

BOROUGH OF BOUND BROOK  
**PLANNING BOARD**  
JANUARY 25, 2007

**CALL TO ORDER**

The meeting was called to order by President Robert Fazen at 7:30 p.m. at Borough Hall.

**ROLL CALL**

Present were: Mayor Ryan, Ms. Miller, Mr. Thompson, Mr. Sabatino, Mr. Krauser, Mr. Shive, Ms. Ackerman, Mr. Cerminara, Mr. Fazen, Mr. Winters

Also present were the following staff members: Mrs. Malone, recording secretary; Mr. Rodgers, board attorney; Mrs. Doyle, planner.

**COMPLIANCE STATEMENT**

This meeting is being held in compliance with the "Open Public Meetings Law." The requirements of the Law have been met. The Annual Meeting Notice has been posted in the Municipal Building, filed with the Municipal Clerk, and forwarded to the Courier-News and Star-Ledger in January, 2007.

**SALUTE TO THE FLAG**

**MINUTES OF PREVIOUS MEETING(S):** Motion presented by Mr. Shive, seconded by Mr. Thompson, to approve the minutes of the January 11, 2007 meeting. Carried unanimously.

**ANNOUNCEMENTS & COMMUNICATIONS:**

Mr. Fazen welcomed two new members, Kerry Miller (chair of Shade Tree Commission) and Dr. Jim Winters, a local chiropractor.

A forum is planned on Monday, January 29, Mr. Fazen and possibly Mr. Krauser will attend.

A letter was received from Mr. Vastola concerning Mr. Scagliotta. He has not complied with the resolution as the property is part of the redevelopment area. They have had meetings with the developer and have reached agreement in principle for the sale of the property. His request is that the applicant be allowed to use the property for one year with conditional compliance to follow if the property has not changed hands by that time. The board feels this is a reasonable request. The delay is due to NJ DEP, Mr. Shive explained. He feels six months would be sufficient. Improvements made at this time would drive up the price of the property.

Motion by Mr. Shive to grant six months, seconded by Mr. Sabatino. Mr. Rodgers pointed out that the zoning officer is enforcing a resolution that is in effect. This would require, technically, an amendment of the resolution, which would require notices and a hearing. He does not feel the board can waive these

conditions for six months. Mrs. Doyle agreed, noting that the resolution is being waived almost in its entirety. She would recommend a public hearing. Mr. Fazen disagreed. Mr. Rodgers noted we can only waive board imposed conditions. Mr. Fazen will tell the zoning officer that the board considers it reasonable. Carried unanimously.

A letter from Mike Wright (building inspector) to John Kennedy was written in reply to Mr. Fazen's request concerning the Galeta house. He indicated the Kingwood model shown would not fit on the lot. The house that is being constructed is 3,000 square feet. This house complies with the UCC. If the planning board has issues, he suggested that the attorney ask the applicant to appear before the board. Mr. Rodgers will address it. Mr. Shive feels it is imperative to hold off on issuance of a c/o until this issue is resolved. Mr. Rodgers reminded the board that they are not an enforcement body.

The board will go into closed session to discuss the Villani lawsuit. Mr. Fazen indicated that new information has been received.

A letter was sent to the Hamilton Street Café including our resolution 01-00, which was for a tea house, art gallery and artist workshop. The letter indicated this is a change of use and it should come before the board. The owner indicated that the latest resolution, #09-03, indicates that they are in compliance. It is now up to the borough attorney to follow through, and the zoning officer will get involved to help determine if they are adhering to the approved use.

The borough is rewriting ordinances with some corrections, and we had sent a letter to the borough council to approve recommended changes to our zoning ordinance, including a \$1000 fee for a site plan waiver request. Our suggestions have been approved and will be voted on by the council at their next meeting.

Mayor Ryan got a notice from the Department of Transportation regarding the bridge leading to Middlesex. They plan to re-cover the bridge, resulting in some traffic problems.

Mrs. Doyle reported that as of this morning a decision was rendered against COAH; Round Three is on hold. "Court Strikes Down COAH Regulations" is the article that was read by Mr. Fazen. The NJ Builders' Association brought the suit against COAH.

