

**\*\*These minutes have not been approved and are subject to change by the public at its next meeting\*\***

The regular meeting of the Park Ridge Zoning Board of Adjustment has been called for Tuesday, February 19, 2013, at 8:00 pm in the Council Chambers of the Municipal Building.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

**ROLL CALL:** Mr. Sandler, Mr. Raman, Mr. Sigilitto, Mr. Walker, Mr. Capilli,

Absent: Mr. Hoskins, Mr. Flaherty, Mr. Brennan

Also Present: William Rupp, Board Attorney  
Brigette Bogart, Professional Planner  
Robert Ludwig, Zoning Officer  
Lyn Beer,

**COMPLIANCE STATEMENT:**

The Notice for this meeting required by Section 3(d) of the Open Public Meetings Act has been provided by the adoption of a resolution by the Park Ridge Zoning Board of Adjustment of January 15, 2013, setting forth a schedule of regular meetings by mailing of said schedule to The Ridgewood News and The Record on January 16, 2013, and by the posting of said schedule on the Municipal Bulletin Board and the continuous maintenance thereof and by filing the said schedule in the office of the Borough Clerk.

**NEW CASES:**

<b><u>CASE:</u></b> 13-01 <b><u>Block:</u></b> 304 <b><u>Lot:</u></b> 1	Application of <b><i>Lifetime Fitness</i></b> : Applicant is seeking interpretation and, in the alternative, use variance and site plan relief as necessary. Zone: ORL
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CAPILLI: Good evening, would you like to tell us what you are here for?

PRICE: Good evening, my name is Gail Price, of Price, Meese, Shulman and D'Arminio, P.C. of Woodcliff Lake, NJ. I am here to represent the applicant, Lifetime Fitness, which is located by BMW Plaza, which also kind of referred to as Sony Drive on one direction and Van Riper to the north. It is about 9 ¼ acres. And ¼ of an acre of the property falls within the Borough of Park Ridge. That ¼ acre is in the southeastern corner of the property.

It was formally used as part of the BMW office and warehouse and tech center, for a driveway and landscaping, in conjunction with that development. What we would like to do and propose to do, is to continue use of that ¼ of an acre for landscaping, which is to be used in conjunction with the Lifetime facility, and simply remove the macadam, thereby making it more green than it is already.

So, we would be taking out that curb cut, taking out the macadam and planting sod and additional trees in that area. There is no structure proposed. There is no building proposed. There is no parking proposed. There is no driveway or access aisle proposed. All that we are proposing to do is to put trees in that area, and green, and to take out that driveway, which is in pretty bad shape.

So, I have filed, both what is known as the interpretation under subsection "B" of the Land Use Law under subsection 70, seeking this Board's interpretation as to what, in fact, would be necessary in order to make that ¼ of an acre more green, and to use that land. I note that on, in our initial investigation, when we first came in to talk to folks in Park Ridge, when we were doing our due diligence, that area of land was not even designated in the Borough as a Lot and Block and we were able to get that properly identified as a Lot and Block number on your tax rolls. So that is know as Lot 1 in Block

304. The balance of the property has a Lot and Block designation in the Borough of Montvale.

So we would like to know what it is, in terms of approvals, that we need to make that green happen and to basically complete the project. We have secured all of the other approvals that are necessary for the project. We have DEP approval, Bergen County Soil, Bergen County. A wetlands delineation has been confirmed. I don't think that we have anything outstanding. We have all of the approvals from the Borough of Montvale. So, this is basically the only item that remains open at this point, in terms of how to get this area complete, and aesthetically treated in a manner that will make the picture one that makes the Boroughs of Montvale and Park Ridge proud.

So, we have the two reports and there is nothing in either of those reports that is troublesome and I think that we can confirm for the record that the couple of engineering items that were questioned as to whether the sidewalk was to be continued and what not, can all be answered in the affirmative. But, our first issue is an interpretation question. I have reviewed the code extensively, as well as case law and the property is in the ORL Zone, as you know, and the only other properties in that area that are in that zone are the Hertz property, Sony, the Marriott, and the NUS building. All of those buildings have landscaping in their front yard, just like we do, or just like we propose to install.

If, for instance, landscaping were deemed not to be allowed in the front yard, you would have 4 other properties in your ORL zone, which would not allow landscaping in the front yard, and it would almost, it seem to be contraindicated when your code calls out that you want buffering, when there is parking adjoining other properties or when there is development of land that does not have a building on it that you want landscaping in those areas. So, I am not sure what kind of relief would possible be required here other than a review to insure that was buttoned up.

The thought of potentially applying for a Use variance for trees, is a new one on me for 30 years. So, the interpretation is the first reason why we are here. I have our planner here if you need to hear from him on that element. And, element, I think is a critical word, let me just say, because, landscaping, to me, is an element of site plan design, just like lighting is, or drainage and your code, just like all of the other codes that I come across when doing my due diligence, doesn't regulate those kind of things, as items that would trigger Use variance relief. Those items are all part of a Plan review. So, you need to make sure that your drainage works and your lighting works, and your landscaping works. Those are not items that trigger Use variance relief. I couldn't find any cases anywhere that said that it does.

So, that is our first step. I will be happy to answer any questions along those lines.

CAPILLI: If I am correct here, in that zone we just don't permit this type of use. Am I correct? What Lifetime fitness would be, so that is kind of where we stand. If it would be alright with you, we would like to kind of just get to right to Use variance, like to look that way.

PRICE: Well, let me just address that. When, you are absolutely correct, that in the ORL zone, you allow office buildings or research buildings or office buildings with a warehouse component with a specific percentage. But, this is a split municipal boundary property, and under case law, that split municipal boundary line is relevant in a couple of issues. One is that each town is supposed to respect the other town's zoning and you are supposed to be able to look at the property as a whole in terms of regional planning and the entire property. But, the line of demarcation stops at that boundary line and in fact your own code takes it a step further, because boundary line is defined, and I say this most respectfully, but in 101-7, boundary line is defined as stopping at the municipal boundary in Park Ridge.

So, if the boundary line stops at the municipal boundary, I am not sure how one looks across that boundary line to say that the use is not permitted. We have no use of a fitness center for this ¼ of an acre. The only use that is happening on the ¼ of an acre, is

trees. Nothing else is going to happen on it. If I were to make this argument to a judge, I don't know how I would possibly say, or if I had to make a traffic study, for how many cars the trees produce, you know, all of the things that you would need to look at for Use variance, those are the things that we thought about and tried to address in connection with the interpretation and a Use variance. I am not sure under the code, how that goes across the municipal boundary. I am also not sure if the Board has weighed in on this matter, on the interpretation yet.

RUPP: Ms. Price, I was wondering if I could ask you a couple of questions?

PRICE: Sure.

RUPP: Again, William Rupp, Board Attorney. Would you agree that for zoning purposes, the fact that the tract of land that we are talking about, is bisected by a municipal boundary line, does not alter the tract itself, which consists of property both within the Borough of Montvale and the Borough of Park Ridge?

PRICE: From an ownership perspective, or a zoning perspective?

RUPP: From a zoning perspective.

PRICE: Well, it depends. I can answer that 2 ways, and I don't mean to be evasive.

RUPP: I am referring to the decision in Ciaccone vs Franklin Lakes. That addressed that issue, I thought, and gave kind of the definitive answer on that, but if you want to be, in other words, if you want to have your Planner testify to that, you can. But, we might be able to short circuit the interpretation. If, for example, you agree, that the tract of land we are talking about, the lot, even though it is bisected by a municipal boundary line, is in fact, one lot for purposes of zoning, or land use consideration. Then, I would ask you, what is the principal use on that lot?

