

Present: Hartmann, Peterson, Connors, DeNofa, Stambaugh, Dodge
Forrester (Attorney)
Cranmer (Engineer)
Absent: Canonico, Betesh, Walsh

Chairman, Mr. Hartmann, called the meeting to order at, 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by, Mr. DeNofa, seconded by, Mrs. Peterson to adopt the minutes of the April 2, 2008 meeting. All approved.

Planning Board Representative: no report

Correspondence:

- **First Fidelity Investments** requested to be carried to June 4, 2008 without further notice. Mr. Forrester announced that this application will be carried to 6/4/08 without further notice.
- Mr. Forrester gave an update of the Litigation on Sunnybank Drive for informational purposes only.

Unfinished Business:

M/M Dennis Pryzwara:

Adoption of Resolution

Bl: 39, Lot: 17

A motion was made by Mr. Connors, seconded by Mr. DeNofa to adopt & memorialize the resolution of approval to Mr. & Mrs. Dennis Pryzwara as amended.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, DeNofa

Negative: None

New Business:

Mr. & Mrs. Michael Fitzgerald:

226 Williamsburg Dr.

Bl: 70.03, Lot: 2

Bulk variances

2nd story addition & 1 car garage

Mr. Forrester announced that he has reviewed service and finds it to be adequate and the board has jurisdiction to hear this application.

Mr. Michael Fitzgerald, 226 Williamsburg Dr was sworn.

Mr. Forrester marked the following into evidence:

A-1: Architectural plans consisting of existing and proposed conditions, floor plans & elevations 5 sheets, prepared by Unger & Mahns, Red Bank, NJ,

Mr. Fitzgerald described what the proposed construction would give his family more living space for his growing family, they would be adding:

- Play area for the children over the garage
- 3rd garage to help with storage since they do not have a basement

Mr. Fitzgerald explained that presently they have a conservatory in the rear of their home which at the present time is leaking and it will be removed and replaced with a screened in porch. He explained that the existing deck will also be removed and replaced with a stone patio. The footprint of the new screened in porch will be smaller than the existing conservatory to give back on the building coverage, but will also increase the rear yard set back. The new driveway leading to the 3rd garage will add a small amount of impervious coverage for entrance into the new garage. They are adding additional living space for the children above the garage and they will be moving the laundry room up stairs as well, and a mud room will be created for coats/boots etc.

Mr. Fitzgerald advised that he has received Mr. Cranmer's letter on the impervious coverage variance. He stated that he would like to consult with Mr. Cranmer on his letter with possibility of what he should do to alleviate some of the drainage. Mr. Fitzgerald explained that the prior owner had "walled in" the property with berms and landscaping, and Mr. Cranmer visited the site and reviewed the approved site plan for the neighborhood, and the approved swales that were installed. Mr. Cranmer explained to him that the approved swales were not working correctly and that the berms were creating a water problem on his property. He has since removed some of the berms and has corrected the water problem to the point of there is very little water/mud in his back yard. Mr. Fitzgerald testified that he would re grade the backyard and he would remove all of the remaining berms in order to restore the original approved swale systems. He would be open to any suggestions that Mr. Cranmer would have, but he doesn't feel that a dry well would work on his property due to the high water table and clay that already exists in his neighborhood.

Mr. Cranmer explained that the back yard was very wet due to a man made condition, and he feels that the most appropriate "fix" would be to take the roof from the house, which is equivalent to what is what the applicant is over on the impervious coverage and install a dry well in the front yard catching the roof area water into in the dry well and mitigate the back yard in the front yard area.

Mr. Fitzgerald gave his concerns on putting the dry well in the front, since he just alleviated the water in the back yard, and he feels that burying the dry well in the front will create a lot of water around the dry well. He feels that if the water tries to drain out into clay, which is what his soil conditions are in the neighborhood, he fears that he is just creating another problem area. He is open to any ideas that could be used in place of a dry well.

Mr. Fitzgerald explained that there is a drainage pipe that he has been directing some of his front roof leader water into, which he believes is a sewer pipe located on his neighbor's property, and it is working great. The leaders have already been installed that Mr. Cranmer suggested in his letter, and it is working great. Mr. Fitzgerald explained that the sewer outlet is located approximately 50' from his house.

Mr. Cranmer recommended that the board consider the application under its merits, the mitigation strategies can be worked out which would be most appropriate for this site, based on actions that have may or may not been taken. Mr. Cranmer said that he is familiar with the property and mitigation will be looked into according to the BMP manual as to mitigation strategies that are available and can be employed.

Mr. Fitzgerald stated that since the removal of the berm the property is much improved and has made a tremendous difference, and they have not removed all of the berms, and he is open to working with Mr. Cranmer with respect the additional percentages of impervious coverage that the garage will create.

Mr. Forrester marked the following:

A-2 a: front of house, 3rd garage location

b: behind garage, 2nd story location

c: conservatory which is to be replaced with screened in porch

d: conservatory which is to be replaced

e: front of garage elevation where the 2nd story with bump out would be located

Mr. Hartmann stated that the proposed would add 458 sq. ft. creating a building coverage of 13.8% where 12.2% exists on a 22,000 sq. ft. lot. He would like to purchase more land but he is built out on all sides with existing homes.

Mr. Forrester stated that a recommendation of the Board Engineer is to supply a grading plan for review. Mr. Fitzgerald stated that he has provided that to Mr. Cranmer which shows the re grading of the berms. Mr. Cranmer stated that he would need a plan signed by the architect.

A motion was made by Mrs. Peterson, seconded by Mr. DeNofa to open the meeting to the public. All approved

There were no comments/questions

A motion was made by Mr. Connors, seconded by Mrs. Peterson to close the meeting to the public. All approved.

Board comments:

All board members felt that as long as the applicant worked with the Board Engineer with respect to the mitigation of the storm water run off.

A motion was made by Mr. Connors, seconded by Mr. DeNofa to approve the application of Mr. & Mrs. Michael Fitzgerald as submitted with the following conditions

- mitigation of the additional storm water with the approval of the Board Engineer.
- Grading plan be submitted to the Board Engineer for his review & approval

Roll Call:

Affirmative: Hartmann, Peterson, Connors, DeNofa, Stambaugh, Dodge

Negative: None

Resolution June 4, 2008.....

Shrewsbury Patterson LLC:

Use Variance only

d/b/a Walgreens

Bl: 2, Lot: 10

Mr. Forrester announced that he has reviewed the service and finds it to be adequate and the board has jurisdiction to hear this matter.

Mr. Peter Falvo, Esquire, represented the applicant.

