



*Resolution 2022-12*

*RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF JACKSON, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING AMENDED PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL WITH VARIANCE RELIEF FOR A TWO-STORY OFFICE BUILDING AND ACCESSORY STORAGE FACILITY WITH DESIGN WAIVERS FOR ROSOCA HOLDINGS, LLC, BLOCK 22103, LOT 14*

**Motion by Flenning/Riker** Yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Wall, Mr. Flemming, Mr. Riccardi, Mr. Haring, Mr. Hudak

**Application Block 4101, Lot 18 - Jackson Development LLC**

**Final site plan for the bike path.**

**Mr. Klee** stated this is a major site plan for a bike path within Jackson Woods Development, 2,735 feet long and 8 feet wide. Mr. Klee stated that there was some discussion at the December 6<sup>th</sup> meeting. There was a concern regarding public access to this bike path.

**Mr. Peters** stated that the site is still located in the PMURD planned mixed-use residential development zone and a recreational facility is still permitted for accessories users.

**Robert Shimanowitz** on behalf of the applicant stated that the applicant introduced the application on December 6<sup>th</sup>, 2021, and there were some concerns raised. Some technical meetings were conducted and the applicant came up with all that will be satisfying to the board.

The applicant's idea is for the Township to take title to this open space lot, which would mean, that it will be dedicated to the Township as an open space in perpetuity. It could not be developed. There will be a restriction that would go into the Deed that the only development that would occur on the open space lot would be a bike path with the Township ownership of that lot. We would ask the town to take ownership and operation of the bike path. Mr. Shimanowitz knows that there was some question about access to bike paths and how they would connect to the public. There was a concern regarding the bike path connecting to the future residential developments. The Southwest section, which is not yet built, has preliminary approval. The applicant is coming in for amended preliminary and final approval. The applicant proposed to give full public access through that property, so the bike path will continue through the future development down to Freehold Road.

**Dr. Campbell** asked when the bike path would be constructed.

**Mr. Dave Erickson** was previously sworn in and his credentials were accepted. Mr. Gartner had sworn him again.

**Mr. Erickson** stated that an open space lot that will be dedicated to the town has to happen first, so the town can be an applicant to DEP. An applicant needs an individual Wetland permit to be able to construct that trail; there is no timing on that. As soon as the approval is received it will be constructed.

**Mr. Gartner** wanted to clarify with Mr. Erickson, that there was a technical meeting, and questions that came up were the Township's ownership of the bike path, making sure it operated properly from the planning perspective, whether the Municipality was in a better position to make the application? Is that Correct?

**Mr. Erickson** said that private applicants cannot get this type of permit.

**Mr. Gartner** said as a condition of the approval first the Township has to accept the ownership and accept responsibility to physically file the permit. The applicant will indeed be financially liable for the construction of any safety lights, and pavement, all costs associated with having it "turn-key" will be borne by the applicant.

**Mr. Erickson** said yes that is true.

**Mr. Gartner** stated the applicant understood the board's concern that should the Municipality take over this site, there would be this connectivity as talked about by Mr. Shimanowitz, and is that correct?

**Mr. Erickson** said yes.

**Mr. Hudak** asked if the bike path will be open to the public.

**Mr. Erickson** said yes.

**Mr. Gartner** stated that based on the technical meeting; an applicant agreed to deed this property to Township. Is there some update associated with this property? In theory, if the future owner could file or amend site plan approval to potentially develop that property?

**Mr. Erickson** said there is some significant upland in the Northwest and this North Central area that could be developed.

**Mr. Gartner** said another benefit of the Municipality after this technical meeting was that it would ensure now no development in perpetuity.

**Mr. Shimanowitz** said if the board is inclined to approve and Mr. Shimanowitz imagines it'll include some process of going to the Town Council to get this approval. An applicant is very happy to include a process, the applicant keeps the planning board informed.

**Mr. Gartner** stated that if the board decides not to approve the application, the applicant has to come back since it materially changes the condition of approval.

Public comments:

**Resident Michael Herenchak** was sworn in. Block 2507, Lot 51, he stated that he has a few concerns regarding the project cost: burden, safety, and maintenance. Is the path going to be open in the evening? Is it going to be 24 hours? Or dusk to dawn?

