

Borough of Pine Hill
Meeting
Planning and Zoning Board of Adjustments
September 8, 2016

- Call to order:** **Call to Order by Mr. James 7:45pm**
- Pledge of the Flag:** **Led by Mr. James**
- Sunshine Law:** This is a regularly scheduled meeting of the Pine Hill Planning and Zoning Board. This meeting has been duly advertised and is in full compliance with the Sunshine Law.
- Roll Call:** Mr. James, Mr. Waddington, Mr. Ford, Mr. Shultz, Mayor Green, Councilmen Robb, Mrs. Ciotto, Mr. Green
Absent: Mr. Castor, Mr. Hagy, Mr. Greer
"There was a quorum"
Professionals: Solicitor: Mr. Sitzler, Engineer: Mr. Dougherty, Planner Mr. Luste
- Correspondence:** Delivered the New Jersey Planners to Members Present Vol. 77, No. 4
- Approval of Minutes:** **Mr. James:** If everyone has had a chance to read the August 11, 2016 minutes can I have a motion for approval
Mr. Shultz: motion to approve
Mayor Green: Second
Mr. James: Can I have a roll call to approve the minutes.
Roll Call: "Aye" Mr. Ford, Mr. Shultz, Mayor Green, Councilman Robb, Mrs. Ciotto, And Mr. Green: "Abstain" Mr. James, Mr. Waddington.
Minutes approved
Mr. Sitzler: If there is anyone in the audience that is here tonight for the application on the deli at 621 Erial Road it will not be heard tonight. It

has been adjourned and the applicant concurred at the October 13, 2016th meeting here at the Borough Hall at 7:30pm. All the required notification and publication was notified, so this is the only notice and if there is anyone here the applicant will not be re-notifying for that meeting you should make plans if you can to be here on October 13th, 2016 if you have any concerns of hearing or anything you want to add to that application. Again that is the deli at 621 Erial Road.

Application 2016-1

Mr. James: Next we have application for WA Outdoor Advertising, LLC Amended Conditional Use/Variance/Waiver/Alternative Use Variance/Site Plan Block 115.19, Lots 14&15

Mr. Wisniewski: Good evening I'm Frank Wisniewski the Attorney for WA Outdoor the applicant in this matter; we were back before the board earlier in the year. We received comments from the board and we received comments all along from your professionals and what have you and we made a number of adjustments to the plan based on trying to respond to the concerns that have been relayed to us. We have filed an amended application, amended plans and tonight the application before the board; there are two applications one the alternative. Actually there are three applications; one is for the conditional use approval which is granted by the Planning Board by a majority vote on just the ponderous of evidence and of course the ordinance, and if that is not approved by the board then we would move into a hearing for the Zoning Board for a use variance for the same facilities but a different approval and that would be for the use variance would need 5 votes, affirmative votes of the zoning department. In addition to the conditional use and or use variance for the sign on the property, we also need the use variances or condition use to have a sign called an all process sign or a sign not related to the activity on the property, so that is either a conditional use or a use variance. We then with respect to that use we are seeking a variance from plate of the sign your ordinance is 8ft high this one is 35ft high and the square footage of the sign under the ordinance is 35 square feet and this sign we have two signs with 288 square feet per face on the two signs, they are each 24' x 12' and then there is one 2' x 20' public service sign that different non-prophets or municipal agencies could go on the bottom as a permanent sign. So it would be a height variance requested and also the size of the sign. So that would be the two variances in addition to the use. We had originally talking about setback variance but since this is a sign, signs are permitted within 10 feet of the property line. This sign we have moved back, we were originally at 15ft we have moved it back and other 10ft to 25ft. so you don't have to rely on your memory and you all probably all have better memories than me but I can't remember what happened so I think we better start from scratch and give you the whole presentation if that is acceptable to the board.

Mr. Sitzler: I would suggest to the board that they should disregard anything that they remember if they do remember any specifics because this is as represented by the applicant this is a substantially different

Mr. Wisniewski: And once the issue of the uses and the bulk variances are resolved, then we have also submitted an application for preliminary and final site plan in accordance with the particular development on the property. I have essentially 4 witnesses tonight, I think it would make sense if we swear them all at one time then we don't have to interrupt okay

Mr. Sitzler: Gentleman would you come up? Could you individually come up to the microphone and identify yourself?

Mr. Miller: James E. Miller of JMiller Planning Associates; I'm a professional Planner

Mr. Sitzler: Thank you Mr. Miller

Mr. Filippone: Stephen Filippone; Professional Engineer; Professional Planner; Certified Municipal Engineer and Principal of Engineering Design Systems

Mr. Sitzler: Thank you Mr. Filippone

Mr. Aducat: Wesley Aducat; I'm the applicant

Mr. Shropshire: David Shropshire Professional Engineer, Professional Planner, Traffic Engineer

Mr. Sitzler: alright gentleman could you all raise your right hand for me please (all 4 men were sworn in)

Mr. Wisniewski: To describe the first which I think is a conditional use; your ordinance we are in the LBD Limited Business District and the intent of this is to provide areas of general commercial and professional activities within the borough. This is a Limited Zone, limited area borough and specifically permitted uses in this zone are professional offices, banks and financial institutions, medical clinics and churches, synagogues and similar places of religious assembly, including meeting halls and social halls. Formed very specific uses, certainly nowhere near fulfilling the intent of what this zone could be used for of general commercial and professional activities within the borough. So the borough in putting this ordinance together had two options as I see it under the municipal land use law. 1 they could have zoned and said you can put any general, commercial and professional activity within this zone; or list specific zones or uses which I just gave to you. Then the borough indicated that in addition to those four specific uses the planning board; which you are sitting here tonight as a planning board can allow by a majority votes other uses that are basically general, commercial or professional in nature provided that they meet four standards under the ordinance. So the first stage gives the Planning Board itself flexibility by not identifying every specific use that can go in this zone, so these four specific plus anything else that fits within the category of general, commercial and professional activities as long as the standards are met; and the four standards are. The use will not injure or detract from the use of the neighboring property, or detract from the character of the neighboring property. The property is suited for the intended use, and that the use will serve in the best business of the borough. The use will not adversely affect public sewers and other facilities, such as water, police and fire services, and will not adversely affect drainage in adjacent neighborhoods. The use will not adversely affect the flow of traffic and that adequate roadways are present. So if the use fits within those four categories and it is generally commercial or professional in nature then this board can say this use can go on this site; and that is

what we are asking this board to approve as a conditional use this sign. So that is the background of the bases of our presentation of conditional use and we will have testimony on that. Can I have the site plan? I will explain to you what the application is to cover which we propose to do when we install on this property. Here is the property located on the corner of Berlin Cross Keys Road and Turnerville-Hickstown Road; it is an approximate .65

Mr. Sitzler: Mr. Wisniewski can you mark that A-1

Mr. Wisniewski: Yes A-1- 9/8/16, so it is a .65 acre parcel located at the intersection of Berlin Cross Keys Road and Turnerville-Hickstown Road. As I indicated the property is zoned in the LBD district, signs are not one of the specific permitted uses but we believe and will show through our testimony that it is a use fact and we feel should be approved as a conditional use. The sign is composed of three elements of signage, we originally had been talking about those signs being digital signs and the copy would change every so many seconds and that the digital signs have been approved by the DOT. Based upon concerns we have had we have changes the application to three signs located here the two on the top are each 24x12 feet fixed copy and then there is the lower sign which is 2 feet X 20 feet and that is also a fixed sign. The bigger sign on the bottom is 9 feet off the bottom and we have the 20 foot side, so that is the proposal of the sign to be the same on both sides and under your ordinance you double the size of the sign if you have signage on both sides. So the height is 35 feet which is above your ordinance for the zone maximum and the total signage with the three signs was greater your ordinance permits and those are the variances we have asked for. How it is going to be located on the property, the property is pretty much; do we have the aerial? With the existing conditions; we will mark that A-2. We will call hat the aerial view. Mr. Filippone will you just stay up here for a second; and show what this plan demonstrates with whatever color that is chartreuse.

Mr. Filippone: This is an aerial from a NJDEPT aerial of a work site; it shows that he site is relatively square in shape

Mr. Wisniewski: You have noted on here the intersection where this is located at there is a traffic signal there

Mr. Filippone: it is a signal run intersection; yes

Mr. Wisniewski: Okay and where is the next signal on there; on Berlin Cross Keys Road

Mr. Filippone: maybe a traffic consultant could

Mr. Wisniewski: I meant street light not a traffic light

Mr. Filippone: in the general vicinity there are two street lights and they are close to the intersection. Just north of the intersection there is a street light and 470 feet south traveling down Cross Keys Road at the intersection of Evergreen Avenue there is also a street light.

Mr. Wisniewski: and the bottom part of A-2 is Winslow Township?

Mr. Filippone: Winslow Township.

Mr. Wisniewski: and on the other side of Berlin Cross Keys Road that's the Borough of Pine Hill

Mr. Filippone: That is correct

Mr. Wisniewski: on both sides of Turnerville/Hickstown Road

Mr. Filippone: That is correct

Mr. Wisniewski: and on the corner opposite of Berlin Cross Keys Road and Turnerville/Hickstown Road what's over there

Mr. Filippone: It's a grass area shown right here

Mr. Wisniewski: and then the closest residential are shown what on Bittle Ave

Mr. Filippone: on Bittle Avenue

Mr. Wisniewski: Alright thanks. So back to A-1 when this sign would be installed the closes edge to Berlin Cross Keys Road would be 50 feet; that would be 20ft back and you'll see the dark green area is all of the existing vegetation woods and so forth that will be retained there will be just enough removed in this area to give lien of sight to the sign for traffic on Berlin Cross Keys Road which is the area the sign is intended to service the traffic on that area. Cars coming up to the intersection on Turnerville/Hickstown Road and Berlin Cross Keys Road will be able see the sign if they look to the right as they are sitting at the intersection but the intent is to service Berlin Cross Keys Road. On the site plan we can discuss all the plans and how they are going to land scape that area. The sign on this plan we have submitted shows the lighting is up lighting the ordinance requires down lighting, so we think up lighting is better because it gets away from any spill over and so forth. But if the board doesn't want to grant us a waiver for down lighting we would just make this down lighting along here. One other this I have a plan that shows a development parcel on this. We will mark this A-3. Mr. Filippone what does this plan reflect

Mr. Filippone: It represents the potential build out of the site, the building envelope plan there are three shades shown on the plan. The center is a light tan that is the building envelope that has the front yard, side yard, and backyard setbacks you can see it is about 50% of the site which would consist of structures and buildings. The larger green along the side here is the vegetation and buffer along the site that needs to be maintained to develop it, the lighter green for the development could be green space, it could be grass, it could be storm water basin, it could actually be parking.

