there. Number 6 is the area back there and this is all spilled oil that is back there. Number 7 is more spilled oil and contamination because there is no macadam so everything sinks into the ground. If you are requesting to park trucks back there again with cabs that are going to leak it's not good. The turning radius I can't fathom driving back there with a car and a big SUV and you're going to put straight jobs and tractor trailers I would love to see the turning radius.

Mr. Paparozzi comments on the 1991 approval for parking. The architects plan shows that was given shows 9 parking spaces on the north side of the property 3 were 10 by 20, 3 were 10 by 30 and 3 were 10 by 40.

There is a debate about where on the property the 1991 approval was referring to in regard to parking.

Mr. Duffy asks if they are showing on the plan where each type of truck will be parking how are they going to line a gravel parking lot so the spaces are defined clearly.

Mr. Raichle suggests that they can mark the curb to show where to park or put up posts.

Mr. Pappozzi says that they had a similar situation in Lodi and the DEP had said if it is a parking lot it needs to be paved so that oil and fuel leakage from the trucks don't get into the soil and that there may be a DEP regulation regarding that. He asks for the Board Engineer to verify that.

Mr. Raichle says that there is no such regulation.

Mr. Kurus says that the regulation doesn't say whether it is a parking lot or truck parking just that an area susceptible to high pollutant loading you shouldn't use porous paving. If this area is susceptible to high pollutant loading then it would apply.

Mr. Raichle says that it is not uncommon for DEP regulations to be interpreted differently and that he can show gravel truck parking approved by the DEP.

Mr. Duffy asks how the trucks access the lot.

Mr. Raichle says that they use the railroad easement.

Mr. Duffy asks if the easement gives the railroad access to the land.

Mr. Pellino says that is how he understands it.

Mr. Duffy raise his concerns about the fire access to the building and being able to use the easement for emergency access. He is also worried whether the fire trucks could enter any other way.

Mr. Sarlo says the site plan for the building was approved and he believes that Lyster Avenue is the fire and emergency access to the front door and if they had to get around the building there is no way on the east side that connects the front of the building to the rear parking lot. He is not sure if modern fire trucks could use it but it was clearly the fire path to the back of the building. He also says that they took into consideration the fire access when they planned out the new plantings.

Mr. Sarlo says a bigger problem is the drivers that go down Lyster not knowing they can't get to the docks and having to turn around and go back out. He is thankful the Township named the easement Chefler Way.

Mr. Duffy tells him the town did not name it the company put up a sign that says Chefler Way and assumes that it is so the trucks can find the correct way into the docks.

Mr. Duffy points out that the property was fenced in at one time and that the fence is still there it is ripped off and laid on the ground.

Mr. Sarlo concedes that it was fenced but it was used as a parking lot in 1979.

Mr. Duffy – I know I parked there when I went to school there. The truck drivers are going down Lyster Avenue because their GPS is taking them that way and it is a major problem for the residents. The sign at the end of Lyster does little to address the situation.

Mr. Pellino reads from the easement agreement that it states that Bernard Branca who owns the property at 400 Lyster Avenue and grants the railroad a license to the premises.

Mr. Duffy clarifies that the property owner has given license to the railroad to use and not to Chefler Foods.

Mr. Sarlo says he will get clarification on the easement.

Mr. Kurus asks that we have the easement and the access on the plans and who has rights to what and how you get in and out. Wants to see the turning templates how they get in and out of that back parking area. He asks for details on the timber curb and more information on whether gravel is suitable for this application.

Mr. Manzo – I'm concerned about the sewer easements. How close are you coming to them?

Mr. Raichle points it out to Mr. Manzo. He then shows the Board on the plans where you can see the manholes.

Mr. Manzo asks if they will be paving where the manholes are.

Mr. Raichle replies no.

Mr. Marz - if that easement wasn't there for the trucks there would be no business basically.

Mr. Sarlo – That's correct.

Mr. Tokosh – On exhibit "C" the letter dated July 11, 2017 it states there are storage and job trailers located on the east side of the building. These items are scheduled to be removed during the week of

July 10, 2017. Right now there are 23 truck cabs and box trucks there and one old van next to the fence. Why are there so many trucks there if they said they were going to remove it?

Mr. Sarlo explains that the letter was from when Chefler Foods took occupancy and Branca said I have construction trucks there and I will remove them because you have total use of the property. This goes back to the 1991 application and wanting site plan approval to park construction trailers. Branca is a real estate developer and land owner of commercial industrial buildings. He's got a construction business at that time he says I own this property I'm speculating I have a lot of equipment I'd like to park it in the back it's not being used let me go to the Zoning Board for approval. That's what this letter is saying. That's why all that equipment is back there and I will stipulate as part of the approval if this Board looks favorably will look to clean it all up.