Mr. Falvo gave the board some background on the application. He stated that the application started in 2006 when they approached Mayor & Council for the construction of a Walgreens on the corner of Patterson Ave & Shrewsbury Ave, as to whether the use would be welcomed by the Borough. It was indicated that the use would be welcomed since they were going to rezone a portion of Shrewsbury Ave in order to accommodate a COAH application but also to eliminate the LI zone. They also indicated that the Ordinance would soon be worked on. With the approval of Mayor & Council they met with the Borough Engineer in order to work out some of the engineering issues, and they indicated that they hoped that the building would design the building closer to the front and supply sidewalks. In 2007 they returned to the Mayor & Council seeking some type of date of the new Ordinance, and they were advised that it was still being worked and could be introduced by the 1st of the year, pending the opinion of the COAH council, and the new COAH regulations that were being introduced. He explained that they had to submit the application to the Zoning Board since the "seller" wanted to see some action as to receiving approvals on this application. The last discussion with Mr. Cranmer indicated that the Ordinance was awaiting the new 3rd round of COAH numbers and its potential impact on the affordable housing on the Borough of Shrewsbury. They do not know when the new Ordinance will be adopted or when the new 3rd round COAH regulations will be ratified, which he feels will be in June but already has the threat of litigation.

Mr. Forrester explained that one of the impacts of the zoning in this area is the Ordinance that has been prepared but there hasn't been any hearing scheduled yet. He explained that the COAH regulations does not impact this application as a stand alone application but there could be low and moderate income housing in the area, but not on their lot, but

as part of a total look at the area. No one knows what the 3rd round is going to require, and there is a lot of conflict in many municipalities.

Mr. Cranmer explained that the Borough adopted a Affordable Housing Fair Share Plan, as part of its Master Plan in 2006. The Affordable Housing Plan included an “overlay district” for the provision of affordable housing, which means that the underlining zoning would remain in effect and there would be an overlay district which would permit a developer who would like to construct an inclusionary development or a development that has an affordable housing component. Subsequent to the submission of the plan the rules changed, the COAH rules were put on hold and they were left in a situation where the plan may or may not be effective as written and they would have to modify it. The approach that the governing body has taken is that they will have to amend the Land Use Element of the Master Plan, change the Zoning Map, adopt Ordinances that create the overlay zoning districts and at the same time they would rezone one or more areas of the Borough that they feel is in need of rezoning. One of the areas that was in question is on Shrewsbury Ave, which currently is in the LI Zone, the LI zone on Shrewsbury would not be in the best interest of the Borough and it is being considered for a business/service/commercial zone. The master plan amendment & zoning map will be done at the same time, along with the ordinance amendments in order to save money & notices for the public hearings. The council would introduce the changes and the Planning Board would have 35 days to provide their input and after the review they would either be adopted or give reasons why the changes would not be adopted. With the affordable housing regulations suspect, it appears that the regulations will be in effect but perhaps subject to litigation by a number of municipalities who feel that they are not receiving “fair” treatment. There have been discussions for approximately 18 months with regard to rezoning & affordable housing elements. The applicant is before the board because they can longer wait for the Ordinance to take affect.

Mr. Cranmer explained that the Ordinance has never been adopted, nor has it received any input from the public, Planning Board or the governing body. He explained that this use may or may not have been a permitted use in the Ordinance. So, no one should jump to the conclusion that this would have been a permitted use in the zone. This application should be judged on its merits as a Use Variance. Mr. Falvo stated that they will meet that burden of proof.

Mr. James Kennedy, Kennedy Engineering, Red Bank, NJ was sworn and accepted as an expert witness in the field of engineering.

Mr. Kennedy testified that he prepared the plan for the construction of a Walgreens, and he described the existing conditions (44, 742 sq. ft mixed use building), with 100% impervious coverage.

Mr. Forrester marked the following into evidence:

A-1: Photo of existing building taken a week before this hearing date

A-2: Site Plan, consisting of 3 sheets

A-3: Colored Landscaping Plan (smaller version handed out to board members)

Mr. Kennedy described exhibit A-3 in connection with how the proposed Walgreens is suited for the site, along with the proposed:

- 2 way driveway off Patterson Ave.,
- 2 way driveway at Shrewsbury Ave (southern side),
- 1 way driveway (northern side).
- 53 parking spaces, which includes employee & customer parking & barrier free stalls
- loading area for deliveries and trash/recycling area for compacting & bailing on the northern side of the building
- drive through for the pharmacy on the eastern side or rear of the building.
- landscaped buffer between Lot 10 & Lot 9.

Mr. Kennedy testified that the existing building will be demolished for the construction of the new 14, 449 sq. ft. Walgreens. He feels that the new building will make a presence on this site where there isn't any at this time. There currently is a structure that sticks out into the roadway. They will create a presence by moving the building to the northerly end of the site, which will open up visibility and parking, and give a visual affect for a more desirable site.

Mr. Kennedy testified that they are proposing a paver cross walk which will create a pedestrian link through the parking lot into the main canopy entrance into Walgreens.

Mr. Kennedy stated that there will be a pylon sign at the corner of Shrewsbury Ave & Patterson Ave, for identification more testimony will be given at the time of site plan.

Mr. Kennedy described the building as a "clipped corner building" which creates an architectural façade, pointing toward the intersection. A 15' set back to the building, which creates a pedestrian scale frontage, which is consistent with a future Ordinance. The placement of the building took into consideration the pedestrian scale environment along Shrewsbury Ave and to give more landscaping in the rear of the property which abuts a residential parcel of land.

Mr. Kennedy stated that one of the key elements is to provide for cross access, again, for a future Ordinance for shared access & shared parking along many of the properties along Shrewsbury Ave. As part of the shared link they are proposing that a shared access easement be provided along the back of the property and run to the property line of Lot: 11. He feels that this would almost eliminate some driveway cuts along Shrewsbury Ave and provide emergency vehicular access through the easement, which was done at the request of the Borough.

Mr. Kennedy testified that they are proposing sidewalks along the entire perimeter of the site, which is consistent with the pedestrian access to the site and circulation to the site, with landscaping buffering between the sidewalk and the parking area to give both aesthetics and safety.

Mr. Kennedy explained that he will be addressing drainage, landscaping, lighting, etc at the time of site plan.

Mr. Falvo asked Mr. Kennedy if this piece of property provide the opportunity to alter the aesthetics of this site, by removing the existing building and creating something that is more in conformance with the zone? Mr. Kennedy asked, more in conformance with the LI Zone? Mr. Falvo said yes. Mr. Kennedy said that there is an esthetic benefit here by moving the building back from the intersection and providing the landscaping and pedestrian scale improvements along the frontage, you will have an incredible boost to the visual environment at the corner. He feels that it will have an overall positive impact.

