

**MINUTES OF REGULAR MEETING OF THE  
JACKSON TOWNSHIP BOARD OF ADJUSTMENT MARCH 4, 2020**

The March 4, 2020 Jackson Township Board of Adjustment Meeting was called to order at 6:59 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement and announced that adequate notice has been provided for this meeting.

**ROLL CALL:**

Peter Maher	Scott Najarian
Garry Miller	Stephen Costanzo, Board Vice Chairman
James Hurley	Carl Book, Board Chairman
Jeanine Fritch - Alt #1	
Nino Borrelli – Alt #2	

**Absent:** *Kathryn McIlhinney, Board Secretary*

**Also Present:** Sean Gertner, Board Attorney, Evan Hill, Board Engineer, Ernie Peters, Board Planner, Frank Miskovich, Traffic Engineer, Jeffrey Purpuro, Zoning Officer, Torro Representative, Court Reporter and Danielle Sinowitz, Zoning Board Recording Secretary.

**RESOLUTIONS: Resolution 2020-10: Phil's Tree Service/ Phil Lewis, Block 23108, Lot 5, 539 Vath Street-** Withdrawing the variance request to operate a tree service business where such a business is not permitted **Motion to approve by NAJARIAN/ Costanzo. Yes:** Maher, Najarian, Miller, Hurley, Fritch, Costanzo, Book.

**Resolution 2020-11: Leeder, Block 7801, Lot 9, 36 Villanova Drive-** approval of a variance to construct a detached storage structure **Motion to approve by NAJARIAN/ Fritch Yes:** Maher, Najarian, Miller, Fritch, Costanzo, Book.

**APPROVAL OF MINUTES: Approval of February 19, 2020 Meeting Minutes by MAHER/ Costanzo Yes:** Maher, Miller, Fritch, Borrelli, Costanzo, Book.

**APPROVAL OF VOUCHERS: Motion to approve a voucher for Torro Reporting, LLC in the amount of \$250.00 for March 4, 2020 & a voucher for Danielle Sinowitz in the amount of \$150.00 for the meeting of March 4, 2020 by NAJARIAN/ Miller. Yes:** Maher, Najarian, Miller, Hurley, Fritch, Costanzo, Book.

*Ms. DeBella swore in the Board's Professionals, who identified themselves and their positions with the Township.*

**ANNOUNCEMENTS:** Mr. Book announced there are two matters that are going to be addressed, one being number **3. Joseph Sebbag, Block 1360, Lot 9 & 10, Clearstream and N. Hope Chapel** on the agenda, and that application is going to be carried until March 18, 2020. Mr. Gertner announced that matter is carried, and that is because the conflict attorney is not available for this meeting. Mr. Book continued onto item 4. **Kennedy Ventures LLC, Block 11404, Lot 82, Willy's Lane**, and announced the variance is being withdrawn. Mr. Gertner noted a submittal was submitted by the attorney for that applicant, and the application is being withdraw without prejudice, as there is no motion for approval, and a resolution will be approved to affirm the application has been withdraw without prejudice, which the applicant does have the right withdraw, and the application number **3. Joseph Sebbag, Block 1360, Lot 9 & 10, Clearstream and N. Hope Chapel** for the subdivision, that matter is being carried to the March 18, 2020 meeting without further notice.

