

On Monday, February 08, 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: 82552693887#, Participant ID: # and Password: 140262#. 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, Mr. D’Amato, Ms. Robortaccio, Mr. Furey, Dr. Kennedy, and Ms. Dargel

*ABSENT: None*

**PROFESSIONAL STAFF**

Mr. Russell Stern, P.P.  
Mr. Larry Wiener, Esq.  
Mr. Mark Denisiuk, P.E.

**MINUTES OF JANUARY 11, 2021 MEETING**

Ms. Robortaccio made a motion to approve the minutes of the January 11, 2021 meeting, Mr. Klein seconded.

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

**RESOLUTIONS:**

**ZBA-20-005 DOONAN**, Minor Subdivision “D” Variance for property located at 31 Eyland Avenue, Succasunna, Block 3708, Lot 14 in an R-3 zone. *Request for an extension to March 8, 2021 for memorialization.*

**ZBA-20-025 MULLER**, Variance relief for property located at 8 Brookside Road, Succasunna, Block 3504, Lot 4 in an R-2 zone.

Ms. Dargel made a motion to memorialize the resolution, Mr. D’Amato seconded.

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

**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 March 8, 2020 with no further notification.*

**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 March 8, 2020 with no further notification.*

**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. *Request to be carried to March 8, 2021 notification required.*

**ZBA-21-001 DAVIS**, Certificate of Non-Conforming Use for property located at 447 Route 46, Kenvil, Block 2613, Lot 12 in an B-1 zone.

Mr. Weiner swore in Mark Davis of 8 Buttonwood Drive, Long Valley, NJ. Mr. Patrick Dwyer, Esq. of Nusbaum Stein began his testimony by stating he was representing the Estate of Marilyn Davis for an application of pre-existing non-conforming use for property located at 447 Route 46, Kenvil. Mr. Dwyer stated he believes there is sufficient evidence which has been presented in the exhibits submitted as part of the application. Mr. Dwyer further testified that the home was built in 1925, therefore pre-dating the zoning B-2 for the lot and should be grandfathered. Mr. Dwyer asked Mr. Davis of his relationship with the property. Mr. Davis replied he moved into the home in 1964 and resided there until 1986. Mr. Davis stated his mother was a Roxbury resident until she passed away in July of 2018 in addition, he stated he is the Executor of his mother's estate. Mr. Overman stated for the record that the property is in the B-2 Zone according to Tax records, not the B-1 Zone as stated in Zoning Officers report. Mr. Overmann further stated that Mrs. Marilyn Davis was a former Mayor of Roxbury Township as well as a Roxbury Township Library Board member. Mr. Overman told Mr. Davis his mother was a treasure to the Township of Roxbury as well as to his church. Mr. Davis thanked Mr. Overman for his kind words. Ms. Robortaccio and Ms. Dargel also confirmed Mr. Overman's words stating she was a lovely lady and it would not impact their view on the application noting they will do what is best for Roxbury.

Mr. Dwyer asked Mr. Davis to look at Exhibit 5 and give a rundown of the timeline of the property. Mr. Davis stated in 1920 Mr. Fredrick Blinne acquired the lot for later development and in 1925 a two-story 3 bedroom home was built on the property. The stone home built becomes 447 Route 46, Kenvil and Mr. Blinne elects to personally occupy the home with his family until 1953 when he becomes a widower and sells the home to Henry C. Blinne. Mr. and Mrs. Davis then purchase the home from Mr. Henry C. Blinne in 1964 and in 1968 Mr. Harold Davis becomes Roxbury Township Tax Collector, he served in that position for 24 years until retirement in 1992. In 1972 an addition was built on the home that included a basement for laundry, first floor family room, and second floor master bedroom. In 1997 Marilyn Davis retires from Town Council but continues to serve on various Township committees. On February 12, 2008, Harold Davis passes away and Marilyn continues to live at the residence, by now her sons have moved out and on July 10, 2018 Marilyn Davis passes away at the home. Previously deferred maintenance and updates such as installation of above ground oil tank was completed. The home was listed for sale in 2020 and a sales agreement was reached in July of 2020, but the mortgage company backed out the sale due to the B-2 zoning.

Mr. Overman asked Mr. Davis if it was his contention that the property had been used as a single-family dwelling for many years. Mr. Davis responded that its entire existence other than when the property was vacant has always been a home. Mr. Overman stated it looks like a home and has all the characteristics of a home. Mr. Overman asked Mr. Davis if there was anything inside of the home that would suggest that is it suited for a business in any way. Mr. Davis responded; no. Mr. Overman asked Mr. Davis if the reason he was before the Board was because the mortgage company of the buyer had an issue with the fact it was zoned for business but to be used for residential. Mr. Davis responded; correct and stated the buyer spoke to the Zoning Officer of Roxbury Township and he suggested there may be an issue if the property was completely destroyed, thus scaring them away and subsequently the loss of the buyer. Mr. Overman asked wouldn't that be the case anyway with a pre-existing non-conforming building. Mr. Davis replied; he did not know. Ms. Robortaccio asked wouldn't the buyer just need a certification of non-conformance. Mr. Wiener responded this is an application to have a Use approved that is not permitted under a Zoning Ordinance. The testimony has been that the original house was constructed in 1925,

