

**BOROUGH OF BOUND BROOK
SPECIAL PLANNING BOARD MEETING**

December 22, 1999

The meeting of the Planning Board was called to order by chairman Lyle Strain at 7:10 p.m. in the municipal chambers, 230 Hamilton Street, Bound Brook, NJ.

ROLL CALL

The following members were present: Mayor Gilly (in audience), Mr. Ruscetta, Mr. Ryan (in audience), Mr. Gaglia, Mr. Strain, Mrs. Pournaras, Mr. Custy, Mr. Thompson, and Mr. Anderson. Also present were Mrs. Malone, Recording Secretary; Mr. Rodgers, Board Attorney; Mrs. Doyle, Planner and Mr. Cilo, Engineer.

COMPLIANCE STATEMENT:

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

APPROVAL OF MINUTES

Mr. Custy made a motion, seconded by Mr. Gaglia, to approve the minutes of the December 8 Special Meeting and the December 9 Regular Meeting. Unanimous.

ANNOUNCEMENTS:

Mr. Strain noted this is a special meeting on application 29-99, Hagan. He said this is the only item before the board for hearing tonight; the board has a couple of matters to discuss afterwards, including an ordinance change, an application to be deemed incomplete, discussion of previously conducted hearing and administrative work to be finalized. The board also has to reschedule a redevelopment meeting.

Since this is a Special Meeting for one purpose only, the board unanimously decided to dispense with the Recognition of Public at this time; they will be allowed to ask questions and make comments at the appropriate time during the proceedings.

#29-99 , HAGAN FUNERAL HOME (continuation)

Mr. Rodgers assured the board that Mr. Thompson has certified, in writing, that he heard the tape of the previous meeting on Hagan and is therefore qualified to participate in tonight's hearing.

Ms. Dragan swore in Mr. Roger Plutar, a Bound Brook realtor. He had listed the noted property several times. He tried to sell the house by normal procedures: open houses, advertising, etc. It is a residential property and was listed over the years at prices ranging from approximately \$80,000 to \$184,900. It was once

listed as high as \$209,900. Ms. Dragan asked if he felt the prices were reasonable; he did. The taxes are quite high for a single family home. When she asked about drawbacks, the busy street was cited, as well as one bath and churches surrounding (no yard for children to play). There was one offer for parking of limousines at \$145-150,000.

Ms. Dragan asked if it could be sold as a two family residence; the answer was yes. He did think it was a good location for a funeral home. Census information from the Somerset County Planning Board was submitted as Exhibit #A4. It goes back from 1960 to present. In 1960, the over 55 population was 1724; 65 and over was 867. The median age in Bound Brook was 31.7. In 1990, over 55 was 2237; 65 was 1303 and 33.8 was the median age. The population (total) in 1960 was 10,203 as compared to 9,487 now. When Ms. Dragan asked what conclusions could be drawn, Mr. Murray objected, indicating he is not qualified (it would be speculation). Ms. Dragan asked what the numbers show -- objection noted. The population of the area is apparently getting older.

Mr. Murray asked, with regard to the proposed second floor apartment, where the bathroom is located. It is upstairs. Mr. Murray asked if the zone allows two families; it does. The house is capable of being renovated to provide two family use, as noted by Mr. Plutar, but the first floor would have only one very small bedroom. With regard to the listing history, Mr. Murray asked what was the most recent listing (1998). Asked if it was utilized as a single family house, it was. Physically, Mr. Murray asked if there is anything that impairs the physical use as a single family home -- Mr. Plutar said the layout would be difficult to work with. There are no structural problems with single family use. Mr. Murray asked if other structures in Bound Brook had as much difficulty in selling, in similar locations. For single families, the answer was yes. They were located on a busy road or surrounded by churches. Mr. Murray asked if there are other houses in Bound Brook located adjacent to churches. There are, but he did not know how many -- there are eight or nine churches, almost all with residences adjacent, but not all on busy roads.

Mr. Murray noted Mountain Avenue projects out to Route 22. When asked about the zoning on Mountain Avenue, Mr. Plutar stated north of 28 it is predominantly residential, south is business properties and multi families. With regard to Mountain Avenue being heavily traveled, Mr. Murray pointed out that there are residential properties on this street. Mr. Murray asked if the listings have been reasonable by fair market value. Mr. Plutar felt the taxes were just too high, rather than the listing price being a drawback. He felt the prices were realistic.

Mr. Murray asked if there is a demand for residential property (single and two-family) in Bound Brook; Mr. Plutar said yes. If the price were adjusted, would it help? It would still be between the church and the synagogue. He feels it is obsolete as a residence. Mr. Murray asked if it is physically or locationally

obsolete. Mr. Plutar felt it was both. When asked how long the previous owner lived there, Mr. Plutar thought it was since about 1950.

Mr. Murray asked if it was used as a single family house for 40-some years. Mr. Plutar said no, the doctor had used the downstairs as an office. Mr. Murray asked if that combined use would be capable of continuing today. Mr. Plutar felt most professionals would not want it. Structurally, it is physically capable of being used that way.

