

**TOWNSHIP OF SADDLE BROOK**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**May 2, 2022 Regular Meeting**

The Saddle Brook Zoning Board of Adjustment will hold a regular meeting 7:00 p.m. on Monday May 2, 2022 at **(Saddle Brook Town Hall 93 Market Street)**

**1. CALL THE MEETING TO ORDER**

**2. FLAG SALUTE**

Mr. Duffy asks for a moment of silence to honor Joseph Calvitti a Fireman an Ambulance Corp Member and third alternate Zoning Board Member who recently passed.

**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**

Ms. Murray, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Burbano and Mr. Duffy – Present. Mr. Mazzer is absent and Mr. Champy arrived at 7:20.

**5. NEW BUSINESS**

**A.) Perry Festa & Karen Nobile, 186 Colonial Avenue, Block 1202, Lot 19**

Applicant requests an eight-foot privacy fence in the rear yard that does not conform to the zoning ordinance for the Township of Saddle Brook, as it exists today.

Mr. Pellino confirms that the notice is in order for this application.

Mr. Pellino swears in Perry Festa and Karen Nobile they state their names spell their last and give their address as 186 Colonial Avenue Saddle Brook New Jersey.

Mr. Duffy asks what it is they want to do.

Mr. Festa explains that he would like to put up an eight foot privacy fence along the back of his property that borders the UPS parking lot. The elevation of the UPS parking lot is about four feet higher than their yard is and with a six foot fence people in the lot can easily see into their yard. The headlights from vehicles parking come into the yard and they have two small children 4 and 6 years old.

Ms. Nobile presents some photos to the Board showing the difference in elevation. There are two photos and they are entered in as exhibit A1. She goes on to say that the workers will hang out there in the lot behind their house on their break.

Mr. Pellino asks when the photos were taken. Ms. Nobile say that it was probably around January.

Mr. Duffy asks whose fence is it that is there now.

Ms. Nobile says that it is the UPS fence and also comments on the buffer that in some areas is pine trees that provide coverage but behind their house are oak trees that provide no privacy.

Mr. Duffy asks if they put up the shed that is in the yard and they say that it was there when they bought the house.

Ms. Murray says that she pulled into the parking lot and sat in her vehicle behind their house and could easily see into their yard. If the cars were backed in they would be smelling the exhaust. She also thinks that the screening could be better.

Mr. Marz comments that they could possibly put a block wall and then put the fence on top of it.

Mr. Duffy – It would be the same situation because it would still be higher than the six foot limit.

Mr. Schilp asks how close to the existing fence they would put the new fence.

Ms. Nobile says right up to the existing fence.

Mr. Duffy says that they can only go to their property line.

Ms. Nobile – I have a survey so we can do that.

Mr. Burbano asks if the fence will encompass the whole yard.

Mr. Festa says just along the rear property line.

Mr. Paparozzi mentions that the survey they provided is not dated.

Ms. Nobile says that she has a dated one that she will provide.

Mr. Duffy asks about the shed and Mr. Paparozzi says that it is preexisting as far as the setbacks go and the UPS chain link fence is two feet off the property on the left side and one foot two and a half inches on the right side.

There are no other questions.

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

Mr. Duffy – Having seen none.

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

Ms. Murray makes a motion to approve the application with the stipulation that they provide a dated survey Mr. Manzo seconds the motion.

Roll call - Ms. Murray, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Burbano and Mr. Duffy – YES.

### **B.) 5<sup>th</sup> Street Associates, LLC, 77 North Fifth Street, Block 405, Lot 3**

Applicant requests to build a self-storage facility that does not conform to the zoning ordinance for the Township of Saddle Brook, as it exists today. (Application was heard at the April 4, 2022 meeting and was carried without notice).

Attorney Bruce Whitaker of McDonnell Whitaker, LLC steps forward to represent the applicant in a continuation of this matter.

Mr. Whitaker explains that it is an application for preliminary and final site plan approval and for some minor variance relief from the standpoint of the parking which I will explain in a moment. We have done a revised plan and on the basis of the revised plan we are seeking relief for the parking and for a loading zone. The Board Planner has confirmed that in your resolution we have to abide by the B-3 zone standard because you had granted the Use Variance for this particular use for the self-storage. On the basis of that the variances we are seeking is a variance for the size of parking stalls. They would be 9 x 18 instead of 10 x 20. The size of 9 x 18 is not uncommon in many parking lots. We are also seeking a variance to permit 33 spaces where the code requires 124. I believe the Board recognizes having reviewed your prior hearings and having reviewed your resolution that this use is very different from the typical warehouse manufacturing use. In your resolution granting the Use Variance you made a finding of fact that they probably would not need more than 10 to 12 parking spaces and we're proposing 33. You had testimony during the course of the Use Variance application that there is only one or two employees there at any given time and the traffic that normally comes to a site like this to go to their storage unit is ten to twelve in any given hour so 33 would be more than sufficient. Then finally the only other variance we may be seeking and it's up to the Board to determine is a variance for a loading zone. The smaller building of the two buildings does not require a loading zone but in connection with the larger building your Planner has correctly stated we need four. We had proposed three so we revised the plan to indicate a fourth and the fourth would be in the exact location where the prior loading zone was for the old building. We realize that the old building is demolished so if the Board determines that based on the demolition of the old building that the loading zone really doesn't exist there then we would need a variance for it. The reason

we need a variance for it fronts on a street. We are not going to use that street but that front loading zone would be in the exact same location but it's in the front of the building so we would seek that variance if you determine it's necessary. If you feel that the fourth loading zone is not necessary we have no objection to seeking a variance for three versus four. At the last hearing we were in the midst of reviewing the drainage plans for the site and what standards and requirements the applicant had to meet. I was at that meeting and there was a suggestion made by the Board that all the engineers should put their heads together at a meeting for purposes of going through engineering detail and hopefully coming up with a consensus. On April 19<sup>th</sup> there was a meeting with Mr. Weissman and Mr. Stearns who are our engineers Mr. Kurus was there Bob Klein the borough engineer was there. I didn't attend the meeting but it's my understanding that there was a consensus between engineers and based on that consensus revisions have been made to the application so that what we have now is a minor development not subject to those new storm water regulations. It's also my understanding based upon suggestions made by Mr. Kurus at that meeting that the applicant incorporates a storm water detention facility that would include an element of water quality and even though the regulations do not require it the applicant has agreed to do this. In addition the applicant has agreed to at their expense do certain off-site drainage improvements on borough owned property which is not just for this development but for the overall area. We are requesting the Board tonight based on the testimony we are going to provide to you that you would recommend to the Mayor and Council approval of the off-site improvements because the Mayor and Council would like we understand, your recommendation for it. The applicant has a meeting with the Mayor and Council this Thursday for the purposes of reviewing and requesting their approval of the off-site improvement. Just so the record is clear the stipulation is the applicant will be installing that at applicant's expense. Tonight where we are at is we need to complete this application. Unfortunately we don't have the luxury of continuing with the application past tonight because we are out of time with the acquisition. Between the DEP regulations that are hovering over us and the seller's economic circumstances we don't have any more time as far as the approval process is concerned. I know that's not your burden it's the applicant's but I just wanted to share that with you and it's my intention to get completed tonight. My client's approach is that if we get an approval tonight we would take the risk of closing before the appeal time runs out just because we really want to see this happen. I think based upon what you've seen and the finding of facts you made in your resolution for your Use Variance we recognize that what's being proposed here will serve as a vast improvement to what's there now. I think at this point I'm going to have Mr. Weissman reintroduced to go over the drainage, the lighting and the landscaping. Then I have our traffic consultant here to talk briefly about traffic circulation and the parking spaces and he'll lay a foundation as to why the spaces we're proposing would be sufficient. Then finally we are going to have our planner here to talk if I know you've got other applications on if you believe you need planning testimony. It's basically for the three bulk variances loading zone, size of the parking spaces and the number of parking spaces. Some of that you found already in your other resolution so we might be able to not need that planner to call and question at that point. Our architect Mr. Chudzinski had surgery recently so he is not able to join us but you had the architectural plans and they were referenced in the resolution for the Use Variance and nothing has changed there as far as the height of the building and we have the plans here to show what it will look like. Our building will be 30 feet in height and in the B-3 zone you're allowed up to 35 feet in height. We have a mathematical error that Mr. Weissman will explain. The building size that was shown was correct but if you did the math and multiplied it the square footage that was put on the chart was deficient. We just have to correct that and tidy that up and Mr. Weissman will tell us about that tonight. As far as lot coverage is concerned and building coverage you've heard the testimony that we are reducing both and at this point both of them are below what the B-3 requires so we don't need variance relief for that. The building is a 2 story building the actual square footage is 108,428 square feet and is located at the rear of the property and is existing. Unless there are any questions for me I will call Mr. Weissman.

Mr. Duffy – Our Planner has indicated he would like to ask you a question.

Mr. Paparozzi – Mr. Whitaker the lot coverage for a B-3 zone is 50% that is building, driveways, walkways, patios. Mr. Weissman has 40% proposed on his zoning chart but last month we said that was wrong. His coverage breakdown has 78.8% I originally had 85.8% so there is a lot coverage discrepancy.

Mr. Whitaker – You are correct and it's in your ordinance it wasn't on your chart. It was in the paragraph in the ordinance not on the chart so I missed that. It's still a reduction from what was there in the past.

Mr. Paparozzi – It is but it's still a variance.

Mr. Weissman comes forward and is reminded by Mr. Pellino that he is still under oath.

Mr. Whitaker – Mr. Weissman you've done revisions to the plans correct.

Mr. Weissman – I have.

Mr. Whitaker – The plans that you revised are based upon the discussions you've had with the engineers for the Township as well the review with Mr. Stearns our other consultant correct.

Mr. Weissman – Yes.

Mr. Whitaker – On the basis of that it's correct to say that the jurisdictional threshold under storm water management is for any project that proposes 0.25 acres of disturbance or more.

Mr. Weissman – Correct we are under the threshold of a quarter acre of impervious.

Mr. Whitaker – Also under the threshold that pertains to one acre of disturbance.

Mr. Weissman – Correct we are under the threshold by approximately 400 square feet.

Mr. Whitaker – On the basis of that at this point the major development that triggers the rules is not in existence for this project correct.

Mr. Weissman – That's correct.

Mr. Whitaker – This is based on your calculations and you as the engineer need to certify to that and you are is that correct?

Mr. Weissman – Yes I am.

Mr. Whitaker – On the basis of this project being exempt from the rules I would like you to describe what you are proposing to do and what these revisions are.

Mr. Weissman – We are proposing a pond detention system along the west side and the south side of the proposed one story building up near North Fifth Street. It's intended to store the runoff from the paved areas the building roof areas and the grass areas that are encompassed by the detention pond. The pond will store the 100 year storm within this basin. We are proposing a semblance of water quality by introducing a soil bed underneath that the water would filter down through and we've got an under drain system to capture the water and introduce it to the existing 30 inch pipe that traverses the property from Fifth Street.

Mr. Whitaker – The water quality treatment that is being proposed I had stated in my opening is beyond what the regulations require but we have stipulated that we would do that is that correct?