Mr. Falvo asked Mr. Kennedy if there is a unique and attraction because it is at a controlled intersection, correct? Mr. Kennedy said yes, it provides a unique opportunity for access due to the signalized intersection.

Mr. Falvo asked Mr. Kennedy if the present impervious coverage is 95.7%, and it will be reduced to 78.4%? Mr. Kennedy said that is correct, and all of the pervious surfaces that are on site are lower quality, and not a well groomed area. It is either not paved or not roofed. This plan will provide a higher grade of pervious surfaces with professional landscaping & would add to the infiltration of water on the site.

A motion was made by Mr. Connors, seconded by Mr. DeNofa to open the meeting to the public. All approved.

Ms. Michelle Izzo, 207 Patterson Ave, owns the property adjacent to the site, stated that she has major concerns with the traffic issues, and that the corner of Patterson Ave & Shrewsbury Ave is a “night mare”. There has been accidents just backing out of her driveway. She has concerns with the driveway directly next to her driveway. She also explained that her family owns & operates a business and they use the area for their customers, and has concerns with vehicles flying up Patterson Ave. Ms. Izzo stated that cars are currently backed up past her house and two other homes on Patterson Ave every single day non stop. The traffic turning onto Patterson Ave will not be able to turn into the driveway on Patterson because the light on Shrewsbury Ave will be blocking traffic in all directions, and she is just not sure that this plan is feasible.

Mr. Kennedy said that the applicant will be providing a traffic expert for any questions with regards to traffic concerns.

Mr. Forrester explained to the public that this application is only for an application for a use that is not permitted in the LI zone, not as the applicant is proposing but a retail use. The applicant must provide special reasons why this property is particularly suited for the use that is before the board. He explained that the chairman did give his concerns that the application is being presented as a site plan application, which he is correct.

Mr. Forrester explained that the site design might be integrally related with the use in order to establish why the use is particularly suited for this particular piece of property or

if you are oppose to it why it's not particularly suited for this piece of property. There has been testimony from Mr. Kennedy and there will be testimony from Mr. Ney as to site issues, the board is not considering site issues, but why this piece of property is particularly suited for this particular use. You might hear testimony about parking spaces, the size of the building and locations etc, the board is only considering that on as it relates to this particular piece of property is suited and what is the special reason why this property is suited for this type of use.

Mr. Michael Bell, 43 Trafalgar Place, Shrewsbury, disclosed that he is employed by Walgreens, but in another division. Mr. Bell asked if Walgreens has another size "box"? Mr. Kennedy asked if he could defer that to the architect.

Mr. Bell asked if there are 3 ingress/egresses? Mr. Kennedy said yes. Mr. Bell asked if the existing building has retail in the building? Mr. Kennedy did not know. Mr. Bell asked Mr. Kennedy why is the retail use appropriate for this site? Mr. Kennedy explained that they have a much potential for retail & on site parking over what exists today. Providing a retail use at a signalized intersection affords good opportunity for circulation, and it is a safer configuration as to what exists today. Mr. Kennedy stated that the site will look nicer and they can bring it up to today's standards for circulation, access and for site development, rather than covering the entire site with a building and outside yard area. He feels that this gives them an opportunity to development a site consistent with today's standards of practice.

Mr. Bell said that he did not answer his question. There hasn't been any testimony as to what the traffic is currently going in and out? Mr. Kennedy said no. Mr. Bell said that if this use generates a significant amount of traffic then what currently is there, would this use be better than what is currently on the site? Mr. Kennedy asked to defer that to the traffic expert.

Mr. Bell did disclose that he is the chairman of the Planning Board and he is here as a citizen not for the Planning Board.

Mr. Bell asked, if this use was approved, the Borough currently has an Affordable Housing Ordinance, and we are currently waiting for a new requirement. Mr. Bell asked Mr. Kennedy if the applicant would be willing to meet the new standards on Affordable Housing? Mr. Falvo said that there would be a development fee that would have to be paid and under the COAH Standards, under the 2nd round, and as they are proposed under the 3rd round, the number of full time jobs that are being generated would require an additional contribution able the development agreement, depending on the number of units that would be created. If they were to create 10 full time jobs, and that required 1 affordable housing unit, under the 3rd proposals, if they would have a requirement of \$130,000 to the COAH Fund to satisfy the obligation of the 1 affordable housing unit being generated by the jobs being created. Even if all of the jobs were from existing people from the Borough it would still generate the requirement of contribution.

Mr. Bell asked if they have considered apartments on the 2nd floor. Mr. Kennedy said that Mr. Cranmer said that might be a component of the “overlay zone”, and they communicated that back to the applicant, and the applicant discussed the viability with Walgreens and he cannot commit either way.

Mr. Bell again stated that he his here as a resident, not as a Planning Board member or a Walgreens employee.

Mr. Paul DeFelice, 43 Strauss Drive, Shrewsbury NJ, asked if the improvements will improve the visibility of traffic from Patterson Ave? Mr. Kennedy said as far as visibility they will be pushing the building back but as far as traffic circulation he has defer the question to Mr. Ney, the traffic expert.

Mr. DeFelice asked if the existing use provide safe access for pedestrians, and does the current site provide sidewalks, and would this plan give a better access for pedestrians? Mr. Kennedy referred to A-3 and they are providing a pedestrian link along the frontage which is separated from vehicle traffic by landscaping & islands and barrier free ramps at each intersection & at the intersection of Patterson & Shrewsbury Ave.

Mr. DeFelice asked questions with reference to the current loading docks. He asked if the use was a more active warehouse would the tractor trailer trucks create a “worse” condition than what is being proposed today? Mr. Kennedy explained that the existing building façade is 6’ from the property line, and they would be moving the building by 70’ from the property line, and in addition they would be providing landscape buffering throughout the area.

Mr. DeFelice feels that this use would be a good improvement to the Borough, and that the Borough Council has not moved on this at this point, and he feels that the development of this site is further developing the town into a better, but we keep walking and dancing which he feels is wrong, and we should be moving on both this site and other sites in this location.

Mr. Sal Izzo, Patterson Ave., owner of Sales Barber Shop, he asked if there would be a 24 hour drive through? Mr. Falvo stated that this would not be a 24 hour operation; the Ordinance in Shrewsbury does not allow the operation to be open past 10:00pm.