Ms. Dragan asked if anyone had asked about the use of the property as a two-family house. Mr. Murray objected to the projection of what people envisioned it as. Location is relative. Asked if there other houses in the borough sandwiched between two churches, Mr. Plutar did not think so. In the R4 zoning ordinance, Mr. Plutar could not find office use listed; it would need a variance. He understands there was a variance granted but never implemented to use it as an office.

Mr. Murray asked if the seller's expenses impact the fair market value of a property. Mr. Plutar said they would if there are liens on the property. He did not know if there were any on this property.

No questions were asked by the board or the public. Mr. Plutar was dismissed.

Mr. Michael Tobia was sworn in as a witness for Mr. Murray's client. He is from Morristown and represents the objector as a planning consultant. He explained his qualifications and described 18 years of experience; the board recognized him as an expert witness.

He was retained approximately one and a half months ago by Mr. Murray's client; he reviewed the site plan and conducted a number of inspections. He attended all the borough hall testimony as well. The most recent master plan and the most recent updates of the master plan were obtained. He reviewed them as well. Mr. Murray asked him to describe the property that is the subject of this application. The property is located at 225 Mountain Avenue, and he gave approximate measurements. He showed the property on a zone map (exhibit reflecting land uses in the area). Uses are color coded on the exhibit, which was entered as O2, 12/22/99.

Mr. Hagan's property is shown in red tape on the exhibit. The applicant's site plan is superimposed on the exhibit to help put it in context with the neighborhood. The graphics are exactly as pictured on the site plan. The yellow area is residential, single and two-family homes. Red graphics are generally south of East High Street depicting a commercial land use pattern. Church properties are shown in green. Mr. Murray asked Mr. Tobia if the driveways are shown on the exhibit. He explained it is a bit fuzzy, and Mr. Murray asked if the East High Street entrances are shown; they are not. The entire site is not shown.

He said zoning basically reflects the pattern in the area. There is an OB zone and a B2 zone in the area. The R4 zone basically encompasses 2/3 of the area. Business zoning is on the east side. Mr. Murray asked if the OB zone ends at Union Avenue; no, it does not. Asked what the zoning is north of Union Avenue, he replied it is mixed. The OB zone is a small pocket along that stretch of Mountain Avenue.

Minimum lot dimensions of the R4 zone were discussed. Prohibited in R4 are anything not specifically permitted (other than 1 and 2 family, public uses, institutions and utilities). Anything else is prohibited. Mr. Murray pointed out that funeral homes are prohibited. The addition will approximately triple the size of the present building and the second floor will be used as an apartment. The home will have a maximum seating of approximately 150. Site coverage is approximately 82.6%. Residential use, when questioned by Mr. Murray, was described as substantially less. The variances requested (about 10) have been described in testimony. They were re-listed by Mr. Tobia.

Joint parking is specifically not permitted in residential ones. A loading area is required, and parking in the zone must be on the same lot. Mr. Murray noted the applicant is seeking both use and non use variances; he asked Mr. Tobia to explain the difference. There are bulk variances requested as well as use variances. Use variances must be supported by special reasons (Medici proofs). Mr. Murray recalled Mr. Sullivan's testimony regarding bulk variances; they must be justified as hardships or benefits outweigh detriments. His recollection is that it was entirely focused on the use variances. Mr. Murray asked if the written report from Mr. Sullivan covered the bulk variances; Mr. Tobia said no.

With regard to special reasons, the applicant must show a demonstration of particular suitability promoting land use law, by reconciliation under the Medici standards that the use will not constitute a detriment to the ordinance. With respect to particular suitability, Mr. Murray asked if that would be encompassed within the general welfare. Mr. Tobia said no. Asked about particular suitability, Mr. Tobia said in each case the application must demonstrate the site is particularly suited to the use. It must make the site more suitable than other areas in the zone.

Mr. Murray cited Medici that although the use fits well, it does not equate to special reasons. Mr. Tobia agreed. He further quoted, the particular site must be the location for the variance. Mr. Tobia agreed with this statement also and said the applicant alleges it fits well in the surrounding area. Mr. Tobia said the applicant's testimony has sought to distinguish the location as satisfying particular suitability. In listening to testimony and doing field work, he does not feel these are appropriate distinctions. It is one of 75 such properties. Churches are located throughout Bound Brook (8-10). Being adjacent to a church does not, in his opinion, make it distinctive.

Mr. Murray asked if, from a planning perspective, the location of a funeral home must necessarily be near a church. Mr. Tobia said no, he had never heard the rationale advanced before that it must be so located. He does not see any significant advantage over being farther away from the church. Asked if there are residential uses adjacent to the site, he was told there are to the west on John Street and to the south.

Mr. Murray asked if there are other funeral homes in Bound brook? Yes, there are two others in walking distance of this property. Asked if there are others outside of Bound Brook but within the region, Mr. Tobia replied there are about a half dozen. Mr. Murray asked if, from a planning perspective, a municipality generally recognizes funeral homes as permitted uses. Some do, others do not. Are they generally permitted in residential zones? Never, according to Mr. Tobia.

Mr. Murray said he has heard testimony that more funeral homes will encourage competition. Mr. Tobia said competition is not a purpose of any zoning goal. Mr. Murray asked what others were presented. Mr. Tobia said property taxes and site; he said Mr. Hagan had said it would result in enhanced property taxes. Mr. Tobia said Conroy pays about \$10,000; the house generated \$7,000 – he does not feel this is a significant enhancement. Mr. Murray asked if this would justify a variance; not to Mr. Tobia's knowledge. Mr. Murray asked about the property no longer being an appropriate use; Mr. Tobia said the use is now allowed and the building is in good repair. He cannot understand a hardship argument. As far as the obsolescence, Mr. Murray asked if it is synonymous with economic inutility. Mr. Cox's book, page 150, states that functional obsolescence is not synonymous with economic inutility. Thus, the fact that a building requires extensive renovation does not meet the criteria for a 'd' variance. Mr. Tobia said the building is not in a dilapidated state. There are no external indicators of neglect.

Mr. Murray asked if this property can be utilized for a conforming use. Mr. Tobia said it is now used in a conforming use, single residential. It could go to two-family with some amount of conversion and that would be consistent with local zoning. Mr. Murray asked, if an owner ceases to have property devoted to his most profitable use, is a zoning ordinance which restricts that goal a justification? No, according to Mr. Tobia. A more profitable use does not absolve someone of limitations of the zoning. If the zoning precludes any profitable use, it would be the case. Mr. Tobia feels it is not unlike countless other properties in the R4 zone.

In reference to another case, Mr. Murray said an owner of residential property wanted to take a single family house and convert it to a combination apartment and funeral home on that site. The board of adjustment granted this variance, and the law division reversed that ruling. Mr. Tobia explained the similarity to Mr. Hagan's application. Mr. Murray said the court stated that the Medici standards were repeated; the variance should be the exception rather than the

rule. In that case, there was no particular suitability standard met. Because a use fits well in the area, a higher burden of proof is required.

Visual environment would be enhanced, according to Mr. Sullivan. Construction of the addition at the rear would be a commercial use in a residential zone with 82% site coverage. In the context of a residential zone, what is there now is more visually desirable according to Mr. Tobia. This would bring site activities that are not customary to a residential zone (crowds, noise, door slamming, etc.) There could be nothing positive to come from this commercial land use being introduced here.

Mr. Murray asked about Medici proposed use and why this use is not permitted in the first place. Mr. Murray said it would have to be reconciled; Medici said the board must adopt specific findings as to why intent and purpose of the zoning ordinance and master plan have been compromised. Mr. Murray said special reasons cannot justify themselves. Mr. Tobia said we all know the R4 zone does not permit funeral homes. The use was in existence when the zoning ordinance and master plan were adopted. Funeral homes were a use in this town as early as 1916. Churches also predated zoning in this municipality. They are not novelty uses.

Some uses were not around because the use is new; funeral homes clearly do not meet that test. They are also specifically permitted in another zone just north and east of this site. Churches are also recognized by the zoning ordinances. They are permitted in residential zones. Mr. Murray asked about the reconciliation of the joint parking. Mr. Tobia said it is directly addressed and permitted in non-residential zones, only by planning board approval. It is not permitted in residential zones. On-site parking is required by zoning in residential zones. Mr. Murray asked what he had learned from a review of the master plan. Mr. Tobia said they have been adopted most recently in 1988, 1996 and 1999. Over that period of time they maintain residential use of this property, though numerous other changes were made elsewhere. The 1988 master plan suggested the town needed a supermarket. Any commercial use here would be inconsistent with the master plan.

Mr. Tobia noted that in 1988 the master plan suggested that the OB zone line was inappropriately drawn. It suggested an area to be rezoned to OB from R4. There are certain uses in that area that are more commercial. It takes an area within one block of this site into an OB zone. Zoning intent is clearly established. Mr. Murray asked, with regard to Mr. Sullivan's testimony, if he discussed the Medici issue? Mr. Tobia said he had not.

Mr. Murray asked about negative criteria and asked if that is another burden the applicant has to satisfy. Mr. Tobia said the applicant has to satisfy that it would not be a substantial detriment to the public good or to the zoning plan. Mr. Tobia feels it is a detriment to the zoning; commercial uses should be in a commercial

zone such as the one that specifically permits such uses. Coverage is 22% higher than permitted. In the neighborhood, most homes have landscaping in the back yard. Shared parking is also contrary to the zoning ordinance. The fence height variance, the eight foot fence, is because of the proposed land uses.

It is basically total ignorance of the R4 standards and simply constitutes a substantial list of variances that constitute the zoning. Mr. Murray asked about utilizing church property by a commercial user. Mr. Tobia said churches are permitted in all residential zones and are viewed as appropriate land uses adjacent to homes. They have peak hours of operation during limited hours on weekends. A commercial use with commercial parking use expands activity and hours of operation beyond what is anticipated for churches. Mr. Tobia said there are numerous properties in the OB zone that would be almost as convenient to the church.

Ms. Dragan asked if Mr. Tobia had walked the property. He had not. She asked what other properties in town are located between two churches. He said there are two to the west of the site between the back of the synagogue; there might be a couple on East High Street which have churches to the north and east, not sandwiched between, on the corner of Church and East High. She asked if he had looked at the uses on Mountain Avenue; he did not break them down but there are 43 residential properties on Mountain Avenue and a couple of apartment buildings as well as some 2-4 families.

She asked if he is aware that in the OB zone there are commercial and residential uses permitted next to each other. They could be next to a residence in the OB zone, but not in the R4 zone. Mr. Tobia said the zoning intent in the OB zone is to mix the uses. It is acceptable in the OB zone. She asked him which master plans he had reviewed, and he said 1988, 1996 and 1999. In the 1996 re-examination report, she pointed out that on page 4 it said Bound Brook has a history of converting one family homes to two family homes as inevitable. Number nine on page 5 says a relatively high portion of renter occupied housing is considered to be unfavorable. She asked how the maintenance usually holds up; he said it depends, but the rental of a building is not so much an indicator as whether the owner is on site.

She asked if the board had considered other joint parking based on hours of operation; he did not know. She asked how many viewing rooms Conroy has; he consulted his notes and said he does not have an answer. She asked which section of the ordinance mentions the 60% impervious coverage; he said if the zoning requirement is 60% it is typical that you find considerably less than that. In the Oradell case, she asked if funeral homes were permitted anywhere in the town. He said he did not recall. On page 203, it says funeral homes are not a permitted use in any zone in Oradell.

Mr. Murray asked if zoning distinguishes between owners and renters; it would be unlawful to do so according to Mr. Tobia. From the 1996 reexamination report, Mr. Murray asked if the standards are any different from prior master plans. According to his recollection, it was actually found in the 1988 document and is simply repeated. It is an ongoing concern in the town. Two family homes are permitted throughout the master plan revision process. Over that history, funeral homes have not been permitted in the residential zones.

Mr. Murray said one of the objectives of Mr. Sullivan's plan was the preservation of historical structures; is this property in an historic zone or is it over 100 years old? He believes it is dated at the turn of the century. Mr. Murray asked if using it as a funeral home would negate historic value; Mr. Tobia said it could potentially do so. It would seem to run counter to historical uses. Mr. Murray asked if the conversion of the church parking lot to this combined use runs contrary to the zoning of churches in a residential zone. He said it did.

Mrs. Doyle asked if the zoning reflects land use patterns. She noted it does not totally agree with Mr. Sullivan's map and she asked to compare. There is a lot 22 that is owned by a public entity and is shown on Mr. Murray's – it is shown as a church owned property but the property owner was present. The map Mr. Sullivan provided shows that there are non-permitted uses; Mr. Tobia was simplifying to show residential and non-residential uses. He did acknowledge apartment buildings, which he viewed as residential though they are not a permitted use in the R4 zone. Discrepancies were explained; one map was more detailed and therefore more accurate. The commercial uses are in the OB zone, and one of Mr. Tobia's points was that that is where the commercial uses are. There are three exceptions in an area of several dozen areas; the zone plan works. Generally, the uses conform.

Mr. Thompson questioned the statement that a variance should be the exception and not the norm. Asked if there are any other properties with variances, he did not know; therefore he did not know if they are the norm. In regard to Mr. Plutar's testimony, the owner had applied for a variance at one time. Would that variance still apply? Mr. Tobia said no because it has reverted back to residential use, or an abandonment of the old use. If it had been an office the whole time, subsequent owners would have the right to that use.

Mrs. Pournaras asked how long he has been an planner; and he replied 18 years. She asked when he came down Mountain Avenue for the first time, didn't it cross his mind that it was a lousy site for a one or two family house? No; he feels it is unfair to consider it sandwiched. The temple is set far back, past the open front yard. He grew up in a house next door to a church; churches and homes can exist side by side. She asked if he felt a family with a couple of kids would be more appropriate and he said yes. It has existed largely in residential use since it was built. It would not be the preferred residential location in town. He admitted that situations change, but the one thing that has not changed is the

zoning; it is still residential up and down Mountain Avenue. She asked if it is not the planning board's job to give variances if they think the proposed use is more suitable than the use that is allowed. He said no, it is not your job to give variances – only in particular situations. If this site is so unsuitable, there are many others in town that are similarly compromised. The proper way would be to change the zoning, but that has not been done here. She asked if this would be too many funeral homes; he said he did not say that. He said there is no foundation in the land use that embraces competition as a planning goal.

Mrs. Doyle asked about economic inutility. From a planning viewpoint, because that is a pre-existing use, she asked if those homes surrounding that property suffer by virtue of that funeral home. Mr. Tobia said to ask those neighbors how they suffer. If the Conroy site was built today with all the variances, he could not support it in that location. Mrs. Doyle said therefore, the surrounding property suffers. He would not say that.

Mr. Anderson asked if it was apparent to an organization that the use of a property in a certain way received a lot of community support, what bearing it would have on the board. Mr. Tobia replied that this is not a popularity contest. Some uses have been deemed to be inherently beneficial because they are good for the neighborhood, but it is not a science. Mr. Anderson asked how many criteria it would have to meet, and Mr. Tobia said all of them.

Mr. Thompson asked if a tax revenue increase could be a special reason. When Mr. Tobia indicated the increase is not significant, Mr. Thompson asked to whom it would be insignificant. He felt that a \$3000 increase would be significant to any senior citizen who was asked. Mr. Tobia said the board cannot simply zone for ratables.

(Break)

The meeting reconvened at 9:20 p.m. The public was invited to ask questions of Mr. Tobia.

Mr. Jack Ford of Wahnetah Drive asked Mr. Tobia how the character of the neighborhood is identified. It has been characterized as a residential area, and he wondered if Mr. Tobia was referring to the garden apartments, or multi-family residences. He asked if this would change the character of the neighborhood, and Mr. Tobia felt it would. Mr. Ford wondered why there were no objectors in the audience if this would be a negative change aesthetically. Mr. Tobia said it depends; it might be because of the popularity of the applicant or because the churches are in support of the application. Generally there would be objectors present. When Mr. Ford asked who called this a single family home, Mr. Tobia said the applicant's witnesses had. Mr. Ford pointed out that the property had been owned by a chiropodist, and Mr. Tobia acknowledged that according to testimony it had once been an office use but is residential now. He said the

office use had been abandoned. Mr. Ford explained that the owner was given permission to expand the use some years ago but he did not want to install the driveway. He asked how far away the OB zone is. Mr. Tobia said it is located 200 feet to the east and is separated by the street right of way and one property. To the north it would be three properties and about 400 feet. When Mr. Ford asked if the other funeral homes in town were obtained through a variance, Mr. Tobia said that they both pre-dated zoning. Mr. Ford could not understand why this one would be detrimental. Mr. Tobia explained that in his view, Conroy would have to be done in a significantly better way today. The fact that it exists does not mean it should be repeated. Mr. Ford noted that the lot is significantly larger than what is required in the zone where a funeral home would be permitted. Mr. Tobia stated that this property fails in every respect. The church and temple are permitted in the R4 zone, but this is a commercial use. If the temple were built today it would also be built differently. But those are existing conditions. Mr. Ford said that basically Mr. Tobia said the neighbors really don't matter that much as long as the property does not affect them adversely. Mr. Tobia reiterated that four properties away this is appropriate; here it is not. "You have to draw the line somewhere."

Father O'Connor noted this is very different from a bar or a wallpaper supply store. He said it is also true that religious services are routinely conducted in a funeral home. He feels that makes it compatible as a neighbor. Mr. Tobia admitted that commercial uses have varying degrees of intensity. Funeral homes have times they will be very quiet. He would place it in the middle of the spectrum, but it is not permitted. Those religious services could be conducted wherever the funeral home was located. Father O'Connor insisted that the funeral home has extreme similarities with the neighbors on each side, but Mr. Tobia stressed that the residential use is the better neighbor according to the ordinance. It could have been zoned for a funeral home, but the zoning office never did that.

Marguerite Hale, a Warren Township resident, advised that there are no funeral homes there or in Martinsville and she felt it would be an asset to the communities.

Mr. Ford asked Mr. Tobia what he meant when he said that the ordinance says it is a commercial use. The OB zone permits offices, single families and mixed uses. They disagreed on whether the OB zone is commercial.

Virginia Haley said she was born in Bound Brook and would not want someone in North Carolina to be enriched by her last business transaction. She would want someone she respects to handle her final arrangements. As far as the noise is concerned, she said there is already a lot of noise. She knows Bound Brook very well and wants Mr. Hagan to stay in business in Bound Brook. Mr. Murray asked who is in North Carolina, and Ms. Haley said Mrs. Conroy. Mr. Murray asked if

she dislikes Mrs. Conroy, and Ms. Haley said she knew her father but has never met the lady in question.

Bill Phair, 211 East Union Avenue, advised that his family has called on Ed Hagan five times, including once at 2 a.m. Mr. Hagan has always been kind and considerate, and he urged the board to grant these variances.

Ed Zujkowski of Longwood Avenue recalled that at one of these meetings Father O'Connor said many of the people in this town are silver haired. He is presently Post Commander of the local American Legion, representing 154 members, 102 of whom are World War II veterans. When the time comes to bury these legionnaires, this funeral home would provide an additional facility. He supports approval of the plans for the funeral home.

Bill Lore, 513 Grove Avenue, pointed out that Medici does not live in Bound Brook but he does. He stated some people have been turned off by harassing tactics. On the parking question, he noted that when he goes to Conroys he parks at St. Joseph's School, and he could cut Conroys' grass with scissors. He feels Bound Brook needs the ratables and most of the people want this.

Joni Kent of Carlton Street said that she has heard the statement that people do not want or need another funeral home. She feels we do need another funeral home in Bound Brook to take care of the good people here; our community is who we are. She feels the Hagans would do a wonderful job and they deserve that chance.

Mr. Ford said he thinks Ed Hagan is a great guy, and they don't come any better than the Chamberlain family. They opened their doors to Mr. Hagan. He has known that property for quite a while, and when it is on the market for that long it is a hardship to someone. He wondered if there were financial reasons for objections to the parking situation. He feels this is the best thing you could put in that place, and it is the perfect place even though it is four doors away from the OB zone.

Carmella Juronics of William Street noted that none of the existing funeral homes have facilities for the disabled. Mr. Hagan will have a ramp and will be handicapped accessible. He feels Mr. Hagan is caring and compassionate; he knows the families and the children. He said we want him and we need the ratables, and we appreciate that he intends to stay in Bound Brook.

Felice Zujkowski said if traffic can be stopped on Route 202, Mountain Avenue should not be a problem. She thinks the planning board is here to help the residents of the town. She feels sometimes we need variances and that is what the board is here for.

Frank Patullo fully supports Mr. Hagan's request for his variance for a funeral home. He wonders if Mr. Chamberlain supports the application, why does Conroy's object so strenuously?

A resident of Metape Circle asked where the objector is. Of all the people in the room, no one objects.

A Mountain Avenue resident, Steve Carfalo, recalled that Mr. Tobia said it should not be a popularity contest. He feels that democracy is, and democracy matters. As to what the people of Bound Brook want, he said that consent comes from local government and that is the way it works best. Since the hurricane, we have a very special situation. Even more than usual, Bound Brook should claim this variance as a strictly local matter. We have about 99% approval here. He also felt, if it is incorrect to use a zoning variance to enhance competition, neither should it be used to inhibit competition.

Mr. Strain closed the public portion of the meeting at this point.

Mr. Murray asked Ms. Hale what the distance in drive time is to Higgins Funeral Home from the Warren border; she replied it is right next to it. Mr. Murray acknowledged that this case is unique, but it is not free from state regulations. His client is asking that the board follow the constitution. If a voice vote could govern where we have low income housing, we would not have any. We are dealing with our mutual obligation to treat this case according to the law. The court says you cannot choose one planner over another. It is his position that when you apply the law, as you must, these people are disserved. The board does not act by popular demand. They are acting as a board of adjustment and have to find clear and convincing evidence of the standards Mr. Tobia mentioned. Mr. Murray believes the only evidence before the board is that which has been expressed by Mr. Tobia. They are here to poke holes in the applicant's case, and motivation is irrelevant. All of the factors must exist to approve this application.

Are there special reasons? Do they make sense? Do they meet the standards? Is the site particularly suitable for a funeral home because of the site? A funeral home must be located here not merely because it is convenient, not merely because it is located adjacent to the parking lot, not because it fits the surrounding area – that fitting is entirely inconsistent with what the court says is "particularly suitable," according to Mr. Murray.

With regard to the general welfare, that has been explained to include particularly suitable. The general welfare may be served by an A&P or a movie theater. This does not give it entitlement as a special reason. Does it serve the general welfare because it is located here? Mr. Murray says you cannot grant it because Mr. Hagan is loved by the community; there are two funeral homes in the community. The special reasons were critiqued to the board that they don't exist.

It would be difficult to deny, at this point, after granting it several months ago. The economic hardship of owning the property does not give you the entitlement to grant the variance. He bought the house in a single family zone. It could be made a two family house, consistent with zoning. Under the applicable law, there is no proof that the property has no economic utility. Mr. Murray feels undue hardship does not exist. He feels the church has not presented undue hardship or special reasons under the standards of the statute.

As to negative criteria, evidence of the objector's planner is contrary to the applicant's planner. Master plan after master plan, ordinance after ordinance, say "no commercial use." The zoning means something: funeral homes are to be located where we said we want them. Funeral homes are permitted on a 60x120 lot with on site parking; that would not be feasible. The intent of the zoning ordinance is to get rid of pre-existing non-conforming use. But for the relationship with the church and the funeral home, it would not be applied for.

Ms. Dragan pointed out that there seems to be a conflict of experts. The Sullivan report does refer to Medici. When there is conflicting expert testimony the board may decide which to accept. Zoning is not a perfect science, and that is why variances were created. Courts generally do not like use variances, but the law still permits them. The house was there long before the church and the synagogue. The property became an "island unto itself," as Father O'Connor said. The use was not zoned for, but it is perfect and compatible. This use is practical and is of benefit to both congregations, according to Ms. Dragan.

The Oradell case stated that just because it fit in with the surrounding area it was not a good enough reason. The property was partly in residential and partly in an office zone. There were four existing funeral homes within a three-mile area, and they were not permitted in the township at all. Bound Brook does permit funeral homes in another zone, so a need is presumed. And churches do have a direct relationship to funeral homes. No one wanted to buy this property as a one or two family home. It will be better maintained as a funeral home than it would be as a rental unit. The proposed parking lot is complementary. The property is in a zone in which the permitted use is not the norm; residences are permitted in the same zone as a funeral home. The character of the neighborhood is changing and will continue to do so because of the flood. The site is not suitable for the zoned use.

There is plenty of parking. If the board tells the applicant what is reasonable he will revise the plan accordingly. The population in this town is both declining and graying. There is more to determining need, though. Ms. Dragan wondered why Conroy is the only one against the application. The increased advertising that all three will have to do will bring competition, and that will drive down costs. She noted that monopolies are frowned upon. Mr. Murray objected to these statements regarding competition.

Regarding bulk variances, Ms. Dragan said the burden of proof for bulk requirements is not as high as for use variances. The engineer testified that there was no other place for the driveway. Mr. Hagan said he could not make the building any smaller. They feel the benefits outweigh the detriment for the 'c' variance. The church is not an applicant; they are an owner, and they give their consent. She does not think a separate application is required by the church. Mrs. Doyle agreed that they consented as owner. Father O'Connor asked for confirmation that they are consenting to allow the parking but are not seeking a variance; Mrs. Doyle said the variance was applied for to allow the parking. Mr. Murray conceded that the church has consented to Mr. Hagan's application.

(Mr. Strain noted that there are no more tapes in the building and asked Mr. Murray's permission to use the stenographer's services to record the remainder of the meeting; Mr. Murray agreed.)

Mr. Strain advised it was time for the board to deliberate. Mrs. Doyle said she thought Mr. Murray summed it up very well when he said we are a kingdom that is governed by rules, and this board is governed by rules. This application was previously approved and those rules were not followed. She also conceded that this is not an application on popularity. It is not based upon financial aspects or whether taxes should go up or down. This is probably the most difficult one the board will have to grapple with.

Special reasons have been advanced in Mr. Sullivan's report. She would like to pose another argument. This zoning ordinance was grandfathered in 1966, and no major revisions have been made since that time. If you grant or deny, you have to do it for the right reasons. She wondered if those who developed the ordinances overlooked how far funeral homes must be from a church. She noted that funeral homes and cemeteries have never been an issue in the board's life. If it was overlooked, that would be very important. The funeral parlor designation has not been looked at.

Mr. Murray stated that this information is privy by Mrs. Doyle and the board, but we have no way of knowing that the board has overlooked anything. He felt Mrs. Doyle was presenting evidence that would be subject to cross examination.

Mr. Rodgers affirmed that if Mrs. Doyle, the borough planner, is going to give testimony that includes information that is not in the record they may ask that she be sworn in and cross examined. The board officially called Mrs. Doyle as a witness and she was sworn in by Mr. Rodgers.

She further stated that the OB zone has funeral parlors listed as a permitted use. The same uses were spit out again for that area. She wondered if not mentioning it meant they did not want it. There is nothing she has ever written that discussed cemeteries or funeral parlors. Cemeteries are not mentioned at all. She is only raising the subject because she has to raise it. The issue of

need is one that is of interest and importance. It is important because it is very hard to establish if there is need. She feels that what is most interesting is that the competing funeral director stood up and said there is enough business for everybody.

Regarding parking, this town has been plagued with parking problems and the desire to share parking. We actually regulate in order to time share.

As to particular suitability, it is an interesting and logical and appropriate contention for the church to the cemetery. Churches are inherently beneficial; when it comes to bereavement or interment it is not inherently beneficial.

The report cites special reasons, and you have to decide if it promotes health, safety and the general welfare. In this case, it is in the interest of the funeral home to have a parking lot available. The objecting planner did a good job with details, and both had very good arguments. The board's decision must be founded under the rules, not emotions.

Mr. Anderson asked Mrs. Doyle about her opinion of the hardship criteria. She asked if it is a matter of economic hardship. No one wants to buy this property. You have testimony from a planner saying you can use it for a house and a realtor saying "you can use it for a house but no one wants it."

Mr. Murray asked, with respect to undue hardship, if the standard is "we have tried to sell it and nobody wanted to buy it at the price it was listed for." Mrs. Doyle said the standard is whether or not it is devoid of use. Mr. Murray said it has economic and physical use but someone has come along and offered the price it was on the market for.

Mr. Murray said that although no zoning has been stated, could it not be legitimately stated that it is not a question of the planning board never having considered funeral homes, but that they did recognize there were two in place and they have been considered indirectly.

Mrs. Doyle said this is not true. She has been the planner in the borough for approximately 15 years and has been party to all the conversations. In this case, there is no evidence to say that it was an oversight. She has put on the record that she truly had not addressed that subject.

Mr. Murray asked Mrs. Doyle if she was aware of the existence of the Conroy Funeral Home and the Taggart-Chamberlain Funeral Home. She said she was aware of the fact that they were there but did not know their names or locations. Mr. Murray pointed out that this municipality had set up a specific zone for funeral homes. At that time the municipality knowingly put them in as a permitted use.

Mrs. Doyle noted that at some point prior to 1988 it was typed in expressly. Mr. Murray asked Mrs. Doyle if she knows of any shared parking between one residential and one non-residential lot or two non-residential facilities sharing. Mrs. Doyle said she would have to think about that.

Mr. Murray asked Mrs. Doyle when stated that the board may have overlooked something, if she was dealing with the Board of Adjustment, she said in many instances, yes. But both the planning board and the board of adjustment only review the changes, not those existing. Mr. Murray asked if she was saying that this board and its predecessors totally overlooked and are now surprised that funeral homes are not permitted in residential areas. She replied that she could not speak for the board, and Mr. Murray noted that this board cannot speak for prior boards.

Mr. Anderson asked when was the last time someone wanted to buy the subject property. Mr. Gaglia said the previous owner bought it about 1955. Mr. Anderson continued, it has been 40 years since it was on the market. Mr. Thompson asked about the allegation that the fact that Mr. Hagan paid a lot of money for the property does not constitute undue hardship. Mr. Rodgers explained that you have bulk variances and use variances, which are the more critical. He considers "undue hardship" misleading, meaning the property is not usable as zoned.

Mr. Thompson made a motion to approve, seconded by Mr. Gaglia.*

Mr. Rodgers noted the last time this matter came up the resolutions had elaborate conditions and details of the approval. He asked if the board intended to vote on it without them. Mr. Strain had a copy of the two resolutions. The site plan approval had conditions listed as A-M and the variance approval had 1-17.

(Break)

The board voted first on the approval of the variances as listed below:

1. Mixed use, funeral home and apartment
2. Joint use of adjacent parking lot
3. Driveway to be located on the same property as the existing house
4. Building height on existing structure
5. Lot coverage
6. Side yard setback for northerly driveway
7. Ground sign dimensions
8. Fence height
9. Total number of parking spots to be made available
10. Absence of a loading area if that is required
11. Not all parking on the same lot

It was noted that five affirmative votes would be required for the variances. Mr. Strain made a statement regarding this particular application, noting it has been a long and laborious application with a cyclone of emotional and intellectual issues. He disagrees with the objectors that it is not unique, and he further disagrees that it is not suited to its intended use. On the parking issue, he feels it may be something that the board has dealt with many times. It may not set the ideal of planning, but sometimes the real work never meets the ideal. In this case, the use of an adjoining parking lot to satisfy the needs of this use is, in his opinion, a reasonably good use for the community and the land. That parking lot sits there hour after hour and day after day, going to waste. There is no way this will impair the intent of the zone; that line is only a couple feet away from this property.

Mrs. Pournaras noted this property has always struck her as being one that she would not like to live in with a family. She also thinks competition is a good thing. In the surrounding area, there must be 500 restaurants, and she sits on this board and approves more even though she owns one. She finds it very easy to understand that no one doing that master plan was actually thinking of funeral homes. She would like to commend the Hagens for having the nerve to open another funeral home in such close proximity to two others, and she knows they will run it well.

Mr. Custy stated he feels it is a good use of available land. Bound Brook is land-locked. This property is suitable for a funeral home and it is a relatively benign use with a good location. There is no on-site parking, which is always a problem in Bound Brook. He feels the total benefits outweigh any detriments.

Mr. Thompson feels the vote is based on two items: hardship and detriments to the public good or zoning plan. He feels the lot itself is the hardship. It has been for sale for years on and off, and prior to that it was in the same family for 40-50 years. If they had tried to sell it earlier, he feels we would have had this meeting years ago. He feels the OB line, which is only 200 feet away, is just a line and could be moved either way. He also feels the lot is unique. Mr. Rodgers asked if he was referring to the conditions as not detrimental, and that they can absorb the use. Mr. Thompson said if you just go north of the property there are no residential houses at all. It only makes sense that it will not be a residential use any longer. The only thing it can be is a commercial use. He does not think it will affect the zone one way or the other if it is permitted; it will be positive for the public good.

Mr. Rodgers asked what the positives are. Mr. Thompson said it will take a piece of property and improve it; it will be made to look presentable. It will also increase the tax base and give Bound Brook another ratable. It will also be convenient with the parking lot next door, with ample room.

Mr. Anderson stated he agreed with his colleagues' statements. He also noted that there is an increasing demand for the services of this business in Bound

Brook. He also believes that one of the providers is "out of favor" and does not serve the needs of the public, thereby increasing the demand on the existing funeral home.

*Vote on Mr. Thompson's motion to approve the variances:

Ayes: Mr. Gaglia, Mr. Strain, Mrs. Pournaras, Mr. Custy, Mr. Thompson
and Mr. Anderson.

Nays: None

Motion carried 6-0.

Mrs. Pournaras made a motion to approve the site plan, seconded by Mr. Anderson, with the 17 original conditions as listed on the first resolution.

Ayes: Mr. Gaglia, Mr. Strain, Mrs. Pournaras, Mr. Custy, Mr. Thompson
and Mr. Anderson.

Nays: None

Motion carried 6-0.

Application #33-99, Westbrook Inn

Mr. Anderson made a motion to deem the application incomplete as per Mrs. Doyle's recommendation, seconded by Mr. Gaglia. Vote 6-0-1 (Mr. Gaglia abstained). Motion carried.

Redevelopment Meeting Rescheduled

The Redevelopment Meeting will be held at Bound Brook High School on January 26, 2000.

#15-99, KURTZ (MINOR SUBDIVISION)

Mr. Cilo asked the board to reaffirm the minor parking lot subdivision that was approved on May 27, 1999. He noted that, due to legal hangups, the time has run out.

Mr. Anderson made a motion to reaffirm approval, seconded by Mr. Custy. Unanimous.

ADJOURNMENT

Mrs. Pournaras made a motion to adjourn at the meeting at 12:15 a.m., seconded by Mr. Anderson and carried unanimously.

Respectfully submitted,

Barbara Malone, Recording Secretary