Mr. Wisniewski: in other words with standards, setbacks and lot coverage it would cover this whole area here in the lighter area and parking under the ordinance could be in this light green area up here, parking, drainage

Mr. Filippone: Yes

Mr. Wisniewski: Mr. Shropshire; please, you've already been sworn. Could you give us your professional background and qualifications please?

Mr. Shropshire: I'm a professional Engineer and professional Planner in the State of New Jersey, and I have been a Traffic Engineer since the early 80's, I have my own firm Shropshire & Associates, I have testified related to traffic engineering, transportation planning issues in approximant 250 Municipalities and thousands of times I have been in Pine Hill for several applications and our firm specializes in the

area of transportation planning and traffic engineering access permitting, traffic signal design we also do some work with noise and air

Mr. Wisniewski: and that is all under the broad umbrella of traffic safety

Mr. Shropshire: That's correct

Mr. Wisniewski: I submitted to the board a July 27, 2016 report under the letter head of Shropshire Associates are you the person that prepared that report.

Mr. Shropshire: Yes

Mr. Wisniewski: okay; Mr. Shropshire would you indicate what investigation you did on this project to conclude what impact if any this sign might have related to traffic safety

Mr. Shropshire: The first and primary thing we did in regards to billboards is take a look at compliance with the state requirements with regards to billboards; they have established specific criteria related to billboard locations and those billboard locations also in relationship to size and height and sign dimensions and also spacing in relationship to other billboards. So that is always the first thing you do this applicant had received some conditional permitting already for the sign so that was a fairly easy thing to conform so I think he had no conditions, he had no situations with regard to the criteria that had fundamental approval from this board. So it met all this criteria, one of the things related to traffic engineering that is critical when we do that the state test preference their own regulation on this so that one of the criteria that they have is safety that is why they put that criteria in place with regard to all those elements. So the State would qualify this as a safe location based on meeting the criteria and I would concur with that. Specifically related to this because there was questions raised by Mr. Dougherty related to the proximity of this location to the traffic signal, we did some further field investigation. I personally visited the site several times taking a look at the impact of the traffic traveling south bound on Berlin Cross Key Road where the sign would be in relationship to the traffic signal equipment and weather there would be any issues in regard to conflicting messages seeing the signal head and the sign behind it. One of the recommendations that we came up with was to set the sign farther away from the right away in that corner that is why we setback 25 feet because we wanted to ensure that anybody in the south bound right had lane on Berlin Cross Keys Road would not be having a conflicting situation with the signal head that is on that approach be a conflict with the billboard. And as a result of those investigations the billboard was relocated 25 feet so it is my opinion that the billboard is outside the cone of vision for motorist that are traveling southbound there is no issue with the North Bound direction there is sufficient clear sight distance in both directions to visibly see this, also I thought it is critical in terms of height of the sign in order to have that height for sufficient visibility. Any clearing that would be necessary around the location of the site would also have to be incorporated into that again for not having multiple plants going through the vegetation and that has all been provided on the site plan. As a result of our evaluation and recommendation it's my opinion that this is a safe location, it's a safe design hence there are no traffic related issues with this proposal.

Mr. Wisniewski: What is your opinion on whether or not the use will have an adverse effect on the flow of traffic and the adequacy of the roadways for this use?

Mr. Shropshire: one of the things that has always been issues with outdoor adverting signs is that are they safe or are they not safe and there has been some effort in studies and backgrounds that have

been done for outdoor advertising signs related to this. In the research that I have done for this there has not been any definitive proof that there is undo safe issues related to outdoor advertising signs in effect it is the same as an overhead sign that is on a freeway that you are glancing and you are glancing on average less than a second and that does not create any adverse safety issues. In the same studies that were done things like texting or doing something that you shouldn't be doing with your cell phone while driving a car that is called a complex secondary driving maneuver, those issues do create safety issues because it's inherent I think we all understand that. Looking at an outdoor advertising sign is not that same level of glance and distraction, so there is no issues in correlation with the glancing at billboards. On top of this we also evaluated accident experiences at this intersection that has been collected up to the year 2014 and there is no design issues of existing roadway or existing intersection that would lead to any issues with regard of traffic at that intersection the flow of traffic along Berlin Cross Keys Road based on the accident experience at that site so putting all that together I believe there is no traffic adverse impact related to the proposed sign.

Mr. Wisniewski: In your opinion is the property suited for this particular use

Mr. Shropshire: Yes

Mr. Wisniewski: I have no further questions from Mr. Shropshire

Mr. James: Any questions from the board

Mr. Dougherty: I did have a question. With regard to the height, in other words this sign is 35 feet tall to the top of it and the trees I would guess are 75 feet tall or so behind it. The traffic light itself so I understand it is set back off the roadway to be out of visual sight line but I have requested a visual cross section through your testimony you were saying that you opened that and signed beyond where the light would be.

Mr. Shropshire: That is correct

Mr. Dougherty: So where in relationship to the traffic light is the sign is it above the traffic light

Mr. Shropshire: From the perspective of the driver, with the driver at 2 ½ -3 feet in their car the traffic signal is at about 14 feet at that angle the traffic signal is actually above where that sign is based on the set back of 140 feet between where that signal head is and where the sign is. So there is really no conflict, and we also moved it outside of the cone of vision where that signal head is and where the offset of where the sign is. So it is not going to be over it blocking it going to be outside of that cone of vision.

Mr. Wisniewski: If I understand what you are saying from someone who is sitting in the car the sign is going to be higher than the traffic signal and it is going to be to the right of the traffic signal.

Mr. Shropshire: It is going to be to the right and actually the sign going to be lower

Mr. Wisniewski: Oh! Lower than the traffic signal

Mr. Shropshire: and the other complicating thing just in the terms of the R valuation out there in terms of low light, that right deceleration lane out there kind of cuts into the south bound lanes of Berlin Cross

Keys Road the traffic signal would actually be affecting that sign or would be back by that sign if the deceleration lane extended another 400 feet to the north but it doesn't so you are in a different lane when you go into the deceleration lane you are now in a position where you don't have any inference from where that signal head is and where we have put the sign it is completely outside of that cone of vision.

Mr. Dougherty: So that would be during the daytime that the sign would not be obstructing the traffic light signal at all, in the evening and I know there was an elimination study and I don't you are regarding the elimination type think but these being shown up on the billboard is there any difference in the evenings. Based on the application that has been submitted the lights would be turned off at 11pm, between dusk and 11pm would it be conflicting with the operation of the traffic light?

Mr. Shropshire: In my opinion the traffic signal is going to stand, I mean they are basically designed to stand out from anything behind it. Right now what are behind it are trees, you are not drawn to the trees as you are looking past it is going to be the exact same thing with the sign. The signal will stand out from the sign you won't be drawn to the sign whether it is day time or night time in terms of that light. It is not going to affect the lighting of the signal or have any issues in regard to that

Mr. Dougherty: Right but there is no lighting there with the trees at the moment so the signal is the only thing that is lit

Mr. Shropshire: correct

Mr. Dougherty: The billboard will be lit

Mr. Shropshire: I guess try and take me through that philosophy, I actually didn't see what the building foot print plan was that was provided, but you could put a building there and have the building lit and it would create the same kind of question that we have but we would never question that with regard to a traffic signal. The building could actually be directly behind where the traffic signal is but we would never kind of question that. In affect the sign is almost the same thing it is a back drop from the traffic signal and the traffic signal is designed not to have an issue with that, we have taken all that out of the equation by setting that sign back away from where that traffic signal is. The traffic signal is then also at an odd angle to the intersection and a little bit of an odd angle to the right turn lane so it actually extends farther out so it is going to be to the right as we talked about based on our setback.

Mr. Dougherty: okay, our office has and illumination expert that I had requested attend this evening. Randy Marshal from our office one of the associates, and what I wanted to do because of no testimony on the lights and the indication that the lights were going to be facing up as opposed to down. I would like to get some testimony on illumination and have our illumination expert discuss that as well.

Mr. Wisniewski: We don't have anybody to present testimony

Mr. Dougherty: Within my report I had asked for information in regard to the illumination. There was a study submitted but it was only a portion it only showed ½ the billboard basically

Mr. Wisniewski: Yes that was in respect to a digital with those lights and so forth, as far as lights on the sign you got that all over the world lights on signs or as Mr. Shropshire had indicated buildings behind it and they are basically fixed lights and there is never a problem. Bottom line is if the board has a concern

about the lights we won't light the sign, if that is a concern of the borough that this sign when it is lit is going to cause a traffic problem and that is your opinion Mr. Dougherty and a person in your office opinion, if that is going to be a safety hazard then we will just eliminate lighting that sign

Mr. Dougherty: Okay I don't have anything else for the traffic engineer at this point. There are some issues with regard the size of the sign itself in addition to the lighting. I would imagine the planner would be addressing that

Mr. Wisniewski: Yes; what is the concern with the sign other than it doesn't meet the ordinance standard

Mr. Dougherty: Well looking at the conditional uses and it is inappropriate for this area. One of the prohibited uses is that it won't detract from the use of the neighboring property or distract from the character of the neighboring property so that is a planning issue as opposed to a

Mr. Wisniewski: Can't you have a building 35 feet high here?

Mr. Dougherty: that is an effective decision

Mr. Wisniewski: I understand that but I'm just saying, so how can assign that is 35 feet high be a problem from a height stand point when you can put buildings up that are 35 foot her with a bigger mass and whatever. I'm trying to understand why there is a concern other than you say your signs are limited to a certain height. I understand that but I don't understand from a planning issue having a sign 35 feet high in this location is a problem when we could put up a building that covers that whole area that is 35 feet high which would be 5-6-10 times the mass of this 20 foot wide sign

Mr. Dougherty: There is a significant difference in that the sign is 25 feet from the right away and the building itself would be 50 feet from the right of way, so they are totally different, the setback makes it a totally different appearance along that corridor. Again you are seeking a variance but you are moving that building to within 25 feet of the right-of-way as opposed to 50 feet and 35 foot building has to be setback 50 feet and that is consistent with the homes they are setback as well.