PRICE: Well, let me answer the first question first. My reading and understanding of this Ciaccone case, was that the court interpreted the law with regard to bulk standards and not use. It did not say that a Use variance was being required, but rather was weighing in on bulk standards and not "D-3" standards.

RUPP: You are right that, that case dealt with setbacks, essentially bulk standards, but it says that under the Municipal Land Use Law, a lot means a designated parcel, tract, or area of land established by a plot or otherwise, as permitted by law, and to be used, developed or build upon, as a unit, not defined in the zoning or subdivision ordinances. It goes on to say, that essentially where there is a municipal boundary, that the lot is to be considered the boundaries of that lot are independent of where the municipal boundary line is.

PRICE: Well I am not.....

RUPP: Let me express the whole argument and then you can address it. To the extent that the principal use of this tract of land that we are talking about, is a fitness center, and to the extent that you also agree, which I think I heard, that, that use is not a specific use permitted under the Zoning Ordinance of Park Ridge. We are now, then, have to address the issue of the landscaping. Landscaping is generally not a principal use. It is generally an accessory use, if you will, to a principal use on the lot.

If, in fact, landscaping is viewed as an accessory use to the principal use of the lot, which is that of a fitness center, and to the extent that a fitness center is not allowed within the use, then an accessory use takes on the character of the principal use and therefore would need a Use variance. That is essentially the argument that would be advanced as to why a Use variance is required.

Your issues about you are adding green and not having any detrimental impact, etc., all goes to why variances should be granted for this, especially the fact that courts

have also indicated that we, as a Board, must give due consideration to the Zoning in the neighboring municipality in which the fitness center has been a permissible use. So, having said all of that, if you want to pursue the interpretation, you can do so. Or, you can proceed with your proofs as to why you should be granted a Use variance.

PRICE: Let me just, I have no problem putting on the entire case, but let me just say a couple of other things, Mr. Rupp: Your code and 101-4, with regard to accessory uses, specifically says that the use that is defined to the accessory stops at the lot that is in your town. So, you have a lot that is defined in your town, a separate lot. It is separate and distinct. By further definition in your code, stops at that municipal boundary line. By the verbiage in your code.

RUPP: Do you think that Franklin Lakes had the same type of ordinance?

PRICE: I doubt it. In fact,

RUPP: I suspect that it did, because that is what the interpretation was, clearly, the Municipal Land Use Act, supercedes local ordinance and here we have a case decision.

PRICE: Except, I most respectfully, my reading of Ciaccone and your reading of Ciaccone, case involving bulk regulations, it doesn't go there. I am saying that the use here, across a municipal boundary, takes on, because there is a use in Montvale, that is not identified on this ¼ of an acre of undersized land that has existed for 43 years, now requires a Use variance, because it doesn't meet, and it doesn't meet the area in your town and it doesn't allow for any uses. By the way, landscaping is not permitted accessory use in any zone.

So, by your rationale, if Marriott comes in, or Hertz or any of those other corporations in the ORL, they would need relief, maybe not Use variance relief, but relief to put landscaping in because if it is an accessory use for us, it is an accessory use for them, under the uniformity clause and I can't find any provisions under the Park Ridge code, under Prizo Manten, where that is substantiated, so help me.

RUPP: If you want to argue that landscaping is not an accessory use to a principle use, I guess your Planner can make that argument. Since we have planting buffer requirements, etc., I find that argument a little bit interesting. But having said that by all means you can make that argument. If it is not a permissible accessory use, it probably creates more of an difficulty for you.

PRICE: No, my position is that it would be the same for any property in the ORL zone. So, if the Board is ruling tonight that it is an accessory use, then it would apply to all of the properties in the ORL zone, then that is the ruling.

RUPP: Do all the other properties have landscaping?

PRICE: Yes.

RUPP: Is that the principle use, or is the principle use something else.

PRICE: It would be an accessory use.

RUPP: Precisely.

PRICE: Under your rationale that you just questioned me about. So, if we proceed under interpretation, that the landscaping is not permitted and it would be accessory, then I would like to just have that.

RUPP: That is the argument. Right, you have the right to contest that. Ultimately the Board will make that decision. If you wish to proceed on that basis, you can do so, or you can proceed on the basis that the actual use variance, but that decision is yours.

PRICE: Okay, so can, I think I need a determination on the interpretation first.

RUPP: The Board doesn't .....

PRICE: Unless we are not having that.....

RUPP: First of all, if you want a bifurcated hearing, you could request that. However the Board will make a decision as to which portion it wishes to hear. It may wish, in fact, to hear the Use variance portion first. If you want to have them both heard together, by all means you can do that.

PRICE: There are 5 eligible members this evening on a Use variance?

CAPILLI: Yes, mam.

PRICE: And there won't be any additional members until next month?

RUPP: Correct. The Board is not in the habit of issuing decisions the night of the hearing. We do not generally memorialize decisions. We generally discuss it after a hearing and then make a decision in terms of instructing the attorney to prepare something. The first vote is actually taken on the resolution. It is not really a memorializing resolution.

PRICE: Which could potentially mean April on the trees.

RUPP: Correct.

PRICE: Okay. May I have a moment?

CAPILLI: Yes.

PRICE: I think that based upon membership that we will put some of our case on, but obviously the 5 members.

RUPP: Lest you feel to badly on that, I understand that you have submitted a rather substantial drainage report, but it has only been received today and no one has seen it, which means the likelihood, if that wish to be put into evidence, the likelihood the Board being able to render a decision in any event, at this meeting, would have been very unlikely.

PRICE: Well, I think that we can address that. We gave the drainage report because we were asked for it. The drainage report addresses the entire project, which is the 9 acres of land, irrelevant to the ¼ acre of land and relevant to the drainage, so we gave it more for information that was requested. We can address the couple of questions that were raised relative to the ¼ acre this evening, by testimony.

RUPP: I understand your dilemma because it is only 5 members here, so. By all means, you can put your case in. Quite frankly, the members who are not here can always listen to the tape as well or read the transcript.

PRICE: For a background, this ¼ acre of property, and the information that has been supplied, I would like to call Mr. Mc Morrow, from Bohler Engineering, who is our Civil Engineer.

RUPP: Please raise your right hand. Do you swear or affirm that the testimony that you are about to give before this Board is the truth, the whole truth, and nothing but the truth, so help you God?

MC MORROW: I do.

RUPP: Please state your name. Please spell your name for the record?

MC MORROW: I am Brian Mc Morrow.

PRICE: Mr. Mc Morrow, can you explain or provide your professional qualifications and your educational background for the members of the Board.

MC MORROW: Sure. I am currently a Senior Project Manager for at Bohler Engineering, in Warren, New Jersey. Prior to that, for 25 years, I was an Engineer and lastly a Branch Manager at Henderson and Boswell in Summerset, New Jersey. I have 30 plus years in the planning and design, permitting and construction of a number of residential and commercial properties all across New Jersey.

I do hold a PE License in New Jersey and have since 1987. I have a Bachelor's Degree in Civil Engineering from Notre Dame.

CAPILLI: Thank you very much.

RUPP: Are there any objectors in the audience? Then Mr. Chairman, if you wish to accept testimony.

CAPILLI: I do.

PRICE: Mr. Mc Morrow, you have been involved....

BEER: Ms. Price, would you have Mr. Mc Morrow use the traveling, the microphone, the black one is the only one that amplifies. It has a long cord.

PRICE: Mr. Mc Morrow, you have been involved with this project from its inception, is that correct?

MC MORROW: That is correct.

PRICE: You heard in my opening and my presentation of our request for interpretation, a run down of permits and approvals that have been received to date, in connection with the project. Is that correct?

MC MORROW: That is correct.

PRICE: Has your office been involved with acquisition of N.J.D.E.P., fresh water wetlands (coughing in background drowns our the rest of question)?

