

**Borough of Highlands
Zoning Board of Adjustment
Special Meeting
September 25, 2008**

Mr. Mullen called the meeting to order at 7:40 p.m.

Mr. Mullen asked all to stand for the Pledge of Allegiance.

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Special Meeting of the Borough of Highlands Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted to the Courier, The Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

**Present: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Mullen,
Mr. Kovic (Planning Board Member)**

Absent: Mr. Anthony, Mr. Gallagher, Mr. Britton, Ms. Solomon

**Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Joseph May, P.E., Board Engineer**

**ZB#2008-3 Knox 400, LLC – 460 Highway 36
Block 108 Lot 2.01
Hearing on New Business**

**Present: Henry Wolff, Esq., Applicants Attorney
Mike Knox, Applicant
Eric Rupnarain, P.E. Applicants Engineer
Michael Leckstein, Esq., Attorney for Paul Mazzella, Objector
Paul Mazzella, Objector**

Conflict: Mr. Braswell stepped down

Mr. Baxter stated that he has reviewed the public notice and finds it to be proper therefore the Board has jurisdiction to proceed.

Mr. Leckstein stated that he believes that the public notice is deficient which he further explained to the board. The notice does not indicate that this an expansion of a non-conforming use and that a parking variance is needed

Mr. Wolff responded that the notice describes what the application is about and the variances. He does not agree that a parking variance is needed. He stated that he wrote the longest public notice and he feels notice to the people was sufficient.

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Mr. Baxter responded by stating that he has reviewed the notice and feels that the notice has too much information. He feels that anyone who reviewed the notice would be well aware of what the application is about and therefore he finds that the notice is fine.

Mr. Leckstein stated that the notice was defective. He further argued that Mr. Braswell, Zoning Board Member has a conflict on this application because his wife testified favorably about this application when it was before the Planning Board. He then stated that he wanted to poll the board to see if there were any other conflicts by having been or have had any spouses or immediate family members who have been members of either the applicants or the objectors gym.

Mr. Baxter stated that if its factually correct then he would agree that Mr. Braswell has a conflict on this application.

Mr. Leckstein continued to discuss Mr. Braswell's conflict.

Mr. Wolff stated that he does recollect that Mrs. Braswell was at that hearing and did speak favorably about this application and that she was probably sworn in at a the Planning Board Hearing.

Mr. Braswell argued that he did not have a conflict on this application.

Mr. Mullen asked Mr. Braswell to step down on this matter.

Mr. Braswell then stepped down for this application.

Mr. Mullen stated that he has no conflict and that neither he nor his wife are members of either gyms.

Mr. Francy stated that he has the same status as Mr. Mullen.

Mr. Fox – same, no conflict.

Mr. Kovic – no conflict.

Ms. Ryan stated that she was a member of Mazzella's gym prior to Mr. Mazella owning it.

The following documents were marked into evidence this evening:

- A-1: Variance Application (2 Pages)
- A-2: Site Plan Review Application form (3 Pages)
- A-3: May 7, 1998 Resolution – Preliminary & Final Site Plan Approval to Bell Atlantic Nynex at 450 Highway 36 (5 Pages)

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Mr. Leckstein questioned exhibit A-6 which was referred to in the 1998 Resolution, He stated that they searched with the Board Secretary and were not able to find a document marked A-6 as referred to in the 1998 Resolution.

- A-4: Zoning Officers Denial/Refusal Memo Dated 4/23/08
- A-5: Preliminary Major Site Plan dated 9/14/05, last revised 5/19/08 by Eric Rupnarain, P.E. (12 Sheets)
- A-6: Hydrological Study by Rupnarain dated 11/20/07
- A-7: 9/8/08 Letter from Monmouth County Planning Board advising that site plan Approval is not required
- A-8: Site Plan on Board (both sides)

- B-1: 12/10/07 T & M Planning Board review letter by Catherine Britell (8 Pages)
** IDENTIFICATION ONLY**
- B-2: CMX Engineering letter by Joe May, P.E., Board Engineer dated 9/3/08

Mr. Leckstein objected to Exhibit B-2 being marked into evidence because the Planning Board Engineer cannot be cross examined. The exhibit was then marked for Identification Purposes only

- O-1: 8 ½ X 14 copy of suspected Exhibit A-6 to cell tower resolution of 5/7/98

Joseph May, P.E. of CMX, Inc., Board Engineer was sworn in.