and the first part of the case needed to be made is seeking certification of a non-conforming use. The burden is to show that at one time the use was legal, mostly likely predating the Zoning Ordinance. Then the question becomes was the use continuous, and were there any changes to the use, one of things that comes up in the discussion is some explanation of the expansion of house in 1972. One of the questions is was the addition done with a permit and what are the circumstances on how it was made to the home. In regards to the mortgage company inquiry, if the house cannot be re-built then is a problem with the mortgage and if a certification is obtained that you have a valid non-conforming use that is fine, but still if the use is ultimately terminated it doesn't have the same impact as if you have received a new variance. Mr. Wiener stated that is just a general background and the focus of the case should be on the applicant being able to make their case by establishing the use and if the Board finds it is a valid non-conforming use then you can make that determination, and if not, ultimately they would need a "D" variance.

Mr. Dwyer asked to Board to look at the photo exhibits provided to them; the first photo shows the addition placed on the home in 1972, the second photo showed the right hand side of the home, and the third photo showed a tax map with the property highlighting its location. Mr. Stern asked Mr. Davis to describe the garage and its conversion to a non-garage use and whether or not that can be converted back to a usable garage. Mr. Davis went on to explain that by today's standards, he is not quite sure how useable it ever was noting it was built in the 1920's. Mr. Davis noted the garage was changed very early in his childhood and from what he remembers it had two carriage style garage doors noting you can see where the doors once were located and the building structure has not changed. Dr. Kennedy asked Mr. Davis if the garage was once used as a print shop. Mr. Davis replied no; his parents use to have a mailing service that labeled and distributed circulars for local businesses and they used the garage as a space to provide this service. Mr. Davis stated that the garage space was also heated by an electric heater. Mr. Dwyer asked Mr. Davis if he resided at the home during that time. Mr. Davis replied; yes and he believes the original garage had a dirt floor, noting there was no driveway and eventually stones were placed to form a driveway but prior to the stone, slabs of concrete were installed that were about 6 feet in length and the width of car tires that lead to the garage doors to provide a path for vehicles.

Mr. Dwyer then asked Mr. Davis if he was living in the house when he additional was built. Mr. Davis replied; yes. Mr. Dwyer then asked if Mr. Davis had any recollection if there were approvals for the addition. Mr. Davis replied; he could not say for a fact, but I can remember a yellow permit sign in the window and he remembers an inspector coming out to the property. Mr. Overman asked if professionals stated there are no permits. Mr. Stern responded there is no indication, but there has not been an exhaustive search. Mr. Stern stated he doesn't believe this is an issue regarding permits but, the fact it was originally constructed as a garage and the Ordinance requires that you have a garage we are dealing with a use that does not have a garage. Mr. Stern further stated that in the Zoning Officer's report he asked whether or not the structure could be converted back to a garage. Ms. Robertaccio posed the question that obviously the Township knew about the addition because the tax records showed it. Mr. Wiener stated you cannot go by that, the reason is that when the assessor comes out they will assess whatever they see and they do not make a judgement call as to how it got there. Ms. Robertaccio noted it was mentioned in the tax records that there is a shed on the property; she asked if they could be talking about the garage. Mr. Davis stated there has only ever been a detached garage on the property and never a shed or even a temporary shed, but they must be referring to what we are calling the garage.

Dr. Kennedy asked in order for the Board to approve this application the applicant would then have to convert the garage structure back into a garage. Mr. Stern replied that would bring it into conformance with the Ordinance because there is a requirement to have garage space. Mr. Stern stated when he provided a site visit he noticed there was a boat and car on the premises and certainly the driveway could accommodate three vehicles which is what is required in terms of parking at this size dwelling. Mr. Stern further stated that if the Board approves this application it is the recommendation of the Zoning Officer to have at least one space in the garage in which to park a vehicle. Mr. Overman then asked if the biggest change to be made would be replacing one of the cedar shake shingled panels and replacing it a garage door that opens and closes. Mr. Stern stated he did not know what was on the inside of the garage, but just from the exterior that is what it looks like needs to be done. Mr. Overman asked if the Ordinance states you must have the ability to pull a car into the garage. Mr. Stern replied yes; you must have the ability to park one vehicle in the garage. Mr. Stern asked Mr. Dwyer if it would be a problem to convert the garage back to a garage use. Mr. Dwyer replied he looked at the adoption date for the Ordinance cited in Mr. Potere's letter and it was adopted in 1978, adding there is not a record that he knew of showing a prior Zoning Ordinance. Mr. Dwyer further stated it may well be that both the addition and the garage were also pre-existing non-conforming, but, as Mr. Wiener has pointed out, in the event the Board does not believe that, the Board may be inclined to grant the Use Variance for this use which has been there for almost 100 years. Dr. Kennedy asked based on the current Ordinance we have today, do we have to make the applicant convert the structure back to a garage. Mr. Wiener stated that we have to look at the long range better course for the applicant, and it may very well be a "D" Variance. The reason for that is if you grant the "D" Variance that runs with the land, where as if it was just the certification of non-conforming use, if something unfortunate happens to the property and it reaches a certain destruction level, then the non-conforming use goes away. Mr. Wiener further stated that one of the questions that came up as he read the report was the expansion of the house in 1972, he stated in strict reading of the law, the addition was an expansion of a non-conforming use and we do not know how that happened, whether there were permits or not. Mr. Wiener further stated the Ordinance has contemplated garages for some time now, letting the Board know these are the items they should be taking a look at. Mr. Wiener stated in analyzing this matter before us, it may be easier to treat this as a "D-1" Variance. Ms. Robortaccio asked if the applicant would have to re-notice to the public for the "D" Variance. Mr. Dwyer stated that he included the "D" Variance in the notification. Mr. Wiener stated Council has done a great job in covering both fronts.

