

# **TOWNSHIP OF SADDLE BROOK**

## **ZONING BOARD OF ADJUSTMENT MINUTES**

### **March 6, 2023 Regular Meeting**

The Saddle Brook Zoning Board of Adjustment will hold a regular meeting 7:00 p.m. on Monday, March 6, 2023 at **(Saddle Brook Town Hall 93 Market Street)**

#### **1. CALL THE MEETING TO ORDER**

#### **2. FLAG SALUTE**

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

Mr. Cialone administers the Oath of Office to John Manzo who is sworn in as second alternate and Karen Nobile who is sworn in as third alternate.

#### **4. ROLL CALL**

Roll call - Ms. Murray, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Ms. Nobile, Mr. Duffy – present. Mr. Tokosh, Mr. Marz, Mr. Burbano and Mr. Champy are absent. Anthony Cialone is sitting in for Mr. Pellino the Board Attorney, Anthony Kurus the Board Engineer is absent and Gary Paparozzi the Board Planner is also in attendance.

#### **5. NEW BUSINESS**

##### **A.) John Da Costa, 275 Hillside Avenue, Block 409, Lot 14**

Applicant requests a two car garage addition and driveway extension that does not conform to the zoning ordinance for the Township of Saddle Brook as it exists today.

Mr. Cialone confirms that the notice for this application is in order and that the application may proceed.

Mr. Da Costa is representing himself and is sworn in by Mr. Cialone.

Mr. Duffy – Would you walk the Board through what you're looking for this evening?

Mr. Da Costa – Right now I have a one car garage from 1970 that you can't fit anything in, and I have one car parking and we have three cars so I want to extend the driveway out and I want to be able to park the car inside the garage. We need storage too because my wife likes Amazon.

Mr. Duffy – I have a couple of questions. What's over the garage?

Mr. Da Costa – It has a dormer so this way a storage platform will be inside the garage so I can walk up and store stuff up there.

Mr. Duffy – So the access to that will be through the garage.

Mr. Da Costa – They'll be one access from inside the house and one from the backyard.

Mr. Duffy – That's where it presents a problem.

Mr. Cialone – The garage level has access from the house and the backyard, correct?

Mr. Da Costa – Yes.

Mr. Cialone – The storage area the Chairman is asking about.

Mr. Da Costa – The access to the storage area would be inside the garage only.

Mr. Duffy – Okay.

Mr. Da Costa – Like a loft.

Mr. Cialone – Like an attic?

Mr. Da Costa – Yeah almost like an attic.

Mr. Duffy – It's not a living space.

Mr. Da Costa – No.

Mr. Duffy – There's no entrance from the main house into that area?

Mr. Da Costa – No.

Mr. Duffy – Because part of the and I don't know how the rest of the Board is going to ask about this but it's not clear in these plans what's going to happen here. Mr. Mazzer do you have any questions?

Mr. Mazzer – Yeah there's a lot of questions you should have had better drawings because on the access from the garage is it regular steps is it pull down steps?

Mr. Da Costa – We were still talking to the architect about it he said I could have a ladder going up our stairs.

Mr. Mazzer – That's what we really need to know and the height from the top of the beam to the ridge beam we kind of need that height. I didn't see it here.

Mr. Duffy – No we don't have the elevations on here.

Mr. Mazzer – If you have it like nine foot it's easy to make an apartment.

Mr. Da Costa – I don't want an apartment I just want put some Christmas decorations.

Mr. Mazzer – If you keep it like six feet seven feet there's no problem but we don't know.

Mr. Da Costa – I don't want anybody to live up there I just want all my Christmas decorations down in the basement and put them in the garage. I won't even put stairs I'll just put a ladder so I can climb the ladder and put the decorations up if you don't want stairs up there it doesn't matter to me.

Mr. Duffy – The problem with this is and I understand what you're attempting to do but I don't think that we have enough solid information on the application. We would need a little more extensive on the plans we don't know the elevation of the garage apparently you're going to do the existing garage is now going to become a family room?

Mr. Da Costa – Yes.

Mr. Duffy – So we don't have the garage itself is a question and our engineer had an issue with the measurements because we couldn't read any of it because it was very small.

Mr. Mazzer – Is it a two car garage a three car garage?

Mr. Da Costa – Single door two car garage.

Mr. Paparozzi – Is there a finished basement?

Mr. Da Costa – I do have a finished basement.

Mr. Paparozzi – What's in the basement?

Mr. Da Costa – A poker table and.

Mr. Paparozzi – Room wise.

Mr. Da Costa – The size of it?

Mr. Paparozzi – No full bathroom full kitchen.

Mr. Da Costa – No the family room is real small and you go down another set of stairs and I have a poker room there and exercise equipment and then off to the side is a laundry room.

Mr. Paparozzi – It would be nice to see that that's what I think the Commissioners are alluding to additionally the number of parking spaces would be based on the number of bedrooms so I don't know how Anthony came up with 2.5 without seeing the number of bedrooms. How many bedrooms are in the house?

Mr. Da Costa – Three.

Mr. Mazzer – The garage is going to be a playroom?

Mr. Da Costa – No just two car parking.

Mr. Duffy – No the old garage.

Mr. Da Costa – I have a small room like the size of this where I have a TV and a couch and I want to extend it out so I can out a nicer TV and some more couches.

Mr. Duffy – So the garage is a family room already.

Mr. Da Costa – No the current garage is a functional garage that you can't put a car in it's too small.

Mr. Duffy – My feeling is that we would need you to come back with a little more additional plans that give more detail. My recommendation would be that you ask the Board for an adjournment this evening.

