

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
MARCH 17, 2010**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Vice Chairwoman Morrissey at 7:30 P.M. Members present were Chairwoman DeSarno, Vice Chairwoman Wilma Morrissey, Jim Gray, Ray Slocum, Kevin Orender, Robert Morris, first alternate Mary L. Burne, Attorney Cramer, Planning Secretary Roberta Lang, Recording Secretary Betty Schinestuhl, Engineer Gerken and Reporter Arnone. Mrs. Draper and Mr. Margadonna were not in attendance.

SALUTE TO THE FLAG

Attorney Cramer announced that all requirements under the Open Public Meetings Act had been complied with for this meeting and read the purposes of the Board of Adjustment.

NEW APPLICATION

#BOA1-2010 – Date application complete: January 20, 2010

APPLICANT: ROBERT LAMBROU

PROPERTY: 2555 River Road, Block 880, Lots 15 & 15.01, R-30 zone

RELIEF REQUESTED: Bulk

Attorney Cramer reviewed the file and stated the Board had jurisdiction to proceed.

Daniel S. Popovitch, Esq. appeared for the applicant.

Entered into evidence:

- A-1 Jurisdictional Items
- A-2 Topographic survey prepared by John F. Diessner revised November 4, 2009 with plot plan prepared by Charles E. Lindstrom dated November 3, 2009
- A-3 Plan revised September 22, 2009
- A-4 Six pages of photos two photos per page

BOA-1 Engineering plan review prepared by Glenn Gerken dated March 11, 2010

BOA-2 Planning plan review prepared by John Hoffman dated March 15, 2010

Sworn by Reporter Arnone:

Robert Lambrou
Glenn Gerken
Cheryl Bergailo

Attorney Popovitch said to Mr. Lambrou you are the applicant and owner. Mr. Lambrou said yes.

Attorney Popovitch asked Mr. Lambrou to explain what he is proposing to do. Mr. Lambrou said he wants to enlarge his home. He wants to add some bedrooms, a second floor and a bigger garage. He said he will add new landscaping. He will make it look like the rest of the neighborhood.

Attorney Popovitch said the existing garage has zero lot line you wish to keep that for storage. Mr. Lambrou said if the Board deems it appropriate for storage of lawn equipment. Attorney Popovitch said if the Board lets you keep the garage would you make it so it matches the renovations to the new house. Mr. Lambrou said yes the renovations to the new house would be stucco, stone, flat looking roof and the garage would have the same appearance just smaller.

Attorney Popovitch said you will be eliminating the driveway that services that garage. Mr. Lambrou said it will be removed and planted with grass.

Attorney Popovitch asked what is on the other side of the garage. Mr. Lambrou said a 6' fence it is between the neighbor's pool and our garage.

Mrs. Morrissey said going back to the shed can it be reduced. Mr. Lambrou said it is for storage of my children's stuff, lawn equipment; it would store anything you would use a shed for.

Mrs. Morrissey said you are partly on the property line. Mr. Lambrou said it is on the property line. Mrs. Morrissey said just make it smaller. Mr. Lambrou said he would rather tear it down.

Mrs. Morrissey asked where it slopes down would you be putting a fence. Mr. Lambrou said I would probably put a row of shrubs, you can't go too close. The backyard isn't very large.

Mrs. Morrissey asked if he would be putting in additional landscaping. Mr. Lambrou said yes.

Mrs. Morrissey asked if that was a new sun room in the back. Mr. Lambrou said it was there when he bought the home. Mrs. Morrissey asked about the two doors. Mr. Lambrou explained one door goes into the kitchen and one goes into the family room. Mrs. Morrissey asked if you are going to have only one set of doors. Mr. Lambrou said yes. Mr. Gerken said you won't even know where the new house is and where the old house is when this is done.

Chairwoman DeSarno said the old garage is next to the neighbor's pool and serves as a screen have you spoke to your neighbors about this. Mr. Lambrou said no they use it only as a summer home.

