

Township of Roxbury  
Board of Adjustment  
April 12, 2021

On Monday, April 12, 2021 a regular remote meeting of the Roxbury Township Zoning Board of Adjustment, originally scheduled to take place at 7:00 pm in the Council Room of the Municipal Building, was instead held remotely via Zoom. The meeting was open to the public via alternate means to provide the ability to listen and the opportunity to be heard during the public portions of the meeting by calling the following teleconference line: 1-929-205-6099 (“Welcome to Zoom”), entering Meeting ID: 82080386408#, Participant ID: # and Password: 998722#. All applications of those applicants who were to appear before the Zoning Board of Adjustment on the aforementioned date were available online via our Township website at www.roxburynj.us. The purpose of the Regular Zoning Board Meeting is to conduct routine business.

**BOARD MEMBERS PRESENT**

Mr. Frequenza, Mr. Overman, Mr. Klein, Ms. Robortaccio, Ms. Dargel and Dr. Kennedy

*ABSENT: Mr. Furey, Mr. D’Amato*

**PROFESSIONAL STAFF**

Mr. Mark Denisiuk, PE  
Mr. Russell Stern, P.P.  
Mr. Larry Wiener, Esq.  
Ms. Alyse Hubbard, Esq.  
Mr. Lee Klein, Traffic Consultant

**MINUTES OF MARCH 08, 2021 MEETING**

Mr. Overman made a motion to approve the minutes of the March 08, 2021 meeting, Ms. Dargel seconded.

*Roll call:* Mr. Overman, yes, Ms. Dargel, yes; Mr. Klein, yes; Ms. Robortaccio, yes; Dr. Kennedy, yes;

**RESOLUTIONS:**

**ZBA-20-024 EGBERT,** Use Variance for property located at 31 Berkshire Valley Road, Kenvil, Block 4003, Lot 6 in an R-3 zone.

Ms. Dargel made a motion to memorialize the resolution, Mr. Overman seconded.

*Roll call:* Ms. Dargel, yes; Mr. Overman, yes; Mr. Klein, yes; Ms. Robortaccio, yes; Dr. Kennedy, yes.

In the matter of William and Winona Egbert  
Case No. ZBA-20-024

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
BOARD OF ADJUSTMENT  
TOWNSHIP OF ROXBURY  
RESOLUTION**

Approved: March 08, 2021  
Memorialized: April 12, 2021

**WHEREAS,** William and Winona Egbert have applied to the Board of Adjustment, Township of Roxbury for permission to renovate the first floor retail space into an apartment requiring variance relief for premises located at 31 Berkshire Valley Road and known as Block 4003, Lot 6 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Sections 13-7.1301A1 of the Roxbury Township Land Use Ordinance; and

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**WHEREAS**, the Board, after carefully considering the evidence presented by the Applicants and having conducted a public hearing has made the following factual findings:

1. Ronald S Heymann, Esquire represented the Applicants.
2. The Applicants are the owners of the subject premises.
3. The Applicants are proposing to convert the first floor of an existing building requiring Use Variance relief, pursuant to N.J.S.A. 40:55D-70(d)(1) & (2) from Section 13.7.1301A1 of the Township's Land Use Ordinance for a two-family home in a single family zone.
4. Applicants submitted the following documents:
  - a. Property Survey, prepared by Henning & Associates Land Surveying, dated November 20, 2015, marked up by the Applicant.
  - b. Drawings and Elevation Plans that were undated and unsigned, consisting of seven (7) sheets.
5. Applicants received a letter of denial dated October 6, 2020, from Tom Potere, the Zoning Officer. Mr. Potere noted that relief was required from Section 13.7.1301A1 of the Township's Land Use Ordinance for a two-family home in a single-family zone, as well as Section 13.7.7C for an expansion of a non-conforming use for the residential use on the first floor of the structure.
6. The following Exhibits were marked for identification:
  - a. Exhibit - 1 – Application
  - b. Exhibit - 1a – Formal Denial Letter
  - c. Exhibit - 2 – Tax Map
  - d. Exhibit - 3 – Resolution
  - e. Exhibit - 4 – Survey
  - f. Exhibit - 4a – Survey showing parking
  - g. Exhibit - 5 – Existing First Floor Plan
  - h. Exhibit - 6 – Newly Proposed Floor Plan, 2 pages
  - i. Exhibit - 7 – Elevations Photos, 4 pages
  - j. Exhibit - 8 – Amended Driveway Easement
  - k. Exhibit - 9 – R. Stern Report dated 03/05/21

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7. A duly noticed public hearing occurred on March 8, 2020 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Executive Order 103 issued by Governor Phil Murphy and the statewide ban on public gatherings, as authorized by the Consent Order of Remand and by P.L. 2020, ch. 11, and in accordance with the Municipal Land Use Law, the Open Public Meetings Act, and the guidance document entitled “Planning Board and Zoning Board of Adjustments Operational Guidance – COVID-19: N.J.S.A. 40:55D-1: Recommendations for Land Use Public Meetings in New Jersey” issued by the Department of Community Affairs, Division of Local Government Services.
8. William A. Egbert, the Applicant, along with Jessica Caldwell, Professional Planner, who was accepted as an expert planner, presented sworn testimony in support of the application. The Applicant has owned the subject property since 1978 and obtained use variance approval to utilize the first floor for retail store and the second floor for a two-bedroom apartment. The Resolution of Approval, marked as Exhibit A-3, included, as a condition of approval, “No expansion of the first story retail business shall occur in any fashion. It is the intention of the Board in granting this variance retain the residential character of the neighborhood as nearly as possible.” Applicant now seeks approval for a first- story apartment.
9. The subject property is 22,745 square feet with a two-story building and a paved driveway. A one-story garage and paved driveway is located on the easterly side of the property and is utilized by the dwelling on Lot 7 under a driveway easement. There are two parking spaces at the end of the driveway for tenants of the second- story apartment and two parking spaces in front of the building for the first-story tenants, as well as a turn-around area for the rear parking spaces. There is an existing gravel area in front of the structure that will be removed and reseeded. Landscaping is proposed to improve the aesthetic appearance of the dwellings.
10. It was noted that a garage is required, but there is no garage existing or proposed. Accordingly, the Applicant requested a design waiver, as the required parking is being provided.
11. The Applicant is also the owner of Lot 5, which contains a driveway encroachment with proposed parking space #1 as indicated on the survey. A common driveway easement must be recorded in order to maintain the parking spaces for Lot 6 if Lot 5 is ever sold separate from Lot 6.
12. Concerns were raised about parking in the front yard on a busy intersection of Berkshire Valley Road and Hercules Road, but it was noted that a residential use is less intense than the previous retail use.