Mr. Overman make the statement that in driving through the neighborhood there are many homes similar to the one before the Board, many of which can easily be considered a single-family dwelling but have the option of turning it into a business. Mr. Overman further stated that if the potential buyer wanted to turn the property into a business they can do so and it is also suited for a single family dwelling. Ms. Robortaccio stated if we approved the application then it cannot be used a business. Mr. Overman responded they can come back before the Board to do so.

Dr. Kennedy asked Mr. Wiener if he could include in the Resolution that the garage be turned back into a usable garage to allow it to fall into conformance with the Ordinance. Mr. Wiener responded the analysis on this property is either or it is not a non-conforming use; that is the first determination needed to be made. Mr. Wiener further stated and if it not, then they are looking for a "D-1" Variance to convert this into a single family home and if the Board grants that you will be more guided by what the Zoning regulations are on what now becomes a residential use. Mr. Wiener stated while this is not an outrageous request, there are still rules and regulations we have and he believes in the long run, especially if the Board winds up granting a "D-1" Variance, it is more in their interest than they may know at this

point. Mr. Dwyer stated he agrees with Mr. Wiener's analysis that it is preferable given his insights that there will be a "D-1" Variance granted which would allow a single-family use on this property and if and when a new owner wants to use the property for a business then that is a completely new application. Mr. Dwyer stated what this applicant is looking for is the ability to use the property as a single-family dwelling, in addition, we showed that it has been used that way since it was built, but we certainly agree with Mr. Wiener that if the "D-1" Variance is granted it would provide more protection to the applicant should the property burn down and it would be the applicants preferred outcome at this point.

Mr. Dwyer asked Mr. Davis to speak about the inside of the garage. Mr. Davis stated the walls are insulated and expanded inward approximately 4 inches on all four sides, in addition pavement was placed on the floor to create the shop. Mr. Davis stated he will put garage doors back on the garage and remove the cedar panels that have replaced the original openings to the building.

Mr. Furey asked if the resolution could state that the garage be acceptable to current criteria since the dimensions are not known by the applicant. Mr. Davis stated the garage structure is made of stone and could not be altered. Mr. D'Amato stated that the garage structure was built many years ago and cars were smaller and maybe it was used to park a car or maybe it was used for storage. If we now want the structure to be converted back to a garage, we can have the applicant install garage doors. Mr. D'Amato further explained that the fact a car, boat, jet- ski, or motorcycle be stored in the garage is inconsequential. The garage will give curb appeal and satisfy the garage Ordinance, but this structure may never have had a car in it. It is a structure you cannot change now because it is made of stone and if you make it look presentable to the public and it remains a storage building like most people use their garages, noting not everyone can park in their garage because we all have stuff that needs to be stored.

Motion was made to open to the public for comments – Mrs. Mary Finnegan of 466 Route 46, Kenvil came forward. Ms. Finnegan stated she has resided in Roxbury Township since 1970 and confirmed the home located at 447 Route 46 was there when she moved to the area and Mr. Davis ran a newspaper business out of the garage. Ms. Finnegan stated she would like to see the home stay as a residential home.

Motion was made to close to the public

Mr. Dwyer summed up with the applicant is applying for a "D-1" variance which was noticed in the newspaper in anticipation of the discussion that previously occurred. We feel this property is particularly suited for this use and has been used as a residential property for a very long time. We also do not feel the property has any detriment to the Master Plan and will seek the Board's approval. Ms. Dargel stated that there are many homes in the area and this home is a very historic looking home that is well maintained and she believes it is reasonable to have it remain as a house. Mr. Overman stated he believes it is reasonable to offer this type of protection to future buyers of the property so it can remain a residence and if they choose it to make it a business they can come before the Board to do so.

Ms. Robortaccio made a motion to approve the application for a "D-1" Variance noting the garage doors should be put back on the building that was a garage to make it in compliance with the Ordinance, Mr. D'Amato seconded.