Mr. Forrester explained that the applicant would need a use variance for the 24 hour operation, and they did not notice for the 24 hour operation. Mr. Falvo said that the 24 hour operation would be part of the General Code Ordinances that are passed by Council, and it would require the Council to amend the Ordinance. Mr. Forrester stated as of today it is not permitted. Mr. Falvo stated that the operating hours would be 8:00 am to 10:00 pm.

Mr. Izzo asked what time would deliveries be made? Mr. Kennedy said that they would be consistent with the Ordinance, they are usually made off peak, and that would be addressed at site plan.

Mr. Forrester explained that eventually if an approval is granted, the applicant would have to enter into a Developers Agreement where conditions would be imposed by this board, which is enforceable by the Code Enforcement Officer. Mr. Izzo asked if that could include garbage trucks. Mr. Forrester said yes.

Mr. Forrester again explained that the objective here is to determine why this piece of property is suited for this use as a Walgreens. It is difficult to separate how it will be used as a Walgreens, that is why some of the site issues have to be integrated with the use, but currently the board is looking at WHY and what are the special reasons why this lot should be used for this retail use.

Mr. Izzo stated that he has concerns with the value of property, the signs and the lighting. He is also concerned that if sidewalks are constructed someone is going to get hit when cars come around the corner. Mr. Falvo explained that sidewalks will be installed around this property.

Mr. Forrester explained that at the time of site plan and the use causes an impact to the site, as part of the approval the developer can be required to make a contribution to help to resolve any problems that they may cause.

Mr. Izzo asked if there will be a sign on his property line/building? Mr. Kennedy said that there is a performance standard in the Ordinance that does not allow them to glare lighting off site, and they would meet those requirements. With regard to the signs, their primary facades are on Shrewsbury Ave & Patterson Ave, there would be little advantage of having a sign facing Mr. Izzo's property. The signs would normally go on the street frontages.

Mr. Izzo asked questions with regard to how, if approved, would the building be taken down and how it would be constructed? Mr. Kennedy explained that they have not reached that point yet. Because the building is so close to the property line specialized demolition techniques would have to be incorporated, and if they receive a favorable decision from the board they would start looking into those issues.

Mr. Forrester explained that if the board was to vote favorably that is an issue that could be included in the Developers Agreement as to "how it is going to happen" with regard to soil removal etc. Mr. Izzo has concerns with construction workers parking in front of his business. Mr. Falvo stated that they would stipulate that construction workers will not park on Patterson Ave, and they will make arrangements that they will park somewhere other than a place that would interrupt traffic on Patterson Ave or Shrewsbury Ave.

Mr. Izzo asked if there will be any food being prepared and sold in the store that would create a rodent situation in the garbage? Mr. Falvo said no.

A motion was made by Mrs. Peterson, seconded by Mr. DeNofa to close the meeting to the public. All approved.

Break 9:05 pm to 9:15 pm. All present at roll call.

Walgreens – Continuation of Hearing

Mr. Shawn Perry, Banett Group, Cherry Hill, NJ project manager for Walgreens and advised that he is authorized to represent Walgreens. He testified that he is familiar with the construction, materials etc of the proposal.

Mr. Forrester marked the following for identification only:

A-4: Board showing proposed building elevations, smaller version will be submitted for the boards records

Mr. Perry testified that the building that is shown is the type of building that is being proposed for this site in question. He referred to A-3 & A-4 and described the building for materials, signs etc.

- Walgreen typically uses 3 signs which would be internally illuminated on both sides. which would also face Shrewsbury Ave & Patterson Ave
- 1 sign to face Shrewsbury Ave, 1 sign at the diagonal cut corner, 1 sign facing Patterson Ave, no sign on the side of the building that faces the residential area,
- the receiving area, includes the dumpster area & the enclosure area for the totes which will be enclosed with fence
- the finish on the building will be a light rock cast, orange/brown utility brick, and a split rock face base across the bottom of the building where the sidewalk would be located

Mr. Perry testified that he did visit the site and his opinion is that the proposed building would be a considerable esthetic improvement as to what is presently there now. This building would bring the corner up to current social status for a much needed beautification to this corner. This building can be compared to the Princeton, Neptune (Rt. 33 & Neptune Blvd), Roxbury, West Caldwell, Berkeley Heights

A motion was made by Mrs. Peterson, seconded by Mr. Connors to open the meeting to the public. All approved.

Mr. Todd Davis, represented Mrs. Eleanor Johnson, owner of Shrewsbury Nursing Home, he advised that there is Walgreens in Freehold. Mr. Perry advised that he is not familiar with that store.

A motion was made by Mrs. Peterson seconded by Mr. Connors to close the meeting to the public. All approved.

Mr. Connors asked why did Walgreens choose this site when there are 2-3 Walgreens within 3 miles of this site? Mr. Falvo said that he would have someone to testify to that.

Mrs. Peterson said that all of the testimony that she has heard tonight is how this site is going to be improved, and she hasn't heard as to WHY this site is suited for this use, who will be testifying to that?

Mr. Falvo said that Mr. Kennedy testified that due to the uniqueness & why it's particularly suited due to the corner location. He also stated that the law states that if you are making a considerable esthetic improvement to a piece of property that could rise to the level of a special reason to grant a use variance. They will get into the other unique & particular characteristics of this property for this type of use through the planner & through the traffic expert.

Mr. Cranmer stated that since the time that he has spoken to Mr. Kenney & Mr. Falvo about this application, the governing body of the Borough has enacted a Ordinance which has created a trust fund for traffic calming improvements to Patterson Ave, recognizing the need to mitigate any increases in traffic in that corridor and there will be development applications presenting themselves. Not only are we aware of an application that is pending on this site, but also on the Boro Bus site but on the Nursing Home site. A trust fund has been created and one way that we could mitigate the increase in traffic would be for a prorate fair share contribution into the trust fund. We have collected monies from a developer already. He wanted to advise that the mechanism is already in place.

Mr. Falvo stated that the applicant is aware of the trust fund and the applicant has stipulated in conversations with Mr. Cranmer that if the application was approved they would make a contribution of their proportion of costs for payment of traffic calming features.

Mr. Hartmann asked if this was a trust fund to improve the traffic flow on Patterson Ave? Mr. Cranmer explained that Patterson Ave currently has an inordinate amount of traffic, and some of the geometric characteristics are that it is one long straight roadway. We has employed a "traffic calming measures" i.e. the creation of speed tables, narrowing of intersections, creating visual elements that give the visual of a narrower roadway to help decrease vehicle speeds. They have created a concept plan, and quantified the costs of the improvements and they are now in the process of securing grant funding and they are now collecting a "fair share contribution" from the developers so tax payers do not have to take on the burden.