Mr. Tokosh asks where they are going to put all the cabs. Right now there are 23 trucks and cabs there where are they going to go.

Mr. Sarlo – We could have tried to squeeze them in but we wanted to come with a plan that would be safe. He will have to find offsite parking if there is that many. We are trying to find common ground with the Board and the Township to have an organized parking area in the back that can be used. Part of the resolution he would have to find offsite parking.

Mr. Tokosh recommends striping an area along the building to keep people from parking there so that emergency vehicles can get by.

Mr. Schilp voices his concerns about the trucks being on gravel and that they all leak oil.

Mr. Sarlo points out that concrete and asphalt are also porous.

Mr. Schilp – Yes but It's not as bad as stone.

Mr. Sarlo – We could put a liner under the stone which would be better than asphalt or gravel.

Mr. Schilp – I would like to stipulate the most number of trucks on the property would be 13 in the back 9 at the dock and 4 in the upper triangle.

Mr. Sarlo – We would be fine with that.

Mr. Raichle – I do like the idea of the liner because the asphalt would have runoff and the stream is right there so that could be worse. I do think a liner based gravel solution might be the best option.

Mr. Mazzer says you can't stripe gravel.

Mr. Papparozzi – You can pitch the blacktop or concrete away from the stream.

Mr. Mazzer – It's a mess back there all on gravel. The improvement here would be to pave it get it striped and get a number down. Get us the turning radius and a better view of the access.

Mr. Champy shares the concerns of the other members.

Mr. Duffy asks for a clarification on the number of trucks.

Mr. Sarlo – The application for the CO was for manufacturing and warehousing and incidental trucks. The zoning officer had come up with a number of 9 in response to this application based on the number of loading docks I believe.

Mr. Pellino – That was Tony's effort to establish a baseline for the use here.

Mr. Sarlo – It was his attempt but it was arbitrary and did not take into consideration how many times he was in the back parking lot and saw tractor trailer parking.

Mr. Pellino – He established the number 9 for the zoning permit.

Mr. Sarlo – That is not how the business has been operating and cannot operate with just 9 spaces.

Mr. Pellino – Which is why you are here.

Mr. Duffy – So you want to keep the 9 and 13 more on top of it and the 4 in the triangle area.

Mr. Mazzer – Was there ever a change in use because it was a school and now it is used for manufacturing.

Mr. Duffy – They went back and couldn't find a resolution.

Mr. Sarlo – In the package there was an application to use it for industrial manufacturing. The CO was issued on that premise.

Mr. Pellino explains that the townhouse zone is a relatively new concept that they didn't have townhouses 40 years ago so I think that zoning ordinance is relatively new.

Mr. Sarlo – I tried researching the history of the zoning ordinance and I couldn't find any history of how or when this property was zoned. It's simplistic in presenting what we would like to do getting there and how we got here there's a lot of unknowns. We came in to make this presentation and if the Board looks favorably on it the counselor will write a very thorough resolution of approval and everybody would have to live by what was agreed to.

Mr. Duffy asks for a motion to open.

Mr. Tokosh makes a motion seconded by Mr. Schilp to open to the public All in favor – YES.

Paul Gordon of 455 Steinway Road comes forward he tells the Board that he had made some improvements to his yard and that a big issue was the coverage and that a liner sounds like coverage to him and where will the drainage go to. The whole lot is covered already and they are talking about paving the lot and increasing the coverage. He is also unhappy with the fact that they cut down a bunch of trees and he can see the trucks and the lot now. They are coming now after the fact for approval.

Mr. Pellino stops Mr. Gordon and asks to swear him in because he is in effect giving testimony.

Mr. Pellino swears in Mr. Gordon he states his name spells his last and gives his address as 455 Steinway Road.

Mr. Gordon continues to explain the conditions that he and his family that they are living with. The fumes from the trucks the beeping when the trucks are backing up at all hours of the night. He knew it was a townhouse district when he moved in but had no intention of moving next to a factory. The refrigerated trucks run often. He is also concerned about the property value it was woods and now there is a trucking outfit there. The food smells are also very strong and unpleasant.

Mr. Pellino asks when Mr. Gordon moved in there.

Mr. Gordon – 1999.

Mr. Pellino – What was going on there at that time?