Ms. Murray – Can I ask something before because you're going to give him a chance to come back?

Mr. Duffy – Go ahead.

Ms. Murray – I need to know about the guidewire and the telephone pole because it measures on the drawing seven feet off the property line and you're building your garage to five feet off the property line and the driveway.

Mr. Da Costa – The driveway would have to be shorter because of the guidewire there I wouldn't be able to make the driveway go to the guidewire.

Ms. Murray – That would need to be delineated on the plan as well because your driveway goes over even with the garage so that is then another issue because that guidewire is there. It's within where your driveway would be instead of in the grassy part that's going to be left on the five feet.

Mr. Mazzer – He could always talk to Public Service they could move the guidewire.

Ms. Murray – I'm sure but if I wanted to make sure if he's going to do this he should make that clear.

Mr. Da Costa – When I was talking to the architect I said I'll go right to the guidewire with the driveway.

Ms. Murray – I just want you to know that if you have to do the plan and put some stuff on the plan it would be good to have that on the plan so that it's showing.

Mr. Duffy – To complete what I was going to suggest.

Mr. Da Costa – This is my first time I'm learning whatever you need I'll get.

Mr. Paparozzi – Mr. Parisi should have guided you somewhat in my opinion he's been before the Board before and other Boards so I'm sure he knows what is required.

Mr. Duffy – It's your option to let us proceed or ask us for an adjournment. I would recommend that because the adjournment would give you the opportunity to make sure that these things are addressed in the plans and then you could have it ready for the next meeting which will be April 3<sup>rd</sup>. In the adjournment we would not have you renote it would be much better so we could take care of these issues. There are issues as to where the roof drainage is going. The engineer had some questions about that. Instruct your architect to make his measurements legible because these were not and that was part of our engineer's dilemma that he couldn't read them and then just clarify the issues above the garage. The Height of the attic space and also the guidewire.

Mr. Mazzer suggests that he could have the telephone pole moved by PSE&G.

Mr. Duffy says that we are not telling you to move it but just to show it.

Mr. Schilp says he should put in pull down stairs but it is his decision.

Mr. Da Costa asks for an adjournment.

Ms. Murray makes a motion seconded by Mr. Schilp to adjourn to the next meeting. All in favor – YES.

Mr. Duffy makes the announcement that the application is adjourned to the next meeting on April 3<sup>rd</sup> without further notice and that there is a possibility the venue will change and the meeting will be held at the new Municipal Complex at 55 Mayhill Street.

#### **B.) Gloria Broussard, 514 Saddle River Road, Block 1309, Lot 4**

Applicant requests to appeal the determination of the Zoning Officer whose Denial Letter stated that the additional retail use represents an expansion of the pre-existing, nonconforming use and additional bulk and parking variances may be required. The applicant would also request variance relief in the alternative in the event the Board declines to grant her appeal and/or request for interpretation.

Allyson Kasetta is representing Ms. Broussard.

Ms. Kasetta – This is the property at 514 Saddle River Road Block 1309 Lot 4 located in the B1 Primary Business Zone. It's developed with an existing building in which the front portion was used as a restaurant. The Township Fountain was an institution in Town for a long time and the rear portion is used as a residence. The Zoning Officer denied the applicant's application for zoning approval to continue the use of the restaurant on his finding that it's an expansion of a nonconforming use and that additional parking and bulk variances may be required.

Mr. Duffy – Just so everyone is aware this is an interpretation therefore it did not have to be noticed.

Mr. Cialone – It's an appeal.

Ms. Kasetta – it's all three so we did serve notice.

Mr. Duffy – You did serve notice.

Mr. Cialone – Because they were asking for the variance in the alternative.

Mr. Duffy – Okay.

Ms. Kasetta – Should I assume you reviewed my proof of notice and found it to be adequate.

Mr. Cialone – Yes I have.

Mr. Duffy – You can proceed.

Ms. Kasetta – This will become relevant shortly but the property owner is here in case anyone has any questions I don't intend to call him for direct testimony but he has advised us that the Township Fountain had a total of 32 seats he also measured the restaurant space and advised that the total square footage is 720 square feet with 576 on the main level and 144 on the upper level. As you mentioned this is an appeal of the Zoning Officer's determination as well as a request for interpretation and then we've requested in the alternative the variances the Zoning Officer deemed to be necessary in the event that the Board disagrees with our position on this. We believe his determination was incorrect for a couple of reasons the first is that as I mentioned this building has two uses, the portion that is nonconforming is the residence the restaurant itself is permitted in the B1 Zone and again this will become relevant later on but the two uses are entirely separate. They have their own entrances they don't share any space within the building they've always existed separately. The second reason is the proposed café I think the Zoning Officer was looking at it as two different uses because it is a coffee and floral café but you'll hear from the applicant that it is not it's one family operated use one café it does involve some floral sales but we don't believe that it should be considered two separate uses. Finally, if it was considered two separate uses they're both permitted in the B1 Zone specifically restaurants, cafes and florists. Our position is there is no change or expansion of the restaurant use there is certainly no expansion or change to the residential use. This restaurant would just be a continuation of the former use which is compliant with the use requirements in the B1 Zone. I did find a court decision that speaks to these issues and I forwarded it to Mr. Pellino so hopefully he shared it with you. I didn't want to just drop it on you this evening. It's Conselice vs the Borough of Seaside Park. The citation for the record is 358 N.J. Super 327 and it's appellate division 2003. The plaintiff in that case had a residence with a real estate office in it. The residence was the conforming use whereas the real estate office was nonconforming so it's sort of the opposite situation from what we have here. The plaintiff was proposing to construct an addition to the residence not touching the office and the Zoning Officer determined it was an expansion of a nonconforming use so the plaintiff as we have done here first appealed to the Zoning Board and it went all the way up to the appellate division. In this decision as a general matter the court recited the rule that to determine whether an activity constitutes the expansion of a nonconforming use we apply a qualitative test and consider the intensification of the nonconforming use as a relevant factor. They agreed with the trial judge's initial analysis of the impact of adding additional residential use to the home including the increased need for parking and pedestrian traffic and their effect on the neighborhood. This is the first important distinction I want to make between that case and what we have here. The plaintiff was proposing an addition to the building. We are not proposing that we're proposing to use the space exactly as it exists today just to reoccupy it with a different restaurant. The Township Fountain had 32 seats when it was operating. When you hear from the applicant she will testify that she is proposing to reduce the number of seats slightly because she wants to put a small floral work station on that upper mezzanine level. I have taken a look at the parking requirements and we'll get to that a little later but basically it equals out so that the parking requirement for the proposed restaurant is no different than it was for the Township Fountain. Our position is that we are not intensifying the restaurant use even if it was nonconforming which it's not we're not intensifying it. Going back to the Conselice decision the court considered the plaintiff's argument that he was only expanding the conforming residential use but the court ultimately found that the uses are mixed that is they're integrated as portions of the permitted residential use are also being utilized as part of the nonconforming business use so this is the second

