

**DRAFT
MINUTES OF THE REGULAR SESSION
STONE HARBOR PLANNING BOARD**

August 24, 2015

7:00 p.m.

CALL TO ORDER:

The meeting was called to order by Mr. Hand, who stated that all requirements of the "Open Public Meetings Act of 1975" had been met with the Press of Atlantic City having been notified of the Board's schedule for 2015 on December 20, 2014, and the schedule having been posted on Stone Harbor's website and the Municipal Clerk's Bulletin Board.

ROLL CALL:

Members Present:

Mayor Suzanne M. Walters
Jill Gougher
Thomas Hand, Chairman
Robert D. Bickford, Jr.
Al Carusi
Wayne Conrad
Perry Conte

Board Solicitor:

Andrew D. Catanese

Board Secretary:

Diane Frangiose

Alternates:

Lynne Dubler

Zoning Officer:

Joanne Mascia

Members Not Present:

David Coskey, Jr.

Stone Harbor Motel LLC Application Hearing

Mr. Catanese stated that he wanted to alert the Board to a procedural issue that came up this afternoon, that he received a call from Mrs. Mascia, who was contacted by a property owner who is within 200 feet of the Stone Harbor Motel. The property owner, Renee Ratay, indicated that she received notice of the hearing yesterday and the email that Mrs. Mascia forwarded to Mr. Catanese as well as the email from the Tax Office indicates that there was a change of address made by Ms. Ratay in July which was subsequent to the Applicant or Mr. LaManna obtaining the Certified Mail list. The specific dates according to the Tax Office, is that Mr. LaManna requested the 200 foot list on June 3rd. It was produced on June 8th. The property owner updated her address on July 29th. Mr. Catanese further stated the Board has received an objection from Ms. Ratay asking that this hearing be postponed. Mr. Catanese advised that it raises a question that there is no clear answer he has found in any of the cases that are on record that says how long you can rely on a list. If you get a list on a Tuesday and the address changes on Wednesday and you mail on a Thursday, is that still a good list?

Mr. LaManna said he agreed with the dates mentioned by Mr. Catanese. They received a Certified List from the Assessor on the 8th and probably got it on the 9th or the 10th. They filed an Affidavit of Service and to go to the issue specifically, he checked the list when he heard about this. The individual is Renee Ratay and her address is listed as Block 97.02, Lot 56. This is a two unit condominium. Ms. Ratay is listed as the owner of Unit A and Robert S. and Joanne Ratay owns Unit B. According to the list, they both show addresses in Fairfax, Virginia at 10842 Santa Clara Drive. The original of the Certified Receipts are with the Planning Board Secretary.

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The Certified Receipts show that on August 5th someone by the name of R. Ratay received the mailing. Mr. LaManna further stated that another notice was also sent to Robert S. and Joanne Ratay and that was likewise acknowledged on August 5th. They both received notices on August 5th. They have done what the Statute required them to do. How long is a list good? Certainly, Mr. LaManna said, 55 days should be pretty good. That is their position.

Mayor Walters asked if Robert S. and Joanne Ratay are at the same address in Virginia. Mr. LaManna stated that the address the Assessor has for both is 10842 Santa Clara Drive. Mr. Catanese said the email that came into Mrs. Mascia today might shed some light on it. Ms. Ratay wrote that she was writing regarding the proposal that is going to be before the Planning Board tonight concerning 9700 Second Avenue and 169 97th Street. She wrote that she would not be able to attend the meeting as she just received the letter for the change yesterday. Mr. LaManna stated that if she goes into objections or reasons for objection, as you know, that is not evidential. Mr. Catanese said no, this is strictly procedural, normally we don't accept letters but this is on procedure not the substance of the Application. Ms. Ratay wrote the Certified Mail was sent to her name but her brother's address, he owns the upstairs unit. The letter was sent to Renee Ratay and it recites that 10842 Santa Clara Drive, Fairfax, Virginia address has never been her residence and that her address is Renee Ratay, 4324 Excelsior Place, Fairfax, Virginia. Ms. Ratay indicated that she expected the hearing to be deferred since she was not properly notified and would plan on attending the next meeting with her attorney. That followed with the dates that we received from the Assessor, Margaret Slavin and the Tax Office who indicated June 3rd for the request, June 8th date for the date the list was produced and Ms. Ratay changed her mailing address on July 29th. Obviously, the list that Mr. LaManna had did not capture the new address. Ms. Ratay does have actual notice of it, however, not the full 10 days, assuming what we have received is accurate. Mr. LaManna said this of course is in addition to the public notice in the newspaper.

Mr. Carusi asked Mr. Catanese if it infers that the Borough sent the notice to the wrong address. Mr. Catanese said no, the tax bill has been going to that address and it was produced and Mr. LaManna got the list. Really the only question is if the Applicant is entitled to rely on a list that is just under 60 days old or was it stale at that point and should it be deferred to provide notice. Mr. Bickford stated that whatever risk or jeopardy is on the Applicant and not the Borough and if we proceed with the meeting and take action on the Application and it turns out that it was procedurally defective and can be overturned then it is on the Applicant. Mr. Conte asked Mr. Catanese if the Applicant would have to defend it and not the Planning Board. Mr. Catanese said both the Applicant and the Board would be a defendant in the case if there was a procedural challenge. The claim would be that the Board lacked jurisdiction to hear it and if successful, the property owner or objector would then get a remand for a new hearing. Mr. LaManna asked if Ms. Ratay said she never lived at the address. Mrs. Mascia stated she had a verbal conversation with her and that she said somehow they had the wrong address and as soon as her brother received her tax bill, she contacted the Borough Assessor and asked for the change.

Mr. Catanese said there is only so much the Board can speculate to regarding the accuracy of the information received since the property owner is not present to be sworn and give testimony. Mrs. Mascia stated Ms. Ratay's property is right next to the parking lot. Mr. Catanese said if the Board finds that a list less than 60 days old was reasonable then the hearing will continue. Mr. Bickford stated he doesn't know if the Board should decide that if the Applicant chooses to pursue remedies claiming it wasn't reasonable, a Court will decide. Mayor Walters asked if the Board

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had to take any action. Mr. Catanese said no, other than the Chairman being okay with it. Mr. Hand said he was okay with proceeding since someone signed for the notice on August 5th. Mr. LaManna said the Statute says the recipient or agent so someone signed for the notice. Mr. Conrad asked if the essence of this conversation would be in the Minutes. Mr. Catanese stated it would be in the Minutes and the Resolution. Mr. Hand said the hearing should proceed.

Mr. LaManna called Mr. Pat Bridgeman to be sworn in. Mr. Catanese administered the oath to Mr. Bridgeman. Mr. Bridgeman stated his name and address, 9310 Second Avenue, Stone Harbor, for the record.

Testimony:

Mr. LaManna: Mr. Bridgeman, you are a principal in the LLC that owns the Harbor Inn?

Mr. Bridgeman: Yes, I am.

Mr. LaManna: To clarify, you also are principal in the LLC that owns the adjoining residential lot to the east?

Mr. Bridgeman: Yes, I am and the name of that entity is Stone Harbor Cottage, LLC.

Mr. LaManna: We are here this evening to ask the Board for several things. Site Plan Approval, and Variances, pre-existing, non-conformities, correct?

Mr. Bridgeman: Yes.

Mr. LaManna: We are also asking for an additional remedy which is Conditional Use under 560-31c and the purpose of that request is that the lot to the east which currently has a structure on it, is intended to be demolished?

Mr. Bridgeman: Correct.

Mr. LaManna: The lot will be used in conjunction with the neighboring parcel, the Harbor Inn exclusively for parking purposes and you understand that the Ordinance requires that we seek as well, a Conditional Use and conditions to comply with.

Mr. Bridgeman: Yes.

Mr. LaManna: It is your position that we complied with all of those conditions?

Mr. Bridgeman: Yes.

Mr. LaManna: Let's talk about your history in terms of Motels. This is not the first Motel that you either owned or managed?

Mr. Bridgeman: That is correct.

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Testimony: (continued)

Mr. LaManna: You currently manage and operate other Motels in town?

Mr. Bridgeman: I operate the Colonial, the Seaward, the Dunes and the Harbor Inn Motels. I have operated them and managed, part ownership in some, for the last 23 years.

Mr. LaManna: Prior to that, did you have a similar function? Were you involved in Motel operations in other towns?

Mr. Bridgeman: I have been involved in Motel operations, buying and selling, leasing, managing, since 1977.

Mr. LaManna: With respect to this particular Motel site, you acquired this, when?

Mr. Bridgeman: November of 2012.

Mr. LaManna: Describe the Motel, generally. How many units?

Mr. Bridgeman: It is 27 units. The front piece is 27 units varying from single family rooms with kitchens or without kitchens to a few three room suites and then it has single family 3 bedroom, 2 bath house in the back with a pool.

Mr. LaManna: Do you have an idea how old this structure is?

Mr. Bridgeman: The front structure is 1957 and the rear structure is approximately somewhere in the same range, it could be the late 40's, early 50's.

Mr. LaManna: You're speaking about the structures known as the Harbor Inn? To differentiate, you are not speaking about the residential structure that is currently on the lot?

Mr. Bridgeman: The Harbor Inn Motel itself, 1957. The structure in the back is the single family.

Mr. LaManna: What do you envision here? What do you have in mind? At some point you retained the services of Mr. Shousky and company and Mr. Kiss and Oliveri Architects to design renovations.

Mr. Bridgeman: When we first purchased it in 2012, we ran it one year and then ran it financially one year and decided the Harbor Inn needed some major upgrades. I have upgraded the Colonial Lodge, the Seaward and the Dunes over the last 10 years and of course, there was a minor upgrade in 1989 by Bill Diller. I want to take it one step further and totally modernize

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Testimony: (continued)

Mr. Bridgeman (continued)

it and give it a beach type theme, more or less, a Key West type theme. We think that with this we will be able to run a longer season and go into the shoulder season pre and post and not only that it will be more economical to run because of the air and heating. It will conform to more of the building codes when we are finished than it does now. We are going to put in all new baths, kitchens, the air and heating systems. We are going to go with a pool and hot tub in the front. The balcony is going to jet out and there will be an overall face lift on the outside. New electric and new plumbing. I think Stone Harbor is ready to extend the post and pre-season. With the 26, we are cutting down one unit and the one unit is going to be a hotel lobby. We went from 27 down to 26 plus the house in the back will not be there.

Mr. LaManna: You are reducing the density and bringing down the number of units and parking you are increasing?

Mr. Bridgeman: I am definitely increasing the parking to approximately 33.

Mr. LaManna: It will still be non-conforming when you are finished? In terms of parking?

Mr. Bridgeman: Yes. We are keeping the basic structure. We wanted to stay in keeping with the town. We didn't want to go high. There were a few things we didn't want to do and I think this will do it. I get a lot of people that come down that have been coming to the Harbor Inn and what I have seen is a lot of people in this room probably have staying in one of the Motels at one time or had a friend or relative stay in the Motels at one time or another. Sometimes when you're sitting there, these people that come down to us, we're like the concierge of Stone Harbor because I get it a lot, they've never been here, blah, blah, blah. So a lot of the times the existing neighbors have stayed at my Motels, they have rented houses, they have rented condos and then they bought condos or bought houses and now they are the neighbors but what is going on here is that people come down, we introduce them to the town, they like it, it's kind of like a cult, they keep coming back, they may not stay at the Harbor Inn, they may not stay at the Seaward but they are staying somewhere. The guy in the back, they bought and stayed at one of my Motels. There are a lot of people like that. I can't remember them all because there is a lot. I think it's really good for the town and it would be nice to have something that coincides with the Reeds. They did a very nice job there and they get a lot of the wedding business. We get a lot of the overflow there. We are just trying to keep up and make it nice.

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Testimony: (continued)

Mr. LaManna: The accommodations concerning the heating and other facilities will be upgraded from what they are now?

Mr. Bridgeman: Yes.

Mr. LaManna: The amenities that you are adding will be conducive to a year round or at least off season?