**Mr. Erickson** said that it will be a Township facility, so whatever the Township wants, an applicant is not proposing any restrictions on it, but the Township may want to do their own.

The resident said that if it is in the evening, would the lighting be provided, and if Township takes over, it will be paying for it.

**Mr. Erickson** said they are not proposing any lightning. The resident stated, that in this case, he is concerned about the safety and who will secure this path. Also, would there be garbage cans or pickups?

**Mr. Gertner** stated that if the Municipality was determined to take responsibility for the property, it is in essence, a public park, except that it will be passive recreation. There are no plans for development other than the path itself. One of the concerns of the board at the previous hearing that is resolved should the Municipality determine to take ownership is all the property including that property within this site that could in the future be developed, could not be developed because the Township would control it. It certainly provides connectivity between sites, no doubt about that. Ultimately folks who move into the site are citizens also and at some level what the planning board does is ensure that all citizens of Jackson share equally in the burden of development of the Township.

The resident expressed concern about snow removal, maintenance, and grading. If the facility was open in winter, also who is going to carry insurance on it in case someone gets hurt?

**Mr. Hudak** asked if Mr. Wall had any input.

**Mr. Wall** said there will be an Administrative discussion with the Council moving forward but in general, the concept of transitioning ownership from the applicant to the Township is newer to me, but just going off the cuff, it is a bike path, so depending on weather conditions, that would be a part of the discussion.

**Mr. Wall** asked what type of stone will be used.

**Mr. Erickson** said dust.

**Mr. Wall** stated that if someone slips and falls or they have an injury the litigation would be borne by the Municipality and joint insurance fund, assuming also your liability question as well? Correct?

**Mr. Erickson** said that's correct.

**Mr. Wall** said that there are all reasonable questions that governing body would take up.

**Mr. Gertner** stated that Municipality should be a part of the discussion since it is the one that makes the application to DEP, there's like a second and third level of vetting for all those questions to ensure it's developed safely and properly.

**Mr. Wall** stated that we should have a proper definition of the bike path, otherwise might be fraught with some peril moving forward. There should be a bike path definition in the specifications, so that future governing bodies know what expectations were all baked into the Resolution.

**Public comments are closed.**

**Motion to close public comments Mr. Riker/Flemming yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Canderozzi, Mr. Wall, Mr. Flemming, Mr. Riccardi, Mr. Haring, Mr. Hudak.**

**Mr. Shimanowitz** said that there is a specification in your plans for the bike path, so you can refer to that, we are aware that we have to go to Council. They are going to be ones owing this large open space lot and owning and operating a bike path, not sure if we are going to get final specifications for this process.

**Mr. Gertner** stated that in the way the applicant indicated as a condition of the approval, the board will have the opportunity to review administratively the final proposal presuming its acceptance at all by the Municipality. For instance, if Municipality determines a material change or if the DEP determines material change or something else, it would still need to come back to the board administratively.

**Mr. Hudak** stated that it would put more weight if we give them final approval. We have a motion for the final with the stipulation that approval from the Police Department, DEP, and all the other agencies, and Council are obtained.

**Motion to approve Riker/Riccardi Yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Canderozzi, Mr. Wall, Mr. Flemming, Mr. Riccardi, Mr. Haring, Mr. Hudak.**

### **Block 3201 Lot 10. 498 Hermann Road**

#### **Major site plan to construct 39,910 sq. feet warehouse.**

**Mr. Klee** stated that we heard this application on December 6, 2021; it was 35,910 sq. ft., now it is reduced to 35,361 sq feet. Some revision was done. Most notable is an adjustment of the alignment for the deliveries that will not require trucks to back out onto Herman Road.

Mr. Klee said that he will leave the rest to the applicant, but he thinks that the applicant heard what the board was saying and adjusted the plan accordingly.

**Mr. Peters** stated that the property is still located in the same zone, IM Commercial Office Light Industrial Zone. It is a permitted use.

**Jennifer Krimko** spoke on behalf of the applicant as an attorney for this project.

A-5 Site Plan, dated 11/23/2020, prepared by Dynamics Engineering. Revised May 24, 2022.