Mayor Ryan reported on the "joint center" with South Bound Brook, in which each borough received \$25,000 for joint planning. With the new government in South Bound Brook, Mr. Bzik told Bound Brook to go ahead with their planning even though South Bound Brook refused their share. Mayor Ryan is trying to get a meeting arranged with the mayor. The OSP has said, Mrs. Doyle reported, we will not lose our designation as a center.

Committee designations are as follows:

Compliance Review Board, which ensures those who have come before the board are complying with the resolution. If someone brings up a property they feel is not in compliance, this board will report back to the board with a recommendation. It involves taking photographs and checking the resolution. Mr. Thompson volunteered, and Mr. Fazen will work with him.

Site Plan Review committee includes Mr. Krauser.

Architectural Review Board: We have three architects on the board. Dr. Winters will work with them.

Application Forms: To be modified to be more user-friendly (Mr. Fazen and Mr. Thompson).

By-Laws: Mr. Rodgers.

Redevelopment: Mr. Shive and Ms. Miller, who will chair the committee.

Proposed amendments to the Land Use Ordinance and Zoning Changes: Mr. Krauser has been spearheading this; members were asked to review the report and come back to the board with any suggestions.

**OPEN TO PUBLIC:           NON-AGENDA ITEMS**

**PUBLIC HEARINGS:**

**#20-06, Gonzalez (KJK Music Studio), 6 Hamilton Street, waiver of Site Plan**  
(was deemed incomplete at the last meeting, and this is where it stands)

**#01-07, Brown, 143 Vosseller Avenue (completeness) ref. Cilo memo  
1/22/07**

Mr. Brown said he received Mr. Cilo's letter. Mr. Fazen explained that public notice has to be served before the hearing as a continuation of a non-conforming use. He suggested that Mr. Brown go to Mrs. Awtry for names and addresses for notices.

If notices can be sent in time, the hearing will be scheduled for February 8. Since an individual applied, they do not need legal representation. Mr. Rodgers explained that is it not a legal non-conforming use.

Mr. Brown purchased the building in January of 2002. A year later he got a tenant in the building. The store next door is vacant and has been used for storage. The lady who appeared before the board for an informal hearing on January 11 has decided not to open a bakery. They now hope to open an optometrist's office. This would require a variance because it is not an

authorized use. Mrs. Doyle suggested they call Mr. Cilo and Mrs. Doyle; the board is not demanding a full site plan. Mr. Fazen encouraged him to get notices out tomorrow. Mr. Krauser suggested rolling both applications into one application. The application will be a request for a variance.

#### **SWEARING IN OF NEW APPOINTEES**

Mr. Rodgers administered the Oath of Office to Kerry Miller and Jim Winters.

Mr. Shive noted that the oath should say "land use board."

#### **CLOSED SESSION**

Motion to adjourn to closed session by Mr. Thompson at 8:20 p.m. to discuss the Villani litigation, seconded by Mr. Shive and carried.

#### **OPEN SESSION**

Motion to return to open session at 8:50 p.m. made by Mr. Thompson and seconded by Mr. Ryan. Carried unanimously.

#### **NEW BUSINESS:**

Mrs. Doyle discussed "Build-Out Analysis." It identifies lots that are large enough to subdivide. There are three one-family zones because minimum lot sizes are different. There are one- and two-family zones, which the board might re-evaluate. Mrs. Doyle will start with a build-out analysis of R-4 so the board will know where there are two-family homes in R-4. The board can make an R-4a and R-4b. Mr. Ryan said the state and county have requested tax maps for re-evaluation. People will have to be hired to go into every house in town. The borough does not have this data in electronic form. She wants to give the board a full pattern of existing uses.

With R-2 and R-3 zones, two lots may be together and both be oversized. As land becomes more valuable, they may be converted to three lots. Some overlays can be obtained from DEP. Mrs. Doyle will have to take out the wetlands. It is extremely detailed, and right down to the lot. This study is expected to take up to 18 months. She will also see how many apartments have become condos.