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

**ZBA-20-018 VERIZON**, Use Variance for property located at 130 Route 10, Block 3701, Lot 2 in a B-2 and R-3 zone.

Richard Schneider of Vogel, Chase, Holland, and Schneider came forward on behalf of the applicant Verizon and gave a summation of the application. Mr. Schneider testified that matter before the Board is a pretty straight forward application albeit one of which is of critical importance to his client. The property known as Block 3701 Lot 2 on the Tax Maps and is located at the intersection of Route 10, Hunter Street, and Main Street is the property Verizon operates what is referred to as a data center/switch facility. This facility provides critical services to both Roxbury Township as well as the surrounding area. The facility in order to meet those demands for services is essentially required to be upgraded in terms of its equipment and its electrical system thereby essentially invoking the need to have the facility further supported by an emergency generator. As a result of the upgrade, what is being proposed is a small addition to the building approximately 280 square feet to accommodate a replacement emergency generator. The only other relevant site plan change is the proposed installation of some additional exterior air conditioning units. There are two variances that are being sought from this Board, the first is a F.A.R. or what we would refer to legally or from a planning perspective is a "D-4" Variance, which is a variance that exceeds the permitted F.A.R. The variance in terms of its exceedance of the floor area ratio is very de Minimis. Currently the building has a F.A.R. of .2195 and as a result of the small increase the floor area ratio is only being increased to .2276. Also note that the percentage of impervious coverage is well below that of which is permitted by Ordinance. The only additional variance being requested is to provide for a 7 foot fence to enclose the air conditioning units; the reason and rationale for the 7 foot fence is essentially there is a current 7 foot fence which encloses the exterior air conditioning unit, so we are seeking to merely extend a fence height to match the existing, also note that Mr. Stern made some suggestions about a wall to enclose the area and if the Board is so inclined, we would be agreeable to that. Mr. Schneider stated that we are in receipt of all the reports and reviews done by the Board Engineer and Township Planner. Perhaps, but for one exception, the applicant essentially has no issue with all of their requests. It is understood the location is small in terms of its site plan improvements, but there is seemingly a request for some improvements to the property and my client in the spirit of cooperation is certainly amenable to incorporate a number of those improvements primarily those that have been outlined by Mr. Stern in his review report.

Larry Wiener swore in Mr. Frank Colasurdo of 350 Clark Drive, Mt. Olive, New Jersey. Mr. Schneider went on to qualify Mr. Colasurdo for the purposes of his testimony. Mr. Colasurdo stated that he is a licensed Architect in the state of New Jersey and has held a license since 1996. Mr. Colasurdo is a graduate of NYIT with a Bachelor's degree and passed his exams in 1996 and was licensed to be an apprentice architect in the state of New Jersey, and currently holds that license in several other states.

Mr. Colasurdo went on to give a current description of the building, explaining the site is a data center that does not have any permanent employees and only houses a data processor and equipment. In the early days it housed old copper lines and Ma Bells; today we have what is known as FIOS. Mr. Colasurdo went on to state that these types of buildings have been placed strategically in New Jersey and around the country and that personnel that visit these buildings during the day tweak some of the equipment and go out on the road and fill orders.

Mr. Colasurdo testified the property is a 1.2 acre piece of property, to the south it is flanked by Route 10, to the west it is flanked by Hunter Street, to the North it is flanked by Main

Street, and to the East there are business and residential properties. The lot is unique because it is split between the B-2 and residential zone. The building itself is in the commercial zone, and the access is off Main Street where the parking is in the residential zone.

Verizon is proposing a single story addition of 20 feet x 21.5 feet and the reason the addition is being proposed is that Verizon wants to increase and update the mechanical electrical systems in the building. Currently, the generator that serves this building is 40 years old and has exceeded its lifespan; same with the air conditioning units. The electric service currently in existence is a 800 amp electric service and will have to be upgraded as well to handle the additional electrical loads from the new equipment. The applicant is proposing to match the exterior finish of the existing building which is a white brick and the height will not exceed the height of the existing building now which is 20.6 feet above grade. The top of the addition will be 13.5 feet above grade which matches the lower roof of this building. It is not being proposing to change any of the parking are comfortable accepting the majority of the conditions, but there are a couple that require discussion.

Mr. Schneider asked Mr. Colasurdo to refer to Mr. Stern's and Mr. Denisiuk's report. Mr. Colasurdo started with Mr. Denisiuk's report dated February 1, 2021 and he referred to item #2 which talks about the proposed fuel source, refueling methods, exhaust methods, and noise level for the proposed generator. Mr. Colasurdo stated he read the acoustic noise study of the product and its findings noting it complies with all applicable noise levels. Mr. Colasurdo stated he also wanted a report to address the condensing units as well and would like to put on record the applicant will be supplying the Board an acoustical report and hopefully it can be made as a condition of approval. It will be prepared by the Acoustical Engineer and will include not only the noise emanating from the generator, but any noise emanating from the condensing units to show they will meet all applicable noise standards.

Mr. Colasurdo then addressed the fueling source and refueling methods of the generator. The generator will be fueled once or twice a year with 2,500 gallons of diesel fuel, provided by a fuel truck and the generator will be exercised once a month for about an hour.

Mr. Schneider referred Mr. Denisiuk's report regarding overnight parking or storage of commercial vehicles, noting if this were to occur it would be on the commercial side of the zone in the B-2 portion of the property and will only be used on an as-needed basis. Any vehicles would be a small in nature such as an SUV.