A-6 Aerial Overlay exhibit, 5/25/2022 prepared by Dynamics Engineering

A-7 Environmental Constraints Existing exhibit, 5/25/2022

A-8 Environmental Constraints Proposed exhibit, also dated 5/25/2022

A-9 Aerial Map exhibit, dated 12/26/2021

A-10 Site Plan Rendering exhibit, revised date 5/25/2022

A-11 Color Rendering exhibit, dated 5/24/2022.

Architectural Elevation will be handed out today. It was approved by this board in 2018. It will be A-12.

**Attorney Krimko** stated that the engineer for the project is from Dynamics engineering and Dave Collons is the project Architect. They were both sworn at the last meeting and they remained under the oath.

**Tom Muller** was sworn in. He is a licensed engineer and planner with Dynamics Engineering Consultants, 1904 Main St, Lake Como, New Jersey. On the easel, A-11 the applicant has Architectural plans which were prepared by Feltz Collins Architect, dated May 24<sup>th</sup>, 2022. One of the concerns that the applicant had received back in December from the board members was the vehicle circulation for this site. The applicant previously proposed loading on the western portion of the site, which required vehicles to utilize Herman Road. Exhibit A-10 site plan rendering, colorized version of the site plan drawing that was submitted as a part of the application. This shows the new site plan layout. The layout is significantly revised on the Western portion of the site to require and allow all the vehicles and trucks to utilize an onsite paved area to access the loading area on the West Side of the building.

On the West side of the site, there is a significant change to the layout to provide a hammerhead loading area and a maneuvering area, as shown on the left side of the exhibit. We angled loading on the Western side of the building to allow and require trucks to pull into Hammerhead and back into loading positions. No maneuvering is required on Herman Road with this layout. The applicant also designed that loading area to allow the trucks to utilize all three loading positions even when a truck is staged there. 3 different truck circulation exhibits were provided that show the maneuvers that Mr. Muller is describing now. The applicant also revised a site plan layout to provide a six-foot sidewalk along the front of the building which was also the concern of the board. We also increased the side yard setback by one foot. 30 feet is permitted by zoning, we now have 31 feet. As a result of this change, the building footprint has been reduced from 35,904 to 35,361 sq. feet. Fence and security walls are provided along the perimeter of the retaining walls.

**Attorney asked Mr. Muller** to clarify Mr. Peter's question about the missing guide rail and whether or not it was still safe. Krimko stated In lieu of having a guide rail on top, the height of the wall was raised to act as a guide rail itself.

**Mr. Muller** agreed. Also, the property layout was revised on the Southern portion of the building to better distribute the ADA parking stalls. We are anticipating 3 tenants for this facility. Additional ADA stalls were added. We also added landscaping and planting along the front of the site. This allows the applicant to filter the Visual impact of the site on the building. Another refuse enclosure was added, which was a recommendation from the board. A 10 x 20 refuse enclosure was added on the West side of the building. Also added were electrical charging Stations at the Southwest corner of the site. Also, the building is designed so it is computable with Solar panels on the roof; also an exit was added at the Northeast portion of the site of the building, which was a concern from the board to provide access through the rear of the building. Finally, the applicant is proposing 1900 linear feet of roadway improvement. The engineers worked with the applicant and they will repurpose the full width and full-depth reconstruction of Herman Road along the frontage of the site as well as, all the way to the intersection of Commodore Blvd. Exhibit A-6 shows the reconstructed asphalt, water main extension, and sewer main extension, approximately 1900 linear feet in length to connect to the existing facilities on E. Commodore Blvd. Also, proposing fire hydrant along Herman Road. The applicant did obtain a number of outside agency approvals. Approval from Jackson Environmental Commissions on 1/19/2022, Ocean County Planning Board on 03/02/2022. Preliminary and tentative approval from Jackson MUA on 02/28/2022. Approval from OCUA on 02/28/2022. Currently in the process of obtaining approval from DEP for the sewer main extension.

**Mr. Riker** asked the applicant about the reconstruction of Herman Road. Mr. Riker needs to know what the applicant is proposing regarding the reconstruction of Herman Road. Will there be curbs for the beginning of Herman Road, will it go all the way through where the applicant is? Is there Resurfacing? What are the specifics of what the applicant is going to do?

Mr. Riker wants specifics regarding the proposed reconstruction of Herman Road.