Mr. Fazen asked why the board would not want to change R-4 to two-families. Mrs. Doyle said if the board finds that the heart of it is all two-families, it can be changed to R-4.1, single family. The county is paying to have the research done.

Mr. Fazen asked about R-1 and R-2 – lot size is the difference. This is where re-zoning often starts. Mr. Fazen suggested that new board members can look up the different zones in the land use ordinance. It is a good thing to know about each application. The redevelopment area was not indicated on Mrs. Doyle's map; everything down from Second Street is in the zone. Mr. Shive asked where we are in relation to the mandated redevelopment plan for that area. Nothing has been done.

Mr. Fazen addressed the Kinsey Report vs. the PP report. The PP report had many faults, and the Department of Justice looked at it and came up with the same problems the board found with it. Kinsey and PP have been negotiating with each other to come up with a resolution that would be acceptable to the Department of Justice. The council is aware of the negotiations. A report will be presented to the planning board. Mr. Fazen said the two consultants are negotiating without input from the borough.

Mrs. Doyle said the Neighborhood Business zone is relatively new in town. The ordinance tells what it is intended to allow and what it prohibits. The fact that it is prohibited is a strong statement.

Garden Apartments zone (R-6) has been modified. Some were taken down when the roundabout was built. The R-6 zone should go up to Union Avenue. Advance property is fully complying with the ordinance. The Regional Business-1 was an attempt to improve dilapidated buildings about 15 years ago. They have since been elevated, so that may not be appropriate and may be re-considered. It therefore should not be a business zone.

Mr. Fazen reported he had two calls last week. Someone wants to put a Laundromat on Talmage between Lamont and Hardy. This is an example of what is going to come before the board. This is an authorized zone. A child care center on Union Avenue is also proposed for one of the professional houses. They are permitted by state law in any non-residential zone.

Everything on the west side of the Middle Brook is IP, and everything north of Talmage Avenue is Green Acres. The west side was rezoned, Mr. Thompson recalled, with the idea of billboards. Mrs. Doyle will show all municipally owned property and all parks on her map.

Mr. Rodgers presented an overview of variances and what evidence is needed to grant a variance.

A 'd' variance is a use variance. Requirements to grant this variance are very complicated. There are:

- Special Reasons (furthering the purposes of zoning)
- Site is particularly suited for the use (Hagan Funeral Home was situated next to the church to share a parking lot and coordinate services)
- Not inconsistent with the Master Plan (courts look at annual reports of variances granted) – this is difficult to justify. Hagan application recalled that when the council met to discuss the Master Plan the need for funeral homes did not come up. Demographics had changed.
- May not be detrimental to the public good.

- Five affirmative votes are required, and only seven non-public-official members may vote, even if only five voting members are present.

Ramifications of legal non-conforming use (not permitted): It is defined as illegal, and the zoning officer should shut it down. The use has to have been in existence legally before the current ordinance making it illegal was adopted. It has to be used continuously from that time to present without having been abandoned at any time. The burden is on the applicant to prove this.

There was a big debate many years ago about enforcing this. The board sort of closed their eyes to these illegal non-conforming uses so as not to upset the residents. Illegal changes from two to three family homes were ignored. Only the board of adjustment can make this finding.

Mr. Fazen explained the use of "Land Use Board." Mr. Rodgers explained that most towns in New Jersey have a Board of Adjustment and a Planning Board. They have overlapping powers. Only a Board of Adjustment can grant a use variance. Site plans and subdivisions usually go to a planning board. The use variance is kept out of the political fray, separated from the influence of politicians. This is why the mayor and council member are not permitted to vote on these applications.

About ten years ago, Bound Brook combined their boards. Mr. Rodgers feels this is more efficient, with a higher level of involvement. This is legally permitted if the population is below 15,000.

Mrs. Doyle asked: In a single family zone there is a house that has been illegally housing four families for 40 years. They acknowledge they are illegal and want to sell the property. The board hears the use variance and get it approved with five votes. The following year the house burns to the ground. What can they rebuild?