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13. The existing frame garage is in disrepair. Although the Applicant testified that it would be used for tenant storage, he agreed, at the request of the Board, to either renovate or demolish the shed on the existing concrete slab.
14. Ms. Caldwell provided the planning testimony related to the variances sought by the Applicant and gave an overview of the site and surrounding area. An aerial Photo with the tax lots within 200 feet of the subject property was marked A-1 for identification. The witness noted the surrounding residential uses, as well as the undeveloped area to the north of the site is zoned Planning Light Industrial Zone. A two-family home would be more in line with the surrounding residential uses. Ms. Caldwell opined that the site is particularly suited for the use and advances the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2), more specifically:
  - a. Purpose A – To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; the first-story is easily converted to an apartment, with adequate off-street parking. The size of the structure is consistent with the area, and the yard is oversized, providing an open lawn area,
  - b. Purpose E – To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; the proposed two-story structure is more in character than the prior mixed use.
  - c. Purpose G – To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; the two-story dwelling is consistent with the zone.
  - d. Purpose I – To promote a desirable visual environment through creative development techniques and good civic design and arrangement; the proposal includes aesthetic improvements to the structure, additional landscaping and a reduction in impervious coverage.
  - e. Purpose M – To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more

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efficient use of land; converting the first floor will lessen the cost of development and an efficient reuse of the existing structure.

15. Ms. Caldwell testified to the negative criteria, opining that there will be no substantial detriment to the surrounding area; stating that the landscape buffer will improve the aesthetic appearance of the site, which will blend into the neighborhood. The use is consistent with neighborhood uses and is less intense than the prior commercial use. The subject property is unique, with a mixed use that is not easily replicated. The two-family dwelling is more consistent with the Master Plan and Zone Scheme than the commercial use.
16. During questioning from the Board, it was noted that there is sufficient parking for additional cars on the driveway. The subject property will be brought into a greater conformance of use, as in the MLUL, one and two-family dwellings are similar uses, exempt from site plan. Additionally, leasing the space to a commercial tenant would be challenging, based on the location of the building and the parking.
17. When asked about converting the structure to a single-family dwelling, the Applicant testified that there is a contract purchaser that wants a two-family dwelling. Additionally, the first-story unit is accessed through the front door and the second-story unit is accessed through the deck in the rear of the building; there is no interior staircase. The interior renovations would be difficult and the structure does not have the appearance of a single-family home.
18. No one from the public attended the hearing.

**WHEREAS**, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board found the testimony of the Applicant's witnesses to be competent and credible. The Board weighed the Applicant's presentation, and with the guidance from its professionals, determined that relief could be granted from Sections 13-7-1301A1 for permitted uses in the R-3 Zone, where single family detached dwellings are permitted and two-family dwellings are not listed as a permitted use, pursuant to N.J.S.A 40:55D-70D(1). The within approval of a Use Variance is granted specifically to convert the first-story of the existing structure into a two-bedroom apartment.
2. The Applicant's Planner was able to establish the positive and negative criteria required and the four elements of proof set forth in *Medici*. First, the site is particularly suited for the use, as it is a two-family

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residential dwelling in a residential zone, which is an appropriate use for this location. The subject structure is easily converted to a two-family dwelling, with sufficient off-street parking, which is more consistent with the zone.

3. Additionally, the proposed development will meet several of the special reasons set forth in the Municipal Land Use Law, namely:

- a. Purpose A – To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; the first-story is easily converted to an apartment, with adequate off-street parking. The size of the structure is consistent with the area, and the yard is oversized, providing an open lawn area,
  - b. Purpose E – To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; the proposed two-story structure is more in character than the prior mixed use.
  - c. Purpose G – To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; the two-story dwelling is consistent with the zone.
  - d. Purpose I – To promote a desirable visual environment through creative development techniques and good civic design and arrangement; the proposal includes aesthetic improvements to the structure, additional landscaping and a reduction in impervious coverage.
  - e. Purpose M – To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land; converting the first floor will lessen the cost of development and an efficient reuse of the existing structure.
4. It was determined that there would be little impact to the surrounding area, as the proposed landscaping and site improvements will have a better visual appearance and be more consistent with the surrounding residential uses. A residential use would be less intense than a commercial use and more consistent with

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the Master Plan. It cannot be easily replicated, as this structure is well suited for a two-family dwelling and cannot easily be renovated to a single-family conforming dwelling. Accordingly, the relief can be granted without substantially impairing the zoning scheme or Master Plan.

5. A Design waiver shall be granted from Section 13-8.700E, as no Certificate of Occupancy shall be issued unless construction includes a garage for parking at least one car and no garage for parking is provided. The Board determined that, based on the lot configuration and the access to the dwelling units, this waiver was reasonable.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township Roxbury on the 8th day of March 2021 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. The Applicant shall obtain all necessary permits from the construction department.
3. The addition shall be constructed consistent with the plans submitted to the Board and the testimony at the hearing.
4. Applicant shall obtain approval from the Morris County Planning Board.
5. A Driveway Easement shall be submitted for review and approval by the Board's Engineer and Attorney. Same shall be recorded with the Morris County Clerk's Office.
6. All four parking spaces shall be paved and striped.
7. The front gravel area shall be removed and replaced with grass.
8. Additional landscaping shall be provided, subject to the review and approval of the Board's Planner.
9. The existing garage shall be renovated or replaced with a conforming shed. Proper permitting shall be obtained.
10. Building shall contain 2 two-bedroom apartments.
11. All improvements shall be completed prior to the issuance of a Certificate of Occupancy.

**ZBA-21-005 DEROSA**, Bulk Variance relief for property located at 2 Lisa Court, Succasunna, Block 4801, Lot 7 in an R-2 zone.

Ms. Robortaccio made a motion to memorialize the resolution, Mr. Klein seconded.

*Roll call:* Ms. Robortaccio, yes; Mr. Klein, yes; Mr. Overman, yes; Ms. Dargel, yes; Dr. Kennedy, yes.

In the matter of Kimberly DeRosa  
Case No. ZBA-21-005

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
BOARD OF ADJUSTMENT  
TOWNSHIP OF ROXBURY  
RESOLUTION**

Approved: March 08, 2021  
Memorialized: April 12, 2021

**WHEREAS**, Kimberly DeRosa has applied to the Board of Adjustment, Township of Roxbury for permission to construct a deck requiring variance relief for premises located at 2 Lisa Court and known as Block 4801, Lot 7 on the Tax Map of the Township of Roxbury which premises are in a “R-2” Zone; said proposal required relief from Sections 13-7.1101D5(a) of the Roxbury Township Land Use Ordinance; and

**WHEREAS**, the Board, after carefully considering the evidence presented by the Applicants and having conducted a public hearing has made the following factual findings:

19. The Applicants are the owners and occupants of the subject premises.
20. The Applicants are proposing to construct a deck and pool in the rear of their home requiring relief from Section 13-7.1101D5(a) for a rear yard setback of 15.7 feet whereas 50 feet is required.
21. Applicants submitted the following documents:
  - a. Boundary Survey, prepared by Douglas J. Wesp, dated July 26, 2007, marked up by the Applicants.
  - b. Plan of Deck & Pool, prepared by the Applicants, undated, consisting of 2 sheets.
22. Applicants received a letter of denial dated August 13, 2020, from Tom Potere, the Zoning Officer, requiring relief from Section 13-7.1101D5(a) for a rear yard setback of the pool and deck of 15.7 feet, where 49.7 feet is existing to the house and 50 feet is required in the R-2 zone.
23. The following Exhibits were marked for identification:
  - a. Exhibit - 1 – Application
  - b. Exhibit - 2 – Denial Letter
  - c. Exhibit - 3 – Tax Map
  - d. Exhibit - 4 – Survey
  - e. Exhibit - 5 – Plan of Deck & Pool
  - f. Exhibit - 6 – Calculations

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24. A duly noticed public hearing occurred on March 8, 2020 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Executive Order 103 issued by Governor Phil Murphy and the statewide ban on public gatherings, as authorized by the Consent Order of Remand and by P.L. 2020, ch. 11, and in accordance with the Municipal Land Use Law, the Open Public Meetings Act, and the guidance document entitled “Planning Board and Zoning Board of Adjustments Operational Guidance – COVID-19: N.J.S.A. 40:55D-1: Recommendations for Land Use Public Meetings in New Jersey” issued by the Department of Community Affairs, Division of Local Government Services.
25. Kimberly DeRosa and Jason Hunt participated in the public hearing and testified under oath that they would like to install an above-ground pool in their back yard, in addition to expanding the existing deck. The Applicants have teenage boys that would like the pool for recreation purposes and Ms. DeRosa would also utilize the pool for non-impact exercise. Pools are common recreational amenities in the neighborhood.
26. The subject property is a corner lot, with frontage on both Lisa Court and Sara Lane, creating a hardship for the Applicants. The lot is also undersized, as 17,000 sf is existing and 25,000 sf is required, which creates a challenge to develop the lot in a conforming manner.
27. The deck would surround the pool connecting the house to the pool resulting in the setback for a primary structure being measured from the edge of the pool and deck. If the pool were freestanding, the required setback would be 15 feet, but as it is attached to the home, a 50-foot setback is required. The deck will have railings around the perimeter, with a gate and the pool ladder will be retractable. Due to the slope of the property and the access from the home using the deck, this is the only logical location to install the pool.
28. There are large arborvitae trees between the subject property and the adjacent neighbor in the rear. The Applicants plan to construct a fence in the future.
29. During the public portion of the meeting, Karen and Keith Kurtzer, neighbors of the Applicants, raised concerns about having another pool in the area. Their property sits below the subject property, so they were concerned about issues related to the pool, as well as security and safety.
30. No one else from the public was in attendance at the hearing.

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**WHEREAS**, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

6. The Board found the witness testimony to competent and credible. Pursuant to N.J.S.A. 40:55D-70(c), the Board determined that relief can be granted from Section 13-7.1101D5(a), permitting the construction of the deck and pool with a rear yard setback of 15.7 feet, where 50 feet is required.
7. N.J.S.A. 40:55D-70(c)(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. The subject property is a corner lot, that is undersized, creating a hardship for the Applicants to construct the common amenities of a pool and deck in a conforming manner. The proposed location is the only logical place to construct the pool and deck.
8. It was determined that there would be little impact to the surrounding area and that there are many homes in the area with pools. Additionally, there is a landscape buffer between the subject property and the neighbor to the rear, which mitigates the impact of the reduced setback. Accordingly, the relief can be granted without substantially impairing the zoning scheme or Master Plan.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township Roxbury on the 8th day of March 2021 that the approval of the within application be granted subject, however, to the following conditions:

12. Payment of all fees, sureties, and escrows required by ordinance.
13. The Applicant shall obtain all necessary permits from the construction department.
14. The pool and deck shall be constructed consistent with the plans submitted to the Board and the testimony at the hearing.

**ZBA-21-003 CORBO**, Bulk Variance relief for property located at 45 Unneberg Avenue, Succasunna, Block 3201, Lot 19 in an R-2 zone.

Mr. Klein made a motion to memorialize the resolution, Ms. Robortaccio seconded.

*Roll call:* Mr. Klein, yes; Ms. Robortaccio, yes; Mr. Overman, yes; Ms. Dargel, yes; Dr. Kennedy, yes.

In the matter of Thomas & Stephanie Corbo  
Case No. ZBA-21-003

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
BOARD OF ADJUSTMENT**

**TOWNSHIP OF ROXBURY  
RESOLUTION**

Approved: March 08, 2021  
Memorialized: April 12, 2021

**WHEREAS**, Thomas and Stephanie Corbo have applied to the Board of Adjustment, Township of Roxbury for permission to construct a second floor addition requiring variance relief for premises located at 45 Unneberg Avenue and known as Block 3201, Lot 19 on the Tax Map of the Township of Roxbury which premises are in a “R-2” Zone; said proposal required relief from Sections 13-7.1101D4 of the Roxbury Township Land Use Ordinance; and

**WHEREAS**, the Board, after carefully considering the evidence presented by the Applicants and having conducted a public hearing has made the following factual findings:

31. The Applicants are the owners and occupants of the subject premises.
32. The Applicants are proposing to construct second story addition of the existing garage, requiring relief from Section 13-7.1101D4 for a front yard setback of 36 feet, where 50 feet are required in the R-2 zone.
33. Applicants submitted the following documents:
  - a. Property Survey, prepared by Henning & Associates Land Surveying, dated November 20, 2015, marked up by the Applicant.
  - b. Drawings and Elevation Plans that were undated and unsigned, consisting of seven (7) sheets.
34. Applicants received a letter of denial dated December 23, 2020, from Tom Potere, the Zoning Officer. As noted by Mr. Potere, the Applicants require relief from the front yard setback, where 36 feet is existing and proposed and 50 feet is required.
35. The following Exhibits were marked for identification:
  - a. Exhibit -1 – Application
  - b. Exhibit - 2 – Denial Letter
  - c. Exhibit - 3 – Tax Map
  - d. Exhibit - 4 – Survey
  - e. Exhibit - 5 – Architectural Plans
  - f. Exhibit - 6 – Deed

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36. A duly noticed public hearing occurred on March 8, 2020 via Zoom, a web-based meeting platform and telephone conferencing service, consistent with Executive Order 103 issued by Governor Phil Murphy and the statewide ban on public gatherings, as authorized by the Consent Order of Remand and by P.L. 2020, ch. 11, and in accordance with the Municipal Land Use Law, the Open Public Meetings Act, and the guidance document entitled “Planning Board and Zoning Board of Adjustments Operational Guidance – COVID-19: N.J.S.A. 40:55D-1: Recommendations for Land Use Public Meetings in New Jersey” issued by the Department of Community Affairs, Division of Local Government Services.
37. Thomas and Stephanie Corbo participated in the public hearing and testified under oath that they would like to construct a second story addition, over the existing garage, within the existing footprint of the home. The proposed addition is a vertical extension of the existing setback, above the garage, to add a master bedroom suite and laundry room. The roofline will be slightly higher than the existing roofline in order to accommodate the required ceiling height.
38. The home is smaller than the surrounding homes. The proposed addition will be 22’x25.9’. The lot is triangular in shape and there is a septic field in the rear yard, limiting the Applicants’ option to construct a conforming addition in the rear of the yard. Constructing an addition in the rear of the home would result in an increase in impervious coverage.
39. No one from the public was in attendance at the hearing.