**Mr. Muller** said it is an asphalt reconstruction on Herman Road, full-depth reconstruction curb to curb. As needed the asphalt from the base will be replaced, but the condition would essentially remain. Curbing is not proposed, it's simply just a reconstruction of full cart way with full depth of asphalt therein. Some existing curves will remain along Herman Road, but no new curb.

Attorney Krimko stated that what the applicant is trying to do is to maintain the existing drainage condition along Hermann road. The applicant is handling all of the drainages on their site, if the curbing was done now drainage that was sheet running off the roadway into the various properties around it would now channel on the curb, run downhill and potentially create a problem at intersections and elsewhere. The applicant is not proposing to redesign the stormwater management of Herman Road. The applicant is proposing to maintain the existing stormwater management and upgrade everything that is there. Now the applicant is proposing a full width. The applicant believes that the public benefit that you are getting with the sewer and water hookups, as well as a brand new roadway is a tremendous benefit.

**Mr. Klee** stated that it is a good trade-off no curb but water and sewer from W. Commodore all the way down Herman Road.

**Mr. Flemming** asked about basin access.

**Mr. Muller** said that we do have a basin access ramp to get to the back of the building.

The attorney stated that the applicant did get approval from the fire official. Whatever they need for access, they found it acceptable.

**Attorney Krimko** asked Mr. Muller if the letter that was received on 06/06/2022 from Mr. Peters, as well as the original letter from Mr. Klee if the applicant can comply with all of the technical aspects of those letters without any stipulations?

**Mr. Muller** said yes.

**Mr. Muller** said that Exhibit A-7 the Environmental Constraints shows some of the environmental constraints. An applicant is significantly restricted on the site for the purpose of what they need to develop here. North is on the top of the page. Green colors are Wetlands verified by DEP. Out of that, there is a 10 foot transition area, which is a freshwater Wetland buffer essentially. The Blue area is the slopes on the site. At the bottom of the exhibit is a white area, the developable area. As a result of the Environmental constraints, there is a number of variances that are required. Those are C variances. C1 and C 2. One is a C1 variance for minimum front yard setback, 100 feet is required by the Ordinance, we are proposing 56 feet –Ordinance section 244-62D.

**The attorney Krimko** stated that the previous board approved a 70 feet setback and the applicant is asking to slightly bring it forward because of all the improvements that an applicant is going to bring.

**Mr. Muller** said there is also a C variance per section 244-62D for an accessory building setback, 13.5 is proposed for the refuse enclose, the Ordinance requires it to be equal to the principal building which would be 30 feet. It is a fenced-in area. Exhibit A-10 shows another variance per section 244-62D for the minimum parking setback to the Right-of-Way, 20 feet is required and 8 feet is being proposed. It does comply with the safety island requirement, but unfortunately, does not comply with the front yard parking setback. The actual parking is 32 feet away from the right-of-way. Ordinance section 244-02E2 does not allow a loading area in front of a warehouse or in front of the site.

**Mr. Muller** said they did their best to offset the loading area of the most obvious location of the site. Previously approved in 2018 the loading area was located on the southeast corner of the site. The site was redesigned obviously to provide the loading on the Southwest corner of the building. There are plenty of Municipal land use law purposes that this project enhances. The applicant is proposing 1900 linear feet of sewer and water extension, also fire hydrants along the frontage of Herman Road. It is a healthy and safe impact. The applicant is also enhancing this building to be concrete tilt-up construction, which is above and beyond what was requested. There are no flooding concerns. The applicant also is proposing a Deed restriction that will go through the governing body of the Township to preserve those Wetlands in perpetuity. No public expenditure will be used. In fact, the applicant is enhancing the purpose of the Municipal land

use law by having the applicant be responsible for constructing that public improvement. The applicant is not providing sidewalks because they are not in the area, it would be a dead-end sidewalk to nowhere. The applicant agreed to provide a fund or compensation to the Municipality for the pedestrian safety fund. There is no negative impact on this development.

**Mr. Flemming** stated that there is no place for him to put a fire apparatus that is not in a collapse zone. It is 18 feet wide, you have 40 feet tall building, and the collapse zone is 40 feet. Mr. Flemming said the most the applicant can give is 42 feet of the asphalt anywhere,” where do I fight a fire from”- asked Mr. Flemming.