Industrial Lessors Inc. says there were special reasons for this house, in this location, to contain four units. They have a right to rebuild because they have proven special reasons. You have to remember this when you vote for a 'd' variance; it is forever. If it were found to be a legal non-conforming use and it burned down, the use would be gone. The zoning officer seldom, if ever, gets the information the tax assessor has access to.

There are other subjects that might be of interest to the board. Mr. Rodgers would be willing to address them at a future meeting.

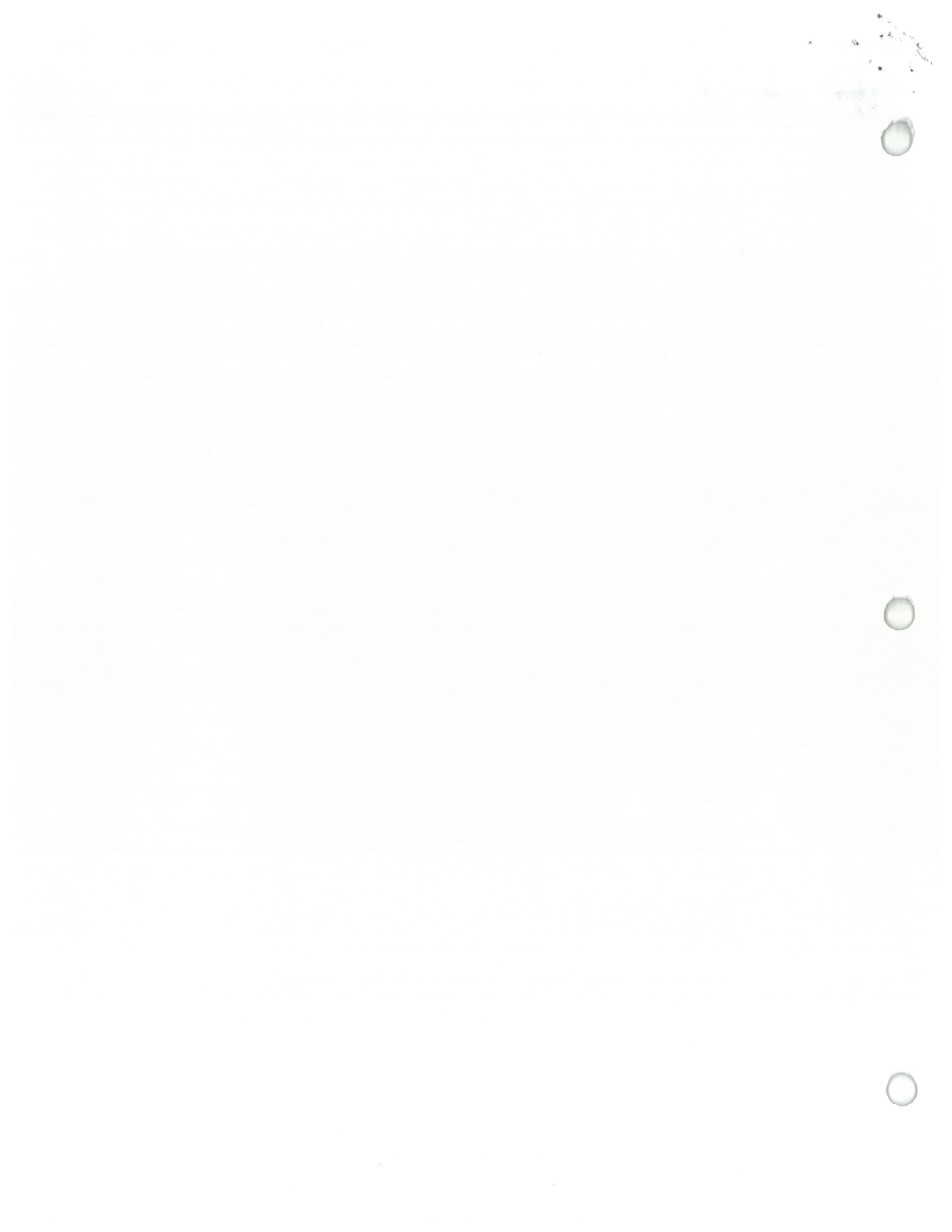
Mr. Fazen explained the mandatory training that is available to board members (a four hour course). He will get a schedule to the new members. Mrs. Doyle said there is one at Vo-Tech in March.