**WHEREAS**, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

9. The Board found the witness testimony to competent and credible. Pursuant to N.J.S.A. 40:55D-70(c), the Board determined that relief can be granted from Section 13-7.1101D4, permitting the construction of the addition with a front yard setback of 36 feet, where 50 feet is required.
10. N.J.S.A. 40:55D-70(c)(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. The subject property is an irregularly shaped lot, with a non-conforming front yard setback. The Applicants are

constricted by the shape of the lot and the existing septic field to construct a conforming addition. The better alternative was to construct a second story addition within the existing footprint.

11. It was determined that there would be little impact to the surrounding area, as this is a nice addition to one of the smaller homes in the area. Accordingly, the relief can be granted without substantially impairing the zoning scheme or Master Plan.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township Roxbury on the 8th day of March 2021 that the approval of the within application be granted subject, however, to the following conditions:

15. Payment of all fees, sureties, and escrows required by ordinance.
16. The Applicant shall obtain all necessary permits from the construction department.
17. The addition shall be constructed consistent with the plans submitted to the Board and the testimony at the hearing.

**APPLICATIONS:**

**ZBA-20-004 SPEICHER**, Minor Subdivision, “D2” Variance for property located at 280 Old Ledgewood Road, Flanders, Block 9303, Lot 1, 3 & 4 in a B1-A zone. *Request to be carried to June 14, 2021, notification required.*

**ZBA-20-023 PISANO**, Variance relief for property located at 4 Bell Court, Landing, Block 11302, Lot 9 in an R-3 zone. *Request to be carried to May 10, 2021 with no further notification.*

**ZBA-21-006 REED**, Bulk Variance relief for property located at 141 Righter Road, Succasunna, Block 3502, Lot 23 in an R-2 zone. *Request to be carried to May 10, 2021 with no further notification required.*

**ZBA-20-026 TOWNE TOYOTA**, Final Site Plan for property located at Arlington Avenue and Kings Parkway, Ledgewood, Block 8602, Lot(s) 12 & 49.01 in the B-2, LI/OR & PO/R zone.

Mr. Larry Calli, Esq. represented Towne Toyota who was before the Board for Final Site Plan, noting they received Preliminary Site Plan approval back in the spring of 2017. Mark Walker from Dykstra Walker had submitted final as-built plans to the Board for Final Site Plan review. Mr. Calli stated there were two reports submitted back to Towne Toyota and Mr. Walker will address any questions the Board may have.

Mr. Wiener swore in Mr. Mark G. Walker of 21 Bowling Green Parkway, Lake Hopatcong, NJ. Mr. Walker started his testimony by sharing his screen to show Exhibit A-1 the approved Preliminary Major Site Plan last revised on 04-20-2018 showing Arlington Avenue directly across from Kings Parkway. Mr. Walker testified it was proposed that Towne Toyota would install a secondary driveway that would allow access to the Service Center which is located on Roxbury Avenue, he explained the site layout plan shows the driveway pulling into the drop off and pick up area, noting there are some markings with arrows that were not constructed. In addition, the ingress and egress driveway leading to Kings Parkway was not constructed as well and there are three items that were slightly different. Mr. Walker directed the Board’s attention to sheet 4 of 7 the “Grading and Utility Plan”, he testified that the applicant had shown a

drainage design that picked up stormwater and connected it into a drywell system on the north-easterly side of the site. Mr. Walker stated the drainage system was not constructed, but instead two seepage pits with an inlet the area of 12 x 24 ft. full of stone was constructed. Mr. Walker noted that under the existing conditions the area was prone to flooding, the applicant and their contractor felt that the seepage pit was a better design than what was originally proposed. He stated it is better in the fact that the original design done by Schorr DePalma in 2004 dealt with the storm drainage system using a number of infiltration pits at the northeasterly end of the site. The additional pit infiltration area helps supplement the existing design, noting there is little or no impervious coverage added to this application and it does provide an additional area where there is more infiltration at the site now than what was previously approved back in 2004. Mr. Walker went on to explain the way the system works is the water would simply flow into the inlet, then it would infiltrate into the ground in that specific area. Mr. Walker stated it solved the site's problem they had been living with for 15 years and it has been in place for a few years now and is working really well.

Mr. Walker then directed the Boards attention to sheet 3 of 7 which is the "Site Layout Plan", he noted looking at the driveway, the drop off and pick up area for service at the dealership is now constructed and there are two lanes going in and one lane going out, so all the drop off and pick up happens within the building itself and this is a really a nice element for the site and it helped the site function much better. The car owners can pull in the building and drop their car off then go to the waiting room where the car would be finished and then then Towne Toyota would bring the car around and the car would travel out thru the easterly end of the site right out to the exit onto Arlington and Route 46. Mr. Walker stated there was no need for customers to wander around the site, so originally its driveway was constructed to assist the Service Center on Roxbury Avenue and it helped to minimize conflicts. Mr. Walker further stated, if you recall the testimony for the service center that was put in was for cars that had more complicated issues, cars that were going to be at the service center for days maybe weeks waiting for parts with a very low turn-over type of situation where there are longer more involved repairs. Mr. Walker went on to testify as the construction of the site progressed it was determined that the loss of four parking spaces that the driveway was going to take up would be more of a detriment than a positive. Mr. Walker stated he felt that the drop off and pick up area was working so well that they did not need to put this extra driveway in and that the extra parking spaces were more important than that access point.

Mr. Walker went on to address the report by the Township Planner, Mr. Stern noting his report was pretty straight forward, but he would like to discuss the issue of the generator. Mr. Walker went on to state that there was a temporary generator constructed on the north east corner of the building on the front yard of Arlington Avenue, subsequent to that Ms. Brauer has obtained a building permit for a permanent generator which will be constructed in the back of the building by the dumpster enclosure. Mr. Walker went on to state that this will require an extension of a gas-line that has received a building permit and has gone through some zoning review, noting it was not made part of this site plan. Mr. Stern asked Mr. Walker if the generator on the service side of the building would be removed one the permanent one has been installed. Mr. Walker replied yes. Mr. Walker went on to state at that time the dumpster enclosure will be modified to install the generator and the enclosure will be repaired as well as the fence. In addition, the perennials will be installed and the remaining items will be taken care of with respect to the gravel as they are all basic conditions of the original approval. Mr. Stern stated that the gravel is an ongoing condition of approval due to the gravel condition of some of the storage parking lots and the plowing operation that occurs during the winter. Mr. Stern went onto state that when he conducted his site inspection most of the gravel was already cleared and placed back into the storage lots.

Mr. Walker went on to address a report from Ferriero Engineering. Dr. Kennedy asked Mr. Walker could answer a question regarding the generator before he proceeded forward to address the Ferriero Engineering report. Dr. Kennedy asked if bollards could be installed so that no one accidentally drives into the generator enclosure and cause it damage. Mr. Walker replied that they can put up some type of barrier but nothing as permanent as a steel bollard with a concrete footing. Dr. Kennedy stated, he thought it would be a good idea to put something to protect it until it is moved to its permanent location. Mr. Walker replied right now it is a very temporary situation as the building permit has been obtained and the gas company is going to be installing the gas line in the very near future. Mr. Stern asked if a timeframe could be given for installation of the permanent generator and the repair of the enclosure. Mr.

Walker replied Ms. Brauer would provide the timeframe in her testimony. Mr. Stern stated would like to see some type of deadline for the project.

Ms. Robortaccio asked if cars are allowed to park on Arlington Avenue. Mr. Stern replied there is a prohibition regarding parking on Arlington Avenue. Ms. Robortaccio stated that during her site inspection she noticed several cars parked along Arlington Avenue from Kings Parkway back. Mr. Stern asked that Ms. Brauer address the issue during her testimony. Mr. Stern stated that as a result of the approval of this application, the purpose was to clear up the roadway so that there would be no on-street parking as well as unloading or loading of car carriers in that area. Ms. Dargel stated that Mark Denisiuk had noticed cars parked on the road on April 5, 2021 as sited in his report.

Mr. Walker went on to address Mr. Denisiuk's report. Mr. Denisiuk asked Mr. Walker to discuss comment #2 on his report as it related to on-street parking. Mr. Denisiuk stated that he conducted a site inspection on April 5th, 2021 and witnessed many cars parked along Arlington Avenue and in addition there were several cars outside of the striped stalls and in the fire zone. Mr. Denisiuk raised the question is the parking adequate for the site, because there seems to be some overflow. Ms. Dargel stated she never thought there was adequate parking on the site and she thought Ms. Brauer stated in an earlier hearing that Towne Toyota was renting an off-site lot nearby.

Mr. Walker asked if he could continue to go through the rest of Mr. Denisiuk's report and that Ms. Brauer would address the parking issues in her testimony. Mr. Walker went on to address #3 in Mr. Denisiuk's report and noted it was discussed earlier in his testimony and moved onto #4 which is the generator which was discussed as well. Mr. Walker went onto #5 which is the dumpster enclosure and has already been addressed, #6 is signage damage that will be repaired, #7 addresses the new inlets along Kings Parkway to be cleaned of all debris so it can properly be inspected for the presence of low flow channels, #8 addresses existing steps in the parking lot at the end of Arlington Avenue that should be removed. Mr. Denisiuk stated that there are two sets of steps, one is shown on the plan where the new driveway was supposed to go, but those are not the ones he is referring to, there is another set towards the north end of Arlington Avenue that are in the Township right of way and they appear to be a hazard. Mr. Denisiuk believes they were not constructed with any proper road opening permit. Mr. Denisiuk stated it was discussed during the preliminary pre-construction meeting. Mr. Walker replied he had no issue with removing the steps. Mr. Stern asked if the steps were being used by the residents to get to Kings Parkway. Mr. Denisiuk replied he believes they are being used by the employees to get to the rear gravel parking lot. Mr. Walker asked if the stairs are removed will the residents be able to access the sidewalk. Mr. Denisiuk replied yes because there is another set of stairs with a handrail closer to Route 10. Mr. Walker went onto address #9 all damaged fence screening lots 49, 49.01, and 33 will be repaired and new fencing shall be installed, as per the preliminary resolution, #10 the night lighting inspection must be performed to verify if the lights turn off and dims by 11:00 pm, #11 landscaping will be installed. Mr. Stern asked if Mr. Walker agreed to items #10 and #11. Mr. Walker replied yes. Ms. Dargel noted that Mr. Walker was reading through the items on Mr. Denisiuk's report but has not confirmed he will address the issues. Mr. Walker replied they have to be done or approval will not be granted. Ms. Dargel stated we like to have on the record show the applicant stated they will comply for each item. Mr. Walker stated for the record that indeed they would be taking care of the items on Mr. Denisiuk's report. Mr. Denisiuk asked Mr. Walker if he could circle back to item #3 of his report regarding the drywell, noting that there really has been no information provided to the Township on what was installed when the field change was done. Mr. Denisiuk stated that Mr. Walker testified there was a seepage pit put in at a certain dimension, but what is required is detail and calculations to be put on the Final Site Plan and As-Built Plan. Mr. Walker replied that he will show the calculations for the drainage area, noting he believes the drainage area is large for the seepage pits installed, he noted the way the site was originally designed was to have a very flat slope from the low area to the parking lot to the north, so what the system does is it allows for the smaller storm event to completely infiltrate within the ground under a large storm event if the seepage pits overflow, basically having the same conditions that has always existed since the site was constructed in 2004. However, with the seepage pit it takes care of the majority of the storms that happen through the course of the year. Mr. Walker went on to state that the more exceptional larger storms, will overflow and the water will travel the way it has always traveled, filling up ponding in the area or flowing to the north and ultimately entering the other seepage pits that are constructed to the north end of the site. Mr. Denisiuk stated the preliminary plan had an overflow to address the situation and where it would be at capacity, so

what we would like to see is a calculation that the drywell is going to drain in less than 72 hours and if it doesn't then we want the overflow pipe installed that is shown on the preliminary plan. Mr. Denisiuk stated he was not sure why it was removed, noting what was installed was done without any approval. Mr. Walker stated it was a Construction decision basically because they did not want to construct the pipe, noting there are fiber optics in the area and they did not want to disrupt anything or hit any other utilities and that is the discussion he had with the contractor. Mr. Walker stated that there has been an increase in runoff on the site and this was to make an existing condition better. Mr. Walker went onto state that this wasn't being installed to compensate for something constructed under this approval, this was the owner stating they had a large puddle and wanted it taken care of. Mr. Walker stated he came up with a drainage solution and proposed it to the construction contractors and they were not in favor of the solution, noting they wanted to go with seepage pits. Dr. Kennedy believes the issue at hand is our Board Engineer asking for both a set of drawings as built and the calculations necessary. Dr. Kennedy asked if Mr. Walker agreed to Mr. Denisiuk's request. Mr. Walker replied he does not have any issue producing the plans, but his client has a problem with it because Towne Toyota did not want to put it in the plans. Ms. Dargel weighed in and stated the calculations have not been done and we don't know if the construction mitigates the issues that exist since there is no overflow pipe. Mr. Walker stated the drainage that was put in April of 2018 was never shown on the approved plans. Mr. Stern stated that is not accurate and the question is when did the professional staff sign off on the plans. Mr. Walker stated the drainage was put in almost a year later. Mr. Calli stated he believes the point Mr. Walker is trying to make is that this wasn't part of a design proposal to mitigate any deviations proposed in the preliminary site plan, this was a fortuitous offering with the applicant trying to self-police a problem they identified and they decided to cure it, this was not a response to any Board mandated compliance during the preliminary review, and I think that is the point Mr. Walker is trying to make. Ms. Dargel stated if it was modified, we still have the right to review it and now to approve or deny it. Mr. Calli stated the second part of Ms. Dargel's statement is not exactly right, noting there are limitations to statutory denials, but, this was never received by the Board which is Mr. Walker's point. Dr. Kennedy asked Mr. Denisiuk if that was a correct statement. Mr. Denisiuk replied that he was not part of the initial preliminary hearings, noting the preliminary plan was presented as an approved plan as an Exhibit. Mr. Stern asked if the Township Engineer signed off on the drawing that shows the piping. Mr. Walker replied it was three years ago and he was not sure. Ms. Brauer asked to be sworn in to testify.

