

Board of Adjustment 10/14/10

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on October 14, 2010 at 7:00 p.m. with Vice Chairman Edward Data presiding. After a salute to the flag, Mr. Data read the Open Public Meetings Act.

BOARD MEMBERS PRESENT: Ms. Darling, Mr. Grossman, Ms. Dargel, Mr. Damato, Mr. Giardina, Mr. Crowley, Mr. Data

ABSENT: Ms. Kinback, Ms. Robortaccio

PROFESSIONAL STAFF PRESENT:

Mr. John Hansen, P.E. - Excused
Mr. Russell Stern, Township Planner
Mr. Larry Wiener, Esq.

MINUTES OF 09/13/10

Ms. Dargel made a motion to approve the minutes of September 13, 2010. Mr. Giardina seconded.

Roll call: Ms. Dargel, yes; Mr. Giardina, yes; Mr. Damato, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

RESOLUTIONS:

ZBA-10-018 Christopher Walsh, Variance for a proposed Martial Arts Studio and Wrestling Club for property located at 2 Howard Place, Ledgewood, Block 8901, Lot 9 in a OR-5 zone
In the matter of Christopher Walsh
Case No. ZBA-10-018

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

Approved: September 13, 2010

Memorialized: October 14, 2010

WHEREAS, Christopher Walsh has applied to the Board of Adjustment, Township of Roxbury for permission to obtain a “D1” use variance to utilize a portion of the existing building on-site for a Martial Arts Studio and Wrestling Club for premises located at 2 Howard Place and known as Block 8901, Lot 9 on the Tax Map of the Township of Roxbury which premises are in a “OR-5” Zone; said proposal required relief from Section 13-7.3302A of the Roxbury Township Land Use Ordinance; and

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

1. The applicant is a proposed new tenant on-site.
2. The existing structure is located at the end of Howard Place and is zoned OR-5. It is improved with a 27,500 square foot industrial type building. All parking and loading activity on-site occurs in the rear.
3. The applicant was seeking a use variance approval to utilize the southern end of the building for a martial arts studio and wrestling club.
4. Applicant received a letter of denial dated 6/22/10 from Tom Potere, the Zoning Officer.
5. As noted in Mr. Potere’s denial letter of 6/22/10, the OR-5 District prohibits such uses.
6. The Board received a report from Russell Stern, Township Planner, dated 7/30/10.
7. The applicant, Christopher Walsh, stated that the intended use would be for a wrestling club and martial arts training. There would also be occasional meets scheduled on the weekend. He stated

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the hours of operation would typically be on weekdays from after school until about 10:00 PM and during the days on weekends.

8. He stated his space would be approximately 7,000 square feet. There were two other tenants – one was a warehouse type operation and the other a marketing company that designed “trade show type” display racks. He stated each of their activities took place during normal business hours and there would be little, if any, conflict with his proposed use.
9. Mr. Walsh stated that there was more than adequate parking on-site and that approximately 25 vehicles could park in the area most convenient to where the club would be. In response to several comments (and as noted below in conditions of approval), Mr. Walsh agreed that certain aspects of the site would be upgraded both to improve the existing conditions and to accommodate his proposed use.
10. Mr. Walsh summarized his application by stating that he had done due diligence in selecting the site and that his use would be complimentary to the existing uses on-site.

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 application is a “D1” use variance and is thus subject to the standards enunciated in the Medici vs. BPR case.
2. In the instant case, as noted in the municipal planner’s report, the 2009 Roxbury Township Land Use Plan Element Update acknowledged that both commercial recreation and industrial operations can coexist and be appropriately accommodated within the Industrial and LI/OR Districts:

“Another use that may be appropriately accommodated within the Industrial and LI/OR Districts is commercial recreation. This involves a building or portion of a building designed and equipped for the conduct of sports, exercise, leisure time activities or other customary and usual recreational activities, operated for profit or not-for-profit and which can be open only to bona fide members and guests of the organization or open to the public for a fee.”

3. The Board finds that, in this case, it is clear that this site is particularly suitable for the recreational/industrial interaction contemplated in the aforementioned 2009 Land Use Plan Update. Thus, the Board finds that this proposal, while constituting a use variance, does not contravene the Master Plan or the current trends in zoning.
4. The Board notes the existence of many similar facilities within the Township and notes there has been no history of any problems with any of those facilities functioning in a safe and efficient manner. This use will clearly be compatible and complementary to the existing uses. It also will provide residence of the Township and nearby areas an opportunity for recreational activity.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 13th day of September, 2010 that the approval of the within application be granted subject, however, to the following conditions:

1. All material located in the southern end of the building, all material located within the southern portion of the parking lot, (cherry pickers, vehicles, trailers, recreation vehicle, propane tanks, fuel cans, etc.) shall be removed prior to the issuance of a Certificate of Occupancy. The parking area shall only be utilized for the parking of patrons and employees.
2. The applicant shall re-strip the parking lot. A parking lot striping plan, which includes ADA parking and signage shall be provided to the Township Engineer and Planner for approval and implemented prior to the issuance of a Certificate of Occupancy.
3. Applicant shall provide a lighting plan utilizing concealed source fixtures, which shall be subject to the review and approval of the Township Engineer and Planner and implemented prior to the issuance of a Certificate of Occupancy.
4. All non-conforming floodlights shall be removed.
5. The applicant testified that there was no need for a dumpster type storage area and that trash generated by this use was limited. If it is determined in the future that the applicant needs a dumpster or other trash type facility, application shall be made to the Township.

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Mr. Crowley made a motion to approve the Resolution. Mr. Giardina seconded.
Roll call: Mr. Crowley, yes; Mr. Giardina, yes; Ms. Dargel, yes; Mr. Damato, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-09-00012 WDIFTK, LLC, D Variance / Minor Sub Division for property located at Hillside Avenue, Succasunna, Block 5203 Lot 46, in a R-3 zone.

