The Chairman called the meeting to order and stated it was being held in compliance with the “Open Public Meeting Act” and had been duly noticed and published as required by law.

ROLL CALL

Present: Mr. Daddario, Mr. Fanelli, Mr. Rashatwar, Mr. Senges, Mr. Schwenke, Mr. Weil, Mr. Willard

Absent: Mr. Brocco, Mr. Cohen, Mr. Leoncio, Mr. Cupersmith,

Also, present, Chris Norman, Board Solicitor, Ben Matlack, CME, Board Engineer, Chris Dochney, CME, Planner, and Corrine Tarcelli, Zoning Board Secretary

**MINUTES FOR APPROVAL**

 Mr. Weil motioned to approve the Minutes from the July 25, 2019 Zoning Board Hearing; seconded by Mr. Willard; none (0) against; Mr. Schwenke abstained.

**OLD BUSINESS**

**Hartford Properties, LLC**

801 Haddonfield-Berlin Road

Block 199.06, L35

Mr. Senges stated any questions or comments must be limited to issues to what the Board may legally consider in reaching a decision. He emphasized the Board is only considering use, not site plan. Bulk variance issues are not relevant. Mr. Senges further stated he did not want the members of the public to be confused at what the difference is between a site plan issue and a use variance issue. If the Board were to approve the use then the other issues will be addressed at the hearing for site plan.

Mr. Norman stated this was a continuation from the previous meeting that took place on July 25th, 2019. He summarized the application stating the Applicant is seeking a use variance to remove all of the existing golf facility improvements (currently operated as “Golf Land”) within the western 12.3 acre portion of block 199.06, lot 35 and construct a 97,800 s.f. mixed use center that will consist of a mixture of non-residential uses including retail, restaurant, fast food restaurant, service, entertainment, exercise or fitness, office and professional office. A total of six buildings are proposed although the number of buildings is subject to change. Offices, professional offices and restaurants are permitted as conditional uses within the SH-Senior Housing zone, however, the other uses that Applicant proposes are not permitted in that zone. This is a bifurcated application seeking a D1 and D3 variance. If there were any action on the application, it would be subject to a full site plan and/or subdivision approval where all bulk variances and design waivers would be dealt with at that time.

Mr. Del Duca indicated at the late meeting July 25th, the second evening of the application, Mr. Baron cross-examined the civil engineer and had completed a significant portion of the public. Mr. Baron will continue to cross examine the applicant’s professionals.

Mr. Baron stated he would like to address the ruling Mr. Senges made stating it was inappropriate and violates the law. Mr. Baron cited the Township of Dover versus the Board of adjustment of Dover, wherein the court stated where there is a claim the Zoning Board is acting beyond its jurisdiction where it is considering in essence a rezoning as opposed to a variance. This is the standard the court stated. Mr. Norman stated according to the book of Cox rezoning is not a decision for the zoning board to decide. The Board has to treat the application as a use variance. Mr. Norman further stated that Mr. Baron can always raise that issue later in a different form. Mr. Baron stated the record has to include the items that are to be considered the basic inquiry in each phase must be whether the impact of the requested variances will substantially alter the character of the district as described by the ordinance. The inquiry requires analysis and evaluation of such factors as the size of the tract, the size of the tract in relationship to the size and character in which the district is located and municipality as a whole, the number of parcels in which it is anticipated that the tract be subdivided and the nature, as well as the degree and extent of the variation from the district’s regulations. Mr. Norman stated Mr. Baron placed the issue on the record. Mr. Norman further stated the issue of jurisdiction was raised at the first meeting and stated Mr. Platt did not believe it was valid and that the Zoning Board does have jurisdiction to consider the use variance. Mr. Del Duca stated to be fair, Mr. Platt stated the issue of jurisdiction can be raised during the public portion. The Zoning Board cannot make the determination at the outset of the hearing that the variances point to the negative criteria. The only way one can determine the application is to review the variances. Mr. Baron stated he had no intention of arguing the bulk variances. Mr. Baron further stated he wanted to discuss what variances the Applicant is requesting and to what extent as this is what the case law states. Mr. Norman stated once again Mr. Baron placed the issue on the record for purposes of a future appeal and the board is cognizant of it. The public is here to discuss the substance and merit of the application. Mr. Norman asked with respect to Mr. Baron’s client how is this and the variances that are being requested impact his client’s property. Mr. Senges stated the Board is still not clear what his client’s basis of objection is. Is the impact land use related? Mr. Baron stated they are land use related. It is of course in part about competition. The Board can give weight to that. Mr. Baron further stated Eagle Plaza is zoned for its use, the Applicant is not.