Chairwoman DeSarno asked if it encroaches onto their property. Attorney Popovitch said it appears that it is not an encroachment it is right on the line.

Mr. Lambrou said he would like to keep the old garage. It would be nice to have but if we can't it is understandable.

Mr. Gray said he thinks that being it is on the property line you should remove it, build something smaller.

Mr. Gerken said 180 s.f. is allowed with a 10' setback. He can put it in line with the front of the house and remove three variances. Attorney Popovitch said they will agree to remove that building.

Jeffrey Carr, Engineer/Planner, gave his credentials which were accepted by the Board.

Attorney Popovitch said you have prepared the plans for renovations. Mr. Carr said yes.

Attorney Popovitch asked Mr. Carr to explain the variances and go over the review letter from Mr. Gerken. Mr. Carr explained the river is to the right. The building is set back quite far. The front of the house will be taken down and a new front will be built. There will be a new single entrance. There are a few existing variances. The south side has 11.2' setback and it is existing. The north side has a 16.4' setback and it is existing. The requirement is 20'. We did not increase those variances. The driveway will be relocated to the south side. We are going to save some of those larger trees. We are below on maximum building coverage 14% is allowed and we will be at 6.64%. Impervious coverage allowed is 25% and we are less than 12%. There will be quite a lot of open space.

Attorney Popovitch said you also had to deal with DEP. Mr. Carr said we have submitted our application. We have that permit and I will supply it to the Board.

Chairwoman DeSarno said you are taking the garage down put in some arbor vitae. Attorney Popovitch said after construction is done we will continue the screen.

Mr. Carr said that homeowner used the side of the garage to his benefit as a screen. There is a fence with 2' of lattice on top of it. We can close that in.

Attorney Popovitch said this will make substantial improvements to the property. It will present a much better street view. It will be an overall improvement.

Mr. Gerken said he has no additional comments. The fact that they are moving the garage and driveway is an improvement. They will have the right to come in for a permit for a shed.

Attorney Popovitch said he is also asking for a waiver of curbs and sidewalks.

The application was open and closed to the public.

Mrs. Morrissey moved to approve the application subject to the removal of the driveway and garage. If a new shed is built it will conform to the setbacks. Mrs. Burne seconded the motion, which was unanimously approved by a roll call vote. (Mesdames. Morrissey, Burne, Messrs. Gray, Morris, Orender, Slocum and Mrs. DeSarno voted yes.)

CARRIED APPLICATIONS

#BOA15-2009 – Date application complete: July 10, 2009. Carried from October 7, 2009 and January 13, 2010

APPLICANT: JEFFREY SHIELDS

PROPERTY: 3400 W. Hurley Pond Road, Block 771, Lot 1, R-30 zone

RELIEF REQUESTED: Bulk with variances

Sworn by Reporter Arnone: Vincent Coppoli

Entered into evidence:

A-11 Limited Environmental Impact Statement

Mr. Shields said he prepared a summary.

Chairwoman DeSarno asked Mr. Shields if he wanted to continue tonight or postpone this. Mr. Shields said he is comfortable with proceeding tonight.

Attorney Cramer asked Mr. Shields if he received a copy of Fire Prevention's report. Mr. Shields said no the only one he received was the Police Department report.

Entered into evidence:

BOA-4 Wall Township Fire Prevention plan review dated March 4, 2010

BOA-5 Wall Township Police Department plan review dated March 17, 2010

Mr. Shields said he has a response to the Police Department plan review.