MC MORROW: Yes.

PRICE: Have you also been involved with acquisition of other permits from the DEP relative to transition area waivers for development on the property?

MC MORROW: We have.

PRICE: And Bergen Soil Conservation District?

MC MORROW: Yes mam.

PRICE: And various utility companies for the provision of water and sanitary sewer to the property?

MC MORROW: We have.

PRICE: And the Bergen County Planning Board?

MC MORROW: Yes.

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PRICE: You were involved with the preliminary and final site plan approval and major soil movement application that was heard and approved by the Borough of Montvale.

MC MORROW: I was.

PRICE: Your office has prepared the site plan package that was approved by the Borough of Montvale?

MC MORROW: Yes.

PRICE: You have a drawing that is on the easel which is a copy of the control point survey, control point is, in fact, a company that falls under the Bohler Engineering umbrella, is that correct?

MC MORROW: It is an affiliated company of Bohler Engineering, yes.

PRICE: Can you just identify that drawing by date, for the record.

MC MORROW: Certainly, it is the Control Point Survey that was submitted along with the package of materials for this matter. It is dated May 5<sup>th</sup>, 2011, again, by Control Point Associates. There are subsequent revision dates to January 31, 2012.

PRICE: Mr. Rupp, can you mark that as A-1. I am not sure how you are marking all of those things that we read into the record.

RUPP: You are up to 14. I think that is the next one.

CAPILLI: Yes, that is the next one.

PRICE: So this is 14?

WALKER: What are we going to call this?

PRICE: It the property survey, with drain colorization. Okay, Brian, do you just want to just take a minute and detail what is shown or depicted on A-14?

MC MORROW: Certainly. Depicted with the heavy line, that I am illustrating with my red highlighter, it is a 9.2 acre tract of land, 9.05 acres of which is situated in the Borough of Montvale and is known as Lot 2 and Block 3302. It is formally known as 1 BMW Plaza.

In the lower left hand corner, that is colored in, partially, in green is a .23 acre parcel of land in Park Ridge, which just last year was assigned Lot 1 of Block 304. The area in green represents that portion of the .23 acres that is currently vegetated. That portion that is not colored at all represents the existing asphalt driveway. All of the other physical improvements that are shown on the survey represent the conditions of the property when it was surveyed back in 2011.

It represents the large rectangular building was the office warehouse, and research facility that was occupied by BMW for many, many years, and constructed in 1972. Tax Maps in Park Ridge historically showed that corner of the property that is Park Ridge, as being a part of the right of way for Brae Boulevard, Sony Drive, the Sony Drive extension and even there was a bit of a street that was, I guess, anticipated for future extension, many, many years ago.

During the course of our survey, we wanted to try to get some background or have somebody here in Park Ridge, shed some light on that. So, we came in met with Ms. Mancuso, represented the Borough and provided Ms. Mancuso with this survey and a lot of other background material and it was realized then, that this was a tax lot that was created back in 1981. There was a map filed, which was prepared by Langan Engineering and it bore the signatures of the Park Ridge Planning Board, in the County

and subsequently it was filed. So, yes, this portion of the tract was part of the larger tract that was conveyed, ultimately, just last year to Lifetime Fitness.

As Ms. Price indicated, the zoning in Park Ridge is ORL. That basically explains the lot, block information and kind of the history of what existed on the property. What we propose to do is going to be shown on the next exhibit.

PRICE: That will be A-15. Lets just identify that for the record.

WALKER: Landscape Plan.

MC MORROW: It is sheet 3 of 4, from your set. It is labeled "Overall Plan". It has been colored. That portion that is in Park Ridge has been colored to illustrate the work that is being proposed, the improvements that are being proposed in Park Ridge. In essence and maybe what I will do is, I will leave the other drawing up.

We are going to remove the asphalt driveway that exists today, construct a sidewalk across the entire frontage of the property, just behind the curb. Once that driveway is out, as you can tell by the geometry, it has a rather wide opening, so by constructing a continuous sidewalk, it will remove any tripping hazards that pedestrians might have. Of course, we are encouraging as much pedestrian traffic from the corporate neighborhood to the Lifetime Fitness Center that is proposed.

We are going to construct a curb to fill in that gap that would otherwise exist with that driveway, plant a lawn over all of that area. We are proposing 3 street trees, or shade trees, along the right of way, 6 ornamental trees, 3 evergreen trees, and some deciduous shrubs, and essentially, that is all the work that we are doing in that area.

There is some utility work that happens in the Sony Drive driveway, and that work is detailed in the plans as well. What is not necessarily shown on the exhibit, is that the entire property is graded to drain away from the Park Ridge Municipal line and presently, and the survey shows that there is like 3 outfalls that discharge either to part of an open ditch that is there or pipe system that drains much of the roof area and some of that back pavement area. So, what happens with the new proposal in Montvale, all of that runs in a northerly and easterly direction, thus reducing the amount of storm water runoff that is discharged to the Park Ridge portion.

I know we just provided, Ms. Mancuso, and the Board with copies of the full drainage report, but all of the details of that are contained therein.

PRICE: Brian, when you say that we just applied, that was in response to the report that was dated February 5<sup>th</sup>, that was issued from Ms. Mancuso's office, correct?

MC MORROW: That is correct.

PRICE: The report that you supplied is, in fact, the drainage report for the entire project, correct?

MC MORROW: Correct.

PRICE: One of the questions in there, that I believe you just testified to, was regarding the sidewalk. Does the exhibit A-14 depict that the sidewalk will, in fact, together with the concrete curb, be extended along that entire frontage?

MC MORROW: It does. It probably illustrates it better in color than it did on the black and white plan.

PRICE: But, it is Lifetime Fitness's intention to continue that sidewalk all the way to the southern property line, correct?

MC MORROW: Correct.

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PRICE: Is there anything else in that report that has not been addressed or cannot be addressed from an engineering perspective?

MC MORROW: Not from an engineering perspective. I hope that I have covered comments that were in there.

PRICE: Let me just ask a couple of questions. You mentioned a tripping hazard. That is an existing condition in the field today?

MC MORROW: It is. Again, the driveway has a pretty wide mouth and it was built in 1972, long before ADA handicapped type ramps were required. That would exist if the driveway were to remain in place.

PRICE: The work that you said that was proposed to be completed, the landscaping, and the curbing and the sidewalk, that is the extent of the proposal for which any type of relief is being sought, correct?

MC MORROW: Yes.

PRICE: There are no building improvements for that ¼ acre, no parking, no access aisles. I know that I referenced it in my opening, but way of testimony, I would ask that you just confirm that.

MC MORROW: Yes, that is correct.

PRICE: Okay, if it were in the Board's purview, not to approve the landscaping and sod, basically, the property would remain in its current condition, correct?

MC MORROW: It would remain in its current condition, and probably experience some degradation of the asphalt. When asphalt is allowed to sit in the open sun and not get traffic and the like, it would likely require some other maintenance at some point in time.

PRICE: Let me just ask you a couple of other questions. The area that is intended to be green, is proposed to be sod, correct?

MC MORROW: Yes.

PRICE: It is to be addressed by way of an irrigation system in the future, correct?

MC MORROW: Yes.

PRICE: And, you have, your office has supplied a response letter dated February 15<sup>th</sup>, 2013, addressing both the Brooker Engineering review memo as well as the Board's Planner memo of February 13<sup>th</sup>, correct?

MC MORROW: Yes.

PRICE: Maybe we could just have that marked, Mr. Rupp, as A-16.

WALKER: 16.

RUPP: I don't think that the Board has seen that yet.

WALKER: No, we haven't.

RUPP: By all means, you can introduce it. You should be aware that the Board has not received it, nor has the Board received copies of that. It is not like we can follow along. That is what I want you to understand.