Mr. Del Duca stated he doesn’t feel as though the Board should make a ruling that Mr. Baron can’t present evidence that might be relevant to certain case law and specifically to the bulk variances. Mr. Del Duca acknowledged that the type of bulk variances that are needed can be relevant in a use variance analysis. The fact that the Board is not going to decide bulk variances this evening doesn’t mean that the variances are not relevant to this use variance application but that those variances won’t be decided this evening. If so, Mr. Del Duca feels that it is appropriate.

Mr. Senges stated relative to Mr. Baron’s comment about an appeal, the Board will not be intimated, swayed or influenced by the fact that Mr. Baron may appeal. The Board will vote based on the evidence presented. Mr. Baron stated he wanted to discuss the bulk variance as they impact the use variance.

Mr. Baron cross examined Mr. McDonough. Mr. Baron inquired as to how much of the SH zone in Voorhees Township will be available for development if this application is approved. Mr. McDonough did not conduct a density analysis. He further stated the property is a remnant piece from the single housing development at Lions Gate. There are at least two other vacant parcels in the SH zone. Block 200, Lot 8, Block 200, Lot 17 located at 15 and 1017 Old Egg Harbor Road respectively. He does not know the sizes of the parcels.

Mr. Baron stated in the notice the application is for a use variance. A mixture of retail, restaurant, fast food restaurant, service, entertainment and exercise. Uses which are not uses permitted in the SH zone. Mr. Baron questioned which of the buildings on the plan will be retail. Mr. McDonough stated the concept plan is illustrious at this point. The numbers are approximate about 50% of the floor area will be allocated to retail. Mr. McDonough further stated in terms of the uses, they are not substantially different than what is now considered the new normal for this particular land use, unbundled amenities. The unbundled amenities could become retail services, eateries, food places, medical type facilities, offices, now being opened to the general public. The nature of the use now is not isolation. The theme of putting the elderly on an island by themselves is not the new normal. It’s interactive, inner-generational. This is not a substantial departure from what one would see in a contemporary modern senior housing project. Mr. Baron asked if it was his understanding of the law that if the Applicant cannot tell the Board what specific use they are requesting, that they are still entitled to a variance nevertheless? There has also been testimony in the future should the ratio change, the Applicant would have to return for an amended use variance. Mr. Baron inquired as to whether or not the Applicant can identify in the concept plan which of the uses will be sited in which building. Mr. McDonough stated this is a use variance application looking at four categories of use. It is not an intensity of use application. It is not a form of use application. Mr. McDonough stated from the public notice standpoint the uses are clearly laid out. It is a mixed non-residential development.