Mr. Weissman – That's correct. Based on discussions with Mr. Kurus this afternoon we have one minor adjustment we'll make is the under drain system will connect to a manifold and then go into a chamber where it goes into the existing line and there will be a device to control the rate of release from that system.

Mr. Whitaker – Is it correct to say the existing onsite drainage ditch is going to be cleaned and the banks are going to be stabilized to improve the drainage system?

Mr. Weissman – That's correct.

Mr. Whitaker – I also had mentioned that there would be an offsite improvement is the offsite improvement that is being proposed something that was discussed at that engineers meeting?

Mr. Weissman – Yes it was.

Mr. Whitaker – What is that going to consist of?

Mr. Weissman – It's basically the replacement of an existing pipe that has deteriorated and is located on borough property near the sewage pump station and it will give an outlet to the neighborhood drainage problems that have existed here for quite some time and it is an effort to help the area to reduce the flooding from a substantial rainfall.

Mr. Whitaker – Based upon the meeting you had with the engineers what you are now proposing and shown on these revised plans meet their requirements and recommendations?

Mr. Weissman – Yes and based on the discussions he suggested and I think it was a good idea to put an outlet control at the outlet of the underdrain system. We'll put some landscaping around the perimeter the landscape plan will change slightly because we don't want to plant trees in the pond itself we will be planting trees around the perimeter of the berm. The landscaping in the front will remain pretty much the same.

Mr. Whitaker – What is the revision date on this plan?

Mr. Weissman – 4/20/22.

Mr. Whitaker – With that said before I go any further maybe the Board wants to deal with Mr. Kurus now on the drainage aspect.

Mr. Duffy – Yes I would.

Mr. Kurus – We had a meeting myself, Mr. Weissman, Township Engineer the consensus is correct based on this reduced scope plan toning down the work on the northwest portion of the property concentrating it on the new stand-alone building they are under that one acre. The big change to this plan is that proposed detention system. Regardless of whether we were major or minor the one concern that we have was with respect to storm water management and water quantity. They have agreed to provide that onsite detention in addition to the reduction in the impervious coverage they're providing that onsite detention to further reduce peak rates of runoff from the project site to have a positive impact on the borough storm water system. Mr. Weissman said they are going to need to just reshape their landscaping a little bit to work with that basin and I think that the calculations will still need to back check those calculations. We haven't seen them yet but from what Mr. Weissman had said he sized it to provide storage for a 100 year storm which is definitely a benefit. I guess the basin would be on the south and west of the building and the front of the building would have the landscaping similar to the landscaping plan that was previously provided. I think this new plan addresses our concerns with drainage provided that those backup calculations come and as well as that final design of those outlet structures. I think my concerns are addressed.

Mr. Whitaker – Thank you and do you want to provide any comment to the Board in connection with what is being proposed for the offsite improvements.

Mr. Kurus – That was discussed with the Township Engineer they were in agreement with that. I think that's going to help as well. I know they had requested some calculations as well so that offsite work would need to be coordinated with the Township Engineer.

Mr. Whitaker – We would stipulate to that.

Mr. Pellino – I think we need to know exactly what you're going to do if we're going to make any conditions.

Mr. Kurus – They did supply a plan I just think the Township Engineer was requesting some backup calculations.

Mr. Pellino – Was that plan submitted to the Board?

Mr. Whitaker – Yes.

Mr. Kurus – We have it.

Mr. Pellino – Is everything else we talked about in the revised plan?

Mr. Kurus – The detention basin is on there. We don't have an updated landscape plan but we have the old landscape plan.

Mr. Pellino – Would you make that subject to your reasonable approval?

Mr. Kurus – Correct.

Mr. Pellino – Okay.

Mr. Whitaker – We are ready to provide that it will not be a problem.

Mr. Duffy – We have the plans on the drainage?

Mr. Kurus – Yes. The offsite was supplied previously.

Mr. Duffy – In the original package?

Mr. Kurus – Yes.

Mr. Duffy – Okay.

Mr. Kurus – The new detention basin is that plan that was just submitted last week.

Mr. Duffy – Okay.

Mr. Whitaker – The last question that you had were questions pertaining to lighting so Mr. Weissman can you explain what is being proposed for the lighting based on the revised plan.

Mr. Weissman – The lighting plan that was recently submitted shows we're going to be installing lights onsite and will be in accordance with the lighting requirements of your code.

Mr. Whitaker – So the lighting requirements will meet the code requirements?

Mr. Weissman – Yes.

Mr. Whitaker – There's no light poles out in the perimeter of the parking lot?

Mr. Weissman – Correct just the building only lights.

Mr. Whitaker – The lighting being proposed will adequately supply lighting for those people to visit their rental units?

Mr. Weissman – It will.

Mr. Whitaker – Just to clarify your original plans that were submitted for the Use Variance correct me if I'm wrong showed a building that was 108,428 square feet but on that plan there was an error in the calculation listing it as some 97,000 square feet.

Mr. Weissman – That's correct.

Mr. Whitaker – The building that was proposed now and the building that was proposed at the time of the Use Variance that sizing of the building is the same?

Mr. Weissman – That's correct.

Mr. Whitaker – That's all I have at this time.

Mr. Duffy – Mr. Kurus do you have any further questions?

Mr. Kurus – I don't.

Mr. Duffy – One of my main concerns was there was significant disagreements between yourself and Mr. Weissman have they been answered?

Mr. Kurus – They have.

Mr. Duffy – To your satisfaction?

Mr. Kurus – Yes.

Mr. Tokosh – The water is going to flow to the pumping station via gravity correct?

Mr. Weissman – Yes.

Mr. Tokosh – In high rain situations will the flow to the pumping station increase or decrease and will the pump in the pumping station be able to handle the load?

Mr. Weissman – The pump station itself is for sanitary sewerage this is storm water drainage we're talking about. What happens is the offsite storm water recommendation we made is for replacing the existing pipe that is the whole area is flat but it is lower than the elevation of the inlets in Fifth Street which is the main point so once it reaches a level which is about two and a half feet lower than the inlets it will act as an overflow to go out as a positive outlet. There's been work I was told downstream from that location that goes under Route 46 and that's been remedied as much as it can be so it will be a positive impact on this area because it will have a relief outlet. So again there is no pumping involved.

Mr. Paparozzi – The Board has to decide if they want the fourth loading dock. If you want the fourth loading dock you have a variance for no loading dock in the front yard. If they feel they don't need a fourth loading dock then there's a variance where they need four and they are providing three.

Mr. Whitaker – It's called pleading in the alternative that is we can take it either way. It's been there forever I don't think it's something from the standpoint of creating any adverse effect from a zoning aspect. I'm not a planner but it's something that has been there for a long time obviously it was destroyed so from a pure case law standpoint probably the nonconformity was eliminated. It's not like it's the first time it would be back there and for the size of this building and the type of uses there probably a fourth loading dock would be appropriate but if the Board thinks it would be better not to have it there we have no trouble with not having it.

Mr. Schilp – Are you in favor of four docks or three?

Mr. Whitaker – We are in favor of four.

Mr. Duffy – I would like to go back to the detention pond just so I'm clear. It's going behind the proposed one story building in that area.

Mr. Weissman – It wraps around and is actually on the south side as well it basically goes alongside the drive area. The heavy line is the top of the berm that contains it. It will take all the impervious area of the building, sidewalk, drive area and store them and let it out. It will empty in less than 72 hours it's actually a pretty efficient system.

Mr. Duffy – I don't have anything further.

Mr. Whitaker – I would like to place on the record as it pertains to the B-3 zone and as the Township Planner has advised we have to meet the B-3 zone standards and as far as lot coverage is concerned 50% is permitted. What was the lot coverage before we submitted this application?

Mr. Weissman – The existing is 90.6%.

Mr. Whitaker – Based upon what we are proposing now am I correct in saying that this nonconformity is being reduced?

Mr. Weissman – Yes to 78.5%.

Mr. Whitaker – And as far as total impervious coverage is concerned that's it.

There are no more questions for Mr. Weissman.

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

Mr. Duffy – Having seen none.

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

Mr. Whitaker calls up his traffic consultant Mr. Corak.

Mr. Pellino swears in John Corak with Stonefield Engineering and Design 92 Park Avenue Rutherford New Jersey.

Mr. Whitaker questions Mr. Corak in order to qualify him as an expert witness.

The Board accepts him as an expert witness.

Mr. Whitaker – You've had the opportunity to review the plans and review the site is that correct?

Mr. Corak – That's correct.

Mr. Whitaker – With your background your viewing of these plans and the site was to determine from a traffic standpoint if it meets appropriate standards.

Mr. Corak – Correct.

Mr. Whitaker – You're familiar with those standards the ITE standards etcetera that exist?

Mr. Corak – Yes.

Mr. Whitaker – You have had the opportunity in the past to deal with other self-storage units and what the needs are for traffic circulation and parking correct?

Mr. Corak – Correct probably over a dozen occasions.

Mr. Whitaker – You know that we are seeking two variances this evening. One for the size of a parking space 9 x 18 rather than 10 x 20 and the other as it pertains to proposing 33 spaces versus 124 that would be required under the code. With that said I would like you to provide us with your professional opinion based upon this and also comment as it pertains to traffic circulation.

Mr. Corak – I can go through the findings of the traffic study. The site is located on North Fifth Street between Market Street and Route 46 on the southbound side of the road. North Fifth Street is a Saddle Brook roadway it's one lane in each direction 25 mile an hour roadway providing that connection from Market down to Rout 46 and eventually down to Outwater Lane. The site will provide a single ingress driveway and a single egress driveway that will be on the north and south sides of the smaller one story building. Then in the rear is the larger two story building the 108,428 square foot structure in the rear of the site. As far as traffic generation is concerned self-storage is one of the lowest if not the lowest trip generator per square foot in all of development. It is very much a benign traffic use and we've done studies of other self-storage facilities both for traffic and parking and have found that the ITE rates match up very well with modern day practices and current traffic counts for the site.

Mr. Whitaker – Just back up a moment I used the same term but ITE rates what is that manual?

Mr. Corak – That's a trip generation manual published by the Institute of Transportation Engineers.

Mr. Whitaker – What is that based upon?

Mr. Corak – That manual is based on data collected by other traffic engineers like myself who actually go out to study sites. They sit there at the driveways they count the number of cars going in and out over

the course of a peak hour or even over the course of a day and that data is compiled published and then available to be used by traffic engineers. It's used across the country. It's used by the NJDOT it's really the industry standard for forecasting traffic for different types of uses.

Mr. Whitaker – I have had traffic consultants testify and say in essence that that manual you refer to is the Bible that all traffic engineers use is that correct?

Mr. Corak – That is a very fair statement to make.

Mr. Whitaker – I also understand that the ITE Manual keeps getting updated base upon more recent data and the various changes of uses that occur is that correct?

Mr. Corak – That's correct.

Mr. Whitaker – Based upon your review of this with the ITE manual what is your opinion as to what the applicant is proposing?