Mr. Hartmann stated that they are developing a plan to slow down the traffic on Patterson Ave, but at the same time we are talking about increasing the traffic on Patterson Ave? Mr. Cranmer said yes.

Mr. Falvo stated that he would like to be carried to the **June 4, 2008 meeting without further notice.** Mr. Falvo will extend any amount of time that is required.

Ms. Antoinette Musorrafiti:

37 Wakefield Ct
Bl: 1: 69.04, Lot: 24

Building coverage variance
to allow a pool dome

Mr. John Giunco, Esq. Middletown, represented the applicant.

Mr. Forrester announced that he has reviewed the service and finds it to be adequate and the board has jurisdiction to hear this matter.

Mr. Forrester asked if this is an appeal of the decision of the Zoning Officer.

Mr. Giunco explained that the applicant was advised that there was a building coverage violation. He explained that the applicant has a lap swimming pool, 60' x 15' which she uses for physical therapy for a neck & nerve condition. The inflatable structure dome was put on October 15, 2008 and taken down on April 15, 2008. The applicant is asking the board to consider the appeal from the Zoning Officer, and if the board supports the decision, in the alternative they are requesting a variance for the building coverage to permit the dome to be over the pool from October 15th through April 15th so the pool can be used during the colder months. The building coverage for the R1A zone is 10% where 15.7% is proposed. They are seeking the board's approval to either determine that the dome is not a building or in the alternative grant a building coverage for the time frame of October through April.

Mr. James Kennedy, Kennedy Consulting, Red Bank, NJ was sworn, and was accepted as an expert witness.

Mr. Gordon Gemma, Planner, was sworn and accepted as an expert witness in Planning.

Mr. Gemma stated that one of his associates from his office took a series of photos dated 4/29/08 & an aerial photo from Microsoft Earth, which is the most recent aerial available. Mr. Gemma testified that the photos accurately represent the property that is before the board.

Mr. Forrester marked the following:

A-1: series of photos taken on 4/29/08

Mr. Kennedy described the surrounding area & 37 Wakefield Court, which is located in the R1 zone, including the location of the pool as shown on A-1. Mr. Giunco stated that this home, the addition, and the pool were all built with the proper permits.

Mr. Kennedy stated that he did visit the site to determine if there were any impacts from the development and use of the site that could be offset from the drainage. He stated that he walked the perimeter of the site, looked at the adjacent areas for erosion, ponding water, or anything that could indicate an increase in runoff, or that the site was unstable,

and he did not find any instability of the site or an adverse engineering impact from the installation of the dome.

Mr. Kennedy testified that the site is landscaped and maintained with rows of arborvitae, and finely manicured landscaped beds. He feels that the landscaping does serve to mitigate any visual impact of the dome itself.

Mr. Kennedy stated that could not suggest any improvements to the site, since he could not see any engineering impacts to the site.

Mr. Giunco asked Mr. Kennedy to describe the perimeter:

- left rear yard is adjacent to a residential yard and home
- fence line toward the driveway & shed
- arborvitae row along the adjacent property line – which are healthy
- with a arborvitae row along the remaining property line, with a mulched berm

Mr. Kennedy doesn't feel that any run off would be able to go through the arborvitae or the mulched area

- a deciduous screen of mature trees with a dense underbrush
- along the rear property line there is a shed and the house also acts as a visual screen from the neighbor blocking the appearance of the pool
- mature landscaping beds are located throughout the property including the front, sides and the corner of the pool areas
- dense foundation plantings up against the home

Mr. Giunco asked Mr. Kennedy if you were standing in the cul de sac looking at the site, is the dome visible? Mr. Kennedy said that the pool is not visible and the dome would not be visible from the street since it is blocked by the home. Mr. Giunco asked if the dome was up when he visited the site? Mr. Kennedy said no.

Mr. DeNofa asked Mr. Kennedy when he was there? Mr. Kennedy said yesterday.

Mr. DeNofa asked, the house that is behind the pool, what is in between there?

Mr. Kennedy said deciduous trees, underbrush, and a natural wooded area.

Mr. Hartmann asked if there is a fence around this whole thing? Mr. Kennedy said that there is a board on board fence along a portion of the site to the rear. Mr. Giunco asked if he saw the fence? Mr. Kennedy said that he doesn't recall. Mr. Giunco said that he represents that there is a fence along the rear of the property. Mr. Kennedy said that the property is gated on both sides and there is an estate type open fence around most, but he doesn't recall a fence in the woods.

Mr. Dodge asked what is the visual affect from the cul de sac to the property to the right of the dome? Mr. Kennedy said that most of the dome is blocked by the applicant's home.

Mr. Dodge asked what is "most of" is it half? Mr. Kennedy said that maybe 1/3 of it would be visible.

Mr. Gordon Gemma, Planner, described his study and findings. He testified that they are here for the interpretation and the variance relief to determine that Mr. Donlon was correct on the interpretation. He referred to the Microsoft aerial, exhibit A-1, and presented a smaller version of A-1 for the board to review.

Mr. Gemma described the 32, 630 sq. ft. lot in a R1A zone, surrounded by other residential home, where pools are a permitted use. The issue is not whether the pool is permitted but rather if dome over the pool is a building, which would exceed the building requirement. The building requirement in this zone is 10%, the lot coverage requirement in this zone is 20%, which is not an issue, but in every other way you meet the criteria of the Ordinance i.e. set back requirements, the height of the dome 12-13' where 15' is allowed. The legal issue is whether or not you meet the definition of building coverage, and if the board feels that Mr. Donlon is correct, and then the issue is variance relief. Mr. Gemma read the definition of "building" Section 94: 2.3, which is also met under MLUL 55:D3.

Mr. Gemma read the definition of "occupancy" into the record, he stated that there isn't any definition of occupancy in the MLUL, the Borough made it up and the concern that he has is that since there is not a definition in the Land Use Law, you are trying to use a definition that makes sense. If you use the word "occupancy" and you occupy something by using it, under that same definition you have just occupied a swing set and a tennis court. You don't occupy it, you make use it, but you don't occupy a pool, you may use it. He asked by putting this coverage, are you now occupying the pool where you weren't occupying it before. That is where you have to look at the definitions in the Ordinance.

Mr. Gemma continued, he stated that previously you weren't occupying the pool, now you are occupying the pool. That is the thin narrow legalist interpretation, and you must make the interpretation as to what it actually means.

Mr. Gemma stated that if you exceed building coverage, you would need a bulk C variance. There are 2 tests for a bulk C variance.