Mr. Bridgeman: More of a layered shoulder season, not just October. Maybe November, first part of December. We have to see how that part goes. Open a little earlier, somewhere around the first of April. If things work out, we'll just keep backing out a week.

Mr. LaManna: At some point in time you retained the services of the Oliveri firm to draw up plans?

Mr. Bridgeman: Yes.

Mr. LaManna: I have no other questions for Mr. Bridgeman at this time.

Mr. Conrad: The square footage in each room would be the same as it is now?

Mr. Bridgeman: We are not doing any interior wall movements at all. Where the lobby office is there will be something, partitions there to open that up. We won't be expanding the rear, east or west. The footprint of the building is not expanding.

Mayor Walters: When Mr. Diller owned the building, that was part of the hotels or motels that you managed, right?

Mr. Bridgeman: Correct. I managed the Harbor Inn for 23 years but we purchased it in 2012.

Mr. Carusi: What do you envision for the timeframe?

Mr. Bridgeman: This year there are certain things I want to do. I want to do the parking lot and the pool area. Next year, 2017 we are probably going to close a little early to get it all done. I am guessing we will close around the 20th of September in 2016 so I can get in and we will open a little later in 2017, I'm going to say June 15th. If things start looking good, we will go back to June 8th and keep going. But the first year, that's what's going to happen. I don't want to take reservations and have to cancel them because we didn't get done in time. I think we can do it in that timeframe. I have done other ones in that timeframe. Especially if I close four weeks early.

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Testimony: (continued)

Mr. Carusi: I walked the site and reviewed the site. You are close to the neighbors on a couple corners and can you tell us a little bit about how you are being considerate of your neighbors and doing things to mitigate issues? Can you expand on that?

Mr. Bridgeman: For instance, we want to have a control on the parking lot. The parking lot on the back will be controlled at check in. We will know who is in there and what is going on with the parking lot at all times. The rear parking lot will be gated and there will be some kind of control system that will be given out at check in. Pre-season, most of them will use the front lot. As the season progresses and gets heavier, we will be using the back parking lot.

Mr. Carusi: And the lighting?

Mr. Bridgeman: The lighting is going to be a low key. Not like a Walmart with a tower shining down. It's going to be connected to the fence area and it's going to be a low beam going in like this and it's not going to be high intensity, sodium lights. I just didn't want that. Of course it's going to have shrubbery all around it as you can see in the plans. It's not going to be a pavement. We are going to dress it up.

Mr. LaManna: The Architect will testify in greater detail on that issue.

Mr. LaManna called Mr. Gerald S. Blackman, Jr. to be sworn in. Mr. Catanese administered the oath to Mr. Blackman. Mr. Blackman stated his name and address, 17 West Knight Ave., Suite 200, Collingswood, NJ for the record.

Mr. LaManna: Mr. Blackman, you are a licensed architect and planner and a member of the firm of Oliveri, Shousky, Kiss?

Mr. Blackman: Correct.

Mr. LaManna: You have testified before this Board before?

Mr. Blackman: I have.

Mr. LaManna: I would ask that the Board accept the qualifications of Mr. Blackman.

Mr. Hand: Accepted.

Mr. LaManna: Mr. Blackman, you heard the testimony of Mr. Bridgeman that at some point in time he retained the services of your office. Would you explain the plan and go into some detail as to what is proposed and what modifications you intend to accomplish?

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Testimony: (continued)

Mr. Blackman (continued)

Okay. Essentially we are looking to renovate a hotel to improve its appearance inside and out. The existing single family residence to the east of the existing hotel would be demolished and that area would be used for a parking lot. On that property, there currently exists an in-ground pool. The in-ground pool would be removed as well and a new pool would be constructed on the motel portion of the lot, just slightly west of the building and sort of nestled within the u shape of the building. Existing non-improved parking areas on the west side of the site will actually be paved and striped and we will include two accessible parking spaces and two loading spaces as well. The motel itself will have the brick veneer removed, the existing roofing finish and replacing it with siding. We will be putting on a new metal roof. The balcony areas on the second floor will be slightly enlarged and we will include a trellis on the second floor level with plantings. We will surround the pool with plantings and providing some plantings not quite as a governor strip but sort of, next to the public sidewalk at Second Avenue. We will provide plantings along the parking lot fence and also the building face along 97th Street. The main focus of the project is to improve the appearance of the motel. As testified before, we are increasing the number of parking spaces that will be provided on site while decreasing the number of overall dwelling units on the project site. The single family residence will be demolished and also one motel unit will be removed from the motel building as well.

Mr. LaManna: In the course of this modification of this property, we are going to be seeking several variances?

Mr. Blackman: Correct.

Mr. LaManna: Is it fair to say that in each case, each of these variances are pre-existing, non-conforming?

Mr. Blackman: Correct.

Mr. LaManna: That the situation, the circumstances that are being addressed are pre-existing, non-conforming?

Mr. Blackman: Correct.

Mr. LaManna: Can you incorporate some reference to this plan in the record? Tell them what they are looking at?

Mr. Blackman: The first page is an exterior perspective. It gives you a general overall view of how the project would look when completed. The second page is the one that I placed on the easel now, it is drawing CS-1 that was submitted with the appropriate Application documents for Planning Board action. It is

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Testimony: (continued)

Mr. Blackman (continued)

the one that depicts our summary of what the zoning requirements are for the business district and how our proposed project compares to those requirements as well as the conditional use stipulations.

Mr. Catanese: Do we want to mark as Exhibit A, the package that we've got consisting of P-1, CS-1, A1-1, A1-2, A2-1, LP-1, and SD-1?

Mr. LaManna: Please, thank you.

Mr. Catanese: We will call that Exhibit A-1.

Mr. Blackman: Are additional copies needed to file with the Borough?

Mr. Catanese: I believe we all have copies here. Is your testimony that what you gave the Board today is exactly what was submitted with the Application?

Mr. Blackman: It is the same. That is correct. It is just a reduced scale. A smaller sheet of paper.

Mr. LaManna: Do you want to go to the zone chart on page 2?

Mr. Blackman: Yes. If you look in the middle of the page near the top, you can see a zoning summary review chart. The motel is located in the business district. The parking lot that is being proposed is the residential A district. The zone line happens to fall coincident with the property line. It is just to the east of the motel property. If you look at the zoning chart, you can see what the applicable requirements are that pertain to our project. We list what the regulation is, what the requirement is that is stipulated in the Borough's Ordinance, what the existing condition is and what the proposed condition is. Where applicable, we have some footnotes that are listed below the chart. All the way to the right is just simply a column that indicates no or yes depending on whether a variance is required for the condition that is proposed or not. If we look at the conditions that are labeled as yes, you can see that we are most certainly looking at a variance in set-back for floor area of the dwelling unit of which both conditions are existing, non-conformities. Actually in one instance where we have a portion of the building that faces 97th Street, where we have a brick veneer, the brick veneer actually encroaches on the 97th Street right-of-way and when we remove those materials and replace it with siding, we will actually be improving a non-conformity as to what exists today.

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Testimony: (continued)

Mr. Conrad: Just for clarification, how far is it into the area where it is not supposed to be currently?

Mr. Blackman: It is a little over two inches.

Mr. Conrad: So we are talking essentially about reducing from the thickness of a brick to the thickness of siding?

Mr. Blackman: That is correct. Once we put the siding up, we will be completely within our property, no longer encroaching on the right-of-way.

Mr. LaManna: Still non-conforming in terms of the set-back but not within the right-of-way?

Mr. Blackman: Correct. We are also proposing to remove the brick veneer on the other sides of the building but that was the only instance where it encroached on the right-of-way.

Mr. Conrad: In the other instance, it is more in terms of being visually appealing and being consistent?

Mr. Blackman: Yes. It slightly may improve set-back along Second Avenue but there was really no set-back requirement for the Second Avenue side anyway, it was really just the 97th Street side that was critical. It was an esthetic choice. It was generally the choice made that we felt was in keeping with the overall image of the building when completed that we were shooting for.

As it pertains to the dwelling units themselves, as Mr. Bridgeman testified, the dwelling units are not increasing or decreasing in size. They are remaining as they are today. We will be making improvements, cosmetic improvements, new paint, carpet, millwork, that sort of thing. The size of the units remains in the proposed project as they exist today. That's not changing at all with the exception of the one unit on the first floor. If you refer to our drawing, A1-1, on the 97th Street side of the building towards the bottom of the plan, more or less in the middle of the sheet, you can see that there is an area labeled as new motel lobby. Right now that is a dwelling unit. It will be removed and turned into the motel lobby instead. That's how we are going from 27 units down to 26 units in the motel building.

Mr. LaManna: For the record, you mention 97th Street. 97th Street is one way east? Correct?

Mr. Blackman: 97th Street is one way to the east, that's correct.

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Testimony: (continued)

Mr. Blackman: As it pertains to parking, we have requested variance for parking quantity. As the property exists today, there are 23 spaces that are on site with 27 units which resulted in a calculation of .85 spaces per unit. 1.5 spaces per unit is what the Ordinance requires as a minimum. The project as proposed, the Application materials that were submitted indicates that we are providing 33 spaces on site. We actually have a couple more spaces that we would be picking up on the streets as well that are around the property due to reducing the curb cuts that we had existing on the property thus far. As indicated and we will probably get into this in the review letter, two of the 33 spaces are actually loading spaces to utilize for temporary use for moving of baggage as people are checking in and such and really shouldn't be counted as a permanent parking space. If you take those two spaces out of the equation, we have 31 spaces on site which results in a ratio of 1.2 spaces per unit in lieu of the 1.5 spaces per unit that are required by Ordinance. It is still an improvement over the existing condition.

Mr. LaManna: Which is currently?

Mr. Blackman: .85 spaces per unit. Each of the spaces that we are proposing on site would be 9x18. Each of them would be paved. Each of them would be striped. We would have the adequate lighting to be able to maneuver in and out of the parking lot and for some minimum standards of security. We have provided for the Board's consideration, a lighting plan which we labeled as LP-1 a little bit further back in your packets. On this sheet, you can see the lighting fixtures that we have selected for the project and small plans first and second floor which indicate the anticipated spread of light from those fixtures for the locations we are proposing. The heavier dash line indicates an isolates of 1 foot candle illumination at the ground surface and it's a little harder to see but there's a smaller lighter dash line that kind of goes in between those isolux curves that reflects 0.5 candles of illumination at the ground level. As you can see, we have illuminated each of the various areas, the parking areas of the motel. We do expect that when it gets to a point, say after 11 o'clock, we would reduce the lighting levels to a lower illumination level just to be considerate neighbors.

Mr. LaManna: Before we move away from the set-backs, you touched on this but I want the record to reflect it clearly, the required front yard set-back on Second Avenue is 10 feet and although the pre-existing set-back is .24, with the proposed removal of the brick veneer, the set-back non-conformity will be reduced from .24 to .58; the pre-existing non-conformity is not relevant due to the applicability of Ordinance 560-18d which states that in the event that a front yard set-back of another building be located on another property in the same block, fronting on the same street, and located in the same zoning district is set-back less than 10 feet from the property line, the newly constructed building addition or alteration shall not be required to set-back

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Testimony: (continued)

Mr. LaManna (continued)

any further from the front property line of that said building. That's why that is not, there is no variance issue with respect to that because of the existing set-back of the neighboring building. I want that to be clear on the record because otherwise it would appear that we are only talking about a variance. I am sorry for interrupting you but I wanted to address that before we move away from the zoning variances. Have you covered each of them at this point?

Mr. Blackman: I believe so if I may just quickly refer to the Engineer's letter to make sure that I didn't miss any.

Mr. Smith: We had spoken about an issue with regard to the side yard set-back on the southerly side.

Mr. Blackman: Yes. I did forget to mention that. That is correct. If we look at the south side of the property, it may be easiest to see on drawing A1-1. On the south side of the property, there is a slight set-back of the building from the side property line. That existing wall would be maintained in its existing position and the finish on that wall is currently stucco. It would remain as stucco. It would be recoated. There is a series of HVAC condensing units that we are proposing on that side of the building. Those condensing units would most certainly encroach on the set-back as we are already not conforming for a side yard set-back on that southerly side of the property. We would limit those condensing units to be within 16 inches of the wall. While we would still encroach on the set-back, we would not cross over the south side property line. Yes, I neglected to mention that set-back.