Mr. D'Amato asked Mr. Colasurdo to address exhaust methods as mentioned in Mr. Denisiuk's report and would a fence or a wall be better for abatement for the surrounding area. Mr. Colasurdo responded what is being proposed is an acoustic vent that reduces the noise level to a point where it is actually below New Jersey standards. Mr. Schneider explained that special acoustical louvres are being used as well as a hospital grade muffler system and all of that together will reduce the noise levels below New Jersey noise standards. Mr. D'Amato then asked to elaborate if diesel fuel exhaust of the generator will be clean. Mr. Colasurdo replied the generator complies with the EPA Standards, this size generator is considered a tier four emission standards which has one of the strictest emission standards you can get and it will comply with all EPA standards.

Mr. Denisiuk commented on the storage of vehicles and explained the reason he made the comment in his report was when he conducted a site inspection, he noticed a Verizon vehicle parked and it was mentioned vehicles would only be parked in the B-2 zone, but it appeared to Mr. Denisiuk all of the parking spaces were located in the residential zone and asked Mr. Colasurdo to explain exactly where those vehicles will be parked and how many. Mr.

Colasurdo address Mr. Denisuk's attention to sheet Z-three of the Site Plan, asking he look at where the existing trash dumpster will be removed from a 20 ft. by 35 ft. space and he suggested the vehicles will park in that area if they needed to be overnight.

Mr. Colasurdo went on the address Mr. Denisiuk's comments on design waivers. Mr. Colasurdo address comment #2 which is a site triangle, noting the applicant has no issue providing a site triangle at the intersection of Hunter Street and Route 10 with a size of 30 ft. x 100 ft. and it is not to be a condition of the building permit, but a condition of the CO so the applicant can get started on the project should it be approved. Mr. Denisiuk concurred.

Mr. Colasurdo then went on to address the ADA handicap space and stated Verizon will be happy to install the space noting this type of facility is basically an unmanned facility and is exempt from the ADA requirement. He further stated the applicant will all agree to stripe the parking spaces as requested.

Mr. Schneider then addressed the Township Ordinance that requires a 15 ft. x 60 ft. loading space, he further went on to state there are no employees at the building for any length of time or are there many deliveries and if there are any deliveries it is through a standard UPS truck, no large trailer unloading takes place at the facility.

Dr. Kennedy asked how many employees are on-site on a typical day or are they only there for maintenance and upkeep of the building. Mr. Colasurdo responded unless there is some type of Hurricane Sandy event where lines are down, he would anticipate four employees at any one time but then leaving after an hour, noting it is not an occupied building 95% of the time.

Mr. Schneider went on to address a comment regarding the trash receptacle, noting it must be fully screened with a gated enclosure and buffered with plant material. He concluded that in the spirit of cooperation the applicant has no issued with this request.

Mr. Schneider stated the applicant has no issued with having the light lens being flush with the fixture housing and parallel to the ground.

Mr. Stern commented that Verizon is stating they will be creating a wall to basically square off the other corner and use that as an enclosure, can the light just be incorporated within the enclosure so it doesn't extend beyond the height of the top of the wall. Mr. Colasurdo replied what Verizon is proposing is a flood light on a post, but to comply with the comments Mr. Stern the applicant will propose a wall pack on the existing building versus the post and flood light design.

Mr. Schneider stated the applicant has no issue with requested landscaping by the Township Planner to develop some supplemental landscaping in appropriate places recognizing the nature of the use.

Dr. Kennedy asked Mr. Schneider to address the proposed fence by Verizon, noting Mr. Stern made the recommendation a 7 foot brick wall be built. Mr. Colasurdo concurred to place the wall along the Hunter Street elevation in an easterly direction to do the total enclosure, the existing enclosure, new enclosure and new fencing so it will last another 30+ years. In addition, the applicant will provide landscaping between the fence and Hunter Street.

Mr. D'Amato questioned whether or not the handicap parking space and striping of the lot was necessary. Mr. Stern replied that Verizon did mention that the building has an



exemption regarding handicap parking, but he does feel the parking lot should be striped. Mr. Stern mentioned when he did a site inspection there were three Verizon service vehicles on-site and he feels it would be better organization if the applicant went forward with the 9' x 18' striping. He further stated, if the applicant is legally exempt from providing handicap parking spaces, then I do not feel strongly for that nor the loading zone. Dr. Kennedy asked Mr. Schneider if he could provide documentation showing the ADA exemption.

Mr. Stern asked if the new louvers being installed on the west side and east side facing Route 10 have a black finish. Mr. Colasurdo concurred and stated if they do not come in black but, they will have them painted.

Mr. Schneider went to address #7 of Mr. Stern's report which stated the proposed exhaust pipe riser located above the new building should be architecturally screened. Mr. Colasurdo stated it was the one comment he had an issue with. He further stated for him to do that he would have to design some sort of box or structure and tie it into the building, but he really wants to make as little penetration as possible to the roof and walls as it is related to this mission critical facility, noting the applicant wants to avoid any water infiltration.