In the matter of WDIFTK, LLC
Case No. ZBA-09-00012

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

Approved: September 13, 2010

Memorialized: October 14, 2010

WHEREAS, WDIFTK, LLC has applied to the Board of Adjustment, Township of Roxbury for permission to obtain a minor subdivision in connection with a “D” variance for premises located at Hillside Avenue and known as Block 5203, Lot 46 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Zone; said proposal required relief from Section 13-7.701 of the Roxbury Township Land Use Ordinance; and

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

1. Ronald Heyman, Esquire, represented the applicant.
2. The applicant is the owner of the subject property. It is an improved four-acre parcel containing a pre-existing non-conforming two-family home. There is also a detached three bay two story garage.
3. Prior to the public hearing, the Board received the following documents:

Prepared by Frederick C. Meola

- Sheet 1, Cover Sheet, undated, revised 3/13/09, revised 10/10/09, 12/13/09, 2/15/10
- Sheet 2, Existing Conditions, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 3, Subdivision Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 4, Grading Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 5, Landscape Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 6, Sight Triangle, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 7, Soil Movement Calculations, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 8, Steep Slopes Map, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 9, Sanitary Sewer Profiles, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 10, Road and Driveway Profiles, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 11, Soil Erosion Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 12, Detail Sheet, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 1 of 1, Tree Study Plan, original 8/3/09, revised 12/13/09, 2/15/10

Prepared by Charles Schaffer Associates, LLC

Sheet 1 of 1, Front and Street elevations, dated 2/18/10

Prepared by Environmental Technology, Inc.

Environmental Impact Statement, dated October 2008

4. The Board received the following memorandums:
 - a. Russell Stern, Township Planner, dated 4/30/09, updated 9/11/09, 11/5/09, 1/7/10, updated 2/26/10

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- b. John Hansen, Board Engineer, dated 5/7/09, updated 9/9/09, 11/5/09, 1/7/10, 3/3/10
 - c. Michael A. Kobylarz, Township Engineer, dated 10/23/09, 12/17/09, 1/7/10
 - d. Historic Advisory Committee, dated 4/8/09 and 11/2/09
 - e. Environmental Commission, dated 3/1/09
5. The applicant's engineer, Frederick C. Meola, walked the Board through the plans that he prepared dated 3/13/09. Mr. Meola reviewed the highlights of the plan noting the proposed dwellings would be located approximately 40' from the road; total limit of disturbance would be 35,882 sq. ft.; new impervious coverage would be 7,650 sq. ft.; disturbance of slopes greater than 25% would be 17%; the retaining walls would be approximately 850' in length with heights of 47'; the homes would have individual driveway openings, there would be approximately 500' of undisturbed frontage; a historic wall (commented upon by the Township Historic Advisory Committee) would remain in place.
 6. During the course of the 5/11/09 hearing, a consensus was reached that the application needed more refinement. The applicant agreed to take another look at the project and have a staff meeting to further discuss ways of improving the original plan.
 7. The matter was subsequently carried and heard on 9/14/09. Mr. Meola had submitted an alternate plan dated 8/25/09. The Board had also received updated reports from Russell Stern, Township Planner, dated 9/11/09 and John Hansen, Board Engineer, dated 9/9/09.
 8. Mr. Meola had prepared what was described as an alternate proposal to the original plans. He resumed his testimony and characterized the key differences from the 3/13/09 to the 8/25/09 plan as follows:
 - a. New dwellings are closer to one another
 - b. Proposed dwellings are located approximately 75'-80' from the road
 - c. Total limit of disturbance is 39,000 sq. ft.
 - d. New impervious area is approximately 11,200 sq. ft.
 - e. Disturbance of slopes greater than 25% is 27%
 - f. Retaining walls approximately 1,200 linear feet with heights of 4-8 feet
 - g. Individual driveway openings
 - h. Approximately 620' of undisturbed frontage
 9. There was a discussion between the applicant and the Board as to the merits of Plan A versus Plan B. Some of the discussion centered on whether or not it was appropriate to divide this property into three as opposed to two lots.
 10. The matter was carried to the 11/9/09 public hearing.
 11. The applicant presented two comparison plans. One was referred to as Plan One (sheet 8 of 12). Mr. Meola reviewed the details of sheet 8 of 12. During the course of his testimony with the Board, it was apparent that some of the calculations would change as a result of certain proposed improvements. As such, the applicant asked for the matter to be carried to a future hearing so as to ensure that accurate information would be supplied to the Board.
 12. The matter was carried to the 1/11/10 public hearing.
 13. Mr. Meola was recalled to the stand and reviewed the latest version of his plans, which had a revision date of 12/13/09. Mr. Meola noted the salient feature of the new plan was to leave the historic single-family home as pretty much intact. The house, obviously, would remain in its location and the existing driveway would be used and there would be no reason to impinge upon any of the historic infrastructure in the walls.
 14. The new lots would be created on the ends of both properties fronting on North Hillside Avenue. Those properties would meet the bulk requirements of the zone but, would, nevertheless, require relief from the steep slope ordinance. The two- family home would be on a 2.41-acre lot. The lot to the south would be 36,516 sq. ft. and the northerly lot would be 51,335 sq. ft. The R-3 Zone contemplates a minimum lot size of 15,000 sq. ft.
 15. As noted by the Township Planner, the following variance relief is needed:

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- a. A “D”(2) variance is necessary from §13-7.701, which prohibits any nonconforming use, such as the two-family dwelling, to be changed in any way other than a conforming use.
- b. A variance is necessary from §13-7.818 as the application exceeds the maximum allowable area of steep slope disturbance in all slope categories.

<u>Steep Slope Category</u>	<u>Area</u>	<u>Maximum Area of Allowable Disturbance</u>	<u>Proposed Area Of Disturbance</u>	<u>Maximum Area of Allowable Disturbance</u>	<u>Proposed Percentage Of Disturbance</u>
15-19.99%	18,360 s.f.	6,426 s.f.	7,525 s.f.	35%	40.9%**
20-24.99%	26,330 s.f.	3,950 s.f.	4,454 s.f.	15%	16.9%**
25+%	100,003 s.f.	3,000 s.f.	17,186 s.f.	3%	17.2%**

** Variance required

16. The application also requires the following design waivers:

- a. A design waiver is necessary from §13-8.602A, as a 33’ wide half-width right-of-way is required while the applicant proposes 25’. Relief is also needed, as a 20’ wide half-width cartway is required, while the applicant proposes to leave the current paving intact at an approximate 14’ half-width.
- b. A design waiver is necessary from §13-8.610A, as a sidewalk is not provided along the entire North Hillside Avenue road frontage.
- c. A design waiver is necessary from §13-8.612E, as the residential driveway grades exceed 6% within 25’ of the right-of-way.
- d. A design waiver is necessary from §13-8.804B, as street trees are not located within the North Hillside right-of-way.