Mr. Smith: The existing side yard, the existing set-back on the southerly property line ranges from 1.7 to 1.4 feet. The detail on the plan showed a 1.5 foot HVAC unit extending past the building in which case it would have actually encroached on the adjacent property so by reducing the expanse of the HVAC unit on the side, it's probably going to be right at the property line. You're probably looking at zero foot set-back to the HVAC units on that southerly property line.

Mr. Blackman: Correct. And 10 feet would be required.

Mr. Smith: So you're probably better off calling for zero because you're pretty close there. Requesting a zero foot set-back to the HVAC units.

Mr. Blackman: I would agree.

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Testimony: (continued)

Mr. Conte: That's an increase of non-conformity by how much? Are they already on the line?

Mr. Smith: The closest set-back there is about 1.4 feet and if they add the HVAC units to the side, they are going to encroach out another 16 inches so it's probably going to be right at the property line to those HVAC units.

Mr. Blackman: We can say within certainty that it would be completely on our property.

Mr. LaManna: Can you approximate the set-back, the non-conformity? Would it be minimal in proximity to the line? Are you talking inches?

Mr. Blackman: We're talking fractions of an inch.

Mr. Conte: Is it possible to keep it within the current non-conformity?

Mr. Blackman: We would have to relocate the condensing units to do that. And then we would have to look at whether or not we could move them to a location that we wouldn't exceed limitations on refrigerant lines to where the interior unit for that split system is located.

Mr. Bickford: To be clear, they are within the property line and they are adjacent only to the set-back which abuts the other hotel?

Mr. Blackman: That is correct. We would also have condensing units on the east side of the building facing the parking lot but they condition is vastly different on that side of the property.

Mr. LaManna called Mr. Daniel A. Shousky to be sworn in. Mr. Catanese administered the oath to Mr. Shousky. Mr. Shousky stated his name and address, 17 West Knight Ave., Collingswood, NJ for the record.

Mr. Shousky: The condensing units we are talking about are going to be mounted on a bracket on a wall. They are very small in size and will work with the interior air handlers. A lot of people might know Mitsubishi units, wall mounted air conditioning and heating units. They are not big air conditioning units. They are really small packages. The reason for locating them on the wall is so they are in the proximity of the HVAC units on the side of the building. There is one condensing unit for every four HVAC units and the size of the units, I think, are 8 inches wide, 8 to 10 inches wide by around 12 inches long. Like a small box. They will be wall mounted on the bracket above so we can bring them right into the building and connect them to the wall mounted units.

Mr. Conrad: Do you have any sense of the level of noise they produce? I have one. It was a leading question. I know they are relatively quiet.

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Testimony: (continued)

Mr. Shousky: They are quiet and efficient. They are the best type units that work with a motel this size. They are not going to be obtrusive. You are not going to see big units mounted on a wall. It's just a small box more or less.

Mr. LaManna: Do these appear on the plan? Are they described in the sizes you are saying now? I want to make sure the record is consistent with the plan.

Mr. Shousky: They are shown but there is not a physical size given that I can remember.

Mr. LaManna: I am trying to make sure that we are conforming and at least responding to what the Engineer has brought up.

Mr. Shousky: On the plan sheet A2-1, on the Second Avenue elevation, it actually shows a dimension of 1 foot 6 inches off of that wall face. It doesn't have to project out 18 inches from the wall. The bracket can come out to 16 inches and that unit can sit on the bracket and still have enough clearance around it.

Mr. LaManna: Height wise did you say?

Mr. Shousky: I think they are 12 x 12 or 12 x 16.

Mr. LaManna: I mean off the ground.

Mr. Shousky: We are going to be at 8 feet so you can walk safely under the bracket and not hit your head.

Mr. Carusi: The condensing units allow heat and cooling capability. How many would you put back there?

Mr. Shousky: We are going to have one condensing unit for every four.

Mr. Conrad: You show four in your drawing.

Mr. Shousky: Right. We have a slope roof and that doesn't work really well. It's going to be a roof that we can keep as clean as we can.

Mr. LaManna: So your testimony is that there is really no alternative to put them?

Mr. Conrad: How about the condensation?

Mr. Shousky: We are going to look at the line and take it down.

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Testimony: (continued)

Mr. Conrad: Underneath it is a walkway or soil?

Mr. Shousky: It's just paved. The area between the buildings concrete. It was a function of how they built the building to access an alleyway. This building and Seaward are to the south.

Mr. Catanese: If I heard that testimony right then the HVAC will be consistent with what we see on the plans?

Mr. Shousky: Yes.

Mr. Smith: With the exception of the project from the wall. Instead of being projected 18 inches it will be projected 16 inches to maintain no encroachment on the adjacent property. Basically what they are requesting is a zero foot set-back to the HVAC units that are on the south side of the building.

Mr. LaManna: Earlier we made mention of the Application for Conditional Use because under the parking provisions of Ordinance 560-31c, Parking Lots in Residential Zones, states that any business operating as a permitted conforming use in that zone shall be permitted to operate one parking lot on property located in a residential district provided that the certain conditions are met. There is a list of some conditions in the Ordinance. Are you familiar with those conditions?

Mr. Blackman: Yes.

Mr. LaManna: Is it your testimony that this Application complies with those conditions?

Mr. Blackman: Yes. We have listed on drawing CS-1 to the right side of the sheet, a compliance checklist. It outlines the 15 conditions that we would have to adhere to in order for the parking lot to be permitted in a residential zone.

Mr. LaManna: It is your testimony therefore, that these are in compliance and the terms of the Conditional Use Ordinance are met?

Mr. Blackman: Correct.

Mr. LaManna: I don't know if the Board wants us to elicit testimony at this time from the Architect concerning the Report or do you want to take the Report first and then we will deal with those. Whatever your pleasure is. Obviously, we have comments and responses to the comments of the Engineer so whatever format you want to proceed with is fine with us.

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Testimony: (continued)

Mr. Catanese: Are you going to address the Conditional Use Standards in more detail?

Mr. LaManna: We can. We can go through them.

Mr. Catanese: I think it's important for the Board to hear on all the conditional use standards.

Mr. LaManna: Absolutely, we can do that.

Mr. Catanese: I have particular interest in the issue as to the hours of operation.

Mr. Conrad: Before we leave the parking, I feel like the Philadelphia lawyer tonight but the 9 x 18 feet for the parking, is that a standard approved dimension?

Mr. Blackman: The 9 x 18 space is the minimum size parking space stipulated in the New Jersey residential site improvement standards.

Mr. Conrad: So it's a minimum but it is acceptable?

Mr. Blackman: Correct and we also have a 24 foot drive aisle to access those spaces and the 24 foot drive aisle is minimum for two way traffic.

Mr. Catanese: On the 9 foot by 18 foot RSIS Standards, Mr. LaManna, would you agree they don't apply here, the RSIS, because it is not a residential building?

Mr. LaManna: They are being referenced as a guide, they are not binding in terms of the Ordinance. It's not pure residential. It's as we said, transient.

Mr. Catanese: Got it. So 560-31 A1 indicates that all off-street parking spaces shall be not less than 10 feet wide and 20 feet long.

Mr. LaManna: Is it not my understanding, Mr. Catanese, that the Borough has accepted the RSIS in the past with respect to the dimensions within the Borough? I do not think they distinguished between residential and commercial for the purposes of RSIS. I know RSIS is a residential site regulation but I think the Borough has adopted the RSIS standards throughout as the dimensions.

Mr. Catanese: I'm not sure if they have. I think the Zoning Ordinance as to parking says in 560-31 A1, "except with respect to Municipal off-street parking and parking regulated by the New Jersey Residential Site Improvement Standards, all off-street parking spaces shall be not less than 10 feet wide and 20 feet long for each vehicle to be accommodated and shall be so located as to prevent parked vehicles from obstructing a sidewalk." So if the New Jersey RSIS is inapplicable to hotels and motels, then the 10x20 foot requirement would apply.

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Testimony: (continued)

Mr. LaManna: If it is the ruling of the Board or the Board Attorney that the 10 x 20 foot applies, we would be seeking a variance from those dimensions to be consistent with the RSIS Standards.

Mr. Catanese: I'm sorry?

Mr. LaManna: If it is the determination of the Board based upon your advice that the RSIS do not apply in the commercial zone then we would be seeking a variance from those conditions to be consistent with the RSIS throughout the rest of the Borough.

Mr. Catanese: Got it.

Mr. Conrad: My questions were driven not by the letter of the law but by the functionality question. Is 9x18 a sufficient space to accommodate the types of vehicles people are driving today. I don't know the answer to that question.

Mr. LaManna: Maybe Mr. Shousky can but I can tell you this much. The RSIS Reports were based upon tests that were performed as to the size of the vehicle and it was acknowledged that the old 10x20 were based upon vehicles that were much larger at the time when that regulation was adopted. In terms of RSIS, they basically reduced those dimensions to keep up with the times and whether or not the Borough has done a similar situation is another issue but I defer to Mr. Shousky who may have some knowledge on that.

Mr. Shousky: I think you pretty much answered the question. Over time, originally going back into the 60's and 70's, parking spaces were much larger. They were 10x20. Over the years, vehicles have been downsized for the most part. It is recognized in the industry. I think if you look pretty much at any zoning code in today's world, the parking spaces are 9x18 and in some instances they are less than that for allowances for compact cars which reduces that down to 8x18, 8x16 but 9x18 is kind of a recognized standard in traffic planning now for parking space spots. Very few 10x20 spaces appear anywhere with the exception of supermarket parking or shopping. Plus we are dealing with an urban area here. We are trying to fit in a reasonable amount of parking that fits the standards. We are in an area where size is limited.

Mr. Conrad: I don't have a problem with it but the point is that it would be a situation that would require another variance.

Mr. Conte: Did you run it with the 10x20?

Mr. Blackman: You would lose two spaces.

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Testimony: (continued)

Mr. Shousky: Close to 20 foot depth. Which would decrease the drive aisles from 24 to 20 feet. Most drive aisles that I have worked on in urban locations more or less have been reduced down to 22 feet, in some cases 20 feet. There is a greater number of maneuvers required to get in and out of the space but we are not asking for that.

Mr. Smith: The way it's set up, it really doesn't reduce anything.

Mr. Conte: Because you're parking on both sides so you're not really taking away unless a car is in fact, longer.

Mr. Shousky: Right.

Mr. Conte: It's just the width not the length.

Mr. Shousky: Right.

Mr. LaManna: You are also working against what is no longer necessarily the trend in the number of spaces per unit at 150%.

Mr. Smith: CAFRA would require 1 space per hotel unit when the unit does not exceed 650 square feet.

Mr. LaManna: But that is not an issue here. That combined with the parking space sizes becomes a bit of a feat to accomplish.

Mr. Conte: Is it important for the Applicant to have 31 spaces?

Mr. LaManna: It's important for the Borough to have it.

Mr. Conte: So the alternative would be 29 and they would be 10 feet wide approximately?

Mr. LaManna: More or less, I guess.

Mayor Walters: Are you saying there are 31 or 33 parking spaces?

Mr. LaManna: There are 31 parking spaces.

Mr. Conrad: But what you're saying is the long range trend is that we are both reducing the size of vehicles, therefore, the necessary space to park them and we are also reducing the number of spaces required for hotel usage?

Mr. Shousky: Up to 650 square feet.

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Testimony: (continued)

Mr. Catanese: In either event, with our Ordinance written as it is, I'll cite Cox at 23-14, standards are not applicable to non-residential construction. So, spaces at 9x18 would require a variance from 560-31 A1, which calls for 10x20.

Mr. LaManna: We are seeking parking variances so this will be a component of that request.

Mr. Conte: That 10x20 standard could be met but you would lose approximately two spaces.

Mr. Blackman: I think we would actually lose three.

Mrs. Gougher: Gerry, do you know how wide our spaces are here in the Municipal Building to give us perspective?