Mr. Wisniewski: The homes are in a commercial zone, and were looking at planning from a standpoint that you're not looking about what is there today, this ordinance says it is going to encourage commercial and, let's see what it says; for general, professional and commercial activities in this zone you have a 35 foot high. That is what this ordinance says, and back to what I was talking about conditional uses this ordinance says we are going to encourage this. You have a large area here and we are going to take .65 acres of which is not going to interfere with any other potential development and the area is zoned for commercial and professional uses. To judge an application based upon the fact that we have woods there today and we have non-conforming houses across the street to me doesn't make sense from a plan standpoint and I have a planner here today to testify to that but when looking from plan standpoint and you have a specific thing in the ordinance and in fact this ordinance is so strong; on wanting to have commercial and professional offices here it says you got 4 uses anything the planning board feels is appropriate for this can go in here but the ordinance says " it is determined that the Borough has limited area for commercial development" IE this is going to be commercial development according to the ordinance "and its desired to prohibit uses that would detract and prevent he development of commercial areas therefore it is determined that certain uses be prohibited in the Limited Business District" It doesn't say signs are to be permitted in the district it says " schools, private

and public; lower, middle or high school levels; full or part time; and day care centers” are prohibited because they are going to prevent commercial development there and “resource recovery” that is what is prohibited there because the town wants this area to be developed commercially and professionally. This particular use fits within all that criteria; it is not going to disrupt the ability of this town to have this developed commercially as it wants to as its master plan has indicated. I understand there has been two master plan reviews and reexaminations by this town and none of those have said they want to change this to residential or keep it from being developed or keep it as a nice wooded area. It has said it is going to be commercial it is going for professional and we are going to keep everything out that is going to prevent that. This particular use is a commercial use, but the other thing is if and when a development comes along that would utilize this partial for the building that shows on A3 I think it is, or somebody puts our two lots together with the rest of it and wants to make a commercial development, this is probably the single use that is not going to disrupt or prevent anybody from an economic or a physical stand point. This sign can be removed in less than half a day and you have a vacant piece of ground with no paving on it, no buildings you have to reuse or whatever. I think the fact that we have something that is 35 feet high that zone permits 35 feet high it is not the planning issue I think we are complying with all the planning in trying to encourage commercial and professional development and the fact that there is residential across the street we can’t do it, well the town has already made a decision it wants to do it knowing that there is residence across the street which are non-conforming uses anyway. So I just have a hard time understanding the concept that we got to protect the area when the Borough says we want this to be developed

Mr. Dougherty: Again I think we will get to the planning testimony; but again a standalone sign is not permitted in this zone, so for you to say well if I meet the condition of a conditional use then it will be permitted. What we are recommending is that it be looked at as a use variance as you originally came in as a use variance to proceed under that. Conditional uses are not defined the sign isn’t in there as a conditional use it just says you meet these 4 criteria, but a standalone sign that doesn’t specifically address the site is not permitted so it wouldn’t be a conditional use either.

Mr. Wisniewski: I think it is because I think the conditional use says any commercial and professional use is allowed by the planning board at this site if it doesn’t violate these conditions or meet these core conditions and is not a school and is not a resource recovery facility. Other than that all commercial and professional uses are allowed not permitted are allowed on this site as a conditional use if the planning board agrees that it makes sense that this particular use on this property

Mr. Sitzler: Mr. Wisniewski you don’t feel, we have exchanged some case law. You don’t feel that our word in non-specifically saying what conditionally uses are allowed in each zone and then what the standards are for those particular uses makes a difference, you’re interpreting our ordinance under the conditional use that anything business can be in this zone

Mr. Wisniewski: As long as it meets board criteria and is commercial, is professional meets those 4 items and is not a school and is not a resource recovery. This is different of any of the cases you talked about because there were no standards at all, there was no guidance given and it was for all the zones in the municipality. This municipality has taken this particular zone and said in this particular zone you can have things that are basically commercial and professional of that category of uses these 4 are specifically permitted if you are going to put them in you then have a right to put them in. Any other commercial or professional use is allowed on this property if the planning board grants conditional use for it and it meets those 4 items of criteria and is not a school and is not a resource recovery. So there you have the standards, you have a specific zone that is not that other zones do not have that, the

residential zones don't have these conditional uses it is for certain specific zones. The other cases we were talking about there is nothing at all it says planning board do whatever you want and call it a conditional use. Pine Hill went a lot farther than that when it did this and came up with the standards

Mr. Sitzler: My understanding and again I looked at the ordinance, and although I read it online and you were kind enough to let me look the copy you have the foot version they seem to be the same. It says in there that out R-MED district, even though, again you don't define any of the conditional uses in that district and we do have the same 4 standards that you have enumerated for each conditional use no matter what zone it is no matter what conditional use it is those 4 things apply to everything, okay. We do have in the R-MED it says "the R-MED district which is residential and the R-LOW district it says that the R-LOW district allows a conditional use that the R-MED allows, when you read the R-MED we don't define what conditional uses are allowed so it is saying look to this section if you want to know what is allowed here. Again we are not talking commercial we are talking residential zones conditional use, these conditional use things allowed. We do have 4 standards but we don't really say what the uses are, that has been my concern from the beginning when we had these conversations

Mr. Wisniewski: I understand that but this section is different from the R-MED and the residential it is different language. If there is a problem with the R-MED zoning that doesn't impact this zone and again if this is something the municipality, you made a mistake on and I don't think you did I think it was intentional, I think it wanted to have the flexibility so as life changes as the world changes as different things come along without having to make a new ordinance for everything the governing body of this municipality said, were going to allow conditional uses that. And I'm only looking at this particular zone whatever the residential is and if there is a problem in that particular zone that is a problem there. We are dealing with this and that is it, it doesn't refer to any other ordinance it doesn't refer to any other section or any other zone this is a standalone section of the ordinance with 4 elements or 5 elements. The intent of what goes in this zone, 2) the specific things that are allowed without anything further as of right conditional use if you meet these provisions and what is actually prohibited because it is going to disrupt the intent. Again my understanding is this master plan and these ordinances have gone under at least two reexaminations, yet the firms that were doing the reexamination or if the town had any problem with that they would have raised questions with it and it never came up these ordinances have stood for a long period of time and courts will assume and we assume this is what the town intended and that is what this body is here to look at is this okay here at this particular location because we meet the standards we don't have a violation of the two things that violate it and we are commercial use which is, the town says is permitted in this location. Sorry if I keep repeating myself.

Mr. Sitzler: I just wanted to know your position; I think one of the cases I've written you on this particular case provided a litany of other cases that would be of additional use would be a 2000 case which was Arron's VS South Hampton. One of the concerns in the language by the judge in finding that it was void of vagueness for a conditional use ordinance was the concern; that going through the conditional use and were turned down how, do you then as an applicant meet the use variance when the proofs are stronger in the use variance that you need when you get turned down for lesser proofs which is required in this application before the planning board for a condition use. There were some concerns by the court that it's an anomaly

Mr. Wisniewski: The situation is that that ordinance is so different from this number 1, number 2 that case involved a lot of hanky-panky on the bases of government and what they were doing in trying to get this thing through for a particular owner. If you read the entire case and all whatever they talk about it. Yes the proofs are different and they are stronger but they are different proofs than you have on a

conditional use what the standards are set forth there and if we were to look at this and say is this a commercial use does it violate any of these 4 things or does it meet intent of this and number 2 is it a school is it a resource recovery if not then it should have been approved because it fits within. The board has the decision to make does it meet all this criteria then if it does it should be approved as a conditional use. I don't see any court setting this aside this ordinance aside. I think we have a good simple use here that is going to put this particular lot onto the income stream give the owner some income, but not hamstringing the borough not hamstringing the owner and then if something else comes along that's more productive and generates more income then it can be converted back and this does no damage at all and has the ability to do something else with this tomorrow next year or 20 years from now whenever the economy or a particular use comes along that wants to take this piece of property over

Mr. Shultz: How is the sign anchored to the ground, does it have footings

Mr. Wisniewski: Yes the plan that we submitted, I don't know if you have it in front of you. There is a cut, it's on the first page we are 8.66 feet concrete block with steel beams that are in there close to 6 feet under the concrete. Do you see what I'm talking about, that has all the construction details there

Mr. Shultz: So your intention is that whole site could be taken out in one day if that site was replaced with another use

Mr. Wisniewski: Yes I don't think it would take any more than a day; we may have to jack-hammer some concrete that is 4 feet by 18 feet, that is the only improvements on there and to pull out some wire which you may use anyway for the future development

Mr. Shultz: let me see both A1 and A2 side by side, if you put that sign there it kind of eliminates the use of that area where you have the potential development

Mr. Wisniewski: Not necessarily, both of them could fit on there. What I'm saying is the sign could stay there and be used for some other development

Mr. Shultz: on that site

Mr. Wisniewski: Yes, or we could take the sign down

Mr. Shultz: Wouldn't that limit what kind of business could go there under the ordinance

Mr. Wisniewski: Not at all you could put a building back here, you could cover this whole thing with building and the sign with parking out here the sign would just be in the middle. I'm saying you are probably not going to keep that sign, but you could have both uses on there without any problem. The probably of it is that this would come out and you would have a vacant piece of ground

Mr. Shultz: but there would be a problem with parking if a restaurant or bar would go there. Over all I was not there and you were not there none of us were there, but I believe the intent was originally not to have a sign there but overall to benefit the town was to have some kind a business there

Mr. Wisniewski: I understand that and if my client had his druthers he would probably rather have a medical office building on there that somebody would use for that and get more income. All I'm saying is

in one way you could look at this as a holding use that it was putting the property into use in accordance with what the ordinance says can go on there but it is not in any way impacting the ability

Mr. Shultz: When you put something in the ground and make a permanent structure I can do anything I want to depending on the size I can just take it down and put something else there. I can picture big billboards that don't fall and are not permanent either so