Mr. Corak – A development of this size self-storage use would generate 11 or 12 total trips coming in and out of the site over the course of a single hour. When we compare that to typical standards from the ITE from the NJDOT they are looking at a trip increase of 100 or more trips before you see any sort of level of service impact or capacity impact. At the rate this development would generate there would be no discernable impact on the roadway network. It's about a vehicle every five minutes either coming in or out of the site a very low generator from a traffic perspective.

Mr. Whitaker – Comparing that to what this is zoned for an Industrial Zone would it be correct to say the Industrial Zone would generate a great deal more traffic than what is being proposed for self-storage?

Mr. Corak – Yes it would. Just about every industrial use generates more traffic than self-storage uses.

Mr. Whitaker – Would the concept of the number of employees that's usually employed at self-storage on a daily basis what is the average?

Mr. Corak – Normally one employee maybe two depending on the time of day compare it to a warehouse or manufacturing it would be substantially more employees. This is very low.

Mr. Whitaker – Some ordinances in fact have recognized the anomaly did they not and actually have a different category for self-storage.

Mr. Corak – Yes we've seen that before.

Mr. Whitaker – In connection with the size of the parking spaces proposed 9 x 18 versus 10 x 20 what is your opinion regarding the sufficiency and adequacy of these parking spaces?

Mr. Corak – Yeah 9 x 18 is becoming the new industry standard as far as parking space dimension. It's specifically called out in the residential site improvement standards. It's something that works well with today's vehicles it's something that will work well on this site. We've seen it work well on other self-storage sites and I don't see any issue with granting that variance from a traffic engineering perspective.

Mr. Whitaker – The circulation of the traffic around the building for the consumer in a car or van and a small amount of truck traffic does this site adequately accommodate it from a circulation standpoint.

Mr. Corak – It does. Self-storage developments don't receive tractor trailer shipments people aren't long hauling those size vehicles to and from self-storage buildings. It's almost all passenger vehicle that actually comes here and you get occasionally vans or small box trucks but this site can accommodate all of those size vehicles effectively.

Mr. Whitaker – I have nothing more at this time.

Mr. Paparozzi – I agree with Mr. Corak's analysis on the trip generation.

Mr. Schilp – On the traffic plan you show a truck coming down and where the open area is where there's no cars allowed to be parked on the west side by the railroad tracks. You show it backing up underneath the loading dock to make the U-turn how high is the loading dock?

Mr. Corak – It's my understanding that it's 14 feet.

Mr. Schilp – That will give me just enough to get a fire truck under there.

Mr. Whitaker – Fourteen it will be stipulated.

Mr. Burbano – We aren't renting any of these spaces right. They are not going to be rental exterior parking.

Mr. Whitaker – The parking is to accommodate those people that have storage in the building.

Mr. Duffy – Just to be clear we an entrance and an exit on Fifth Street and the Urma Place is emergency access only.

Mr. Whitaker – That is in your resolution and that remains the same. Your resolution has a stipulation already.

Mr. Duffy – What are the size of the vehicles you used here?

Mr. Corak – What's shown here is a 33 foot long truck typically they are 28 or less.

Mr. Duffy – What's the length of the average or above average fire truck?

Mr. Schilp – They're all over 30 feet. Well not all of them but most of them are over 30.

Mr. Duffy – I don't have any other questions. At this time I would like to have a motion to open for this witness.

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

Mr. Duffy – Having heard none.

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

Mr. Whitaker explains to the Board that the planner that they had to testify has not arrived yet and says that his main testimony was for the coverage variance that they are seeking. He reiterates that they are reducing the coverage and that it is a positive element in planning. I would proffer to you that the findings of fact that you made in your original Use Variance resolution would be pertinent in granting the variance relief as it pertains to the coverage because the same factors go into a C1 criteria and that is A the reduction of a nonconformity is positive from a planning standpoint B you are eliminating the eyesore that is there now. That's not a word that I use it's a word you used in your resolution and C your resolution already has a finding of fact that this proposal has a lower impact and is less intense than what could be there and what was there and that by virtue of this there is an aesthetically pleasing development versus what could be there. On the basis of that I would proffer that as the planning testimony so we would not have the planner testify and use it that way.

Mr. Duffy – We get to ask you questions.

Mr. Whitaker – Sure can.

Mr. Paparozzi – I agree with the 4 indicated variances that Mr. Whitaker alluded to earlier. Last month I brought up one and I didn't bring it up when Mr. Weissman was here. The minimum size loading dock is 10 x 35 they are proposing one on the southeast side of the two story building which is 15 x 18 that would also be a variance so there are 5 variances not 4.

Mr. Whitaker – They are all conforming now we checked that this afternoon.

Mr. Duffy – For my satisfaction point them out on here please and let me know.

Mr. Paparozzi – This is the one I was talking about that was just revised.

Mr. Paparozzi points to all of the docks on the plan for Mr. Duffy to see.

Mr. Duffy – Size wise they conform?

Mr. Paparozzi – Yes they do.

Mr. Whitaker has nothing else.

Ms. Murray – When the architect was here we discussed that his plan didn't allow for access to exterior and I just want you to be aware that he is going to have to rework those in because there are no exterior doors and we were told in the original there would be no exterior doors.

Mr. Whitaker shows a revised plan to Ms. Murray.

Ms. Murray – Then wouldn't you have to have places for people to park along the exterior in order to get into those doors?

Mr. Whitaker – The sidewalk is a depressed sidewalk in that area and its 10 feet in width so someone can get on that sidewalk to park and use those garage doors.

Ms. Murray – It would have been helpful to have that revision. This was one of the other items we wanted addressed.

Mr. Whitaker – Right.

Mr. Whitaker calls up Mr. Guttuso who is still under oath from the prior meeting to answer some questions.

Mr. Guttuso – The architectural renderings elevations were not prepared because Mr. Chudzinski has fallen ill. What we did was doctor up the architectural renderings we presented in November.

Mr. Whitaker – These were presented during the Use Variance correct.

Mr. Guttuso – That's correct. Your revised site plan shows a 10 foot depressed sidewalk on the south and 10 foot depressed sidewalk on the west and a 6 and a half foot depressed sidewalk on the north up to the point of the parking spaces. Those sidewalks are intended for people to bring their goods, wheel them around the sidewalk to get them into these doors and then also be doors on the backside.

Mr. Guttuso hold up his display and describes and explains what it is that he had revised.

Ms. Murray – So cars will not be able to park there.

Mr. Guttuso – That's correct.

Ms. Murray – Would you be striping it no parking?

Mr. Guttuso – Yes. It's a sidewalk as opposed to motor vehicle access so it's only for pedestrians to load and unload their goods in front of those overhead doors.

Mr. Duffy – Once they enter in that's how they would access their unit?

Mr. Guttuso – Just for that area the small building in the front.

Mr. Duffy – In the back building they would have a similar situation?

Mr. Guttuso – In the back building there are no overhead doors from the outside.

Mr. Duffy – So there's no access from the outside?

Mr. Guttuso – From the exterior you have the four loading docks. Those loading docks have four glass doors. They slide open people walk into a vestibule with their product and then they go up an elevator or down a hallway. There are no overhead doors from the outside on the large building.

Mr. Duffy – we would want to have updated plans from the architect.

Mr. Whitaker – Absolutely.

Mr. Guttuso – The other thing that's important for the Board to know is that those plans would show both the two story building and the ones you have for the one story building. They are called flex plans so what we represent to you may not be the actual final mix. Those are showing 10 x 10's they could be 5 x 10's they could be 10 x 20's it all depends on demographics. They put together a plan that's how many cubicles get installed on the inside. In terms of making a revision I would offer to the Board any plan that comes in would have to be permitted to the Building Department and at that point we have to follow what we're saying. Those are only going to be overhead doors on the small building and the interior layout can change substantially depending on what the actual need is.

Mr. Duffy – There is a company that will design the number of frequency and size of your units based upon a demographic so they look at the area and say this is what it calls for we need so many 5 x 10's and 10 x 10's.

Mr. Guttuso – Exactly right.

Mr. Whitaker – So the stipulation is that the exterior of the buildings will be what we testified to, as far as the interior is concerned those units will be flexible so there may be more or less than what we would show on a plan.

Mr. Duffy – I'm not too crazy about the flexibility of it only because we're going to if this is approved we're going to say based upon what was given to us and then all of a sudden it turns around and there's something else so that flexibility concerns me.

Mr. Guttuso – This is a worst case scenario what you've been given is the maximum.

Mr. Whitaker – That would be the max but there may be less units because maybe somebody looks at the demographics say we will accommodate the public based on the demographics and provide bigger units than the ones we show now.

Mr. Duffy – the square footage doesn't change and the exterior doors do not change.

Mr. Whitaker – None of that changes.

Mr. Duffy – The only thing that would change is the number of units or the size.

Mr. Whitaker – Exactly.

Mr. Duffy – The layout would stay close to the same.

Mr. Whitaker – Exactly. The footprint remains the same.

Mr. Duffy – In order for this to go forward with the Building Department and we do this resolution this has to be updated to reflect that at that time.

Mr. Whitaker – Absolutely.

Mr. Duffy – We can't say this is good and then you go into the Building Department and say now we're going to do it this way.

Mr. Guttuso – These plans represent the maximum amount of cubicles. So if we go to the Building Department it can only be less.

Mr. Duffy – Okay.

Mr. Guttuso – It would be a specialized firm that comes in and determines that.

Mr. Burbano – I build these and manage them and I am all for this project but there were no doors on the original when we discussed it so one of the things I have an issue with is all of those doors are adjacent to the public housing. Exterior doors bring contractors the contractors then use them to work in the morning to pick up stored materials and things like that. They generally start 5 or 6 o'clock in the morning. The bigger the unit now we had an issue with making a turn in the back with a box truck. I did calculations and I believe with the size units they had originally we were going to be using 13 foot maximum 15 16 foot trucks we wouldn't be needing larger trucks. Those units go to 10 x 20's or 15 x 20's you are going to be using larger trucks because they're not going to have to go through. If you had those units in the back properties even if it's a big unit people will know they have to walk that stuff inside they're going to storing smaller items so those bigger trucks would be far less time. If you have a 10 x 20 or 10 x 25 unit on the exterior you are going to get 26 foot lift gate trucks in there. Those are the only concerns that I have. I don't know that I have a problem with the exterior the smaller the unit on the exterior the better. I don't remember what the hours were for the facility.

Mr. Whitaker – It's in the resolution. It says 8:30 am to 5:30 pm for the office and 8:00 am to 10:00 pm for access.

Mr. Burbano – So the gates are going to be programmed not to open before 8 even with the code so contractors might not use it as much because they want to get out at 6 and if the gate codes are not going to allow them in or out then we're good. Those hours can't change.

Mr. Whitaker – The entire use is governed by the resolution.

All agree that they would have to come back to the Board to change the hours of operation.

Mr. Schilp asks about motion sensors for the lighting and Mr. Guttuso says that there will be sensors for all of the lighting inside.

Mr. Paparozzi – On the one story building where you have the louvre doors here if they are not allowed to park here the only way they can get their merchandise into the units is to walk around the entire building.

Mr. Guttuso – They have to walk the sidewalk. There have to be carts provided so they can take their goods from those parking spaces and roll them around to the doors.