Mr. Blackman: In the Municipal lot, I believe they are 10x20.

Mr. LaManna: I am going to go through the Conditional Use Conditions with you if I may.

Subsection C starting with the first item, the parking lot shall be immediately adjacent to an abut for at least 10 feet, the lot upon which the associated business is situated. Correct?

Mr. Blackman: Correct. It does abut the property. The proposed parking lot does abut the motel. It is directly adjacent to it.

Mr. LaManna: Number 2, the parking lot shall be reserved for the exclusive use of the associated businesses customers and/or employees.

Mr. Blackman: That's correct. The parking lot would not be open to the public.

Mr. LaManna: Number 3, no fee shall be charged for the use of the parking lot.

Mr. Blackman: Correct, no fee would be charged for the parking lot.

Mr. LaManna: Four, no such parking lot shall be permitted without conditional use approval. That's why we are here; it sort of answers itself. Five, no such parking area shall exceed a frontage of 100 feet in any residential zone.

Mr. Blackman: Our frontage is actually 50 feet from the parking lot.

Mr. LaManna: So there is compliance there. Number 6, no portion of the vehicular access way providing ingress and egress to the parking lot shall be located in excess of 35 feet from the district to which such parking lot is contiguous. There is a however but I want you to address that part first if you would.

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Testimony: (continued)

Mr. Blackman: The parking lot immediately abuts the business district and the motel use on that business district that's well within 35 feet.

Mr. LaManna: Fine, so it complies so far. However, in the event that a parking lot shall be located in such a fashion as to be contiguous to two residential lots having frontage on a common street, within the same parking lot, the vehicular access for ingress and egress shall be located equally distant from such residential property. That just doesn't apply?

Mr. Blackman: Correct. There's only one residential property that is on the same frontage that abuts the parking lot.

Mr. LaManna: Seven, an opaque fence of a height of 4 feet shall be erected between the parking area and the residential district between the parking area and any sidewalk fronting on the street.

Mr. Blackman: We are proposing, you will see on the drawings submitted with the Application, that we do have if you refer to key SD-1, we do have a fence detail. We are going to be proposing that 4 foot fence that you see in that detail 7 on sheet SD-1, on the easterly side of the parking lot, on the southerly side of the parking lot, those 2 sides abut, residential uses and also on the northerly side of the parking lot where it abuts 97th Street.

Mr. LaManna: So we are complying with 7?

Mr. Blackman: Correct.

Mr. LaManna: Eight, any change in the use on the lots served by the parking lot pursuant to 563-1c which change in use requires a site review pursuant to Chapter 345, shall terminate the parking lot use. We understand that as a condition and we would be back to this Board should such an event occur. Correct? It's understood.

Mr. Blackman: Correct, yes.

Mr. LaManna: Nine, no building or structure shall be permitted on the parking lot with the exception of signs, fences and lights pursuant to the Regulations here and set forth.

Mr. Blackman: What we have proposed on the lot was signs, fences, lights for the parking lot as well.

Mr. LaManna: Okay, so we comply.

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Testimony: (continued)

Mr. Blackman: Yes.

Mr. LaManna: Ten, lights for illumination purposes may be erected upon standards which shall not be greater than 12 feet in height. Such lights shall be shaded and angled downward in a manner as to confine the direct light entirely within the parking lot. Such light shall be operated by an automatic electric timing device which shall cause the lights on the parking lot to be extinguished a half an hour after the parking lot is closed. If I may, we comply but we are reducing intensity. Actually, we are much more in compliance than what the condition would permit in terms of height.

Mr. Blackman: Correct. Generally, we are mounting the lights at a 4 foot elevation. We are utilizing the fence posts that surround the parking lot as the standard at which we mount the light upon. We do also have some building lighting on the west side of the parking lot but that would be mounted at a similar height as those that we mount on the fence posts. We would probably mount them maybe a foot higher up to 5 feet but in each case, we would be directing them downward towards the paving so that it doesn't spill towards neighboring properties.

Mr. Catanese: So the lights will be completely extinguished a half hour after the lot is closed?

Mr. LaManna: No, the lights would be reduced in intensity. The extinguishing is for lights that are 12 foot high which clearly we are not doing that. The lights are going to be down on the base of the post.

Mr. Catanese: It says lights for illumination lights for illumination purposes may be erected upon standards which shall not be greater than 12 feet in height.

Mr. LaManna: Right.

Mr. Catanese: So we've got lights that are 12 or less. Such lights shall be shaded and angled downward in a manner as to confine the direct light entirely within the parking lot. We've talked about that. Such light shall be operated by an automatic electric timing device which shall cause the lights on the parking lot to be extinguished a half an hour after the parking lot is closed. So, is that the testimony that you are going to comply with that? It will be on a timer and a half hour after the lot closes, those lights are extinguished.

Mr. LaManna: I would have to speak with the client and architect. I think for safety purposes, you have to have either some illumination on the lot. Maybe it's in the form of luminescent paint but to make it totally black is ridiculous. This is not a store that closes at 11 o'clock.

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Testimony: (continued)

Mayor Walters: I was thinking the same thing. If somebody goes out to dinner or whatever.

Mr. LaManna: Maybe those lights should be extinguished. Maybe there's a....I have seen in some locations that there's a light, an in-ground light that may go on. Mr. Shousky may have an answer.

Mr. Shousky: One of the things we wanted to pay attention here to the lighting because we didn't want to disturb the neighbors with poles that are 12 foot high, although you could put what they call house side shields on them, you're still going to see the light so, our idea was to locate the lights at the 4 foot height. They would be located in-between the cars so the poles, the fence posts are located 9 foot on center. So you have a light fixture that essentially illuminates the aisle space between cars. So that when you come in the lot later on at night, if you're leaving, coming back and going into the parking lot, there should be some light available for safety. I think to have no illumination whatsoever is going to cause a problem down the road somewhere.

Mr. Catanese: Maybe this number 10 and 11 need to be talked about together because 11 talks about the parking lot being closed between the hours of 11 p.m. and 7 a.m. so that's what I'm getting to. How those two as conditional use standards are going to be met, need to be met by the Applicant.

Mr. Shousky: Number 11 part of it, we are going to put a gate in that is going to be activated by a device to be determined. We are either going to have a device as part of the check-in that would be held by whoever is parking in that lot that would activate that gate after 11 o'clock. Between that time and 7 o'clock in the morning. I think it would make sense for us the way we look at it, that we could reduce that lighting level when the parking lot is closed but I think you need to have some level of lighting for safety for people entering the lot when it is closed.

Mr. LaManna: I think we can do that and work within this Ordinance. The lights they are speaking about that are 12 feet or less, such lights shall be operated by an automatic electric timing and shall cause the lights to be extinguished. We can extinguish those lights at 11 o'clock but there will be some other form of ground lighting that would at least provide....this provision doesn't say you can have no lighting at 11 o'clock. That would really be a safety issue and it just doesn't make sense.

Mr. Smith: The parking lot is supposed to be closed. There's supposed to be no access after 11 o'clock.

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Testimony: (continued)

Mr. LaManna: No, no it doesn't say that. It says closed.

Mr. Smith: It says to be closed.

Mr. Catanese: Hold on.

Mr. Smith: That's how you comply with the Conditional Use Standards.

Mr. LaManna: The Conditional Use Standard says closed.

Mr. Smith: That means no entry or exit.

Mr. LaManna: That's what you say. That's not what this says.

Mr. Catanese: The Board is going to need to make a determination as to whether the Applicant has complied with items 10 and 11 that deals with the lights being extinguished because if the Board determines that a parking lot in which cars are parked from 11 p.m. and 7 a.m., and in fact cars can go in and out of at 11 p.m. and 7 a.m., is not closed within the definition of this Ordinance, then this Board lacks jurisdiction to hear this and you need to go to Zoning.

Mr. LaManna: I understand that and I want to be heard on that issue as well because I think there is a whole body of law that speaks about this as waivers and doesn't belong in a variance situation but that is aside for the moment. I think we can address the lighting issue if I have a moment. The language in the Ordinance we can comply with the language in the Ordinance.

Mr. Catanese: For the record, Mr. Bickford is leaving the meeting.

Mr. LaManna: To return?

Mr. Catanese: No.

Mr. LaManna: Can I have a moment with the client on this issue?

Mr. Catanese: Okay. We are still on the record.

Mr. LaManna: We can represent to the Board that with respect to number 10, we will comply. The lights will be extinguished at 11 o'clock.

Mr. Shousky: I think you are going to find we are probably going to have enough ambient light around the area. We have street lighting. You're going to have other sources of light that may not be a direct light but I think certainly enough that it would make that lot feel safe. At that point, the lights are off so there shouldn't be any you know, confluence with the neighbors in terms of seeing a bright surface lit up.

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Testimony: (continued)

Mr. Conte: I don't fully understand the closing of the lot.

Mr. LaManna: We want to get past the lighting first and then we are going to address the closing issue. That's next.

Mr. Conte: They are interconnected. Lighting and usage.

Mr. LaManna: They may or may not be. The volume of traffic and maybe Mr. Bridgeman has to testify to this, but after 11 o'clock, there's not a lot of check-ins but not only that, Mr. Bridgeman, would you come forward please? You are still under oath. This lot is basically a backup lot. This is not the only parking lot on the premises.

Mr. Bridgeman: No, there is a front lot.

Mr. LaManna: What will the practice be with respect to check-ins. Which lot will be utilized first?

Mr. Bridgeman: The front lot most likely.

Mr. LaManna: For excess purposes, the rear lot would be used?

Mr. Bridgeman: Yes.

Mr. LaManna: The testimony so far has been that the lot will be closed at 11 o'clock by a gate. Is that correct? By the installation of a gate?

Mr. Bridgeman: That's correct.

Mr. Conte: What if someone wants to leave after 11 and there car is in the lot?

Mayor Walters: You're talking about 21 spots.

Mr. Carusi: Or come in late from night activity.

Mr. LaManna: They have to check-in. The public cannot go into that. Would it have to be somebody that would have to be identified by Management by a check-in process or some other form of identification?

Mayor Walters: But it's not just checking in and checking out, if somebody is staying there at the hotel, I mean it's 21 units and if they go out for the night, whatever, they go to Wildwood, go to Cape May, whatever and it's a late night and they are coming home at 2 o'clock in the morning, their slamming car doors, their talking to one another.

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Testimony: (continued)

Mr. LaManna: As are any residential neighborhoods with driveways.

Mayor Walters: I understand, I abutted one for years so I fully understand the issue but that's why the regulation was put in about allowing these parking lots next to a residential area.

Mr. LaManna: I don't know why it was put in and if any of us do and I think there's a definition with respect to the word closed here and I think closed means closed to the public. That's what we are submitting it means. The general public cannot have access to this. Look, this town does not die at 11 o'clock. There is activity throughout this town as we all know so you know, this is not saying that there can be no movement of vehicles anywhere in town. There's going to be cars passing in front of the buildings on the street in front of the house next door to the parking lot.

Mr. Catanese: The arguments as to whether variance relief is appropriate for it isn't critical here. The question is whether or not the Applicant meets the conditions because if they don't then the Planning Board doesn't have jurisdiction.

Mr. LaManna: Well if they don't accept that I will provide for you as I did in an email earlier and I will put it on the record, that there's case law that indicates that this is waiver material. This is the parking Ordinance. This is, in fact, your Ordinance under the zone says that there is no conditional uses for this type of thing except under the parking and parking is a site vehicle. It's a site tool and this is something that is appropriately waived. You can't just take something that is parking and lighting and things of a Site Plan nature and say well now you need a variance under the zoning ordinance. What I think is happening here is that this bodes for an interpretation that is somewhat liberal with respect to what this whole Application for Site Plan approval is about. You're going to send us to the Zoning Board for this? Is that what we're being told? Because the definition of closed means no gate but closed all night between hours that don't even apply anymore, 11 and 7?

Mr. Conrad: In the area of interpretation, it would seem to me that the lot could be closed and if someone was coming in to check-in or if they had been out to Atlantic City or whatever, you could always go to the desk and say you know, I want to bring my car in and technically, the lot is closed but a particular tenant or particular client could ingress or egress.