Mr. Colasurdo offered to paint the exhaust pipe white with some sort of heat resistant paint because it is basically a muffler that is going to exhaust the heat from the generator. Mr. Colasurdo stated that the pipe would only be extending 3 feet above the building. Mr. Stern asked if it could be done thru a parapet. Mr. Colasurdo asked what would be gained by the parapet. Mr. Stern stated the Township Ordinance is looking to screen all roof top mechanical equipment. Mr. Colasurdo replied if that if it is a condition, the applicant will comply, but by painting it white it will blend in with the brick and there should not be a visual impact on the surrounding area. Mr. Stern asked how far the pipe will be from the Route 10 elevation. Mr. Colasurdo replied over 50 feet and to see the pipe you would have to stop and look for it. Mr. Stern stated the pipe will not be fully visible due to the fact there are some large Pine trees set back from the road and the speed of the road, noting this is a site that does not typically draw attention to itself. Mr. Stern stated based upon the circumstances and the need for the exhaust, he could see himself stepping away from that requirement and not objecting to the waiver.

Dr. Kennedy asked if there would be any additional lighting required for the addition. Mr. Colasurdo replied no.

Mr. Colasurdo went on to speak about repairing the sidewalk along Main Street and Verizon has agreed to do so, noting there is 90 feet of frontage along Main Street.

Mr. Stern asked Mr. Colasurdo if he knew the height of the transponder being installed near Hunter Street. Mr. Colasurdo replied he did not, but he would find out and get that information to the Board.

Mr. Klein wanted to state for the record that the original switch which was housed in the building is now in the Smithsonian.

Mr. D'Amato asked if the service provided from the building are for both landline and cellular. Mr. Colasurdo replied yes.

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

Mr. Wiener swore in William F. Masters, Jr. of 19 Ironwood Drive, Morristown, N.J. Mr. Masters went on to tell the Board of his qualifications stating he is a Professional Planner, licensed in the State of New Jersey and has been continually licensed for the past 40 years. He was the Township Planner for the town of Parsippany Troy Hills for 13 years and for the past 27 years he has been involved in his own private practice focusing on the communications industry such as wireless and landline communications applications. He has previously testified for numerous Planning and Zoning Boards as an expert witness.

Mr. Masters reviewed the site plan drawings, application, and supporting documentation and provided an on-site inspection. In addition, he reviewed the relevant Ordinances, as well as the 2017 re-examination of the Master Plan and prior re-examinations of 2009 and 2005 Land Use Plan Element, and also reviewed reports from the professionals on the Board and from the Township.

Mr. Schneider asked Mr. Masters to give the Board an understanding of the proposal from a Planning perspective. Mr. Masters went on to testify that the primary variance relief associated with this application is the "D-4" variance from the maximum permitted floor area ratio which is located in the B-2 zone is .20 and the existing building that occupies the site is non-conforming in regard that the existing floor area ratio of the single story building is .2195 which exceeds the floor area ratio requirement of .0195. The proposed addition which is a total of 428.3 square feet brings the floor area ratio to .2276 which is a total of .0276 floor area ratio in excess of the maximum permitted floor area ratio.

Mr. Masters further testified that floor area ratio is a regulation designed to control density and intensity of use, it differs from building coverage in that it takes into account multiple story buildings, which are all factored into a floor area ratio. He noted that in this application we have a single story building with a use previously described by the Architect as a data center that houses equipment and as a result does not require a great amount of parking. We also have a situation where, while the existing building and the proposed building with the proposed addition exceeds that maximum permitted floor area ratio requirement of 20%, if we look at the impervious coverage ratio in the B-2 zone, the maximum permitted impervious coverage is 60%, the existing impervious coverage is 37.62% far below the maximum permitted use, noting that correlates with that fact that the building is an equipment center as opposed to an office building or some other type of employee intensive or commercial type of use. Mr. Master further stated that it is the applicant's burden of proof in terms of the "D-4" variance relief request to show that the site will accommodate the floor area ratio associated with a floor area that is larger than that which is permitted by the Ordinance, noting this is somewhat of a unique situation in that the nature of the building is to house equipment as opposed to employees or customers with active travel back and forth to the property so in that regard I believe the request before the Board can in fact occur without substantial detriment to the comprehensive zone plan of the Township of Roxbury or without substantial detriment to the Master Plan for the public good. Mr. Masters also noted that in terms of the "D-4" variance request this particular relief can be granted as well without substantial detriment to the Master Plan, he further stated that Roxbury's Master Plan is somewhat unique in the fact that they have a visual design plan element requirement in their municipal Master Plan with the purpose to preserve and enhance the visual environment and to encourage the most appropriate architectural and sight design features possible for all new residential and non-residential projects.

Mr. Masters made the point that generators are usually pieces of equipment which are located outside of a building and it is not unusual even in a corporate campus environment

to see emergency generators set up on the outside premises, noting they are not particularly attractive so visual impact of a generator is a valid concern.