Entered into evidence:

A-12 Response from Mr. Shields to the Wall Township Police Department

Vincent Coppoli said he was asked by Mr. Shields to do an EIS for his application. This is a little different. We addressed the comment issues. We looked at wetlands. This site is 10 acres in size and there are some wetlands none of which will be impacted by the turbine. We looked at the slope issues. The tower would be 25' back it would not be impacting the slope area. We looked at the soils. We had some good soil data. We looked at wild life. The turbine is located within one of the better sites. Noise is usually not an issue. Noise is not a concern. It is away from the residents. There is no impact to wild birds and bats. This is a tier one structure as far as DEP is concerned. It does not need any permits from DEP. We looked at different types of landscaping. We found no threatened or endangered species. We also looked at air traffic. It is one mile away. We looked at air space. It does not exceed 200' in height so we are not required to submit anything to FAA. There is no red flashing light. Most of these are small scale and do not impose an environmental impact or threat. The project meets with our approval.

Chairwoman DeSarno asked if this report was taken from DEP. Mr. Coppoli said yes 2008. We rely on DEP experts.

Chairwoman DeSarno said she sees ducks and geese on this site. Mr. Coppoli said the tower is out of the flight plan of birds. He said he doesn't think this will be an issue with the geese. Even when you chase them away they always come back.

Chairwoman DeSarno asked did you go out to the site or did you characterize it. Mr. Coppoli said we did both.

Mr. Gerken said it was a very thorough report.

Mark Brosnan, 2603 River Road, said one of his concerns is the bald eagle. He said he looks at the river everyday and he sees 38 – 40 swans and bald eagles. Is that considered in your report? Mr. Shields said that is not where we are talking about. This is on Hurley Pond Road.

Mr. Brosnan asked if there was any way they can reduce the size and get the same output. Mr. Shields said that has been addressed. It goes by air flow. It cannot be reduced.

Mr. Brosnan asked what speed. Mr. Shields said 8 MPH it is a low speed turbine.

Mr. Coppoli said the bald eagle was considered. If it was a concern it would have shown up. They tend to prefer larger bodies of water. These types of structures are not made like a jet engine. A wind turbine is run by wind. Birds don't fly if it is too windy.

Kathy Sims, Martin Road, asked what the impact is if we don't start putting up a lot of these systems. If we don't do this the world will not be the way we know it today.

Mr. Gray asked about the Police Department's report. Mr. Shields explained there are a lot of opinions out there. I addressed these things the best way I know how. Getting expert testimony is hard to do. Turbines are being put in all over the State. There is tons of information out there.

Chairwoman DeSarno, referring to the Police Department's report, said start with the interference of TV. Mr. Shields said 99% of people do not use an aerial; they get cable, FIOS so interference is extremely rare. Regarding microwave reception interference it would rare, chances of that type of interference is nil. Regarding property values it depends on how you look at it. Homes that are self sufficient with energy are worth more money. It will only increase the value. Flashing red lights it is not an issue because they do not need one. Noise, we addressed that. Traffic, there may be some because people will want to come and see the turbine. Road damage, I don't understand that.

Mr. Slocum said are you addressing fall zone. Mr. Shields said we have addressed that. I can't move it any where else on my property. Mr. Coppoli said locating the structure where it is now will have the least amount of impact. That is why it is where it is. He said he looked at alternatives but this was the best.

Mr. Slocum said the fall zone will be right in the middle of the road. Mr. Shields said there is nothing he can do about that. Turbines usually don't fall they collapse onto themselves.

Mr. Coppoli, regarding wildlife, said the turbines do not have shadows so they will not impact the wildlife.

Mr. Shields said, stray voltage, an electrical permit has to be taken out. It is something that is not an issue.

Mr. Shields said, regarding shadows, any shadows will be cast on the pond or toward the other side of the pond. It is not an issue. Regarding lightning striking it strikes trees all the time. As long as it is properly grounded it goes right into the ground.

Mrs. Morrissey said there is a windmill in Ocean Gate. The Star Ledger said it would be noisy. If I wanted to look at a turbine similar to this where would I see one? When looking it up on line they are all different sizes. Mr. Shields said the only other one is in Vineland. That one is 50 kil and mine is 20 kil.

Mr. Orender asked for the size of the property in Vineland. Mr. Shields said he doesn't have that information.

Mr. Orender said he doesn't have anything against alternate energy just the safety issues.