Mr. LaManna: That's what our position is because there is nothing more unfortunately by the way of definition for the word closed in this Ordinance. It will be closed, there won't be access to it. We have a parking lot in town that's supposed to be in a residential zone and adjacent to a commercial use that at 2 in the morning is open and it's been open for years.

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Testimony: (continued)

Mr. LaManna: I think you have to use a certain amount of reason with respect to this and that's why I said it deserves an interpretation. It's not something that says simply well if a car goes in after 11 o'clock, it's no longer closed. I don't think that's what the intent was here.

Mr. Smith: Chairman, may I? To me, and I'm certainly not going to profess to be an attorney but you got a list of conditional use standards. If you're seeking a departure from one of the conditional use standards, it's a d, you go to the Zoning Board.

Mr. LaManna: I know the law sir.

Mr. Smith: I'm not....

Mr. LaManna: Believe me, I understand conditional uses and conditional use variances and I know a variance for conditional use goes before the Zoning Board and not the Planning Board so let's start out with that understanding.

Mr. Smith: First of all, the definition of closed is the real issue. You initially said that it's closed to the general public. Well the lot is always closed to the general public because it is specifically for access and parking for hotel guests. My interpretation, I was not here when the Ordinance was adopted...

Mr. Catanese: Let me backup then. Let me swear you in if you are going to give an interpretation.

Mr. Smith: I am not going to give an interpretation. I am just giving an opinion but I would be more than happy to be sworn in.

Mr. Catanese administered the oath to Mr. Smith. Mr. Smith stated his name and address for the record: Robert Smith, Remington, Vernick and Walberg Engineers, 845 N. Main Street, Pleasantville.

Mr. Catanese: You also made some prior comments. Do you swear that all the testimony that you have made thus far have been true to the best of your knowledge?

Mr. Smith: I do.

Mr. Catanese: Thank you.

Mr. Smith: I guess the statement that you made was that it is closed to the general public. Well, again, it is always closed to the general public. My opinion was the genesis of the Ordinance was if you need additional parking during the day adjacent to a residential use for a commercial use, that's more than appropriate but at some point in time, it effects the use and benefit and enjoyment of the adjacent resident. So at 11 o'clock, the parking lot can

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Testimony: (continued)

Mr. Smith (continued)

no longer be used as the Solicitor said, headlights, people coming in and out at all hours of the night you know, making noise. That is detrimental to the residents' use of their property. I certainly again, was not here when it was created. I was not here when it was adopted. I can certainly infer as to what the intent was and my opinion of closed is no ingress and egress to the lot between the hours of 11 and 7. That's just my opinion for what it's worth.

Mr. Catanese: Mr. LaManna, it's your Application and your record to make but when you're finished, we will take up that issue of jurisdiction and really it's a question of whether the conditional use standards have been met. That will be the first vote.

Mr. LaManna: If we can adjourn for a very short period of time.

Mr. Catanese: Do we want to adjourn? It's up to the Chair.

Mr. Hand: Yes for a 5 or 10 minute recess.

Mr. Hand: We are back on the record. Microphones on. We are back in session.

Mr. LaManna: We are back to the issue with respect to the condition that the lot shall be closed. Let me have some testimony, if I may, from our Architect and Planner and ask him some questions. We are dealing with the definition of closed at this point. Correct?

Mr. Blackman: Correct.

Mr. LaManna: Alright. Now, it's been the position of the Applicant that a gate will be installed. The gate will be controlled by the Applicant. The access during this period of time will be from none at all to minimal depending on circumstances.

Mr. Blackman: That's correct.

Mr. LaManna: Now, does that conform to your definition of the word closed?

Mr. Blackman: Correct. I guess the intent is that the parking lot is not used by the general public. Only those guests of the motel. In order to access the parking lot, you have to be a guest. In order to get past the gate, you are going to need a device that you acquire upon check-in. In general, the nature of motels are that it is possible that somebody is going to come in after 11 and it is possible that somebody may leave after 11 and before 7. Closed, I guess is a somewhat broad term. Can you take closed to mean to the extent that

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Testimony: (continued)

Mr. Blackman (continued)

vehicles can't be parked there overnight. After 11 all vehicles have to be removed from the lot altogether in order to account for the eventuality that somebody may leave after 11 or come back from wherever they were visiting after 11. I don't think it is reasonable for the use as proposed. On one hand, you know the use of a residential area for a parking lot adjacent to a business use like a motel is permitted but then you take that permission away by stipulating that by the nature of having a motel, you are going to have vehicles there between the hours of 11 and 7. In order to account for the eventuality that they might be moved, do they all have to be removed from the parking lot? I don't know that that was the intent.

Mr. LaManna: Just carrying that thought a little further. I am not being factitious here but if somebody at midnight or 1 o'clock decides they left a diaper bag or something in the car and they go in and they turn on the ignition and they open the car and they take out what they want and they slam the door.

Mr. Blackman: But don't actually move the vehicle out of the lot.

Mr. LaManna: Don't move the vehicle at all. The concept, the alternative concept of having no vehicles in the lot at all would fly in the face of the whole parking concept with a motel. We are trying to produce spaces for accommodation for this project and it appears at least on one hand that the Ordinance wants to facilitate that. However, again, we all realize that if this were a store that had business hours and they closed at 11 o'clock, we wouldn't be sitting here. It would be an easy call. But this is a motel. Is it your understanding that an interpretation that would either prohibit vehicles at all under a closed definition such as that or that would limit no movement of vehicles during the hours between 11 and 7 would frustrate the purposes of having this parking lot as an incident to motels. You couldn't have a motel use this parking lot, this type of arrangement under these circumstances.

Mr. Blackman: Or like you said, if you forgot something in your car and you had to go down and open the door and shut the door again. But not move the vehicle.

Mr. LaManna: But if closed under the alternate interpretation means closed to vehicles, no vehicles permitted, then how would we comply with the parking requirements with respect to the Application? I'm not going to conclude, I will ask you. Does it make good sense to determine from a planning perspective and in your opinion as a Planner, does it make any sense at all to interpret closed as a closed lot beyond the point of limiting public access under these circumstances, motel use, Site Plan application, what's before this Board?

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Testimony: (continued)

Mr. Blackman: As for what's before this Board, I feel that it's reasonable to permit guests of the motel only, to be able to move in and out of the parking lot between the hours of 11 and 7. Yes, closed to the general public by access of having a gate not just anybody can go up and park there. You know, additionally we could certainly say something to the order of well, you know we will inform all of our guests when they arrive that generally can you try not to leave and if you do, happen to be back before 11 or if you can't be back for 11 wherever you are stay there until after 7 then come back or park your car on the street you know until the hours of 7 a.m. and then you can move into the lot. I think it imposes undue restrictions I guess on the Applicant and how they can utilize a lot that they are permitted to use by Ordinance.

Mr. LaManna: Doesn't it in fact go beyond that to the point where it frustrates the entire Application?

Mr. Blackman: It does.

Mr. LaManna: How can you have this Application proceed without the use of that lot under these circumstances? If you have no cars permitted in that lot from 11 to 7, we might as well go home. We're not going to have....how many spaces would we lose?

Mr. Blackman: 21.

Mr. LaManna: We certainly can't expect the Applicant to tell the patrons that come in sorry, 11 o'clock this lot is empty, it's closed, you have to park somewhere else, we can't take you. That flies in the face all of what we are asking this Board to approve in terms of parking. There is an anomaly here that can only be addressed by an interpretation of the word closed to mean closed to the public. Do you agree?

Mr. Blackman: Correct.

Mayor Walters: During the day prior to 11 p.m., if the public just goes in and parks in that parking lot, are they going to be allowed to park there?

Mr. LaManna: No.

Mayor Walters: Okay, so it is closed to the public anyway.

Mr. LaManna: Correct but that just further Mayor, makes my point that if closed means you can't use the lot after 11, you can't have cars in the lot, that's part of this whole Application and to use the lot for parking. It would clearly be a case of saying no motel in this community with a parking lot in a residential zone would qualify under this Ordinance and I don't think that's what it says.

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Testimony: (continued)

Mayor Walters: I don't think that anybody is saying that you would have to remove all the cars. I think they are just saying that movement in or out of the lot between 11 and 7 is not allowed.

Mr. LaManna: But see unfortunately, we don't know because the word closed isn't defined. I'm sure that your Solicitor has done this. I know I've done it. There isn't any definition for closed in this Ordinance. That's the problem. It is not defined and could very well mean closed for all purposes. Nothing can be in there at night. Or take the other interpretation. That it means limited, closed but no vehicle movement in the lot after 11 o'clock. Okay, so tell a patron you're coming to a motel, you are trying to encourage guests to come on the shoulder season and you say yes but once you park in this lot, you're there until 7 o'clock in the morning because we can't let you out.

Mr. Catanese: Can we agree, however, that even if the determination of closed meant there could be cars in it but it has to be sealed off, no cars in, no cars out, that's not something that your client is seeking approval for? Another words, your client is seeking approval, the Application is for the ability to have cars in there through the night with the ability to go in and out?

Mr. LaManna: I think that our request, what we are seeking here and our interpretation of closed runs both ways. That it's just as being capable of being interpreted that no cars are in the lot as limited use because that's the word closed. Closed can mean either of those two things or in either event, the Ordinance, that interpretation if it's broader than that, has frustrated an Application for parking for a motel.

Mr. Catanese: The Application is not for a lot which will be sealed off at night. The Application is for a parking lot that cars may go in and out of at night, albeit through a pass code, a card and a gate. What the Applicant is asking for is a lot that cars can go in and out of anytime someone wants to park there or remove their cars. Is that correct?

Mr. LaManna: No. What the Applicant is asking for is a definition of the word closed that permits a limited use of the parking lot between the hours of 11 and 7.

Mr. Catanese: Exactly. So your client is seeking approval for limited use of the parking lot. That's my point. The Board needs to identify the purposed use. They need to know what they are deciding on. They are not deciding on a lot that is going to be locked up at 11 o'clock until 7, cars in or out. People can get their cars in, they can get their cars out. That's what proposed.

Mr. LaManna: Not because we want it that way but we could never sell a room on that understanding.

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Testimony: (continued)

Mr. Catanese: I get it and I'm not saying that's unreasonable. I think it's perfectly reasonable for a motel owner and a guest to be able to take a car out.

Mr. LaManna: We're not trying to be obstinent it's just not practical otherwise. It just isn't.

Mr. Catanese: I get it.

Mr. Bridgeman: Can I say something Vince? It's going around and around and you're telling me that the motel's a permitted use and parking lots in a residential zone is permitted with the use next to it. I got a motel next to a residential lot and you're saying I can't park cars for a hotel that's a permitted use on a commercial lot. It's very frustrating. It's like you might as well just say except motels. Everybody can park there except people in motels. It's just a ludicrous idea. I mean closed, I'm not going to be charging money to park cars and yet you want parking. I just don't get it. Now you're going around in circles and now there's a possibility of going to another Board. I don't get it, I just don't get it. It is very frustrating dealing with this town. I have to tell you.

Mr. Catanese: This issue sir, has been known. We talked about it at length. Whether or not this interpretation was one for the Board to make today. We knew it was a gray area. I think Mr. LaManna knew it was a gray area, so I will take this opportunity to say that this question and the questions that you are hearing in the situation that we are in now, is not the Board being difficult. This is a clear issue.

Mr. Bridgeman: Okay.

Mr. LaManna: I don't want to be-labor it. I want to make the point if I may.

Mr. Catanese: You are still on the record. It's still your Application. We are up to number 12.

Mr. LaManna: I want to move away.

Mr. Catanese: We spent a lot of time on numbers 10 and 11.

Mr. LaManna: Let's finish up the rest of these and then we will deal with that. Twelve, each parking lot shall have a sign not in excess of 5 square feet mounted in its entirety upon the fence at each vehicular access way to the lot. The sign shall indicate that the use of the parking lot is restricted to customers and employees of the associated business, hours of operation and any other limitations set forth by the owner. Such signs shall be approved in connection with the Application for the Conditional Use Permit and signed with the approval.