Mr. Wisniewski: Again looking at the ordinances and how you interpret it, but more towns struggle with vacant buildings and how to convert them and that is what I'm saying. For one reason or another is this piece stops it is not going to impede the building of a use of anything at all that makes sense and gets approved in this town because this particular physical structure can be eliminated and if it not a day it's two days and the only disruption to the ground is that where the concrete pad is everything else comes off where as you put a restaurant there you put in an office building a small strip center whatever it is, once that fails the first thought is not take it down and build from scratch with a vacant piece of ground it is how can we repurpose it how can reuse it and whatever. My point was that this not put the owner or the municipality in any kind of a struggle on what are we going to do here when that sign no longer needs to be there

Mr. Dougherty: one point I wanted to make when we talk about the sign and the business coexisting, that would be two principal uses they wouldn't coexist. To your point that the sign could be moved, you couldn't have a bank there and the billboard stay there it wouldn't work right. It would be two kinds of uses too because we, in theory the board would be approving this conditional use that's the primary use for this site. If it were to convert to something else you would have to come back with a site plan and the sign would be removed and then the bank site plan go before

Mr. Wisniewski: I understand, and I will just respond to the question that you couldn't have the sign and another use on there physically at the same time; I think you can

Mr. Shultz: He didn't say that, he said the sign actually fits on there

Mr. Wisniewski: Okay I misunderstood, and far as parking spaces you lose at the most 3 but probably only 1 or 2 spaces if they are 20feet wide. I agree if the sign was to stay there and you had another use the borough would have to grant a variance to do that I agree with you there, but physically you could coexist with a lot of different scenarios on the development of this property and still have the sign exist. I'm not saying that is what we are proposing all I'm saying is when this property and the borough is ready for a different use on it this in no way is going to impact your ability to put another use on that property that was the purpose of my comment

Mr. Wisniewski: any other questions of Mr. Shropshire, I guess that is where we started

Mr. Luste: I have an observation; we all have been talking about in the LBD district about the commercial flavor residential uses can also be allowed in that. Now in what you are saying the land next to you to the south if an owner comes in and decides he wants to do a mixed use development, which could be mixed uses residential included. Then he would have to buffer on his property and might lose some valuable real estate that could be developed because the billboard is there right. So it puts a burden on these developers on the south side

Mr. Wisniewski: Technically yes, but let me ask this question. What was the word you used mixed? What is an office building, strip center or whatever going to do to that developer that wants to put a residential here what kind of buffer is that man or woman going to have to do to protect the residential here from this use of a sea of parking with this building here all the traffic that is coming in and out. The ordinance has accommodated that you can only put residential on there if you protect the residential you are going to put on there. So you are saying this very minor sign here is going to be a lot more detrimental to this man or woman that wants to develop residential back here as opposed to this particular large development. I don't understand that

Mr. Luste: What I'm saying is that he would be required or the company whatever to add in a buffer to any residential uses he puts on that property, the buffering may or may not fit into open space requirements or not he may then have to therefore lose some space; which could be units or square feet of commercial uses because of the buffer. So if that case was to happen and they were to approach the owner of the billboard, if constructed and says I would like you to take it down because I shouldn't have to construct 30 feet by 250 feet to screen my people from your billboard. So is there some kind of guaranteed mechanism that could be written that puts the buffer on your side

Mr. Wisniewski: If this was going to be developed, I'm saying the income would I would think from whatever else was going to be developed here is going to subsume whatever is here and this would go because this would be an impediment

Mr. Shultz: You don't own the land right

Mr. Wisniewski: Well it's under contract we are purchasing it we have a contract to purchase it

Mr. Dougherty: So if that application would move forward that would be a condition of approval is that we are saying it wouldn't have coexisting

Mr. Shultz: That would be another thing you can't lease the land you have to own it

Mr. Wisniewski: Nope we are going to buy the land; WA is going to buy the land so it is not a lease we have a contract to purchase it

Mr. Dougherty: but we would still have a condition if the site gets developed by someone else the sign would come down

Mr. Wisniewski: that is an acceptable condition

Mayor Green: I understand your argument but in the borough this is not a permitted use, then why would you propose a billboard sign that is not in the borough ordinance

Mr. Wisniewski: Because we should get Mr. Shropshire back here but an 8 foot sign at 35 square feet is just not going to work as a highway sign and from an economic stand point it doesn't make sense to put up 8 foot by 35 square foot sign as your use on the property

Mayor Green: we can't take into consideration economic any more then we can decline an application for economic reasons, so from an economic stand point that is not our issue. And I guess my question is right off the bat why wouldn't we if we were going to grant conditional approval and granting it for the

ordinance which is an 8 foot by 35 square foot is one thing but granting a sign that now is 35 feet tall I don't see why we need it

Mr. Wisniewski: The question on economics, you have a piece of property that has set here vacant for a long period of time, there is now an economic incentive to put the property to some use and that use is this 35 foot high sign. It has two spaces on it to be leased to different people that want to do it; that's the economics you can take into consideration that property is unusable unless you can get an economic return for it and my point is this is, this gives this particular property enough of an economic return to put it to use where an 8 foot high 35 square foot sign is not going to generate any kind of income so basically what you are going to have here is vacant land for who knows how long. So that is where the economics comes in, the fact is it is zoned into economic misuse unless you get a certain level of income and it makes it worthwhile to put the property into use and the economics is fairly low here from a stand point of to what the construction cost are going to be and so forth to put this up and then generate the income and give the municipality cash revenues and so forth for a property that is not getting anything except made up land prices. And I would assume vacant land prices are not that high if it sat unused for all this period of time. Ready for Mr. Miller

Mr. Wisniewski: Mr. Miller you have already been sworn; could you please give us your professional background and experience both educationally and engineering experience

Mr. Miller: Yes I'm a licensed professional planner in the State of New Jersey. I'm certified as a certified planner by the American Institute of Certified Planners. I have been qualified as an expert witness in over 230 municipalities in Pennsylvania and New Jersey. I have also been qualified as an expert witness in both the state and federal courts and have also been practicing since 1971 and have also been before this board and qualified as an expert by the Pine Hill Board

Mr. Wisniewski: Is that acceptable

Mr. Sitzler: Yes

Mr. Wisniewski: Mr. Miller at my request have you examined the application relative to the conditional use application and the variances that are associated both with the conditional use or a use variance if it is granted being the height of the sign and the size of the sign

Mr. Miller: Yes I have

Mr. Wisniewski: okay what did your investigation consist of?

Mr. Miller: It consisted of a review of the applicable sections of the zoning ordinance; I reviewed the various master plan documents that were on file here with the township that have been adopted over the years since the boroughs master plan. I've visited the site on a number of occasions; the application has been before the board for a long time it has also been before me as well, and whenever I'm in the area basically I go to the site. I have also both walked the site and the area and in addition I have also reviewed the various professional letters that have been issued regarding this application looked at the plans and the normal preparation you do for a hearing of this type.

Mr. Wisniewski: And what has your investigation disclosed as to the property and surrounding areas

Mr. Miller: Well basically a lot of these details have already been addressed; I'm looking at A-2 for the record and basically it gives you an overview of the site and the surrounding uses. You do have some non-conforming houses in Winslow the zoning over there is minor commercial and I know from doing a lot of work in Winslow lately and Winslow Township's objective is to continue to develop the Cross Keys Road corridor as a commercial corridor and they are actually doing a lot of things to intensify so that there are commercial uses within the corridor. Now on the Pine Hill Side you have our property which is in the Limited Business District and then there are some residential properties a little bit to the north west of the property, but basically the dominant use and immediately adjoining use is the intersection and the open space associated with the intersection. The plan is for this type of application where you have a conditional use is to present testimony as to whether or not in our opinion the application satisfies the conditional use standards and you have already heard quite a bit of testimony about that, but I'm going to go through it with a planning perspective. The 1st condition which is that the use will not injure or detract from the use of neighboring property or detract from the character of the neighboring property, and I believe this condition is really met. You have a property that is on a corner the remainder of the property still has some significant area with significant frontage on Cross Keys Road and in my view and we have gone over this quite a bit internally with the engineers and you have already heard this testimony but from my perspective as well I don't believe the sign would predetermine a barrier to the further development to the property. Again the sign could be removed to aid in the future development of the property or there could be a combination of pieces where the sign was retained. That is not uncommon for a commercial property to have multiple uses; you could actually put retail uses there combined with the sign and categorize it as a single use as a shopping center and probably not even have the issue that was raised earlier about having more than one principal use on the property; but again signs of this nature typically associated with commercial uses and are fully compatible with those uses so, you have a commercial district you have a property that is well suited to a commercial use and a sign that we are discussing tonight is a commercial use they are all compatible with the zoning district and appropriate for this location as a consequence I don't think they would have any, detract in any manner from the district again it is a commercial use, it is fully compatible with the zone and you have a commercial corridor with like uses all the way up and down Cross Keys Road Corridor between the White Horse Pike and the North South Freeway and then beyond so it is a very intensively built corridor and certainly has an array of uses. The second condition is the property is suited to be intensely useful and to serve the best interest of the property. I would like to reiterate the site is fully suited to the use in terms to accommodate the use and has ample room for; it's a commercial use which is again consistent with the purpose of the zone which is to encourage commercial and professional uses. To the extent that it might prohibit residential use it is actually advancing the purpose of the zone because what the zone really wants to encourage is professional and commercial uses and provide those types of services to the community as opposed as allowing residential, and in fact the clearing and construction intended with this sign may even act as an encouragement for further development of the property because it is going to draw some attention to the site, it might actually encourage further development of the site at some point. To limit your analyses to just the sign and not looking at any one, the design combines the character of the area to really control any impact that the sign might have on any of the uses to the west or to the north and it does that by maintaining the trees there in conjunction with the sign itself. Now later of course as the site develops you are going to have much more intensive uses, the trees will have to be removed to some extent and there would be use of the property from some of the residential areas from the north and west but within the context of this application those views would be obscured by the wooded area so the impact of the sign itself is principally along the Cross Keys Road corridor where again it is a fully appropriate impact. So in terms of the use itself it advances among other purposes, the land use law which calls for supporting appropriate uses and appropriate locations and I believe that is what this site is given with the character of the area and the character of the

location and the zone where it is placed. The other two criteria, the first is the use will not adversely affect public facilities such as water, sewer, and other facilities such as fire and police services and will not adversely affect drainage of the adjacent neighborhoods. This is a relatively easy standard for this application to satisfy because the use that is proposed is unmanned and unoccupied and as a consequence it doesn't have any need to tie into the sewer or water systems. It is not going to create any water or sewer demands it is not going to create any demand for solid waste so basically in many respects it is a low impact use and it won't have any potential to have either a negative or positive impact on the public service it is a neutral impact because it doesn't utilize any of those utilities. In terms of fire and police services there is very little potential to have any need for those again because there is really no activity here it is an unmanned property and almost any other use that you would develop on this site that you could conceive of is going to have a greater potential impact on these municipal services and municipal utilities and this is because of simply it is an unoccupied use. The last standard is the use will not adversely affect the flow of traffic and the adequate roadways that are present; I think you already heard extensive testimony from Mr. Shropshire regarding the impacts on the highways themselves and I would concur that those impacts are certainly not detrimental and would be consistent with the objectives with the ordinance, I would only add that you have a use here that is not going to generate any trips or any traffic so to that extent it again meets the standard because there is no traffic flow what so ever, so there is no potential here for any adverse impact as a consequence of traffic. In my view the use meets all the standards in the ordinance and it has a relatively benign and low impact on the community and meets the applicable criteria.