Chairwoman DeSarno asked Ms. Bergailo if the assembly bill talked about setbacks. Ms. Bergailo said it was signed by the governor in recently. It refers to when a municipality adopts an ordinance what reasonable standards should be in the ordinance. With respect to setbacks it reads something that would be reasonable would be no closer than 150% of the height of the tower. Chairwoman DeSarno said that would be a setback of about 200'. Mr. Gerken said about. Ms. Bergailo said correct.

Mr. Shields explained he prepared everything the best he could. He said he used all the resources available. The setback is the only issue.

Ms. Bergailo said in something the applicant submitted it discusses setback distances. It is not just a matter of fall zone for a very tall structure.

Dave Sims said he is applying for a wind generator for himself. This is very complicated. He said he wants to have one on his own property. It is very important to him. He said there are some situations where it is not appropriate. The environment is having a real problem. Every tree will eventually fall down. This thing is engineered to hold up. If we don't do something regarding the environment our kids will have problems.

Peter Moko, South Wall, read a statement to the Board. We have to move on to the future. Alternate energy is the future.

Mark Brosnan said this is common sense out there. Utilities are starting to be put underground. The phone poles are coming down. 20 years down the road we will have thousands of windmills, cell towers. I disagree with using windmills. We have solar energy. There is something to consider other than wind turbines.

The application was closed to the public.

Mr. Shields said the structure is professionally engineered it is not something a farmer put up in his backyard without a permit.

Mr. Gray said this is a new issue. I wish the Township had an ordinance in place. We made recommendations to the Township Committee. The issue is not just the fall zone. The structure

is 130' high in a residential zone. Nothing more than 35' in a residential zone is permitted. In a commercial zone it would be a different situation. I have to go by the State requirements. That is the only thing I can go by. This does not meet those regulations.

Mr. Gray made a motion to deny the application. Mrs. Morrissey seconded the motion, which was unanimously denied by a roll call vote. (Mr. Gray, Mesdames. Morrissey, Burne, Messrs. Morris, Orender, Slocum and Mrs. DeSarno voted yes.) The application has been denied.

9:20 P.M. the Board recessed.

9:30 P.M. the Meeting resumed.

Chairwoman DeSarno recused herself on the Harpoon Willy's application.

CASE #BOA19-2008 – Date application complete: August 20, 2008, September 17, 2008, November 12, 2008, December 3, 2008, February 4, 2009, March 18, 2009, April 1, 2009, May 20, 2009, July 15, 2009, November 4, 2009 and March 3, 2010

APPLICANT: SQUAN RIVER GROUP

PROPERTY: 2655 River Road, Block 886, Lot 1.01, R-30 zone

RELIEF REQUESTED: Use

Mark Aikins, Esq. appeared for the applicant.

Attorney Aikins said at this time in response to the questions the Board members had Mr. Purvis prepared a report.

Sworn by Reporter Arnone: Jack Purvis

Entered into evidence:

A-14 Colored rendering showing the new Harpoon Willy's

Mr. Purvis showed the existing building and behind that the deck that is being added. The south side will be kept open for the view. We are proposing to develop a sound barrier on the west side to help control the noise by people eating on the deck. It comes out about 8' beyond the existing structure.

Attorney Aikins asked Mr. Purvis to describe the materials and colors.

Mr. Purvis said we will match it to the existing building.

Entered into evidence:

A-15 Architectural elevation

Attorney Aikins asked Mr. Purvis to walk the Board through the elevations and tell them how it will work.

Mr. Purvis said the sound seems to be the main concern.

Entered into evidence:

A-16 Floor plan

Mr. Purvis said they are providing a second barrier wall adjacent to the residential side. It will be 8' beyond the deck. We are creating a glass wall so the homes adjacent will not hear the noise. There is also a stockade fence and a row of trees. We will take the compressors and put them on top of the building. They will be below the parapet wall. We are relocating two of the units for AC. We are eliminating one and putting it on section seven. We are taking the noise of those compressors away. The deck is basically the same as it has been. Looking from the north side there will be double plate glass which is an Anderson product. It will be insulated glass. There will be wood siding below the deck.