**Mr. Muller** said that they have reviewed the plans with the fire official and he specifically requested 18 feet. The applicant has provided 18 feet. It is by far the most common width for a fire lane that Mr. Muller has provided on very similar projects. A vehicle could stage there outside of the limit of the concerned area. If there is a fire on the Northwest corner of the building, that vehicle is not going to stage within roughly 40 feet or more of that fire. From a site plan perspective, 18 feet lane even though it’s dead-end like that is suitable, I have to defer back to the Architect on any kind of a fire code or actual collapse zone requirements, but what the applicant said from a site planning perspective, the way this is designed is adequate for fire safety.

**Attorney Krimko** asked Mr. Muller if it also meets the Ordinance and meets the fire official’s approval.

**Mr. Muller** said yes.

**Mr. Wall** stated the opinion that the applicant does not need a sewer to serve this building. First of all, noting that this is a positive element for a community really depends on what community the applicant is talking about. He said all are probably familiar with COAH Mount Laurel building remedy and related land use impact for that. The concept that this is some type of amenity that benefits the entire community, Mr. Wall does not agree with it at all. Mr. Wall asked if this is the same property where there are half a million dollars to do the sewer extension? So you guys bought the property or your client did for \$520,000, I guess you closed it in April unless it flipped to someone else? Other than the self-imposed hardship of buying a property on specs and seeing what you know you can build on it, the notion specifically now of a sewer extension and the notion that it somehow benefits a community, Mr. Wall thinks is totally false. Without looking at the specific land-use impacts, negative land use impact of sewerage that property, unless I have a wrong site, an a35, 000 sq. feet warehouse does not need sewer. There are alternatives to engineering to do that.

**The attorney Krimko** wants to indicate that hardship goes with the land and the applicant purchasing it recognizing that this is a hardship. The applicant knew about it, but it does not eliminate the ability to avail ourselves of that in the bulk variance criteria. The applicant is not seeking to subdivide a piece of property, that applicant knew could not be subdivided. As far as a

public community, what has been indicated that's being provided is a benefit to all the property owners along that stretch of roadway. Whether or not it could be developed with or without the sewer goes back to whether or not it could be, the applicant before you is for an extension of the water and sewer. The applicant needs this site build and is proposing this size building in order to support the overall project that is before you today.

**Mr. Wall** asked if this site is owned by MUA.

**Mr. Muller** said to his knowledge no.

Mr. Peters asked to refresh his memory regarding previous testimony that this site was supposed to accommodate multiple vehicles on the site at one time.

**Mr. Muller** agreed.

**Mr. Peters** stated that in theory, you could make that smaller if there was just one vehicle using the site at a time. It is designed so that three vehicles can be on the site at a time.

**Mr. Wall** said that he was wrong about the applicant's property. The one that you are here about tonight was sold recently by the Municipal Utility, by MUA, right next to it. Could we have an answer yes or no, if the applicant is in a conversation with that other owner? I would just like some transparency overall.

**Attorney Krimko** stated that an applicant did not have any discussion with that owner with regards to any kind of joint development.

**Attorney Krimko** asked Mr. Wall it is his opinion, that extending the sewer could potentially facilitate more development and this is a negative impact?

**Mr. Wall** said that he is not stating an opinion; he is questioning what the applicant is putting forth as a positive and challenging whether or not it is in fact valid.

**Mr. Gertner** stated that Mr. Wall did not say that. What he said, it could arguable not be positive and he qualified the question because it has to ultimately be determined and discussed among the board. Mr. Gertner said as he hears as well one of Ms. Krimko's arguments with regards to the variances is the board should look at what could be built if there were no environmental constraints.

**Mr. Krimko** said the reason why she said that is that it was coming from the Supreme Court case that you quoted. Does the hardship affect the extent to which the applicant can use our property and how that has been applied, if there were no hardship? What the applicant could build there?

**Mr. Gertner** expanded on the concept just for transparency, 292.9634 from COX talking about C1 variance. It is about the individual house as opposed to a Commercial warehouse. In that case

board of adjustment or reviewing court should consider whether the structure proposed is so unusually large, that its size rather than the unique condition of the property causes the need for the variance. In Mr. Gertner's opinion, it is a slightly different way to approach a similar question that Ms. Krimko raised, simply because you have environmental constraints, arguable it is ultimately for the board's determination. They're certainly there. This is the picture. To the extent of how important they are, it is up to the board to determine in relation to the proposal made by this application.