Mr. Gordon – There were some trucks back there but you couldn't see them because it was all woods. The trucks were also not active they were only stored there and the lot was hardly used. This is now an active parking lot not employees coming and parking at 8:00 in the morning and leaving at 5:30 we're talking about in out all day long.

Mr. Duffy tells Mr. Gordon that there is a noise ordinance and he can call the police if it is after hours.

Mr. Gordon says he can call every day and they can write a ticket every day but my life is already impacted. Mr. Gordon steps down.

Shayne Gonzalez steps forward to speak. She lives at 461 Steinway Road. She says that she and her husband moved in this May and was aware of there being a factory there. She shows on the display where she lives.

Mr. Pellino suggests that she be sworn in. He swears her in.

Mrs. Gonzalez asks where the trucks are going to be.

Mr. Sarlo points out on the plan where the lot will be and the trucks will be parked.

Mrs. Gonzalez has similar complaints to Mr. Gordon about the fumes from the trucks the smell of food that is being packaged there and the noise of the trucks going in and out. She is concerned about her child and that they won't be doing anything that will affect his health. When they moved in there was a lot more foliage and you couldn't see the trucks and now all she sees is trucks and truck lights at night and the beeping when they backup. Her son's bedroom is getting the light from the trucks going in and out. She wants to clarify the number of trucks as 9 and 4 and where they are going.

Mr. Duffy points out that it is 9 and 4 and where they will be.

Mrs. Gonzalez steps down.

Mr. Duffy calls for a 5 minute recess.

Mr. Pellino swears in Janet Taormina she states her name spells her last and gives her address as 447 Steinway Road.

Mrs. Taormina tells the Board she moved in in 2013 and she did not have the smells that she has now of vinegar and curry and they are overpowering. They can't sit outside. The tractor trailer drivers have invoices that she has seen that say Lyster Avenue on them and they aren't allowed to go down that street so they come down Steinway. She says they have a car that they park in the street and it has almost

been hit by a tractor trailer on numerous occasions. One instance she remembers that a tractor trailer backing all the way up Steinway to Erie so he could get out. She also said that when she walks her dogs at all different times and she always hears the sound of the refrigeration trucks running. All the trucks lined up along the easement say Amazing Mikes.

Ms. Taormina steps down.

Nicholas Wille comes forward he is sworn in by Mr. Pellino he states his name spells his last and gives his address as 518 Lyster Avenue.

Mr. Wille asks the Board to check and make sure that Chefler has a legal CO to be there. He says that the name was originally spelled different and what they said they were going to do is different from what they are actually doing. He tells the Board that he caught them making the parking lot and pushing the dirt into the runoff stream that runs behind their property. He went to the town immediately and the Building Inspector put a stop to it. They are not refurbishing the parking lot they already made the parking lot. If you keep pushing for them to pave it then where is that water going to go is it going into that stream? If that stream overflows it will back up into our yards and that is my concern. My other concern is they do whatever they want there. You want 13 parking spaces who is going to police that? If you give it to them a week later there will be 23 trucks back there. The owner does whatever he wants he has no respect for the neighbors or anything else. I've gone to the Council a few times about it and they give me lip service. You are worried about the fire trucks getting in there if that building goes and they come down Lyster or they go in the back and there's more than 13 trucks and that fire truck can't get in there. There's another fire lane around the other side of the building it always said fire lane that thing has been blocked since the day these people went in there. I had the Fire Chief down there I don't know what he told them it's still blocked. Now where it said fire lane is gone.

Mr. Duffy – Which side of the building is this?

Mr. Wille – That would be the north side.

Mr. Duffy – Where the loading dock is.

Mr. Wille – Yes. I've been there since 1981 that was all woods back there. The school was there for a while they parked on the edges. We went back there today there's all trucks back there. They put a parking lot there. The only reason they're here is because they caught if they didn't get caught there would be 23 trucks back there. I want you to explain how they are going to do this parking lot to keep that ditch from getting filled. If it's not paved the water goes down which is fine by me but now you have trucks there and you have oil contaminating the ground. If we pave it where is it going to run off to?

Mr. Mazzer – Does that stream go any place?

Mr. Wille – Between my block and their block under the ground you go in some of our backyards there are grates you see the water rushing by but the cement pipe ends behind that building then it comes out in the stream and goes down towards Mayhill.

Mr. Mazzer – It follows the tracks?