Mr. Baxter questioned Mr. May about his Review Letter marked B-2.

Mr. May stated that he reviewed the T & M Letter marked as exhibit B-1 and a letter that he previously wrote for this application and stated that he prepared his own report that is consistent with the T & M Associates Letter.

Mr. Wolff stated that T & M and Mr. May are both competent and that it should be permissible and asked that the letter be marked into evidence.

Mr. Leckstein stated that the issue is that there is a report and he can't cross examine so he objects to the T & M Letter.

Mr. Wolff stated that if Mr. Leckstein wants to call Ms. Britell of T & M as a witness there is nothing preventing him from doing that.

Mr. Baxter stated that it would be appropriate way to handle this is to mark the T & M Letter as B-1 for identification and not has evidence.

Mr. Francy questioned the T & M letter not being marked into evidence.

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The Board agreed with Mr. Baxter and the letter was marked for identification purposes only.

Mr. Wolff stated that they agree with the section 1.2 of the Board Engineers Review letter. As far as the cell tower is concerned they are here because the Zoning Officer determined that this application constitutes an expansion of a non-conforming use. They do not agree with that but none the less they are here. So if that is necessary then that is something that they are seeking approval for. The sidewalk from nowhere to nowhere, they are seeking a waiver. They are seeking a design waiver for off street loading facility, parking set back, compact parking stalls, variance for outdoor living space, variance for height of sign, area of sign and setback of sign which is pre-existing, minimum lot area and lot coverage. Parking spaces may need variance for one space because of new ordinance.

Mr. Mullen then explained the hearing process to the public.

Michael John Knox of 49 Waterman Avenue, Rumson, New Jersey was sworn in and stated the following during his testimony:

1. He is the owner of the Fitness Center USA located at 1006 Hwy 36, Navesink, New Jersey, which is close to the subject site.
2. He has been incorporated since 1992.
3. He entered into purchase contract for the subject property in May 2005 with Joe & Anthony Natale who currently own and operate a Stewarts Restaurant at this site.
4. His intension is to convert the property into a Health & Fitness Center. A family fitness center that can offer not only adults but kids from Pres-K up to High School.
5. He hired an Architect to prepare Architectural Plans and that Catherin Franco, A.I.A. She prepared a set of plans that propose to build on the first floor the men and women's bathrooms, child care, front desk check in, Cardio Area and Gym Equipment area. On the second floor there will be a half court basketball area to train teams and kids T-Ball, Basketball and indoor Soccer.
6. He is currently a Head Coach at Holy Cross, Head Coach of a Boys and Girls Soccer team and formally a Head Coach for Red Bank High School for Track & Field.
7. There is an existing structure at the site which houses the Stewarts Restaurant and an apartment.
8. He intends to convert existing structure first floor into the men's and ladies room, cardio area, child care area and front check in area. The existing apartment will remain the same. He does not propose any renovations to the existing apartment. He is going to construct another building on the west side of the existing structure and it contains two floors. The first floor height is approximately 9 ft 6 inches to 10 feet which will house our gym equipment, cardio equipment and a stretching area. The second floor is a clear span space that will have basketball nets hung on the walls and they will use this area for the teens and kids fitness and condition and sports training as well as classes for Yoga, Palate's, and general conditioning for adults.
9. Both floors are less than 3, 000 square feet.
10. The second floor has a lot less intense use. When they play half court basketball you usually have three on three, Volley Ball is two on two or three on three, Basketball for the little

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kids will be 10 to 15 little kids up to the age of 12, Basketball team or indoor soccer and T Ball. The dimensions of the upstairs is approximately 56 by 53 feet and the dimensions for the down stairs is about the same.