Entered into evidence:

A-17 Sections

Mr. Purvis explained the section plans. The windows will not open they are permanently fixed. There will be a wood truss supporting the roof. Material that absorbs noise will be used.

Mrs. Morrissey said the two AC units one is new and one is old are they going to be replaced. Mr. Purvis said there are six now we are removing two and adding one that will replace those two. They will help control the noise.

Attorney Steinberg said he has not had a chance to review this new concept until tonight. He said he is not prepared to ask all the questions. He did ask if the size of the deck has changed. Mr. Purvis said yes originally there was a lower deck it has been removed.

Attorney Steinberg said the deck it is the size on the plans. Mr. Purvis said yes.

Attorney Steinberg asked if there will be an emergency exit from the deck. Mr. Purvis said it will have a gate.

Attorney Steinberg said it will face the parking lot. Mr. Purvis said Old Bridge Road side.

Attorney Steinberg asked if there will be access to the deck from the road. Mr. Purvis said if you look on the plan there will be a walkway over to the ramp.

Attorney Steinberg said the glass wall it is only to block sound. Mr. Purvis said correct.

Attorney Steinberg said it will retain sound within the deck area. Attorney Aikins said that is the objective.

Attorney Steinberg said what is your understanding of the wall. Mr. Purvis said the way sound works what the wall does is create a block.

Attorney Steinberg asked if there will be any speakers on the deck. Mr. Purvis said the owners will answer that.

Attorney Steinberg asked will there be any other things other than tables and chairs. Mr. Purvis said there may be a station for waitresses. You have to ask the owners.

Attorney Steinberg asked about the entrance onto the deck. Mr. Purvis said through the existing door.

Chairwoman DeSarno asked if they were expanding the size of the door. Mr. Purvis said no.

Chairwoman DeSarno said the entire deck will have a ceiling. Mr. Purvis said yes.

Chairwoman DeSarno asked about the trees along the property line. Mr. Purvis said there will be trees next to the fence. Chairwoman DeSarno said no sound barrier on the other two sides of the deck. Mr. Purvis said correct.

Chairwoman DeSarno said the noise generated on the deck will bounce off the barrier. Attorney Aikins said this witness cannot answer that.

Attorney Aikins asked how many tables. Mr. Purvis said seating for 30, 3 tables for 4 and 9 tables for two.

Attorney Aikins asked if there will be a service area. Mr. Purvis said no.

Attorney Aikins asked if there will be any plumbing. Mr. Purvis said no.

Mrs. Burne said the number of seats and tables couldn't they be changed to a table for 12 at some point. Can't you change the number of people in that room? Mr. Purvis said they might be grouped together but there will not be any more than 30 people. Attorney Aikins said no more than 30 on the deck.

Mrs. Morrissey said with the deck you would have more customers. Attorney Aikins said fewer customers than what was proposed originally. We previously offered to close an area in the restaurant so the customers would not be increased. We are not at that point yet.

Mark Brosnan said the questions that are coming up seem to have been asked over the past year or so. How many times do we have to hear them? Attorney Aikins said we are trying to make a thorough record. We are trying to deal with the Board's and public's questions. We want to make sure the technical part of the application is met.

Mr. Brosnan said there has been testimony regarding buffers. Attorney Aikins said yes.

Mr. Brosnan said you are reducing the number of seating. Attorney Aikins said yes.

Mr. Brosnan said there will be no bar on the deck. Attorney Aikins said no service bar.

Mr. Brosnan said the square footage has been reduced. There is access to allow the handicapped. The Fire Department reviewed the plans. Attorney Aikins said yes.