- C1 variance – the exceptional characteristics of the property, shape topography, structures upon the property, and the strict interpretation of the Ordinance would result in undue hardship.
- C2 variance – the flexible C that the benefits of allowing the use outweigh any detriments

Mr. Gemma stated that the detriments are that the impervious coverage was originally intended to make sure that there isn't any run off on to adjacent properties, here we are not adding any additional run off or impervious coverage, in fact, we are under the overall coverage requirement. Another reason for impervious coverage if you are building too much or overbuilding the property, and here again the dome cannot be seen from the street, due to the house blocking the view. It can be seen by the neighbor to the rear only when the trees are not in full bloom, and maybe the neighbor to Dorchester Way, but there is an arborvitae row blocking. The neighbor on Wakefield Court probably cannot see the dome, but he has not gone on that property.

Mr. DeNofa said that he has a problem with “probably” either you can see it or can’t see it. Since you weren’t there to say that you did see it, it doesn’t matter.

Mr. Gemma said that he did see the screening, and based upon the screening from his clients property, and when he says probably he did not go on the neighbor’s property looking back at his client’s property. He stated that there is a large arborvitae row that makes it so that you cannot see through, but he was not able to look through the other way.

Mr. Giunco asked if he was on the ground? Mr. Gemma said he was on the ground, and he was not on the roof at a different elevation, but when a neighbor says that they saw it, they probably did.

Mrs. Peterson asked if he was there when the dome was up? Mr. Gemma said no, he was there yesterday and today again. There were some leaves on the trees, not full, but the arborvitae row is a full evergreen row, but you can see through to the neighbor to the rear. Again, you have to go to what is the purpose and intent of impervious cover and does this allow for the over building of the property to have an adverse detrimental impact upon the neighbors, and the answer is by meeting all the other set back requirements i.e.: height requirements & set back requirements. It certainly is big as an accessory structure, but it is not to the point where it would have an adverse impact such that a variance relief is not warranted.

Mr. Giunco asked Mr. Gemma since the applicant only will use the dome from October through April 15, would you find any difference in any of your opinions as a result of the limited use? Mr. Gemma said that it certainly becomes temporary, it is not permanent not matter how you cut it, and certainly by its very nature it’s not a permanent thing. That would mitigate any impacts that it would have. There are other ways, if the board finds that there are potential impacts that could be mitigated similarly with the substantial arborvitae row, and quite permeable, but dense. Those types of things could also be utilized if the board finds that is the intent & purpose of the building coverage requirement that has to get mitigated then in fact the board could impose that.

Mr. Giunco stated now that the potential impacts & mitigation have been identified, has there been an analysis as to whether there is any basis or justification on the MLUL that would allow the variance & grant the use of this if the board found that there was occupancy and hence this was a building. Mr. Gemma said looking at the flexible C criteria the board could, by trying to mitigate impacts that they might perceive were existing, that the benefits outweigh any burdens. He cautions the board, there is a difference between it looks big & ugly and it has a detrimental impact. In New Jersey don’t have a right to a view; you don’t have a right to dictate as to what the neighbor next door puts over there. You have the right to make sure that it doesn’t have an adverse impact upon you, as adverse impacts are defined pursuant to the MLUL, and that is the criteria you have to apply.

Mr. Giunco said that the principle of no right to a view has been defined & decided in case law in New Jersey particularly affecting water & ocean views, is that correct.
Mr. Gemma said that is correct.

Mr. Giunco asked if there are any recommendations that you would propose for this site?
Mr. Gemma said that the recommendations would be to confirm that there is no adverse impact from run off, which is one of the purposes of impervious coverage, and that was Mr. Kennedy's testimony that there wasn't any run off, and that it could be confirmed by your engineer reviewing the information filed by Mr. Kennedy. The board could limit the time of year so the pool is only usable in the winter and the visual impacts could be mitigated by requiring additional year round green screening.

Mr. Cranmer asked for some information on the structure of the dome.

Mr. Giunco stated that there was testimony from Mr. Kennedy that it is 12', inflatable through a small compressor to keep it up. Mr. Cranmer asked if there is any framing involved? Mr. Giunco stated that Mr. Kennedy can answer that.

Mr. Kennedy said that there is no structural element to the dome, it is held up by a small 110 volt air compressor. It is tethered with bolts along the edge of the concrete apron.

Ms. Antoinette Musorrafiti, 37 Wakefield Court, was sworn. She testified that she is the owner of the pool and the user of the pool. She explained that the compressor is approximately 2' high, it has a cover to protect, runs off of 110 volt, and it is only a blower, which runs constantly, and it makes very little noise. The dome is held down with eye bolts and wires. If the fan is turned off the dome deflates. The dome is kept warm by the heat that rising.

Mr. Connors asked if there were lights in the dome? Ms. Musorrafiti said only the lights that are in the pool.

Mr. DeNofa asked when was the dome put up? Ms. Musorrafiti said this season. She explained that if the weather is severe she just turns the blower off and it deflates, it takes about 2 ½ hours to inflate. She testified that she swims in the bubble 4-5 times a week for her shoulder. She testified that it is easy to maintain, there isn't any mildew.
Mr. Cranmer asked what type of cover did she use before she had the dome?
Ms. Musorrafiti said that it was a flush hard cover with a small pump on it to take the excess water off.

Mr. Cranmer asked if there was case law with regard to pool domes? Mr. Giunco said the issue that was raised by the zoning officer was the building coverage, in terms of case law that states that it is or it isn't a building or structure he could not find anything.

Mr. Jerome Donlon, Zoning Officer Borough of Shrewsbury stated that in support of his denial of the application he would submit that he considered it to be a building for a number of factors:

- Definition of building & occupancy
- Section 94-2.2 “usage” page 11 read the definition into the record as follows:
- “...building includes the word structure, the word occupied includes the word design & the phase intended to be occupied”.

Mr. Donlon stated that looking at the Ordinance he felt that it was a building and our Ordinance supported that. He stated that he referred to the International Building Code 2006 NJ Edison, Chapter 31 Special Construction (air inflated structures) “a building where the shape of the structure is maintained by air pressure of cells or tubes to form a barrel vault over the usable area. “.Occupants of such a structure do not occupy the pressurized area used to support the structure. Air supported structure, a building where in the shape of the structure is attained by air pressure and occupants of the structure are within the elevated pressure area, air supported structures are of 2 basic types, double skin and single skin.”. This information led him to believe that it was a building, and he applied the building coverage to the structure, and that was the basis of his denial on the building coverage criteria.

Mr. Forrester asked if the building coverage requirements deal with the “mass” of the improvements on the site even though they not cause an impervious problem?

Mr. Cranmer said that the impervious density, it’s tied to the F.A.A.