Mr. Wiener swore in Susan Brauer, President of Towne Toyota located at 1499 Route 46, Ledgewood, NJ 07852. Ms. Brauer went on to testify that when the property was purchased it was brought to her attention that there was going to be some water run-off and where the three exit driveways were built there has consistently been a water issue where when it rains heavily the water would accumulate where the new service exit driveway was and it was a serious problem. Ms. Brauer stated when she met with the Architect of Towne Toyota she wanted a solution because she thought it was hazardous for customers to be driving through water when it rained, so we decided that seepage pits were the most effective way to alleviate this problem. Ms. Brauer stated she immediately wanted to address the issue for customers and employees, noting sometimes it would rain so much that it would enter the building. Ms. Brauer stated for this reason the seepage pits were installed and there have been no drainage issues since. Ms. Dargel stated it shouldn't be an issue to show what was installed. Mr. Denisiuk concurred and stated there is nothing on any plan showing how large the seepage pits are and what stormwater they can handle. Ms. Brauer agreed to put the drainage system on the plans and explained how well the system works. Ms. Dargel stated it should be a conditional part of the approval. Ms. Robertaccio agreed. Mr. Walker and Ms. Brauer agreed to provide updated plans showing the drainage system with calculations.

Ms. Robertaccio asked the applicant to address the cars parked on Arlington Avenue. Ms. Brauer replied that sometimes her employees parked on Arlington Avenue even though there is ample employee parking. Ms. Brauer explained that the employees tend to parking on Arlington Avenue because it is closer to the building and admitted that she has to do a better job policing the situation. Ms. Dargel asked if there were no parking signs. Ms. Brauer replied yes. Ms. Robertaccio stated that it was part of the original approval that cars not be parked on Arlington Avenue, reminding Ms. Brauer that there are homes located in the area and the residents must travel back and forth on Arlington Avenue to get to their homes. Dr. Kennedy let Ms. Brauer know that he has observed small car carriers parked in front of the dealership. Ms. Brauer stated that all Toyota cars are delivered are unloaded on the rented lot by Tree King but, sometimes there are random people picking up a lease return or occasionally a tow truck operator show up and they are

unsure of where to park. Ms. Brauer stated that when we see them parked in that location we ask them to move and let them know that is not permitted.

Mr. Stern asked Ms. Brauer when the temporary generator was going to be removed and the permanent generator be installed. Ms. Brauer stated the process is much further along than Mr. Walker eluded to and that the NJ Natural Gas permit has been submitted and approved and they have now connected the generator line to the gas line and the meter has been installed where the dumpster is located and now the concrete pad can be installed along with the bollards, all of this will take place over the next couple of weeks. Ms. Brauer stated at the end of April the job will be complete. Ms. Brauer stated the property has been mulched and all loose gravel has been removed and the contracted landscaper has ordered the requested plants per Mr. Stern's report and will be installed as soon as conditions allow.

Motion was made to open to the public for comments – none were made  
Motion was made to close to the public

Mr. Stern made the suggestion that should the Board move to approve the application that it should be subject to the items within Mr. Denisiuk's report and his own report as conditions to be resolved prior to the issuance of a permanent certificate of occupancy. Mr. Wiener stated there had been other representations made as well.

Ms. Robortaccio made a motion to approve the application, Ms. Dargel seconded.

*Roll call:* Ms. Robortaccio, yes; Ms. Dargel, yes; Mr. Overman, yes; Mr. Klein, yes; Dr. Kennedy, yes.

**ZBA-21-011 CALANTROPIO**, Bulk Variance relief for property located at 82 Lazarus Drive, Ledgewood, Block 8303, Lot 6 in an R-1.8 zone.

Mr. Wiener swore in Jamie and Audra Calantropio of 82 Lazarus Drive, Ledgewood, NJ 07876. Ms. Calantropio went on to testify that she had submitted a zoning permit application for the installation of an 14' x 28' in-ground pool and ran into a few variance issues due to the fact the property is located on a corner lot and she has what is considered two front yards, noting that an accessory structure is not permitted in the front yard, secondly a variance is required for the exceedance of allowable impervious coverage, thirdly a variance is required for not meeting the required ten foot set-back from the principle dwelling and lastly a pre-existing fence from a prior owner was installed in excess of four feet on what is considered the front yard.

Mr. Stern asked Ms. Calantropio how because of the reduced set-backs to Cather Court and also the adjoining properties to the east is there landscaping being provided between the fence and the right of way along the property line. Ms. Calantropio replied along the property line is a line of six foot vinyl fencing with a small retaining wall. Mr. Stern asked what about the front yard of Cather Court. Ms. Calantropio responded there is a six foot privacy fence and in front of the fence nearing Cather Court are plantings and shrubbery. Dr. Kennedy asked about the 15 foot wide utility easement and noting the fence has been installed on the easement and that potentially is an issue. Mr. Stern replied from the Township's standpoint it is an issue and research would have to be done to see what type of easement it actually is, in addition a hold harmless agreement would need to be signed by the applicant. Mr. Stern stated the proposed pool should be moved a few more feet away from the easement. Mr. Stern asked Mr. Wiener to opine. Mr. Wiener stated without knowing the exact parameters of the easement it is hard to give an opinion, there is a requirement as far as set-back for swimming pools. Dr. Kennedy asked if there was another authority who would have to take a look at this to make sure encroachment on the easement is not detrimental to the Township or the utility company. Mr. Wiener stated we must first find out who the beneficiary of the easement is, whether it is solely the utility company or the Township. Mr. Stern addressed the applicant and stated it looks as though you would only be required to set the pool in a few feet, and asked if this is something you would be willing to do. Ms. Calantropio replied yes. Ms. Robortaccio asked if the pool was moved a few feet south how close would it be to the house. Mr. Stern replied closer to 3 feet as opposed to the original 4 feet.