important distinction unlike the building here the business and the residence shared common spaces and did not have separate entries. The Zoning Board in considering the appeal initially found that 44.8% of the first floor was for dual use. That included utility and storage space a kitchen a hall and a lounge workstation which I'm not even sure what that is. Almost 50% of the first floor was shared between the uses so again we don't have that here we have entirely separate uses in this building. The court went on to say we therefore distinguish this circumstance from a property containing conforming and nonconforming uses where the uses are distinctly separate and discreet and there's no common usage of the property by both uses. That's what I'm presenting to you here that we have the opposite situation where they don't share space. Ultimately the court held that expansion of the residential use is not only expansion of that discreet use but an expansion of the mixed use of the property requiring relief from the Zoning Board for a Use Variance. It's entirely premised on the fact that these uses were integrated together and the plaintiff could not expand one use without impacting the other. I just wanted to give the Board that context before bringing up my client so I'd like to have her sworn and she can tell you about the proposed use.

Gloria Broussard comes forward and is sworn in by Mr. Cialone. She gives her address as 135 Forest Place Rochelle Park New Jersey.

Ms. Kasetta – If you could start off by confirming you are the contract purchaser of this property.

Ms. Broussard – I am.

Ms. Kasetta – Tell the Board about your vision for the restaurant café.

Ms. Broussard – This concept has been growing a lot in New York City flowers and cafes and it's crossed over the bridge. They're known in Englewood one is called the Plant Shed Montclair Boho Café and in Bloomfield there's one that's been all over the news which is Café Flora. It's a combination of flowers and coffee crafted drinks lattes and plants and it's just a beautiful place.

Ms. Kasetta – What's the name of the proposed café?

Ms. Broussard – The name of the café (Ms. Broussard gets choked up and has a difficult time answering the question). She regains her composure and explains that the name is Adriani Floral Café and it is the name of her grandson who has passed away. She explains the circumstances of her grandsons passing and that her daughter was a surgical technician and never wanted to go back to work after her son passed. She always had a passion for flowers and she wanted to support her and her son who is a Starbucks barista and that this concept is to bring the flowers and the café together and have both of her children operate the business.

Ms. Kasetta – Can you tell the Board a little more about your daughter's floral business and how she operates what she does.

Ms. Broussard – She does venues like this week the Marriott Hotel hired her for Valentine's Day. They put in an order and she prepares them and drops them off. If it's a wedding or baby shower whatever it is she does it on site. She takes the flowers and she does them on site. Nowadays there's a lot of decorations you have to do on site.

Ms. Kasetta – As far as her inventory she picks everything up so they're not delivered to her.

Ms. Broussard – It's Clifton Warehouse everything is picked up.

Ms. Kasetta – As far as the food that will be served here can you tell the Board about what you're envisioning the level of cooking that will be done on site or not done on site.

Ms. Broussard – I believe prior the Township Fountain was more like burgers where we're more since my son worked at Starbucks it's more like specialty drinks, fresh juice, pastries, muffins grilled cheese with some soup and empanadas.

Ms. Kasetta – You don't want to be doing too much cooking on site because you don't want to take away from the flowers and the atmosphere in there. Baked goods those will be brought from offsite not baked on site.

Ms. Broussard – Offsite.

Ms. Kasetta – How many employees do you anticipate having?

Ms. Broussard – It's my daughter, my son and someone helping him in the café area.

Ms. Kasetta – So three.

Ms. Broussard – Yes.

Ms. Kasetta – I would like to introduce and mark an exhibit. This is a floor plan that was prepared by my client so it is not to scale and has not been prepared by an architect it's really to give you a visual representation so that you can see what we're talking about.

Mr. Duffy – So this would be an exhibit.

Ms. Kasetta – A1.

Mr. Paparozzi – Ms. Kasetta when you emailed the survey to my office you mentioned you were going to bring a parking layout to the meeting and to date I still don't have a parking layout. Do you have one with you?

Ms. Kasetta – I do have one with me, yes. I figured we would cover the interior first and give the Board an idea of what the use is and then we can get to that.

Mr. Paparozzi – I couldn't give a detail of variances requested because I didn't have your parking layout.

Ms. Kasetta – I have it.

Mr. Duffy asks Mr. Cialone the best way to proceed.