Mr. Baron stated during Mr. McDonough’s testimony he stated the Applicant considered or mentioned a rezoning of the property, however, a use variance deals with this situation and requested Mr. McDonough explain. Mr. McDonough stated the use variance mechanism is appealing from a planning standpoint, it’s a containment of the space. The Board could put a rope around the use, limit the activities. It’s more of a control. This is a unique location where seven zones collide. The uses are not in extreme departure from what could be placed on the property. Mr. McDonough further stated the goal of the master plan is to promote senior housing. This application bolsters senior housing and makes it more appealing. It does not erode the community’s goal to provide for senior housing. It’s right on point with what the market has been doing in the last three or four years. Uses that are gaining currency may be a basis for granting a use variance. It is a new normal for senior housing facilities to have these amenities available. It is something that wasn’t contemplated back in 2012 when the master plan zoned this site as SH. Mr. Baron stated Voorhees ordinance does not include in the SH zone the uses that are being proposed. Mr. McDonough agreed and stated when we look at a particularly suitability aspect of the test, we look at the condition of the property. There is unconstrained land, leftover land that is not been conducive or manifested to senior housing. It is ripe for some form of development. The physical condition of the property is certainly particularly suited to accommodate the use. The applicant has demonstrated with these uses the site can be adequately parked and can be adequately screened from the surrounding land uses. This is not a homogenous area. Mr. Baron stated the master plan in fact said that SH should be increased. Mr. Baron inquired as to whether or not this an appropriate parcel for the uses proposed. Do you have any idea how many variances have been requested? Mr. McDonough stated approximately a half dozen. Mr. Baron continued the minimum tract size is 45 acres. Both lots are less than 45 acres. Minimum tract frontage 1,000 feet. Relative to minimum tract depth the applicant does not comply. In determining setbacks the Voorhees ordinance states to the front building or to the parking. They do not comply with parking, parking is too close. The buffer is required to be 50 feet within the setback and the Applicant does not comply. Minimum rear yard setback does not comply. One or two buildings require a height variance. There will be a variance for one possibly two buildings. Maximum impervious coverage requires a variance. Maximum parking setback 100 feet from residential, applicant will require a variance. Maximum clearing is 70%, a variance will be required. Minimum distance between buildings relative to Buildings B and C, E and F2 and E and F will also require a variance. Setbacks in the right of way will require a variance. Applying for a use variance and conditional variance. Mr. Baron stated there are 14 total bulk area and standards in the SH district and of those, the Applicant will require 10 out of the 14. Mr. McDonough stated there is nothing in the law that states the number of variances, quantitative amount, it’s qualitative. That is a basis that can be looked at by the Zoning Board.

Mr. Baron inquired relative to the various degrees of deviation previously discussed for some of those variances, you don’t disagree with those deviations? Mr. McDonough stated that is correct.

Mr. Baron had no further questions.

Mr. Del Duca stated the distance between buildings will be determined during site plan. The height of the buildings will also be determined during site plan.

Mr. Baron called his professionals to the stand. Ms. Barbara Allen Woolley-Dillon, Planner, 125 East Main Street, Tuckerton, NJ and Mr. David Horner, Engineering Consultant, 105 Atsion Road, Medford, NJ and Ms. Veronique Longo, Vice-President Hutensky Capital Partners, 100 Constitution Plaza, Hartford, Connecticut. The three professionals were sworn in to testify.

Ms. Longo stated her firm has owned Eagle Plaza for three years. The plaza is approximately 227,000 square feet and comprises of a supermarket, liquor store, several restaurant uses, services, drive-through restaurant. The parcel is zoned for all uses and they never required any zoning variances. The plaza is 87% occupied. Recent improvements over the past year totaling $3.5 million to date have been made to the façade. There is interest in the vacant suites since the façade has been improved upon. Her concern is the increase in traffic and how that will impact the various businesses located at Eagle Plaza as well as the impact on the space her firm can lease in Eagle Plaza.

Mr. Baron had no further questions for Mrs. Longo.

Mr. Senges stated based on his experience with retail real estate, a center across the street may improve or increase the traffic at Eagle Plaza. Ms. Longo stated during the acquisition process, her firm did a lot of due diligence and one of the aspects they focused on is what’s currently in the market, what impact it has on the property and what the potential is for change so they can determine the risks and how they can be mitigated. After her firm evaluated what was already around the center, there was existing retail, however, not enough. The property across the street was not zoned as retail so a low risk was placed on that property. What is being proposed is a significant departure from that.