Mr. Masters testified the whole purpose of a generator is to operate in emergency situations so that the equipment that it is designed to support the public is sustained and able to continue to operate without interruption. Given the issues of visual impact, noise and security, it would be my opinion that it is a far better zoning alternative to enclose the piece of equipment inside a building with four walls, a floor, and a roof as opposed to having it sit outside on a concrete pad. Mr. Masters summed up with the benefits in this application far outweigh the detriments and that it actually promotes the purposes and objectives of the Master Plan in terms of encouraging the most appropriate architectural and sight design features for a new non-residential project. In addition to the floor area ratio "D-4" variance request there is also a request for the height variance for the accessory structure which in this case will be the replacement wall for the existing board on board fencing of the air conditioning condensers. The applicant concurs with Mr. Stern's assessment relative to the wall and in looking at the existing board on board fence, the applicant concurs that the wall would be a more attractive method of screening as well as noise attenuation. The replacement of the existing board on board fencing along with a continued new wall both around where the existing board on board fencing as well as the newly revised location of the new air conditioning condensers which would now be to the north east side of the existing condensers would be a better solution to both screening visually as well as noise attenuation. Mr. Masters suggested the variance request for the seven foot fence height for the accessory structure is a preferable zoning alternative to the lower wall height and in conclusion, he believes that the proposed building addition to house the generator as well as the proposed wall around the air conditioning condenser unit promotes the purposes and objectives of the Master Plan as well as the intent and purposes of the zone plan promoting the public good as well as promoting the purposes and objectives of zoning.

Mr. Stern asked Mr. Masters if he concurred with instead of the current board on board fence to then construct a wall around the current condensers. Mr. Masters concurred. Mr. Stern stated the old fence just needs to come down and the enclosure then would be a wall matching the existing wall along Hunter Street. Mr. Masters replied yes; the fence needs to be removed entirely. Mr. Stern then asked Mr. Masters to confirm that the wall would be at the seven foot height. Mr. Master concurred.

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

Mr. Schneider summed up with he would kindly urge the Board to grant the "D-4" variance as well as the request for the seven foot wall. He would respectfully suggest that based on Mr. Masters testimony it is a pretty clear case that the applicant has satisfied the criteria for granting of the "D-4" variance floor area ratio tending to regulate the intensity of the use. Finally, the applicant would ask that the Board approve the application as presented subject to the stipulated conditions that the application represented and that it will comply with during the course of this hearing based on both the comments of the Township Engineer, Board Engineer and Mr. Stern including but not limited to the modified proposal to replace the existing fence with a wall and extend it into a northeasterly direction together with all the other representations as they relate to landscaping and lighting.

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

Mr. D'Amato made a motion to approve both the D-4 and C variance stipulating everything that was put on record as far as the applicant is willing to make including but not limited to striping the driveway and repairing the walkways around the perimeter of the property, Ms. Dargel seconded.

*Roll call:* Mr. D'Amato, yes; Ms. Dargel, yes; Mr. Overman, yes; Mr. Klein, yes; Ms. Robertaccio, yes; Mr. Furey, yes; Dr. Kennedy, yes.

**ZBA-21-002 SOS SERVICES, LLC.** Use Variance for property located at 438 Route 46, Kenvil, Block 2612, Lot 13 in an B-2 zone.

Mr. Glenn Williams, Esq. from the firm of Williams Graffeo & Stern stepped forward on behalf of the applicant SOS Services, LLC.

Mr. Williams went on to testify that Zoning Board Application 21-002 is for the replacement of two pre-existing non-conforming signs with a new sign at 438 Route 46. The two existing signs do not meet the Township's Ordinance Section 13-8.196B2 which limits properties in the zone to one free standing sign per lot, not to exceed 55 square feet in size with a maximum height of 18 feet and a minimum setback of 15 feet. Section 13-8.917A1 further prohibits any increase of a non-conforming sign or a non-conforming sign be illuminated. Mr. Williams further testified that Section 13-8.9172 prohibits moving or replacing non-conforming signs except to bring it into conformity. Mr. Williams stated the applicant intends to place two non-conforming signs with a single new sign thus conforming with the single sign limit approximately 24 feet in size which is smaller than the 55 square foot permitted in the zone as well as the 18 foot maximum height and it will be internally illuminated instead of the two externally illuminated signs which exist. The new sign however will not satisfy the 15 foot minimum set back requirement due to physical limitations at the sight.

Mr. Wiener swore in Mr. Raymond Sosnovik of 79 Marble Hill Road, Great Meadows, N.J., 07838. Mr. Sosnovik went on to testify that he is the principle owner of Exit Cornerstone Realty and SOS Services, LLC. Mr. Sosnovik acquired property located at 438 Route 46 in June of 2020 which houses Exit Cornerstone Realty a real-estate franchise where Mr. Sosnovik works as a licensed broker. Mr. Sosnovik noted his property is two houses up from the Dairy Queen and was formerly a gold purchasing business. Mr. Sosnovik stated the signage has been there from the 1970's and the applicant stated he would like to be in conformity with the Ordinance but the problem he has is if he relocated the sign over to the right the sidewalk is in the way and if he doesn't keep where it is currently located, the neighboring trees block the visibility of the sign. Mr. Williams asked Mr. Sosnovik to draw his attention to Exhibit 4 which is a picture of existing signage on the property showing a large tree that would obstruct visibility if the sign were moved further into the property. Mr. Williams asked Mr. Sosnovik if it was his intent to replace the two signs with a single sign that conforms with all other respects to the zoning ordinances with the exception of the 15 foot set back. Mr. Sosnovik concurred and stated the sign he is proposing is basically the same as the pre-existing sign from the prior owner. Mr. Williams asked Mr. Sosnovik to draw his attention to Exhibit 5 which is a rendition of the proposed signage. Mr. Sosnovik went on to describe the sign he is proposing is an aluminum sign that will have an interior light, its dimensions are 48' x 72' and has 6' x 6' posts. Mr. Sosnovik further stated the pre-existing sign had flood lights to illuminate the sign on both sides which provided a lot of glare, noting the proposed sign has a softer LED internal lighting. Mr. Williams then asked Mr. Sosnovik to look at Exhibit 6 a survey that was prepared by David B. Swanson and asked him to provide the location of the existing sign as it relates to the concrete curbing. Mr. Sosnovik went on to state from the front part of the sign to the curbing the measurement is

7.1 feet and it was requested he be able to hold that position, but erect a single sign instead of the two signs that are located there currently.