Mr. Brosnan asked how much further do we have to go. Attorney Aikins said whatever questions the Board and public have we have to answer. At the next meeting we will have testimony regarding parking. Mr. Brosnan said hasn't there been testimony on parking. Attorney Aikins said yes.

Mr. Brosnan said we have heard testimony on every issue on this facility. It is close to a year and a half now and it costs everybody. We are in the same place as we were one year ago.

Wendy Sherman, River Road, said you have done inside work. She asked if any outside work has been done. Mr. Purvis said no.

Ms. Sherman asked what types of windows. Mr. Purvis said they are standard Anderson windows.

Ms. Sherman said she just saw the plan tonight is there enough support for those windows. If we have a storm like last week those windows can go down.

Ms. Sherman asked about speakers. Mr. Purvis said there aren't any.

Ms. Sherman said this deck will hold 30 patrons what is the total with waitresses and bus boys. Mr. Purvis said you will have to ask the owner.

Attorney Aikins said the materials for the barrier will absorb sound. Mr. Purvis said yes.

Attorney Aikins said the section of the wall you designed it will meet code. Mr. Purvis said yes.

Attorney Aikins said any final construction will be subject to construction codes. Mr. Purvis said yes.

Michael Barbota gave his credentials which were accepted by the Board.

Attorney Aikins asked Mr. Barbota if he prepared the noise report, A-13. Mr. Barbota said yes.

Attorney Aikins said you did that at the request of the applicant. Mr. Barbota said yes.

Mr. Barbota said he worked with Mr. Fitzpatrick. The noise study included a review of the requirements both by the State and Wall Township. He reviewed the standards of New Jersey and Wall Township. Wall Township is 50 decibels day and night. This is restrictive. Wall Township standards have not been approved by DEP. He said he monitored the noise on two occasions in August. The average results were 59 decibels at the location of the site. That was at a number of locations. Mr. Barbota explained as you move further away from the noise it dissipates and becomes lower. If you were at 25' and the level you were measuring was 70 decibels then at 50' you would be hearing at 60 decibels. The further you move away from the

noise the quieter the source. He said he modeled the existing source and the proposed source. The proposed source included the changes and improvements to the existing equipment. It also included the sound from the deck.

Mr. Barbota explained the applicant plans on removing the older condenser and replacing it and putting it on the roof of the building behind a parapet. The parapet will be used as a barrier for sound. By moving it away and placing a barrier the sound is less. Another improvement is there are two AC units that are along the River Road side of the building, they are both old units and much louder than new units. The other units are low noise. Units one and two will be removed. One new unit will be replaced. It will be located away from the residential properties.

Mr. Barbota explained the deck noise will be reduced with focus toward the residential properties. The sound from the deck is 80 decibels at 6'. I did the calculations with ten tables, four people at each table. Sound levels meet the DEP requirements. The proposed situation will meet the State standards and will also meet the Wall Township standard of 50 decibels.

Mr. Gray asked about the parapet barrier. Mr. Barbota said the parapet is 6" wide. Mr. Gray asked if 6" concrete will be enough of a sound barrier. Mr. Barbota said yes.

Mr. Gray asked when the noise study was done in August 2009 was it during the day. Mr. Barbota said in the afternoon and evening. That information is in the report.

Mr. Gray said you got 59 decibels in the summer time what was making that 59. Mr. Barbota said different things at different locations. On the lawn closer to the river at that location there is a clear view of 70 the majority of that noise was from 70 traffic. At another location near the property line but in the parking lot between the residential properties and where the deck would be the sound level still included quite a bit from 70. The bulk of the noise was from the older condenser units. He said he did measure the AC units. He said he also took measurements from the road, in front of the residents and across the road from Harpoon Willy's.

Mr. Gray said basically Saturday night during the summer some of the noise would be from doors closing and people talking. Is that very loud? Mr. Barbota said it could be. I did not consider that it is basically an existing situation.