Mr. Wisniewski: Now Mr. Miller with respect to the two variances that we have requested. The height greater than 35 feet or greater than 8 feet and a sign area greater than 35 feet, would you comment on those and also this application is for a sign the standard in the ordinance is 10 feet for a setback we are at 25 feet so there is no variance there, but there's been some comments made that really since it is this high 35 feet high and 20 feet wide maybe it has more of a characteristic of a building which has a 50 foot setback. So would you comment on why if you feel 25 feet is appropriate for the setback for this sign and the appropriateness of why a variance should and can be granted for the height and the overall size of the sign.

Mr. Miller: Well first of all, what I would like to do if I can when I address that is address it formally to the variance criteria and I can do that but I think I want to address the other question first. I think when you look at setbacks and this is an appropriate setback you have to think in terms of the functionality and the use that is being controlled. In the case of a building the primary reason you have a 50 foot setback is to provide for an area for parking and circulation in front of the building and then some landscaping along the highway that is normally what occurs within the 50 feet and with a sign you don't have traffic or trip generation from this there is no real parking requirement for it so the functionality of the sign is really to placing the sign in the most advantageous location from the standpoint of its visibility and its functionality and from that standpoint the 25 foot setback is more appropriate because it brings the sign closer to the area where it is going to be viewed from which is Cross Keys Road and I think you also have to factor in as Mr. Shropshire's testimony regarding the way the site relates to the light at the intersection and all those other factors as well. But when you combine all that the 25 foot is definitely a much more appropriate setback for this specific use whereas I think the balance of the uses which would be occupied buildings the 50 foot setback would be more appropriate.

Mr. Wisniewski: So the fact that the sign standard is 10 feet it is more appropriate standard for a sign and 50 for a building and we are 25 feet because of Mr. Shropshire's safety concerns if it was too close to the highway it would impact the traffic signal so we are at a medium the signs in a location where it

can be visible but not impact the traffic signal but if you move it back 50 feet you're going to lose the whole purpose

Mr. Miller: The location is to maximize the functionality of the sign and the safety of the sign

Mr. Wisniewski: And now with respect to the C variances the height of the sign and the size of the sign please

Mr. Miller: Sure, with the C variance what we have to show is that the relief requested would be a better zoning alternative and would advance the purposes of the municipal land use law. And believe that there are at least two purposes that would be advanced by this relief; the first would be purpose C to provide adequate light air and open space that is typically a purpose that you see to advance with any bulk variance. Then Purpose G is to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space for public and private according to their perspective environmental requirements in order to meet the needs of all New Jersey citizens. I already addressed that purpose a little earlier in my testimony but really this purpose does is it dovetails the provision in the code that creates the conditional use standards because basically what the code is trying to do is support this purpose by providing for a verity of uses in the appropriate locations in a flexible manner and as we already discussed the variances due to the height of the sign and the area. I believe the, first of all the waiver we requested provides the appropriate standard for a sign of this type and therefor is a better zoning alternative. The setback again in the zone it seems a building and it isn't appropriate for a sign, and again we are talking about the shallower setback again the functionality of the sign that it also provides a safe distance from the road. It is also an ample distance to provide adequate sight line so again the sign can function as required. I believe the height requested is appropriate also for the sign; typically that is the height of this type of sign would be built to and it is also consistent with the zone which a 35 foot high structure is appropriate to this particular district and it will again advance the purpose for a verity of uses at the location. I also believe that the sign would provide adequate lighting, open space and again it would have to do with the setback is appropriate from a safety stand point and also because it is the only structure on the property and it is at a significant distance from any other neighboring structure really if you go to A-2 you can see there is nothing really proximate at all that could be effected by things like shadows from the structure, so those are the things you are concerned with when adequate air light and open space and this structure obviously has that. So in terms when you balance the benefits of the sign verses the negative impacts I think the benefits of providing and appropriate use for this property outweighs any potential detriment from either the height variance or the size variance and it would meet the positive criteria. In terms of the negative criteria we have to show that there would be no substantial detriment to the public good and no apparent inherent purpose to the zone plan, and here again you are dealing with a relatively low impact use in terms of, it doesn't utilize utilities, it doesn't generate traffic it is basically a passive use that just sits there along the road side. There is very little if any potential for any detriment to occur from the use and in terms of the zone plan we have already talked extensively about the overall purposes of this district which is no encourage commercial activity within the zone and it basically advances that standard, it won't have any discernable negative impact on the zone what so ever because it is really the kind of activity that's envisioned by the district. It's got significant separation from any of the occupied uses from within the borough that are approximate to the area and as a consequence I don't see any detriment to the surrounding properties and I believe there is no apparent intent to the zone plan where you have a commercial use in a commercial district.

Mr. Wisniewski: I have no farther questions of Mr. Miller

Mr. Dougherty: In my review letter dated July 28th has Mr. Miller reviewed that?

Mr. Miller: Yes

Mr. Dougherty: On page 7 (b) I highlighted a couple of different things. Many of the planning issues deal with illumination and I understand at this point you would be willing to remove the lights from the billboard.

Mr. Wisniewski: Yes if the board feels the lights are a problem we just won't have lights on it

Mr. Dougherty: From a standpoint and Joe you might want to comment a little farther on this since you are our planner, but looking at F and G there with context of the neighborhood the surrounding landscape and the impacts of the billboard itself, in other words the fact that we do have residential properties across the street, so it is a wooded lot currently so the size of the billboard and how that is impacting the adjacent in Winslow. I know as we go north there is a vacant lot but on Bittle Ave there are homes there in that aerial photograph. This is a neighborhood and how is the sign fitting with the context of that specific neighborhood, trying to put it into perspective

Mr. Wisniewski: On your question if the intent is to develop commercially and that is where Pine Hill is, how can you develop commercial and not impact residential? If Pine Hill wanted this area to remain open space then they could condemn it and make it open space if they want it to remain residential they would zone if residential, but the town has zoned for commercial and professional and you have non-conforming residential across the street, so I don't understand the concept of not allowing anything to happen because we have non-conforming residential across the street and if we don't let anything happen we are not going to get the commercial and the professional that we want it is just not compatible from that standpoint from a planning standpoint at least in my view, I don't know maybe you can answer that since you are the profession

Mr. Miller: Well the only thing that I could add is that given the zoning of the property the potential uses there are much more intense than the uses we are proposing this evening for example if you put any kind of retail or professional use there you are going to have parking fields you are going to have traffic you are going to have light associated with nonresidential use and all those impacts are more intense than the impacts of this use but there are also impacts that are appropriate and consistent with the zoning of the property and appropriately consistent with the overall character of the Cross Keys Road Corridor and the climate of the development that is potentially good for the Winslow side of the line as well so from all those perspectives and all things being equal of the potential uses that go here this is a less impactful of most of the others if not all the other uses that could go here and more over the impacts albeit they might be potentially much more impactful than what we are proposing are still completely consistent with what the zoning and the overall character of the area.

Mr. Dougherty: I think one of the things that you had mentioned is the use that you are proposing incurs with a business, but if there was a bank there and it could be the neighborhood bank and that would actually encourage business in that area that would not be a detriment to that neighborhood it would be part of the neighborhood. The billboard itself how does that encourage business on that corridor in that neighborhood?

Mr. Miller: First of all I think a bank would be a good use on the site there is no question but you don't have a bank before us and I think what basically it does provide an appropriate use of the property which is consistent with the zoning and it is basically a general services for businesses in the area so that's the services it provides and again you have that without a lot of the other impacts that would be associated with uses that would otherwise be at that location.

Mr. Dougherty: I'm looking at G on page 7; basically the board should consider the benefit to the borough of the sign use as opposed to something else that is a permitted use

Mr. Wisniewski: We don't have something else, this gets the property used and it starts, and if something else comes along that makes sense here than that something else will happen

Mr. Shultz: I have a concern you are asking for a much larger sign than what we currently allow for, if we set the precedence we are going to have other much larger signs on other parcels so there for eliminating businesses not really generating them

Mr. Wisniewski: Well on that particular point the other signs are associated with the business on the property and therefore to scale of what that business is

Mr. Shultz: I'm talking about other billboards, when you set a precedent you open yourself to be allowable for much larger billboards than what already exists

Mr. Wisniewski: I think Mr. Sitzler will tell you do on one application does not set any precedent and that is not a valid argument that we did it here and therefore you got to do it here. 8 properties we looked at individually and there were purposes and how it impedes. In this zone this is not a prohibited use as such under what the standards we have in the zone; there are only two prohibited commercial and professional uses and they are really not commercial or professional but you can't put them in there and that is schools and resource recovery other than that the ordinance allows with appropriate approval all other commercial and professional uses on the property, and we are saying this sign is a commercial use and I think we have demonstrated it is appropriate for this property but it doesn't mean that when something else that comes along that they be a better use for a better reason of an economic standpoint or whatever that cannot go on or would go on. As far as a benefit to the resident's I'm not sure where that is, if we are looking for benefits the applicant said it will let any business in the municipality have the right to use one of those signs for 30 days, so if you have any business that wants to go up there for 30 days we can do that. That would be considered a benefit to the businesses in town that would be fine with no charge.