Mr. Cialone – If you deny the appeal then they have a D Variance which would include any bulk issues as well.

Mr. Duffy – What is the best way to proceed on this we listen to all testimony as if we are going to be thinking about variances or do we just go with the first issue which is the interpretation the appeal?

Mr. Cialone – I would recommend the appeal first but it's up to the applicant as to how much testimony and evidence they want to provide to the Board.

Mr. Duffy – This way the Board understands we're going to be hearing a lot right now but our initial focus will be on the appeal.

Mr. Mazzer – if we just go with the regular not an expansion of a use they can just do what they want to do right?

Mr. Paparozzi – There are variances Commissioner and quite frankly I don't have all the variances because I don't have any of the layout so I really couldn't tell you what the variances are but there are several. Can I continue Chairman?

Mr. Duffy – Yes because I want to be clear how we go so everybody understands and this way the reason I'm bringing this up is I want everybody to understand where you're coming from and how it will affect our decisions and how we go.

Ms. Kasetta – I appreciate it.

Mr. Duffy – There's three things here.

Ms. Kasetta – I understand and if I may that's kind of why I wanted to go through the interior first have my client explain what this use is so that the Board can think about that and decide whether you believe this is an expansion of a nonconforming use so we can move on from that part and then if we need to get into parking and any other variances we can.

Mr. Duffy – Okay fair enough you can proceed then.

Ms. Kasetta – Just to confirm you prepared this floor plan correct?

Ms. Broussard – Yes.

Ms. Kasetta – If you can just walk the Board through.

Mr. Duffy – This floor plan is going to be what?

Ms. Kasetta – A1.

Ms. Broussard – We're not touching anything the way it is it's going to stay but I know that right now there is a very long counter and we're going to cut that more than half because my son doesn't need that much of an area. So on top the mezzanine area right there are some chairs and tables and the bathroom is up there so we would remove all those tables and replace it with a floral fridge, my daughters work space and the bathroom door and then next to there we would cancel the door that goes into the house where Bob and Theresa live. We would eliminate that door and put a small floral sink for my daughter. That area stays we're not closing it up it's going to remain just the way it is steps go up as you come down I should have started from the entrance. In the entrance the same setup but just on one side we'll put four chairs on the other four barstools. You walk in the middle will be like a table with some displays and on the sides

a total of 30 seats and that's it. We're not planning on any barstools it'll just be a coffee area, the same where it's at now where the hood is at that area will continue but smaller and that will be Adriani's Floral Café. We're not touching anything at all.

Ms. Kasetta – Going back to the square footage as I mentioned I did some calculations while we were figuring out how many seats would keep this within the same parking requirement. For restaurants the code requires either one space for every 200 square feet or one for every three person's occupancy whichever is greater. If you use the square footage the requirement is only 3.6 or rounded up 4 spaces so we have to use the requirement based on occupants. If you use one for every three seats the requirement would be 10 spaces based on the number of seats. If you want to add in that mezzanine level and add another space at 1 per 200 because again that mezzanine is 144 square feet that brings it up to 11 spaces. With 32 seats the Township Fountain's requirement was also 11 spaces so what we've done here was keep the seats down to compensate for that mezzanine level so that the parking requirement doesn't change. Then the apartment has three bedrooms so that requires two spaces but we're not touching that that's no different than it's ever been. As I was discussing with Mr. Paparozzi we didn't have a chance to submit a parking layout plan because we were under a strict deadline to file the appeal but we did have that prepared as well as an updated survey. We can get into that Mr. Chairman when we think the time is appropriate but our position is that this is not a change of use that it was a restaurant it's still a restaurant the sale of the flowers doesn't change the nature of the use it's just an additional product that's being sold at this café and that's really the essence of this appeal.

Mr. Duffy – Mr. Mazzer.

Mr. Mazzer – Everything seems about the same. We're not touching the apartment doing anything so I think it will be a nice addition to the community.

Ms. Murray – I tend to agree with your presentation of that appeal where you showed what really was an expansion of nonconforming recalling what we have to decide about the nonconforming and the conforming the business is the conforming piece of this in my mind which means if you're not changing the size you're not changing anything exteriorly and the parking is the same which we'll deal with that at another time I don't see where there is an issue with that piece of it's not not conforming it is conforming.

Ms. Kasetta – Correct.

Ms. Murray – So that's where I am.

Mr. Manzo – I agree with Ms. Murray it's just replacing one thing with another.

Ms. Nobile – I have one question about the there's no entrance between the residential and the café?

Ms. Kasetta – There is a door upstairs but she is looking to eliminate that. There's a separate side door to get into the apartment so I think what you're talking about is when I was comparing this with the case that I mentioned. In that case there were no separate entries to the office and to the home. You had to go through the same entry to get to either.

Ms. Nobile – So the outside entrance goes to the residential and there's no access from the café to the residential.

Ms. Kasetta – There won't be.

Ms. Nobile – There will not be.

Mr. Schilp – I guess you plan to rent the upstairs.

Ms. Broussard – Yes my daughter has been considering my daughter has her home in Lodi but she's considering right now she hasn't moved back to her home she's been living with me so you know this whole life change thing it's her only son so she doesn't know yet so I'm keeping it open to her.

Mr. Schilp – My only comment would be is if your daughter does live upstairs that you hold to your bargain that you're going to close the door that goes from the restaurant to the house.

Ms. Broussard – It is going to get closed I have to close it that was something we don't want to mix one thing with the other because I know that's the way it is right now.

Mr. Schilp – That's fine.

Mr. Paparozzi – I have a few questions. Ms. Broussard if I wanted to go in there just to buy flowers I could do that right?