11. They will have a front and rear entrance to the proposed structure.
12. The main desk will be on the south side of the building.
13. The gym business - they will be open 7 days a week from 5am to 10:30 pm. The peak hours are in the morning Monday through Friday from about 9:30 am – 11:00 am for aerobic classes. The evening peak hours will be from 6:30 pm to 8:00 p.m.
14. They will have a locker room with showers there will be five showers and four showers. They took out the proposed steam rooms to add more showers. He believes they added another toilet and another urinal. He stated with the removal of the steam rooms they will have a less intense use.
15. He stated that the women don't usually shower at gyms which he explained.
16. Towels – they have work out towels that are provided. They do not provide towels for showers.
17. He will not do laundry on site. He currently takes the towels home and washes them and he will continue to do that. Its only workout towels.
18. They will serve beverages but not food at the site. The beverages will be Power Drinks, Protein Drinks and Water. He does have a storage room. He anticipates having five to six cases of drinks stored on site. He obtains the beverages by buying them as Costco and then every two weeks a delivery of Protein Drinks during off peak hours.
19. He intends to have one employee during non-peak hours and during peak hours they will have four to five employees. The staff at the site will be from anywhere between 1 up to 6.
20. They are going to manage the business and schedule the classes so that people have a chance to leave in an orderly fashion and also arrive in an orderly and comfortable fashion. No matter how you do this it's a self regulated business.
21. There is a membership requirement for this business. They sell memberships on a one month, three month, six month basis and a year basis. They have very few walk ins at his business which he further explained.
22. They are not qualified to do P.T.A. (Rehabilitation) Training.
23. He stated that in the seven mile radius there is no family fitness centers. He then described the need for children to have sports training which he is proposing. He further explained his proposed sports training for kids. He said that these programs would not be during peak hours. They would be after school, weekends and get them out of the gym and have the adult classes, then he wants to do the teen classes after the Yoga and Palate, Body Conditioning Classes, Spin Classes. After 9:00 then he can bring in the High School Kids. He really wants to be a family fitness center.
24. He stated that Moms would have to drive the kids, no buses.
25. Trash Generation – he generates more trash at his home than he does at his gym. Every night he goes around with a white trash bag and that's it. So they will take the trash can approach. They will roll out the trash can for the town to pick up when they come twice a week.
26. He has been coaching since he was seventeen years old and mothers usually drop off the kids and come back to pick up which he further described. It's sad but most parents don't show

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up for kid's games, the parents drop off. He is going to be instructional, that the purpose of this is to teach the kids.

27. He explained the classes and programs that he is proposing and stated how the sports training classes will change constantly based on the sports seasons which he further described.

28. He stated that the ceiling height is 22-feet high so he would be the only gym within 7 miles. The reason why they are building the second floor as an Athletic Club and not as a Gym is that he needs the ceiling height. The ceiling height allows him to do multi spots.

29. He stated that the pre existing apartment on the site is going to be left alone and that he has never been inside of the occupied apartment. He has never been inside the second floor apartment he just relies on the Architectural Plans. The tenant has been there for several years. He is not familiar with a second floor storage bump out that was questioned by Mr. Kovic.

Mr. Leckstein then began to cross examine Michael Knox and Mr. Knox stated the following during his cross examination by Mr. Leckstein as follows:

1. The facility that he operates is a facility that is 6,300 to 6,400 square feet.
2. He does not currently have square dancing, Yoga, Aerobic Classes, Palate Classes at his existing site. He then explained what Palate was.
3. He then spoke about his prior Tinton Falls business classes.
4. He stated that he doubts that he will have Square Dancing at the new facility.

Mr. Leckstein stated that he believes that the board is entitled to know what you are going to do and not do if they are considering the parking.

Mr. Wolff objected – the Counsel is making speeches and not asking a question.

Mr. Knox continued to be cross examined by Mr. Leckstein and responded as follows:

5. He would mind restrictions being made on what he can and can't do at his business.
6. He is 63 years old and some day he may retire but won't sell the business and his son will take over at that point in the future. He will coach until he dies. His son will continue to take the laundry home when he runs the business.
7. The upstairs class area is slightly under 3,000 square feet and the class size will average 15 to 16 people in class , He commented on Mr. Mazzella's class sizes..

Mr. Leckstein – asked if the applicant was aware that his client Mr. Mazzella is very close to him and that he has testified before on this application that his amount of parking and amount of people substantially more than the applicant has told.

Mr. Wolff objected.

Mr. Mullen – that's not a question it's a statement.

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Mr. Leckstein – he opened that door by referring to my clients operation. I want to know why he wouldn't believe that his facility would be as successful as my clients.

Mr. Baxter – you have to rephrase that.

Mr. Leckstein – based on the fact that you are familiar with my clients operation isn't it possible that your new gym will be as successful and if not more successful and you would have classes of this size.

Mr. Knox testified as follows:

16. The parking requirements have been established both for Middletown, Marlboro and us and it requires five car parking per 1,00 square feet which we more than meet.

Mr. Leckstein – that wasn't my question. We are talking about the amount of people that would be in a 3,000 square foot facility separate and apart from the people down stairs on the exercise equipment doing classes, observing their kids and we are trying to get an idea

Mr. Wolff objected to the question which he explained.

Mr. Baxter – I think that real question is could you have 30 or 40 people in the upstairs space.

Mr. Knox answered cross as follows:

17. It is possible to have 30 to 40 people in the upstairs space but it's not realistic which he further explained. He described studies that he has done with other facilities in the area.

Mr. Leckstein objected to the explanation of Mr. Knox and asked that he be able to control his cross examination.

Mr. Knox continued to explain his study of other facilities and continued to answer cross examination questions by Mr. Leckstein as follows:

18. He stated that the average class size of gyms over 30,000 square feet is 15 to 16 people.

19. He said that the employee count that he testified to did not include either himself or his son. He said that he and his son are not at the facility at the same time and that they are like to two ships passing in the night.

20. They will not have a baby sitter during all business hours, they will have a babysitter during the adult classes.

21. He is going to have anywhere from 35 to 45 pieces of equipment.

22. It is possible to have four or five staff on site.

Wolf Objected to the number of employees on site exceeding five.

23. He explained that if there are 20 people in a class there is still just one instructor.

23. He stated that the classes require one Instructor.

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24. He explained class schedule time.

25. He stated that it's not possible to have all equipment machines occupied while there is a class being held up stairs which he further explained that if there is a line for equipment people will join another gym.

26. He is chopping 1,000 square feet out of their existing area. He believes that he will be 1,000 square feet less than existing business.

Mr. Leckstein – you testified that you are going to have 45 machines and now you are saying that you are going have less machines, it's very hard to hit a moving target.

Mr. Wolff objected and stated that the applicant first testified that he would have 35 to 45 machines.

Mr. Knox continued as follows:

27. There will be 35 to 40 pieces of equipment.

28. 35 to 40 can occur if you have 30 people come during peak and then you have _____ can occur.

29. A Box like Truck delivers the Protein drinks and they come at non peak hours.

30. Rugrats is a TV show.

31. Kick Ball and Dodge Ball will possibly play in the facility.

Mr. Leckstein - when you planned this project did you instruct your engineer and architect to maximize the parking on this site.

Mr. Wolff objected to the relevancy.

Mr. Leckstein and Mr. Wolff argued the relevancy of the question.

Mr. Wolff – we need to move on so I am not going to object but he thinks these questions are ridiculous.

Mr. Knox continued to answer cross examination as follows:

32. The ceiling height is 22 feet high for the half court.

33. He asked his Professional to maximize the parking on the site based upon the size of the building that he projected.

34. He did not consider making the building smaller so that he would not have to need a variance for coverage because if he is going to play and teach the kids he has to have a 21 foot or higher elevation so the kids can play and be taught. In order to instruct the kids to play basketball correctly he needs a three point line, a foul line, and you can't teach a kid in an artificial setting which he further explained.

35. He can't make the second floor any smaller and be a legal half court. He can't make the first floor any smaller because he would not be able to get the 35 to 40 machines in there.

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Mr. Leckstein questioned if he considered eliminating the apartment to help with the parking.

Mr. Wolff objected because it is not possible to eliminate the apartment which he further explained.

Mr. Mullen – I would like to hear from Mr. Knox.

Mr. Knox continued as follows:

36. No, he has not considered eliminating the apartment.
37. He explained that he cannot illegally evict a tenant unless he is personally going to occupy the apartment.
38. The addition will not be prefabricated.
39. To have the cell tower spaces used by employees would be ideal.

Mr. Leckstein stated that he had no further questions for Mr. Knox.

Mr. Mullen asked if there were any questions for Mr. Knox by the public.

Elaine Hoffman residing in the Shadow Lawn Mobile Park asked the applicant why a traffic study was not done.

Mr. Knox the DOT provides for the traffic study.

Elaine Hoffman spoke about the condition of the roads.

Mr. Knox stated that the proposed use is less intense than the existing Stewarts Restaurant use. He explained that parents drop their kids off, they don't hang around. He said that she should speak to the town about the condition of the road.

Donna O'Callahan of 29 S. Bay Avenue questioned off peak hours. She spoke about the traffic peak hours 4:40 p.m.

Mr. Knox – for his business his peak hour is not at 4:30 p.m. He explained that people can come in through the back of the site and exit back out on Ocean Avenue. He is not adding congestion to Highway 36 which he further explained. He will be less intense that the existing restaurant at the site.

Donna O'Callahan asked what is the reason a person chooses a specific gym. She continued to question him about the application.

Mr. Knox explained that it was location. He has 438 members at his existing facility. He responded to questions about his study on other facilities. He has access to four or five trainers

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for his business. He will charge between 10 to \$12 per hour for the kids. He spoke about possible onetime events at the facility.

Elaine Hoffman questioned Mr. Knox.

Mr. Knox – we have two entrances to our facility and the drink guy usually delivers to him once every two weeks around 11 to 12 o'clock and he does not see a problem. He feels that he has ample parking spaces on this site.

Jim Parla of 16 Portland Road questioned the applicant.

Mr. Knox stated that he is adding a fire hydrant and that is a benefit to the community. He described the site improvements such as the landscaping. He said the proposed building will be better looking than the existing. He stated that a benefit of having a supposedly new condominiums at Shadow Lawn is that he is in enough walking distance for his business.

Maureen Kraemer of 200 Portland Road questioned the site only having one entrance to the site.

Mr. Knox stated that there is only an emergency exit off of Hwy 36 which allows for more parking and DOT is thrilled about removing the exit on highway 36.

Mr. Leckstein objected to Knox comment about DOT being thrilled.

Mr. Knox – because there is no exit on Route 36 it's an easier application.

Mr. Wolff stated that the DOT has already approved. He stated that we are not asking for an entrance or exit on to Route 36.

There were no further questions for Mr. Knox from the public.

Mr. Knox was excused.

The Board took a break at 9:43 P.M.

Mr. Mullen called the meeting back to order at 9:51 P.M.

Mr. Wolff called Mr. Rupnarain, P.E. up to testify.

Eric Rupnarain of 119 Douglas Street, Lambertville, New Jersey 08530 was sworn in.

Mr. Leckstein stated that he had no objection to his qualifications as a Civil Engineer.

Mr. Rupnarain described his education and professional background to the board.

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Mr. Rupnarain stated the following during his testimony and response to question from the Board and Mr. Wolff:

1. He prepared the site plan for this application.
2. The site plan proposes reconstruction of parking lot, landscaping and removal of some impervious coverage.
3. The existing site has a Stewarts Restaurant, Cell Tower and support building and a paved parking lot.
4. Lot Coverage - Maximum lot coverage (Existing is 99%, Proposed is 85%, Permitted is 80%),
5. Existing Cell Tower – he has reviewed the 1998 Resolution Granting Cell Tower Use.

Mr. Wolff – does this use that is contemplated by this application change, modify or intensify any activities in connection with the cell tower?

Mr. Leckstein objected to this question – it calls for expertise conclusion not in his expertise. That's a legal conclusion and a Planning conclusion but certainly not an engineering conclusion.

Mr. Wolff withdrew his question.

Mr. Rupnarain continued his testimony as follow:

6. There is no modification that this plan proposes to the cell tower or its support facility. The improvements that they are proposing for Knox 400 is the improvements to the parking lot, landscaping and lighting.
7. They are not proposing any sidewalks along Route 36 because there are presently no sidewalks in the area to connect to.

Mr. Mullen asked about the applicant making a sidewalk contribution for future sidewalks on the other side of this site.

Mr. Wolff – that issue was raised by the Planning Board but not this board but he understands that this could be an issue.

Mr. Rupnarain continued his testimony as follows:

8. They are not providing for any dedicated loading area for this site. The only time the applicant expects to have any loading is during the initial set up when all of the equipment is delivered to this site. Aside from that there is really no need for a specific loading area.
9. He described the site plan which was marked as Exhibit A-8.
10. This plan develops 45 parking spaces, there are two spaces along the cell tower and in the paved parking area itself they have 43 parking spaces. The majority of the spaces are 9 by 18 but they do have five parking spaces which are designated as compact parking spaces and they are

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asking for a design waiver for the compact spaces because they are not specifically permitted in the ordinance.

11. They are seeking a design waiver for the setback for parking spaces. In order to comply with the amount of parking spaces required they could not meet the required parking setback of 5 feet from the edge of the property line to the edge of the base parking area and in an area they are 1.3 feet by the corner of the emergency exit. So they are seeking a waiver for the setback along Highway 36 and Ocean Avenue.

12. The 6 compact parallel parking spaces along the easterly property line and those spaces are 8 feet by 25 feet long.

13. There is a turnaround area proposed on westerly area.

14. There is a sign that is located along the south easterly property line and it's an existing sign that we will use. The sign structure will remain the same but the information on the sign will change.

15. There is no proposed loading area.

16. There is no dumpster area. The applicant has stated that the amount of trash that this facility generates, he will take it with him.

17. Drainage – he described the proposed drainage for the site . They are proposing a trench drain along the south easterly corner of the property, that trench drain will collect run off and ties itself into the existing drainage system onto Ocean Avenue.

18. He did prepare a Hydrological Study which was marked as Exhibit A-6 and dated 11/20/07. He explained the Hydrological Study and the data and method he used in preparing this study. He explained that the drain line directions. He stated that there is actually a net decrease in the amount of runoff from the property as a whole because there is a reduction of the amount of impervious coverage on site. He does not believe that there is any existing drainage facility on the site.

19. A change in elevation occurs south of the property into the Stereo Installation Facility. Everything will be grading to existing height. There is no proposed retaining wall.

20. There is a trench drain being proposed because a standard inlet would not work. He further described the proposed drainage as shown on sheet 4.

Mr. May requested that the applicant provide detail of the Cast Iron Top.

Mr. Rupnarain continued his testimony as follows:

21. Trash Enclosure – there is no need for one and if one were required it could be located between the stairs and the building.

22. Landscaping – along the westerly property line there are several existing trees and they are not planning on removing any of those trees. There is one dead tree that will be replaced on the site. Along the parameter of the parking lot between Highway 36 and the property they are proposing a hedge row to prevent the car lights from projecting onto the Highway. The same for the parking area along Ocean Avenue. Around the building they have shrubs, more decorative type plantings. Within the parking lot the large circles on the plan show the shade trees that are proposed.

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23. Emergency Area – yes there is a proposed chain. They could put some reflectors on the chain and the Fire Department did approve this.
24. Lighting – they propose all new fixtures as shown on the site plan which he further described.
25. No wheel stops by cell tower but there are on other spaces except parallel spaces.
26. There are presently two curb openings along Route 36 one is located toward the easterly property line and one toward the westerly line and the easterly curb opening will be completely closed and the westerly one will be reduced in width to accommodate the Fire Department to have an emergency exit.
27. Waiver for lighting needed for two locations because they exceed .5 ft candle. He then described the reasons for the waiver for the lighting. He stated that the way the site was laid out was because of the existing building which also applies to the parking layout.
28. He described the location of the reduced impervious coverage and marked the areas on Exhibit A-8 with a green highlighter.
29. Compact parking spaces will be identified with signs.
30. Wheel back will be corrected to meet the required setback of 2 feet.
31. It is not uncommon to have 25% compact parking and if they were forced to make the compact spaces non compact they do have the ability to do it but it would eliminate some of the landscaping along Route 36 and change the impervious coverage.
32. They do meet the parking requirements. They are providing 41 parking spaces for the fitness facility, 2 spaces for the apartment and 2 spaces for the cell tower (required in original cell tower approval).
33. He explained that delivery vehicles would be during non-peak hours and he explained how they would circulate through the site.

Mr. May stated that there were some conflict with some light poles on the site.

Mr. Rupnarain continued his testimony as follows:

34. Sheet 2 does show where existing utilities are.
35. There are all new light fixtures being put in.
36. Tenant Parking there are two spots located and are signed. The location of the signs they will put where the board wants.

Mr. Leckstein begins cross examination of Mr. Rupnarain.

Mr. Rupnarain responds to cross examination by stating the following:

1. Cell Tower Parking – two spaces are provided and that is a pre-existing condition.

Mr. Leckstein submitted Exhibit O-1 which he identifies as the suspected A-6 of the 1998 Resolution.

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Paul Mazzella was sworn in and explained that he obtained Exhibit O-1 by researching the Borough's Cell Tower File and he explained that he could not find a document marked A-6 but this document looked like this was it.

Mr. Leckstein continued his cross examination of Mr. Rupnarain.

Mr. Rupnarain stated the following during cross examination:

2. He looked at Exhibit O-1 and recognized it as the configuration of cell tower.

Mr. Wolff objected to this document which he explained.

Mr. Baxter – it would make more sense to hear the testimony which he further explained.

Mr. Wolff then reviewed Exhibit O-1.

Mr. Leckstein continued his cross examination of Mr. Rupnarain.

Mr. Rupnarain stated the following during cross examination:

3. The parking area is similar to the proposed cell tower parking.

4. He read the notation on O-1 by the cell tower it stated “ provide one parking space for equipment technician”.

Mr. Leckstein stated that 2 parking spaces for the cell tower came about in the T & M letter and he can't cross examine because she is not here.

Mr. Leckstein and Mr. Mullen discussed the required parking spaces for the cell tower

Mr. Wolff and Mr. Leckstein argued about the required amount of parking spaces.

Mr. Baxter – we obviously need to see Exhibit A-6. He will check his files to see if he has a copy of the old A-6 Exhibit. The Resolution from 1998 does not speak to the number of spaces only to a plan.

Mr. Rupnarain stated the following during cross examination:

5. He spoke about the stacked parking spaces.

Mr. Leckstein and Mr. Mullen spoke about stacked parking.

Mr. May explained that typically there are stacked parking for cell tower applications.

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Mr. Leckstein made arguments about the stacked parking and the required number of parking spaces.

Mr. Rupnarain stated the following during cross examination:

6. If you assumed that the cell tower parking space is a two car space then there are 45 parking spaces on the plan.
7. Not counting the cell tower parking 43 spaces are required for the proposed use and the apartment.
8. If the building were smaller they would require less parking under the ordinance.
9. If you reduce the size of the building then you reduce the required amount of parking.
10. The combination of the existing and the proposed we are meeting the FAR requirements. So we are entitled to build that building. Absent the existing structure it may be possible but he has not looked at it but it gives a lot of flexibility on the property as far as what you can or cannot do.
11. The previous application that was made for this site had less parking.
12. They are trying to provide what is required for the site for parking.
13. They did consider safety when laying this site out.
14. He is not a Traffic Engineer.
15. He described traffic circulation for someone who has to back up on the site. He stated that there is adequate site distance. He stated that there are not obstructions along Ocean Avenue either that would prevent someone from turning around and looking. This is not a fast food restaurant, it is not a retail center where people are always coming and going.
16. He has designed other health and fitness facilities in Raritan and Ready Townships and they were much larger.
17. He continued to describe how a car could maneuver throughout the site.
18. The applicant told him that his customers stay about 30 minutes.
19. Sidewalks – it's not a good idea to put sidewalks in because someone may start to walk down and where would they go into the street. It would be a better idea to build sidewalks all at one time instead of building them in pieces.
20. The parking is laid out because of the existing structure.
21. The existing structure is what dictates how the site is designed. The existing building is dictating how to make the addition.
22. Outdoor living space – presently there is none. Obviously if you reduce the size of the building you could do it.
23. The need for all the waivers and parking is all generated by the existing building and the need for the addition.
24. The 12 inch pipe is more than adequate it meets normal engineering standards for velocities to make sure that anything settling in the pipe its structurally sound. There is no difference between the 12-inch pipe and a 15-inch pipe as far as performance is concerned. If he wanted he could put the 15 inch pipe in which require a longer trench drain. They are making the site better than what it is.
25. Yes, the size of the building is predicated on the use inside of the building and in order to provide an appropriate size basketball facility that was the driving force behind the size of the

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addition. There are no variances required for the setbacks or yards because of the structure. In terms of Floor Area Ratio he believes that they are half of what is allowed.

Mr. May stated that the pipe is at full capacity, it can be up sized but it doesn't require to be up sized.

Mr. Rupnarain stated the following during cross examination:

- 26. Lighting - we have a limited area where we can put a fixture.
- 27. A trash pad would increase the impervious coverage.

Mr. Leckstein spoke with Mr. Mullen about continuing his cross examination of Mr. Rupnarain at the next meeting due to the late hour.

There was a discussion about the next meeting schedule and the fact that there is another case scheduled for next meeting which is 231 Bay Ave, LLC.

Mr. Baxter stated that he would call the Attorney for 231 Bay Ave, LLC to speak to them about moving their October 2nd hearing.

Mr. Francy asked Mr. Baxter if the issue of stacked parking is allowed does that have to be addressed?

Mr. Baxter – yes, but it can be addressed in several ways which he explained and a discussion followed.

Mr. Fox offered a motion to carry this hearing to the October 2, 2008 meeting without the need for further notice, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL

AYES: Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Kovic, Mr. Mullen

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Francy offered a motion to approve the September 4, 2008 minutes, seconded by Ms. Ryan and all were in favor.

Ms. Ryan offered a motion to adjourn the meeting, seconded by Mr. Fox and all were in favor.

The Meeting adjourned at 11:19 P.M.

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CAROLYN CUMMINS, BOARD SECRETARY