Mr. James: You just said you are doing this for the benefit of the businesses in the community, are you limiting the advertising on those signs to businesses within the community

Mr. Wisniewski: No we are not saying that this sign benefits businesses in the community or it will, what we are saying is it benefits the community because the community has made a determination of what the zoning is going to be what it is going to allow in various areas within the municipality and we are fulfilling the standards the 4 corners of all the conditions that the ordinance sets forth. All I'm saying is the professional report said we should demonstrate how this benefits residents. I don't think that is a criteria; I don't think that is a necessary element of any particular application or approval of an application, but if the board wants some benefit to the residents coming out of here my client said that it will provide that benefit to residents in the town that whatever businesses that want to have

advertising on that sign for one month can have one of those sections for a month without paying for it. If you feel that there needs to be a benefit, I don't think that is a proper criteria and I'm not aware of anything that says it benefits a resident or benefits residents

Mr. James: I'm not saying that I'm saying benefiting the community. What was the 2nd criteria that you mentioned?

Mr. Wisniewski: The ones that are prohibited specifically

Mr. James: No, no; you gave us 4 things

Mr. Wisniewski: Okay the ones you already talked about; will not injure or detract from the use of neighboring properties or detract from the character of the neighboring property. Mr. Miller went over each of these but that was the number 1. Number 2 the property is suited for the intended use and the use will serve the best interest of the borough

Mr. James: right; when you say best interest that is really a kind of mentalist term right, because you're saying it serves the best interest of the borough and we can argue it that it doesn't serve the best interest of the borough. Your argument that it is serving the best interest of the borough is the fact that the borough would be able to collect tax revenue am I correct

Mr. Wisniewski: What I'm saying is it benefits the interest of the borough. The best interest of the borough is, the borough has said this property is zoned for commercial use and professional use and if we provide a use that fits that, and then we are benefiting the borough because we are fulfilling the intent of the borough for what this property is to be used for

Mr. James: but you're missing one word there you said the best interest of the borough, it's not any use of the borough it's the best use

Mr. Wisniewski: Okay

Mr. James: Just understand me if we are going to talk about the ordinance and what it states it doesn't say any use because if that is the case anybody that comes in we would have to approve, but we have the option deciding if it is the best use relative to any use

Mr. Wisniewski: And I'm saying that the term best interest of the borough in conjunction with your ordinance in this particular zone is, the interest is fulfilled by fulfilling the objectives and standards of the ordinance that is what this property should be used for in this location. And I agree you can't convey whether a Doctor's Office or a WaWa or a bank is a better use of the property, I don't think that is a proper standard or whatever and I don't think you could interpret ordinance to say that the only thing we are going to approve in is something that we determine is absolutely the best item for this property

Mr. James: Then why is the word best use in the ordinance

Mr. Wisniewski: I think it is the best interest of the municipality is that if the use fits within what the municipality has said that this property can be used for and should be used for

Mr. James: That is just an interpretation

Mr. Wisniewski: I understand that, but I don't know what other kind of interpretation there could be when looking at the ordinance and all those words in there and it all relates to getting this property into use as commercial or professional that is the intent as set forth in the ordinance, your master plan and whatever

Mr. James: That is a condition but the intent was not to detract that is what it was supposed to do, the 2nd condition was the best use, the best use for the borough it was not the use as we keep going back to. On the one hand it was clearly archaic as to what things should be without any objection, right.

Mr. Wisniewski: Right

Mr. James: Then it said in the condition we have choices, and part of those choices would be what is the best use not just any use that anybody came up with that met a criteria because if that was the case why would best be in there. You would take best out and put any commercial or professional use but they didn't say that

Mr. Wisniewski: right, but it had the other criteria in there

Mr. James: I know but there is 4, but you have to meet all 4

Mr. Wisniewski: I understand what you are saying and I don't see how you can get into a debate as to what is absolutely the best, the sentence says "property is suited for the intended use and will serve the best interest of the borough" best doesn't mean absolutely only one thing, best means the whole broad spectrum and basically if it's not the opposite it's not going to harm the municipality to me that is how you look at it the work best is the opposite of do not harm and I think that is what the interpretation of best here is and does not harm the municipality.

Mr. James: But isn't "do not harm" a minimal standard?

Mr. Wisniewski: Pardon me

Mr. James: wouldn't "do not harm" be a minimal standard and not a maximum standard?

Mr. Wisniewski: Yes, but I do not think best interest is a maximum standard either.

Mr. James: I don't think it is either but it creates an option

Mr. Wisniewski: To say yes or no

Mr. James: To say yes or no based on whether or not you think it best serves the borough at the time it is being presented and best would be different from day to day and year to year. Right, which means we have an option of choosing as opposed as having you say this meets and we should accept or it qualifies and we have to accept, there is a difference there.

Mr. Wisniewski: I understand your comment there is a difference if you say best means the board has the absolute authority to say this is absolutely the only thing that can go there because nothing else is as good as

Mr. James: No that is not what I'm saying, what I'm saying is best means, if we don't feel that this is the best option at this time for that location we have the right to say it is not and if we find that it comes across that it is the best option then we can say yes that is the best thing it doesn't mean that anybody that comes forward and presents this because of those conditions can just say well I meet all of your conditions but you want to read off certain words and the words fit perfect. I'm sure you understand that right, if it didn't mean anything you would leave it out but it means something

Mr. Wisniewski: And I think the meaning is, and you disagree and that is fine. I think the meaning is "and is not harmful to the municipality" best interest to me equals not harmful to the municipality. And you may not agree with that and I understand that but I think that is the interpretation of best interest

Mr. Dougherty: I'm picking up on that point in our review letter on page 8 letter I; it picks up on that point in the best interest the sign is high and I know we talked about visibility but there is no competing signs in that area, this is the only sign of this nature here so why is it in the best interest of the borough would it have to be as large as it is. Another words you can see it from the road but you don't have other competing signs there is nothing out there

Mr. Wisniewski: But we don't know what's going to go up next anywhere else, and the other thing is what is the problem with the size of the sign what is the problem that is trying to be addressed and what's the concern that this size is wrong

Mr. Dougherty: I think the board has to decide if that is in the best interest because again it is residential, the residential corridor is relatively dark you only have one street light at the intersection the traffic light itself and then much farther down you have another street light so it is basically on open area. As you go down further and get into Gloucester Township there are a lot of billboard signs, there is digital signs there is a whole bunch of stuff down there but they are all competing for your business to look at that sign here you don't have, so the question is why would you need to basically have 4 opportunities to advertise on this why would you need something that large

Mr. Wisniewski: There are really only 2 opportunities in each direction

Mayor Green: Right that is where he is getting 4 opportunities

Mr. Wisniewski: yes but it has to be large enough to see it on this kind of a highway and this is not a residential corridor, the town has said that it is not a residential corridor, the town has said this is to be commercial and professional

Mr. Shultz: The residents that live around there will not reap any benefit from the sign being there

Mr. Wisniewski: No I get that, it doesn't harm the area that is what I'm saying, but yes there are certain things you can put out there that will benefit the residents and there are others that will have nothing to help the residents that are commercial in that area. The fact of the matter is I just don't understand why the fact that there are nonconforming residents across the street in Winslow are a verity of concerns of what can go on this property when the town has already said it should be developed commercial and professional

Mayor Green: I don't understand why we need a 35 foot sign, and I don't understand why an 8 foot sign or 12 foot sign wouldn't be more appropriate for the area there is no competing signs in the area. If you

are asking us to give a conditional use for what the ordinance calls for an 8 foot sign I think you have a pretty good argument but you are asking for a 35foot sign that is very large and I don't see where that is in the best interest of the area

Mr. Dougherty: And where we are also in this area is the use of the sign there is a provision on page 4 of our letter this is under prohibited signs "No sign shall be erected or maintained on a lot, tract or parcel including any improvement thereon, unless the message on the sign directly relates to the use of said lot, tract or parcel." And I also indicated a variance, but I didn't hear any testimony in regards to that, that is a prohibited sign in our ordinance, so that is a prohibited sign and would go to a prohibited use

Mr. Wisniewski: Well that is the only reason we are here

Mr. Dougherty: that is just one fact

Mr. Wisniewski: But I'm saying we are here because it is not allowed in the zone specifically, and the ordinance only says we can have a sign on the property and that is why we are here with the application for a conditional use which we feel that this meets the conditional use criteria in your ordinance because it meets all those types of things or if the board doesn't agree with that then we have the application in for the use variance and yes we recognize and the testimony recognizes it does not meet the ordinance standards because it is not on site and it is higher than the ordinance permits and it is larger in area than the ordinance permits, so that is the bases of our application for those two things and we have gone through the testimony of why we think this sign at this location is appropriate for a conditional use

Mr. Dougherty: But you insisted that he only prohibited uses are schools and resource recovery operations but in fact the sign itself is prohibited

Mr. Wisniewski: Not by this section in the ordinance, my reading of this ordinance anything that is commercial or professional is allowed in this ordinance, 4 things specifically and then any other commercial or professional use that meets this criteria and is not a school and is not a resource recovery facility

Mr. James: so does that mean anything even if it violates another ordinance

Mr. Wisniewski: It depends on what the violation is; if it is a pornographic store no they are prohibited no you wouldn't be able to put that on there because it is not going to meet all this criteria

Mr. James: but that is what I'm saying it does violate another ordinance, I'm out of my time trying to defending it we heard your argument we heard the 2nd condition has to do with the best and you heard us talk about best for our interest we are, but we don't have a problem with the sign as long as it meets our criteria we don't have a problem with that. But to ask us to change everything I'm a little disturbed because these ordinances were put into place for a reason and I think you agree with that, and I think the conditions were put into place for a reason, okay and I think the conditions were put in place to give us choices to make a decision incase everything doesn't fit nice and neatly in the way it was set. But to come in and now say well we want to do this and this is why think you should allow us to do this regardless of what the other things you have to say and then say I think you need to this because it is in the best interest, and I just think this is a little bit absurd to be honest with you. I mean we have

quantitated that this could passively be converted along this area, there is open to the interest not to that point. It is going to be seen

Mr. Wisniewski: It is not going to be able to be read on that kind of a highway with the messages that are going to go on there.

Mr. James: Okay so you are saying our problem should be your problem, because if you have to be out of ordinance it won't be read, but why is that our problem

Mr. Wisniewski: what I'm saying is that your sign ordinance is related to a sign that identifies what is happening on the site, has a different message that is conveyed in a different way with different signs this use is for a sign to advertise items that are not on site therefore it needs to be bigger in order to fulfill its function

Mr. James: okay

Mr. Shultz: question why does it have to be 35 feet high, why does it have to be 4 different sides I think those are some of the questions people have

Mayor Green: Why can't it be one sign that's 12foot high and one on one and that's it

Mr. Wisniewski: You mean eliminate instead of having 2 sides facing one way just have one sign facing one way. I'm just saying if we take off just one 24x12 foot sign, so we have one 24x12 foot sign that faces either direction instead of two 24x12 foot signs

Mayor Green: Right, you cut it in half because there is no interest in the 2 foot by 20 foot public service sign to begin with it is just not viable for the borough to manually go out there and try to change it

Mr. Wisniewski: Okay you wouldn't have to do that you would just have to tell Mr. Aducat and he would change to whatever copy you would want.

Mayor Green: The only time we would use something like that would be in the state of emergency and in an event like that I wouldn't expect anybody out changing a sign in that weather

Mr. Wisniewski: That was when going it was going to be digital and that would be copy, this would be a sign that would be hard copy but if you had service organizations that they wanted to put their own, Rotary and Moose and whatever else and town down there something like that or if a certain organization like the Police like the police are going to have something like a PAL

Mayor Green: We appreciate that but the reality is we don't allow that because when you let one organization put something up then everybody and all of a sudden people from 5 towns over whose 3rd uncle 3 times removed has a problem and they want to do a fund raiser and they wonder why they can't advertise

Mr. Wisniewski: We don't want to increase the irritability, Let me just check with my client

Mr. Siltzer: Mr. Wisniewski there has been some board discussion I think just to clarify the issue essentially what you application is for is a billboard which is different than a sign. I think the argument

that you were making so the board understands with the sign limitations you refer to in our ordinance were specifically directed towards signs that identify things on the property, and a lot of times they are also accessory uses to a property this is a principal use this is a sign that advertises information, commercial information generally and it is generally a billboard

Mr. Wisniewski: Yes I don't think there is any, billboard it's a sign. Billboard is some people's definition of a larger sign we think it is a sign but if you want to call it a billboard we are not going to argue. Mayor as I understand as we just discussed we have two of these we will eliminate the top one, leave this one the way it is we will eliminate this reader board at the bottom same sign and there will be copy on either side.

Mayor Green: Yes

Mr. Wisniewski: That is acceptable to Mr. Aducat

Mayor Green: That is definitely more within what would be acceptable and I think would fit within the area personally, it would be much more palatable not only for the surrounding residents but for the long term impact of that area. I know I think that would not deter development

Mr. Dougherty: I do have 1 on page 4 the sign height; this is basically a definition and has to do with a facade sign which would be somewhat consistent with that lower sign. In the case of an attached sign to a building it can't be higher than the second floor sill window on a two story building so I would put that at around 15 feet so if we are going with that and I guess we would still have the 9 feet of clearance from the base of the base of the sign

Mr. Wisniewski: Yes; and we are going to landscape that area

Mr. Dougherty: so that would be 21 feet as opposed

Mayor Green: Yes; there is a big difference from 21 feet and 35 feet it may not seem that way but there is a big difference

Mr. Wisniewski: Well it is a big difference with my client we have gone a long way and we certainly appreciate that

Mayor Green: And as far as lighting goes I don't know what the final decision was on that, I mean I would like to see it dark at 10:00 at night to 6 in the morning because obviously there are residents in the area if you want to have it lit other hours than that I really don't have an objection to that

Mr. Wisniewski: Well the ordinance already determined what the proper hours are for lighting even in residential and that is up to 11:00 at night.

Mayor Green: Okay

Mr. Wisniewski: But again if the town, we would like to have it lit and if we could work with Mr. Dougherty's office on what's the best way to do it whether it is down lighting or up but if it is going to be a problem

Mayor Green: I don't necessarily have a problem with it being lit up to a certain hour, I don't know about the rest of the board

Mr. Wisniewski: Like I said the ordinance has already determined that businesses and things like this can be lit on till 11:00 if you want to do 10:00 that is acceptable

Mr. Shultz: I don't see the difference but what is the benefit between up or down lighting

Mr. Wisniewski: I don't know, we had proposed up lighting because we thought it was better to go up because then when you come down we think there is more dispersion but the ordinance says it has to be up lit

Mr. Dougherty: The ordinance is down; ours says we prohibit up lighting so it has to be down

Mayor Green: In my perspective down means you are not casting out here there is more ground waste but that would be up to our engineers that is their mission

Mr. Dougherty: The lighting on page 5 there wasn't enough detail with regards to the lighting provided and of course the prohibited up lighting you need down lighting, so the down lighting in another words it is cutoff there is a dark sky initiative so you don't have light shooting up into the air and being lost in space so a down lighting is more environmentally friendly as well from the standpoint of dark sky

Mr. Wisniewski: And that is why we went with that because that seemed to be a better standard on it to have down lighting

Mr. Dougherty: No you had up lighting

Mr. Wisniewski: Either way if you decide you want down we will do down

Mr. Luste: I have a question your primary target would be people driving, truckers whatever on Berlin Cross Keys Road because direction of the sign right

Mr. Wisniewski: Correct

Mr. Luste: Okay; probably doing a traffic survey you may know more if you did some traffic counts, when would the peak hours of traffic traveling down the highway say if you wanted to see the sign say in the winter time. What I'm getting at if there was a timer on say it could be shut off at 8 O'clock because peak traffic could be long gone and there is nobody out there. That is just a thought

Mr. Wisniewski: We think 11 is appropriate the ordinance says 11 but if you want to do 10 or something like

Mayor Green: 10 O'clock is probably, based on my knowledge of the road out there after 10 O'clock it gets pretty barren

Mr. Dougherty: I did have some additional lighting things but that would be something with the board's approval and we would work with your engineer to get the appropriate lighting standard approval

Mr. Wisniewski: So we would go with lights off at 10 O'clock and work with Mr. Dougherty's office on whether it is up lighting or down lighting

Mr. Dougherty: Did you have any other testimony?

Mr. Wisniewski: No

Mr. Dougherty: the only other thing to bring to the boards attention would be the rest of our letter which does deal with some of the landscaping and things like that on page 8; basically in the design and performance standards. Install concrete sidewalk along the frontage of the property that would be an opportunity for the borough to get some sidewalk on the other side of the street. The applicant would be able to request a waiver or have the opportunity to install the concrete sidewalk. The concrete curb is there but it is unsightly so we would ask the applicant to maintain that, to weed it initially so we can see the curb there and maintain that, I was asking for a note to that effect.

Mr. Wisniewski: Can we go back to the sidewalk for a second, you have side walk over here and having sidewalk here is not going to lead anywhere or here and the borough always has the option, yet sometime in the future if there are uses down here or uses up here that would want to connect with our area you could always do a little assessment and put in the sidewalk you always have that opportunity. It just doesn't make any sense to put in sidewalk that is not going to be used, doesn't lead anywhere. Again the borough is not cut off from having a sidewalk if and when is needed you just enact an ordinance and make an assessment

Mr. Sitzler: Excuse me I think there are some questions on the board on what you mean by assessment if you can explain that, you're talking about similarly to putting in public sewer

Mr. Wisniewski: Yes, the town has the ability to require the property owner to put in curbing, put in sidewalk run sanitary sewer and pay for the share of that. The town then either says do it and the primary does it or the town goes in and does it than it is an assessment just like a tax and the property owner has to pay it as an assessment along with their taxes.

Mr. Dougherty: Our ordinance doesn't provide for that

Mr. Wisniewski: A municipality always has that option per the state statute if it is not an ordinance it's a state statute that gives the municipality the ability to assess for sidewalks, curbs and depending on if they have a sewer authority it could be the municipality or the authority, but it is not an ordinance issue. They would adopt an ordinance to do the assessment if and when one is needed

Mr. Dougherty: Right but at this time it probably doesn't have it, so I'm familiar where towns have a curb assessment ordinance where is the borough doesn't put in curb then they either assess property owners and it goes into the tax bill but that is an actual ordinance and we don't have that at least with our board at the moment. And generally when an applicant comes before the board for a site plan or sub division actually we are able to request that the improvements be made. We haven't historically gone out an assessed people an installed sidewalk in front of their home unless it was part of the site plan

Mr. Wisniewski: I understand that I'm just saying when you are doing the site plans and subdivisions the sidewalks serve a purpose and they are used here these sidewalks are not going to serve any purpose

and all I'm saying is if and when it is desirable to have sidewalks that connect something down here with this or something down here with this the borough has the option to have those sidewalks installed at the property owners expense, no you never enact that ordinance until you are ready to have the sidewalk put in and the curb is right here so we are not talking about that, but this stuff always has that option at any time to charge to have a sidewalk put in. I'm just saying why put something in that is useless

Mr. Dougherty: That would be up to the board as to whether or not sidewalk was to be put in

Mr. James: Would you accept a condition that when the adjoining properties put a sidewalk in you would put one in as a condition, you wouldn't have to do it till that happened

Mr. Sitzler: His request Mr. Wisniewski is in the event a developer came in and put in a large project and was putting in sidewalks right up to your property line would then be agreeable to connect the sidewalk on whichever side

Mr. Wisniewski: Yes; if the adjoining properties are developed and they put in sidewalks we can put a condition here that this property would then put in sidewalks to connect between the intersection and the sidewalk

Mr. Sitzler: Then you would have the sidewalk that is the question

Mr. Wisniewski: That is fine

Mayor Green: We can do that that works

Mr. Sitzler: Rather than a waiver a future condition

Mr. Dougherty: The other one was on shade trees that is a condition of the ordinance, the applicant is asking for a waiver for that and I did hear testimony on that but of course

Mr. Wisniewski: you really don't need shade trees along here; you're going to have all of this with trees on there on that basis. It is not going to be a vacant site it is going to be loaded with trees and just moving a few trees doesn't make sense for this location at this point

Mr. Dougherty: It was along the front so you would have that street scape look as you travel down Cross Keys Road or Turnerville Road so the applicant is seeking a waiver on that. That was just on additional trees you take some down and you have to put some back about 40ft on center so if that had been more than seen fit to waive that that could be waived. And I was just looking for a note on the plan that a wooded snow fence would be installed to protect the trees that remain in that area that were not to be cleared they would be protected by a wooded

Mr. Wisniewski: You mean during construction

Mr. Dougherty: Yes

Mr. Wisniewski: Yes we would mark the construction line or the removal line and set it off with a fence and once everything is done and up we would remove that fence that is fine.

Mr. Dougherty: I just have as a minor note a landscape schedule on the plan is something to be corrected; we are also looking for what is called a tree compensation plan because you were taking down a number of trees that are 5in or greater that they would be replanted and I can understand that when you are clearing trees I don't know if you would be able to; basically what they are looking for is a tree compensation plan to relocate those trees on site.

Mr. Wisniewski: We did give you the number of trees that are over 5 something

Mr. Miller: 5in or greater

Mr. Wisniewski: Yes we have a plan that shows that and that is on page 2 of 3 at the top it's about 32 trees, and we in order to address that we have landscaped the heck out of this property see our landscaping plan we thought that was submissive because of the massive amount of trees behind us we thought that just putting in the low growing landscaping and you can see it is pretty heavy if you look at sheet two about the middle of the landscape plan there is a lot of landscaping and we thought we would spend our money on that rather than putting in trees and trees no sense in making the forest any thicker than it is now.

Mr. Dougherty: so then if the board would choose to have a waiver of the additional compensation in other words the landscaping that is proposed is basically making up for the compensation so if the board see fit for that than that would be the board's decision to waive that. The other thing was lighting but I believe the applicant agreed to work with our office on that so I think that basically is finishing everything up I don't think there is anything else. Mr. Luste is there anything you took acceptance too in the letter?

Mr. Luste: No nothing that hasn't been discussed

Mr. Wisniewski: I think we have going through the site plan so the decision could probable discuss both the site plan and the use, unless you want any more testimony on the site plan but I think we have covered that

Mr. Dougherty: There is nothing else site plan related unless there would be some specific things but I think the applicant has addressed our site plan conditions very well

Mr. Sitzler: Does anyone have any questions?

Mr. Shultz: Who is going to be maintaining the landscaping you are going to be putting in

Mr. Wisniewski: We are, WA Advertising

Mr. Sitzler: Does anyone else have any questions

Mr. James: If no more questions I would like to open the floor to the public

Mr. Sitzler: If there is anyone in the public that would like to come forward to give comments or testimony concerning this application. Anyone

Mr. James: Is there a motion to close the floor to the public:

Mr. Shultz: Motion seconded by Mayor Green

Mr. James: All in favor? All "aye" Motion Carried, The floor is closed to the public

Mr. Sitzler: Anything else Mr. Wisniewski?

Mr. Wisniewski: No I would just say with in accordance with what was discussed with the Mayor and the rest of the board the sign would be lowered to 21 feet instead of 35 feet

Mr. Sitzler: And the area would be 12 X 24

Mr. Wisniewski: Yes 12 X 24 which is 576 square feet with 288 per side and we eliminate the lower 2 foot X 20 Foot sign

Mr. Sitzler: Alright the applicant is before the board for a conditional use application and the application that was heard is properly jurisdictional to be heard by the planning board it is a hybrid. The Municipal land use law says if it were a zoning ordinance it would require the conditional use be heard by the Planning board according to the definite specifications of the standards which would be noticed set forth as sufficient certification to let the developers to know the limited extent a planning board should render the application for conditional use 45 days from submission once they have an application by a developer to administrative law is limited since advised where we can send it to by the applicant. That is the Municipal Land Use Law, as I've indicated we are pointing out legal issues and case law to the rights of individuals to do this in New Jersey. What I have just relayed this is from Statuary goal 55a-67a-b we do not define in our ordinance what a conditional use is and when you don't define in the ordinance then the State Statute of the municipal land use law definition, we couldn't have a definition if we did it would be different anyway and since we don't have one the definition I just read would be the one that is applicable to our ordinance. The standard of proof that the board has as Mr. Wisniewski has pointed out in his remarks is a much lower standard than a use variance and that is it is a hybrid of sorts where we may not need a 5 vote for a use variance and the standard of proof is low that is required here. The applicant provided the standard of proof so a simple majority of the board would be sufficient to grant the conditional use of this particular property. Is there anything that I said that you disagree with Mr. Wisniewski?

Mr. Wisniewski: 7

Mr. Sitzler: The applicant has made a condition to presenting the testimony that they made some substantial changes to the original application and they agreed to lower and are not exceeding any longer a significant to C variance to the fate of this particular sign and agreed to reduce to 21 feet which is still in excess that requires a C variance so we still have to determine if we want to grant a C variance for this conditional 21ft sign rather than what was originally proposed 35ft, they will be a double sided 12 X 24 in area which equals 576 square feet and they and they agreed at the boroughs request to eliminate the bottom sign the 2 X 20 lower. The sign would be 9 feet. You did state 9 feet from the ground is that correct Mr. Wisniewski?

Mr. Wisniewski: Yes

Mr. Sitzler: Despite the other changes that would remain the same

Mr. Wisniewski: Yes

Mr. Sitzler: You have heard the testimony from both the engineers as far as the traffic why they have agreed to put the sign back 25 feet which is farther back than out minimum law requires. Of the safety issues of what the ordinance talks about he feels that that would be an appropriate spot from where that would be both have visibility for its purpose and also provide safety to traveling motorist traveling down the roadway as they pass the sign. The applicant did offer to provide sign lighting and the current proposal before the board is now that they would work with our board engineer professionals and light consultants to come up with a light plan and that the lighting would end at; did you say 10 O'clock

Mr. Wisniewski: 10 O'clock

Mr. Sitzler: Alright the sign would be lit till 10 pm. The maintenance of the sign of the sign will be the responsibility of the owner or a prospective buyer, contingent buyer that would set up. The basic terms of our ordinance says that a conditional use may be permitted by the planning board as long as they meet these 4 requirements by preponderance of the evidence you heard that read for the record I will do that one more time "will not injure or detract from the use of the neighboring property or detract from the character of the neighboring property, (2) that the property is suited for the intended use and which will serve the best interest of the borough, (3) The use will not affect public sewer level utilities such as water, police and fire services and will not adversely affect drainage in adjacent neighborhoods and then the use will not affect the flow of traffic and that adequate roadways are present." The applicant has through their testimony of the various witnesses indicated that they believe they have met those 4 standards. Then as far as a sidewalk waiver rather than waiving the sidewalk the applicant consent to would be that the applicant would agree to provide sidewalks and match up to any future projects by an adjacent neighbor that has sidewalks that they would conform and agree that at some point in the future that would occur to provide sidewalk on that side from the adjoining neighbor to as was represented to connect up so there would be a walking place to go for the length of the neighboring parcel as well as this parcel. Is there anything else Mr. Wisniewski?

Mr. Wisniewski: I think we had a waiver of street trees because of the compensating landscaping

Mr. Sitzler: Yes and the waiver of compensated provided your grade of trees which was 32 trees, not to replace them one for one but the landscaping plan will provide a verity of shrubs and landscaping materials are such that it would be as equally attractive plan and would be sufficient enough rather than replace whole trees, the reason for that is probably pretty obvious you would end up with trees taller than the sign. Anyone can say a tree will only get so big, but some varieties get larger than one expects.

Mr. Wisniewski: And we agreed to put a note on the plan that we will mark the tree line with fencing during construction and that we will put that on the plan

Mr. Sitzler: Yes and that the landscaping will be maintained by you

Mr. Wisniewski: Yes maintained by the applicant

Mr. Dougherty: The other thing was the sign would be removed if the site was developed for something else that was discussed during testimony

Mr. Sitzler: Yes way back in the beginning

Mr. Wisniewski: That is acceptable

Mr. Sitzler: Okay then the one more condition would be that site that is this property would have a future development of some significance including perhaps a building as was represented in the building envelope the primary here has agreed that the sign would be removed as not to impede a more intense commercial use

Mr. Dougherty: The other thing that I had and I didn't know if committed to was free advertising for 30 days for borough businesses

Mr. Wisniewski: I thought that was rejected

Mr. Sitzler: That is something we are not requiring, unless the board has any questions that would be a subject of a motion to approve or abort whatever the board feels appropriate

Mr. Waddington: Do we need an approval for the waiver for the shade trees along the outside

Mr. Sitzler: Well the condition is that the landscaping would replace the shade tree

Mr. Waddington: I didn't know if they were the same of separate

Mr. James: Is there a motion?

Mayor Green: Motion to approve the conditional use variances and requirements as listed by the attorney

Mr. Dougherty: But in addition to that would be a site plan as well

Mr. Wisniewski: So I think it is a conditional use, which is not a variance. So a conditional use approval of the variances for height and size and approve preliminary and final site plan subject to all conditions that have just be announced

Mayor Green: Motion for the conditional use, approve the two C variances for height and area and to approve the preliminary and final site plans subject to the approval which were read upon the record

Mr. Shultz: Second

Mr. James: Roll Call; all "aye" Motion carried

Mr. Wisniewski: Thank you very much and thank you for coming here sick (Mrs. Ciotto)

Mr. Sitzler: Congratulations

Mr. Wisniewski: Thanks again that's for all your help and support

Old Business:

Mr. James: There is no old business

New Business:

Mr. James: The next meeting will be October 13th, 7:30 pm

Open Meeting to the Public:

Mr. James: This meeting is now open the floor to the public **(no public)**

Mr. Waddington: Seeing non make a motion to close

Mr. James: all in favor of closing the floor to the public? All "aye"

Motion to Adjourn:

Mr. Shultz: Motion to Adjourn

Mr. Ford: Second

Mr. James: All in favor all "aye"