Mr. Wiener swore in Philip Picarello of 1295 Route 23 South, Butler, NJ. Mr. Picarello testified as the pool contractor for the applicant. Mr. Wiener asked what type of pool was going to be installed. Mr. Picarello replied a steel wall vinyl liner pool. Ms. Calantropio asked Mr. Picarello if moving the pool to the south would be an issue. Mr. Picarello replied there would be no issue in moving the pool towards the house, noting it would give the applicant 3 feet out of the easement. Mr. Stern asked if there were any structural member underground that would encroach onto the easement. Mr. Picarello replied no, it would be a vertical pool wall. Dr. Kennedy asked how far down the wall go. Mr. Picarello replied 42 inches. Ms. Robortaccio stated the most logical solution would be to shift the pool 3 feet to the south out of the easement. Ms. Calantropio asked if the pavers located on the easement would have to be removed. Mr. Stern stated within certain municipal easements the Township has allowed fences and at times even sheds, but with a hold harmless agreement entered into with the Township, which means if the Township needs to do an improvement the homeowner must remove the obstruction in advance of the work or else the Township will and not be liable for any damage. Mr. Stern stated he would need input from the Township Engineering Michael Kobylarz to determine the full extent of the easement and the second is what restrictions are associated with it. Dr. Kennedy asked why the applicant did not try to place the pool in the lower portion of the backyard. Ms. Calantropio replied it was a consideration but they have three small children and there is a play set located in that spot, in addition, it is a blind spot from inside the home, as there are no windows on that side of the home. Dr. Kennedy stated the pool would fit though. Ms. Calantropio replied yes, but it still would require all the same variances as in the original application. Mr. Stern stated if the Board was inclined, they could probably approved the application with the pooling being moved 3 to 5 feet to the south and with regards to the pavers and the fence in the easement, we would look upon the Township Engineer, assuming it is a Township's easement, but if the easement is a utility company easement the application would have to come back and alter their application. Ms. Robortaccio asked if the application could be approved conditionally. Mr. Stern asked if perhaps a resolution could be drawn and if the issue is resolved prior to next month's meeting the resolution can be memorialized. Mr. Wiener stated that a resolution can be drawn up in anticipation of a possible vote of approval with the conditions not being known right now, but possibly being met at time of the next meeting, this way the applicant would not lose any time. Dr. Kennedy asked what should be done about the 6 foot fence issue. Ms. Robortaccio noted it was a pre-existing fence installed by the previous homeowner. Mr. Stern stated the fence has been there for a number of years and the applicant can ask for a waiver from the Board, because it is up already, you can make a determination if it is a substantial detriment to the area or not. Dr. Kennedy asked with the pool being moved south, will the applicants run into any additional variances. Ms. Calantropio suggested that they could move the pool to the east, but that would create another variance. Mr. Stern stated yes then you would be less than 10 feet from the east property line. Mr. Stern stated taking a look at the fence and the retaining wall, a difference of 2 feet would be noticeable. Mr. Stern stated it is more important to get safe circulation around the pool as opposed to narrowing it down to 3 feet between the pool and the home.

M. Picarello state the only reason he would suggest to have a minimum of 3 feet of patio would be to install a safety cover. A safety cover cannot be installed unless there is patio to anchor it to, noting the pavers that fall on the easement can be taken right up if need be.

Motion was made to open to the public for comments – none were made  
Motion was made to close to the public

Ms. Robortaccio made a motion to approve a draft resolution of the application for approval at the next meeting subject to Board approval, Dr. Kennedy seconded.  
*Roll call:* Ms. Robortaccio, yes; Dr. Kennedy, yes; Mr. Overman, yes; Mr. Klein, yes; Ms. Dargel, yes.

**ZBA-17-012 KINGTOWN DIESEL**, Amended Preliminary Site Plan, “D” Variance for property located at 1470 Route 46 East, Ledgewood, Block 9302, Lot 3 in a B-2 zone.

Dr. Kennedy asked that since we now have a new Board member since Kingtown Diesel was last heard before this Board, the Board would like to give you the opportunity to go back and take a look at everything that needs to be done and either withdraw the application or the Board can deny without prejudice and it can be started over again so that everyone is on a clean slate.

Mr. Heymann, Attorney for Kingtown Diesel testified that this application is a very large application and over the last several days after we received reports from the Board professionals, and had a conversation with Mr. Stern and Mr. Wiener, Mr. Heymann stated that first and foremost he acknowledged that the Board has a new member and would like to give an overview of the site and what the applicant intends for the site. Mr. Heymann went on to testify that after a discussion with Mr. Stern about a year and a half ago before Covid-19 hit, Kingtown Diesel began an application with some very limited testimony and Mr. Heyman requested that this particular application be dismissed. Mr. Heymann stated he would prefer this latest application be given a new number and this be deemed a brand new application, noting escrow fees have been paid and this would begin on a brand new footing. Mr. Heymann went on to give an overview stating he has been involved in this project since 2005 and Kingtown Diesel has been at its current location longer than any surrounding properties as a gas, diesel station and more. The property is owned by Norman Lippman and goes back 40 to 50 years. Mr. Heymann stated his history started in 2005 with Mr. Safaraz, noting Mr. Safaraz and the other professionals associated with this job are listening in tonight. Mr. Safaraz began leasing the property from Mr. Lippman and the application came before the Board, at that point in time the property had a junkyard and multiple other uses. Mr. Sarfarz streamlined the property and took away some of the uses and it really got back to a service station and a convenience store and on the sides of the property Mr. Safraz had a trucking entity known as SMA Raza and the trucks were allowed to be stored onsite. Several years went by and Mr. Farnsworth took over the site, noting Mr. Farnsworth probably spent over \$100,000 if not more to make the improvements to the site that were part of the first resolution Mr. Heymann was involved in, they included such things as landscaping and anything else put into the site. As some of you know, Mr. Farnsworth had many health issues and Mr. Farnsworth unfortunately passed away and once again Mr. Safaraz has been there under a lease with an option to purchase. Over the timeframe the applicant has come back before the Township for various improvements to the site, one was the Subway and another was a truck wash. Mr. Safaraz came to Mr. Heymann to get approval for a truck stop for all intents and purposes. The truckers approached Mr. Safraz that there was no weight station for the heavy vehicles that come through the station from Route 78 and Route 80 out in Pennsylvania. Mr. Safaraz came before the Board a little over a year ago with the intent to remove the truck wash and add a weight station, and some of the reasons it has taken so long to get back to the Board is beside the delays that Covid created and things of that nature is that Mr. Safaraz has been negotiating with the Borough of Netcong to hook up to their sewer system. Mr. Heymann explained the applicant has signed numerous papers and are waiting for Netcong to get back to them, also to approve the same. Mr. Heymann went on to testify that this week the applicant found out that the original papers that were delivered to Netcong Township have been lost, so a new set of papers were resigned and resubmitted to Mr. Blaksley and hopefully it will make it to the Town Council agenda. The hook up will not cross over Route 46 it will go through the Grace Baptist Church, and once that is approved, an application will be made to Mr. Kobylarz to seek sewer allocation for gallonage. Mr. Heymann stated that that will open up one of the issues we are seeking to get approved, we want to eliminate on both sides of the property, the east and west side parking stalls. The applicant would like to use that space for overnight parking for truckers and as part of that we would like to make some changes to the downstairs convenience store where expansion of the store and at the same time install showers. Because of the size of the proposed expansion of the store for some cooler space and to sell truck repair parts, the fact that the applicant would like to expand the store is causing additional trip generations which will require us now to go to the DOT for DOT access. Mr. Heymann went on to explain Elizabeth Dolan has been speaking with Mr. Klein as to what is going on noting the Board last time had requested new site distance reporting. Mr. Heymann stated that right now we are in the process of scheduling a meeting with the DOT and Mr. Stern and Mr. Klein noting one of the issues to be discussed is to read your reports concerning the no left turn but at this point in time we are not willing to give up the no left turn, so we would like to go to the DOT and see what they say about the no left turn and the other access