Mr. Stern interjected stating the Board does not have the authority to approve the location of the sign as it is located in the State of New Jersey Right of Way. Mr. Stern further stated the applicant needs to make an effort to move the sign within his own property and shift it over at least 3.2 feet, noting the proposed sign is being reduced in size, making the shift very feasible. Mr. Stern stated that if the applicant is not willing to move the sign he would then be dealing with a different jurisdiction. Mr. Williams stated the proximity of the sign that currently exists and what is being proposed is very consistent with other signs in the area some of which are closer to the road. Mr. Stern reiterated that the Board does not have jurisdiction to approve anything in the DOT State Right of Way and is not going to pull the files of surrounding signs to see if they were legally permitted. Mr. Sosnovik stated that moving the sign 3.2 feet would be an easy fix but, the sign would then be obstructed by the neighboring property. Mr. Stern reiterated as the application is proposed currently, this Board cannot make a ruling.

Mr. Sosnovik asked Mr. Stern how the other signs in the area were approved. Mr. Wiener replied the other signs are not going to make your sign legal and the application being heard before us tonight is about your sign. Mr. Sosnovik asked if those surrounding signs were approved by the DOT or by the Zoning Board. Mr. Wiener replied he did not know, and again the matter at hand is your sign, not the other signs.

Mr. Stern asked Mr. Sosnovik if he shifted the sign more towards his driveway, would that provided better visibility. Mr. Sosnovik replied he didn't think it would because coming from the other direction there are very large pine trees that obscure the view of the sign. Mr. Stern asked Mr. Sosnovik if the trees are located on his property. Mr. Sosnovik replied no.

Mr. Sosnovik again asked the Board if they have never approved a sign in the DOT Right of Way. Ms. Robortaccio replied no, it's illegal.

Mr. Furey stated it is out of our jurisdiction and Mr. Stern has stated so three times. Ms. Robortaccio stated the sign must be moved 10.3 feet in from the curb line. Mr. Wiener stated the exact distance needs to be confirmed as well as its location.

Mr. Williams stated his applicant is willing to move the sign back begrudgingly to the property line and out of the DOT Right of Way and they will plot the location on the survey showing the new sign to be on his property.

Dr. Kennedy stated once we have ironed out the location of the sign in an acceptable area, he would like to talk about the sign itself.

Ms. Dargel asked if the sign itself falls within the Ordinance. Ms. Robortaccio replied yes. Dr. Kennedy stated he had a question regarding the illumination.

Dr. Kennedy then asked how the sign was illuminated internally. Mr. Williams replied the sign has an aluminum frame with white panel faces as reflected in Exhibit 5. Dr. Kennedy asked Mr. Stern if the town has a lumen standard. Mr. Stern replied no, but this sign having a white face and being very close to the road could be very bright and distracting and as we heard earlier in the meeting there are residents in the area. Mr. Stern suggested that because the sign is located very close to the Right of Way it should have a dimmer associated with it so that if the Township does receive complaints it could be subdued to some degree.

Dr. Kennedy asked the applicant what hours would the sign be lit and will it be on a timer. Mr. Sosnovik stated the sign will have a timer on it. Mr. Sosnovik stated he would be willing to put the sign lighting on a dimmer and stated he doesn't want the sign so bright that it is unable to be read.

Dr. Kennedy asked Mr. Sosnovik if he would be willing to make the sign posts more decorative, suggesting finials.

Mr. D'Amato let Mr. Stern know he researched the proposed lighting on line and the lumens wattage is 102, the lumens per foot is 108, the input voltage is 12 volts, the primary voltage is 120 volts, and has a color temperature of 6,500 K.

Dr. Kennedy asked Mr. Sosnovik if he could turn off the sign light at midnight. Mr. Sosnovik concurred. Mr. Overman weighed in and felt midnight is too late for a realty business to have its sign on and feels 10:00 pm is much more reasonable.

Mr. Stern read the Ordinance to the Board stating where illuminated signs are permitted, signs facing a residence or residential zone shall not be illuminated between 10:00 pm and 7:00 am, unless the business is open to the public later than 10:00 pm in which event such a sign may be illuminated until business is closed to the public but not thereafter.

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 the application setting the sign back 10.3 feet from the curb line granting the variance for 15 setback requirements, a dimmer switch for the sign and it will follow the guidelines of the Township Ordinance as mentioned earlier Mr. D'Amato seconded.

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

NEW BUSINESS: None

OLD BUSINESS: None

Motion to adjourn 10:18 pm

ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF ROXBURY  
*Tracy Osetec, Board Secretary*  
*February 25, 2021*