Mr. Donlon stated that the term “building coverage” was repealed by Ordinance #664 1992 and replaced with Section 94-5.9C “maximum coverage of a lot by building shall be as set forth in the schedule of Zoning District Regulations and expressed as a percentage of total building area to land area within. The total building area is the sum of the principle and accessory building areas as measured within the perimeters circumscribed all above grade enclosed portions of each building, and land area.....” Just the term was repealed and the definition was moved over to Section 94-5.9C page 9514.1 of the Ordinance.

Mr. Giunco asked Mr. Donlon if the building definition is the definition that he relies on in the Ordinance? Mr. Donlon said yes, that is one of them. Mr. Giunco asked if the site is well maintained? Mr. Donlon said yes, it’s a well established neighborhood and maintained.

Mr. Giunco asked Mr. Donlon if the dome was not on the pool would the pool be occupied? Mr. Donlon said no if the dome was not there the pool could be occupied. Occupancy was not the only factor that went into the definition of building, there are other factors. He wouldn’t consider a pool to be a building, but he would consider the inflated structure a building, not only because it could be occupied but because it is covered, has roof, whereas a pool without the dome could be occupied without the dome and not be a building.

Mr. Cranmer since the Building Code defines this as a building; would a building permit from the Construction Department be required? Mr. Donlon said he would have to make that determination. Mr. Giunco said that his client did not consider this to be a building or structure. His client is before this board because she was making her pool usable during the winter season. This was a simple mistake and they immediately filed an application for the dome, and his client is trying to comply with the town. His client would like to keep the dome and be able to use the pool during the winter season due to her shoulder injury. Mr. Giunco stated that his client doesn't have any intent to create any adverse impact.

Mr. Forrester stated that the Zoning Ordinance defines building permit, "as a permit used for the alteration or erection of a building or structure in accordance with the provisions of the State Uniform Construction Code. Mr. Donlon stated that sheds that are less than 100 sq. ft. do not require a building permit. Mr. Giunco stated that if a building permit is required they would file for one.

A motion was made by Mrs. Peterson, seconded by Mr. DeNofa to open the building to the public. All approved.

Mr. Michael Bell, 43 Trafalgar Place, asked Mr. Donlon why he denied the application? Mr. Donlon said for building coverage, and they would have to meet the positive criteria of a C variance. Mr. Forrester stated that the "C" variance runs with the land and someone could replace the dome with a building, not just a pool cover but a building that would comply with the coverage variance that was granted.

Mr. Bell stated that it is his understanding that the applicant has to prove some hardship or reason for the board to grant the variance other than just liking to swim in the middle of the winter.

Mr. Giunco referred to Section 70 of MLUL: "C" variance and the positive criteria. The first is hardship & 2nd is a benefit/detriment analysis. They have proven that the client has the physical condition and needs the pool for the therapeutic training and the benefit/detriment to only use the dome from October through April. Is there a detriment and Mr. Kennedy testified that there isn't any adverse run off, the second adverse impact of the dome affecting someone else's view, and if it is an esthetic negative impact. The dome is in person's private back yard, the view that is being impacted is the view of his client's pool and backyard. There is no right in New Jersey to protect the "right to a view". Mr. Giunco feels that he has demonstrated the positive aspects and have demonstrated a basis to justify the granting of the variance on either a hardship or a benefit detriment analysis.

Mr. Bell asked what is the hardship? Mr. Giunco stated that it is the physical condition of his client. Mr. Bell doesn't feel that the physical condition of a homeowner is irrelevant as to whether you can be granted a variance for coverage. Mr. Bell asked what is the benefit to the town or the community to have the dome? Mr. Giunco said that the Mr. Gemma can answer that. Mr. Gemma stated that the benefits of zoning are found in

NJSA 40: 55D-2 - Purposes, and one of the purposes is set forth in 2G and that is to provide sufficient space in an appropriate location for private recreational use. This clearly advances the private recreation. He agrees that it is not for the public but it is a purpose that is set forth in the Statute, in section 20 – to provide for an efficient use of land. In this case the Borough permits pools in residential zones, and under the definition set forth in the MLUL it is met for the positive criteria. An argument could be made that it does have a negative impact, or that it is not appropriate, but it does meet the positive criteria set forth in the Statute.

Mr. Bell asked Mr. Donlon if it is his interpretation that the “bubble” is not allowed because of the coverage, and that the pool is considered pervious. Mr. Donlon stated that by some standards it is considered pervious, but there are people that would argue that it is pervious, the water surface is pervious, and there are other people that would argue that the pool is concrete or steel with vinyl liners that would be considered impervious.

Mr. Bell stated that the Borough does not allow any resident to put up a party tent in their backyards all summer. You could get a permit for it, but you are not creating another usable living space. Mr. Giunco objected to his comments. Mr. Bell said that this area is now a living space, someone can sit in there, since it is heated by the water. He doesn't feel that there isn't any positive impact for the neighbors, for the town, and there isn't any hardship.

Mr. Ed Tognola, 121 Dorchester Way, adjacent to the Musorrafiti property, made several comments with respect to the dome. Mr. Tognola stated that he has contacted manufacturers of domes and they stated that once the dome is inflated it is significantly larger than 15', and could be 18' high. He also is concerned with the run off from the dome, because water that was going into the pool prior to the dome is now running off.

Mr. Tognola, 121 Dorchester Way was sworn, and passed around 5 photos of the surrounding area from his property of 121 Dorchester, marked **as 0-1 into evidence**. He read a statement into the record of his observations & concerns as a result of granting a variance:

- financial hardship, undermining property values in the area
- his property has taken a financial property loss due to the dome
- a precedent will be set if the variance is granted
- the view from the inside of his home has been turned into an eyesore
- a 15,000 cubic foot dome brings his property value way down to what it was and puts his home into an undesirable category as long as he has “the view” of the and will create a financial hardship
- 4 photos provided show the dome from all of his windows, and there are no leaves or trees along the property line to block “the view” and is now worse than what is shown in the photos
- the life expectancy of the dome is 7-10 years and as it looks today is “as good as it is going to look” each year the view from his property is going to be worse and worse

- water & drainage is a concern since that area has already been a problem and this could cause additional problems and additional water would cause repercussions that are not obvious at this time
- noise – the motor is not the problem, but rather in windy conditions the dome “flaps” and “snaps” and wakes you up out of a sound sleep
- safety – the manufacturer recommends certain things be done in windy conditions of 30mph that the dome be deflated, and he has concerns as to what will happen during a hurricane and what happens if the dome and anchors become projectile objects
- He doesn't feel that there is any valid reasons for granting a variance and many reasons to deny the variance.