PRICE: Okay, it was sent via Federal Express on the 15<sup>th</sup>.

LUDWIG: It did arrive. It arrived today.

MC MORROW: Yesterday was a holiday.

PRICE: Okay. I can supply extra copies.

RUPP: I just wanted to make sure that if you are going to ask any questions, understand that the Board has not yet seen it and can't follow along the report because it doesn't have it in front of them.

MC MORROW: It was just one copy, the intention was that Ms. Mancuso would get it as the Board's Engineer. There are other members who would like copies, certainly let us know.

PRICE: Ms. Mancuso was copied and so was Ms. Bogart. It was sent to Mr. Ludwig for the Board. Let me just confirm for the records and so we are clear, you enclosed the drainage report and the traffic impact analysis that were both prepared for the underlying Montvale overall site plans, correct?

MC MORROW: That is right, yes.

PRICE: And you confirm that the concrete curb and sidewalk would be for the full length.

MC MORROW: Yes.

PRICE: And you confirm that you would, in fact, revise the proposed soft cut line around the storm sewer within Sony Drive at the request of the Engineer?

MC MORROW: Yes.

PRICE: And, you would, in fact, that all soil erosion control measures would be filed.

MC MORROW: Maintained and followed, sure.

PRICE: On that ¼ of an acre. Okay, and that all disturbed areas would be re-vegetated, with sod and the irrigation system would be provided?

MC MORROW: Yes.

PRICE: Let me ask you another question on the trees. There was an issue as to whether there were any trees that were within the right of way.

MC MORROW: All of the trees are proposed on private property.

PRICE: And that any trees to remain within that portion of the property would be protected by a tree protection.

MC MORROW: There are a number of evergreen trees that straddle the property line, and those are not being disturbed. So, the existing tree, vegetation that is in that area would be maintained. There are no trees that will come down as a result of the work that we are proposing.

BEER: Ms. Price, are you submitting that also.

WALKER: Yes, can I have a copy of that if we are going to log it in.

PRICE: Sure.

WALKER: Yes, A-16 is Bohler Engineering report.

RUPP: Do you have a date?

WALKER: Dated February 15, 2013.

PRICE: I don't have any further directs by Mr. Morrow.

MANCUSO: I am in receipt of the drainage report and the traffic report, and I did receive it today. It is in my office, so I haven't had the opportunity to review it. On the issue regarding the drainage came up because I did, in the submission, I did see on sheet 3 of 4, additional piping that was coming from the Montvale side of the site, into Park Ridge. Since it was a limited view of the site plan, I wasn't really able to determine the full extent that the amount of drainage that was being transferred down into Park Ridge. So, now that I have the drainage report, I will have the opportunity to review that and I will be able to report back to the Board.

The other issue, you did note that the curb and the sidewalk will continue through that driveway, which is to be removed. If you could clearly mark that on the plan, and also the limit of the roadwork along Sony Drive, where the new drainage is to be installed, that would be helpful.

MC MORROW: Sure.

MANCUSO: The only other item I noted was, again, the soil erosion. I understand that there was some correspondence directly with the Borough regarding sweeping the street and maintaining erosion control measures and taking a little bit more care and not running over the island on Brae Boulevard and things of that nature. That is something that not only under the jurisdiction of Park Ridge, but under the jurisdiction of Montvale and the Bergen County Soil Conservation District, so I believe that between the 3 parties that will be fully addressed.

CAPILLI: Thank you very much. Mr. Ludwig do you have any thing?

LUDWIG: No.

CAPILLI: Thank you, Mr. Mc Morrow.

RUPP: Wait, wait, I have something. There was some reference to a catch basin and something corrected around a catch basin. Could you just explain that again. I am not quite sure that I understood that. During your testimony, you had indicated that you were addressing some issues. I thought that you made some reference to a catch basin.

MC MORROW: There are a number of catch basins and outfalls in that existing driveway along the southerly property line and they have discharges to the south and to Park Ridge, today. Much of that storm water gets redirected to the north, after the development into Montvale.

CAPILLI: Thank you.

RUPP: Please raise your right hand? Do you swear or affirm that the testimony that you are about to give before this Board is the truth, the whole truth, and nothing but the truth, so help you God?

MELBY: I do.

RUPP: State your name for the record and spell your last name.

MELBY: My name is Jeffrey Edwin Melby. M as in Mary, e-l-b as in Boy, y.

RUPP: Can I just have the spelling of Jeffrey?

MELBY: it is Jeff, we will go with that.

PRICE: Mr. Melby, can you just state your current position of employment?

MELBY: Yes, I am the Vice President of development for Lifetime Fitness.

PRICE: Who is the applicant this evening, correct?

MELBY: Correct.

PRICE: I am going to ask that we have the next document marked and I will pass it out while you are getting comfortable.

WALKER: It is 17.

PRICE: It is A-17. Maybe you could just explain, while I am passing what the document is for the record.

MELBY: Absolutely. We have included some photographs, about some of our existing facilities, just as a reference point for the Board, and to give you a feel for what type of business we are and what type of facilities that we build.

LUDWIG: What are you calling this?

PRICE: We will call it a photo booklet on existing Lifetime Fitness facilities. Does everyone have one. Mr. Melby, I am just going to ask you a few questions. You have heard my background presentation and Mr. Mc Morrow's presentation testimony. You, in fact, provided testimony at the Montvale site plan hearings, correct?

MELBY: Correct.

PRICE: So, you are familiar with these New Jersey proceedings.

MELBY: Yes, I look forward to them.

PRICE: You have 2 other facilities in New Jersey, is that correct?

MELBY: Yes, that is correct. We have a facility in Berkley Heights and a facility Florham Park.

PRICE: Was I correct when I noted for the record that you have 105 clubs?

MELBY: Correct. We have 105 clubs in 23 states and one Canadian Province.

PRICE: Just take a minute and explain to the Board a little bit about Lifetime Fitness and corporate background.

MELBY: Absolutely. We are a Minneapolis based company. We were founded in 1990, and we opened our first family oriented health and fitness center in 1992. Since that time, we have expanded outside of the Midwest and recently in the northeast. We are a publicly traded company. We are traded on the New York Stock Exchange under the symbol LTM.

PRICE: The facility that is being built on the subject property is a little bit more than a 103,000 square feet inside, correct?

MELBY: That is correct.

PRICE: In terms of operations, it is a full service facility?

MELBY: It is a full service facility. Our philosophy is to make fitness and health and wellness as easy for a specific member. So, we have built large format centers that have multiple types of spaces in there, where we have some of the best programs in the industry to engage with our memberships.

PRICE: You have an indoor and outdoor utilization on the space proposed?

MELBY: Yes, we do.

PRICE: You provided a series of information during public hearing process about hours of operation and employees and none of that has changed, correct?

MELBY: Correct.

PRICE: You project approximately 200 jobs as a result of this facility being added to the marketplace?

MELBY: That is correct.

PRICE: Is it still accurate that there would be approximately 50 or so at any one given time?

MELBY: Correct.

PRICE: It is Lifetime's request to be able to improve that corner of the property, which is currently housing a somewhat dilapidated driveway and existing landscaping?

MELBY: That is correct.

PRICE: Is construction of that at all relevant in terms of your overall process?

MELBY: It is. Obviously we are investing quite a bit of money and time and energy into this property and this facility. Having this area undeveloped, it just feels like you baked the cake and only frosted 7/8 of it. It is functional, but it doesn't exactly serve the visual purpose that you would expect. So, being able to remove the asphalt drive, do some quality landscaping that is consistent with the rest of the development is really important. It send a right message from us, from a corporate standpoint, as well as to our membership and to our neighbors.