Mr. Del Duca inquired as to whether or not her primary concern about the application is competition. Ms. Longo stated “No”. The primary concern is the fact that her firm did not consider the property across the street a risk when they were performing their evaluation. Mr. Del Duca requested Ms. Longo define risk. The proposed site would potentially bring more competition as well as synergies. Ms. Longo stated to some degree however, it is hard to say.

Mr. Del Duca had no further questions.

Mr. Horner, Traffic Engineer and President of Horner and Canter Associates, a Traffic Engineering Consulting firm was called to the stand. Mr. Horner was qualified as an expert by the Board. He stated he reviewed the applicant’s traffic study. The first thing he reviewed was the comparison between the proposed traffic generation and that of the by right use. The traffic study did include that comparison. Mr. Horner further stated the by right use is senior housing. In the morning peak hour 37 trips would be generated by the by right use. The proposed development based on the numbers of the traffic study would be 290; about seven times the numbers of trips. Similarly in the afternoon there are 75 by right trips, 261 proposed, Saturday 58 by right, 291 proposed. This level of traffic increase does raise a concern. The traffic study does analyze the roadway network. The existing conditions along that roadway particularly at the signalized intersections, are operating at a deficient level of operation with very high delays. When this dramatic increase in traffic is added, those conditions will worsen. In his opinion they worsen to a point where it does represent an adverse impact.

Mr. Horner further stated the traffic study appropriately looked at three peak periods, 7 a.m. to 9 a.m. during the weekdays which covers the school and commuter peak. It also looks at the 4 p.m. and 6 p.m. which covers the commuter peak, after the school peak. The shopping center traffic depending on the exact uses would begin as early as 7 a.m. and 8 a.m. and extend throughout the day peaking after work during the commuter peak and beyond. Certainly the high school traffic contributes to the existing conditions. There are 2,000 vehicles total in both directions in the peak hours currently on Haddonfield-Berlin Road that is much more than what the high school itself generates. The roadway limitations occurs at the signalized intersections. The signalized intersection at White Horse Road currently operates with a level of service of F, the worst condition with an average of 95.8 seconds of delay per vehicle. Those conditions are considered to be deficient. Laurel Oak Road is not as deficient. There are deficiencies in the afternoon peak hour, currently a D level with 52 seconds of delay in the afternoon. In the morning the level of service is a C. Southbound left turns in the morning are an F, westbound left turns in the morning is an F, straight through on Haddonfield-Berlin Road is a B. Adding traffic to any movement will have an impact. Over the three peak hour period, there will be an additional 780 plus vehicles. Mr. Baron inquired as to whether or not the Applicant’s traffic engineer performed a queuing analysis stating how many cars will be queued at the intersections during peak hours. Mr. Horner stated they did not. It would be relevant because the delay level of service tells part of the story; ques can tell a different story, sometimes the same. However, they are both important factors. Mr. Horner used the applicant’s traffic engineer’s report. He did not complete his own study. He reviewed the engineer’s report. Mr. Baron inquired as to whether or not this property would present a substantial detriment to the public welfare and would it impose a risk to public safety. Mr. Horner stated yes, the more congestion there is on the ques, the more risk. It is difficult to equate safety directly with congestion. Mr. Senges asked whether or not Mr. Horner had any comparable data? Have you expressed concerns for safety in previous reports? Mr. Horner stated yes and he has also provided recommendations for mitigation. Mr. Senges stated the Board receives traffic studies all the time and this is the first time traffic was a safety issue. Mr. Baron stated the congestion is going to make an F condition worse and it will occur at least three times during peak time every day.