17. The within application was continued to the 3/8/10 public hearing.

18. The principal of the within application, Kenneth Parks, testified at the hearing. The applicant’s engineer was not present due to illness. Mr. Parks identified a streetscape depiction showing how the houses would appear looking at them from the street. During the course of discussion, it was apparent that Board members opined that not enough detail and scale gave them an adequate feel for what the elevations would look like.

19. The applicant agreed to re-visit the streetscape so as to make same conform to the Board’s request for a more accurate and meaningful drawing.

20. Richard Cramond, from the Township Historical Advisory Committee, also testified at the public hearing. Mr. Cramond noted that it was his personal opinion (which would be reviewed with the other members of the Historic Advisory Committee) that the applicant’s plan, as presented, respected the historic nature of the two family house as well as the various associated infrastructure including an old wall. He opined this had historic value and maintaining same would be consistent with the town’s goals relative to historic sites.

21. The matter was continued to the 6/14/10 public hearing.

22. The applicant called its architect, Charles Schaffer. Mr. Schaffer presented a two sheet architectural rendering dated 5/11/10:

- a. A-2 – Design A Left Side of the property
- b. A-2 – Design B Right Side of the property

23. Each of these drawings depicted one of the two new proposed homes. Mr. Schaffer noted the homes would be approximately 3,000 to 4,000 sq. ft.

24. Mr. Schaffer testified that the design of the homes was an attempt to make them architectural compatible with the historic two family building.

25. Richard Cramond, from the Township Historical Advisory Committee, appeared at the hearing and generally endorsed the proposal. He asked for some minor modifications to the window

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treatments, which the applicant agreed to. Mr. Cramond's testimony is strictly from the view of the historic society.

26. The matter was carried to a further public hearing since there was not a full seven member board at the 6/14/10 hearing.
27. The final public hearing for the within matter was on 9/13/10.
28. The applicant's attorney gave a summation; several questions were asked by the Board; the meeting was opened to the public; there were no further public comments.

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 within case is unique in several ways. But for the fact that the existing historic home is a two family home (a prior legal non-conforming use), this matter would have been before the Planning Board. It is also conceivable, if the two family use were abandoned, the applicant would have been able to theoretically done a conforming subdivision that would have resulted in a yield of more than the three lots that are created as a result of this approval before the Zoning Board of Adjustment.
2. The core issue to the grant of this "D" variance, to expand a non-conforming use (the expansion really consisting of subtracting the two lots being created to construct single family homes), turns on the non-conforming use being of historic and special quality. In this regard, the recommendations and testimony of the Township Historic Advisory Committee and its chairman, Richard Cramond, are critical to the Board's evaluation. As noted by Mr. Cramond, maintaining the status quo of the house and preserving much of the existing infrastructure is something that the Township Historic Advisory Committee has strongly recommended to the Board. The alternative, to the owner and developer of the property, is to remove and/or abandon the non-conforming use and simply develop the property with single-family conforming homes.
3. In analyzing the situation, the Board finds the instant proposal with the "D" variance (and related slope variances/design waivers) is a better planning alternative than simply saying to the applicant to go ahead and develop the property with the subdivision in a conforming manner. The benefits to maintaining the existing two family structure and the reduced density of only creating two additional lots is consistent both with the intent and purpose of the Municipal Land Use Law as well as the Township's zoning ordinance. Thus, the approval, in this particular instance, is extremely fact sensitive.
4. Given the lowered intensity of use and the maintenance of the two family home, the impacts of this proposed subdivision would clearly be less than the impact of a straight conforming subdivision.
5. The conditions noted below will further reduce the impact and limit any further development of the site.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 13th day of September, 2010 that the approval of the within application be granted subject, however, to the following conditions:

GENERAL CONDITIONS

1. Subject to the review and/or approval of all other governmental agencies with joint and/or concurrent jurisdiction over the within application.
2. Payment of all fees, sureties, and escrows as required by Township and/or other governmental agencies.
3. The approved subdivision plan is the Frederick C. Meola plan, dated 5/21/07 with a revision date of 2/16/10. Subject to further conditions and any necessary revisions needed to incorporate the conditions of approval.
4. The two new homes to be constructed shall be constructed and located as depicted in the Charles Schaffer architectural renderings presented at the 6/14/10 public hearing bearing a date of 5/11/10.
5. There shall be no further subdivision of any of the lots created by this application. The applicant shall record the restrictions on development in the chain of title of the subject property.

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6. The historic two family house shall be maintained in its present condition. Any improvements to same shall be reviewed and approved by the Historic Advisory Committee. The existing walls and infrastructure shall be maintained and the maintenance of same shall be a continuing obligation of the owner of the property.
7. The applicant shall file a conservation easement for those areas of the property encumbered by steep slopes or other non-developable areas.
8. The subdivision Deeds must be filed within 190 days of the date of adoption of this resolution or the approval shall expire.
9. Demolition of the existing dwelling will require approval by the Zoning Board and a building design to compliment the historic character of the property.
10. Prior to site work and the issuance of building permits, the applicant shall contact the Police Department to coordinate construction activities that may impact North Hillside and may obstruct the flow of traffic or conflict with school activities. Where a Police Officer is needed for traffic control, the Township shall be compensated in accordance with established procedures.

PRIOR TO THE SIGNING OF SUBDIVISION PLANS

1. Delineation of the conservation easement shall be reviewed and approved by the Board's Engineer and Planner.
2. The applicant shall obtain Morris County Soil Conservation District approval and approval of the Morris County Planning Board.
3. Applicant shall file a Tree Removal Permit application. The tree study plan shall be consistent with the application as well as the subdivision plans. If necessary, the documents shall be revised to incorporate same. Additional replacement trees shall be located on the drawings. Street trees required by ordinance or street trees located within the applicants property cannot be counted as replacement trees. Size and species of street trees shall be provided. The Township Planner shall review and approve this condition.
4. Applicant shall detail the wall material for the retaining wall along North Hillside Avenue as well as the interior lot retaining walls. The type of material shall be reviewed and approved by the Township Planner
5. Applicant's proposed tax lot numbers shall be reviewed and approved by the Tax Assessor.
6. Applicant shall comply with the comments of the Township Engineer, Michael A. Kobylarz, in his memorandums dated 10/23/09, 12/17/09 and 1/7/10. Those memorandums are attached to this resolution for purposes of clarity.
7. Metes and bounds descriptions and closure calculations must be reviewed and approved by the Board Engineer.
8. An operation and maintenance manual for the drywell systems must be submitted for review and approval by the Board Engineer.
9. Applicant shall pay any past an current outstanding sewer bills associated with the existing two family dwelling.
10. Board Engineer to approve driveway turnarounds on lots 46.01 and 46.03.
11. Applicant shall obtain sewer capacity allocation from the Governing Body.
12. Fire Hydrant location shall be reviewed and approved by the Township Engineer and Fire Official.
13. The applicant shall contact the Township Planner for further landscape comments. A revised landscape plan shall be submitted for review and approval by the Township Planner. Plants less desirable to deer shall be utilized.