PRICE: Just on Ms. Mancuso's statement relative to working together to insure that the streets are cleaned and any issues are remedied, in an expedient manner, I contacted your office when I received notice of an issue last week, relative to the streets needing to be addressed, is that correct?

MELBY: That is correct.

PRICE: Did your office put into play a plan of action to remedy that situation?

MELBY: Yes. Our general contractor notified the subcontractor. I think that subcontractor with their general contractor communicated to both Boroughs and other interested parties to let them know that, a) we fixed the things that could be fixed now and the rest of it would be fixed as soon as the weather would allow.

PRICE: Will you remain as a point of contact to insure that the situation remains addressed?

MELBY: I will.

CAPILLI: Are there any questions? Thank you very much.

MELBY: Thank you.

LUDWIG: Who would testify on hours of operation?

PRICE: Jeff can answer that question.

LUDWIG: Basically, when are you going to be open and when are you going to have impact.

MELBY: Generally, hours of operation will begin as early as 4 am. And we will close at 1 am. Just to clarify you could go to our company website, if you were to visit some of our other facilities in other areas. We do have facilities that are open 24 hours a day. This facility we would close for those 3 hours for cleaning purposes.

If construction, if the weather continues like it is now, and we get through the construction season, we would expect that by November or December of 2013, this facility would be open.

LUDWIG: You didn't mention, is it 7 days a week?

MELBY: It is 7 days a week.

LUDWIG: I know you did mention that you were going to address the street situation up there. I was up there just today, and it is, I mean it is probably not the same mess, but it is still a mess. I am not sure what plan you put in place, but it is.....

MELBY: When I drove in, I got in later this afternoon, there was a subcontractor with a sweeper and somebody else out on the street, I believe it was Brae Boulevard, that was doing street cleaning this afternoon. It was raining, but it looked like the street was in clean condition.

LUDWIG: I was up there at noon and it was pretty muddy. Again, you understand the condition of the median on Brae Boulevard has been somewhat destroyed by the large trucks, these 100 foot trucks that are coming down?

MELBY: Yes, just to clarify, this is a pre-cast building. The building comes in long pieces. All of that trucking is done at this time, so there won't be any large trucks. So, I don't think that we are going to have the issues. I know that we did receive photographs of the median that was damaged. It was my understanding that there was some landscaping and some turf that would need to be dealt with.

Our contractor is aware and we will make sure that we satisfy both Borough's concerns.

CAPILLI: Is everyone good? Okay, thank you.

RUPP: Please raise your right hand. Do you swear or affirm that the testimony that you are about to give before this Board is the truth, the whole truth, and nothing but the truth, so help you God?

TOBIA: Yes, I do.

RUPP: Please state your name for the record and spell your last name.

TOBIA: Michael Tobia, t-o-b-i-a. I am the applicant's planning consultant.

PRICE: Mr. Tobia, can you review your background for the Board?

TOBIA: Sure. I am a licensed Professional Planner in the State of New Jersey. I have been practicing for 30 years, since I concluded undergraduate and graduate work in the field of planning from NJIT and Rutgers University respectively. Over the years, I have had a consulting practice, now dealing exclusively with private sector development clients.

I have made appearances, now, in over 200 agencies, before 200 agencies of this nature, Planning Board and Zoning Boards as well as multiple appearances in Municipal Courts and Superior Courts. I have been representing Lifetime, now, since they came

into New Jersey. I have worked on the site you just heard from Jeff, Berkley Heights and Florham Park.

PRICE: Mr. Tobia, you heard everything that has been discussed this evening. You have also had an opportunity to review the ordinances in the Borough of Park Ridge, specifically Chapter 101, entitled Zoning, and Chapter 87 entitled Subdivision and Site Plan review?

TOBIA: Yes.

PRICE: Also you had an opportunity to review the reports that have been issued and the plans that have been submitted in connection with this matter?

TOBIA: Yes I have.

PRICE: You are familiar with the fact that we have asked for both the interpretation and in the alternative basically everything that could possibly be deemed necessary under my notice?

TOBIA: Right, which would mean a "Use" variance and Site Plan in the alternative, right.

PRICE: In your roll as a Professional Planner, you have occasion on a regular basis to use the provisions of the Municipal Land Use Law to substantiate both deviations, particularly with reference to Subsection 70 of the Land Use Law and variances?

TOBIA: Yes, constantly.

PRICE: So, lets talk about this project. Lets talk about, I am not sure that we are going anywhere on the interpretation, but, lets talk about, starting with the interpretation and then moving from there. Let me have your thoughts and share those thoughts with the Board.

TOBIA: You just want a few minutes on interpretation?

PRICE: I think just a few, since I already went there and I recognize that I am not a witness, so just for the record.

TOBIA: Lets give you all a little background on zoning first, so you understand where we are coming from. This is an ORL Zone. It is a zone that permits offices, various forms of offices. It permits labs and related offices, as well as research labs combined with office space.

The zone also permits as a principle use child care centers. Permitted accessory uses that are specifically enumerated include, parking and loading facilities, signs, executive dining rooms, cafeterias, and similar uses, fences and certain child care centers.

Your zoning ordinance, like a lot of zoning ordinances also includes a definition of accessory use or structure. It speaks to uses or structures subordinate to and customarily incidental through principle use on the structure.

Now, when Gail and I were preparing for this, you know I noted first of all, that your specifically enumerated uses obviously do not include landscaping as a permitted accessory use. It is important to note that when planners do ordinances and enumerate accessory uses, those are only part of the uses that we normally permit in the planning process and in the site panning process. Others are implied. So, when you go onto a site like Sony or Hertz or Marriott, to NUS, and you go through a property you see things like sidewalks, lighting, driveways, HVAC equipment, bike racks and so on, that are not specifically permitted in your code, under case law, and under your definition of accessory use, they are, however, implied as permitted uses because we view them as customary and incidental to a principle use.

The thrust of our interpretation case run quickly from a planning perspective, is that the landscaping proposed for the Park Ridge portion of this piece, is so customary so incidental, so normal, that in my view, it has to be deemed an accessory use.

I have never, ever, ever, worked on a case where landscaping has been deemed to be in need of a “use” variance. It is just part of a normal site plan review and as Gail mentioned before, you go through the rest of the ORL zone, you actually see abundant landscaping in places like Marriott, Sony, Hertz, and NUS. You see abundant front yard landscaping at those properties a lot like what is proposed here by Lifetime Fitness.

My view on this is that from, on the interpretation case, it is clearly reasonable and supportable by your ordinance as well as prevailing case law, to view this simply as an accessory use. The fact, Mr. Rupp, that it does adjoin a fitness center, okay, should not generate a use variance, in my assessment, because the fitness center is outside of your boundaries, where you do not have zoning control. It is the, the landscaping is within the boundaries of Park Ridge, and it is in an ORL zone where obviously landscaping has been applied as accessory use throughout. So, I would simply review it as a permitted accessory use subject, perhaps, to a plan review on your part, such as the type of plant material that we selected. You are okay with the curbing. You are okay with the sidewalks. You are okay with the lawn that we are going to put down. You approved that plan. That is the interpretation case in my view and the summary is that it is an accessory use and it doesn’t need a “use” variance.

I would go even a step further and say landscaping is probably an implied accessory use in every zone district that I have ever worked in.

RUPP: I wonder if I could just as a question? What is it an accessory to?

TOBIA: It is an accessory to the fitness center property.

RUPP: And the principle use is the fitness center property is of a fitness center?

TOBIA: Yes that is right.

RUPP: Do you agree that is not a specifically enumerated permissible use in the ORL district?

TOBIA: Do you mean in the ORL zone it is. Right, but remember we said it a few times, that portion of the development is in the other town.

RUPP: It is not a permissible use. Are you maintaining that the fitness center is or is not a permissible use in the ORL?