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Testimony: (continued)

Mr. Blackman: We do have a sign that will be mounted to the fence at the drive aisle that accesses the parking lot. It would be limited to 5 square feet and there is a detail of it on SD-1, detail 9 on SD-1.

Mr. LaManna: Let me ask you to address 5 words in the middle of this paragraph. The hours of operation are going to be on that sign. Now as you know, a motel is something like a hospital. It doesn't close. The hours of operation are going to be....

Mr. Blackman: 24/7.

Mr. LaManna: 24/7. So that's required to be placed upon the sign.

Mr. Blackman: In that sense you would be placing hours of operation as 24/7 on the sign.

Mr. LaManna: Let's go to thirteen. The parking lot shall be constructed of potamitis asphalt, concrete or pavers. The parking space on the lot shall be striped and the lot shall be kept clean and free of potholes and other dangers or unsightly objects. The operator of the business property shall be responsible for the proper operation and maintenance of the parking lot. Agreed?

Mr. Blackman: Agreed. The parking lot would be paved with concrete. We do have the appropriate line striping to identify the parking stalls.

Mr. LaManna: Fourteen, on the outside of the fence adjacent to the front property line, except for sidewalks and driveways, fresh stone, wash stone or grass shall be the ground cover. Between the fence and sidewalk, landscaping including decorative plantings shall be installed. Agreed?

Mr. Blackman: Agreed. We do have a landscaped area in the area between the fence and the sidewalk along 97th Street.

Mr. LaManna: There's a grandfathered provision in here. I don't quite understand the dates and the history behind it but I'll read it for the record. It doesn't apply to us presumably. The provisions of this 560-31c shall not be applicable to those parking lots located in a residential zone on June 10, 1980, whatever happened then, which lots are hereby declared to be lawful. However, the owners of such lots shall be encouraged to conform to as many of these conditions and requirements as possible in order to avoid unnecessary interference with the residential uses in the district. Agreed it does not apply to us. Correct?

Mr. Blackman: It does not apply. The lot was not in existence before 1980.

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Testimony: (continued)

Mr. LaManna: That completes the 15 items. Okay. Now, I want to illicit some other testimony from you on a related topic. Have you had occasion to review the Stone Harbor Master Plan, the last that was adopted in June of 2009?

Mr. Blackman: I did.

Mr. LaManna: Okay. The concept that is being offered by the Applicant in this matter and consistent with the designs of putting forth an upscale, shoulder season facility that will accommodate visitors during that period of time of the shoulder season, did you find consistency with the Master Plan?

Mr. Blackman: It was consistent with the Master Plan. Also consistent with the Master Plan with respect to provide opportunities for a short term stay.

Mr. LaManna: I specifically want to refer you to pages 13 first of the Master Plan under business district issues where it found the language commencing in the Stone Harbor profile. Do you see that?

Mr. Blackman: I do.

Mr. LaManna: Can you recite that for the record please?

Mr. Blackman: In the Stone Harbor profile prepared by the Center for Business Research in 2007, augmenting the shoulder season is critically important for sustaining a thriving downtown business district. Strengthening the shoulder months can be approached in a variety of ways such as marketing, street scape improvements, event planning and program development in a wider variety of shops and services.

Mr. LaManna: Services would include accommodations?

Mr. Blackman: Would include accommodations. Correct.

Mr. LaManna: I refer you now to page 20 of the Master Plan, specifically under the category Observations for Future Planning Considerations. Did you find anything there?

Mr. Blackman: Yes. It does indicate that there is a need to do two things. Diversify the current retail with other uses that will draw shoppers from outside the Borough and can be appealing in the shoulder months and provide for more short stay lodging and also has a shoulder season component. It's virtually the Application that is before you tonight.

Mr. LaManna: We are seeking variances even though they are pre-existing, non-conforming. Again, I'm sorry, I have to ask you Mr. Chairman and Mr. Solicitor, are we going to take the comments of the Engineer or do you want us to take those now while we have the Architect on the stand?

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Testimony: (continued)

Mr. Catanese: If you would like to run through the Engineer's Report, we can do that now.

Mr. LaManna: I don't want to ask my closing questions to the witness until we have addressed the comments in the Engineer's Report.

Mr. Catanese: Okay. Mr. Smith, do you want to go through your Report?

Mr. Smith: Certainly. We discussed the variances that the Applicant is requesting at length. I am going to jump down to the bottom of page 3 under Waiver Requests. The Applicant has requested a waiver from the requirement to provide utility locations. We were concerned since 97th Street is under moratorium to make sure that there is no additional utilities, they are required to be accessed to serve the property. One of the issues which the Applicant issued as not applicable is the fire service location. You had discussed earlier in the testimony that you would be upgrading the project to current building conditions that may require the addition of a fire sprinkler system and one of the items considered was whether or not you would need an additional service to accommodate a fire sprinkler system for the building.

Mr. LaManna: Do you want us to take these as they come up and respond?

Mr. Smith: I was just going to go through the waivers first.

Mr. LaManna: Okay, alright.

Mr. Smith: The other issue was the project assessment statements, specifically regarding the impact and possible mitigation to the adjacent properties. Those are the waiver issues.

Mr. LaManna: Do you want to address those issues raised by the Engineer?

Mr. Blackman: Okay. In regards to utility locations, our Application proposes to continue use of the existing utilities. We don't have need for bringing in a separate water line, reconfiguring sewer or such. The project while hotels, motels in a new construction situation would require a fire sprinkler system, under the New Jersey Rehab Sub Code, even though the nature of the project is such, that we are essentially renovating the entire building, we are not required to provide a sprinkler system because the building is less than 4 stories. In that regard, we would not have to open up 97th Street in order to bring in a separate water service for sprinkler. As far as utilities are concerned in relation to 97th Street, we don't anticipate that we would need to open the road to run anything. In regards to project assessment statements and statement regarding impact and mitigation, most certainly with any construction project there is going to be dumpsters and those dumpsters should be appropriately permitted if they are located on a street and should be covered to prevent rodents and such from accessing

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Testimony: (continued)

Mr. Blackman (continued)

dumpsters or people throwing waste in that isn't related to the construction project and such. Barricades should be provided to keep people out of the work area while construction operations are going on. Damage to neighboring property should be suitably and adequately repaired if it was caused due to construction operations. All of those things would certainly be a requirement imposed upon this project by the construction office. We would certainly adhere to those requirements. By and large what we are talking about is a demolition of an existing single family residence that has a pool. Constructing a new pool and renovating an existing building. By and large the construction operations are fairly, easily controlled. We can certainly put barricades like fences up to keep people out of the work area. We can keep dumpsters on site so that they are not located on streets.

Mr. Catanese: Would you be satisfied with a condition that a Project Assessment Statement would be provided to the satisfaction of the Board Engineer?

Mr. Blackman: We would confer.

Mr. Catanese: Okay. So it sounds to me like that waiver request is withdrawn, however, you are still requesting waivers for items 17 and 35.

Mr. Blackman: 17 and 35 that's correct.

Mr. Smith: We would offer no objection.

Mr. Catanese: No objection, okay.

Mr. Smith: The next section is the condition and use. I think we have spoken at length about that. I will jump down to the top of page 4, Site Plan Review. We had some brief conversations with the Applicant prior to the meeting. There were some grading questions along the adjacent lot lines. The Applicant indicated that they would review that and if necessary, provide calculations to substantiate that no additional run off would be going to the adjacent properties. We had a grading question, comment number 2, we had a grading question along the east side of the existing motel. The Applicant is going to review that grading issue and address it. Item 3, discussing the need to mitigate the impacts of the construction, I would assume that would be addressed as part of the Statement that the Applicant is going to provide. The buffering, I think the Applicant should provide some testimony regarding the adequacy of the buffering to the adjacent uses from the parking area.

Mr. LaManna: We're speaking landscaping. I assume that's what you're talking about at this point. The conditional use variance prescribes the fence as the buffer.

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Testimony: (continued)

Mr. Smith: Correct, the 4 foot high fence.

Mr. LaManna: Okay, so this would be in excess of that. I think the intention is to put some landscaping in. Am I correct on that?

Mr. Blackman: Yes, I guess what we would propose is that we would prepare a landscaping plan to submit to the Engineer for review.

Mr. Smith: Okay.

Mr. Blackman: That landscaping plan would include dimensions of the various planted areas, additional description as to what the planting materials are and quantities and method of irrigation and such.

Mr. Smith: Okay, so basically the revised landscape plan would take care of comments 5, 6 and 7 regarding irrigation and the dimensions of the landscape areas.

Mr. LaManna: I want to clarify and subject to the Architect's input, that we are dealing with landscaping in a more decorative sense with respect to that then buffering because I don't want to put the cart before the horse here. If the Ordinance prescribes the fencing as buffering and we're doing the fencing, then hopefully we're not going to have to deal with 9 foot poplars in addition to the fence and I'm being facetious but I mean you follow what I'm saying.

Mr. Smith: Certainly.

Mr. LaManna: We certainly want to put some landscaping in there but we don't want again to have the tail wag the dog here.

Mr. Smith: Correct because conditionally standard 7 calls for the 4 foot high opaque fence along the property lines. At the corner of 97th and Second Avenue there is an existing, free-standing sign that encroaches into both right-of-ways. I don't know if the Board would typically deal with that as a relocation or some type of license agreement with the Borough to allow the sign to remain in the right-of-way.

Mr. LaManna: This sign I'm told and we can take some testimony, Mr. Bridgeman, how not new is this sign? Do you know when it was installed?

Mr. Bridgeman: I've been there 23 years. Its definitely been there 23. Its definitely over 23. I would have to guesstimate probably close to 35.

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Testimony: (continued)

Mr. Catanese: We can agree that, I assume you would agree to the condition that there would either be an encroachment agreement or removal and relocation of the fence.

Mr. LaManna: Encroachment agreement would be satisfactory. We acknowledge the fact that it is in the public way, a portion of it so that would be the subject of an encroachment agreement.

Mr. Catanese: Okay.

Mr. Smith: The next comment talks about the load and unloading spaces. I guess what they are really is check-in spaces. A guest comes, arrives, checks in, using that way and I think you've already revised your variance request so instead of providing 33 spaces you are actually providing 31 with the 2 check-in, check-out spaces.

Mr. LaManna: That's correct.

Mr. Smith: Okay. Parking space number 21. There was some concern as to the accessibility there because that's the one right next to the trash enclosure and the shower enclosure and the trash enclosure has that fence so there was just some concern about access from the driver's side.

Mr. LaManna: We can address that. Is there going to be some adjustments to the trash enclosure area?

Mr. Blackman: We would adjust the trash enclosure to guests to provide some more access and visibility as to space 21.

Mr. Smith: Okay.

Mr. Blackman: We can depict that on a revised.....

Mr. Smith: That's fine. With regard to what is known as parking space number 2 on Second Avenue, your striping a space adjacent to one of the new driveway locations. The fact that you're putting full face curb in allows you to provide some additional striped spaces. The concern we had was the proximity to the intersection and the proximity to the crosswalk. I believe that the requirement is 25 feet from a crosswalk to the parking space. If the Board would like, you could defer that to the Police Department to evaluate whether or not that space would have any adverse impact on traffic flow but I think it's basically Title 39 calls for 25 feet from a crosswalk so we would have no objection, Chairman, to that issue being deferred to the Police Department for further review.

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Testimony: (continued)

Mayor Walters: I also wondered about that once that's no longer a curb cut, along there, would the Borough meter that. The other areas around there are metered.

Mr. LaManna: And it's from a visibility perspective. That's a one-way street.

Mr. Blackman: If you were travelling on Second Avenue heading south, you have the landscape buffer that divides lanes. If you were looking to make a left-hand turn, if you're heading in a southerly direction on Second Avenue and wanted to make a left-hand turn so that you could head east on 97th Street, that parking space doesn't really impinge on your ability to see vehicles heading north on Second Avenue. If you're heading north on Second Avenue, you wouldn't be encountering vehicles that are maybe trying to travel west on 97th Street towards Second Avenue because 97th is one-way in the easterly direction. I guess in terms of vehicular movement, it doesn't really impair your ability to see vehicles if that parking space, that parallel space number 2 on street is there but it certainly would be within 25 feet of the crosswalk.

Mr. Catanese: Can we agree that it will either be removed from the plans or you will provide us with a letter from the Police Department telling you its okay to show it on the plans? It's the street. Ultimately the Borough has control over it. Right. We want the plans to be consistent with what's supposed to be there. Make sense?

Mr. LaManna: Taken in the context of our limited control of the circumstances.

Mr. Catanese: That will remove it from the plans. It's on street parking. It's not your site. It's not part of the Site Plan.

Mr. LaManna: Is it something that we should deal with directly with the Police or with the Public Safety Committee?

Mrs. Gougher: I think we would refer to the Police Department in terms of the Statutes.

Mr. Catanese: Like I said, I think either some approval either by the Police or Public Safety or remove it from the plans. Just again, so the plans are consistent with the end product.

Mr. LaManna: Okay.

Mr. Blackman: Okay.

Mr. Smith: The next comment deals with the trash enclosure. A detail of the trash enclosure should be provided to include protection against odor and leakage. I think the plans call for a 5 foot high fence for the trash enclosure. I think the maximum height is 4 feet. If you propose a 5 foot, it would require

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Testimony: (continued)

Mr. Smith (continued)

I guess an additional initial variance for the height and what is the method for handling the disposal of trash? Will you have a private hauler to pick up the trash?

Mr. Blackman: I believe the existing method would continue. Municipal pick up and then they would store the refuse in the containers in the trash enclosure. If I remember correctly, I think pick up might even be daily.

Mr. Catanese: We can agree that the Applicant will comply with that. Either will provide a detailed trash area as well as make sure that the height is 4 feet max.

Mr. Blackman: We can provide a detail to trash and show that enclosure will be no more than 4 feet in height.

Mr. Smith: When you submit the revised plan I would request that you submit for any utility services serving the trash enclosure and the outdoor shower area. Just show them on the revised plans.

Mr. Blackman: Okay.

Mr. Smith: You had already indicated that no new fire services would be required. Comments 15 and 16 just deal with the revisions to the detail for the curb to show a max 6 inch curb face. Also a detail should be provided for the parking gate. There's a schematic detail in the plan that kind of shows just like a bar, a lift bar, but detail should be provided with specifics on how it should be controlled. Also, we request a buffer for the crush stone detail be provided as well as a street restoration detail if any repaving is required along Second Avenue.

Mr. Blackman: We can provide those details.

Mr. Smith: Chairman, I believe that would conclude our Report at this time.

Mr. Hand: Very good.

Mr. LaManna: We had testimony with respect to the variances, most of which we concluded were pre-existing nature. Based upon your opinion, are we dealing with in terms of remedying these variances, these non-conformities, are we dealing with situations that would constitute a hardship under the Statute C-1?

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Testimony: (continued)

Mr. Blackman: I guess if we were to fully comply with the Ordinance, I mean I guess what we'd be looking at is a reduction in the number of units in the motel by half. If we are looking to increase the unit sizes to 600 square feet in lieu of 200 that's existing or to meet the set-back requirements.

Mr. Catanese: By way of point of clarification, this property is not proposed to be used either partially or wholly for residential uses. Is that right? Another words, it is proposed strictly as a hotel or motel use.

Mr. Blackman: Correct, yes. Hotel, Motel transient occupancy.

Mr. Catanese: Okay so as long as this is not to be used either wholly or partly for residential purposes, it's my opinion that the 600 square foot unit size limitation does not apply.

Mr. LaManna: We agree.

Mr. Catanese: That applies according to the Ordinance only to buildings that are used wholly or partly for residential purposes.

Mr. LaManna: We talked about this. It's transient. It's not permanent.

Mr. Catanese: Right. This is not a multiple dwelling, multi-family dwelling so that eliminates those as variances.

Mr. Blackman: Essentially what we are dealing with....

Mr. LaManna: The side yard issues. The variances with respect to those, I call your testimony concerning, for example, the condensing units, the roof cannot accept them there. There's very few other places whereupon they can be located so that in view of that testimony, would you constitute a hardship in terms of the C-1 provisions of the Ordinance?

Mr. Blackman: It would, that's correct.

Mr. LaManna: Aside from those very limited hardship issues, have you had an opportunity to review the purposes of the Act that are set forth in Section II?

Mr. Blackman: I did, correct.

Mr. LaManna: Are there any purposes in your opinion, that are set forth in that Section that would be advanced by this Application?

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Testimony: (continued)

Mr. Blackman: We are in essence I guess by virtue of demolishing an existing single family residence, reducing density, therefore, providing greater opportunity for light, air, open space, etc. In providing a use that is in keeping with the Master Plan of the Borough of Stone Harbor that we are encouraging coordination of public and private activities and overall the cost of development and efficient use in the land, that by making use of existing building stock and improving it, that essentially that is the most efficient way to develop a project rather than tear down and building it new on separate sight. Furthermore, we do feel that by the virtue of the Application we are providing for recreational and commercial uses that are appropriate with the Master Plan that has been developed for the Borough of Stone Harbor.

Mr. LaManna: Is it your testimony that any of the variances that have been sought can be granted without substantially impairing the intent and purpose of the Zone Plan?

Mr. Blackman: Yes and in fact, I think we're improving the situation in that we are providing a use that is in accordance with the Master Plan, bringing the building into further compliance with the construction code, including accessibility provisions of which the existing facility has no provisions for accessibility. There's no parking spaces for disabled persons or units that are useable by disabled persons. We are providing those as part of the overall project. There are situations and such that we are removing encroachment on the right-of-way by removing brick veneer, that we are increasing the number of parking spaces that are available for this facility above what's existing by virtue of adding planted areas, we are reducing lot coverage. I think that is important in that we are looking for ways to even increase the amount of planting areas that we're showing and as we develop the landscape plan, I think that may bear that out even a little further.

Mr. LaManna: Consistent with that, would you conclude that the variances can be granted without substantial detriment to the public good?

Mr. Blackman: That's correct.

Mr. LaManna: I have no further questions of the witness.

Mr. Hand: Do you have any other witnesses to testify?

Mr. LaManna: No, I do not.

Mr. Hand: At this time, I would like to open to the public for public comment. If you do come before the Board, please state your name and address. Anyone?

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No one spoke. Mr. Hand closed the Public Session.

Mr. Catanese asked Mr. LaManna for a summation.

Mr. LaManna: The Applicant has established clearly, whatever relief should be granted C-1 and C-2 as far as the variances are concerned. I think we have established a basis for Site Plan approval. I suggest as well that we have established a basis for conditional use approval and we have of course, the area that we have spent quite a bit of time on concerning the condition involving the closure of the parking lot. Clearly, clearly, clearly, the Application is what has been almost specifically prescribed by the Master Plan. It comes off the page in providing the services that the Master Plan indicated would be necessary to support shoulder seasons in this community. I think that is critical and I think that is a segway into the whole issue with respect to the parking lot enclosure. Unfortunately, we don't have a clear definition of the word closed and we can have a variety of opinions as to what that means. I think that a determination and a definition such as closed has to be taken within the context that it's found. This is an unusual situation. This interpretation of the word closed is going to have consequences. There is no question it will have consequences. When you stop and think about it and read the Ordinance, the purpose and none of us were there, at least I wasn't when this Ordinance was adopted, it is clear that it was intended to benefit a particular business use and in this case that business use happens to be a motel. There's no way that you can have a motel next to a residential lot and sensibly comply with the definition of closed meaning closed, period, can't open it ever, not limited access, nothing. I suggest to you the word closed can be interpreted as meaning limited access under these circumstances and find a dozen other circumstances where it may mean something else. Under these circumstances, it makes sense to interpret closed as limited access, just as much as it makes no sense to interpret closed to mean no vehicles. That can be an interpretation. Maybe not an acceptable one but it could be. No vehicles in the parking lot between 11 and 7. Look, somebody had an idea at some point in time and I don't know what happened in 1980 when they grandfathered this thing but somebody had an idea that 11 to 7 is a good time and if we close these parking lots, that's fine but under the circumstances where you're encouraging a motel that's in the business district to take advantage of a single family residence in the residential zone and then saying you're a motel but you can't have any check-ins after 11 or if somebody's got to leave, you can't have them go out after 11. I mean in the grand scheme of things, does that make any sense as a definition for the word closed? That's the context I think this must be reviewed in. The definition of the word closed. I don't think closed necessarily always means the same thing and I certainly don't think it means it here because if you interpret it to mean closed, no vehicles or closed, no access between 11 p.m. and 7 a.m., you have frustrated an excellent Application for a motel. You have frustrated the parking, you have frustrated the essence of the

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Mr. LaManna (continued)

Application. No sense in proceeding and I think that's the choice here. It's not an easy one. I don't relish the obligation on your part to make that kind of determination but I think that determination is certainly an option that you have. That is a definition of closed. Limited access. We have a motel. You're not setting any precedence here. I don't know how many businesses have residential lots located next to them in the Borough of Stone Harbor to begin with so I don't know that there is great precedential value in terms of this interpretation but here you do have a Motel with a Plan that I think is extremely beneficial to the Borough and I strongly would urge that a definition of closed means limited access and it can be effectively limited and we are prepared to and I know Mr. Bridgeman is prepared to accept restrictions in terms of limited access. But limited access. You can't tell a patron that they can't go to their car ever again until 7 a.m. or you might as well tell them to go somewhere else and stay or get rid of the Ordinance. It just doesn't make any sense otherwise. Thanks for your time, I really appreciate it.

Mr. Hand: Thank you.

Mr. Catanese: So the Application comes to you tonight seeking approval in three different respects. First is the conditional use approval under Section 560-31c. Second would be discussion of variances and third would be Site Plan Approval for the site for the use of the parking lot as we've seen it. The conditional use approval comes first and foremost and in order to approve and vote yes, you would need to be satisfied the Applicant has satisfied all of the conditions of 560-31c, including the most obvious ones that are sort of in question regarding the illumination of the lights but that is whether they satisfied the conditions of the lot being closed between the hours of 11 p.m. and 7 a.m. We could take these one at a time if you want to deliberate on that one and vote on that one and then depending on the outcome of that vote, we would move on to the remaining items.

Mr. Conte: I agree with Vince that I think the Ordinance does need to be changed. I'm having a hard time wrapping my head around you asking me to redefine closed. If it was a retail business and it was to be closed between 11 and 7 that would mean no cars, no use. It should mean the same thing, it should be interpreted the same way all the time, not differently depending on the situation. That's where I'm having some trouble accepting. I agree it is conflicting. I don't think you should be allowed to have a parking lot and not be allowed to use it.

Tom Hand: I actually agreed with you in the very beginning but after his argument, in my business, we have to close and stop serving at 2 o'clock but the patrons are in there until 2:30 so, technically, we're closed. No one can buy anything. No one can come in, enter. But the patrons who are there, are there and they can leave. They have to be out the door at 2:30. It's kind of what he's saying.

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Testimony: (continued)

- Mr. Conte:** Stop serving and closed. You have to be closed at 2:30 or you have to stop serving at 2?
- Mr. Hand:** We have to stop serving at 2.
- Mr. Conte:** And they have to be out by 2:30?
- Mr. Hand:** Yes.
- Mr. Conte:** 2:30 is closed.
- Mr. Hand:** No. Closing time in the Statute it says you're closing time is 2 a.m.
- Mr. Catanese:** Remember that this refers to the hours of operation of the lot.
- Mr. Hand:** I know but it's kind of the same argument. Can I ask your Applicant a question?
- Mr. LaManna:** Absolutely.
- Mr. Hand:** To avoid the closing issue, could you use some of those parking lots in the front as your late check-ins and just designate a couple spots there if you happen to get a late check-in.
- Mr. Bridgeman:** We could do that.
- Mr. Hand:** Technically it's closed. If somebody goes to Cape May for dinner and they come back, if there's not a spot in your front lot, they are going to have to park on the street and if there's signage saying that, is that impractical?
- Mr. Catanese:** That was the reason I asked Mr. LaManna to clarify what the Application was for, which was what the Applicant is seeking as approval to have that lot accessible so folks can move car into it and out of it.
- Mr. Hand:** Right but can they rescind that if that scenario works?
- Mr. Carusi:** How practical is that?
- Mr. Hand:** I think it's very practical but I'm asking him.
- Mr. Bridgeman:** Most of our check-ins are in by 11, 10 or 11 and most of them are in by 6 or 7 o'clock.
- Mr. Carusi:** Suppose you have folks out on the town and they come in later, they have to leave for some reason during the middle of the night?