Ms. Broussard – Yes if she has flowers there at the moment yes.

Mr. Paparozzi – That's what the intent is right?

Ms. Broussard – Right.

Mr. Paparozzi – The residence on the first floor is going to stay right.

Ms. Broussard – It's the back of the building.

Mr. Paparozzi – Yes is that going to stay?

Ms. Broussard – Nothing is going to change.

Mr. Paparozzi – The second floor is that residence as well?

Ms. Broussard – It's part of the first floor it's a one family.

Mr. Paparozzi – The second floor in the back of the.

Ms. Broussard – The first floor is living room kitchen and upstairs there is three bedrooms and a bathroom.

Mr. Paparozzi – Chairman Commissioners I do agree that it's not an expansion of a nonconforming use but there are several variances for example the B1 Zone requires 10,000 square feet for one business now technically we have two businesses so there is an expansion of that bulk requirement. The B1 also requires a hundred foot frontage for one business and now we have two businesses with less than a hundred feet so that's another C Variance. The parking I understand Ms. Kasetta's analysis but I should see a plan so I can confirm the 720 and the 144. I have no numbers no dimensions of anything to at least say Ms. Kasetta is right and now the parking requirement is X also the parking requirement would come under the number of bedrooms that are within the resident part. When you couple all of that together I would have to do that calculation and then determine the parking. Now the parking also has to be 10 by 18 or 9 by 20 a 24 foot aisle additionally I think we should see where the garbage and recycling is going whether there is going to be a dumpster or whether you're going to have cans if you're going to have cans you have to have sufficient amount of cans for garbage and for recycling and it should also be in a designated area whether fenced off or not. Those are some of the things I guess I should see but there are at least three variances that I know of I just don't know what else because we do not have anything but a survey. I do agree it's not an expansion of a nonconforming. I'm going to tend to believe that the Construction Code Official meant that it's an expansion of the bulk variances that are nonconforming not the use because obviously the retail of flowers and café is a permitted use and the residence is preexisting and is not changing. Without some plans I can't tell you exactly what is going on with variances nor can I verify the 144 square feet and the 720 square feet I think the Township should at least have that just so everything conforms. I have no problem with the application I just want to let you know what the variances are and if there are any issues.

Mr. Duffy – Correct me if I'm wrong but I did read that in land use law that there are provisions made to not retroactively punish a property owner because the situation existed before the ordinances were updated before those requirements were necessary or deemed law. We're looking at a building that is not going to change it's exactly the way it is the only exception is to terminate the entrance from one to the other. The last time this was in front of was because of the abandonment issue which we determined was not an abandonment so am I going in the right direction?

Mr. Cialone – You are talking about preexisting deviations in the bulk requirements so the question is whether or not the proposed use exacerbates those existing bulk nonconformities.

Mr. Duffy – My understanding from Ms. Kasetta is that they are taking steps to stay within what was originally there without going outside to force those issues so the question is where are we first do we put it to a vote on the appeal?

Mr. Cialone – Yes.

Mr. Duffy – If the appeal is successful what is the next step do we just say okay that's it or do we have some other things that we have to take care of?

Mr. Cialone – We have the bulk variances which we can hear if the planner determines we need more information the Board can have them provide more information and come back it's up to the Board that's how we would proceed.

Ms. Kasetta – If I can just offer one thing I acknowledge that there are nonconformities on the property but I think if you grant the appeal you're sort of acknowledging that they are existing nonconformities that they're not being triggered by this change in occupancy and I think the ones that Mr. Paparozzi mentioned

about the amount of frontage and the amount of square footage for a business I respectfully differ from your opinion I don't think these are two businesses but regardless I don't think what we're doing requires the need for those variances because they already exist we're just swapping out one occupant for another within that space. The parking is the same kind of thing and Mr. Chairman this might be a good time to introduce this layout plan but I do want to give the caveat that all we're showing is striping because this parking lot has not been striped for a very long time. We're not creating a new parking lot we're not putting addition on this building that changes the parking lot in any way we're just we have this prepared to show how many spaces we could have striped to improve the safety in that parking lot but in my opinion the parking doesn't require a variance either even though our surveyor has determined that we can stripe out 7 spaces including one handicap space whereas I mentioned 11 spaces are required because it's an existing condition we're not doing anything that's going to increase that requirement or take away anything that was there before parking wise.

Mr. Duffy – Judging from what we did the last time when we were here in October on the abandonment issue you can if I understand correctly just open up the Township Fountain just fire up the grill and go right back to how everything was done.

Ms. Kasetta – I will say I know the Zoning Officer is not here so I don't want to speak for him but in my conversation with him I asked him is it this idea of floral sales that is causing you to deny this in other words if we were just proposing a coffee shop with no flowers would you approve this and he said yes.

Mr. Duffy – Okay so hold on because I went in the Township Fountain and there was a secondary thing going on there there was candy sales. He had a luncheonette he served food prepared food and then you turn around and he's got a stand there where you can buy gum and lollipops and other candies in there. To me and I'm just giving my opinion on this that the luncheonette always had two uses so this is where I have a disagreement with the Zoning Officer that the flowers unless this becomes a full blown floral shop.

Ms. Kasetta – I would liken this to the selection of fresh flowers you might see at a convenience store or in a pharmacy. It doesn't change the nature of the pharmacy it's just that they have a little area where you can pick up fresh flowers but it's still a pharmacy.

Mr. Paparozzi – Ms. Kasetta that's why I asked if I can go in and buy flowers alone two the testimony was that for a bridal shower or something that they would prepare the arrangements which has got nothing to do with any candy store or café. I'm sure that there's not a Starbucks you can go in and get an arrangement for a wedding so there is two separate businesses that's why I asked that.