**Ms. Krimko** said that Mr. Gertner made a point, that the applicant is not looking to put a 200,000 sq. feet warehouse there, which is so outrageously oversized for the area and the land. What the applicant is proposing is actually significantly smaller than what this land could otherwise accommodate but for those environmental constraints and that is why Ms. Krimko had Mr. Muller offer to testify with regards to the application being almost half of coverage in both buildings and total impervious.

**Mr. Gertner** followed up on the case mentioned above, and the courts ultimately determined that the applicant, in that case, was ought to be permitted to build a house comparable to the surrounding houses, which comports Ms. Krimko's argument, whether you accept the argument is a different story, but it comports with the argument, that you look at the constraints. Mr. Gertner is concerned about the applicant's deliberation. It needs to be clear in reconciling the constraints. At this point, there has not been any testimony contrary to those constraints in relation, particularly about the size of the building coupled with the improvements planned as part of the development. But ultimately, it is a determination of how that site is developed in relation to those constraints.

**Break at 9:00 PM. The session was resumed at 9:10 PM.**

**Ms. Krimko** asked the planner if from the planning perspective if this site is unique? Meaning its shape and environmental constraints.

**Mr. Muller** said yes.

**Ms. Krimko** stated that any variances that were granted for this site would not have any precedential value anywhere else? It would be specific to this site only?

**Mr. Muller** said yes.

**Ms. Krimko** asked Mr. Collins to go right to the safety of the building, the fire suppression, and how the applicant addresses the concerns that were raised by Mr. Riker and Mr. Flemming in regards to truck access around the building.

**Mr. Collins** stated that those types of buildings are very well constructed and are all non-combustible, and they have a lot of great attributes. It typically comes down to one of the interior steel members. If it is hot enough and it does deform, it could theoretically release a panel and

that is possible. It is also possible in a different way, in a previously approved building, although the construction type is totally different, the structure is totally different. Two End walls in a metal building are pretty vulnerable in the same way. The only thing that supports this end wall is a series of very thin metal roof purlins. They are just bent Z roof purlins. Those in this approved type of buildings would be weak in the same areas and if those were to deform very similar thing could happen where the entire wall or the portion of that wall could collapse over.

**Ms. Krimko** asked that in previous approval there was no more access around the building than what the applicant is proposing now.

**Mr. Muller** said no. The access was very similar to the previous approval. Mr. Muller said he is not a fireman but, he would think in buildings like that, or building that was previously approved, most likely a fire Department would not put apparatus in an area where it was vulnerable like that. One thing that the applicant can offer that might make a difference, the applicant could do is to put remote FDC and move that fire department connection away from the building, away from the collapse zone, so the vehicle could be clearly outside that area and have a direct connection to that water source so the truck did not need to go so close to the building. A couple of other things on this topic, the new building code requires all buildings to have emergency radio frequency transmission from inside and outside buildings, this is a great addition to the code because it ensures that there is clear communication from the people on apparatus to the people that are inside the building, so that does also give a little bit more time if something bad is happening. Most important is that the applicant is doing beyond making a non-combustible building is providing an ESFR system. It means taking city water, bringing the volume and pressure of water to increase capacity to push it through to a rapid response sprinkler system. If there is a time and those heads are triggered, there will be more volume of water pressure. Between the building being non-combustible and having a rapid sprinkler system, which is the key for us to bringing water, the applicant wants a continuous flow of water from the city, so that is one of the real benefits of bringing water up the street. The applicant would also do remote FDC to try to make sure this truck does not need to get too close to the building.

**Mr. Wall** said it is a good solution.

**Mr. Riccardi** asked how many parking spots are showing.

**Mr. Muller** said 16 across the front.

**Mr. Wall** asked how many toilets and showers are showing in the building?

**Mr. Muller** said that the applicant is not proposing any showers. Actually not proposing any toilets, because it's flexible. A typical flex unit would have a toilet a sink and a service sink. Each one of those tenant spaces could be designed with one toilet, one sink, and one service sink.