Mr. Wille – Yep but there's one on both sides of that building. There's one on the other side that goes under the ground. You go in their parking lot and you can look down and see it go. If something happens back there with this parking lot our backyards all the water is going to come up in our yards. These people don't want to hear refrigerated trucks all night. The employees are all nice people they are just doing their job but the owner doesn't care about the neighbors. They sent a jar of mayonnaise from the CFO saying we want to be good neighbors 3 years after they moved in. Now they want to put a parking lot back there which they already added but they got caught that's why they're here. If they didn't get caught they wouldn't be here. The attorney even said he presumes he presumes I saw those pictures whoever took those pictures then they wrote a date in there. In 2014 that wasn't a parking lot in 2010 it was woods. There was an old construction trailer and an old beat up truck back there.

Mr. Wille steps down.

Mr. Duffy asks if anyone else would like to speak. Seeing none he asks for a motion to close the meeting.

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

Mr. Duffy – The meeting is closed to the engineer's testimony. Mr. Sarlo do you have any other witnesses?

Mr. Sarlo – No other witnesses Mr. Chairman.

Mr. Duffy – Does the Board have any other questions regarding this application?

Mr. Duffy – Can I have a motion on the application in its entirety.

Mr. Schilp makes a motion seconded by Mr. Marz to open to the public All in favor – YES.

Mr. Duffy – The meeting is open for the application you may ask questions of the engineer or Mr. Sarlo.

Mr. Gordon who is still under oath steps forward.

Mr. Gordon – Just to clarify they did do this before any applications were made is that against the rules is what I'm asking. Since they have done all this work kind of asking for forgiveness instead of asking for permission.

Mr. Duffy – Not in this sense because what they are asking for is these parking spaces. They didn't set this up in the manner you are talking about now. I think some of the other comments from the residents was they are attesting to how this area looks. It should have probably been cleaned up a long time ago I can't give testimony to that.

Mr. Gordon – They are trying to make it official now. That was woods for the longest time. If there was something parked it was way at the other end near the tracks so all this trucks and parking it was absolutely woods. They already cut down everything they graveled it they put lights up this is a parking lot now it was a parking lot 6 months ago. This is after the fact that's all.

Mr. Pellino – When did the woods disappear?

Mr. Gordon – Six months ago they came in and leveled it. Weeds trees woods if there was gravel there it was all overgrown. They already did all this that's my point this is a little late that's all.

Mr. Duffy – Can I have a motion to close?

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

Mr. Duffy – There's a lot of questions that have not been adequately answered to go forth right now and at this point I am not sure what the pleasure of the Board is. I know what my thinking is.

Mr. Pellino – We may want to give Mr. Sarlo an opportunity to sum up or give us a direction how he would like to proceed.

Mr. Sarlo – I can respond to some of the public's comments I don't know where the Chairman wants to go if there are certain things he would like to see and come back with a revised plan. If we are going to vote I would have to ask for a 5 minute recess to speak to my client. If I may the last fellow that spoke is to a certain degree correct. The gravel was overgrown with weeds. This is a food manufacturing facility it had to be cleaned up. Refreshed gravel was brought in no different than if you approve this refreshed gravel would have to be brought in on a periodic basis. There was construction vehicles back there putting gravel down. Did they push it too far to the brook carelessly probably and that's why we are looking to pull it back. It's not like we got caught it was an intentional effort to replenish the gravel so that it wouldn't be a health violation because of the food manufacturing. I hear a lot of comments about not being used as a parking lot and again photographs and we heard from the Chairman back in 1979 photographs are the photographs you can believe them or don't believe them. My client has been using it maybe in a haphazard manner but he has been parking vehicles there because the property owner not only had applied for a site plan approval to park vehicles in the back and believed he could continue because of the documentation. I've been in countless hearings like this and some worse than this and I get it. People made investments in their residence. We have two incompatible uses an industrial operation next to a residential area. No fault through my client a use variance was granted to allow this industrial building to be built back in 1974 not by my client. This situation has occurred my client has a legal right to operate here it's just now looking to mitigate. What does my client need to continue a business and how do we mitigate any concerns of the residents. There are a lot of valid concerns but if you think land use this one was almost self-created because presumably and maybe your right counselor the townhouse concepts go back to the 1970's didn't exist I'm not sure when townhouses came into play what the zoning may have been. Maybe it was industrial and it got changed to townhouses I don't know. If you think about it there is always going to be a dividing line between incompatible uses. This is not good I agree but I am not sure paving is the answer given all the historical flooding we had in recent past.