permits we are going to need because of the fact we are increasing traffic flow at this site. Mr. Heymann stated that what we are seeking to do now is to add retail space and that is really only for truck parts and we want to add overnight truck parking both on the east and west bound side, in addition, we want to use the showers and the showers were there a long time ago used by Mr. Farnsworth because of his physical issues, but there are no being used currently. We also want to close the truck wash and put a weigh station, in addition, we want to put storage, noting when we appeared before you about 18 months ago an issue was brought up where if a truck is too heavy where are we going to put the materials, we now want to propose having a storage site, and in place of the truck wash area we are proposing a service bay so truck repairs can be done for some of the trucks that come on site, sometimes they need repairs when they come in. Lastly, we are going to relocate the dumpster and put in a 12,000 DEF tank as this is a requirement from the DEP. We are going to eliminate the drainage issue on east side of the property with some stormwater drainage and we are going to hook up to the sewer service of Netcong and we have a couple of other issues.

Mr. Heymann went on to testify that the last time we came before the Board it was mentioned there were some items we had taken some liberty with, notably on the westbound side there were 5 parking spaces and split rail fence, unfortunately when the trucks back up they kept destroying the split rail fencing, so we now have put in a concrete barrier. It wasn't permitted per the first resolution, it's there now and we are going to try and remedy it. In the rear of the property it was originally a grassy area but the trucks kept running over the area so Mr. Safaraz removed it and installed gravel. There has been a small increase in the retail space not for any merchandise to the general public just for truck parts. The truckers not only stop in for gas but for rest as well and as you know they have requirements and regulations that they can only drive for a certain amount of time and then they have to stop and rest. Lastly, we have to repair the drainage issues that are on the east side of the site.

Mr. Heyman stated what he is saying to the Board at this point and time is there really is no purpose for us to proceed until the DOT tells us what we can and cannot do there. Optimistically six months might be how quick we can get to the DOT. Mr. Heymann went on to say that he doesn't particularly want to table it to move it but instead keep it here with the idea that once the DOT clears us as to what we can and cannot do, we will be ready to proceed with our testimony. We will address the things that are in Mr. Denisiuk's report and Mr. Stern's report.

Ms. Robortaccio asked Mr. Wiener if we could hold the application for six months. Mr. Wiener replied it is within the Board's discretion, it does not mean you have to table it. This application has been around for quite a long time and it seems to me that it needs a reboot because it has drifted away from what it was, and a brand new application should be brought forth and this will give the applicant plenty of time to get the issues straightened out with the NJDOT. Ms. Robortaccio stated and the sewer hook-up as well, because according to our experts the Board cannot approve the application unless there are signed documents that a sewer hook-up can take place. Dr. Kennedy stated he was under the impression that Kingtown Diesel is not tabling anything but withdrawing their current application. Mr. Heymann replied no, that is not what his applicant is asking to do. Ms. Robortaccio stated they are being asked to start a new application. Mr. Heymann stated he is proposing that we withdraw the application from a year or two ago, and he further stated he did apply for a new application with a new narrative but did not address the sewer issue, because they did not have approval. Ms. Robortaccio stated it has been three years we have been speaking of the sewer hook-up. Mr. Heymann replied he didn't believe it has been three years but over the last year we have been working with Netcong to get the sewer hook-up and he thought he would have that by today but he doesn't. Mr. Heymann stated if the Board wants us to withdraw the application until DOT approval is made then he will do it, noting it is the same as his last submission. Ms. Robortaccio stated she would think the application would have new traffic reports along with the items our experts have been asking for, noting when she looks at this application it doesn't appear to be complete at all. Ms. Dargel agreed noting the professional reports are obsolete and that she would recommend the application be denied without prejudice and when you are ready come back with a new application that lays out exactly what you want to do, so that it is not redesigned multiple times.

Mr. Wiener stated if the applicant wants to withdraw the application without prejudice then allow him to do so.

Township of Roxbury  
Board of Adjustment  
April 12, 2021

Ms. Robortaccio asked Mr. Heymann about the proposed added storage in the back, suggesting the Board did not insinuate you add storage, merely they asked a question about what happens if the trucks are overloaded, it was an information question, it wasn't mean to assume that we wanted storage units place on site and it is right to assume you want the units for the public too. Mr. Heymann stated he will not have the storage units open to the public it will make it too intensive of a use.

Mr. Heymann stated the most pressing issue for the applicant is going to the DOT as well as getting Netcong on board.

Mr. Heymann then stated he will withdraw the application and either the escrow can be refunded to the applicant or it can be held in its current account, whatever is the easiest and we will be back with a new application.

Mr. Stern stated as this application has morphed into an application regarding public water, public sewer and DOT access permits, more overnight tractor trailer parking we will view this as a new application that is going to be coming in and as a part of that completeness project it requires an application to DOT, and it requires the allocation letters from the Township Engineer for water and for sewer, noting these are completeness items.

Mr. Heymann stated Mr. Stern and Mr. Klein will attend our initial DOT meeting and whatever discussions we will have will be heard by both sides.

Dr. Kennedy stated in accordance with that we will be asking our experts to come back after that application has been submitted to re-review everything that has been done and everything that you are proposing so we have a new set of recommendations. Ms. Robortaccio stated we also need new traffic reports noting the last time reports were updated was 2017.

Mr. Heymann concurred.

Mr. Stern stated the Roxbury Police would like to participate in in the DOT discussions as well.

Ms. Robortaccio asked what can be done in the meantime about the violations going on at the property. Mr. Weiner stated that would be taken care of at the Municipal level.

Dr. Kennedy stated he will entertain a motion of this applicant to withdraw without prejudice. Ms. Robortaccio made a motion to allow the applicant to withdraw without prejudice and Mr. Wiener asked Mr. Heymann if he consented to the action. Mr. Heymann concurred. Ms. Dargel seconded. *Roll call:* Ms. Robortaccio, yes; Ms. Dargel, yes; Mr. Overman, yes; Mr. Klein, yes; Mr. Frequenza, yes; Dr. Kennedy, yes.

NEW BUSINESS: None  
OLD BUSINESS: None  
Motion to adjourn at 9:14 pm

ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF ROXBURY  
*Tracy Osetec, Board Secretary*  
*April 29, 2021*