

Regular meeting of the Haworth Zoning Board of Adjustment on November 6, 2018, at the Municipal Center.

**PRESENT:** Dennis Posen, Chairman  
Richard Ehrenberg  
Jeffrey Lester, Vice Chairman  
Catharine Luby  
Joseph Panzella  
John Paquet, Secretary/Treasurer  
David Roth  
Laura Weingartner, Alternate 1

Alexander West, Board Attorney  
Joseph Vince, Board Engineer

**ABSENT** Andrew Rosenberg, Council Liaison

Mr. Posen called the meeting to order and upon roll call, the above Members were present.

Due notice of this meeting was given in accordance with the New Jersey Open Public Meetings Act.

In essence, the following transpired.

#### **ACCEPTANCE OF THE MINUTES**

The minutes of the October 16, 2018 meeting were reviewed.

Mr. Paquet asked that on page 61, paragraph 6, the minutes should read, "He pointed out that the applicant originally said they were not going to leave Hackensack..."

Mr. Ehrenberg moved to accept the minutes as amended, subject to the rights of absent members to correct statements directly attributed to them.

Seconded by Mr. Roth and upon voice vote was unanimously carried.

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### CORRESPONDENCE

- Summation for the St. Gabriel's Church Application from Mr. Lubin
- Summation St. Gabriel's Church Application from Mr. Capizzi

### ST. GABRIEL'S CHURCH APPLICATION (continuation)

Mr. Posen noted that Mrs. Weingartner had listened to the recording of the meeting she missed and also presented an Affidavit stating the same.

Mr. Posen stated that although they had full attendance, they had an alternate ready to fill. He said that Counsel had a copy of Exhibit 1 filed by the Church when the application began. Mr. Posen explained that the Board members wanted to be reminded of all the additions, conditions, valet parking and other changes as well as how this vote would move forward.

It was noted that Mr. Capizzi and Mr. Lubin had sent copies of their summations to the Board and they had already been distributed and reviewed.

Mr. Posen said that they would like to have any changes on the record. He told them they would deliberate whether a vote would go forward, under what conditions, and what motion would be in order. Mr. Posen said that they were free to go over any conditions.

Mr. Posen said that if any conditions would not be approved, then it would be a motion to deny. He said that it was certainly appropriate to review any variances and riders.

Mr. Capizzi stated that the application had been building for 2 ½ years and in large part it had not been 172 parking spaces and 305 seats in the Sanctuary. Mr. Capizzi said that use of the basement was the only real modification, there was an implementation of valet service, and the Site Plan had been revised with regard to drainage. He said that was essentially the application before the Board. Mr. Capizzi noted that the Valet Plan was intended to be part of the application.

Mr. Ehrenberg said they were asking for variances - some for inside the Sanctuary and some for outside in the parking lot.

Mr. Capizzi stated that the variances were for impervious and pavement coverage and he would like to have them considered separately.

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Mr. Lubin said that the applicant was excising conditions. He said he agreed with counsel that there were only two variances and the others were to relieve what the applicant had originally agreed to do.

Mr. West stated that they were currently asking for 426 to be used simultaneously with the Sanctuary and in the basement.

Mr. Roth said that in terms of excising conditions, it was never really clear whether the Board could excise conditions set by the Planning Board. He said he believed that Mr. Lubin said it would not be appropriate unless conditions were changed in the neighborhood. Mr. Roth asked if Mr. West knew if the Zoning Board should be doing this.

Mr. West said he would have to think that the Zoning Board most likely had authority to excise those conditions but would have to look to the changes in the neighborhood. The size of the building inside is adequate and there is room for additional pews and seats downstairs.

Mr. Lester had some concerns. He said the question was that if this was not part of a church, what would be the question and if this was residential, how would the Board look at it. Mr. Lester said that this was a fairly major variation from which the Mayor and Council felt was appropriate. He pointed out that they were also bound by RLUPA and to what extent does it affect the Board's right to review the use of the property. He elaborated. In essence, he said that what they were doing did not affect the practice of religion. Mr. Lester said that perhaps the property was simply too small.

Mr. Ehrenberg said that the Planning Board sold a size 8 ½ shoe for a size 10 foot. He said that as far as RLUPA, he understood they could not treat the church differently and it did not say that they had to treat the church differently.

Mr. Lester said that from a use point of view, they had to treat this broader.

Mr. Paquet agreed with Mr. Ehrenberg. He said they were not stopping anyone from going to church; it was more of how they were going to get people to the property. Mr. Paquet noted that they had reached the maximum parking for the church

Mr. Lester said he did not disagree to the extent they were constrained by the Ordinance. He noted they would have a 42% increase in pavement.

Mr. West pointed out that the pavement coverage would go from 14.6% to 36.1%.

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There was discussion about what the applicant was asking for as well as other concerns. It included changes to the increased number of parking spaces and the number of seats in the Sanctuary; the fact that the church was too big for the size of the lot, the Valet Plan, the approvals and conditions in the original Resolution, drainage, the tremendous percentage in the increase of impervious and pavement coverage, the landscaping, and also RLUPA and how that should be treated.

There was also discussion relating to a possible conditional approval upon reviewing the landscaping architecture and having an agreement between the parties, which included who would be responsible for payment.

Mr. Lubin noted his objection for the record.

Mr. Posen stated that he did not think they should entertain discussion of the interior of the building. He said he felt it wasn't germane and the inside did not impact the outside. He elaborated.

Mr. Posen stated that on the subject of valet parking, he did not think it was a valid subject for the Zoning Board to determine and there was no way that the Zoning Board was in the position to decide since it was not under their jurisdiction. He said he felt it was the ultimate problem of the church. Mr. Posen said that having only one Mass a day was something that the Church would have to figure out. The size of the stalls, the church capacity, and the fire lanes were not under the jurisdiction of the Zoning Board. He said that pavement coverage would be a relatively easy problem to solve. Mr. Posen pointed out that they have resolved storm water conditions and they have been accepted.

Mr. Roth said he felt that the property was too small and it would be better if it could have more Masses. He asked if an approval would create a precedent.

Mr. Posen said that every decision they made would refer back to this. However, every application stands on its own.

Mr. Posen said that with regard to parking, he was struggling on that one subject with other members of the Board. There has been no effort to recognize the Ordinance. He said that there was an unforeseen nature of this application about how the congregation grew. He did not think they should reject the application for a good neighbor but he thought there should be a reasonable proposal.

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Mr. Posen said he did not think the Board should be struggling with the parking stalls - there were a fixed number of spaces and that was it. He said that was the Board's jurisdiction and those conditions could not be on the table. He stated that fire, life, and safety issues should not be the Zoning Board's jurisdiction. Mr. Posen said they wanted the Church to be part of the town and they were welcome, however, the Board's obligation was much larger. He said they needed a reasonable solution. If the church wants 305 seats, then they should have a plan for the parking stalls - and if they have other special events, they should make special arrangements.

There was discussion on the changes to the application.

Mr. Posen said that the Valet Plan was not something with which he was comfortable, and busing congregants was not under the Board's jurisdiction.

Mr. Paquet pointed out that the Church had been parking more cars than permitted for several years and what they are doing will continue. He said he had weighed this heavily both ways. Mr. Paquet said that there were four holy days a year and it was his concern that they would start parking on Sunset Avenue. He stated that there should not be any parking allowed on Sunset Avenue and they should stop parking on the grass. Therefore, he felt they should put in pavement. He asked that if the Board wants conditions and they do not go forward, then where will the church go with this. Mr. Paquet said this was one man's opinion - his. He pointed out that prior to St. Gabriel's application, there were several houses proposed for that area and now they have a church on a lot which is not big enough.

Mr. Paquet stated that the applicant had said they would provide a valet service but he did not know if it could work. If it was only a few days a year, then it would be a parking variance and not a condition. If a motion is made and carried to grant the application, then he would agree with Mr. Posen in that it is irrelevant whether there was a valet system or not - just as long as it does not interfere with emergency services activity.

Mr. Posen said he did not think that anyone on the Board was that far apart. He said his point about the valet services was that the Board had impervious coverage and pavement coverage issues and that was exactly what happened with the Planning Board. Mr. Posen said if the congregants were willing to pay for services, it would not be a Zoning Board issue - it would be a fire, police and traffic issue. It should meet the town's criteria for landscaping, parking stalls, etc. and they should apply to put more cars on the property for a couple of days and have a Fire Marshall present. Mr. Posen stated that his condition was not on the table and he was not willing to approve this request. He said he was going for the 48 weeks of the year. He acknowledged that it was a problem; however, he did not think it was the Zoning Board's responsibility.

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There was discussion regarding what would happen if this was approved.

Mr. Posen said there was a request for meeting the standard for landscaping between the stalls and the size of the stalls. The condition would be that they have a revised Plan and that they meet the standards of the Borough. Mr. Posen said he did not think they should be parking in the mud and this was not within the Board's jurisdiction. Mr. Posen noted that they were dealing with the land and not the building; and stated that a messy, muddy property was an eye sore.

Mr. Ehrenberg stated that he felt the parking lot should be striped in accordance with the law. He said he wanted to get back to the days of the week and the aesthetics. He pointed out that the church would have a huge unscreened parking lot and it would be a view or a site which would be unacceptable. Mr. Ehrenberg stated that they were changing the character of Sunset Avenue.

There was discussion about how that property would look with less grassy area because of all of the cars on it.

Mr. Ehrenberg explained that some of the grass would disappear.

Mr. Paquet said they had put in grassy pavers on the site and when they came up, the pavement went in. He said there would be a lot more landscaping so the view from the Sunset Avenue would not change from the street. He said he did not think this was an issue. Mr. Paquet felt that when you get down to the nuts and bolts, throw something out. He said the plan was referenced on the architect's drawing dated 10/11/16.

Mr. Posen said that his sense, his intent and his intuition was that they were moving in a direction and they had a reasonable consensus that the Board would like to approve some part of this application. It suggests that the Board entertain a motion and then go through all the conditions, additions, changes, and everyone's concerns. Mr. Posen said he thought that after roughly 45 minutes, it appeared that some members of the Board see a path. He stated that they needed a negative or positive motion. Mr. Posen asked what it was that would satisfy the Board.

Mr. Paquet made a motion to approve the application as presented.

Seconded by Mrs. Luby.

There was discussion.

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Mr. West asked if the Board was going to go over everything. He said that if there was a denial of any one of those variances, the Board would have to deny. Mr. West explained that this was an Omnibus Motion.

Mr. Posen suggested that the motion be amended to say, "Motion to approve with the following conditions" rather than, "As the motion was presented."

Mr. Paquet agreed.

Mr. Posen then suggested that the motion say that this approval in no way excinds the conditions of the 2008 Planning Board Resolution, and it no way approves the rejection on excinding the 2008 application approval.

Mr. Paquet asked if the applicant had to agree to the proposals the Board was making.

Mr. Lubin stated that there should not be any more dialogue. He said that if the applicant was not happy with the proposals, it had to apply to the Court.

Mr. Ehrenberg said the Board should attach a condition that the Sunset Avenue side of the property should have a 6 ft. burm with the top at 6 ft. and they should use fast growing evergreens.

Mr. Posen asked if the Landscaping Plan would be meeting this.

Mr. Vince said that a 6 ft. burm was not going to fit because of the width.

There was discussion.

Mr. Lester said he thought a 6 ft. burm would be restrictive

Mr. Ehrenberg stated that he did not like the Plan and was trying to get something to hide the parking lot.

There was further discussion about the 6 ft. burm and a suggestion was made for 3 ft.

Mr. Ehrenberg explained that if someone drove down Sunset Avenue they would just see a burm and decent size trees and you would not see the building. He said that in terms of dimensions, he deferred to the other experts. Mr. Ehrenberg then gave an example of another house of worship.

There was discussion about the type of greens which should be planted.

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Mr. Vince asked if this was going to the Bergen County Planning Board for approval since it was on a County road. He also asked about what was going to be on the burm side.

There was discussion on what the neighbors did in the front of their property.

Mr. Paquet stated that they had to get some defined metes and bounds.

Mr. Posen responded that that was what Mr. Vince was suggesting to Mr. Ehrenberg. He asked if he could offer some language to give the County. He said that the Plan had to be reviewed and then get suggestions from Mr. Vince.

Mr. Posen explained that they had to provide in words the goals and expectations of the Board. He explained that they could not just provide a plan.

Mr. Paquet stated that he was not in agreement with Mr. Ehrenberg. He said the property was barren so maybe they could get something more detailed.

Mr. Posen said that the Plan which was proposed was not the Plan which existed right now.

Mr. Paquet asked if there would be any other provisions. He commented that he was not sure it could be resolved that evening.

Mr. Lester said that the applicant should install landscaping of a height of at least 6 ft. with a burm or vegetation to the North property line of the building.

Mr. Ehrenberg said that it would ultimately achieve his goal but he was not an architect or engineer.

There was discussion.

Mr. Paquet said they should not interfere with it visually.

Mr. Vince said that the motion should say, "...they were suggesting the landscaping to the extent permitted by Bergen County.

Mr. Paquet asked about what would be done across the parking lot.

Mr. Posen responded that was a landscaping issue.

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Mr. Lester stated that the applicant shall insert landscaping along the North side of the parking lot in such a manner that shall not interfere with the site lines of the existing parking lot and shall comply with the restrictions of Bergen County and shall be of a height of 6 ft. to shield the parking lot as planted with a burm or vegetation.

Mr. Vince asked for clarification.

Mr. Paquet said they should have a curb and make it 6 ft. or higher.

Mr. Posen said that the next concern was the valet parking. He said he did not know if they should stay silent.

Mr. Paquet stated that the Board was not the Police.

Mr. Ehrenberg said that he understood his position but he felt the valet service and the off-site parking had to be addressed.

Mr. Lester said he felt the Board should not allow so many spaces and the Police, in their discretion, could take the appropriate action.

Mr. Posen said he did not want silence to seem that they are condoning the solution. He pointed out that Mr. Capizzi said the valet parking was part of the application. Mr. Posen said he wanted to be sure it was clear that the Board was not condoning the application.

Mr. Capizzi said that they proposed the valet parking as a condition and it was up to the Board.

Mr. Posen stated that the Board could eliminate that condition.

Mr. West said that another condition was that there had to be one shade tree for every 10 stalls and Mr. Capizzi said that they would provide them. He asked Mr. Capizzi if it was possible to provide the Plan for the burm and those trees before the final approval.

Mr. Capizzi said they could not have it. He elaborated.

Mr. West reiterated that there was a condition that there should be one shade tree for every 10 parking stalls and they stated that the Church would provide revised Plans if the application was approved. He again stated that they wanted one shade tree for every 10 parking stalls.

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Mr. Vince stated that the church shall provide one shade tree for every 10 parking stalls so he considered this to be an increase. He said that this should have been taken care of at the beginning.

Mr. Capizzi responded that it was not an issue and that they would provide the Plans.

Mr. Posen asked about the number of stalls.

Mr. Ehrenberg said that they should have whatever fits according to the Zoning Ordinance. He said that if the capacity according to the Land Use laws was 150 stalls, then only 150 are allowed.

Mr. Posen stated that the basis of the application was a variance for an increased number of stalls and that increases the capacity. The variance would allow the applicant to put more parking than the Ordinance allowed. He elaborated. Mr. Posen said that if they were going to zero-in, then they had to determine from testimony the number with which the Board was comfortable.

Mr. West stated that it was not the number of stalls, it was the impervious coverage and pavement coverage.

Mr. Capizzi noted that he was also looking for a Site Plan approval, so if the Board reduced the number of stalls then they would have to adjust the Site Plan approval Plans.

Mr. Posen said the proposal on the drawing was for 172 stalls.

Mr. Vince said that space, sizes, and the drive aisles were conforming. The hairpin stripe would be in the grassy paver area so it would be marked in some other way. He pointed out that there could be no more than 15 parking stalls in a continuous row. Mr. Vince said that looking at it quickly, it looks as though there would be 3 additional parking spaces.

Mr. Posen asked about the Handicap parking spaces.

Mr. Vince said they would be taken care of by the valet service.

Mr. Posen said that his comfort level was to put in lighting in accordance with the Code so they would be compliant with parking stalls, lighting and striping.

Mr. Lester felt they should attach a drawing.

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Mr. Vince stated that 172 cars were being proposed. He asked if waivers were requested.

Mrs. Luby pointed out that some stalls would not be wide enough.

Mr. Vince said that there were supposed to be no more than 15 spaces in a row and they were proposing 20 so that would be one waiver. Mr. Vince said it would amount to being a reduction of one space. Mr. Vince explained that 5% of the interior parking should be landscaped and they would have to lose one space in each row. He said they wanted hairpin striping and they were not proposing to re-stripe the lot.

Mr. West noted that the engineer was calling them "waivers" and the church was calling them "variances."

Mr. Lester said he would vote to grant the waivers since it was in the rear of the building and he felt it was *di minimis*. He said it was clear that they needed a variance to allow more than 15 stalls in a row. Mr. Lester said he felt they should allow 5% of the parking area to be landscaped and the Board could approve the parking layout as proposed.

Mr. Posen said that they could say, "no more than 172 spaces with attached waivers." He said that in the original application, the applicant sought to modify and excise certain conditions. One was the approval of the new Site Plan and it in no way approves these objectives of the applicant's request to modify or excise conditions in the application.

Mr. Ehrenberg asked how the applicant would get the conditions they were requesting.

Mr. Posen responded that the Board had heard some testimony that they were not conditions. He said it was his opinion that the Board did not have jurisdiction over another Board's approval - it could only be done by the Planning Board. He said that there were conditions inside the building which already had a Certificate of Occupancy. Mr. Posen said they had to consider prior conditions, valet service, landscaping issues, and parking.

Mrs. Luby asked for clarification with approval in 2008 and asked if there was a conflict. She said that by putting in the Board's Resolution what you had just stated about the 2008 approval, does anything exclude the Zoning Board from giving a variance. She also asked if the Board could approve this application if those conditions stand.

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Mr. Lester said he thought they could always apply for a variance of a current use of the property based on change of circumstances.

Mr. Posen said he saw them as two completely separate things and that was his instinct on the matter. He elaborated. Mr. Posen said that zoning was Land Use and not about what would happen on the inside of the building. He stated that it was not up to the Zoning Board to rule.

Mr. Paquet stated that he agreed with all of the amendments which the Board added to the motion and he wished to include them in the motion, "as amended with the conditions set forth.

Seconded by Mrs. Luby and upon roll call, the vote went as follows: Yes - Mr. Paquet, Mrs. Luby, Mr. Ehrenberg, Mr. Lester, Mr. Panzella, Mr. Roth and Mrs. Posen; No - none. Motion carried.

Mr. Capizzi thanked the Board.

#### **BONJ SPECIAL PROPERTIES, LLC, 471 HAWORTH AVENUE APPLICATION**

Bruce Whitaker, with offices in Ramsey, New Jersey appeared on behalf of the applicant.

Mr. Whitaker said that the subject property had a single-family home which was going through foreclosure and they were seeking variance approval. He said that the prior owner had a building permit, however, the contractor did not follow the plans exactly and it does not conform to the Zoning Code. The applicant is seeking variance relief for what exists now. Mr. Whitaker elaborated.

He said that the owner was asking for the house to remain the way it was so the owner could sell it. They also needed a variance for pavement coverage. Mr. Whitaker explained that what was there now was greater than permitted. The other problem was that in the rear of the property, the setback did not conform to what was required. He referred to a Plan dated 3/13/18 and stated that they need 43.2 ft. and 42.5 ft. was built. It was marked as Exhibit A-1. Mr. Whitaker said that they were seeking a C Variance under which the benefits outweigh the detriments.

Mr. Whitaker stated that the subject house had been refurbished and it was a better house than what was once there. He said they should not disturb their design, which was designed for drainage and which he felt was *di minimis*. Mr. Whitaker said that the Ordinance had changed as to how to measure the rear yard setback and they were looking at approximately 8 inches in one area. He referred to Exhibit A-1, a colorized Plan.

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Mr. Whitaker presented Deeds showing that his client, BONJ, had acquired. He explained that his client was the entity.

Michael Hubschman was presented as an expert. Approval was waived and he was sworn in.

Mr. Hubschman stated that he had been to the property and knows its history. The existing conditions were approved by permit. This was a two-lot subdivision in 2007. There was a new house built on the Harland Avenue side and there was an existing garage. The previous owner made an application to put on additions. There were small additions on the right side, which were a covered porch on the front and side and there were no conditions of approval. Mr. Whitaker said they were never before this Board. Everything was conforming in 2011. He explained that the bank took over the property in 2017. Mr. Whitaker said they found that the rear yard was slightly deficient. The requirements changed in 2013. In 2011, the rear yard was 30% of lot depth and 45 ft. were required and he measured it as 42.5 ft.

Mr. Hubschman read the Ordinance and stated that under today's standards, it would be conforming.

Mr. Whitaker said it did not conform when they got the building permit but now it conformed. He said that looking at the rear, there was less than 15 ft. behind the garage.

Mr. Whitaker presented photos of the front taken on 11/5/18. He said the driveway should be 10.6 ft wide but it was 13 ft. in width and wider than what was permitted.

Mr. Hubschman described the property and said that they would not want anyone to back out of the driveway onto Haworth Avenue. He explained that George Rosenberg, of Ridgewood, New Jersey, did all the drawings.

Mr. Posen asked if the drawings showed that he had a PE license.

Mr. Whitaker said that it did not.

Mr. Hubschman pointed out that the photo showed the patio.

Mr. Lester asked if the slates were included in the pavement coverage and if there was anything else to be included in the 19.3%.

Mr. Whitaker said the architect looked at the words, "pavement coverage" and it included the slate.

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Mr. Ehrenberg asked what the cost of remediating it would be.

Mr. Hubschman said that for 431 sq. ft., it would be approximately \$10,000.

Mr. Paquet said it did not look excessive.

Mr. Hubschman said he was suggesting C-2 criteria since they were lawfully constructed. He stated that the benefits of leaving what is there right now offsets any of the damage.

Mr. Lester said that, what is there now was built contrary to what was allowed.

Mr. Whitaker said he was suggesting that a mistake was made but it was not over-burdening the property.

Mr. Hubschman explained that the subject property was on a very busy street and it was designed at a 10 ½ ft. width.

Mr. Posen said that with all due respect, this property was huge and they could cut off the right lane and do a "K" turn and come out forward. He said he appreciated the argument.

Mr. Hubschman said they were over the impervious coverage by 36.6% and 40% was allowed.

Mr. Whitaker said that they had a Zoning Official letter which had to be addressed. He said they meet the requirements for impervious coverage but they need proper drainage. Also, now they have a confirmation that a Certificate of Occupancy could be issued.

There was discussion.

Mr. Panzella made a motion to accept the application for variances as presented.

Seconded by Mr. Roth.

There was discussion.

Mr. Lester stated that he had no problem with the rear yard. He thought there was a way to reduce the pavement issue efficiently, quickly, and cost effectively, and if there was a problem with the pavement coverage, he felt it should be reduced.

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Mr. Lester stated that the applicant could present something which would lessen the need for a variance and bring it into compliance.

There was discussion with Mr. Whitaker about making the property more conforming.

Mr. Lester said he would be happy if the original Plan complied.

Mr. Whitaker stated that the original Plan showed a narrower driveway but it did not show the patio.

Mrs. Luby asked if the 431 sq. ft. in the driveway could be pavers.

Mr. Hubschman pointed out that the patio was free-draining because there were spaces in between the slates.

Mr. Whitaker stated that he did not know if that was the way it was interpreted.

There was discussion.

Mr. Posen said he would not support approval of any variances with any paving issues. He said that they needed to send a message to Borough Hall.

Mr. Whitaker stated that under the current Ordinance, it was not required, and a variance was not necessary.

Mr. Paquet suggested having one vote on the rear-yard setback and one vote on the pavement coverage.

Everyone agreed.

Upon roll call, the vote went as follows:

To allow the rear-yard setback - Yes Mr. Panzella, Mr. Roth, Mr. Ehrenberg, Mr. Lester, Mrs. Luby, Mr. Paquet, and Mr. Posen. No - none. Motion carried.

To allow the pavement - Yes - Mr. Panzella, Mr. Roth, Mrs. Luby, and Mr. Paquet. No - Mr. Ehrenberg, Mr. Lester, and Mr. Posen. Motion carried.

Mr. Whitaker thanked the Board.

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There being no further business to discuss at this time, Mr. Ehrenberg moved to adjourn.

Seconded by Mr. Roth and unanimously carried.

Respectfully submitted,

  
Dolores Fazio O'Dowd