**ADJOURNMENT:**

Mr. Sabatino presented a motion to adjourn the meeting at 9:40 p.m., seconded by Ms. Miller and carried unanimously.

Respectfully submitted,

Barbara A. Malone  
Recording Secretary



Applicant\*     Engineer  
 File\*         Borough Clerk  
 Original)     Chairman  
 ~~Original~~     Zoning Office

Application No. 21-06

RESOLUTION

BOUND BROOK PLANNING BOARD

Applicant: Leicester Property Management Group, LLC

Location of Premises:  
Street address: 12 Maiden Lane  
Lot and Block: Lot 7, Block 11

Present Zoning: B/R

Date Resolution Approved as to Substance: 12-14-06

Date Approved as to Form: 1-11-07

Relief Sought: Site Plan, with waiver of full submittal requirements, to permit change of use of first and second floors to corporate offices for a soccer school

Be it resolved that the Planning Board of the Borough of Bound Brook makes the following findings and conclusions with respect to the above application:

PLANS AND REPORTS SUBMITTED BY APPLICANT:

1. No plans were submitted.
2. Application Number 21-06 dated 10-24-06.

REPORTS SUBMITTED BY OR ON BEHALF OF BOARD:

None.

ADDITIONAL EXHIBITS RECEIVED DURING HEARING:

1. None.

WITNESSES APPEARING BEFORE BOARD:

1. Justin Marriot, principal of applicant.

2. No members of public appeared.

FINDINGS OF FACT:

1. The property has previously been used as a theatre, church and offices for a computer business. Applicant intends to use the building for corporate offices for a soccer school.

2. Applicant testified that it does not intend to teach soccer on the premises and was advised that a use variance may be required if it ever desires to teach on the premises.

3. Applicant does not plan any changes to the exterior, and plans to make only cosmetic (as distinct from structural) changes to the interior.

4. Applicant stated that approximately 15 employees will use the premises on a regular basis. Any greater use will be only occasional. The employees coming by car will use the municipal parking lot if spaces are available.

5. The proposed office use is a permitted use.

APPROVAL AND CONDITIONS OF APPROVAL:

The proposed use of the property as corporate offices for a soccer school as described above is hereby approved subject to the following conditions, all of which were agreed to by the applicant:

1. Applicant shall make changes to the facade in accordance with the recommendations of the Board's architectural review subcommittee. To carry out this condition applicant shall submit to the architectural review subcommittee i) photographs of the premises in their current condition, ii) a sketch of any changes that the applicant proposes to make to improve the appearance of the facade, and iii) sketches of the interior floor plans of all floors in the building in their current condition with a notation of any changes intended by applicant. Following this submittal applicant shall schedule a meeting with the architectural review subcommittee to discuss its recommendations.

2. The recommendations of the Board's architectural review subcommittee shall be put into writing by the committee and added to the file maintained by the Borough for this application.

3. No building permit shall issue until the application therefore, including in particular the building plans submitted therewith, have been approved by the architectural review subcommittee in writing.

4. The approval granted by this resolution and development pursuant to this approval is subject to compliance at all times with all applicable federal, state, county and municipal law and regulation including, without limitation, all environmental, building and property maintenance codes.

5. The development constructed pursuant to these approvals shall be maintained in good condition and kept in compliance with this approval in perpetuity.

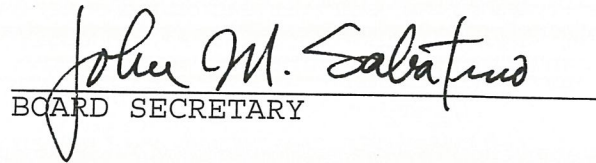
Date:

1-25-07

  
BOARD CHAIRMAN

Date:

1.25.07

  
BOARD SECRETARY