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Testimony: (continued)

Mr. Catanese: Two things. Number 1, to the extent the question was one as to whether a condition would work that's one thing but if we begin to retake testimony, well there wasn't much of a public portion, but we would have to do that. The hearing is technically closed. I don't want to cut off eliciting information that you think might be appropriate in determining whether a condition or some sort of limitations on the approval are there. To the extent that you are asking the Applicant whether or not they would agree to a condition that whatever it is, that the lot be closed if that's what you're proposing so that folks can only move their cars into the exterior spaces or not retrieve cars, I'm not sure what you're thinking, but we should phrase that in the context of talking about conditions on the approval list. That's where you want to go with it. I just don't want to reopen the hearing.

Mr. Hand: Okay, I understand.

Mr. Conrad: In addition to any concern about the definition philosophically for the word closed and by the way, I would happen to agree with you that closed should have a more flexible definition, in an operational sense, I would surmise that the amount of people either trying to come in in which case they could simply say you would have to park on the street but in terms of going out, or going out to your car to get something out of your car, I think the incidence of that happening would be very, very few and the impact would be very, very minimal.

Mr. Catanese: I don't know that that is the question.

Mr. Conrad: Maybe it's a legal issue.

Mr. Catanese: The question is, is the lot open or closed. If it's closed then they have met the condition.

Mr. Conrad: I would disagree that the question is, what is the meaning of the word closed.

Mr. Catanese: There's no question. Is what the Applicant has proposed for folks to move their cars in and move their cars out at any hour?

Mr. Conrad: The point of my comment was to say if we say there is a more flexible definition on the word closed, the impact in terms of neighbors and what have you, I think will be very, very minimal.

Mr. Catanese: Keep away from that discussion. Be careful of talking about whether this is appropriate for the neighborhood, whether or not it's going to have a negative impact. On the Zoning Ordinance or the Zone Plan, those are conversations that would be appropriate if the Applicant was seeking relief from the condition, which we do not have the authority to give.

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Testimony: (continued)

Mr. Conrad: I agree. Okay. Agreed.

Mr. Catanese: The only question is do they meet the standard, yes or no. We can't give a variance from this section. This Board doesn't. If the Board were to vote that they have not met the conditions, then the Applicant can submit an Application to the Zoning Board and the Zoning Board can grant that variance if the Zoning Board sees fit. There is a course and a path that is available to the Applicant.

Mr. Conrad: Available to them.

Mr. Catanese: Absolutely.

Mr. LaManna: This Board has the power to interpret.

Mr. Catanese: That's what we are doing. That's what we need to do. Another words, if you find that the Applicant has met all these conditions, you can vote yes and approve the Conditional Use.

Mr. Carusi: If we accept Mr. LaManna's suggestion of what the definition means, and we don't have to change the Ordinance and we accept the practicality of that, we are clear to vote yes on that?

Mr. Catanese: Yes, if they meet the condition and that even though people can go in and out, that's a closed lot. You would have to come to that conclusion.

Mayor Walters: Your interpretation of closed is limited use. Universally.

Mr. Catanese: A yes vote means a lot that people can drive in and out of at any time at night is not a closed lot.

Mr. Hand: But not to open the hearing up again, would it be clear for you to not allow anybody, have the lot closed, no one can enter that parking lot after 11?

Mr. LaManna: Mr. Bridgeman can answer that but I in good faith cannot say that because I'm suggesting, strongly suggesting, that closed can cover issues where limited access is involved. Look, if somebody is in violation of an Ordinance in town and they are shut down and the sign says closed, they can't open, they are closed. That's that definition and that's that context. We qualify in all other respects for this use of this residential lot to support this business which happens to be a motel and a motel requires accommodations for parking and that was part of our whole package was the parking package. It's just not reasonable to define closed to mean you can never open. You've got the times of 11 to 7. The times are artificial. Yes, they're written in the Ordinance. We are not seeking a variance from those. All we're seeking is a broad definition that closed means limited if you will, very limited, access to that lot.

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Testimony: (continued)

Mr. LaManna (continued)

I would be repeating myself if I say any more so that's fine, that's my position.

Mr. Carusi: Another thought. The suggestion to....

Mr. Hand: I wasn't suggesting, I was clarifying.

Mr. Carusi: Clarifying that to impose that on practicality for a local businessman that's willing to make a significant investment, it just doesn't seem practical if we accept the more specific definition of what closed is.

Mr. Hand: Our Ordinance might be outdated and need to be reworded.

Mr. Carusi: Unless we understand and accept the definition of what closed is. Am I correct?

Mr. Hand: To me, if somebody, if you're not allowing anybody in, it's closed. That doesn't mean that somebody in an emergency couldn't go out.

Mr. Conrad: At a very practical level, you cannot deny somebody the right to go out.

Mr. Carusi: Right.

Mr. Conrad: Meaning there's a medical emergency, whatever, so at least the egress part is not an issue. You can't say I'm sorry sir, you can't remove your car from this lot.

Mr. Conte: It is certain that it is definitely unreasonable to allow a lot and then not allow usage of it. I can't get away from the definition.

Mr. LaManna: Can I confer with Counsel for a minute? It's strictly procedural.

Mr. Catanese: Do you mean off the record?

Mr. LaManna: Off the record.

Mr. Catanese: It's up to the Chair.

Mr. Hand: We will allow that as long as you're good.

Short break took place for Mr. LaManna and Mr. Catanese to speak privately.

Hearing continues.

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Testimony: (continued)

Mr. Catanese: We are moving on.

Mr. Hand: Is there any other discussion? Do you want to make any clarifications? My question to you was closing, is that not allowing anybody in and maybe just emergency exiting only?

Mr. LaManna: I'm not in a position to say that, to answer that in the affirmative. My recommendation would be that it would be extremely limited, if at all, but that would have to come from Mr. Bridgeman. It's his operation.

Mr. Hand: It's a good project. I hate to see it....

Mayor Walters: And I agree 100% with you there. This is an excellent project, it's something we need and what we've wanted but when you look at the Ordinance and it doesn't define closed and what closed means, it's like what is in the Clinton era. It's so difficult. The Ordinance says between 11 and 7. It's in there for a reason. I don't know what the reason is that it was put in there. Obviously, the Ordinance needs to be clarified or done away with totally but that's not our job tonight. Our job tonight is this Application that's before us.

Mr. Carusi: But if it's not defined, how can we make a determination in the negative any more than the positive?

Mr. Catanese: Your job is to interpret it.

Mr. Conrad: Thank you.

Mr. Catanese: Normally the Zoning Board has interpretive powers but in the context of an Application and if you have to make an interpretation in order to be able to do your job, you have the power to do it and that's before you tonight. You've got an Ordinance that permits these commercial uses to push into the residential zone subject to the conditions, conditional use standards. Again, if they don't meet them, the jurisdiction is with the Zoning Board where they can make Application for a variance.

Mr. Conrad: Are we ready for the vote then? I think we all know where we stand.

Mr. Hand: Yes, I was just trying to get clarification.

Mr. Catanese: Time for a Motion.

Mr. Hand: Yes. Motion to approve the Conditional.

Mr. Carusi: Make that Motion.

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Testimony: (continued)

Mr. Conrad: Second.

Mr. Hand: Roll call.

Ms. Frangiose: Mr. Bickford.

Mr. Catanese: Absent, he left us.

Ms. Frangiose: Mr. Carusi.

Mr. Carusi: Yes.

Mr. Conrad: Yes.

Mr. Conte: I'm sorry to do this now but the conditional again, is the parking lot?

Mr. Catanese: This is the approval for the conditional use. Yes, this is the vote for the conditional use approval parking lot.

Mr. Conte: Regretfully, no.

Mr. Coskey: (Absent, not at the meeting).

Ms. Dubler: Regretfully, no.

Mrs. Gougher: No.

Mayor Walters: No.

Mr. Hand: Yes.

Mr. Catanese: Okay. So that Application failed by a 4:3 vote. Mr. LaManna, I believe that renders the remaining Applications for the variances and the Site Plan Approval moot at this point.

Mr. LaManna: Can we proceed to the Zoning Board on the variance issue only and complete the Site Plan here? In terms of a vote on the other issues?

Mr. Catanese: My advice will be that if the Applicant seeks a variance at the Zoning Board, then the entire Application including the variances, the bulk variances and Site Plan would probably all be appropriately handled at the Zoning Board.

Mr. LaManna: I think that would be an option but I don't think it's mandated.

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Testimony: (continued)

Mr. LaManna (continued)

We put a complete Application in here. I would think that we should be able to, if we had to go to the Zoning Board for the variance, we should be able to....the whole purpose in trying to streamline these Applications is to have the Applicant avoid duplicity.

Mr. Catanese: I understand. My advice to the Board is that the remaining votes on the bulk variances and the Site Plan are now moot given the fact that the Conditional Use isn't approved. The Board doesn't even have jurisdiction to the extent that the Application doesn't satisfy the Conditional Use Standards.

Mr. LaManna: Let me ask you this. Instead of having a vote, and I can't believe it would turn on this, but instead of having a vote on this issue first, you voted on the other issues which would have been perfectly acceptable and then we proceeded with this vote, it would be the same situation and the option would still be there whether or not if we wanted to proceed. Obviously, if we wanted to proceed we would have to go to the Zoning Board for a variance.

Mr. Catanese: It is my practice to take a Use variance which I know this is not, but to deal with Use and whether a Use is permitted, to take that issue first because if it's not permitted, if the Board finds it's not, it renders moot the remaining items. This Board is not going to get to a Site Planning consideration because the Use could end up in front of another Board.

Mr. LaManna: I don't follow that. I don't agree but I mean it's your ruling. To me, Site Plans are traditionally, more naturally in front of a Planning Board than they are in front of a Zoning Board and here you've already had all the...in the efforts of saving time. I am not avoiding the Zoning Board issue with respect to the variance. I understand that but with respect to the Application, unless you can cite me some law that would dictate otherwise, I don't see why, what the harm would be.

Mr. Catanese: My advice to the Board is that there are no further votes required on this.

Mr. LaManna: And your advice, which you are also the Solicitor for the Zoning Board, your advice to the Zoning Board would be that they would have to hear the entire matter?

Mr. Catanese: I believe the Zoning Board's ancillary jurisdiction over the Site Plan would kick in with the D Variance if the Applicant seeks it. Yes.

Mr. LaManna: Thank you folks.

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Mr. Hand stated there was only one other discussion on the Agenda with the Zoning. Since Mr. Bickford left and he is the Chair of the Committee and because of the time, Mr. Hand suggested that it should be postponed until the next meeting. Mayor Walters agreed.

New Business

Mayor Walters announced that Saturday morning, August 29, 2015, there will be a meeting at Borough Hall in Chambers with Atlantic City Electric about the new poles that they will be putting in. The meeting will be at 9:30 a.m. The poles will be put in down 95th to Second, Second to 95th Street and then they will come over 95th Street and go down to Second Avenue, go down to Second Avenue to 80th Street and then go back to Third Avenue and go on Ocean Drive. Mr. Conte asked if they would be like the giant poles that are going on the Boulevard. Mayor Walters said they are close but not quite that big. Mrs. Gougher stated the Borough's website gives further information and an idea of what they will look like.

Adjournment

Having no further business at hand Mr. Hand called for a Motion to adjourn the meeting. Mrs. Gougher made the Motion and Mr. Conte seconded the motion. All members present were in favor and stated aye.

APPROVED: _____, 2015

ATTESTED: _____
Diane Frangiose, Secretary Stone Harbor Planning Board