**APPLICATIONS: 1. Michael Hannemann, Block 3601, Lot 146, 55 Anita Drive- Michael Hannemann- home owner- sworn-** Mr. Book asked Mr. Purpuro, to explain before testimony begins the concept in the refusal for the permit that references "lot of record". Mr. Purpuro stated there are numerous lots in town that are zoned R-3, which means there has to be 3 acres minimum to do improvements such as what is before the Board, and when there are R-3 zones less than 3 acres there are protections in place where there needs to be at least 1 acre, which is why the application is here for the variance. Mr. Hurley noted that section 142 seems to apply to the R-1 zone. Mr. Purpuro stated this was once an R-1 zone. Mr. Peters mentioned there are 2 pieces of information, one being that in 2004 the governing body made wholesale changes to the developments in town regarding the minimum 1 acre lot sizes, there are occasional existing lots, and when the survey is viewed, when this map was filed in 1985 it was a conforming lot, it would have become an R-1 zoned property up until 2004 when the property was re zoned to the R-3 zone, at some point in time when someone sub divided these lots, it became conforming. Mr. Book asked when looking at page 244-168 in the Jackson Code, it provides the details for requirements for an R-1 district, does this application have to conform to the lot minimum to an R-1 district. Mr. Peters stated that was correct. Mr. Book noted it's giving the applicant an easier standard to comply in an R-1 zone. Mr. Book also mentioned that submitted with the application there was a survey, and it is not too certified to the applicant. Mr. Hannemann said this was the survey provided in October of 2019. Mr. Gertner stated the only thing on the survey from 2015 was what appears to be a 2 story framed building. Mr. Book stated the applicant is asking the Board to look at a 2015 survey provided to the previous owners, and none of what is purposed is drawn to tell the Board what is being purposed in order to consider the relief that should be granted. Mr. Hannemann said there was a previous application, and the survey was provided before the pool was put in, and the updated survey was provided to show the pool. Mr. Hill stated to be clear, the applicant is not here for dimensional relief or setbacks, the building is being done within the envelope, and the applicant is only here because his lot is not one acre. Mr. Book asked what is being sought. Mr. Hannemann said his wife is pregnant, and he has a young boy, and they would like a family room for the boys to have room to play. Mr. Hurley asked if the applicant was just proposing to close the deck in. Mr. Hill asked if the deck be off the rear. Mr. Hannemann said it will be to the right of the addition, and will be 2' off the side of the house. Mr. Hill mentioned that if the Board looks at the box that is on the back of the house, it shows the addition and the deck combined, and it shows the deck and the addition, which will stick off the side of the house 2'. Mr. Costanzo asked if this is one story addition. Mr. Hannemann said that is correct it will be a one story family room, no bathrooms, just an open room. Ms. Fritch asked if this property had well and septic. Mr. Hannemann said the septic is in the front yard, and the well is between the pool and the addition. Mr. Book noted the shed in the conservation easement. Mr. Hannemann said it's been there since before he purchased the home, and the building department advised not to touch it to leave it as is. Mr. Book stated as it related to the application there are no further questions.

*Opened public comment; seeing no one come forward, public comment is closed*

**Motion to approve by NAJARIAN/ Hurley. Yes:** Maher, Najarian, Miller, Hurley, Fritch, Costanzo, Book.

**2. Royal Grove Realty, Block 16005, Lot 36, Knight Drive- Michael Castore- Attorney for the applicant-** stated this application before the Board is seeking an interpretation of chapter 244-175-c related to “yard areas”, and information that was requested by the Board has been brought back, and Mr. Ian Borden is present to provide the information found.