Mr. Whitaker – We'll have that striped.

Mr. Paparozzi – Enforcement is going to be tough when you're offsite. You only have a 20 foot exit so if you have a truck parked facing the door you're blocking the exit.

Mr. Guttuso – It has to be limited to pedestrian loading.

Mr. Guttuso asks if Mr. Pellino can send a letter to the Mayor and Council with respect to the offsite improvement.

Mr. Duffy – Taken under consideration.

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

Mr. Duffy – Having heard none.

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

Mr. Duffy – Mr. Whitaker do you have a closing statement?

Mr. Whitaker – My opening statement would be my closing statement you've made finding of facts earlier with the Use Variance as to what this proposed development would do at this particular site and for all those findings of facts I believe they are relevant to what we are requesting and they justify the 4 variances we are requesting. We met all of the requirements of the site plan aspects of this application and we have stipulated to the drainage improvements that will be made with that I thank you for your time and ask for a positive vote.

Mr. Duffy – I think this is a good project. One of the fears in being a lifelong resident of Saddle Brook and living in that area we've all known what Fifth Street can be like. Now with that area those buildings the way they are and what it's zoned for one of my fears would be that the wrong type of business would come in which could be a trucking business or something like that and I don't think it's something that area would need. What I would like everyone to be aware of when someone puts forth a motion that we are diligent and make sure we put down everything in that motion that we talked about tonight and is in there. I think it will look really nice and it doesn't have an adverse effect on the area.

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

Mr. Duffy – Having seen none.

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

Mr. Schilp makes a motion to approve the application with the following stipulations. There will be 4 loading docks. A sign restricting that there be no tractor trailers there. There will be no parking spot rentals. The Urma Place gate will only be used for the owner and emergency services. The parking spaces will be 9 x 18. The detention pond is in there and the calculations for all of the drainage submitted to the engineer. Landscape details subject to the engineers approval. A complete set of architectural plans submitted. The offsite drainage improvements coordinated with the Township and completed at the developers expense. The cleaning of the ditch.

Mr. Whitaker – I have one more that I would recommend. When people read resolutions 5 or 8 or 10 years later and say huh that is the stipulation set forth in the original resolution still continue that covers your hours of operation.

Mr. Burbano seconds the motion.

Roll call - Ms. Murray, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, and Mr. Duffy – YES.

Mr. Whitaker asks if the Board can forward a letter to the Council.

The Board agrees to the request.

#### **D.) 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. (Applicant was first heard at the October 4, 2021 meeting and was carried to the February 7, 2022 meeting. It was carried again to the April 4, 2022 meeting due to a scheduling conflict and asked to be carried to the May 2, 2022).

Mr. Duffy – Judging on our time constraints we are going to bring up Chefler Foods for a moment. In light of the fact that we will not be able to afford the applicant proper time we offer an adjournment and move to the June 6<sup>th</sup> meeting.

Mr. Sarlo – Thank you for your consideration and we consent to waiving the tolling of time and we are okay for June 6<sup>th</sup> without further notice.

Mr. Pellino makes the announcement that they will be carried with no further notice required.

#### **C.) BT-Newyo, LLC, 280 North Midland Avenue, Block 1202, Lots 27-29**

Applicant is appealing the Zoning Officer's Determination.

Craig Gianetti of the Day Pitney Law Firm steps forward to represent the applicant.

Mr. Pellino asks Mr. Gianetti if it would be okay if he explains what is going on as it is an unusual application.

Mr. Duffy cautions everyone in attendance to keep comments to themselves and to maintain decorum during the hearing of this application.

Mr. Pellino – This is an unusual application and the Zoning Board has certain powers under the statute and one of those powers is to hear appeals of the decision of the Zoning Officer. In this case Tony Ambrogio is the Zoning Officer and he made a decision and a ruling that Mr. Gianetti is going to tell you about that they are appealing. Our job is to hear that and to review it. It's not personal to Tony we have to make our own determinations as to whether or not he made a proper zoning decision. I'm not even

sure as a starting point the applicant is required to notice but they did notice and provided notice to a 200 foot list to let people know. We also I know have objectors represented by counsel Mr. Lieberman is here to represent them so it's going to be a process. I can tell you a little bit I don't want to steal Mr. Gianetti's thunder but in large part this is going to have to do with the interpretation of the meaning of a truck terminal. In fact Tony has determined that the UPS facility is a truck terminal based on a definition Mr. Gianetti disagrees with that and he's going to present evidence in support of that. Mr. Lieberman will also participate on behalf of the people he represents. Again a little unusual but our decision is to determine whether Tony Ambrogio's decision to call this a truck terminal and a nonconforming use is correct. The implication is important if it's a nonconforming use then the applicant's proposal to do certain things becomes an expansion and he needs a D Variance from this Board. If Tony is not right then it goes to the Planning Board in fact Mr. Gianetti has already submitted an application to the Planning Board for site plan approval which has been carried pending the determination of this. This is the first time that I've been here and maybe the first time in a long time that we've heard this type of application again this is an appeal of the Zoning Officer's decision.

Mr. Gianetti – The subject property is 280 Midland Avenue Block 1202 Lots 27, 28 and 29. It is in an I industrial zone and EP planned limited light industrial district. UPS has operated a distribution facility on this property since the 1970's and fast forward to where we are today. We do have a pending Planning Board application which was submitted I the end of 2021 and that was in connection an addition to the facility for a mobile distribution center and we even received review letters on that. Then there was a complaint made by a neighbor to the Zoning Official about a pallet dock on the property. On January 28<sup>th</sup> 2022 the Zoning Official issued a letter to UPS indicating that there was a pallet dock on the property there was no record of any approval for a pallet dock on the property. We had to come to the Planning Board for site plan approval and include that in our pending site plan application for the Planning Board. On February 7<sup>th</sup> Mr. Stuart Lieberman counsel for Steve Lobue who lives at 1 Susan Lane files a notice of appeal challenging the finding of the Zoning Official hat we were to go to the Planning Board. His contention was we were a truck terminal and therefore a preexisting nonconforming use and therefore any expansion would require a D2 Variance. At that point our position is the appeal should have come to this board through that notice of appeal and we expected to present evidence at any hearing on that notice of appeal. Three days later without having an opportunity to respond relying on the uncertified testimony and notice of appeal. He reversed his decision and issued a new letter February 10<sup>th</sup> to UPS advising us that we had to get site plan approval for the pallet dock but that we were a truck terminal under the definition of the ordinance that truck terminals are prohibited in all zones in the town. Therefore it would be an expansion of a nonconforming use and we would have to seek a variance for that from the Zoning Board. On March 1<sup>st</sup> we filed a notice of appeal of that Zoning Official decision and also filed an application to the Board to have a hearing on that notice of appeal outlining our contention that we are not a truck terminal but a distribution facility. Distribution facilities are permitted within the EP light industrial zone. We have historically been considered a distribution facility by the town in various construction permits and even by the Planning Board as recent as 1992 in a resolution of approval connected with this site. The definition of truck terminal in your ordinance is “any lot on which more than 3 trucks of over one and a half tons capacity and or trailers are parked at any time out of doors where such trucks and trailers are used in the transfer or shipping of goods and or materials and where such trucks and or trailers are stored and serviced”. As Mr. Pellino noted the sole purpose of the meeting tonight is our presentation of our challenge to that interpretation and that our position that we are a distribution facility and not a truck terminal. I'm sure you'll hear from objectors counsel to the different. I know there's complaints about noise, about fencing, landscaping we heard some of it already this evening. There will be another site plan application before the Board where we deal a lot of these issues and questions but for tonight's purpose all we are talking about is what currently goes on at the site operationally and based upon that is it a truck terminal or is it a distribution facility. Any testimony with respect to noise with respect to landscaping complaints of things like that are irrelevant for purposes of tonight's meeting. It may be relevant for a site plan but not relevant for purposes of determining what is the use there. Tonight you're going to hear some operational testimony and planning testimony as to this

issue. There was a letter from 1978 our planner did submit a report kind of previewing his testimony tonight. Sean Moronski of Langan Engineering made a note in 1978 after this facility was built there was a question whether this use was a truck terminal or a distribution facility. At that time there wasn't an ordinance with a definition but it was determined we were a distribution facility permitted to operate. You would also hear since that time and even after the truck terminal ordinance was adopted in 1985 and amended in 1986 both the Planning Board and the Building Department has referred to and identified this site as a distribution center. Specifically in 1992 as part of a Planning Board approval referred to as a distribution center. Mr. Moronski will testify more as to that. We'll also be showing you some historical aerial photos of the property from the 1970's and the 1980's. It will show based upon the current aerial as well there hasn't been much change to the site since then. You'll hear testimony operationally from a UPS representative as to what occurs at the facility. Though there is a pallet dock on the property there is no forklift and they don't use a forklift with respect to the parcels on the property. We also don't accept any parcels more than 150 pounds. I know there is talk about it being a freight service but again there is a limit on what they accept at the site. With respect to our planner you will hear testimony as to the truck terminal definition and with the requirement as I read to you to be a truck terminal you have to be storing and servicing trailers on your property. You will hear testimony that there is no servicing of the trailers or the trucks on the site. No oil changes or maintenance of the vehicles occurring on the site. There is no storage of trailers on the property. You'll see photos there are trailers on the property but as you will hear in testimony they are brought to the site unloaded and then within a short time getting loaded again and being moved around. If there's any point that there are trailers that have to stay longer they are brought offsite to another location where they are stored. We don't fit the definition outlined in the ordinance. It is our position that the finding of the Zoning Official was incorrect we ask that the Board find that we are a distribution facility and being a distribution facility going for our next approval that we would be going to the Planning Board for that approval as opposed to the Zoning Board for an expansion of a nonconforming use. I have with me Paul Bendixen who is the North Atlantic District Director of Building Systems and Engineering. He will be providing testimony as to the operations and I also have Sean Moronski of Langan Engineering a licensed professional planner who will be testifying to the interpretation of the ordinance from a planning perspective. We also have a few exhibits here one is already up from Langan Engineering which is an aerial photo. There will be another exhibit having historical aerial photos of the property for just comparison purposes. I would like to call Mr. Bendixen up as my first witness.

Mr. Pellino swears in Paul Bendixen. He is the North Atlantic District Director of Building Systems and Engineering for UPS his address is 493 County Avenue in Secaucus.

Mr. Gianetti states that he will leave the aerial photo of the site on display for Mr. Bendixen to reference during his testimony. The photo is dated March 16, 2022.

Mr. Gianetti – Mr. Bendixen you indicated that this UPS facility at 280 Midland Avenue is under your jurisdiction?

Mr. Bendixen – Yes it is.

Mr. Gianetti – You've visited that site before?

Mr. Bendixen – Many times.

Mr. Gianetti – If you could describe the property generally that's the subject of the application.

Mr. Bendixen – it's 280 North Midland Avenue. It is a little over 17 acres of property. UPS has been there since the early 70's. The building was built I believe in 72 we'll call it 70 thru 72 it opened in 72. The major footprint of the building is exactly the same as it has been at that point roughly about 150,000 square feet.

Mr. Gianetti – Briefly describe the use of the property and what goes on there.

Mr. Bendixen – This is a distribution facility. UPS has many throughout the United States. We did a large growth as a company in the 70's and throughout the 80's. We built similar buildings to this at that point. UPS uses this facility where packages come in from customers. They come in via the brown package car or the tractor trailer and they are unloaded by hand. We have a numerous conveyor system throughout the facility so as the packages are unloaded they go through a conveyor system which distributes it out to various doors and or conveyor belts inside the building so they can be loaded into trucks and or trailers.

Mr. Gianetti – That underlying function if you could elaborate a little more on the sorting of the packages and how they come in from customers either through trailer or boxes.

Mr. Bendixen – The packages come in on brown package cars. We have some unloading devices which are conveyor systems which extend into a conveyor and we'll have one or two employees that unload them onto the conveyor systems. We're called a small package company because we're not a freight facility a freight is over 150 pounds that's not UPS small package is what we call ourselves. Packages all weigh less than 150 pounds and the employees lift them on and no forklifts are involved in the process of unloading however some of our customers use pallets to put them on and load them into a trailer that gets brought into UPS. We do generate some pallets because of that.

Mr. Gianetti – The pallet dock operation on the site that's for recycling and efficient organization of the pallet as opposed to just having them lying around?

Mr. Bendixen – UPS is a very sustainable company and recognized globally for sustainability and we try to recycle as much as possible. Pallets is one of those recycling ways for us. The pallets that come in through our customers we take them to the trailer we'll move over to the pallet dock and then load those so they can be put into a pallet recycling trailer.

Mr. Gianetti – You mentioned some of the customers will put these parcels on these pallets that are being brought to your site. Can you describe how it works with the trailers going to those customers, who is filling it and then getting brought back to the site?

Mr. Bendixen – We have UPS employees that work inside the building and that drive the tractor trailers. Those trailers will go to customers. Some customers do have their own trailers that they will bring in but for the most part UPS drivers go out and pick up these trailers and bring them in. Once they are unloaded we have 30 doors we use for unloading of packages that are trailers that are full. There are roughly 150 doors that are for loading of trailers plus the package cars that are on the inside. There's over 150 to 200 cars that are loaded inside the facility.

Mr. Gianetti – You mentioned freight is over 150 pounds and your testimony is UPS does not accept parcels over 150 pounds.

Mr. Bendixen – That's correct.

Mr. Gianetti – With respect to the trailers after they're unloaded what happens to them how long are they on the property?

Mr. Bendixen – Most of the time once a trailer is unloaded, it comes in full goes to one of the 30 unload doors they are unloaded and either taken if they have pallets in them to that pallet dock or they are taken to the outbound area which is where they would be loaded. If all of those are filled we have four sorts that take place inside of this facility. There is a sort that takes place in the morning to load the brown package cars. That takes place around 4 am through 9 am. We have another sort that starts in the morning roughly at 11 am that goes until 4 pm another sort that starts at 5 pm and goes until 9 or 10 pm. Then another sort that starts at 11 pm and goes until 4 am. Those have been taking place for years and years.

Mr. Gianetti – With respect to those trailers and for instance even with the aerial photo you sometimes see trailers that are not at bays. What is going on with those trailers how long are they typically there for?

Mr. Bendixen – Those would probably be either a full trailer that's waiting to be put onto the 30 unload doors. If there's more than 30 trailers that are on there they have to wait they're full of packages. Then there may be a need for an empty trailer that just came out of the pallet dock and is going to be put on one of those other outbound doors. For the most part the trailer movement because we have those 4 sorts that take place those trailer movements are every 5 to 7 hours.

Mr. Gianetti – If a trailer was not going to be used for any particular period of time what does UPS do with that trailer?

Mr. Bendixen – We have offsite staging of trailers multiple lots in the area two specifically that are in close proximity to this site but not at this property. Those trailers would be sent to those locations for longer staging areas.

Mr. Gianetti – With respect to maintenance is there any maintenance of the vehicles? Are the tractor trailers or the box trucks that occur onsite?

Mr. Bendixen – We do not have an automotive service center at this 280 North Midland Avenue facility so everything is a distribution facility where packages are coming in loaded and or being unloaded and then they go out and make their deliveries throughout the day and come back and start again tomorrow.

Mr. Gianetti – That led me to the next question. I'm going to have this marked as A-2 this is the letter from September 21, 1978 Mr. Pellino that you provided. I don't know if it was part of the record or not.

Mr. Pellino – For the Board's edification I think you may have come up with this, someone in the Building Department was looking at another file and came up with a letter that pertained to this application which I forwarded to Mr. Gianetti for purposes of transparency and completeness.

Mr. Gianetti – It is a letter from September 21, 1978 from Malcolm Blum Planning Board Attorney to the Planning Board Chairman and Members of the Board.

Mr. Gianetti hands out copies of the letter to the Board.

Mr. Lieberman the attorney for Mr. LoBue objects saying that the UPS attorney knows that this was before the 1986 ordinance which is the subject of the Zoning Officer's decision. He is afraid if the Board sees this they will be confused because it has nothing to do with what the Zoning Officer said. He wants them to know that it has nothing to do with why we are here. This has to do with the 1986 ordinance and the letter is from 1978 and that it should not be part of the record but if it is there should be a clarification.

Mr. Pellino – I think the clarification is noted I don't think Mr. Gianetti disagrees as to the time that the definition for the ordinance was adopted.

Mr. Gianetti – Mr. Bendixen have you seen this letter before?

Mr. Bendixen – Yes I have.

Mr. Gianetti – I'm going to flip to the second page and there is a description of the UPS use. Going to the second line where it says as explained by the UPS representative. If you can just read that paragraph.

Mr. Bendixen reads the paragraph "as explained by the UPS representative Mr. McPartland, the UPS center does not use this type of equipment necessary to break down large loads into smaller loads. Further it appears that this is not the intention of UPS operations. The operation seems to be one where they just route parcels of rather small size to their proper destination much as the Post Office routes its mail to its proper location. Further the UPS facilities does not appear to be either end of a carrier line, nor does it have a freight yard.

Mr. Gianetti – With respect to that description of the UPS operation in 1978 does that description still apply to how UPS operates today?

Mr. Bendixen – Yes it still applies today we really have not changed the operation since 1970. What goes on inside the facility with the brown trucks that go out and the trailers that come in.

Mr. Gianetti – Over the years UPS has sought various permits from the town.

Mr. Bendixen – We have.

Mr. Gianetti – In fact you received Planning Board approval in 1992.

Mr. Bendixen – Yep.

Mr. Gianetti – Those were part of the Langan Report that was submitted to the Board which we will mark into evidence when Mr. Moronski gets up to testify but in all those instances did both the Building Department and the Planning Board identify the UPS use as a distribution facility?

Mr. Bendixen – Yeah so in 1992 UPS sought a site plan waiver in reference to the wash tunnel that's been on the site since the building was built. In that we changed the direction of the sewer line that went the way it entered the property. At that site plan approval UPS was recognized in 1992 as a parcel distribution facility. We spent several other instances where the Planning Board has again confirmed that UPS is a distribution center.

Mr. Gianetti – Can you describe what the wash tunnel is and how long it has been at the site?

Mr. Bendixen – The wash tunnel dates back to and you will see from pictures prior to me working at UPS. I've been with UPS for 30 years and it shows on pictures from the 1970's. It's used and is similar to a carwash. The brown package cars drive through and it has brushes on the inside that spin and water comes through and washes the vehicles. It also washes the trailers to keep them clean.

Mr. Gianetti – There's no for lack of a better word service station or lifts where the trucks would be lifted up and repair work could be done on that?

Mr. Bendixen – It's purely for the washing of the vehicles and that's all and not the engines.

Mr. Gianetti – I have nothing further for this witness if the Board has any questions of Mr. Bendixen as to the UPS facility and the operations there.

Mr. Duffy – Could you go back and run through those time frames that you gave us earlier?

Mr. Bendixen – We have a lot of part time employees as well as full time employees. The facility runs nearly 7 days out of the week and specifically on the morning hours we have a morning shift that starts approximately at 4 am. At Christmas time it's going to start a little bit earlier. They load the brown package cars that you see that go out and deliver to your houses.

Mr. Duffy – Where are those brown package cars stored?

Mr. Bendixen – They are stored inside and outside of the facility.

Mr. Duffy – Why are they called cars?

Mr. Bendixen – It's just been the terminology we've used at UPS for we call it package cars.

Mr. Duffy – So the big brown trucks are called cars?

Mr. Bendixen – They've been known as package cars like I said I started at UPS in 1986 and they've been called package cars long before that.

Mr. Duffy – What's the technical term for the vehicle?

Mr. Bendixen – It's a package car.

Mr. Duffy – Not at UPS that's not what I'm asking. I'm not asking UPS's terminology what is the vehicle called?

Mr. Bendixen – A delivery vehicle.

Mr. Duffy – A panel truck some type of truck is it a truck what kind of vehicle is it?

Mr. Bendixen – It's a delivery vehicle.

Mr. Duffy – I've read a lot of this all of it actually and we bounce back and forth from things as we have a distribution facility, distribution center, distribution hub. Now I have brown vehicles, brown cars, package cars so I just want to set it straight what are we talking about when it comes to the brown trucks. In my experience from seeing them they look like trucks to me. What are they really called? What's the gross weight of them, what are they considered, what class do they fall under, what type of license do you need because I don't want to look at this as cars because this is all trucking terminal.

Mr. Bendixen – I can say that I was a brown package car driver and they have been called package cars for us forever. Most of the world has modeled themselves after us. I would say that UPS ought to be able to say we've called them package cars forever.

Mr. Duffy – If I wanted to order one from the manufacturer I would ask for a brown package car and they would know right away what I'm talking about?

Mr. Duffy – I'm not trying to be comical I'm really not.

Mr. Bendixen – I'm not either.

Mr. Duffy – I don't buy the car I want to know is it a truck, is it a van? What's the classification because on the registration if we went out to one right now and pulled the registration it's going to have a classification on it right? It's not going to say car. I drive a pickup truck it's still a pickup truck. My wife drives a car it's a car. I need to get this. This is something I read about and I just want to get clear so let's start there.

Mr. Bendixen – The first question do you know the gross weight of these vehicles? I don't off the top of my head certainly I can find out.

Mr. Duffy – That's a question we need to substantiate. Let's go back to the time frame. We start at 4 am on average that's the morning shift. For lack of a better term right now the brown package cars are inside that U shaped building.

Mr. Bendixen – Yes. They have white roofs on them so some of the ones outside are package cars that you see out there as well.

Mr. Duffy – I didn't know that.

Mr. Bendixen – They have white roofs to allow light to get through. It takes a normal class B license to be able to drive them it's not a tractor trailer nothing special.

Mr. Duffy – No CDL required just a standard driver's license?

Mr. Bendixen – Yes that’s right. We do offer extensive training to our package car drivers.

Mr. Duffy – We still need to get that clarified.

Mr. Burbano looks it up on Google and it’s called a package car but it’s considered a van according to Google.

Mr. Duffy – So it falls into a truck classification. To clarify for the record this is according to Google not an authority from the Motor Vehicle Agency of New Jersey or any other agency.

Mr. Bendixen – There are a lot of different sizes from very small ones close to a minivan up to much larger ones that are 30 feet long.

Mr. Duffy – You have the pallet dock. How are the pallets removed from the truck?

Mr. Bendixen – By hand.

Mr. Duffy – Are the pallets broken down and pulled out by hand.

Mr. Bendixen – The pallets are pulled out by hand or a pallet jack there’s no forklift up on the pallet dock.

Mr. Duffy – Is it a motorized pallet jack?

Mr. Bendixen – No.

Mr. Duffy – Just a standard pump one?

Mr. Bendixen – Yep.

Mr. Duffy – It’s not a forklift?

Mr. Bendixen – No it’s not a forklift.

Mr. Duffy – One of the reasons I’m asking these questions is the vernacular is all the same so we’re talking about the same things. (Referring to the display) All the vehicles around that structure there are a combination of trailers and or cars?

Mr. Bendixen gets up to point to the display. This is our unload area that I mentioned originally 30 doors that we unload full trailers. All the way around here and back here these are all loading areas and these are trailers that are put on empty and then they get filled up. These are brown package cars for the most part that go inside the facility and they’re loaded. There is a conveyor system that goes throughout here and then continuing here and they’re loaded in those areas.

Mr. Duffy asks about other trailers that Mr. Bendixen did not reference.

Mr. Bendixen – These trailers up here are a temporary storage they are either full or they are waiting to be put onto one of these locations.

Mr. Duffy – Those are trailers that are stationed there the tractor itself is not hooked up?

Mr. Bendixen – The tractors are right here. We have many tractors that come in because of all the trailers. They come in they temporarily park here they’re on break waiting for this one here to get loaded and then to drive off to go to its next destination. These here are tractors as well and there’s also some that are right here.

Mr. Duffy – So there are times that they will be parked there and uncoupled from the tractor?

Mr. Bendixen – Most definitely.

Mr. Duffy – Where is the carwash?

Mr. Bendixen points to it on the display.

Mr. Duffy – That’s only for the package cars?

Mr. Bendixen – Trailers can go in too. This is our employee lot.

Mr. Duffy – There’s no tractor trailers parked in there at any time? It’s strictly an employee lot?

Mr. Bendixen – Strictly an employee lot.

Mr. Gianetti – Just to clarify Mr. Bendixen the tractors that are parked there you indicated are waiting for whenever the trailer is available to be hooked up and taken away after it’s filled?

Mr. Bendixen – I mentioned we have four sorts that run primarily those are part time employees that come in and work. We also have full time employees they are the ones that drive the brown package cars and the ones that drive these. Those employees really don’t work full time in the building they come in pick up their load and then they go.

Mr. Duffy – You spoke about the resolution in regards to connecting to the existing sanitary sewer main.

Mr. Bendixen – Yes.

Mr. Duffy – You said that in this resolution and I can't seem to find it that it makes a comment to calling this a distribution facility. Can you identify that paragraph for me?

Mr. Gianetti – If you have the resolution go to the second page where it says finding of fact. That sentence "The property in question is located at 280 Market Street and is currently the site of the applicant United Parcel Service, Inc.'s distribution center. There is currently onsite a truck wash tunnel so on and so forth.

Mr. Duffy – Prior to Mr. and I know there was an objection to this so please, Mr. Blum's comments which were much further back in history this is the first time it was mentioned as a distribution center?

Mr. Bendixen – That's not the first time in 1985 it was listed as well probably multiple times but in 1985 a document was found that shows we were applying for additional Christmas work to be done and a trailer to be used for that and it was noted in that permit package distribution facility.

Mr. Gianetti – That's Appendix E to the Planner Report. There is 1990 also identified as an S1 distribution center as far as the CO being issued.

Mr. Duffy – For clarification purposes what is an S1.

Mr. Bendixen – Storage one.

Mr. Duffy – Do any members have any questions?

Mr. Schilp – If a truck breaks down or a trailer gets hit and it's inoperable and it's onsite do you tow it out of there to another facility?

Mr. Bendixen – Yep we have plenty of service facilities around the state so they are towed to one of those facilities depending on if they break down at the building or they break down on ground or wherever.

Mr. Tokosh – I Googled what's a truck terminal versus a distribution facility. The definition I got was a truck terminal means a principle use of land or building where there are dock facilities for trucks either partially enclosed or unenclosed for the purpose of transporting goods or breaking down and assembling tractors for transport.

Mr. Pellino – I would just say from my perspective we have to be focused on the Township's definition of a truck terminal because that's what governs us.

Mr. Tokosh – I'm just saying this is what I found.

Mr. Pellino – I understand but I think our focus has to be on the Township's definition and whether or not their operation falls into that definition.

Mr. Tokosh reads the definition of a distribution facility. Distribution facility or center is a facility used for receiving temporary storage and distribution of goods according to orders as they are received. To me this definition is like Amazon where somebody says I want a product and they ship it out where as the truck terminal to me is what UPS is doing right now.

Mr. Pellino – It remains to be seen. The question I would pose Mr. Chairman is can you be both a distribution facility and a truck terminal at the same time?

Mr. Gianetti reads the Township definition of a truck terminal. Any lot on which more than 3 trucks of over one and a half tons capacity and or trailers are parked at any time out of doors where such trucks and or trailers are used in the transfer and shipping of goods and or materials and where such trucks and or trailers are stored and serviced.

Mr. Duffy – There is nothing in that definition that stipulates how long they're there though it just says they're there.

Mr. Gianetti – It says stored.

Mr. Burbano – So they are hinging it on that they don't service.

Mr. Duffy – I would debate service because they wash and I would consider washing a form of service. Not the engine washing they're servicing it for a cleanliness aspect so that definition could be a little loose too.

Ms. Murray – I disagree cleaning car is appreciating your asset it's not servicing. Servicing is fixing it repairing it maintaining it mechanically.

Mr. Pellino – I was going to suggest we debate this at the end.

Mr. Duffy – Does anyone have any questions for Mr. Bendixen?

Mr. Gianetti – I did want to highlight that there are no oil changes, repairs or maintenance but with respect to fueling of trucks.

Mr. Bendixen – There are fuel islands. We do have a diesel fuel island. We have an unleaded fuel island at the site they've been there as long as I know. I don't know if it was the 1970's. I know the buildings that were built in the 1970's I can't say for this one because I wasn't there but almost all of them had fuel islands that were put in. The tanks for these were replaced in 1992 or early 90's which would sustain that it probably was put in in the 70's or 80's.

Mr. Burbano – Are there any vehicle mechanics employed by UPS onsite?

Mr. Bendixen – Not at this site.

Mr. Burbano – They don't do any servicing of the vehicles tire pressure anything at all onsite?

Mr. Bendixen – We have other sites but this one that I am testifying for.

Mr. Burbano – Doesn't have any onsite.

Mr. Bendixen – Yeah.

Mr. Burbano – Okay.

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

Mr. Duffy – The meeting is open for this witness only and only in relevance to his testimony and nothing outside of that.

Stuart Lieberman comes forward and says he is from the firm of Lieberman, Blecher & Sinkevich of Princeton and he represents one of the homeowners in the area Steven LoBue. He says he will call Mr. Lobue as a witness at a later time and does not represent anyone else in attendance.

Mr. Duffy – The gentleman that raised his hand do you have a question.

Mr. Pellino swears in Glen Leone who lives at 202 Colonial Avenue in Saddle Brook.

Mr. Leone says the he has been living there since the UPS facility was built in the 70's. He begins to give an account of a conversation he had with a UPS driver.

Mr. Gianetti objects.

Mr. Pellino – We'll hear it. It's hearsay so you're supposed to give low credibility to it.

Mr. Leone – Where their customer counter is about 200 yards away (he points to the display) that's where they do mechanical work. When you go there to bring a package there's always brown trucks there that I know from my own seeing it. My friend a driver for 30 years just retired said that's where they do mechanical work.

Mr. Duffy – Your friend is not here. Do you have a question for Mr. Bendixen?

Mr. Leone – No that would be my only question I understand they do mechanical work in that building.

Mr. Duffy – In that building.

Mr. Leone – This is right around here is where there customer service if you want to bring a package in.

Mr. Duffy – I know where it is. That's not part of this you have to look at the picture that the border is around inside of the red. What happens outside of that there is nothing we can say or do about that because we are dealing with what's inside the red.

Mr. Leone – Even 100 yards away?

Mr. Duffy – It could be two feet away. It's outside of that particular parcel I understand what you are saying and your comment is fully noted but I can't go any further.

Mr. Pellino swears in Carmelo Lana who lives at 105 Jamros Terrace and he points to his house on the display.

Mr. Lana points to the display and asks Mr. Bendixen if this is the loading dock area.

Mr. Bendixen – Are you referencing the pallets?

Mr. Lana – The pallets I'm sorry and the loading dock.

Mr. Bendixen – It's only a pallet dock there.

Mr. Lana – Okay you can call it what you want there is a forklift there. No?

Mr. Bendixen – Yes there is.

Mr. Lana – And you're saying this is not operated by.

Mr. Bendixen – No I didn't say that.

Mr. Lana – How did you say that there is no forklift?

Mr. Bendixen – Because there is no forklift up on the dock.

Mr. Lana – But there is a forklift.

Mr. Bendixen – We have to load pallets into the recycling trailer.

Mr. Lana – Right which is located right here which doesn't move ever. Let's get one thing straight we live here so you can call a truck a car. You can say that trailers don't move. You can say that you don't park trucks here but every one of the residents here see it. Maybe you should take a visit to your own site.

Mr. Duffy – Mr. Lana I am going to caution you please.

Mr. Duffy asks that everyone be respectful to one another and not get out of hand.

Mr. Duffy – The questions are, "is there a forklift" and you alluded to something I said which is I asked him about taking the packages off the truck not that forklift. I'll just clarify my own statement. Ant questions you have or comments you'd like to make?

Mr. Lana – Loading dock forklift dock there is a dock here.

Mr. Bendixen – There is a hand dock. People stand up on the dock and remove pallets out of the UPS trailers and stack them by hand.

Mr. Lana – And there's a forklift that puts the pallets from the ground onto the loading dock.

Mr. Bendixen – No into a recyclable trailer that is parked on the ground.

Mr. Lana – A forklift puts the pallets on top of the loading dock to be loaded into the trailer.

Mr. Bendixen – The pallets come out of a trailer onto the dock. A forklift takes those stacks of pallets that the employees stacked lifts them off of the dock drives over to a trailer and outs them into the one recycling trailer that is provided by the recycling pallet company.

Mr. Lana – If that's your understanding of it but I'm telling you that's not what happens. I think the residents here would agree.

Mr. Duffy – You're speaking on your behalf not anybody else.

Mr. Lana – You said that no trucks ever park here.

Mr. Bendixen – That's an employee parking are.

Mr. Lana – Right and you said.

Mr. Lieberman would like them to somehow identify what they are referring to because you will not know where they are pointing to from a transcript.

Mr. Duffy – Would you please designate what you're talking about.

Mr. Lana – This parking lot that runs along Colonial and the northeast corner of the property you said is employee parking.

Mr. Bendixen – That entire area up there is employee parking.

Mr. Lana – You stated that there is no trucks parked in this area.

Mr. Bendixen – we could go there right now there's no trucks and the majority of the time there are no trucks. There is a gate that is there where a truck could go up there. There's motorcycle training that takes place over there on Sundays. That has since stopped. The motorcycle training was not UPS.

Mr. Lana – All winter long there were trucks parked along this fence being backed in all night long especially around Christmas and if we go there now there's probably three or four still there.

Mr. Bendixen – I was just there before the meeting started.

Mr. Lana – Well I guess they got moved.

Mr. Gianetti – When you say trucks are you referring to trailers or the tractors?

Mr. Lana – Tractors box trucks so not only were they parked all winter it snowed. They plow all the snow in front of it and then they have to come and move all the snow to get the trucks out. Again we live there we see what goes on. You say they are only there temporarily but this was two three weeks a truck being parked there not being moved, trailers not being moved.

Mr. Lana has nothing else to say.

Mr. Pellino swears in Denise Dougherty she lives at 218 Colonial Avenue Saddle Brook.

Ms. Dougherty – I've lived there for 42 years. When we did move in in the 70's things were a little bit different then. You were always a truck terminal. There was always a lot of noise there were always a lot of trucks. Lately in the past few years it's gotten pretty unbearable. On February 18<sup>th</sup> my husband and I sat in my family room and counted the trucks that left your facility from 9:06 to 9:27 we counted 116 trucks. If there's 116 trucks going out there's 116 trucks coming back. That was the box trucks trailers straight jobs. This morning we saw overseas containers there are a lot of trucks. During the course of the

day there were trailers in and out of there constantly. It used to be like after five o'clock things got quiet the weekends things got quiet that's not the case anymore. It's never quiet anymore it's always noisy. Four o'clock in the morning you'll have a trailer coming through that street off of Midland Avenue or coming through your facility onto Midland Avenue with pallets on the inside. An empty truck with pallets they make a turn and the pallets go crazy and all you hear is BABOOM and it scares the heck out of you in the middle of the night. It is very much a truck terminal I have to agree with our town official. What else would you call it? You have a gas tanker that comes through twice a month to fill the trucks. During the holidays you have I guess you don't have enough of your box trucks available you're going with other carriers those carriers in these big trailers are parking right there facing our houses and sleeping. This is a truck terminal not a distribution facility. We all know it we see it we live it you have to believe us this is what it is. You're invited come and see come and watch come count this is what goes on on a daily basis. This is what has gone on for 42 years. It's just gotten worse and it's very hard to live with. There are so many other issues and of course we can't get into them but to say it's not a truck terminal it's a truck terminal.

Mr. Duffy asks Ms. Dougherty to remain standing so that Mr. Gianetti can question her.

Mr. Gianetti – It was more again for the point of all we're here for is whether we are a truck terminal under the Town's definition of a truck terminal not Google's definition not what everyone thinks a truck terminal is whether we are one under it. Whether we have 20 trucks going to it or 1000 trucks going to it doesn't impact based upon the Town's definition of whether we are a truck terminal. It doesn't say if you have X number of trucks coming in or out you are a truck terminal. I appreciate there's going to be a lot of members of the public that have a lot of complaints about the operation of the site and will have a lot to say but the focus for tonight, there will be a site plan hearing at some point as to a lot of the site issues but for purposes of tonight it is whether we are a truck terminal under the Town's definition. I don't have any questions.

Mr. Lieberman who is representing Mr. Lobue steps forward to ask questions.

Mr. Lieberman – You saw the Zoning Officer's letter right?

Mr. Bendixen – Yes.

Mr. Lieberman – The Zoning Officer didn't say that you're a transportation facility. He didn't comment on it one way or the other is that correct?

Mr. Bendixen can't find the letter and it seems that it was not provided in the application packages.

Mr. Lieberman reads the letter into the record.

The letter is written to the UPS North Atlantic Division 439 County Avenue Secaucus.

"This is a follow up to my letter to you of January 18, 2022. In that letter I advised that I believe you need site plan approval in order to continue what I termed your pallet operation in the employee parking lot at the above site. Upon further investigation and discussion with legal counsel it is my opinion that operation of this UPS facility constitutes a nonconforming use and that what I have referred to as the pallet operation constitutes an expansion of that nonconforming use. Generally expansions of nonconforming uses are not permitted under the law. Should you wish to continue the pallet operation it is my opinion that you will require a D2 Variance which can only be granted by the Zoning Board of Adjustment. In as much as my letter of January 18<sup>th</sup> indicated my opinion that you required site plan approval from the Planning Board and gave you eight weeks to do so I assume UPS has begun preparing to file such an application. I would also assume that much of that preparation will lend itself to an application before the Zoning Board. Accordingly I will give you six weeks from today's date (which was February 10<sup>th</sup>) to file such an application with the Zoning Board. Should you fail to do so I will consider the continued pallet operation as an impermissible expansion of a nonconforming use and will take enforcement action against you. Please be guided accordingly very truly yours Anthony Ambrogio".

Mr. Lieberman – So that's the letter and that's where the appeal comes from. You read this letter sir?

Mr. Bendixen – Yes.

Mr. Lieberman – You read it before you came here to testify?

Mr. Bendixen – I have read it before not today.

Mr. Lieberman – What is your title?

Mr. Bendixen – I'm the director of Building and Systems Engineering.  
Mr. Lieberman – How many facilities do you have responsibility for?  
Mr. Bendixen – Approximately 50.  
Mr. Lieberman – Are all 50 here in Bergen County?  
Mr. Bendixen – No.  
Mr. Lieberman – Where are they located?  
Mr. Bendixen – Throughout New York State, Long Island and some of New Jersey.  
Mr. Lieberman – You're on the road a fair amount of time looking at the different sites is that correct?  
Mr. Bendixen – Correct.  
Mr. Lieberman – You don't spend all of your time here at the subject facility?  
Mr. Bendixen – No I don't.  
Mr. Lieberman – The last time you were at the subject facility was today correct?  
Mr. Bendixen – Sure.  
Mr. Lieberman – Before today when was that?  
Mr. Bendixen – Probably two weeks ago.  
Mr. Lieberman – After you found out that this actually was occurring is that correct?  
Mr. Bendixen – No many times since then.  
Mr. Lieberman – Are you in charge of maintenance of the vehicles?  
Mr. Bendixen – No I'm not.  
Mr. Lieberman – Who is in charge of maintenance of the vehicles at this facility?  
Mr. Bendixen – The automotive maintenance director.  
Mr. Lieberman – In UPS do they all operate the same or do they have individual protocols?  
Mr. Bendixen – As far as maintenance?  
Mr. Lieberman – Yes.  
Mr. Bendixen – We have an extensive preventative maintenance program a lot of electronics to tell us when to repair them and so forth.  
Mr. Lieberman – When a vehicle at your facility needs a new battery do you install the battery at the site?  
Mr. Bendixen – No.  
Mr. Lieberman – Do you ever do that?  
Mr. Bendixen – No.  
Mr. Lieberman – How do you know?  
Mr. Bendixen – Because I've been with UPS for so long I have direct communication with the people that are there and we don't store batteries at this site. I do oversee all of the things within the facility.  
Mr. Lieberman – Have you asked anybody whether that occurs?  
Mr. Bendixen – Well we have electric vehicles inside that are small golf carts we'll call them. Those have batteries in them.  
Mr. Lieberman – I'm talking about these trucks what do you call them cars? They have batteries right?  
Mr. Bendixen – They have batteries. We do not do any maintenance inside there.  
Mr. Lieberman – You do have a carwash that you've had since the beginning of the facility opened is that correct?  
Mr. Bendixen – That's correct.  
Mr. Lieberman – UPS has a tradition of having carwashes at many facilities isn't that correct?  
Mr. Bendixen – That's correct.  
Mr. Lieberman – As a matter of fact just about every UPS facility to your knowledge has a carwash similar to this one isn't that correct?  
Mr. Bendixen – No that's not correct.  
Mr. Lieberman – But many do.  
Mr. Bendixen – Many do.  
Mr. Lieberman – The reason UPS has this is because they want to keep the trucks clean yes?  
Mr. Bendixen – Standard appearance.

Mr. Lieberman – In other words UPS washes these trucks because in doing so it promotes the brand isn't that correct?

Mr. Bendixen – Yes.

Mr. Lieberman – Because you don't want your trucks to go out on the road unless they look pristine and I would add personally speaking they do look pristine correct?

Mr. Bendixen – We want them to look presentable.

Mr. Lieberman – You do have a tanker truck that comes to this facility every other week and brings petroleum correct.

Mr. Bendixen – We have underground fueling tanks.

Mr. Lieberman – That's not what I asked. You have a tanker truck who comes to this facility to bring oil to store in those underground tanks correct?

Mr. Bendixen – Yes.

Mr. Lieberman – That's because the trucks are fueled onsite.

Mr. Bendixen – Yes they are.

Mr. Lieberman – Have you actually read the municipal definition of truck terminal anytime in your life?

Mr. Bendixen – For Saddle Brook?

Mr. Lieberman – For this municipality.

Mr. Bendixen – You have an understanding that there is no definition of the term service in the ordinance where it references servicing of vehicles. You know there's no definition is there?

Mr. Bendixen – No there is not.

Mr. Lieberman – In fact there is no definition of the term servicing in any of the local land use ordinances in the municipality of Saddle Brook to your knowledge isn't that correct?

Mr. Bendixen – Correct.

Mr. Lieberman – You've heard of what a service station is right?

Mr. Bendixen – Yes.

Mr. Lieberman – Service stations are where people get gas isn't that true?

Mr. Gianetti objects that it is outside of Mr. Bendixen's purview.

Mr. Pellino allows the question.

Mr. Bendixen – Yeah I fill my own vehicle when I go to New York, Pennsylvania all over.

Mr. Lieberman – Let's go over this definition because I want to hammer this down and make sure we are on the same page. The definition says any lot on which more than three trucks of over One and a half ton capacity and we're going to stop there for a second. You have an understanding that this facility consists of multiple lots and blocks you know that don't you?

Mr. Bendixen – Yes.

Mr. Lieberman – So this is a lot right?

Mr. Bendixen – Yes.

Mr. Lieberman – You have an understanding that at any given time there's more than three trucks situated on this lot correct?

Mr. Bendixen – Yes.

Mr. Lieberman – Anytime there is more than three correct? What is the maximum capacity of trucks that are situated on this at any given time what is it?

Mr. Bendixen – Which kind of trucks?

Mr. Lieberman – This doesn't say so I'll just ask you and I'm going to include in it those cars by the way just for giggles. How many trucks including those cars can be stored on this facility at any given time? What's the maximum?

Mr. Bendixen – I would have to look it up but it's a significant number.

Mr. Lieberman – Hundreds correct?

Mr. Bendixen – I don't have the exact number.

Mr. Lieberman – Over one and a half ton capacity all of the tractor trailers are over one and a half ton capacity correct?

Mr. Bendixen – Yes.

Mr. Lieberman – The cars they are over one and a half ton capacity too aren't they?

Mr. Bendixen – Most of them.

Mr. Lieberman – We call them cars but they're over one and a half ton capacity. It says we'll go back to the definition capacity and or trailers are parked at any time out of doors. This ordinance doesn't say how long they have to be parked does it?

Mr. Bendixen – No.

Mr. Lieberman – According to this ordinance if it's parked there for 20 minutes it's parked correct?

Mr. Gianetti objects.

Mr. Pellino – That's not for him to say.

Mr. Lieberman – At any given time you have tractors and trailers parked there. Let me keep going with this definition. Where such trucks and or trailers are used in the transfer and shipping of goods. You'd agree that every one of those vehicles participates in the transfer and or shipping of goods isn't that correct?

Mr. Bendixen – Yes.

Mr. Duffy - Mr. Lieberman where are we going with this?

Mr. Lieberman – The whole question is whether or not your Zoning Officer was correct in writing that this ordinance applies.

Mr. Duffy – Are you trying to convince him or us?

Mr. Lieberman – I'm not trying to convince anybody I'm just trying to get to the bottom.

Mr. Duffy – Can we get back to questions or comments on his testimony instead of the debate because the whole purpose of this is to look at this ordinance. I'm asking you because I opened the meeting to the public and I stipulated it's for this witness in regards to his testimony and I think you have gone way outside of his testimony. You're trying to have him testify again.

Mr. Lieberman – I'm cross examining him and part of that involves the use of words. What I'm saying is I'm trying to lay a foundation with this witness based on what he knows and what he doesn't know as it relates to this ordinance. That's all I'm trying to do.

Mr. Duffy ask if we can keep the questions and comments to his testimony.

Mr. Gianetti – To be clear factual testimony not his opinion on terms or what they mean.

Mr. Lieberman – Most of them were facts I wanted to make sure we had the minimum threshold of trucks wanted to get that done. Now by the way we talked about the trucks and trailers. Do you know where Rugby Avenue is?

Mr. Bendixen – Yes.

Mr. Lieberman – Isn't it true you are parking trailers along Rugby Avenue?

Mr. Bendixen – We do not park trailers along Rugby Avenue at this point. We have in the past at certain time. A concern came from a neighbor and we corrected that.

Mr. Lieberman – Tell me when you stopped.

Mr. Bendixen – The Township came to me last year and we had an agreement with them that we would do that.

Mr. Lieberman – I want to be perfectly clear because we're going to hear witnesses later for the community. Your testimony is sitting here today that you do not park tractors or trailers on Rugby Avenue.

Mr. Bendixen – I don't park any on Rugby Avenue.

Mr. Lieberman – I meant I stand corrected I didn't mean that. I mean you don't park any tractors or trailers on UPS property that immediately adjoins or abuts Rugby Avenue is that your testimony?

Mr. Bendixen – My testimony is the Township came to us and asked us that there was some concerns there and so we went back and we said in order to try and minimize the concerns we will try to eliminate all of the parking of trailers on that side and we have done that. Is there a trailer that gets parked there it's possible. I'm not there twenty four seven as I said and I will say I have found a trailer there we went to the department that's over that and that problem was corrected again.

Mr. Lieberman – You only found one trailer?

Mr. Bendixen – That's all I could recall.

Mr. Lieberman – You have mobile distribution facilities there?

Mr. Bendixen – We do.

Mr. Lieberman – What is a mobile distribution facility?

Mr. Bendixen – We purchase some units from a company that are state approved and there are some that are called portable distribution units and some that are called mobile distribution units. Both of them sound like they're mobile because they were purchased or built somewhere else and brought onsite. We have some mobile units that were installed and we have one at the corner at door 68 that we're trying to replace. That is really what most of this here generated.

Mr. Lieberman – What do you do with the mobile distribution facilities?

Mr. Bendixen – There are package cars that back up to these and they are loaded.

Mr. Lieberman – How does that compare with other places at which packages are loaded? What's the difference? When did you first start using these mobile distribution facilities?

Mr. Bendixen – I can't give you an exact answer. They are very old the reason we are replacing this one is because it's wearing out. It's got to be well over 20 years old.

Mr. Lieberman – After you got your original approval in 1973?

Mr. Bendixen – Oh yeah.

Mr. Lieberman – Did you ever get any approval from the Planning Board or Zoning Board to have those mobile distribution facilities?

Mr. Bendixen – I can't say yes or no I wasn't here at that time. I don't have a document that says that we did and I don't know that we did. I can say that I have put many of those up at UPS throughout the entire eastern seaboard and I do obtain building permits for them. That's why we came to the Planning Board for this one because I know that it's the right thing to do.

Mr. Lieberman – My question is did you come for the other ones?

Mr. Bendixen – I don't know the answer to that.

Mr. Lieberman – Those hours that you talked about starting at 4 am right.

Mr. Bendixen – Well I say start at 4 am but there's a sort that starts at 11 pm and goes to 4 am so it's almost non-stop throughout the night.

Mr. Lieberman – Was there a point in time where the hours weren't that extensive?

Mr. Bendixen – I can't give you an answer because I haven't been here but I know that it's been these hours for decades.

Mr. Lieberman – Before those decades was it less?

Mr. Bendixen – I wasn't at UPS during the 1970's.

Mr. Lieberman – Has volume gone up since people are buying online?

Mr. Bendixen – I believe so.

Mr. Lieberman – Do you know how much?

Mr. Duffy – Is this relevant to his testimony?

Mr. Lieberman – I think it is.

Mr. Duffy – Can you explain to me how it is relevant.

Mr. Lieberman – Yes because his whole role here was to provide operations testimony. If I ask whether or not the operation is more intensive I think it's completely relevant to his testimony.

Mr. Duffy – Is it relevant to the definition of a truck terminal?

Mr. Lieberman – Yes it is relevant to the appeal that we're taking because your officer said there's been an intensification of use.

Mr. Gianetti – Of a nonconforming use because it's a truck terminal.

Mr. Pellino – His ruling was the pallet operation would constitute an intensification of what he believed was a nonconforming use and even though the letter didn't say it, it was based on his opinion that this was a truck terminal. That's really the question whether the hours have increased or not increased is outside of this.

Mr. Lieberman – Counselor he also indicated there are pallet operations that were being expansive in this meeting. You know there was colloquy back and forth about what he meant by that and what pallet operations meant and the Zoning Officer meant that he was expansive and wasn't just focusing on the pallet operations.

Mr. Pellino – I don't think so that's not how I read the letter but I think the question really comes down to the truck terminal and really not whether their hours have expanded. That may be true or not true but it's really not the focus here.

Mr. Lieberman – I have nothing further.

Mr. Lana – In one of your statements there was a question asked what type of driver's license do you need to drive the cars the brown trucks. I think it might have been the attorney that said class B.

Mr. Duffy – No that was Bendixen.

Mr. Lana – A class B driver's license is a truck driver's license because a class A driver's license is for a car.

Mr. Bendixen – I'm from a different state so I may have to clarify. It's the same license to drive any car or regular truck.

Mr. Lana – So you don't need a class B driver's license because what I understand driver's licenses in any state there's class A, class B, class C and then there's bus, hazard, there's air brake.

Mr. Bendixen – The tractor trailers are CDL but not for the brown package cars.

Mr. Lana – So that's a class A driver's license class B is a truck anything over a certain GBW.

Mr. Bendixen – When I drove which was a few years ago in California it was a class B.

Mr. Lana – So then that is a truck driver's license.

Mr. Bendixen – No it was not it was a normal license.

Mr. Lana – It should be interstate it should all be in sync.

Mr. Duffy – It's California I don't know.

Mr. Lana – I don't know either. That said we're talking about Saddle Brook and New Jersey.

Mr. Bendixen – What I could say is it does not require any special driver's license to drive the brown package cars.

Mr. Lana – I think that needs to be checked into.

Ms. Murray – I know multiple UPS drivers and they all have regular driver's licenses no extra endorsements unless they drive the tractor trailers then they need a CDL.

Mr. Duffy – Does anybody else wish to be heard? Having seen none.

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

Mr. Duffy – It is after 10:00 so we are past our time for new testimony so at this point we will have to carry this to the next meeting.

Mr. Lieberman asks who the next witnesses would be for the next meeting.

Mr. Gianetti – Mr. Moronski our planner is our next witness.

Mr. Pellino makes the announcement that this application will be carried without notice to the June 6<sup>th</sup> meeting 7:00 same location.

## **6. RESOLUTIONS**

A.) Approval for Jungah Kim, 93 Graham Terrace, Block 1513, Lot 45

B.) Approval for Shawn Schimenti, 584 Elm Avenue, Block 1708, Lot 18

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

Roll call - Ms. Murray, Mr. Schilp, Mr. Manzo and Mr. Duffy – YES.

## **7. MINUTES**

Meeting of April 4, 2022 Regular Meeting

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

## **8. COMMUNICATIONS**

Anthony Kurus to the Zoning Board, 4/04/22

Stuart J. Lieberman to Anthony Ambrogio & Stephen F. Pellino, 2/18/22

Stuart J. Lieberman to Anthony Ambrogio & the Zoning Board with Attachment A, 3/11/22

Craig M. Gianetti to the Zoning Board, 3/16/22

Craig M. Gianetti to the Zoning Board, 3/28/22

Stephen F. Pellino to Bruce E. Whitaker, 4/06/22

Stephen F. Pellino to Richard G. Arango, 4/06/22

Stephen F. Pellino to EPA Attention: Kate Anderson, 4/13/22

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

## **9. VOUCHERS**

Basile Birchwale & Pellino, 4/01/22, Darwin Betancur, 10 Sterling Place, Block 906, Lot 6 \$250

Basile Birchwale & Pellino, 4/01/22, Abel & Maria Dacunha, 353 Capitol Street, Block 102, Lot 11 \$250

Basile Birchwale & Pellino, 4/01/22, Russell Kelley, 275 President Street, Block 105, Lot 10.01 \$250

Basile Birchwale & Pellino, 4/01/22, BT-Newyo, LLC, 280 N. Midland Ave, Blk 1202, Lot 27-29 \$593.75

Return of Unused Escrow, 4/20/22, Karen Vermilyea, 592 Elm Avenue, Block 1708, Lot 20 \$157

Return of Unused Escrow, 4/20/22, Victor L. Olivetti, 594 Saddle River Rd., Block 511, Lot 13 \$395.85

Return of Unused Escrow, 4/20/22, New Horizon Develops, 166-170 Midland Ave., Block 403, Lots 12 & 16 \$470.20

Return of Unused Escrow, 4/20/22, Giuseppe DiFulco, 505 N. Midland Ave., Block 1717, Lot 3 \$122.37

Return of Unused Escrow, 4/20/22, SS Zava, LLC, 270 Market Street, Block 512, Lot 2 \$2793.75

Mr. Schilp makes a motion seconded by Ms. Murray to pay if the funds are available. All in favor – YES.

## **10. OPEN AND CLOSE MEETING TO THE PUBLIC**

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

Mr. Duffy – Having seen none.

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

## **11. ADJOURN**

Ms. Murray makes a motion seconded by Mr. Manzo to adjourn. All in favor – YES.