Ms. Kasetta – Her testimony was also that her daughter does most of her work on site for events like that.

Mr. Paparozzi – I would imagine they would have to come to either pick out some arrangements or flowers or something that being said that's why I disagree with your interpretation I believe with Anthony that there are two businesses there. I believe they're conforming I don't have a problem with the application but because the Township Fountain was there 50 years ago or more I mean you do have to stripe you do have to show parking you do have to show recycle I mean it's 2023 if you want to go back to 1950 I'd love to come with you but if there are different rules and regulations what the Township Fountain got in 1950 now you've got to conform to 2023 so you have to show us something.

Ms. Kasetta – Sure and I have it.

Mr. Paparozzi – I don't have it though and I should have it ten days prior.

Mr. Duffy – Where does this lead us?

Mr. Cialone – With the Board deciding the appeal and deciding whether the applicant is just going to go back to the Zoning Officer and get their approvals or the Board determines no we need additional plans and they need bulk variances. The Board will decide that and they'll comply.

Mr. Duffy – Before that I have to open the meeting to the public. Do I have a motion to open to the public?

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

Mr. Duffy – The meeting is open for Ms. Broussard and Ms. Broussard only.

Ricardo Leone comes forward and is sworn in by Mr. Cialone. He gives his address as 518 Saddle River Road.

Mr. Leone – I live next to the Township Fountain and the only thing I have an issue with I'm happy for a café I love coffee. The only thing I have an issue with is the venting of the exhaust it is facing the house where I live right now. We planted trees there to muffle the sound but I'm afraid now if it's being used again it's going to kill all the trees and it shouldn't be vented towards another property and maybe they can redirect it.

Mr. Leone presents a photo for evidence to the Board and it is marked as O1 which is kept and added to the file.

Mr. Mazzer asks how far away from the property line the fan is and he says 8 feet.

No one else wishes to speak.

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

Mr. Manzo – On Market Street there's a florist card store combination two separate businesses and they don't have the amount of parking. They have four signs in the front this is reserved for the card store and that's it. I don't think they have a thousand square feet I'm just making a supposition but I don't think they have enough parking either so I don't think they're out of line.

Mr. Duffy – Their parking is based on the entire building itself.

Mr. Paparozzi – Yeah and they could have gotten a variance back then I don't know so it's a different situation so I can't really comment on it but I understand the point you're trying to make.

Mr. Duffy – I would seek a motion at this point to reverse the Zoning Officer's determination and that the use proposed is conforming.

Mr. Duffy makes the motion and is seconded by Ms. Murray.

Mr. Mazzer – I just want to add something.

Mr. Duffy – On the appeal to the motion.

Mr. Mazzer – Yeah on the appeal because once we appeal then she doesn't have to get a variance.

Mr. Paparozzi – That's not true.

Mr. Duffy – That's not true.

Mr. Mazzer – No?

Mr. Duffy – No that's the question so before we accept the second we strictly stay with the appeal and then we can continue to look at the variance this evening or adjourn for the variances to another night.

Mr. Cialone – That's the way I would recommend doing it.

Mr. Duffy – The second stands?

Ms. Murray – Yes.

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

Mr. Duffy – That's part A so now your position.

Ms. Kasetta – My position is that we don't need any bulk variances because as I said we're not doing anything that changes those conditions including the number of parking spaces. I did have this parking layout plan prepared just to show you how many parking spaces could be striped out for safety purposes. I'm prepared to hand this out and mark it. I do have a couple of full size copies so I will definitely give one to Mr. Paparozzi.

Mr. Mazzer – Everything stays the same.

Mr. Duffy – Yeah.

Ms. Kasetta – That's my point too but I'd rather present the information to you and let you see it.

Mr. Duffy – Present the information so everybody knows what's going on.

Ms. Kasetta hands out copies of the parking plan she prepared marked as A2.

Ms. Kasetta – So you can see there are 7 spaces which is below the requirement of 11 but again we have reduced the number of seats to account for that mezzanine level so the requirements stands exactly as it was for the Township Fountain. I do realize also that the code requires certain square footage 180 square feet for the parking spaces these are only 162 but they are 9 by 18 which is pretty much an industry standard also required by RSIS even though that is for residential use and the reason for that is it maintains a 24 foot aisle width in the middle which we think is safer than extending the length of the parking spaces and cutting down on the width in the middle.

Mr. Paparozzi – So that would create a variance by today's standard by code.

Mr. Duffy – Because of the parking spaces.

Mr. Paparozzi – Plus you might lose one if they put a dumpster there I would like to see that as well.

Ms. Kasetta – We don't believe that a dumpster is needed.

Mr. Paparozzi – By today's standard parking is 10 by 18 which is the code so if it's not that's a variance that's at least one along with the other two that I believe are because I believe it's a separate business as I alluded to earlier but now if you show a dumpster you might lose a space and listen this may be all well and good I don't have a problem with that I just need to see it. I need to see it so I can tell the Board that this is a variance and this isn't and we should have you know 50 years ago he didn't need parking at the Township Fountain or the parking was one for every employee I don't know we don't have those records we have to go by today. That's why I said it's got to be brought up to today's standards. A hundred years ago you were allowed to put five families there they're not anymore. A hundred years ago nobody had cars they had horses now we need parking so there is a different standard today and that's what I was trying to explain and I think again this is the first time I'm seeing this so quite frankly I think we should have it a little beforehand so I can give that report to the Board. I think we need to see where the garbage is going to go and how it's going to be handled and especially recycling. Now there is recycling for the Township there's a code 50 years ago there wasn't and again I don't have a problem with the application I think the application is fine but I just need to see it so I can tell the Board what is required.

Mr. Duffy – Mr. Mazzer?

Mr. Mazzer – I disagree because that's the premise that there's two businesses there. My personal opinion is it's not it's one so you don't need any of this but you could make the application subject to where do you want to put the garbage but these variances all come into play because of the premise that there's two businesses then it has to be brought up to code. If it's not if you say it's one you really don't need any of this.

Mr. Paparozzi – There's a parking variance no matter what one or none.

Mr. Mazzer – No because everything is existing.

Mr. Paparozzi – No it isn't first of all there's no striping and hasn't been striped in years.

Mr. Mazzer – It doesn't matter if they stripe it this is existing.

Mr. Duffy – Here's the fundamental argument because they could easily just open up turn on the gas and put a hamburger on the grill and nothing changes.

Mr. Mazzer – No parking no striping no nothing.

Mr. Duffy – The business satisfied the issue of abandonment and did not be abandoned. It may be a nonconforming use because of the residential structure and the business but it's been like that since well you have a survey from 1983 and it went back probably 40 years before that. I think its 75 years that this business has been like this so I get your argument but I'm also looking at it you know a turnkey operation can walk in and make it a luncheonette again and not even change a thing. That's the way it always was.

Mr. Paparozzi – There's still a parking variance even if you agree to that because 50 years ago the parking requirement might have been two cars now it's as Ms. Kasetta said it's fifteen.

Mr. Duffy – The issue is if Mr. West just wanted to open up and start up again he would not need any of this. He wouldn't even need us he would just open up turn the key and go right back to work.

Mr. Paparozzi – He would have to stripe and provide.

Mr. Duffy – Why? He didn't abandon the building he never.

Mr. Paparozzi – That's the code today you have to stripe.

Mr. Duffy – Let's say his business never interrupted he has to stripe?

Mr. Paparozzi – Of course he does. Every few years the inspector goes out to all the commercial lots and tells them you have to restripe because it fades.

Mr. Duffy – Then the Zoning Official takes a preexisting condition and then all of a sudden exacerbates it and makes him have to go.

Mr. Paparozzi – He doesn't have to exacerbate it.

Mr. Duffy – If he says he has to stripe it then when he goes to stripe it now he's created a situation where he's making him go for a variance.

Mr. Paparozzi – No that's not true Mr. Chairman. If he only had six spaces and the striping came off put the six spaces back you have to. Now there's a recycling code you have to recycle where is it going? The Commissioners are taking it the wrong way I have no problem with the application you just need to show it. The code now calls for again 50 years ago he only needed two spaces so now if he needs ten the size of the building dictates that it was existing but you've still got to show 10 by 18 you have to show it that's your code you can't change it. You can change it with a variance an attorney would tell you that. You have no problem if you want to change it by the variance but the code says 10 by 18 you're creating a variance at 9 by 18 it's that simple. I'm telling you as your planner you could disagree but I'm telling you as your planner.

Mr. Mazzer – We could do it as subject to and then say you have to put your recyclables somewhere.

Mr. Duffy – What is this shaded area here not shaded the lined area?

Ms. Kasetta – That's the striping around the ADA parking space and that's what I was going to mention I don't think it needs to go in that little corner where the building juts out and that is where the Township Fountain put their trash and recyclables. They just had bins that they brought out to the curb which my client proposes to continue doing. She'll produce even less waste then they did back then.

Mr. Schilp – There's also area to the right of spot seven it's about four foot from the right side of spot seven to the property line so you can put garbage cans back there too if need be.

Mr. Duffy – You're not putting a dumpster back there you're not getting a truck back there you would have to roll the dumpster out to the street.

Ms. Broussard – I wasn't planning on a dumpster.

Mr. Schilp – Garbage cans on wheels.

Ms. Broussard – Yes because we're not making that much food we don't have a big inventory of food it's more pastries and people just pick it up and they go. I don't know how much cooking used to happen there but there's not a lot of cooking so I never thought about a dumpster.

Mr. Paparozzi – It's not required a dumpster Chairman they could have separate receptacles for recycling and separate for garbage. Don't forget this isn't only for a business there's a residence too and I assume the residents have to have garbage and everybody here has garbage so there's got to be garbage and quite frankly this is 2023 show it just to protect the Township that's all I'm asking. If the code says 10 by 18 I don't have a problem granting 9 by 18 but it's a variance that's fine I have no problem granting a variance but it's a variance. I disagree with Mr. Ambrogio that it's an expansion of a nonconforming use but I determined in my opinion as the planner I determined there's two businesses so you need 10,00 square feet again I have no problem granting a variance but I think in my recommendation to the Board you would be better safe than sorry. I don't have a problem with it just show it. Does anybody here know that the florist is 144 square feet other than Ms. Kasetta's testimony?

Mr. Schilp – I've been in and out of that place not in a long time but that area up there if it's 10 by 12 it's a lot.

Mr. Paparozzi – I agree with you but show us the numbers.

Mr. Schilp – Gary I agree with you I'm just I haven't been in there in a long time and I'm sure it hasn't changed at all inside and it was just a small area with a couple of tables.

Mr. Paparozzi – You want someone to confirm Ms. Kasetta's testimony right?

Mr. Schilp – If we go through with this and approve it just that she's got to prove the numbers that she gave us.

Mr. Paparozzi – if you want to do it subject to I have no problem but I would just include those variances as well.

Mr. Duffy asks Ms. Kasetta if she has anything else and she says she does not.