Mr. Del Duca cross-examined Mr. Horner. Mr. Horner stated he was hired in May and he did not prepare a written report. Mr. Del Duca stated Mr. Horner has testified on behalf of many applicants over the years and some of those applicants are centers and mix-use centers. Mr. Del Duca inquired as to whether or not Mr. Horner agreed that many of those developers would prefer to be in a location like this with the traffic attributes that are seen here. Mr. Horner agreed. Mr. Del Duca stated Eagle Plaza is directly across the street and the Applicant is proposing to add a fourth light at Voorhees Drive; a four-way signal. Mr. Del Duca further stated more importantly is the impact of the trips and the delays at the intersection. The volume of traffic is relevant to the wait time at a light. The key consideration is how long is the Voorhees Township consumer going to have to wait at the intersection of White Horse Road and Route 561? Mr. Horner stated he did not evaluate or look at any potential traffic improvements proposed. Other than signal time and adjustments he did not see any proposed improvements in the study. Mr. Del Duca inquired as to whether or not Mr. Horner’s opinion could change based upon what improvements are installed. Mr. Horner stated yes if there is corresponding mitigation to address the adverse impact and render it not adverse. Mr. Del Duca inquired as to whether or not Mr. Horner believes synchronizing the lights would help or lessen those delays. Mr. Horner stated it would probably lessen the delays but to what extent he did not know. Things like site distance and location of access are more important to what is safe from a traffic standpoint than volume. Site distances are very important to safety, more important than volume. Volume and congestion does factor into safety.

Mr. Del Duca had no further questions.

Ms. Allen Woolley-Dillon, is employed by her own professional planning firm as well as currently the Director of Planning for the City of Atlantic City and licensed in the State of New Jersey since 1988. She was qualified as an expert by the Board. She performed a site inspection. She looked at the application and plans, reviewed the zoning ordinances. Looked at the master plans and master plans reexamination reports as well as the master plan updates and the 2012 master plan reexamination. She was asked to take a look at the application to see if there were any concerns she had as a professional planner. One of the things she reviewed were the ordinances and the case law to see if the application meets the positive and negative criteria. Mr. Baron requested Ms. Woolley-Dillon read to the Board the goal of the master plan for the SH Zone. She stated the goal is to insure the housing types and housing quantity meets the needs of the township residents and does not place a burden on township fiscal sustainability. To provide senior and disabled special needs housing to meet the requirements of the township residents. Page 27 of that same report, B5, the comprehensive objectives is to promote the protection of neighborhood characteristics by enforcing buffer areas between non-residential and residential areas. This application requests to reduce the buffer. The Planning Board typically develops the master plan. The purpose of the master plan is to lay down a foundation so the municipality can grow or not to grow. Rural, suburban, or urban. The plan provides a vision for what the Township would like to achieve. Relative to the plan for Haddonfield Berlin Road (CR561) 2012 to 2015, there has never been a recommendation from the Planning Board to change the SH use on the property. The master plan also states to maintain senior housing. Exhibit O1 was marked for the record, Township of Voorhees Zoning Map, dated April 24, 2006, last revised May 11, 2015. The coloring on the exhibit indicates the SH housing zones in the Township. It’s approximately 90 acres. There are two vacant lots one on the eastern side of Laurel Oak road that remains undeveloped. Relatively nominal amount of the SH zone has remained undeveloped. Slightly bigger than the parcel in question. Other parcels have been developed as non-senior housing and non-residential, small office development. Mr. Senges stated Lions Gate testified their current level of development exceeds the needs and that they cannot do any further development because their percentage of occupancy currently is below an acceptable level and doubt they can fill up the space. Therefore in this particular location, the needs have been met. Ms. Woolley-Dillon did not agree. There is actually another portion of the master plan that speaks about expanding the SH zone to another portion of the municipality. Source document is page 33 in the 2012 master plan reexamination report item number seven which states it is recommended the Township review the possibility and appropriateness of extending the SH overlay on the vacant undeveloped parcels, 202.23 lots 32-36, 79.77 acres located in the O3 zoning district on Centennial Boulevard adjacent to the existing EIB zoned senior housing development. Mr. Baron stated the criteria is that’s it’s a particularly suited use. What about this piece of land lends itself to a retail use? Ms. Woolley-Dillon stated nothing she is aware of. Mr. Baron described the proposed site and various locations around the site. To which Ms. Woolley- Dillon agreed. Mr. Baron further stated there are no shopping centers on the same side of 561 as the proposed site. There is nothing that has been submitted to suggest that it is in the general welfare of Voorhees Township to create a shopping center on the opposite side of Route 561, place it next to residential housing and impact the traffic on Route 561 in a negative way. Ms. Woolley-Dillon agreed. The proposed shopping center may be consistent with the use across Route 561. However, it is an entirely different zoning district and what the law states is that you cannot use different uses to transition. There are zoning boundaries in place which clearly defines the edges and limits of what the different zoning districts are. What is across the street is an entirely different zoning district. Mr. Baron stated anytime an Applicant requests a use that is not consistent with the ordinance, it’s a detriment. Is that correct? Ms. Woolley-Dillon agreed. Mr. Baron asked when discussing the number of variances proposed for this use does that result in a deviation from the zone as well as the extent of variation? Ms. Woolley-Dillon stated “Yes”. Regarding the percentages of the deviations, is that testimony relevant? Ms. Woolley-Dillon stated when looking at what is proposed, it is incumbent on the Board to look at not only what is quantitative in the number of variances but to the degree of the variances, how much relief is required. Mr. Baron stated the testimony is that there are 14 use/bulk standards in the SH zone. Is the deviation in ten of those, significant in Ms. Woolley-Dillon’s opinion? She stated yes and she believes there is one that has not been addressed yet. Due to the subdivision, there is also a density variance that is required for Lions Gate. They are backing out 12 acres. They met the density before and now they do not. With 36 acres, the maximum allowable dwelling units is 147.2; Lions Gate will have 162 so they are going to be over.

Mr. Baron inquired as to what will be left of the SH zone if the proposed application is approved. Ms. Woolley-Dillon stated approximately 15 acres. However, there appears to be a division of a woodlines to indicate a tributary, small creek or a small body of water running through a portion of the site.

Mr. Baron inquired whether or not Mrs. Woolley-Dillon feels as though the Applicant has satisfied the criteria of no substantial detriment to the zoning plan and zoning district. Ms. Woolley Dillon replied “No”. Mr. Baron stated as a result of the deviations from the bulk and area standards and the fact that they do not comply, the fact that it is not consistent with what is surrounding it. Are all of those factors that it is substantially detrimental to the zoning district and zoning plan if it were to be approved? Ms. Woolley-Dillon replies “Yes”.

Mr. Baron had no further questions.

Mr. Del Duca stated the SH zone is not the only zone in Voorhees that permits senior housing. He further stated Voorhees has a CCRC overlay that permits senior housing. Additionally, the major business zone, town center, and RR zones permit some form of senior housing as does the O3 zone. Therefore, there are five other zones that permit senior housing. Mrs. Woolley-Dillon agreed.

Mr. Del Duca inquired as to whether or not Ms. Woolley-Dillon agreed that this is a unique property in this case because there is a golf farm on 12 acres and Lions Gate on the remaining 35 acres. Ms. Woolley-Dillon could not state whether or not this is a unique situation. Mr. Del Duca inquired as to whether or not it would be unusual for a municipality to take a single tax lot and in doing so in re-examining a master plan to recommend that a portion of the tax lot split that zone. Ms. Woolley-Dillon stated actually the master plan typically does not recommend a zone be split. Lions Gate has 162 units and it is permitted to have 147.2 units from a density standpoint. Mr. Del Duca inquired as to the size of the proposed Lions Gate parcel. Ms. Woolley-Dillon stated it was approximately 33 acres. Mr. Del Duca stated the plan shows 36.8. Is it correct that an ordinance in the zone permits a density of 10 dwelling units per acre that would permit 368 dwelling units? Ms. Woolley-Dillon agreed. Mr. Del Duca inquired as to the number of dwelling units present including the single family dwelling units, independent living apartments, assistant living units, skilled nursing beds and skilled rehabilitation units. Ms. Woolley-Dillon stated there are a total of 12 side by side units. However, she could not state the number of the various remaining units.

Mr. Del Duca had no further questions.

Mr. Senges closed this portion of the hearing and opened it to the public. Seeing no one; the public portion was closed.

Mr. Baron in his summation stated the application before the Board is for a use variance, conditional use variance. Basically the Applicant has nothing. The Applicant talked about retail, entertainment, services. The Board has no idea what is going in any one of the buildings. The Applicant wants a floating approval until they decide what they want to do. They have proposed percentages. They cannot make a commitment. He further stated he would have a problem voting for an application if he did not know what the use was going to be. He stated the Applicant has not demonstrated to the Board that this is particularly suited for this site. It’s a golf farm and senior housing. It must be particularly suited to the use and the site must be particularly suited. There is no use. The Board does not know what the use is going to be. Is it particularly suited to a stereo shop, a grocery store, a sports facility? Why a retail facility here? This area has been zoned by the Governing Body. The Board is able to issue a use variance in certain circumstances as long as the Board is not usurping the governing body’s authority. The Applicant is requesting 14 variances. Therefore not consistent with the zone. Deviations anywhere from 15% to 50% again not consistent with the zone. The biggest non-conforming uses are abutting the residential homes. The applicant submitted photographs. It looks as though this center is awfully close to the residential homes. Mr. Baron inquired as to whether or not it is a good idea to shove something like this right up against residential units. The traffic study found that this is not safe. The planner admitted that the application could have been submitted as conditional uses. They would have to satisfy those standards. There are a number of deviations from this zone. In this case, why so many? Because this is not an appropriate site for this use. It isn’t particularly suited. To the contrary it is not particularly suited. There is not enough room for everything the Applicant wants to put on the property. The Applicant cannot provide a full size buffer because they want to squeeze it in closer to the residential units. The Applicant cannot adhere to the setback from Berlin Road although they are encouraged to do so according to the master plan. The Applicant wants to put more uses on the site, multiple uses that are not permitted because they cannot meet the zoning criteria. The Applicant cannot meet the bulk and the area requirements under the ordinance. So it’s not an appropriate site, too many deviations. This is exactly what the court said is an arrogation of the power of the governing body. Should the Board decide to approve this, the Board would be usurping the authority of the governing body to decide on this parcel which by the way is one of the last parcels available for this type of use. This application is woefully deficient.

Mr. Del Duca in his summation thanked the Board for their time over the past three months. He further stated as mentioned previously this is the beginning of this project. The applicant is here for a very limited purpose and that is the use. The applicant applied for two types of D variances a regular use variance and a conditional use variance. Contrary to what Mr. Baron said, the Applicant has clearly articulated the use variance and conditional use variance he seeks. The Applicant laid out specifics square footages and percentages. He seeks approval of a 97,800 square foot mixed used center with a mixture of uses. Mr. Del Duca as well as the Applicant explained to the Board that they do not know what all the uses are and they are not required to do so. Also explained was why he does not know that. The Applicant has to start marketing the property and come back for site plan and variances. This application will continue to evolve. In the meantime, Hartford Properties has the right to request the use variance to permit this 97,800 square foot center. As Mr. Platt mentioned in June, the Board does not regulate users, the Board regulates usage. The applicant will return and the Board will have an opportunity at that time to evaluate bulk variances and site plan. As to the bulk variances, Mr. Del Duca agreed whether the Applicant needs bulk variances can be relevant in the Board’s review of the use variance application. However, the fact that there might be six, or eight, or ten or fourteen isn’t deposable due to the fact that the Board has to look at the bulk variances in question. They are not significant. If looked at in the context of the plan, they are not significant. Secondly, the zone is senior housing. This use is different. The bulk variances required are related to the use variance. At site plan the Applicant may not need as many bulk variances. Just the fact the Applicant needs bulk variances doesn’t mean they don’t meet the negative criteria and it doesn’t mean the site is not particularly suitable. As the Board, the question is specifically whether or not the Applicant has met the burden of proof. That the variance applied for should be granted. The Board has to examine the evidence and the testimony and in doing so the Board will have to evaluate credibility of the witnesses. One of the witnesses, Ms. Longo, denied their main concern is competition. There is nothing wrong with worrying about competition. It’s a natural human emotion. Eagle Plaza is a forty-year-old center. The Applicant does not wish any harm at all on Eagle Plaza and although there will be some competition, we think that competition will assist them. Mr. Del Duca further stated make no mistake Eagle Plaza is here to prevent competition. Eagle Plaza represents yesterday’s center. What the Applicant is proposing is today’s center, tomorrow’s center. Mr. Hill and his partners want to invest in Voorhees and they want to bring this Class A center to this location and the question is whether or not this a particularly suitable location for this use. There was a lot of evidence presented proving that this site is particularly suited for this use. The Applicant can easily meet the positive criteria which is the site suitability standard. Obviously the Applicant has to meet the negative criteria. This is a remnant parcel. There are 12 acres out of a 45 acre parcel. The golf farm is underutilized. It is obviously starting to fail and it’s a very unique situation. When reviewing the negative criteria, the Board has to reconcile why didn’t the Planning Board recommend a rezoning of the site? One is that it is a remnant parcel, Lion’s Gate on most of it. In 2012, it is conceivable that the writers of the master plan thought that Lions Gate might expand. However, that has changed since 2012. Why didn’t Voorhees rezone this 12 acres? Mr. Del Duca stated he thinks it’s because it’s on one lot and it has been a golf course forever which is a permitted use. It is easy to understand why it hasn’t been rezoned. When looking at the nature and character of the neighborhood, one has to look at the entire neighborhood. This is a commercial corridor. That’s part of the neighborhood. Yes they are single family homes behind the proposed center. The Applicant and his professionals have presented powerful evidence that they will mitigate the impact to the neighbors. Those risks can be managed. The buffers proposed are significant. The buffers will be addressed at site plan. The Applicant will mitigate any impact to the neighbors in the rear as best as they reasonably can. The Applicant has evaluated other possibilities of improvements, traffic improvements to increase the efficiency which can be addressed at site plan. There is no question that this is a busy corridor. The question is what is our impact going to be and the delays at the three signalized intersections. The Applicant does not believe there is a substantial impact. Any impact can be mitigated. It makes sense that this use belongs in this type of location. That is why Mr. Hill and his partners are willing to invest millions and millions of dollars in Voorhees to bring this new cutting edge, Class A center to this use. It’s not a usurpation of the governing body’s legislative duties. The Board is allowed to grant use variances if the Applicant proves that he is entitled. The Applicant and his professionals provided evidence that this is a site that is particularly suited for this use and therefore the Board can and we believe should, with all due respect, grant the variances requested.

Hearing nothing further; Mr. Fanelli made a motion to deny the use variance. Seconded by Mr. Schwenke.

Mr. Norman stated the Motion to Deny is basically a simple majority vote. If members vote yes to the motion, they are denying the motion.

Mr. Weil voted no to the motion.

Mr. Willard voted no to the motion.

Mr. Daddario voted yes to the motion to deny.

Mr. Rashatwar voted no to the motion.

Mr. Senges voted no to the motion.

Mr. Norman stated the request for the variance did not pass and suggested the Board make a motion to approve. The majority rule may not apply on a motion to deny because the law states you need five affirmative votes for approval.

Mr. Norman motioned to grant the approval subject to subdivision and site plan approval and approval of bulk variances at the time of site plan; seconded by Mr. Willard.

Mr. Fanelli voted no to the motion.

Mr. Weil voted yes to the motion.

Mr. Willard voted yes to the motion.

Mr. Daddario voted no to the motion.

Mr. Schwenke voted no to the motion.

Mr. Rashatwar voted yes to the motion.

Mr. Senges voted yes to the motion.

Mr. Norman stated the tally of the vote, four yes’s, three no’s, as a result the application is denied.

Seeing no further business Mr. Senges made a motion to adjourn, seconded by Mr. Weil.

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 Corrine Tarcelli

 Zoning Board Secretary