Mr. Slocum asked if he could give a decibel number with 30 people sitting outside on that deck. Attorney Aikins asked at what distance. Mr. Slocum said 50 – 75". Mr. Balbota said 80 decibels. Mr. Slocum asked how he got that number. Mr. Balbota said he averaged it.

Mark Steinberg, Esq. asked If Mr. Balbota prepared the report. Mr. Balbota said yes. Mr. Balbota said there are various procedures to take noise levels.

Attorney Steinberg said different people take it different ways. Mr. Balbota said yes. He said he used what would be in accordance with the State of New Jersey.

Attorney Steinberg said everything is based on 80 dba at the deck level. It gets reduced as you get further from the deck. Mr. Balbota said yes.

Attorney Steinberg said if you started at a higher level it would be different. Mr. Balbota said yes.

Attorney Steinberg asked if sound travels in a straight line. Mr. Balbota said yes. Attorney Steinberg said what happens after the 8' of barrier. Mr. Balbota said without the barrier the sound would be closer to the property line.

Attorney Steinberg asked if the calculations took into account the noise from inside the restaurant. Mr. Balbota said no.

Attorney Steinberg asked if wind increased the decibel level. Mr. Balbota said not necessarily. Attorney Steinberg said but it could. Mr. Balbota said it could.

Attorney Aikins objected he said we are talking about general sound theory.

Attorney Steinberg said this site is in violation of Wall Township sound ordinance. Attorney Aikins said Mr. Balbota did not testify to that.

Attorney Steinberg said Wall Township's decibel level is 65. Attorney Aikins said that has not been approved by DEP.

Attorney Steinberg said there are 58 decibels at the property line. Mr. Balbota said yes.

Attorney Steinberg asked what the decibel level will be when there are 30 people singing Happy Birthday. Mr. Balbota said about 80.

Jim Watts, 2644 River Road, asked what is it 50' from the deck. Mr. Balbota said it is in the report.

Mr. Watts said the output was 59 decibel where is that coming from. Mr. Balbota said basically the highway.

Kevin Schuberman, 2652 River Road, asked if Mr. Balbota has ever been certified by DEP as a noise control officer. Mr. Balbota said yes.

Mr. Schuberman said as a noise control officer I look at complaints. We use the mythology in a slow response. You use average. If I was out on a noise complaint against a commercial property I would use the meter in slow response mode. If the noise from the source was above the standard it would be a violation. Mr. Balbota said he did measure in slow response mode.

Mr. Schuberman said he is concerned that his method does not account for that. Slamming a door that could go over the standard. Attorney Aikins said but that is existing and it will be there forever.

Mr. Balbota explained the portion of the deck facing the river is open and adding the wall will act as a barrier for any noise that will be from the tables.

Mr. Balbota explained it will get louder toward the river because the deck is there and there is no barrier on that side. There will be an absorbent material in the roof. That will absorb some of the sound.

Mr. Gray asked if there is a way to measure it at the front property line. Mr. Balbota said he did not do that because it was not an issue.

Martin Seidenstein, 2627 Ramshorn Drive, asked if Mr. McCarthy has expressed any objections. Attorney Aikins said quite the contrary Mr. McCarthy is in an agreement regarding parking.

Vickie Pekarchik, 2640 River Road, asked how many decibels a car would have when pulling in your driveway. Mr. Balbota said he can't give an answer to that.

Mrs. Morrissey announced this application will be carried to April 21, 2010

Mr. Gray said when all done we will deal with the res judicata issue. We will hear everything first and then decide on that.

Attorney Aikins waived the time limits.

RESOLUTIONS TO BE MEMORIALIZED:

EUGENE PILOT - #BOA 32-2009
Block 954, Lot 1

Gray/Orender

RAYMOND W. MARTIN - #BOA 31-2009
Block 930, Lot 36

Gray/Morris

ROBERT & JUDITH HARMS - #BOA 33-2009
Block 876, Lot 8

Gray/Morris

There being no further business to come before the Board, a motion was made, seconded, and unanimously approved to adjourn the meeting at 11:15 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary