

**TENAFLY PLANNING BOARD
REGULAR PUBLIC MEETING
NOVEMBER 8, 2006
MINUTES**

Chairman Sellinger called the public meeting to order at 8:06 p.m.

The announcement was made regarding compliance with the Sunshine Law. Chairman Sellinger commented the NOTICE to amend the annual meeting schedule for November 8, 2006 was published in The Press Journal on November 2, 2006.

The Secretary was asked to call the roll:

Present: Mr. Sowlakis, Mr. Galant, Ms. Kelly, Mr. Tremble, Mr. Kelly,
Mr. Sellinger, Mr. Allen, Councilman Salvatore, Mayor Rustin,
Mr. Lee and Ms. Wilmit

Absent: None

Also present: Jeffrey Zenn, Board Attorney
Mike Carroll, Borough Engineer's Office
Sean Moronski, Planner
Frank Mottola, Zoning Officer

APPROVAL OF MINUTES of Regular Public Meeting of September 27, 2006

Mayor Rustin made a motion to approve the minutes of the regular public meeting of September 27, 2006 as written; seconded by Mr. Allen and so carried.

PUBLIC HEARINGS SCHEDULED FOR THIS EVENING

1. PB#1-06-07 – Site Plan/Variance

Block 1309, Lot 3
245 County Road
Applicant: Di Feo BMW

a. Continuation of Hearing from September 27, 2006

Chairman Sellinger asked the representative for this application to step forward.

Mr. Galant noted he had listened to the tapes of the previous meeting and would like the record to show that he has given affidavit to that affect and assumes this qualifies him.

Attorney Zenn asked Mr. Galant if he had signed a certification?

Mr. Galant answered yes.

Mr. Urdang came forward and noted he was representing the applicant, Di Feo BMW. He commented, as you know, this is a continued public hearing. Actually, we have had two prior public hearings. At the first one there were some problems with the recording

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device. At the last hearing which was September 27th, for all practical purposes, we started the testimony over again. We had Mr. Coco recap all his testimony from the earlier meeting and then he continued on with certain changes in the plans.

Mr. Urdang: We also had testimony from Steve Capasso, representing United Auto Group, the holding company for Di Feo BMW.

Mr. Urdang: We have two remaining witnesses. One is the applicant's architect; the other is the traffic engineer. Both are present tonight.

Attorney Zenn commented while waiting for the witness to organize his material, he would like to swear in the board engineer. Attorney Zenn swore in Michael Carroll, from Hals Engineering. Mr. Carroll gave his credentials and commented he has filled in for Mr. Hals on a number of occasions and had testified before this board previously.

Mr. Urdang called Ramon J. Degheri, representing Canzani Associates Architects, 80 East Ridgewood Avenue, Paramus, New Jersey.

Mr. Degheri gave a brief resume of his education and professional experiences. Mr. Urdang offered him as an architectural expert.

Mr. Zenn commented so recognized.

Mr. Urdang asked Mr. Degheri to give a description of the building dealing first with the interior, then with the exterior.

Mr. Degheri explained on the ground floor there will be thirty-seven spaces which will be utilized for the storage of vehicles and also we'll have six diagnostic bays. There will be a parts department, fire storage, information technology area. There will be a break room, men's and women's toilets and also a locker room on the ground floor.

He continued and explained there will be an elevator and staircase to the second floor which is the service area. There will be twenty-nine service bays and also a parts storage area as well as two toilet facilities and a tool area.

He explained ingress and egress will be in a one-way fashion throughout the service area and he pointed out the cars would exit on the left side of the building which would be the east façade.

Mr. Degheri handed out renderings depicting both the front and the rear façade of the exterior of the building.

Attorney Zenn marked the rendering of the front of the building as **Exhibit A-7** and the rendering of the rear of the building as **Exhibit A-8**.

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Mr. Degheri explained the front façade which is facing County Road has the upper two-fifths of the building faced with Lucabond (a metal sandwiched type material). Below that we will have two different colors of a split face or textured block. We show a light gray and dark gray on the rendering. That block will essentially wrap around the entire façade of the building. Where you have a grade change, the block will step down to reflect that.

He noted there will be some clear story windows located in the service area letting in some natural light in the front.

Next, he described the type of doors which would be a high speed roll up glass metal type door which he felt was attractive.

He pointed out the building height varies. The front on County is about twenty four feet, four inches (24' 4"). The rear moves up to thirty-seven feet, four inches (37' 4") due to the grade change.

He added the mechanical units will be on the roof of the building. He circulated a small picture. He pointed to the screen that would enclose the mechanical units on the rooftop. Essentially there are three compressor handler units up on the roof on the side, some exhaust units as well as some make-up air units. They will all be screened by five foot high screening made of the same Lucabond material that is on the façade of the building.

He further explained this was prepared in response to Mr. Hal's letter asking for a detail of this.

Attorney Zenn marked the **Screening Details of the Roof Mechanicals** as **Exhibit A-9**.

Next, Mr. Urdang went over the letter from the Borough Engineer dated October 31, 2006 with Mr. Degheri to make sure they were in compliance.

At this point, Mr. Urdang announced he had no further questions of this witness.

Chairman Sellinger asked if there were any questions of this witness from board members?

Mr. Tremble asked Mr. Degheri regarding the rendering you show, there are some objects bumped out on those locations (he indicated by pointing them out) can you tell me what those are?

Mr. Degheri answered those are down lights.

Mr. Tremble asked if they were in the lighting plan?

Mr. Urdang answered they are not supposed to be there. They are going to be removed. The lighting plan shows lighting on poles, not wall mounted lighting.

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Mr. Tremble noted he would like to address the length and height of the rear façade. He asked, is there anything that you think, as an architect, could be done to make it look less long and high?

Mr. Degheri answered we tried to do that through the use of different materials. Maybe in the rear we can bring the dark gray block up a little higher so it divides the building a little bit more in half..

Mr. Tremble noted that on the Hudson Street façade, the material you have called Lucabond seems to have a slight projection and produces a shadow.

Mr. Degheri agreed and explained it is a metal sandwiched panel, made of Styrofoam on the inner core and it's an insulator as well as a decorative aesthetic feature.

Mr. Tremble noted the layout on the site is arranged so that it requires a variance for the residential buffer. My question would be how would you approach achieving the residential buffer without detaining the building?

Mr. Urdang noted they had testimony previously from Mr. Coco addressing that variance.

Mr. Degheri further explained when we are given a building program we try to package it in the most efficient way possible. Our client doesn't want to spend any more money than they have to for building something.

Mr. Tremble stated I understand the design pressure. I am just asking you how would it be done. Shrink the building, reconfiguring it, moving it on the lot, what are the choices that you see as a professional?

Mr. Degheri answered there are many. But given the building program that I have to work with there are not too many other ways to take this building and job it or do any other type of breaking up of the box so to speak. We tried to do it through the use of material and a rectangle. This is the most efficient way to get the building program in.

Mayor Rustin asked would you be adverse in continuing that façade the length of the back of the building? He added I think the windows are slightly different in the back. But to answer the concern of the appearance of the height and length, I think the sense would be if that façade was extended on the west side and the windows were of a similar nature to the others that would break up the size of that wall dressing. Is that something that could be done?

Mr. Degheri answered that certainly could be considered if my client is agreeable to do so.

Mr. Kelly asked, in looking at the front, the east façade which comes in on the upper level, is that where all the cars are brought into the building?

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Mr. Degheri answered no. On the County Road façade which is the east façade, these doors are for the service facility only. For the twenty-nine bays upstairs. They will go in this door (he pointed), circle around, find a bay or be taken to a bay. They operate one in and one out.

Mr. Allen discussed the trees on the landscaping plan compared to the rendering and inquired about moving a tree depicted on the landscaping plan.

Mr. Urdang answered they would have no problem in moving the tree up closer to the corner if that is what the Board decides and if there was no problem with sight vision for traffic.

Chairman Sellinger noted that signage was designed on the building and asked is that just illustrative?

Mr. Urdang answered he thinks it is. We had not made signage a part of this application.

Chairman Sellinger asked if there were any questions from the public for the testimony of the architect.

Ms. Gail Price of Price, Meese, Shulman & D'Arminio, on behalf of Sharp of Tenafly LLC and JMP Holdings, the owners of the property immediately west of the subject property, (the 9.9 acres. bordered by Prospect Terrace, Hudson and Piermont) came forward.

Ms. Price stated she had a series of issues that she would like to raise to the Board, but at this time she would just cross examine the architect.

Ms. Price asked, with regard to the building height, you testified that the heights were twenty four feet, four inches at County and thirty-seven feet, four inches in the rear, correct?

Mr. Degheri answered correct.

Ms. Price noted on the site plan the building height is referenced as being thirty feet (30') as proposed. She asked Mr. Degheri if he was involved in the calculations of the building height?

Mr. Degheri: I was involved to the extent that I know what it is when the building is finished. If it's different on the site plan then I can't explain that.

Ms. Price: Are you in a position to testify as to whether your calculation included the measurements of the rooftop units or is that just to the top of the building?

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Mr. Degheri: That is to the top of the parapet. The rooftop screening is an additional five feet six inches (5' 6") set back from the front fascia.

Ms. Price: So, if you added five feet, six inches to thirty-seven feet, four inches you would be somewhere over forty-two feet in height. And the maximum permitted height in this district is forty feet, correct?

Mr. Degheri: That is correct. But I believe that the rooftop screening is not necessarily included in the overall building height calculations.

Ms. Price: Well, perhaps I can show you the definition of height of building and ask you if your opinion stays the same.

Mr. Urdang asked what section of the ordinance are you referring to?

Ms. Price: It is in the definition section in front of the ordinance. And it is entitled height of building, page 3.7 She further asked if the maximum height permitted for the zone is forty feet would you possibly need additional relief?

Mr. Degheri: I don't know but it sounds like a variance would be necessary.

Ms. Price: Are the screens proposed around the mechanical units characterized as aesthetic screening or acoustical?

Mr. Degheri: It is aesthetic and acoustical.

Ms. Price: Do you know if a noise study has been performed for this application?

MR. Degheri answered he would not know.

Ms. Price: Were you given any information or were you at all involved in the design of the screening of these units.

Mr. Degheri: yes.

Ms. Price: When you noted these units have been placed back from the edge of the building, that a line of sight had been analyzed - can you tell me where that line of sight was located? Was it at the property line? And, if so, which property line did you take the line of sight from?

Mr. Degheri: I don't have the exact measurement for you from how far back from the building you will need to be before you see the screening. But I can give you an opinion that it most likely will not have been seen from County Road.

Ms. Price: What about the property to the west?

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Mr. Degheri: I do not know but I believe we had an exhibit that showed a comparison.

Ms. Price: Does the building have an emergency generator as designed?

Mr. Degheri answered I don't know, I haven't designed it.

There was further discussion regarding the windows in the rear as not being able to be designed in a different format other than in the rectangular format that they are currently designed in.

Ms. Price asked if the upper treatment on the building could extend around the corner of the building?

She also asked is the white membrane material proposed on the entire roof?

Mr. Degheri answered it will be over the entire roof deck.

Ms. Price asked how many units are there on the roof?

Mr. Degheri commented I believe we show three compressors on the south side, two compressors or three compressors on the north. We will also have make up air units which are necessary to bring fresh air into the building. And ultimately termination for the exhaust will be from inside the building as well.

Mr. Price asked will all of those units be screened.

Mr. Degheri explained they will be screened. There is one opening in the center so you can get in and service the mechanical equipment. Again, from down on the street they are really not going to be visible.

Ms. Price asked if they had an example of the screening?

Mr. Degheri answered he did not bring any.

Ms. Price explained she was not talking about the Lucabond but the separate screening material around the five foot six inch units on the roof.

Mr. Degheri answered it could be a number of different types of materials.

Ms. Price next discussed the line of sight from someone looking downward, but not necessarily across at the units, more above the units.

Mr. Degheri commented you would have to get maybe twenty-five feet high before you actually start to see the top of the screen. As you get higher you see more and more and more.

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Ms. Price added so, if the residential units were fifty feet (50') in height, those units would be looking at the rooftop units?

Mr. Degheri answered yes, and that is why we provide a nice attractive screening.

There were no further questions of this witness and Mr. Urdang called his next witness, Mr. Luglio.

Attorney Zenn swore in Mr. Louis Luglio, a senior associate with Vollmer located at 365 West Passaic Street in Rochelle Park.

Mr. Luglio gave his credentials as a traffic engineer and was accepted as such by the Board.

Mr. Luglio testified he is familiar with the site and its environs. He stated he was engaged to perform a Traffic Impact Study with respect to the subject property.

He added, that study was submitted to the Board and is dated August 2006.

Mr. Luglio explained the scope of the study is to identify and/or determine if a particular project has a negative traffic impact associated with it.

Mr. Urdang asked what was the methodology used in the preparation of this study?

Mr. Luglio answered, from a higher level the Traffic Impact Study looks at the existing traffic conditions in the area. It forecasts what could happen if the project is not developed, other projects are built, other growth in traffic. And we call that the "no-build" condition. In addition, we look at the site itself. We do trip generations, which is basically understanding how many new vehicles will be coming to and from the facility. And then analyzing those new vehicles to determine if they have an impact at the intersections or roadway sections.

He further explained the Traffic Study and noted the exiting data collected was at the one intersection of County Road and Hudson Avenue which was done on Tuesday, July 25. The counts were done between 7:00 a.m. and 9:30 a.m. and 4:00 p.m. and 6:30 p.m. He added the peak hours at the time were determined to be 8:15a.m. to 9:25 a.m. and 4:30 p.m. to 5:30 p.m.

Mr. Luglio added from a traffic engineering standpoint, we look at traffic volumes for a one hour period. We analyze that one hour data set that we get. Because we counted in the summer months, we made a seasonal adjustment factor and assumed an increase in the numbers by fifteen percent to account for any summer activity that we might not have counted.

He commented in speaking with Mr. Hals regarding our report, he provided us with a Traffic Impact Study that was prepared by Atlantic Traffic for the JMP Holding site. We

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utilized that traffic information in these numbers that we have as our no-build traffic volumes for this intersection. He explained that when you're talking about a no-build situation, you're talking about just a general increase that one might expect of traffic in the area, irrespective of any development on the site.

Mr. Luglio stated now comes the part where we start to understand how many vehicles would be coming to and from the site because of the development. Based on our conversations with the applicant and our judgment of understanding how the facility works, we broke this up into three different types of trips coming to and from the site. We had customer trips. We had employee trips. And we had what we called "shuttle trips". The customer trips are basically people that are coming in and are dropping off their vehicle. Once someone drops off their vehicle they have three different options that are available to them. They have the option of dropping off their car and taking a loner car. They have the option of getting picked up by someone else. Or they have the option of taking a shuttle bus.

Mr. Urdang asked this is not occurring on this site, correct? It's occurring on the Summit Avenue facility?

Mr. Luglio answered correct, not on the subject site – that facility is a block and a half away. There is still shuttling of the vehicles which happens between the two sites. And that would obviously increase over what is happening today, which is not shuttling any cars to the proposed site.

He continued explaining either you take a loaner car; you get picked up by someone else; or you take a shuttle. The report shows about sixty percent taking a loaner car; twenty percent having someone pick them up; and another twenty percent utilizing some type of BMW shuttle service.

Attorney Zenn marked an **enlarged version of Exhibit 1** from the Traffic Report as **Exhibit A-10** for identification.

Mr. Urdang asked is there an alternate route that may be used for shuttling?

Mr. Luglio answered I believe it is Madison. Certainly if there is traffic or congestion on County Road that could be used as well.

He explained in conclusion of the information presented in the report there is no significant impact associated with the development at the signalized intersection of County Road and Hudson.

Mr. Urdang stated he had no further questions for this witness.

Chairman Sellinger asked if there were questions from the Board members?

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Ms. Wilmit: Would it change your study at all to know there is a school about a block and a half away from where you did your study that utilizes the intersection of Hudson and County (at the light). Between 8:30 a.m. and 8:40 a.m. approximately 400 students are dropped off. There is no busing – there are parents dropping children off on Magnolia but they have to come down County from the north and make a left onto Hudson. She added I can't tell you every parent does that because they are coming from all different houses, but more than what your current study shows which is zero people.

Ms. Wilmit also pointed out that the study was done when the elementary school was closed. She added, in addition, coming from the other way there is a middle school and again parents drop their children at that school and then have to come back and drop if they have younger children during that same time. She explained I am not sure how that would impact but many people do that run.

Mr. Luglio commented we counted in the summertime but we applied fifteen percent for every one of the signals – every one of the movements actually. What you're talking about now is one movement that would be significantly higher – that being a left turn movement. He added, I will tell the Board that I don't believe that is going to change the result of the analysis. But that is something we can plug in and see what the facts are; that's easy to do.

Mr. Allen asked do you know if the study from JMP included this traffic that Ms. Wilmit is referring to? And if so, would that cover what you have already studied?

Mr. Luglio answered no.

Mr. Tremble questioned the significance of the waiting time.

Mr. Luglio explained the peak hour factors and how they are applied. He felt they would go out and do the same count just to confirm that the numbers are what they predicted it to be with the fifteen percent because he agreed that doing a count in August was not the best time to do the count.

Chairman Sellinger pointed out one of the comments from the public at the first hearing was the concern about children walking to school. He asked if that could be built into their consideration.

Mr. Luglio answered okay.

Mr. Sowlakis questioned if the development in Cresskill on the old Hoke property now referred to as Sunrise would have any impact.

Mr. Luglio commented they didn't come across that as one of the reports to consider.

Attorney Zenn commented to Mr. Luglio you indicated that you had contacted the County Board to get some information. This is a County road; did you have a

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conversation with them concerning the level of service for your proposed use? What comments, if any, have you had from them?

Mr. Luglio: We had a conversation with the Supervisor of Public Works who provided the signal timing data for the traffic signal. And I had a conversation with Gary Ascolese on the operation of the signal from the existing condition and explained the proposed project. It seemed to be fine from the County's perspective.

Chairman Sellinger: If in fact your conclusion is the level of service is impacted, what does that mean? Does that mean they change the type of light or the capacity of the intersection?

Mr. Luglio: Hypothetically, if there was an impact, the impact would be accomplished by changing the signal time at the intersection. This is the first step. The second would be adding a brand new signal that would deal with the different left turn movements that are at the intersection that could provide a greater benefit.

Chairman Sellinger asked if there were questions from the public.

Mr. Bob Icolo, 70 Prospect Terrace came forward. Mr. Icolo stated he has been a resident of Tenafly for forty-five years and lived at his present address for thirty-five years. He noted their study was done in July...I'm a board member of one of the swim clubs. The last few weeks in July there is very little attendance in the club because people are on vacation. The thing you haven't realized about what happens at Maugham School is that in the morning the crossing guard puts up a barricade so all the cars coming down Hudson turn into Magnolia and then have to go back up Prospect or to the left of Prospect. They can not continue on Magnolia. They drop the children off. The children walk a block and a half. So that causes a massive traffic problem. And Prospect is a very narrow street with cars parked on both sides.

He explained so that gives you another problem and you will find that your fifteen percent is way off, not even close. You have to understand the cars are coming from Engle also. Engle is a real wide street and a busy street. They come down Engle into Hudson down to Prospect. They come from Piermont Road up Prospect. They come along County to turn... It is very dangerous. You have kids walking; you have people driving SUV's. There are no sidewalks there. You can't see the kids.

Mr. Luglio: I think if we go back out and collect new data at the intersection, including any pedestrians that are in the area, we will map that out. And we can bring that back to the Board.

Ms. Carrie Putelo, 107 Hudson Avenue came forward and stated she would like to clarify what Mr. Icolo said in terms of traffic on Prospect and Magnolia. By saying that people have to park on Magnolia, what he is basically saying is the only way to access that area is by County or Hudson Avenue. So you do have a tremendous increase in traffic in that area and that concerns me as well.

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She added the residents on Hudson have a hard time getting out of their driveways. It is a big concern to have this increase in traffic flow. She noted that currently parking is allowed on Hudson Avenue. And she would like to ask the Board to consider no parking on Hudson because if someone does park on either side, let alone both sides, it already causes a major traffic problem.

Mr. Luglio commented as part of our effort in going out and counting, we will make note of all four approaches and what the parking regulations are for that block so we will have it as part of the information that will be sent back to you.

Mr. Putelo asked if no parking on Hudson could be considered?

Mayor Rustin: It is a governing body that would have to pass an ordinance to change any parking situation.

Mr. Urdang: That issue was addressed, I think, at the previous meeting. You brought up the same question. We certainly had no problem with prohibition of parking on Hudson. We don't expect to use Hudson at all.

Ms. Putelo stated she had concerns about employees parking on Hudson and Magnolia.

Mayor Rustin: We have a condition at this point there is not going to be any additional employees parking on the street.

Mr. Urdang: We had agreed to that before.

Mr. Galant: Have you taken into account the fact on return trips the vehicles exiting and taking a left onto Hudson to get back to the showroom are going to have to make a left onto Summit?

Mr. Galant explained the cars originate in the new facility. It gets out onto Hudson, goes to County, takes a left onto County then has to take a left into the facility. At that left there is no light there. There is only one lane. Have you taken into account the back up that could cause?

Mr. Luglio: We have not looked at that intersection. We have not studied that intersection at this point.

Mr. Galant: Wouldn't that be a significant problem?

Mr. Luglio: Sure it could be a significant problem.

Mr. Urdang: What if Madison was used?

Mr. Luglio: If Madison were used then you don't have that issue.

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Ms. Kelly: How many residents are there on Madison?

Mayor Rustin: No more than two. He added the reality of it is that it probably would make sense to investigate making a left out of the building going down Hudson to Madison.

Mr. Luglio: I think that is really one of the things that BMW can control in how they shuttle the vehicles back and forth, so that is totally something that is in our control.

Chairman Sellinger asked Ms. Price if she had questions for this witness.

Ms. Price came forward. She asked Mr. Luglio, what use classifications did you use for your study for the proposed project?

Mr. Luglio: I have reviewed the site plan and participated in team meetings.

Ms. Price: Were you asked to opine, as an expert, regarding the subject matter of deliveries in connection with the scope of the project? Were you asked to include this in your report?

Mr. Luglio: It is not included in the report.

Ms. Price: Were you asked to address the issue of refuse collection and trucks accessing the site onto the property and off of the property?

Mr. Luglio: It is not included in the report and I have not presented any information to the Board.

Ms. Price: Did you include any information in your report regarding loading issues, parking space size, aisle width, aisle design, all of the issues that relief has been requested in connection with the application:

Mr. Luglio: The Traffic Impact Study does not typically include those issues.

Ms Price: Is there a reason you did not prepare a report to provide to the Board in connection with the variance relief that is being sought.

Mr. Luglio: No.

Ms. Price: Okay, thank you.

Mr. Urdang: I just have to bring Mr. Coco up to address some of the items that are in the last letter from Mr. Hals.

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Attorney Zenn stated that Mr. Alfred Coco, 261 Cleveland Avenue, Highland Park, New Jersey was previously sworn.

Mr. Coco: In reference to address the pertinent engineering comments in the October 31st letter from Mr. Hals, on page 1, items A, B and D have been addressed by the architect and Item C, the type of fencing for the on-site parking area should be a decorative fence in the areas visible from the street frontages. He commented he thought that is something they agreed to. This would be the two fences that cross the two driveways. Page 2, item number two is simply reiterating the waiver and variances that were requested as part of the application. We covered all of these and I would concur with these.

Mr. Coco: Item number three, there is a loading zone indicated at the rear drive aisle. Mr. Hals had recommended striping it. We can agree to that. Item four, there is a note on the plan that the Hudson Avenue curb would be granite block and the County curb would be the County specs which is a concrete curb. Item number five, we had prepared a cross section view of the site building. He asked that we would have a rooftop canopy and screening. We do as reflected on the plan. He indicates here that the landscaping must be provided between the western fence and the residential zone with conditions and use requirements. We have proposed to install larger trees. And I think it was suggested, that some of the landscaping come out. Mr. Hals correctly pointed out that the landscape cannot come out. It has to go back in and we agreed to do that.

He stated continuing to item seven, Mr. Hals wants the concrete apron extended and installed in the Hudson Avenue driveway entrance. We agree to that. And to make life a little simpler, on items number eight for the clean up; number nine for the granite block curb; number ten for the paving detail and number eleven we can stipulate we agree to do all of those, basically engineering changes to the detail plans. Item number twelve, I would like to discuss this issue with Mr. Hals regarding his suggestion that we use this type of soil groups. We are going to suggest to him that we do soil tests on the site to identify the permeability rate of the soil. Once we get the actual soil data I think we can satisfy Mr. Hals with revised calculations. Item number thirteen, he correctly points out that other permits are required and we are in the process of obtaining those.

Mr. Urdang asked Mr. Coco, you prepared the site plan, correct?

Mr. Coco replied yes.

Mr. Ureang: Can you say what you indicated as the building height?

Mr. Coco: Yes, we indicate that the building height is thirty feet (30'). The zoning ordinance actually indicates that the building height is average height based upon the four corners of the building. The front of the building is shorter than the back, two stories shorter in the back, one story in the front. So if we average those numbers we are down below twenty feet (20').

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He added even if we did include the screen height in our building height, we are still below the forty foot (40') requirement. So I don't believe we need a variance for building height.

Mr. Urdang: I have no further questions.

Mr. Zenn asked Mr. Coco, you're talking about a parapet ordinance?

Mr. Coco answered, right.

Mr. Allen: I am still concerned with the water being cleaned and that drain. Is the data that has come to view on the ability of this equipment to purify that water, where does that come from? Is that kind of a standard for engineers? I don't trust it, to tell you the truth, that is why I am asking the question.

Mr. Coco: It's a good question. What we are proposing to use are devices. There are different manufactures that make these chambers that we are using to clean the water before it is discharged from the site. These systems are designed by private companies. They come up with data of what is the different removal rates of suspended solids that move from the water that goes into basins and out. And that data has been provided to the DEP. And the DEP has approved it in the past. These companies perform tests. They provide that information to the state agencies and others. That information is then used. And the state either agrees with it and approves it or they don't.

Mr. Allen: Assuming that down the road, three, four, five years, the equipment stops cleaning how does the water get tested to make sure the repairs need to be made?

Mr. Coco: Well, it is not necessarily something where testing is normally done for something like this, but maintenance is an important issue. And as part of the approval, this includes a maintenance plan for these devices. The applicant is responsible for upkeep.

Mr. Allen: Is it the applicant's responsibility to fix it if it fails?

Mr. Coco: Absolutely

Mr. Allen: Thank you.

Ms. Kelly asked if the Board ever received a report from the Fire Department.

Chairman Sellinger answered: We did.

Mayor Rustin: It was in the packet with the agenda.

Ms. Kelly: Have they looked at the plan; are they satisfied?

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Mayor Rustin: Yes. The only comment was about one of the entrances being declared a fire lane.

Chairman Sellinger: You mentioned approval subject to a maintenance plan?

Mr. Coco: Yes, the maintenance plan is a document that is part of the submission that indicates how often the structures are cleaned, how often they are inspected. It is part of the maintenance plan for the property.

Mr. Zenn asked Mr. Carroll if he had seen them.

Mr. Carroll answered no.

Mr. Urdang: We will provide that.

Mr. Tremble: Mr. Coco, I have a couple of questions. One related to your statement about Mr. Hals's statement regarding the landscaping between the western fence and the residential zone. What are we going to do back in there? Is there a plan on that?

Mr. Coco: When we originally submitted the plan, we provided landscaping along that entire boundary. In conversations at a site plan review committee meeting they suggested that some larger trees be installed closer to the proposed building on the adjoining property. Because these are large trees they are expensive. He felt the engineer's letter suggested maybe we don't need to put that on the landscape.

Mr. Coco: Mr. Hals points out this is fine; but the ordinance says in order to meet the conditional use we still have to provide landscaping in that strip. So we are putting the tall trees in and we are putting that landscaping back.

Mr. Tremble: When you say "that landscape", there was a block wall that was several feet high at that point?

Mr. Coco: correct.

Mr. Tremble: We were talking about a fence or a block wall?

Mr. Coco: We are talking about the landscaping in that area. The plan shows that we are providing a six foot high solid fence along the straight portion of the boundary where the cut out is. Where the three spaces stick out. There we have a decorative block screening wall.

Mr. Tremble: That is a three footer?

Mr. Coco: Six footer. Then there is a solid fence of the remainder going toward Hudson Avenue.

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Mr. Tremble: The block wall, is that area close to the proposed residential construction?

Mr. Coco: Exactly.

Mr. Tremble: That is adjacent to the trash removal area?

Mr. Coco: It goes around the trash enclosure.

Mr. Tremble: There were earlier some questions about noise from the architect which really weren't answered. Is that something you could answer for us?

Mr. Coco: As far as the rooftop units, no I would have to defer to the architect on this or the mechanical engineer. The manufacturers of that equipment have readings or they have noise levels that those units produce. I suppose that is something that could be provided.

Mr. Urdang: You also have a noise ordinance that we have to comply with.

Chairman Sellinger: Any other questions from the members? May I ask if our professionals have any questions. Just a question that was raised about the building height, I just want to make sure we are in concurrence.

Mr. Mottola, Zoning Officer: I concur.

Mr. Zenn noted there were no further questions from the public for this witness. He advised Ms. Price that a quick recess would be taken.

Chairman Sellinger announced at 10:30 p.m. that the Board would take a recess.

The hearing resumed at 11:15 p.m.

Attorney Zenn: I think we finished up with Mr. Coco. The only questions were by Ms. Price. The public had finished their questions. He then asked Ms. Price; do you have any questions of Mr. Coco?

Ms. Price: Well, I have a lot of questions, but apparently my client has discussed a potential resolution of his concerns with the applicant during the break, which was extended. I thank the Board for that extension.

Mr. Zenn: And Mr. Urdang, one minute, let me say what I understand the stipulations to be.

Mr. Urdang: You probably know better than I do.

Mr. Zenn: The stipulations will be that JMP will withdraw their opposition to the application of BMW. The Board is going to hear testimony from Mr. Mottola concerning

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the use. And based upon hearing his testimony tonight that will result, I believe, in the Board's determination that the use is a permitted use which would negate the set of the conditional use realm; therefore, there would be no requirement for a six foot fence.

Ms. Price noted it is a six foot wall.

Mr. Zenn: the applicant will stipulate to

Mr. Urdang: Acoustic barrier around the HVAC.

Mr. Zenn continued, the applicant will agree based upon Board comments to continue the cornice wrap out of Lucabond and/or EFIS.

Mr. Urdang: We are going to cover the dumpster.

Mr. Zenn: Delivery of parts will be to the garage entrance closest to Hudson.

Ms. Price: The northern most. And the windows on the back façade will be changed. We are talking about a more residential look.

Mr. Zenn: We also talked about raising the band in the rear of the building. I think that's it.

Ms. Price: The landscaping. Mr. Hals has required that the landscape be done as part of this application and as part of the stipulation there will be certain landscaping actually done on the JMP site.

Mr. Urdang: Which will be the subject of an amended site plan by JMP.

Mr. Zenn: I think we meant the landscape in the rear of the property.

Ms. Price: Right along the common line.

Mr. Zenn: Right along the common line. Just so the Board understands what is contemplated by the parties, JMP will come in for certain site plan amendments that will incorporate and effectuate their remaining items of their understanding. They will come in if any variance is necessary. Obviously, they will come in for that. They have an understanding as to their cooperation in terms of that. But we will allow subject to the other application and not as part of this resolution because we don't have that matter in front of us with the landscaping in the rear.

Mr. Urdang: I think that does it.

Mr. Zenn: These are the conditions that you decided upon?

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Mr. Urdang: There may have been certain other things incidental that have been stipulated to; i.e., no employee parking on Hudson.

Mr. Zenn: Right, there are other things...

Mr. Urdang: There are other things that are between the parties.

Mr. Zenn: And for the Board's review. This is just a condition of the objectors withdrawing their objection.

Mr. Urdang: That is it.

Ms. Price: Yes, that is it.

Mr. Urdang: I don't have anyone further.

Mr. Zenn: Okay, Great. Let's call Frank Mottola

Attorney Zenn asked Mr. Mottola to state his name and his position with the borough.

Mr. Mottola: I am Frank Mottola, Zoning Officer for the Borough of Tenafly.

Mr. Zenn: Have you been here for the prior hearing in this matter?

Mr. Mottola: I was here for the initial application meeting, The second hearing I was not present.

Mr. Zenn: Is it your understanding now of the way this site plan application is proposed that all the cars being serviced will be dropped at the main BMW facility and car jockeys will actually drive cars to the site and return?

Mr. Mottola: Yes.

Mr. Zenn: I know the applicant has stipulated no customer will drive directly out of this site.

Mr. Mottola: That is correct.

Mr. Zenn: This is previously a commercial C zone; is that correct?

Mr. Mottola: Correct.

Mr. Zenn: Now, understanding that operation, does that change your view of whether this is a conditional or permitted use?

Mr. Mottola: Yes, because I think that was the defining sort of difference. The ordinance is somewhat unclear as to what this category falls into. Whether it falls into the permitted use in the C zone because it is listed as new car sales and services, or the conditional use which groups together gasoline service stations, public garages and car wash facilities. So all of them are really automobile related. And those are conditional uses that are permitted only in the C zone. That is the only place they can be. I think in either case the zoning regulations envision automobiles servicing of some sort or another in this zone. So they permit it either way.

He added, the thing that I was uncertain about initially was it seemed that this was more of a public garage or public facility where anyone could bring their BMW in for service, whether they bought it from this dealer or not. It wasn't particularly tied to this dealership and so it was open to the public. What I was not aware of initially was that all of the drop-offs would be at the dealership. This puts it in the category of the straight permitted use of new car sales and service much more strongly than the conditional use.

Mr. Zenn: So, with that interpretation if someone came along and wanted to buy this facility and just use it as a service facility they could not do that, is that correct?

Mr. Mottola: Correct. They would have to do it in conjunction with a conditional use or in the context with another car dealership.

Mr. Zenn asked if there were any questions of Mr. Mottola. There were none from the Board or the public.

Mr. Zenn asked Mr. Urdang to give his summation.

Mr. Urdang: I will waive summation. I think the Board is pretty familiar with this.

Chairman Sellinger: Let's just go over what you highlighted. Let's make sure we are covering everything that has been discussed.

Mr. Zenn: Regarding conditions, the Applicant has stipulated no customers will drive there. They will all be facilitated. The facility will not be open to the public. They will maintain the underground water system.. The lighting plan goes off at 8:30. I guess the flood lights go off at 8:30. The security lights then go on which are dimmer. There is no split junction between the property. They stipulated trash pick up will be at designated times.

Chairman Sellinger: That the porter will drive, will exit on Hudson.

Mr. Zenn: Yes, exactly, will exit on Hudson, not County Road. I think further clarification is needed on that. I want to suggest that we say upon further review of the Borough Engineer that route may be designated to go on lower Madison.

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Mr. Zenn: For right now, let's just say exit only onto Hudson, not County and may be subject to further review of the Board Engineer.

Mr. Zenn: Review by the Board Engineer of the additional traffic counts that the traffic engineer indicated.

Mr. Urdang: Just one more item. There is no employee parking on Hudson.

Mr. Zenn: Right. Let me go through them again so we are clear. If there is a finding by the Board that this is a permitted use and as such there is no requirement of a six foot wall. The applicant would install an acoustic barrier around their site. The applicant would continue the Lucabond, EFIS in the rear. The applicant would cover the dumpster. The delivery of parts to be in the garage door in the rear closest to Hudson. The windows in the rear to be changed to a more residential look. The applicant will raise the dark block and view level in the rear and the landscaping in the rear property will now be placed on the JMP site which will be the subject of a JMP site plan amendment.

Mr. Zenn: And those are the conditions of the site plan for approval and for the various waivers and variances that Mr. Hals called for in his October 31st letter and which the Applicant's engineer stipulated were correct.

Ms. Price: There is one correction. There is still landscape on the BMW side, just a supplemental landscape we were talking about. The record should be clear that there is still landscaping that will remain on...

Mr. Urdang: Expect on the rear lot.

Ms. Price: No, there is landscaping that is shown on the landscaping plan, so we should be careful just to indicate that except for a supplemental ...

Mr. Urdang: Sure, I'm sorry.

Mr. Zenn: That is actually shown here. You are talking about the stuff that is in this corner (indicating).

Mr. Urdang: Right.

Ms. Price: I just want to make clear that we have all intentions of going forward with this agreement. But if there should be a default, recognizing that the Board went ahead and made findings based on Mr. Mottola's review of the ordinance, I did not utilize my right of cross examination or my position on jurisdiction (which I had quite different opinions on that subject matter). And I want to make sure that I fully reserve my rights should the settlement that is outside this Board's finding blow up for whatever reason and I find myself in Hackensack on either a prerogative writ matter or another lawsuit. I want to make clear that I am in no way waiving my rights, and neither is Elliot. But the fact that I was silent on that statement by Mr. Mottola should not be construed as ...

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Mr. Urdang interrupted and stated they are adopting a resolution. We have a signed agreement which if it blows up you can attempt to enforce in Hackensack or whatever you want to do with it. But we can't have this going in and out. The Board is adopting a resolution here.

Ms. Price: I understand that. I am also reserving my rights. I did not exercise any cross examination or statements with Mr. Mottola's findings tonight.

Mr. Urdang: I understand that because it was settled.

Ms. Price: That is fine.

Mr. Urdang: You can reserve any rights you may have; but I don't think you have any rights.

Ms. Price: Okay, well then placing it on the record should be a simple statement. It is on the record.

Mr. Urdang: As long as it is understood that we are not conceding that she has rights. She can reserve whatever she wants to reserve.

Mr. Zenn: I am not sure what we are reserving because if we are going to move forward, we are going to move forward. You didn't cross examine or object to facts. I assumed because I was implementing some of the various agreements with the parties. If they don't fulfill what we have talked about in their agreement it seems to me you have a case to enforce yourself, settlement agreement.

Ms. Price: If the Board will entertain basically a motion in that I have litigation rights almost in terms of what would, at that point, be a settlement of the parties.

Mr. Zenn: We have the Courts though.

Ms. Price: I know. I understand that and that is why it is a little bit different:

Mr. Urdang: I think we resolved it. She has made a statement as to what she wants to reserve. I don't believe she has a right. It has nothing to do with the Board. She is not going to be coming back here on a motion.

Mr. Zenn: As long as there is an agreement I am happy. Having said that, does someone want to make a motion for approval of the site plan with the variances and waivers set forth in the Hals' letter of October 31st with the conditions that I just outlined?

Ms. Kelly made the motion; seconded by Mr. Kelly and carried with the following roll call vote:

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For: Mr. Sowlakis, Mr. Galant, Ms. Kelly, Mr. Tremble, Mr. Kelly, Mr. Sellinger, Mr. Allen, Councilman Salvatore, and Mayor Rustin

Against: None

It should be noted that during the roll call the following Board Members made comments:

Mr. Galant: I was reluctant to vote yes. I think this building is too big for the lot and two of the variances were granted to permit that. But in view of what is going on , I will vote yes.

Mr. Tremble: I have some concerns about this application also with regard to size, bulk, position on the lot and I guess overcoming objection to the neighborhood. I had great concerns for future residents on that property. I think the resolution that has been achieved will mitigate most of my concerns so I am going to vote yes.

Mr. Allen: I too had concerns on the size of the building relative to the size of the property. I don't know what else that property could be used for right now. And I guess on that basis I vote yes.

The hearing was closed at 11:43 p.m.

At 11:45 p.m. Mayor Rustin made a motion to close the meeting; seconded by Ms. Kelly and so carried.

Respectfully submitted,

Dee Lorberbaum
Acting Secretary