TOBIA: It is not a permissible use in the ORL zone.

RUPP: And you acknowledge that the landscaping is an accessory use to it.

TOBIA: Yes, we are not arguing. The only thing we are telling you, remember this is important law. Your zoning power is over the territory in Park Ridge. Montvale has zoning powers over the territory in Montvale. The entire fitness center property, as Mr. Mc Morrow mentioned, the parking and the buildings and the accessory uses over there, such as the walls and the signs are all outside of Park Ridge. Okay.

RUPP: Let me ask you just one more question. Cox book indicates that “note that an accessory structure takes on the attributes of the use to which it is accessory”. Do you agree with that statement?

TOBIA: Yes, sure, sure. So, lets talk for a few minutes about the “use” variance portion of the case. Okay, Mr. Chairman, this is only 5 or 10 minutes of work. When you get to “use” variance, you have to show special reasons in support of the “use” variance case. This is in your Planner’s report. The particular suitability test is what

Planners have to demonstrate, meaning the proposed use or the site I should say, is particularly suited for the proposed use.

Here we have a nice easy case. It says that although this lot straddles 2 zone lines, the landscaping proposed is obviously, particularly suited to the Lifetime Fitness property. Landscaping is abundant as provided by Lifetime. It continues on to the Montvale property in the front yard of the property and it also continues along the southerly side yard of the property as well as throughout the property in general. So, it is a coordinated landscaping plan that connects landscaping in Park Ridge to landscaping on the Montvale side of the property.

There are hundreds of plants that are proposed on the overall piece of land. The landscaping, when you look at it, Mr. Mc Morrow talked about the safety aspects of removing the driveway and the curbing, which is obvious. We don't want a curb cut to nowhere. We don't want long stretches without sidewalks. Those are safety arguments, but there is also a nice easy, obvious argument that says tearing up old macadam, which by the way, represents 36 ½ % of the triangle in your town. Tearing it up and replacing it with landscaping is a major aesthetic improvement, whether it is the plant material or the ground cover that is proposed. That speaks to a special reason as well, beautifying the property.

Landscaping, incidentally, is also consistent with the nearest land use on the Sony piece, which is just to the south of us. Sony has a large building set well back from BMW Plaza. It has a large parking lot that comes right up to the southerly property line of Lifetime Fitness building.

If you have been out there, there is a stretch or a buffer, right along the Lifetime property line, that is also landscaped. On that side of the property line, Sony has put in a bunch of White Pines that have now matured, as well as some other evergreen plant material. So, the use proposed on the Lifetime piece in Park Ridge really blends in well with what is right next door on the Sony piece.

Remember, also, property owners in split lot zoning cases, must be afforded some reasonable use of land on the opposite side of the lot line. In this case, what is on your side of the Municipal boundary, the Park Ridge side, is about 9,000 square feet in size. I think that you heard that before. It is 9,935 square feet in size, .23 acres. What it does, by the way, is represent 2 ½ % of the overall property. The problem is that the ORL zone has a minimum lot size of 10 acres. It has a minimum front yard of 100 feet. When you apply those standards to our piece, you realize without some type of relief, that piece of property is utterly useless. So, strict application of zoning under ORL standards for this lot would render it useless.

The court, Mr. Rupp, in the AMG case in Springfield, nice case on split lot zoning, says you have to allow some use of the property. In the Springfield case, they said that it doesn't mean that you necessarily have to allow, for instance, the Lifetime building or the Lifetime pool, or the Lifetime parking garage to come over into Park Ridge, but give the property owner something because they are still paying taxes on it and we are allowed to use our property in New Jersey.

In the Springfield case, they said the reasonable compromise was to put a little parking back on the split lot piece and allow the office building to be build in front. Here we are submitting to you that the reasonable use of land on the Park Ridge side is merely landscaping. No paved surfaces, no building, no coverage, no manmade elements, other than the sidewalk and curbing, which would take place in the right of way.

So, we think that is a nice compromise. That landscaping is reasonable. It links with the other landscaping on the site and it is a nice accessory use for a facility, having seen a half dozen or so of them that prides themselves on nice curb appeal.

What I have just told you, promotes a number of purposes of the Municipal Land Use Law, and when we do testimony on "use" variances, we try to articulate how it connects to the purposes of the Land Use Law, which incidentally also serve as purposes

of your local zoning ordinances. Goal A, to guide the appropriate use or development of lands in the state that promote the general welfare, is one goal. Fixing up this site and removing a crumbling driveway and replanting it, bringing it down to zero lot coverage, by the way, is a good thing. It promotes the general welfare. To provide adequate air light and open space, is another goal, Goal C. It is served here by providing open space and green space and visual interest to the property.

Goal I promoting a desirable visual environment. Planners love this goal because we like making things look nice. Here, Mr. Mc Morrow said we are adding about 24 trees and shrubs to replace any lawn adding some mulch in the area, and that promotes a good visual environment and good civic design.

A final Goal, Goal M, Mr. Rupp, speaks about the more efficient use of land. What do you want, a driveway whose time has passed, or a front yard landscaped a lot like the other properties in the ORL zone. I think that landscaping wins every time.

Let me give you a couple of minutes on negative criteria, and then we will wrap up. Any and all "use" variance or variance applicants, I should say, have to satisfy the to prong test of the negative criteria. It is a substantial detriment to the public good, or is it a substantial impairment to the intent and purpose of your zone plan and zoning ordinance. I am sure that you have heard those many times. Here we have a use that is probably unique in the history of your Board here, Mr. Chairman. We have no building that we propose. We have no coverage that we propose. We have no FAR. We have no setbacks to worry about. We have nothing. We have landscaping.

So, we can not argue that there is some building massing here or setback issues that constitute a detriment to the public good. The ordinance has a bunch of performance standards that speak to controlling noise over vibration and so on that have absolutely no applicability here. We are totally passive use. The proposed use as a landscaping use, as I said, blends in well with the front yard landscaping on the other properties in the ORL zone. There are no environmentally sensitive lands disturbed by this proposal. It has been disturbed for nearly 40 years by the BMW driveway. We are taking it from a disturbed state to a landscaped state.

Landscaping, also, if you look at your code, is required at certain moments in your code. Section 101-63A1 for instance, says landscaping of any portion of a site not used for buildings or structures is required. You don't want soil out there with no plant material on it. We don't want paved parking sites. Wherever it is not paved, wherever it is not built upon, required by code to be landscaped. We are meeting that requirement.

Section 101-63C1 also says buffers and landscaping are required along property lines, which is what we have in this case. We share a property line with Sony, or where parking area abut other properties. Indeed we have this common line with Sony and your ordinance says in those spots, provide landscaping. That we have done.

Rather than be a detriment to your ordinance, or an impairment to your ordinance, I should say, I think we are really meeting the spirit of it in terms of beautification of the site. Above all, remember what Mr. Mc Morrow said, the site right now, has a wide open curb cut. It has no curbing. It has no sidewalk. It is a driveway to nowhere. But it is a driveway to nowhere at the throat to the Sony entrance and without curbing this and properly identifying it and landscaping it, you have the potential for driver confusion, pedestrian safety problems and an un-channeled intersection, where you have several driver options. You shouldn't have that. So, we can eliminate public safety concerns by fixing up the property.

One minute on Medici, Mr. Rupp, I know that you have been waiting. You know the Medici Case says you have a real problem as an applicant if your proposed use was deliberately excluded by your Master Planning and Zoning process. We can conclude, if you look at this piece of property in the ORL zone, that you probably didn't want a McDonalds there. You probably didn't want single family homes there. You zoned it for big box, attractive corporate quality office buildings.