**Mr. Gertner** asked if this could be made as a condition of approval.

**Mr. Muller** said yes.

**Mr. Dolan** pointed out that all the lighting is facing down not up and out.

**Ms. Krimko** agreed. She believes that in Mr. Peter's letter he had indicated that we could need some shields perhaps to make sure that the lighting was not going off-site, that is why Mr. Klee said that the applicant complied with everything in the letter.

**Public comments.**

**Riker/ Dr. Campbell Yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Canderozzi, Mr. Wall, Mr. Flemming, Mr. Riccardi, Mr. Haring, Mr. Hudak.**

**Ms. Krimko** stated that she understands the board's concern; she understands from the first meeting as well as today. Mr. Krimko respects the concerns. She would just ask to go back and look at the actual variances the applicant is seeking, what their impacts are, what necessitates them, and most important, are we mitigating them such that there won't be a negative impact so substantial that it outweighs any of the benefits and even if the board takes the position that the extension of the sewer is not a benefit because it could potentially create more development down the road and you consider that to be negative, taking that off the table in its entirety, the board heard extensive testimony both from the engineer and the architect as to all of the other benefits that would be the repaving of the road, the extension of the water which is necessitated by the fire suppression system in order to serve this site, the extensive landscaping that the applicant is proposing far exceeding anything that most industrial uses would have, particularly in an area that is in the middle of nowhere in the industrial corridor. It is not a through street that you're going to take to the store or that you're taking home; if you are on that street, you are either visiting or working at one of those other industrial sites. The Board heard ample testimony with regards to the hardship; Ms. Krimko does not think that anybody disagrees with that regardless of the size of the building in order to put a building that could function as a warehouse on this site, whether it was double this size or half of the size, the applicant needs a front yard setback variance, a parking setback variance, and a wall height variance that is solely a function of the environmental constraints and unique topography of the site. Ms. Krimko stated that she knows the Board's biggest concern is that if the approval is granted here with the variances, and then the next applicant will say, well the board let them put it up front so why can't I put it up front? Of course, the Board has the qualitative experience of what the board is doing here and knows that each variance stands on its own, there is no precedent being set if the variance is granted here. It is only based on very specific testimony about very specific site constraints that the applicant has and it would not carry over to other applications. The Board does not have to feel that it is opening a Pandora's Box if the variances are granted. Despite how the board feels about the development or about sewer, Ms. Krimko asked to look at what the board's concern was at the last meeting and the great lengths that this applicant went to address each and every one of them, what the Board's concerns were tonight and the additional accommodations that the

applicant is willing to make. Ms. Krimko believes that the applicant addressed the number one concern about fire safety. When the board looks at the variances the applicant needs, what's driving them, which is clear hardship, and what the applicant is doing to mitigate them, Ms. Krimko thinks the Board would be constrained to be able to make a statement that the determinants are so substantial that they outweigh the benefits of the application. Ms. Krimko asked the board to vote in favor of the application as a whole based on all of the stipulations that the applicant made which are in full compliance with Mr. Peter's letter as well as Mr. Klee's letter and any revisions that he may have by virtue of the submissions of the full set. We had stipulated that the applicant will include solar, no outdoor storage and is willing to strip and sign the area. Most importantly the applicant will put in, the remote FDC at an allocation to be determined. Most likely it will be in the center and accessible from Herman road but obviously that would be subject to your board's professionals as well as your fire officials and the building officials. We would limit to a total of 3 bathrooms, 3 sinks, and 3 service sinks, despite what the tenant mix would be. With all of that Ms. Krimko asks the board to vote in favor of this application as presented with the variances as justified.

**Dr. Campbell** stated that she would advise the applicant to sit down with the Fire Department and discuss what the board is suggesting and come to an agreement on it.

**Ms. Krimko** said that the applicant would absolutely commit to that.

**Public Comments are closed. Motion by Riker/Dr. Campbell Yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Canderozzi, Mr. Flemming, Mr. Riccardi, Mr. Haring, Mr. Hudak.**

**Mr. Wall No.**

The application was approved.

**Motion by Flemming/Riker yes: Mr. Dolan, Dr. Campbell, Mr. Riker, Mr. Canderozzi, Mr. Wall, Mr. Flemming, Mr. Riccardi, Mr. Haring, and Mr. Hudak.**

Respectfully submitted by

Irina Darrar

Planning Board Recording Secretary