Mr. Pellino – The Board has raised a lot of concerns but also a lot of questions. That license agreement does not appear to say what you thought it said. There's questions about access and turning templates and things like that. I think it's up to you and your client if you want to request of the Board to come back with more information and revisions. I think the Board will consider that if not then we'll proceed to a vote.

Mr. Sarlo – I think it would be unfair to ask the Board to vote on this with the number of questions that have been raised. In some instances it is appropriate to stipulate and say we'll submit conforming set of plans after the fact. I don't think that's the case here. We respectfully request an adjournment.

Mr. Paparozzi – There are 2 issues that I had that I think Mr. Sarlo should address in the application. The ingress and egress with his client and also that it is shown on the survey that there is more proof than what we have.

Mr. Pellino – Except if it's a license agreement it's not an easement it's not going to show it's not going to be recorded and the license agreement specifically said not to be recorded.

Mr. Paparozzi – If that is the case then that should be attached. The other issue about the oil spill I think maybe the Board Engineer and even the engineer for the application should get that determination from the DEP. Based on those photos I think the DEP would come back with the same decision they did in Lodi about not parking those type of trucks on gravel. Also the front lot needs to be striped as well if the application is approved. When I went there it was parking lot but no striping.

Mr. Duffy also says he saw cars parked along the building blocking the way for a fire truck.

Mr. Schilp say that the south side of the building is not a fire lane anymore and you could never get a fire truck through there. When they had the old rescue trucks yes but nowadays there isn't a fire truck in town that could get down the south driveway.

Mr. Duffy – This application is being adjourned this evening and will be heard again on November 1st without notification. They will address the concerns of the Board and the residents.

6. RESOLUTIONS

A.) Approval for Suresh Patel, 31 Hutter Street, Block 1501, Lot 7

B.) Approval for CDR Realty, 435 President Street, Block 102, Lot 23

Mr. Schilp makes a motion seconded by Mr. Manzo to approve the resolutions.

Roll Call - Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Duffy – YES.

7. MINUTES

Meeting of September 13, 2021 Regular Meeting

Mr. Schilp makes a motion seconded by Mr. Marz to read and file the minutes. All in favor – YES.

8. COMMUNICATIONS

Anthony Kurus to the Zoning Board, 8/20/21

Anthony Kurus to the Zoning Board, 8/27/21

Anthony Kurus to the Zoning Board, 6/23/21

Anthony Kurus to the Zoning Board, 8/23/21 Revised

Anthony Kurus to the Zoning Board, 8/27/21

Anthony Kurus to the Zoning Board, 8/26/21

Gary Paparozzi to the Zoning Board, 7/24/21

Eric Timsak to the Zoning Board, 9/08/21

Mr. Schilp makes a motion seconded by Mr. Marz to read and file. All in favor – YES.

9. VOUCHERS

Neglia Engineering Assoc., 8/13/21, Curcio Realty, 156 Midland Avenue, Block 403, Lot 9 \$90
Neglia Engineering Assoc., 8/13/21, Midland Commons 2, Van Bussum Ave, Block 402, Lot 1-5 \$337.50
Neglia Engineering Assoc., 8/13/21, Bruce Walker, 130 MacArthur Drive, Block 503, Lot 10 \$92.50
Neglia Engineering Assoc., 8/13/21, Chefler Foods, 400 Lyster Avenue, Block 1009, Lot 9 \$1110
Neglia Engineering Assoc., 8/13/21, Suresh Patel, 31 Hutter Street, Block 1501, Lot 7 \$162.50
Neglia Engineering Assoc., 8/13/21, Jean Makowka, 458 N. Midland Ave, Block 1402, Lot 53 \$232.50
Neglia Engineering Assoc., 8/13/21, Jessica & Anthony Fiore, 148 Platt Avenue, Block 506, Lot 3 \$140
Neglia Engineering Assoc., 8/13/21, Anthony Breonte, 126 Nedellec Drive, Block 1511, Lot 2 \$140
Neglia Engineering Assoc., 8/13/21, Scaduto, 177 Wilson Street, Block 1703, Lot 24 \$372.50

Mr. Schilp makes a motion seconded by Mr. Marz to pay if the money is available. All in favor – YES.

10. OPEN AND CLOSE MEETING TO THE PUBLIC

Mr. Schilp makes a motion seconded by Mr. Marz to open to the public. All in favor – YES.

Mr. Duffy – Seeing no one.

Mr. Schilp makes a motion seconded by Mr. Tokosh to close to the public All in favor – YES.

11. ADJOURN

Mr. Mazzer makes a motion seconded by Mr. Manzo to adjourn the meeting. All in favor – YES.