What is safe to say, however, is that the zone has been developed for about 3 decades if you read your Master Plan, the entire language that you devote to the ORL zone in the Master Plan is limited to 3 sentences. That says we want to keep this going. It is really nice and we like it and we want to keep it going. It is unlikely that your Planner, like me, ever heard of Lifetime Fitness before a few years ago.

It is a unique land use in this state. The idea of 100,000 square foot, all encompassing, fitness center is not something we typically plan for, or anticipate in the planning process, at least up to now. My view on this under the Medici Standard is that the omission of either language that the site has to be landscaped, or language that fitness centers must be specifically prohibited, is that it was entirely inadvertent, because the Master Plan was focused on other elements rather than this rather narrow issue of how to handle an orphaned piece of property at the fringe of the ORL zone.

That is it, Mr. Chairman. I can go on forever on Lifetime because I think it is a really nice land use. It is going to pull from Park Ridge, as well as neighboring towns, and I think it will be a nice addition to the area.

CAPILLI: Thank you very much.

RUPP: Can you address the issue of the adjoining zoning in Montvale, and what consideration that should be given?

TOBIA: Well on a split lot case, the case law on the Holmdel Hazlet case says rather strongly, that you as a Board really have to significantly consider the zoning in the other town, because it does speak to particular suitability. If you as a town recognize we all have to share zoning at these Municipal boundary lines, the Court said you really have to pay attention to that. In fact, the court in that decision, Mr. Rupp, said it may suggest that a piece like we are talking about here is not only particularly suited to support the fitness center, it is uniquely suited—strong language.

So, I think what they were trying to get at there, is recognize that our neighboring towns are doing things trying to promote their public good. When you look at this piece, it really does fit in only with Lifetime Fitness. You do need to recognize that is the approved piece in Montvale by Master Plan initiative, zoning approval, and site plan approval, and turn it around the other way, what else is this piece possibly going to be used for, if not to connect to the Lifetime landscaping plan.

RUPP: One other, just one question. In the Montvale application, was there a requirement for a certain amount of open space or landscaping?

TOBIA: Well, there was coverage limitation. The counter of the coverage is so much has to remain green, so the answer is yes.

RUPP: Was this little corner taken in to account in those calculations?

TOBIA: Yes. Back then, we recognized, don't forget, the piece deeds, as Mr. Mc Morrow said, through the Park Ridge Property and includes that in the acreage. So, that was calculated in terms of overall lot size, coverage calculations, and so on.

BOGART: Just one question. I agree with your testimony, the majority of it. I just have a question regarding the positive criteria. You had mentioned that, a number of times, that adding landscaping, removing the driveway, is a significant benefit to the Borough, which I agree. However, in this case, like you mentioned, it is a driveway to nowhere, no one uses it.

Now the modification comes in and if you look at the traffic report, it will be used significantly. Significantly to the point a light may be warranted further down the road in the Borough of Park Ridge. I am wondering how you weigh that change in comparison to the benefit of adding landscaping versus the driveway.

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TOBIA: Remember, it is a different driveway that Lifetime will be using. You know that, right? The driveway that is here, in the green strip. Lets speak to A-14 for a second. The driveway shown through the color triangle is the existing BMW driveway that will be removed. It once looped around to the side of the BMW building, the south side, and connected to loading docks. There is a new driveway proposed, more or less with a common center line with Brae Boulevard, that will be one of two ways in and out of the site.

BOGART: That is exactly my point. Right now, as you mentioned, the existing driveway goes right to the loading docks. You had significant testimony on the benefit of landscaping and removing that driveway. Now, in the proposed plan, we have the parking lot, which is completely reoriented and we have created a driveway that is actually usable, which makes sense from a site planning perspective. I agree with the landscaping, that makes sense and its location makes sense. But, I am curious as to how you weigh the impacts of the modified driveway and the additional traffic that will come into the Borough against minimal landscaping in that corner.

TOBIA: Yes, you know that I don't do traffic, so I want to steer away from that. I do want you to understand that the advantage here, also, because we could have used the old driveway to get into the site, but it curves and it is in a crummy location and it is offset from Brae Boulevard. So, what we did or what Mr. Mc Morrow did when he was laying out the site plan, was bring the new cut right across from Brae, so you would have a straight alignment across, when you enter the site from Brae, you are not, you are going straight. You don't have to go right and make a quick left or left and make a quick right. It is exactly what you want to do with good site design.

BOGART: That is exactly what I said, I agreed. It makes sense from a site planning perspective but when you look at the traffic impacts, how is that balanced on the impacts, the setting impacts that you said we benefit from?

TOBIA: I am reminded, right now if you go out to the site, there is the driveway slated for removal and there is another one more or less at the mid point of the BMW site, was at the mid point. Then there is one over by Van Riper Drive to the far north side of the site. So, reducing curb cuts is always a good idea if you can do it and control traffic a little bit better.

If you are trip generation, I can't answer those questions but I can tell you any use that went on a piece this big, this is almost a 10 acre piece, would generate traffic, just like Sony does, and you know the nice land uses in Park Ridge. So there is some trip generation from the job and that is the nature of redeveloping a site and adding a nice land use to the town. Just like, you know, when Sony came in, it is a grate ratable, as you point out in your Master Plan, but its traffic.

BOGART: Understood. I was just curious as to how you weighed that in consideration when you talked about our benefit from landscaping.

TOBIA: Yes, I don't know if I would weight it directly against landscaping. I mean this isn't a C2 where we are trying to weigh benefits versus detriments, but overall, any good large scale development of a nonresidential nature generates some amount of traffic. It has been studied to death by our traffic engineer and there is trip generation but the levels of service, the site design, all work out in a very good way.

BOGART: Thank you.

CAPILLI: Are there any other questions?

RUPP: You got me thinking when you said C2. Assuming that the Board was to grant a "use" variance, could you comment on the undersized nature of the lot in Park Ridge, and would any additional variances be required in your mind and would that be somehow subsumed within the "use" variance?

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TOBIA: They are noted in the plan as preexisting conditions. So, you all have a 10 acre minimum lot size. We have a 9,000 plus square foot piece of property, existing condition. I have never viewed that as a variance. I think that it was, as Mr. Mc Morrow pointed out, it existed before the zoning came in to place on the piece. We view it as an existing condition. It is obviously a hardship if you were going to say, we are going to deny you because we want you to get that 9,000 square foot piece of space up to 10 acres. There is no place to acquire more land. The piece to the south is Sony. There is no land available there. We have a street in front of us. We have Lifetime to the north. So, it is an existing condition and can not be remedied in any way to put it into productive use on its own.

CAPILLI: Okay, thank you very much. Do you have anyone else? Is there anyone in the audience that wishes to speak to this? Okay.

PRICE: I think we will have to wait until next month. Hopefully everything will be okay and then maybe you will get a couple of Board members to read the transcript.

CAPILLI: Yes, we will discuss at the end of tonight's meeting. If you want to stay you can.

PRICE: So we will just carry it to....

BOGART: If we are not closing tonight we can not discuss it tonight.

CAPILLI: That is right, we are not closing it so we can not discuss.

PRICE: Okay, so we will carry it the next meeting.

CAPILLI: The next meeting is March 19<sup>th</sup>.

BOGART: Did you submit the traffic report for the Board's review?

PRICE: I submitted it because I was asked to submit it.

WALKER: We don't have it.

BOGART: Were you going to present any testimony on it?

PRICE: On the trees?

BOGART: Plans as submitted show relocated traffic light?

PRICE: The plans that were submitted raised the issue of the relocated traffic light. I have submitted a request to the council to consider it.

BOGART: And the Mayor and Council are going to be talking to you about that?

PRICE: Yes.

CAPILLI: Ms. Price, is this testimony?

PRICE: The light has nothing to do with this triangle.

CAPILLI: Okay, anyone else? Okay, I think we are good. We will carry without further notice to March 19<sup>th</sup>.