PRIOR TO THE FILING OF SUBDIVISION DEEDS

1. A copy of said Deeds shall be provided to and reviewed by the Board attorney.
2. The applicant shall install the sidewalk as determined by the Township Engineer and street trees as determined by the Township Planner, and the stormwater management structures for the remaining two-family home and driveway. A pre-construction meeting, with the Township Engineer, must be scheduled and concluded prior to the commencement of any construction of said improvements. Street tree location shall be staked in the field and approved by the Township

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Engineer and / or Planner prior to installation. The installation may be waived where location is in conflict with existing vegetation. Plans should be noted accordingly.

3. The portion of the existing driveway that crosses proposed Lot 46.01 shall be removed. The area shall be stabilized in accordance with soil conservation requirements. Curbing and paving along the applicants road frontage will be repaired / replaced at the direction of the Township Engineer.
4. The two front staircases associated with the existing dwelling shall be removed.
5. Applicant shall also pay a tax map lot line revision fee in accordance with Township ordinance.
6. Applicant shall pay a monetary contribution for the portion of the sidewalk not constructed on the remainder of their North Hillside Avenue frontage. This contribution amount will be calculated by the Township Engineer.
7. A notice shall be added to the deed of proposed lot 46.02 that informs subsequent owners that grading and disturbance of a portion of that property is required in order to construct a dwelling on proposed lot 46.01
8. Applicant shall pay their pro rate share of providing off tract and off site improvements as determined by the Township Engineer.
9. Applicant shall pay a mandatory development fee in accordance with Township ordinance.
10. The applicant shall obtain signed subdivision plans.
11. Additional street lighting shall be provided if requested by the Township Engineer. Details shall then be required and the applicant shall comply with section 13-8.707B for "contribution fixtures".
12. Replacement trees shall be installed and a monetary contribution provided in accordance with section 13-11.106G for replacement trees that cannot be located on the properties. Performance guarantee shall be provided in accordance with Section 13-11.13c stump removal is prohibited until a Soil Movement permit is issued.
13. The existing home and garage shall be cleaned / painted / resided.

PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT

1. The subdivision deeds shall be filed to create the lots.
2. Applicant shall obtain the necessary Soil Movement Permits for each proposed home site.
3. The retaining wall design calculations and details shall be provided to the satisfaction of the Township Engineer in accordance with Section 13-8.809L.
4. Applicant shall provide individual lot grading and drainage plans for review and approval by the Township Engineer.
5. Architectural drawings for all houses shall be reviewed for consistency with architectural exhibits and approved by the Township Planner.
6. Conformance to R-3 zone building height shall be verified.

Ms. Dargel made a motion to approve the Resolution. Mr. Damato seconded.

Roll call: Ms. Dargel, yes; Mr. Damato, yes; Mr. Giardina, yes; Mr. Crowley, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-10-019 KEN'S AUTO BODY, D1 Use Variance & Site Plan Approval for property located at 1280 Route 46, Ledgewood, Block 7502, Lot 4, in a B-2 zone.

In the matter of Christian Mockler/Ken's Auto Body

Case No. ZBA-10-019

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

Approved: September 13, 2010

Memorialized: October 14, 2010

WHEREAS, Christian Mockler/Ken's Auto Body has applied to the Board of Adjustment, Township of Roxbury for permission to occupy a portion of the improved premises on site as an auto body use (auto repair facility) which requires a use variance for premises located at 1280 Route 46 and

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known as Block 7502, Lot 4 on the Tax Map of the Township of Roxbury which premises are in a “B-2” Zone; said proposal required relief from Section 13-7.25 of the Roxbury Township Land Use Ordinance; and

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

1. David Brady, Esquire represented the applicant.
2. The applicant and its principals are under contract to purchase the subject premises. The ownership group includes the principals Mr. Edward Korpos & Mr. Ronald Lipps of Ken’s Auto Body and Homecraft Rentals, two tenants and businesses located in the building. Homecraft would occupy a significant portion of the upper floor, which is located towards Route 46. Ken’s Auto Body would occupy the entire lower level and a small portion of the upper level (office).
3. Ken’s Auto Body is presently located on Route 46 within a quarter mile of the subject site. Its present location was depicted on exhibit A-1 which was presented during the hearing by John McDonough, the applicant’s planner.
4. The Board received a memorandum from Russell Stern, Township Planner, dated 9/8/10.
5. The Board received the following documents:

Prepared by Byrne Design Associates – proposed

Sheet 1, Landscape Plan, Front elevation and Key Map, dated 8/2/10

Sheet 2, Lower Level Plan and Wood Fence Details, dated 8/2/10

Sheet 3, Upper Level Plan, dated 8/2/10

Prepared by Jorgenson Associates – Existing

Sheet 1 of 4, Upper Floor Plans and Elevations, dated 8/28/85

6. The Board received a report from Richard D. Cramond, the Chairman of the Historic Advisory Committee, dated 9/10/10.
7. The instant property comprises of 33,679 square feet and is located on the eastbound side of Route 46 with approximately 262 feet of road frontage north of the old Ledgewood Circle. As noted, the property fronts both on Route 46 and Main Street. The Main Street frontage is approximately 160 feet; the elevation is such that the top floor is level with Route 46 and the lower floor has the equivalent of a full walkout basement (analogizing to a residence) onto Main Street.
8. In the mid 1980’s, Homecraft received site plan approval and ultimately developed the property with a 9,240 square foot commercial building with the two levels noted. Each level comprises of approximately 4,620 square feet. Homecraft, which rents items such as ladders, floor sanders, compactors, backhoes, power washers, etc. presently, occupies the upper level. Homecraft also fills propane tanks from a storage tank located next to the upper parking lot. The lower level, likewise, encompasses 4,620 square feet and is accessed from Main Street. That is presently the location of RBI Baseball, a recreational tenant who is apparently leaving the facility for another location.
9. The upper level has 18 parking spaces and the lower level has 9 spaces. The property has several existing non-conformities including parking setbacks and layout as well as design requirements. The property in question is in the B-2 zone and is surrounded by B-2 zone properties. There is an office building to the northwest, another building to the southeast, a home to the southwest, and to the west is a Suburban Propane distribution facility.
10. The applicant requires a “D1” use variance, as the current B-2 zone does not allow an auto body operation. Vehicular service stations are a permitted conditional use. The interior of the existing lower level is industrial in character with an overhead door access, high ceilings, and an open floor plan.
11. The application essentially is characterized as a change in interior use from a recreation instructional facility (and former machine shop) to an auto body repair operation. The auto body repair operation would comply with current NJDEP regulations. Part of the applicant’s plans

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would result in improvements including a superior Route 46 façade, additional landscaping, and an enhancement of the building's functionality by providing interior access between the two levels.

12. In addition to the "D1" variance, the applicant requires a design waiver from Section 13-8.809B for the installation of a 6' high board on board screening fence to partially hide the propane storage tank.
13. Four witnesses testified on behalf of the applicant.
14. The applicant's first witness is the present owner of the property, Christian Mockler. Mr. Mockler stated that his family had operated Homecraft in Roxbury since 1959. They owned the building since the mid 1980's. The building was a little over 9,200 square feet with approximately 4,600 square feet on each floor. Homecraft presently occupied the entire top floor (because of the topography, the top floor was at the Route 46 elevation, while the lower floor was at the Main Street elevation). Mr. Mockler stated there had been various tenants in the lower floor including a warehouse user and presently was the site of RBI Baseball, an indoor baseball recreation facility complete with batting cages, etc. RBI had approximately three employees and there would be as many as 30 cars for RBI customers, some of which would be parked on Main Street. RBI, like the prior users on-site, occupies the entire lower floor and, as noted, Homecraft was on the upper floor.
15. Mr. Mockler stated he was selling the business and, as part of the sale of the business, was selling the building. The building would be sold to a consortium, which included the principals of Homecraft and Ken's Auto Body (Mr. Edward Korpos & Mr. Ronald Lipps). He stated that the proposal was to carve out 640 square feet from the upper floor which space would be utilized as an office by Ken's Auto Body. There would also be an integrated indoor stairway from the upper floor to the lower level. Mr. Mockler stated that historically most of the customers came early in the morning to rent the homeowner light construction equipment offered by Homecraft, thus their peak hour of operation was earlier in the morning. Typical hours of operation were 8:00 AM to 5:00 PM Monday through Saturday.
16. The applicant's next witness was Robert O'Donnell. Mr. O'Donnell was the contract purchaser of Homecraft. Mr. O'Donnell stated that he would generally continue the exact same business operations as Mr. Mockler, but he might add a Sunday morning component and open from 8:00 AM to 12:00 Noon. He noted that part of the proposal would be to dress up the Route 46 facade, fix some of the aesthetics with the building and give the site an overall upgrade. He stated that he was purchasing it in conjunction with the owners of Ken's Auto Body and that they had reached an agreement as to how the site would function with both uses and was confident that the auto body use would be compatible with the Homecraft rental use.
17. Ed Korpos, one of the principal owners of Ken's Auto Body, was the applicant's next witness. Mr. Korpos described the present business operations of Ken's Auto Body and noted they would only be moving a short distance from their present location at 1262 Route 46. He stated the present facility was inadequate for a number of reasons including upgraded NJDEP and insurance company requirements for body shops.
18. He stated that he had reviewed the internal workings of the proposed new locations and that same had been reviewed and approved by various contractors including the paint booth vendor. He stated that the site would work and that they would have as many as eight vehicles inside the building being worked on at a time. He noted the vehicles would be queued waiting for repair and would be kept in the lower lot. Those vehicles, with significant damage, would be covered with a car cover so as to minimize their impact on the public. He stated that they would be willing to provide landscaping and/or other shielding along the lower parking lot. He stated the business operation would generally involve either customers dropping off cars for repair and/or estimates or a wrecker delivering a car to the lower lot. He stated most cars would be turned around within a week to 10 days at the longest because insurance companies did not want to pay for the storage of vehicles or to extend customers in replacement rental vehicles. He stated that Ken's Auto Body had been in Roxbury for 25 years and never had a problem with the town, neighbors, or any enforcement activity.

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19. The applicant's final witness was its professional planner, John McDonough. Mr. McDonough stated that he had reviewed the zoning ordinance, Master Plan, had listened to the testimony of the applicants and had also had meetings with the applicants on-site and off-site to discuss and familiarize himself with their business operation at the site and how the site was proposed to function, if approved.
20. Mr. McDonough also presented exhibit A-1 which were a series of aerial photographs from various angles of the existing site. He noted that there was an eclectic blend of uses around the site including a nearby Suburban Propane plant. He analyzed the unique features of the site including its topography, it being a through lot, and the building itself. Based on those features, he opined that a primary basis for the grant of the variance was its unique and particular suitability for the use in question. He noted that the existing facility was only a short distance away and even provided a "pin point" on the aerial photo to demonstrate its proximity. He reviewed several of the purposes of the Municipal Land Use Law and, in particular, A, F, I, and M as justification for the grant of a "D1" variance. In seeking to address the negative criteria, Mr. McDonough noted that Ken's Auto Body presumably would be leaving a site that it had outgrown and would be moving into a more compatible site that would be sheltered from the highway and have much less of an overall visual impact. He also noted the instant site would have enhanced landscaping, improvements to the building, and improvements to the infrastructure, itself. He also noted the proximity of the industrial and commercial uses nearby.
21. On cross examination, he conceded that there was nothing to stop Ken's Auto Body from operating out of both locations and, if Ken's Auto Body left 1262 Route 46 based upon its status as a non-conforming use, it would be theoretically possible for another similar operation to come in as a matter of right.
22. When the meeting was opened to the public, the owner of the office building to the left, Andrus Aasma, testified in opposition to the within application. Mr. Aasma stated that he did not believe there was sufficient buffering provided between the properties. He presented a series of photographs marked O-1 to O-3. Those photographs depicted the existing rear area between his building and the instant building as well as the existing site. He opined the existing site had its problems and was concerned that those visual problems would carry over. He noted, in his opinion, most other body shops had fenced in yards because of problems associated with the visual impact of wrecked or damaged automobiles and automobile parts.

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 finds the testimony of the applicant's witness and the applicant's planner to be credible. (The Board does note a flaw in the testimony in that there is nothing to stop the existing site from continuing as a non-conforming use.)
2. Notwithstanding the fact that the existing site could theoretically continue to be utilized, the Board finds that the applicant has made a case for the grant of a "D1" use variance. The site in question is, in fact, particularly suited for this proposed use. The building is industrial in nature and the lower level space was clearly built to accommodate an industrial type use. The high ceilings and open floor space made it ideal for its use as a baseball training facility. Those same features translate well in terms of creating an indoor area within which to locate an auto body facility. The topography and split-level nature of the building are truly unique features. The existing neighborhood is an eclectic mix with no discernible overall theme or character ranging from a residence, a heavy type industrial facility (Suburban Propane), and an office building. The sum of all these different uses creates a very mixed area.
3. The Board acknowledges receipt of the report from the Historic Advisory Committee and does not take the comments of the Historic Advisory Committee lightly, however, the Board does not find that there is anything in this particular area of Main Street that is historic or visually unique or any type of resource that should play a factor in limiting the use of the property. There are, obviously, other areas on Main Street where there are opportunities to maintain historic characteristics of neighborhoods.

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4. The Board believes, with the implementation of the conditions noted below, that the site will be aesthetically upgraded, function well, and the two uses will be very well adapted to the existing infrastructure.
5. The Board finds the request of the Design Waiver for the fence height to be reasonable and the propane storage tank is unaesthetic and potentially dangerous as well as an attractive nuisance. As such, the deviation and design standards are clearly justified.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 13th day of September, 2010 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 or statute.
2. Subject to the review and/or approval of all other governmental agencies with joint and/or concurrent jurisdiction over the subject matter of the within application.
3. The applicant shall comply with all requirements of the New Jersey Department of Environmental Protection and any other state or local agency having jurisdiction over the operation of body shops and the painting of motor vehicles.
4. All motor vehicles, which are waiting for repairs shall be parked on the Main Street parking area or stored inside the facility. Any vehicles waiting for repairs that are significantly damaged or undriveable shall be covered with a car cover. Same shall be of a gray or brown color and all cars shall be covered with the same type of cover. Parking on Main Street of serviced vehicles or vehicles awaiting service is prohibited.
5. There shall be no advertising in, on, or around vehicles that are on-site that said vehicles are for sale or lease.
6. There shall be no outdoor work or repairs or the outdoor storage of new, used, and/or damaged parts. Same is absolutely prohibited.
7. There shall be no truck repairs on vehicles over 10,000 pounds with the exception of emergency vehicles. No such vehicles shall be permitted onto or located on the subject property.
8. Propane storage tank location shall be corrected on the drawings and screen fence and landscaping adjusted accordingly. The fence detail shall specify a minimum overlap of 1" of opposite boards.
9. Gooseneck lighting used to illuminate the wall signs shall be revised so that the bulb does not extend beyond the fixture housing.
10. No vehicles shall be stored on site for more than 10 days.
11. All dumpsters and recycling containers shall be kept indoors except for pickup days. Approval by the Zoning Officer, through a Zoning Permit, shall be required; if an exterior dumpster/trash/recycling enclosure is sought in the future.
12. Handicap parking spaces and signage shall be provided, as required by State regulation and subject to the review and approval by the Township Engineer and/or Construction Official. It is noted that restriping for the handicap spaces may result in the loss of a parking space(s).
13. All parking spaces shall be restriped.
14. A settled section of concrete sidewalk by the northeasterly upper level building corner shall be replaced.
15. Prior to construction, applicant shall provide a palette of the proposed building covers for the review and approval of the Township Planner.
16. Existing soffit and wall/roof mounted canister and floodlights shall be removed. A lighting plan shall be submitted that, at a minimum, provides the current level of illumination. Subject to approval by the Township Engineer.
17. The non-conforming wall lights, along the northern building elevation, shall be replaced with conforming "shoebox" type light fixtures.
18. Two 2 ½" to 3" caliper 12' to 15' height street trees shall be provided along Main Street and the landscaping along Route 46 shall be enhanced.
19. Plant quantity shall be specified on the plant list.
20. Landscaping shall be provided to accent the Main Street driveway opening.
21. Applicant shall provide a comprehensive landscape and screening proposal for the site to include both sides of the parking lot along Main Street and may include, at the discretion of the Township

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Planner, fencing to provide buffering and screening from the adjacent sites. The detail and location of the planting materials and/or other screening shall be reviewed and approved by the Township Planner.

Ms. Dargel made a motion to approve the Resolution. Mr. Grossman seconded.

Roll call: Ms. Dargel, yes; Mr. Grossman, yes; Mr. Damato, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Data, yes.

ZBA-10-021 Gary Zeek, C Variance for a proposed covering on existing front step with a roof for property located at 10 Gordon Road, Wharton, Block 12901, Lot 57 in a R-2 zone.

In the matter of Gary and Barbara Zeek

Case No. ZBA-10-021

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

Approved: September 13, 2010

Memorialized: October 14, 2010

WHEREAS, Gary and Barbara Zeek have applied to the Board of Adjustment, Township of Roxbury for permission to construct an open covered porch for premises located at 10 Gordon Road and known as Block 12901, Lot 57 on the Tax Map of the Township of Roxbury which premises are in a “R-2” Zone; said proposal required relief from Section 13-7.1101D4 of the Roxbury Township Land Use Ordinance; and

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

1. The applicants are the owners and occupants of the single-family home on site.
2. The applicants were proposing to construct an overhang over the existing concrete porch.
3. Applicant received a letter of denial dated 8/11/10 from Tom Potere, the Zoning Officer.
4. The applicant’s proposed improvement was depicted on a sketch plat and plot plan attached to the application. The open overhang would be approximately 8’6” wide at the base and be in the area of the existing concrete porch and existing concrete steps. Same would be designed to be totally integrated into the existing home. There would be spindles and a railing on each side of the open porch.
5. The applicant comes before the Board because the proposal results in a 23’ front yard setback where as the existing non-conforming setback is at 29’ and the R-2 zone requires a 50’ front yard setback.
6. The applicant stated the purpose of the covering on the porch would aesthetically enhance the house and provide a transition area when coming in from the outdoors. He stated the setback would not be all that different than the existing pattern in his neighborhood.

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 finds the testimony of the applicant to be credible. The addition of adding a cover to an existing porch is a *de minimis* enlargement of the existing home. The benefits to be gained by providing architectural detail and a reasonable and normal transition area clearly outweigh the nature of the violation of the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 13th day of September, 2010 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 Township Ordinance.
2. The open covered porch to be designed and located as depicted on the drawings attached to the application. Setback shall be no less than 23’, as proposed.

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Mr. Damato made a motion to approve the Resolution. Ms. Dargel seconded.

Roll call: Mr. Damato, yes; Ms. Dargel, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

OLD BUSINESS:

ZBA-07-41 Envision Management, Architectural changes to a new home on property located at Mary Lousie Avenue, Ledgewood, Block 6101, Lot 5 in a OB zone. Approved by the Board, September 10, 2007

There was a discussion on the architectural changes to the new home being built at Mary Louise Avenue, Block #6101, Lot 5 in Ledgewood.

Mr. Damato made a motion to approve the architectural changes. Mr. Giardina seconded.

Roll call: Mr. Damato, yes; Mr. Giardina, yes; Ms. Dargel, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

APPLICATIONS:

ZBA-10-023 Cindy Cooper & Eric Dhuy, Use Variance for a proposed 2nd floor expansion for property located at 711 Route 46, Kenvil, Block 4002, Lot 19 in a B-2 zone.

Ms. Cindy Cooper & Mr. Eric Dhuy, 711 Route 46, Kenvil, were sworn in. Mr. Dhuy explained that there was a water leakage problem on the north side of their house so they decided that while repairing, they would also expand and improve their residence. They applied for a zoning permit to expand their second floor bedroom with a two foot cantilever. The reason they were before the Board is because this is a non conforming use. The current bedroom is 9' 6" X 11' 6" and by the increase of the two foot cantilever it will improve the quality of living space. There would be no impact to the neighbors as the increase is on the north side of the building away from their view. The title for this property is from 1863.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Giardina made a motion to approve the application. Mr. Damato seconded.

Mr. Dhuy asked if the Resolution could be memorialized at this meeting so that the project can get started as soon as possible before the winter sets in. The Board agreed to approve and memorialize the application together.

Roll call: Mr. Giardina, yes; Mr. Damato, yes; Ms. Dargel, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-10-025 Darlene Vance, Bulk Variance for a proposed screened in and roof on an existing deck for property located at 39 Ford Road, Landing, Block 11105, Lot 26 in a R-3 zone.

Mrs. Darlene Vance and Richard Vance, 39 Ford Road, Landing were sworn in Ms. Vance stated that they would like to enclose their 12' by 19' deck. Because the existing right side yard set back is 9.4 ft a variance is needed to meet the required side yard set back of 10 ft. The deck was built twenty one years ago. Her husband has a bad reaction to mosquitoes; they'd like to be able to enjoy the deck in the evening without worry, which is why they want to screen in the deck. They are not going over our property line it's a double lot and it sits down off the road. Due to the odd shape of the property and the way the house is tilted there is only 15 to 20 feet before the back yard drops down, there is a house below on Vail Road. They have never had any drainage problems. Additional supports will be added to the porch and it will be screened in. Open to the public: No one stepped forward. Closed to the public.

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Ms. Dargel made a motion to approve the application. Mr. Giardina seconded.
Mr. Stern made a recommendation to approve and memorialize the application.
Mr. Wiener read the proposed resolution to be accepted and approved by the Board.

Roll call: Ms. Dargel, yes; Mr. Giardina, yes; Mr. Damato, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-10-028 Michael Aemisegeo, Bulk Variance for a 12' X 12' shed for property located at 21 Ann Street, Succasunna, Block 1603, Lot 7 in a R-3 zone.

Mrs. Carmen Aemisegeo & Mr. Michael Aemisegeo, 21 Ann Street were sworn in. Mr. Aemisegeo stated that the reason they are before the Board is because they would like to add a shed for extra storage. He is a carpenter and has large heavy duty tools for his work and would like to be able to store them in a safe place, out of the reach of his children. They have a two car garage and actual have three cars. The property is over 15,000 square feet and the garage is not attached to our house, most houses on the street have attached garages. If our garage was attached to our house this would not be an issue and they would not be seeking this variance. There was a discussion on the impervious coverage; required is 25%, what exists is 25.39% and what is being proposed, 26.40%. You can not see the shed from the street.
Open to the Public: No one stepped forward. Closed to the Public.

Mr. Giardina made a motion to approve the application. Mr. Damato seconded.

Roll call: Mr. Giardina, yes; Mr. Damato, yes; Ms. Dargel, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-09-00028 METRO PCS, Amendment to condition of Approval for property located at 7 Orben Drive, Ledgewood, Block 8602 Lot 17, in a LI-OR zone. Mr. Joseph O'Neill, Garofalo & O'Neill 60 Baldwin Road, Suite 202 Parsippany, NJ 07054 was the attorney for the applicant.

Mr. O'Neill stated this is a request to amend a condition of approval in regards to the Resolution of Approval for Metro PCS memorialized on May 10, 2010. It was brought to our attention by our installation team that we cannot comply with Condition #3 which states that all coaxial cables must be installed within the pole itself. They brought a sample of a wire (exhibit A-1) to show the Board and would like to have Mr. Lulay explain how the previous installations have apparently resulted in the tower being filled with cables and conduit in such a way that Metro PCS cables are unable to pass through.