Mr. Giunco asked Mr. Tognola why he didn't contact the homeowner as to the manufacturer? Mr. Tognola said that he did contact her about his dissatisfaction in general.

Mrs. Pat Tognola, 121 Dorchester Way, was sworn. She stated that she is a broker with Brokers 3, Shrewsbury NJ and she has consulted with other brokers and they could not believe as to what was allowed. The dome is a hardship on them if they were ever to sell their home. She asked the board how they would feel if it was behind their home.

Dr. Thomas Westerman, 131 Dorchester Way, lives adjacent to the property owner, and read a letter into the record:

- the dome creates a hardship, since it is enormous and unsightly
- the dome gives an undesirable appearance of a “circus tent”
- the dome he feels will significantly decrease the value of his home
- the dome is too high to “hide” with landscaping
- concerns with the safety & recalls of these items
- the dome “snaps” & “flaps” in the winter not allowing the windows to remain open
- he also has a pool and he would not cover his pool due to the unsightliness of the dome, and the arborvitae
- he doesn't feel that the dome is a hardship

Dr. Westerman presented 21 photos **marked as O-2**, dated 3/26/08, 11/16/07 – described each photo.

A motion was made by Mrs. Peterson, seconded by Mr. Dodge to close the meeting to the public. All approved.

Mrs. Stambaugh had concerns because none of the applicant's experts saw the dome up, correct? Mr. Kennedy said that he did not; Mr. Donlon said that he did see it, but he doesn't know how high it is. Mr. Hartmann feels that it is approximately 13' in height. Mr. Giunco said that the testimony was that it is approximately 12-13' high, and that the applicant is not here for the height but rather the building coverage.

Mrs. Peterson asked what was the original date of the denial? Mr. Donlon said approximately 11/9/07 the Zoning Permit was received, and he then asked the Code Enforcement Officer to look into this matter and he sent a notification to the property owners dated 11/8/07 to come into the Zoning Office for approvals.

Mrs. Peterson said that she has problems with the fact that no one has physically observed the dome, and it's by a picture taken or by going by the specs. She feels that this has been happening over months and no one has seen the dome up other than Mr. Donlon. She has a problem with "you may be able to see it", "it's kinda obstructed" but no one has physically seen the dome.

Mr. Giunco explained that Mr. Gemma was just brought into this application in the last couple of days. The Planner who works in Mr. Gemma's office was called away and unable to be here and he asked Mr. Gemma to take over. If the board wishes they will bring Mr. Janou in next month, who has been on the site, took the pictures and we could hear his testimony. Mr. Giunco reminded the board that if the dome did not exceed the coverage they would not be here at all.

Mr. Connors asked if the board would be setting a precedent if we approve the variance? Mr. Hartmann said that if the board determines that Mr. Donlon's determination that this is a building is correct or not. If the board decides that it is not a building, then Mr. Donlon ruling is null and void and that is the end of it. If the board determines that the dome is a building then the applicant is requesting the variance. Mr. Hartmann stated that the board must make the determination if this is a building on the testimony that was presented.

Mrs. Peterson asked if a shed is considered a building? Mr. Donlon said yes.

Mr. Giunco summarized the application:

- an application was submitted when a letter was issued to the homeowner
- the board must determine if this is a building, and the board must rely on the definition in the Ordinance, and read the definition into the record
- if the pool is being occupied from time to time does that constitute occupancy as occupancy is defined, and read the definition into the record
- the pool is not designed for anything other than pool use
- the dome is temporary not permanent, and read the definition into the record
- if the dome is determined to be "temporary" the case would end, and the pool can be used as is
- if the dome is considered to be a building then a variance would be requested
- private recreational use is a basis for a zoning determination
- adverse impacts, and it was determined that it is already an impervious surface, and there was testimony that in the past the applicant pumped the water off the top of the pool cover
- no substantial or significant or measurable change to the cover that would create, change or modify the storm water run off

- Mr. Kennedy gave testimony that there is enough of a burm around the perimeter with no evidence of storm water leaving the site
- Visual impacts, the law in NJ is clear that there is no right to a view, and if so if there a right to a view into someone elses backyard. The homeowner has already provided a buffer and screening, and is willing to add additional to alleviate the situation
- The arborvitae that currently exists will be maintained and is willing to add additional buffering, if a condition is imposed
- The dome meets the requirements of the MLUL, in terms of justifications for a variance, in terms of the negative impacts they contend that there is no appreciable or recognized negative impact
- They are further willing to off set the negative view
- If the dome does not meet the definition of a building there should not be an issue
- In the event that this lot, along with the dome, had less than 10% building coverage the application would not be before this board
- The issue is that for the time that the dome is up, what adverse impacts would it adversely have, and it is there contention that it is not a building, and alternatively no adverse impacts, and his client is willing to mitigate any potential or any acknowledgement that the views into his clients backyard needs to be shielded
- The applicant wants to use the property in this way and is willing to take steps in addition to make this less objectionable to other people as to how she is using her property

Mr. Giunco feels that the applicant's needs can be met and the neighbors needs can be met and the impacts to the property values, if they exist, can be minimized. He is asking the board to recognize that the dome is not a building, grant the variance and impose conditions if you feel that they would appropriate.

Mr. Dodge agrees with the Zoning Officer that the dome becomes a structure and would hurt the tax base of the community. The buffer screen could be a mitigating issue and there are other alternatives to cover the pool that could be considered. The special purpose does not fit the construction of the neighborhood. It is a detriment to the community. He feels that the 60% overage on the building coverage is too high and a 40% over the existing conditions are too high.

Mr. Connors agrees with Mr. Donlon and it's a building.

Mrs. Peterson agrees with Mr. Donlon and we must uphold his denial

Mr. DeNofa agrees with Mr. Donlon based upon the testimony from both parties

Mrs. Stambaugh agrees with Mr. Donlon and that it is a building

Mr. Hartmann agrees with Mr. Donlon, the pool has a roof, its occupied and it's a building.

Mr. Forrester read the Statute for "C1" variance.

A motion was made by Mrs. Peterson, seconded by Mr. Connors to uphold the decision of the Zoning Officer and his findings, on the application of appeal for Ms. Antoinette Musorrafiti.

Roll Call:

Affirmative: Hartmann, Peterson, Connors, DeNofa, Stambaugh, Dodge

Negative: None

Resolution 6/4/08.....

Mr. Hartmann suggested that the applicant meet with the neighbors prior to the next meeting.

Mr. Giunco requested that the variance application be carried to the **July 2, 2008 without further notice**

A motion was made by, Mrs. Peterson,t, seconded by Mr. Dodge, to adjourn the meeting at 11:15 pm All approved.