RUPP: Do you have additional testimony that you wish to offer.

PRICE: Pending the reports that I might get, I would just like to reserve that right in case anything comes up in review.

CAPILLI: Okay and we will do our best to get people so that they are ready for you.

PRICE: Okay, I appreciate that.

**PENDING CASES:**

<b>CASE:</b> 12-11 Block: 502 Lot: 10	Application of <i>Michael DiBella</i> , 3 Glenbrook Drive for rear yard, impervious coverage and pool in front yard variances to construct an in-ground swimming pool, patio, outdoor cooking area to existing house in an R-40 residential district. Determination forthcoming this evening.
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CAPILLI: We have a resolution in the affirmative.

**WHEREAS, MICHAEL DIBELLA AND BARBARA DIBELLA** (hereinafter referred to as “Applicant”), being the owners of premises known as 3 Glenbrook Drive, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also being known as Lot 11 in Block 502 on the Tax Assessment Map for the Borough of Park Ridge, applied to the ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE (hereinafter referred to as “BOARD”), seeking variances from a front yard setback, pool location in the front yard and impervious surface coverage to allow the construction of a pool, accessory equipment and patio to the existing one family home; and

WHEREAS, the premises are located in an R-40 Residential Zoning District as same is defined by the Zoning Ordinance of the Borough of Park Ridge; and

WHEREAS, the BOARD has received the exhibits and documents with respect to this application as more particularly set forth on the list attached hereto and made part hereof; and

WHEREAS, the BOARD held a hearing in connection with the application, upon due notice as required by law, on September 18, 2012 and January 15, 2013; and

WHEREAS, the BOARD has carefully considered the application and all evidence and testimony submitted in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE that the BOARD hereby makes the following findings of fact:

1. Applicant is the owner of premises located at 3 Glenbrook Drive in the Borough of Park Ridge, containing 53,600 square feet (40,000 square feet required) and currently improved with an existing single family residential structure. The premises are located on a corner lot at the intersection of Glenbrook Drive with Spring Valley Road, are irregular in shape (trapezoidal), having a front lot line along Glenbrook Drive measuring 297.87 feet and along Spring Valley Road measuring 194.31 feet.
2. Applicant has applied for variances for front yard setback, pool location in the front yard and impervious surface coverage to allow the construction of a pool, accessory equipment and patio to the existing one family home.
3. Within the R-40 One Family Residential Zoning District, the required front yard setback is 50 feet along both street frontages (S 101-13). The existing house is setback 70 feet from Glenbrook Drive and 68.7 feet from Spring Valley Road. As a result the rear yard measures only 53.3 feet (60 feet required). The existing impervious surface coverage is 29.7% (maximum permitted 25%) and is taken up, in large measure, by an existing driveway extending from Glenbrook Drive across the front of the house and extending around the northern side of the house to

service the existing detached garage. In addition, there is a paved driveway and walkway extending to the property to the east of the subject property.

4. The proposed pool and patio is located to the rear of the existing house. The pool would extend to within 36 feet of the rear lot line (20 feet minimum required) and the patio would extend to within 32 feet of the rear lot line. Accessory pool equipment is located 45 feet from the front lot line along Spring Valley Road (50 feet required). In addition, due to the location of the house upon the corner property, a portion of the pool extends to within 58.9 feet of Spring Valley Road while the existing house is set back 68.7 feet from Spring Valley Road. As a result, the pool is located within a portion of the property designated as the front yard (the zoning ordinance requires that pools be located within the rear yard only (S101-16B(4))).
5. The proposed pool and patio addition would add an additional 1,380 square feet plus or minus to impervious coverage resulting in coverage of 32.3%. The applicant proposes to eliminate approximately 849 square feet of driveway pavement (leading to the property to the east of the subject property) resulted in a revised impervious surface coverage of 30.7% (maximum 25% permitted).
6. The BOARD finds that by reason of the location of the existing house on the corner lot, which results in two front yards, the strict application of the Zoning Ordinance to require that the proposed pool and patio be located solely within the rear yard and to preclude accessory pool equipment to encroach within the required 50 foot front yard setback along Spring Valley Road, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the applicant.
7. In addition, due to the existing driveway access from Glenbrook Drive and the need to access the existing detached garage, the Board finds that strict application of the Zoning Ordinance with respect to impervious surface coverage would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the applicant.
8. Moreover, by reason of the larger than required front yard setbacks of the existing home, the large lot size and layout of the premises and the mitigation of impervious surface coverage by the elimination of a portion of the existing paved driveway, the BOARD finds that a decision to grant the variance to permit an increase in impervious surface coverage from 29.7% to 30.7%, the 5 foot encroachment into the required front yard setback for the accessory pool equipment and the location of a portion of the pool in the front yard along Spring Valley Road will not result in any substantial detriment to the public good nor will same impair the intent and purpose of the zone plan or Zoning Ordinance of the Borough of Park Ridge.

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE, by virtue of the foregoing, and pursuant to the authority of N.J.S.A. 40:55D(c), the BOARD does hereby grant the Applicant's requested variances from the front yard setback requirement so as to permit the accessory pool equipment to encroach 5 feet within the required front yard setback, to permit the pool to be located within the front yard no closer that 59.8 feet from the front property line along Spring Valley Road and to increase impervious surface coverage from 29.7% to 30.&% so as to allow the construction of a pool, accessory equipment and patio to the existing one family home as more particularly set forth in this resolution and as shown on the plans submitted to the BOARD, and BE IT FURTHER RESOLVED that the final soil movement calculations shall be subject to the approval of the Board's Engineer and will be reviewed further during the permitting process.

The resolution was offered by Mr. Raman and seconded by Mr. Sigillito

**EXHIBIT LIST FOR DIBELLA APPLICATION:**

1. Application -- 8/12/12
2. Certification of Service -- 8/28/12
3. Legal Notice -- 9/7/12
4. Payment of Taxes -- 8/22/12
5. Deed 8-8-95
6. Survey -- 5/30/12
7. Photographs -- 2 photos undated
8. Mortgage Satisfaction -- 3/23/94
9. Landscape Plan & Details -- 7/9/12
10. Letter of Authorization -- 8/16/12
11. Board Secretary Letter -- 9/20/12
12. Board Secretary Memo -- 10/2/12
13. Board Secretary Letter -- 10/11/12
14. Extension of Time -- 10/16/12
15. Applicant's Architect Letter -- 12/11/12
16. Revised Site/Zoning Plan -- 12/8/12
17. On-site retention Plan -- 12/3/12

**Ayes:** Mr. Sigilitto, Mr. Raman, Mr. Walker, Mr. Sandler, Mr. Capilli

**Abstain:** None

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**VOUCHERS:**

<b>Booker Engineering</b>	
Janovic	\$ 239.50
Board of Education	510.00
Lifetime Fitness	367.50

The Chairman entertained a motion that the BOARD recommend payment of the vouchers to the Mayor and Council, subject to receipt of funds. So moved by Mr. Sandler and seconded by Mr. Walker.

**ROLL CALL:**

**Ayes:** Mr. Sigilitto, Mr. Walker, Mr. Raman, Mr. Capilli, Mr. Sandler

**Abstain:**

**APPROVAL OF MINUTES:**

The Chairman entertained a motion that the December 12, 2012 minutes be approved as submitted. So moved by Mr. Walker and seconded by Mr. Sigillito. Carried unanimously.

**NEW BUSINESS:**

None

**CORRESPONDENCE:**

None

**ADJOURN:**

There being no further business to come before the Board, by motion of Mr. Walker and seconded by Mr. Sigilitto, and carried unanimously, the meeting was adjourned at 9:45 pm.

Respectfully submitted,

Margot Hamlin,  
Transcriber