Mr. Duffy – The interesting thing is that there's actually two other pieces of property just like this right next door that are in the same boat. They're not doing anything at the moment but they're in the same situation. If I'm understanding correctly we can if we choose to grant a variance tonight for the parking subject to verifying the square footage.

Mr. Schilp – And where you're going to put the garbage cans. There's several spots you can put them it's not a problem.

Mr. Duffy – There's not a requirement on how many or how big a space it is we just have to allocate for it if I'm correct.

Mr. Cialone – For the?

Mr. Duffy – For the garbage. That's the major concern if I understand Mr. Paparozzi correctly.

Mr. Paparozzi – Well again I would like to see the numbers on the floral place and the café and then if you want to do it subject to I would make the motion to include parking variance the square footage and the frontage as an expansion of a nonconforming bulk requirement so there's three C variances that I believe. Now the parking is short but the parking was always short that's why I'm not saying the number of parking spaces but the way it's laid out now the size is not to code.

Mr. Duffy – So the frontage is an issue?

Mr. Paparozzi – It is it's an expansion and again it's my contention there are two businesses like I just explained to Mr. Mazzer I don't know if that's possible but the florist can go do a wedding if that were the case. If somebody from Saddle Brook wanted to go there and say I want your daughter to do my wedding you're not going to go to Starbucks and get somebody to do your wedding so therefore I'm trying to show you that there's two businesses so when you're expanding the second business one business needs 10,000 square feet and it needs a hundred foot frontage so I would call them the C variances the expansion of the bulk requirements for a business and then the parking requirement would be 10 by 18 you're going to accept 9 by 18 if that's how they want to present it and then she would show me some numbers and where the garbage is going before the resolution and I don't have a problem with that.

Mr. Schilp – That's what John had just said well the only other thing that you added was the frontage. We had the parking and get the dimensions for us so that should be I think that's a settled conditions to approve or disapprove.

Mr. Paparozzi – I have no issue with that.

Mr. Schilp – Okay thank you.

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

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

Mr. Duffy – This is open to the public on the entire application excluding the appeal of the Zoning Official because we did that already. Having heard none.

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

Mr. Schilp – I would like to make a motion that we approve the application with I believe three stipulations.

Mr. Paparozzi – Three variances.

Mr. Schilp – The variances the first one would be the frontage, the lot area and the parking spots.

Mr. Cialone – The number of spaces and the size.

Mr. Schilp – The number and the size and I would just like to put in there that they move the vent from straight out to vertical to help your neighbors.

Ms. Broussard – Upstairs is the patio that they have so I don't know can I go up that way?

Mr. Schilp – I don't know.

Ms. Broussard – To be honest I was going to remove that because it's very big and we don't need all of that so that's not a real concern.

Mr. Schilp – You're not doing cooking and that's what it was for over the grill.

Ms. Broussard – We're going to do something smaller.

Mr. Duffy – That would be a code issue.

Mr. Paparozzi – It's already 10 feet from the property line and it's preexisting so I would let that one go.

Mr. Duffy – I agree with you because you can't bend straight up because you'd have to go too high. So we covered.

Mr. Schilp – The two parkings the frontage and the area. Provide measurements for the inside.

Mr. Paparozzi – Measurements and the trash.

Mr. Duffy – Trash and recycling. Subject to.

Mr. Schilp – They produce it to the engineer.

Ms. Murray – And the planner.

Mr. Schilp – And the planner.

Ms. Murray seconds the motion.

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

Mr. Duffy asks for a five minute recess.

## **6. RESOLUTIONS**

A.) Approval for Carrols Restaurant Group, 439 Market Street, Block 705, Lots 24, 25 & 26

B.) Appointing Chairperson

C.) Appointing Vice Chairman

D.) Appointing Secretary

E.) Annual Report 2023

F.) Authorizing Contract with Board Attorney

G.) Authorizing Contract with Board Engineer

H.) Authorizing Contract with Board Planner

I.) Designating Official Newspaper

J.) Authorizing Meeting Schedule for 2022

K.) Resolution Regarding Completeness Determinations

L.) Resolution Regarding Compensation of Professionals

Mr. Duffy – We can do these together. The only ones who can vote on these are Mr. Schilp, myself, Ms. Murray and Mr. Mazzer.

Mr. Schilp makes a motion seconded by Ms. Murray to approve resolutions A through L.

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

## **7. MINUTES**

Meeting of February 6, 2023 Regular Meeting

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

## **8. COMMUNICATIONS**

Anthony Kurus to the Zoning Board, 2/16/23 (275 Hillside Avenue)

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

## **9. VOUCHERS**

Basile Birchwale & Pellino, 2/01/23, Priscilla Rotondo, 722 Saddle River Road, Block 1602, Lot 7 \$275

Basile Birchwale & Pellino, 2/01/23, Joseph DelGreco, 134 MacArthur Drive, Block 503, Lot 9 \$312.50

Basile Birchwale & Pellino, 2/01/23, Monzer Khalil, 279 John Ochs Drive, Block 1403, Lot 35 \$312.50

Basile Birchwale & Pellino, 2/01/23, Jackie Logerfo, 22 Miller Street, Block 517, Lot 11 \$275

Neglia Engineering Assoc., 2/14/23, Pandya, 28 North Fifth Street, Block 709, Lot 34 \$165

Neglia Engineering Assoc., 2/22/23, Jean Makowka, 458 N. Midland Ave., Block 1402, Lot 53 \$146.25

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

Meeting adjourned at 8:39 pm.

Respectfully submitted,

Frank Barrale  
Zoning Board Secretary