**Ian Borden- Professional Design Services- sworn-** stated this application was tasked with 2 items of homework, 1 was the definition of “terrace” and “deck” which are not contained in the land use code, and public sources were provided, and a planning document was suggested, and that was provided in a letter dated February 28, 2020 with the definition of terrace which referenced the term patio and the interpretation of deck, and in the second page it was noted that those definitions support the argument, the deck or terrace would be raised and open and at an elevation less than the floor level, and there was a definite that was mentioned that describes the definition to be no more than 3’ with grade, which means the height of the deck or terrace would not be more than 3’ above the finished grade. Mr. Gertner asked if that means that no post holding a deck or patio can exceed 3’. Mr. Castore stated that is correct. Mr. Gertner asked if that also means that no one can stand underneath. Mr. Borden stated that was also correct, and mentioned that the second item was for an illustration to be provided as to where this may be used, and there was illustrations provided to show where there are decks that do not go past where it should, and what is shown is the decks that are currently existing and what could be constructed should the interpretation be approved which shows the encroachment that cannot be more than 100SF, and these 3 existing decks that are shown have an area of 170-200SF with a depth of 7-10’ and the interpretation would enable each deck to extent at least 5’ which would be in the encroachment of 30’, and would allow the 7-10’ deck to be 11-15’. Mr. Purpuro asked if this is **Exhibit A-1**. Mr. Gertner mentioned that it can be marked. Mr. Book asked what other information is available that would offer some history or some lamination of the drafters intent when this was together. Mr. Castore presented **Exhibit A-2**, an OPRA request that was submitted for several items such as minutes, ordinances, resolutions, and permits that related to “decks”, and there were no other instances, and there were no ordinances or resolutions which indicates that how the code introduced was, and there are over 1700 permits for “decks” that were issued in Jackson Township. Mr. Book explained he was trying to understand where in the ordinance the context is provided. Mr. Borden stated section 10 is previously related to the Planning Board, and as Mr. Castore said the original section has not been modified, and they are referenced that are always looked at. Mr. Castore stated that of the 1700 permits provided, terraces were not mentioned once, and terraces are already being interpreted as decks already, and decks have already been interpreted as terraces. Mr. Costanzo asked regarding the February 28th letter to be gone through again, and asked how terrace and decks is being in simulated. Mr. Borden stated the point is the definitions are meant to show a terrace could be considered a deck, and the term deck under the mosaics definition in particular the terrace is described as an embankment which is speaking about a deck. Mr. Costanzo asked if columns are to define the term “deck”. Mr. Borden stated that is correct. Mr. Costanzo asked if the thought process is that there is good detail provided under terrace and it loosens up to patio, and a deck is allowed to be 3’ above grade and a terrace talks about space filled in. Mr. Gertner stated in terms of this interpretation the applicant is willing to define that interpretation so that a deck, terrace, or patio not more than 3’ above the grade level, would be the definition that would be agreed too, and there are times where legislation is put together, and that is not defined, and in the code “terrace” is used once or twice, and deck has over 100 permits, so it’s already being interpretation, and because these terms are being used by the code officials and it’s not specifically defined in the code, this applicant is asking the Board to interchangeably use the word “deck” or “terrace” and define at least the term terrace in this code section as an open structure not more than 3’ above grade. Mr. Castore agreed that information is correct. Mr. Gertner stated the applicant is asking for the Board to define the term terrace and deck above 3’ of the grade. Mr. Maher asked if these dwelling were smaller, would this application still come before the Board, and asked why this can’t be done case by case. Mr. Castore stated the applicant is asking this Board to make an interpretation which cannot be refused, this application either needs to be interpreted or denied. Mr. Purpuro asked should this get approved, will the Township still be referring to the deck being attached to the house. Mr. Borden mentioned that there are towns that will tell an applicant what it is weather attached or not. Mr. Purpuro noted it would be a structure if it was not attached to the house, it would be an accessory structure and there is a 10’ off the house. Mr. Peters stated that from a planning perspective the interpretation comes from a denial that was received by the client. Mr. Borden mentioned there was no denial, the client is simply asking for an interpretation. Mr. Peters stated he has been involved in the Township side, and the word “deck” has been used since the beginning of time, and it comes before the Board and weather that is an error, someone at some point in time started calling structures “decks” without understanding the ordinance, the town has been reconciling decks, and frankly a deck has never been called a terrace, and at the last meeting it was asked for other sources aside from the dictionary, and there is no exception taken to Mr. Borden’s letter that was received, because in plain reading all 3 definitions can be read the same, however the code lists definitions and tells us what they are, and if they are no definitions, it’s because the terms are not defined, and the Board is required to interpret based upon the application submitted, and the general knowledge, and the decision is among the Board. There’s an application made by an applicant, and the Board has to make some sort of decision. Mr. Gertner stated should the Board be inclined to interpret the particular section in some matter that does not mean that the municipality can’t review the interpretation, and as it pertains to the permit issues, those permits would be grandfathered in, however it doesn’t mean forever, and whatever the Board does this evening it will be assured the governing body. Mr. Castore stated this is a 10x10 area that can encroach, it can be asked for council to add, remove or agree, and that is for them to say, but this application is asking for this Board to interpret what is existing, and what happens to the decks that are existing. Ms. Fritch asked why terrace needs to be included at all, these are existing decks and it’s on a permitted deck expansion. Mr. Borden advised that the ordinance contains the word “terrace”, and the word deck doesn’t appear at all. Ms. Fritch asked if the 3 homes mentioned have existing decks, and if the homes are occupied. Mr. Borden said yes. Ms. Fritch asked why those residents aren’t here asking for deck expansions. Mr. Borden stated these pictures were provided for visual purposes only, they are not specific for this application. Mr. Miller disagreed, and mentioned it was stated that a terrace was filled in, which decks are not. Mr. Borden stated there is no definitions aside from the one that states that information. Ms. Fritch asked how many homes this interpretation would apply to. Mr. Castore stated this application is not for any specific number of homes. Mr. Purpuro noted this applies to the entire Township. Ms. Fritch asked if someone who has an existing deck just expand, without a permit if this is approved. Mr. Purpuro stated a new permit will need to be obtained, however there will be no variance obtained. Mr. Castore stated the interpretation will eliminate the need for a variance.

*Opened public comment;*

*Mr. Gertner reminded the Board that with an interpretation there is no requirement to open to the public.*

**Jim Bezanson- 12 Melissa Lee Drive- sworn-** said when an applicant puts a large house on a small to which is based on zoning, they create their own hardship when doing that, and if the knowingly create hardship and are looking for relief on something they created, there are going to be high density projects, and it’s going to be a can of worms, this is going to developed into other issues.

Mr. Castore disagreed with the comment, because this is in the ordinance, and the applicant is asking the Board to apply standards that have not been applied before.

*Closed public comment;*

Mr. Costanzo understands the subject, however there have been many applications for a deck, and there has been no proper definition, and there has been approvals based on a raised wooden platform within this town and that being said a terrace, patio, or porch is a structure to be seen at grade made from pavers, which would also follow Mosco's definition to terrace, and an interpretation is being asked on how to apply this, and the Board is being asked to put something down that everyone can live with. It is hopeful that the town will put meat to the bone of the individual items, because it's clearly needed and it's assumed a deck is a wooden structure above grade. Mr. Maher added that although the 10x10 is not a lot of space, there is concern that this will be for the whole town, and when there is the need to increase the size, it should be on a case by case basis. Mr. Costanzo stated unfortunately the Board has to get over that and address the issue at hand. Mr. Maher noted it's hard to see how this will be 3' off the ground. Mr. Costanzo advised it's not just the area, it's the concept, and there is no anticipation that a terrace will be 3' off the ground. Mr. Miller stated the Board will be creating an interpretation for one development when it should be on a case by case basis, and Royal Grove shouldn't make the stand for the entire town, and a terrace is at ground level of some sort with concrete or patio block, and has is open underneath. Mr. Costanzo stated the applicant is asking for a difficult task, which is to ask that a deck and terrace be one in the same. Mr. Gertner agreed with the global point which is that the Board is called upon to interpret the ordinance as it is, and the Board could determine what a deck is by usage, and there is a meaning for terrace, and that's an interpretation for the Board to make. Mr. Costanzo asked if this Board can place definition. Mr. Gertner stated that is the task at hand, and anyone who would be asking for 100SF encroachment can't be more than 3' above grade without a variance. Ms. Fritch noted that porch was mentioned, and asked if it can be covered. Mr. Castore stated a porch can be covered according to the ordinance. Mr. Gertner stated the only way a homeowner can encroach is if the deck is UN covered. Mr. Book stated the applicant is seeking an interpretation and the words used are un covered rear deck, and terrace and it's assumed that the definition for porches and deck is to be defined, and deck is not defined, and the applicant provided additional definitions of the terms, and it's important to know the applicant did not find the term patio which is found in the ordinance, and there is a difference in the definition from terrace and deck and the actual purposed structures and those terms are not reconciled. Mr. Book asked if all these synonyms are the same as long as they are un covered, because with the lack of definition and the lack of meaning in the definition of the ordinance, can the Board determine the intent of the ordinance based on the text, this Board is not policy makers, and there are consequences, and what is being sought should not be granted, the governing body should define this. Mr. Costanzo agreed with the chairman along with the Board's conversation. Mr. Costanzo made a motion to deny the application.

**Motion to deny by COSTANZO/ Fritch. Yes:** Maher, Miller, Fritch, Borrelli, Costanzo, Book.

*Recess taken at 8:26 p.m. reconvened by Mr. Book at 8:36 p.m.*

**3. Whalepond Development, Block 7301, Lot 10, 741 Brewers Bridge Road- Adam Pfeffer- attorney for the applicant-** stated the lot is on the corner of County Line and Brewer Bridge Road, and mentioned that the signs are existing, and advised the Board that the applicant is here to ask for new signs, along with fixtures to the existing signs to damage. Mr. Pfeffer mentioned that when the initial sign package was submitted it was denied as there was no variance received for the signs, and there for two signs, one that fronts on County Line Road, which is shown in **Exhibit A-1** which was included in the original package. Page one is the sign that fronts on County Line Road and on the bottom left it talks about the sign being 155SF and that is incorrect, Mr. Pfeffer stated the sign is 13x12 which is 156SF, and there is the notation of the new sign, and the size will not change, and the height and area will stay the same, and the existing steel tubes will also remain and the sign will just be repaired and updated, and the other sign on page 2 is the sign that is along Brewers Bridge Road, and that again shows 30.6SF which is incorrect, the sign is actually 40SF and the size of the sign is not changing, nor is the footing, and the sign will be no different, it will be new and un broken. Mr. Costanzo asked if the sign will be lit. Mr. Pfeffer advised there will be the normal back lighting. Mr. Costanzo asked if the signs are currently lit. Mr. Pfeffer stated that is correct, and mentioned that Mr. Peters letter was received and will be addressed, and noted that a site plan was not provided and that is correct, because the applicant is looking to have that exempt as nothing will change to the overall site of the property, and the signs are old and have been damaged in a recent storm, and the signs will remain the same, there were comments to landscape which the applicant will comply to the ordinance requirements, and as far as a comment on page 3, the only issue is regarding the logo, and it will remain uniform, and the colors would have to be in conformance, however the style would be eliminated, and the reason for that is the existing signage and it must have been granted at one point and it is there and the applicant is trying to fix it, and the height on County Line Road does help, and the shopping center is set back , and if the Board wants additional testimony the owner is present. Mr. Costanzo asked what the light timing is for the signs. Mr. Pfeffer stated the lights kick on when it's dark outside.

**Jim Ambrose- Allied signs- sign expert- sworn-** Mr. Pfeffer asked Mr. Ambrose if he has presented before Boards like this before. Mr. Ambrose stated he has, and mentioned there is one thing that the owner and he could agree on which would be the upgrades needed to make the sign more effective which is by putting the tenant on panes that are more legible, by taking away useless space, the building has a big pointed roof, so the top was squared off so the tenants are more visibly placed, and that is the only thing that was changed and that is why this is so important. Mr. Gertner stated after hearing Mr. Pfeffer's representation, he asked if Mr. Ambrose agrees as a sign expert. Mr. Ambrose said that was correct, and regarding the lighting question, this sign is so old that there are florescent lamps and they have been blown away, and what's state of the art is LED lights, and the electric bill is lesser and the sign is lit better and it's better for the environment. Mr. Costanzo asked if the lumes would be similar to fluorescent lighting. Mr. Ambrose stated it wouldn't be brighter, the material is different, and it's UN breakable plastic. Mr. Book asked if it will be uniform colors. Mr. Ambrose said that is correct, and it will be uniform lighting. Mr. Hurley asked if the lighting will shut off automatically at night, or at a certain time. Mr. Ambrose stated the lighting will comply with the Township ordinance, however it would be desired to keep the lights on until midnight. Mr. Hill noted it is usual purposed that if there is capability that at 11 p.m. the lights go out. Mr. Gertner asked if there are tenants in the plaza after 11 p.m. Mr. Pfeffer stated the reason the applicant is asking for a midnight shutoff is because there is one supermarket in the plaza that is open until 11 p.m., and employees need to leave to go home. Mr. Gertner asked if there are residential areas surrounding the plaza. Mr. Pfeffer stated the one sign fronts on County Line Road and is 200' from the building, and there are apartments that are also setback. Mr. Hurley mentioned that if the shops are closed at 11 p.m. and the sign is continually lit, it would notify the driving public that the store is still open, and if it's lit for the employees to leave, the parking lot would take care of that. Mr. Ambrose stated there are many reasons to keep a sign lit as long as possible, one being because it lets people know even when it's closed the next day, and it's uncommon that someone may think it's open, someone would typically drive by and return the following day. Mr. Hurley stated the benefit as a part of the application is

that lettering will be separate and will be larger for each tenants, and it makes it easier for the driving public. Mr. Peters noted that section 244-207-a11 reads no sign shall be illuminated when a business is not open to the public or open for business unless it's for safety, and it should go off when the business is closed. Mr. Pfeffer stated the applicant is fine with an 11 p.m. shut off. Mr. Book asked if the last business will be closed at 11 p.m., and if that is the case the lights should go off. Mr. Najarian asked if the applicant is keeping the signs the same, so relief isn't being sought for the height of the signs, they will just be updated. Mr. Pfeffer stated the signs will be made better, the only difference is the square footage that was off. Mr. Hill stated the applicant is requesting a waiver, and understand rehabbing the sign however there is no indication of the dimension of the right of way, and if the Board votes favorably, during resolution compliance, it should be confirmed for the right of way on both sides, and depict the landscaping purposed at the base of the monument sign on both sides and assuming no additional variances are required for right of way, and if a variance is required it can be deliberated tonight. Mr. Costanzo asked if the shrubs be in the way of sight. Mr. Pfeffer stated it's in the ordinance to have landscaping around the pole, however it will be low shrubbery.

*Opened public comment; seeing no one come forward, public comment is closed*

Mr. Pfeffer stated the applicant is trying to make this better, and asks the Board vote in favor of this application. Mr. Najarian made a motion to approve with lights being shut off at 11 p.m. Mr. Gertner added it should be 11 p.m. or as provided in the ordinance, and should something change with business hours, the ordinance would permit the lights to stay on. Mr. Najarian continued his motion to approve with the lighting to follow the ordinance, and the lighting and landscape description to be provided.

**Motion to approve by NAJARIAN/ Hurley. Yes:** Maher, Najarian, Miller, Hurley, Fritch, Costanzo, Book.

**4. Justin Laczynski, Block 22401, Lot 7-12, 510 Whitesville Road-** Mr. Gertner stated this application is for an interpretation, and there was notice provided for a variance. **Adam Pfeffer- attorney for the applicant-** stated that was correct. Mr. Hurley asked what variances were noticed. Mr. Pfeffer cited the notice that was made to the public. Mr. Hurley noted that the PM-1 zone does not allow more than one use on the same lot, and asked if that notice was sufficient for purpose of that notice. Mr. Gertner stated that traditionally it has been articulated, if there is notice issue, the applicant proceeds at their own risk. Mr. Pfeffer mentioned if there was no notice only the interpretation can be spoken on. Mr. Hurley cited the ordinance as it pertains to this zone. Mr. Pfeffer asked Mr. Borden to please walk the Board through the ordinance and the application. **Mr. Ian Borden-still under oath-** presented 2 exhibits, the 1st being the ariel of the site, which was marked site aerial photograph **Exhibit A-1**, and **Exhibit A-2** is the surrounding ariel map which shows the area within the pm-zone and the third sheet is the survey map that was submitted. Mr. Borden stated that the property is located on the west side of Whitesville Road, and the property contains 6.1 acres and the property is occupied by a dwelling and 3 barn buildings, and the site is proposing a contractors office and shop for elite paving, which was located on Faraday Avenue. The site would operate from 6:30 a.m.-7 p.m. Monday through Saturday, and the business would have a matching number of employees and there are currently 6 trucks, paving machines, rollers, bacos, skid streamers, and there is no manufacturing. Storage will be done onsite, and the entire left side of Whitesville Road to South Hope Chapel is in PM-1 zone and on the east side is the "I" zone. Mr. Borden cited all the permitted uses in the PM-1 zone, and noted item 11 in the permitted uses is what will help make this case. Mr. Borden stated the ordinance also permits accessory uses, and dwelling units are permitted if tied to the business, which in this case the dwelling is used as an office for Elite paving and for an employee who is a custodian on the site. A warehouse and office are purposed within the existing structure, and the office will be in the dwelling, and there will be maintenance and repairs for this use only not for a separate business or client, and there is no asphalt production on site, or hazard or fire explosion, and the applicant is not purposing any outside storage, with the exception of the recycled concrete which will be used in the business. Mr. Borden mentioned that nothing will be for sale, and there will be no retail or wholesale sales taking place. Mr. Miller asked if there will be waste material. Mr. Borden stated there will be however it will not store on this site, Earle asphalt will get those left overs. Mr. Najarian mentioned that there will be asphalt on the trucks, and asked what will prevent that that excess asphalt from falling off the trucks. Mr. Borden stated empty trucks will be returning to the site, and they have to be empty based on what is purposed, and no storage will be within 100' of any street, and equipment may not be parked close to the front property line Mr. Borden mentioned that adjacent to the north as shown on **Exhibit A-2**, that is a site plan on lot 6, which are the same uses as purposed that are contractor, and warehouse, and this is relevant because an interpretation was received for those uses, and the uses proposed are consistent with the adjacent site by this Board with resolution 2017-20, and there was site plan approval from the Planning Board. Mr. Pfeffer the interpretation comes to the zoning board, and once it's found to be permitted it would go to the Planning Board. Mr. Gertner asked that Resolution be read into the record. Mr. Borden read the resolution into the records and mark the document as **Exhibit A-4**. Mr. Borden noted that beyond the interpretation that is next store some uses were reviewed to compare to what is being proposed. Mr. Gertner asked what portion of the 2017 resolution supports the interpretation. Mr. Borden noted the office, shop, and warehouse is permitted. Mr. Gertner asked what one has to do with the other according to the resolution. Mr. Borden stated the use is focused. Mr. Pfeffer added that while the applicant has an asphalt paving business, no operations will be conducted onsite. Mr. Borden said that was correct, and added that the operation of the site is that employees would arrive, get into a company vehicle, load up and leave for the day and return at the end of the day. Mr. Pfeffer asked if that is the comparison, as that was a contractor yard. Mr. Borden agreed. Mr. Book stated the applicant is calling this an asphalt/ paving business, but the question is with regards to the nature of the trucks and equipment onsite, and what is being done off site, is there somewhere where the trucks are going, and then what is happening before they return to the site. Mr. Borden stated the trucks on site are empty when the employees arrive onsite, then the employee would load paving machines and equipment onto a trailer, and go to the site, roadway, driveway, and the trucks would leave the yard and go to an asphalt plant and go to the project site, then the materials would be used on that site during the day, and normally repeated trips would be taken from the plant to the job site, and once the job is completed, the goal is to have no inventory at the end of the day otherwise it's wasted, and once complete the trucks would return the same way they left. Mr. Book asked if there are other machines that scrape the asphalt, and then asked if those types of machines are going to be onsite. Mr. Borden stated that to his knowledge elite doesn't do the milling, and that will not be purposed. Mr. Book asked where the oil trucks come forms. Mr. Borden stated those would come from off site as well. Mr. Hurley asked what will be stored onsite. Mr. Borden stated the only material is the recycled concrete which is used as a sub base, and it does have an expiration date, and it's crushed concrete. Mr. Hurley asked where it comes from. Mr. Borden advised it comes from the central jersey recycling facility, and that site accepts raw material, and what is going to be stored is the final product from the railing plant. Mr. Costanzo asked how much will be stored. Mr. Borden mentioned it would be a maximum height of 10'. Mr. Pfeffer asked if there are environmental issues. Mr. Borden mentioned there are no issues as it is a finished product from an approved recycling facility. Mr. Purpuro asked if that gets delivered or picked up. Mr. Borden stated the company trucks would pick it up, and it will be a small amount for a smaller project, if it's a larger project the railing company would normally deliver that directly to the job. Mr. Costanzo asked for the definition of small, is that footage, or tonnage. Mr. Borden mentioned it's based on the general operation. Mr. Hill noted there isn't a statement of operations or a list of equipment, and there is business like this in town, and what was submitted was a survey plan, and

there are a lot of open ended questions that should be addressed, and a variance plan is usually submitted. Mr. Hill added that if there is enough information in front of the Board to determine if this is a permitted use, and there are concerns from an engineer perspective this needs to be treated as a commercial statement. Mr. Purpuro agreed and stated that the operations described are not happening now by any means, because there has been efforts made to assure the site is not operating now as purposed. Mr. Gertner stated that weather the Board were to interpret or require a use variance, would the applicant agree that this would have to come back for a site plan. Mr. Pfeffer stated that is correct. Mr. Borden mentioned that normally other uses aren't focused on, but in this case the other uses in the PM-1 zone are consistent to what is purposed. Mr. Gertner asked for a list of uses that are going to be provided, because this asphalt use should tie in. Mr. Borden noted there are 11 uses that have been identified, and of those 11 uses and 4 are permitted under the number 1-10 of the ordinance, the other 7 are not permitted, and most of them are contracted and that is heavy site contracting. Mr. Hill stated there are 7 uses that were noted that were not permitted. Mr. Borden listed the 7 non permitted uses. Mr. Costanzo stated there was mention of maintenance to equipment, and there were 6 trucks indicated and in the asphalt business the grinder was eliminated, however the machine that holds the asphalt, will that included. Mr. Borden stated there will be pavers, and maintenance will be done onsite, and it is limited to the barns onsite. Mr. Pfeffer asked if maintenance is permitted. Mr. Borden stated it is limited to side. Ms. Fritch asked if the trucks that are transporting concrete will be opened. Mr. Pfeffer stated they will be covered. Ms. Fritch asked if someone pave a driveway so there isn't dust on Whitesville Road. Mr. Pfeffer mentioned that will be handled during the site plan stage, and if the Board votes affirmative the applicant has agreed to an application that will be submitted to the Planning Board for site plan approval. Mr. Peters stated that from a planning perspective and from a use perspective, when someone looks at industrial uses they are the most intense uses permitted in town, and whatever spectrum they are in, and from a use perspective this is the area where these uses belong, and that's the applicant's burden.

*Opened public comment;*

**David Visconi- 441 Whitesville road- sworn-** said there are concerns with the proposal, his home is a few hundred feet north of the site, and the nature of this activity alone there are concerns for the people who live across the street and the railroad tracks that go to toms river, and it was purposed to have activity start at 6:30 am and that is very noisy, there are air breaks, diesel engines, equipment, and there should be concerns from the Board.

Mr. Book understands the concerns, and mentioned that the focus is on the interpretation, and the items being focused on are about a use or variance. Mr. Gertner asked if there are comments, questions or concern as to whether or not the ordinance would have permitted this type of use.

**David Visconi- 441 Whitesville road-** had concerns with the outdoor storage, because it's not believed that the PM-1 zone allows that, it may be being done but there is belief that it's illegal.

**Thomas smith- 520 Whitesville road-sworn-** said the list that was heard is mainly indoor, and there are issues with the storage of materials, it may come from a facility, but what if that facility doesn't have a license, the site is already developed and this is a bogus application

Mr. Book noted the testimony is not relevant to the interpretation, and there will be another opportunity to speak, however this is just questions on the interpretation

*Closed public comment;*

Mr. Pfeffer noted that Mr. Borden has responded to the issues mentioned, and asked if the outdoor storage allowed. Mr. Borden said it is allowed. Mr. Pfeffer noted there was also a comment made about an indoor contractor, and asked that, that please be clarified. Mr. Borden stated there is sufficient evidence in the zone and this use in the ordinance is similar, and not inconsistent to the uses in the zone, and there are uses that are outside which will be the vehicle storage. Mr. Hurley advised the testimony has been listened to, and there is agreeance and disagreeance, and there was reference to the ordinance which simply states and gives uses about uses that are similar to those that are permitted and the applicant stated that the uses purposes are similar to those that are permitted, and the uses that are permitted are as similar to the use purpose, and the uses that are conditionally permitted are similar, and this is similar to a recycling facility. Mr. Hurley added that this is also similar to a truck terminal where there are trucks moving in and out on a daily basis which is a conditional use. The specific use is not specifically prohibited and this proposed use is more a conditional use then a permitted use, and the Board can't make a determination weather this is a use, it cannot be found where this is a permitted conditional use, and this doesn't fit into the permitted use. The inclination is that the use that is purposed here is not permitted and in order to proceed a D-1 variance should be sought. Mr. Book concurred with the comments made, and some equivalency that was made shows false equivalency, and there is not nearly enough information provided to show those uses are the same, and an interpretation should not be granted.

Mr. Najarian made a motion to deny the interpretation and permit the applicant to proceed to a D-variance.

**Motion to deny by NAJARIAN/ Hurley. Yes:** Maher, Najarian, Miller, Hurley, Fritch, Costanzo, Book.

Mr. Gertner stated further more in all cases it is required to provide all notice, and without being perfectly sure the applicant does so at his own risk, and given the Board's action, and given further some question about the notice, it may focus the applicant to notice on a specific request. Mr. Book asked when this can come back. Mr. Purpuro mentioned May 6, 2020. Mr. Pfeffer stated the applicant will waive time and asked that no further notice and re notice be done.

**Motion to adjourn at 10:17 p.m. by NAJARIAN/ Hurley. Yes:** Among those present.

Respectfully submitted,

Danielle Sinowitz,  
Zoning Board Recording Secretary