Mr. Terrence Lulay, P.E. Lulay & Illescas Associates, 99 Quaker Church Road, Suite 2, Randolph, NJ 07869 was sworn in and referenced his letter to Mr. O'Neill dated August 31, 2010 stated that after receiving the resolution for 7 Orben Drive - Metro PCS and the proposed monopole extension design, the construction crew determined that it was not possible to rout the new coax cables inside the existing monopole shaft. The existing carriers on the monopole have choked the pole with roughly 42 cables. The 1-5/8" coax cables are too rigid to snake through the maze created by these existing cables and the limited opening at the extension joint. As an alternative, Metro proposes to mount the cables to the exterior of the pole on the Southeast quadrant. Twelve cables will be mounted flush to the pole using Universal Round Member Support Brackets banded to the monopole shaft; the cables will be painted to match the galvanized color of the monopole. There was a discussion on the factory galvanized finish of the cables. Mr. Wiener stated that the consensus of the Board seems to be that they would not have a problem if they were able to come up with a factory finish gray-like color. Mr. O'Neill agreed the

finish would be a gray factory finish with stainless steel brackets that will match the existing pole.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Damato made a motion to approve the application for an amendment to the condition of approval with all the stipulated conditions as noted on record. Mr. Giardina seconded.

Roll call: Mr. Damato, yes; Mr. Giardina, yes; Ms. Dargel, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Grossman, yes; Mr. Data, yes.

ZBA-10-020 METRO PCS Use Variance & Site Plan Approval for property located at 275 Route 10, Succasunna, Block 5004 Lot 7, in a B-3 zone.

Mr. Data stated that this is a co-location, there are two other carriers located at this site, the Board would accept the abbreviated version. Mr. Michael Levin attorney for the applicant stated that Metro PCS is a federally licensed carrier. This site is particularly suitable because Metro PCS is placing its antennas on an existing structure and there is no coverage in this area. Metro CPS clearly requires this site to provide coverage pursuant to its FCC license. The proposed site will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The proposed site will not produce any noise, vibration, smoke, dust, odors, heat, or glare. It will not require only infrequent maintenance. The site will not have any adverse impacts on adjoining properties.

Mr. Syed Mujtaba, Metro PCS, RF Engineer, Mr. Anthony Suppa, Jr., PE, CME., 600 Parsippany Road, Parsippany, NJ, Mr. Ronald Reinertsen, PP, AICP, 210 Malapardis Road, Cedar Knolls, NJ were sworn in.

Mr. Suppa explained the equipment will be supported on steel support rails that are flashed into the existing roof membrane. Each equipment cabinet will utilize two (2) support rails with stub columns that penetrate the roof and fasten directly to the existing building steel girders. The design input is based on the requirements of Metro PCS for rooftop based telecommunication facilities. This structure has been evaluated based on generally accepted principles of the practice of structural engineering and in accordance with the IBC 2006, New Jersey Code. Based on inspection and calculations with the equipment located on the support rails, the existing building steel framing members are structurally adequate for the proposed loading condition resulting from the Metro PCS equipment at this location.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Syed Mujtaba stated that the proposed wireless facility will operate within the radio frequency emission limits set forth by the Federal Communications Commission. The wireless facility will also be fully compliant with all federal, state and local mandates. All existing Metro PCS stations in other parts of the country operate within their FCC allocated frequency spectrum and do not cause interference to electronic equipment operating outside of Metro PCS's band. As demonstrated in the preceding paragraphs of this report, NY5751 shall add reliable cellular service to part of Roxbury Township that is not currently being served by Metro PCS. This wireless facility is designed to blend in with the other surrounding planned sites in an optimal fashion and is inconspicuous in blending in with the surrounding architecture of the neighborhood. The approval and construction of NY5751 will be a benefit to the citizens of Roxbury Township. There was a discussion on the map showing the predicted reliable coverage of all the surrounding sites and the proposed wireless facility.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Mark Nidle, 14 Ridgedale Avenue, Cedar Knolls, NJ, summarized the Antenna Site FCC, RF Compliance Assessment Report dated July 19, 2010. The FCC MPE limit has been constructed in such a manner that continuous human exposure to RF fields up to and including

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100 percent of the MPE limit is acceptable and completely safe. The maximum calculated RF level from the combination of proposed and existing antenna operations at the site is only 2.4743 percent of the FCC MPE limit. The worst case calculated RF level is more than 40 times below the FCC MPE limit. The results of the calculations indicate clear compliance with the FCC MPE Regulations, as well as with that of the State of New Jersey. There was a discussion on being in compliance with the FCC's RF exposure guidelines which is incorporated in Section 1.301 et seq. of its rules and regulations. The guidelines specify MPE limits for both occupational and general population exposure.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Ronald J. Reinertsen, stated that the applicant is seeking a (d) use variance to install six wireless communication antennas and an equipment shelter on the roof an existing three story building. Two antennas are oriented towards Route 10, two towards Commerce Boulevard and two towards Staples. The antennas will be no higher than the parapet roof and will be painted to match the existing roof screening. Equipment cabinets will be no higher than the top of the roof. A GPS antenna and equipment cabinet work light will extend beyond the top of parapet. This does not increase the footprint of the existing building and does not require any site improvements. There will be an average of one maintenance visit per month. There was a discussion on the negative and positive criteria of this application to prove that the variances 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.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. Damato made a motion to approve the application with the recommendations of Mr. Stern's report. Mr. Grossman seconded.

Roll call: Mr. Damato, yes; Mr. Grossman, yes; Ms. Dargel, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Darling, yes; Mr. Data, yes.

ZBA-10-015 VALLEY AUTO WRECKERS, Pre-Existing, Non –Conforming Use for property located at 217 Berkshire Valley Road, Wharton, Block 7201, Lot 1 & 2, in a LI-OR zone.

Mr. George Johnson, Esq., Johnson & Johnson, 33 East Blackwell Street, Dover, NJ 07801 Attorney for the applicant, stated the application is to establish the current uses as pre-existing nonconforming. This business started in 1954 and was a permitted use under the zoning ordinance that was adopted in 1965. In 1975 the ordinance was changed and an auto wrecking and repair facility was no longer permitted in the zone. Because of the existing tenancy, this application may be changed from a pre-existing nonconforming use to an expansion of a pre existing nonconforming use. They requested to be carried to December 13th Zoning Board meeting with no further notice and an extension of time.

NEW BUSINESS:

Mr. Stern stated that Roxbury Township Master Plan Committee had a meeting on Wednesday, October 13, 2010 Mr. Stern reviewed the Master Plan Committee Agenda asked if the Board had any questions or concerns there was a short discussion on solar energy, rebates and renewable energy.

Motion to adjourn the meeting was made at [8:48:02 PM](#)

ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF ROXBURY

Dolores Tardive,

Board Secretary

October 14, 2010