



CITY OF NEW BRUNSWICK  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
MAY 4, 2020  
MINUTES

Meeting Location  
Remote Teleconferencing  
7:00 PM

I. ROLL CALL

✓	John Cox (Chairperson)
	Nancy Coppola (Vice Chairperson)
✓	John Zimmerman
✓	Michael Belvin
	Ivan Adorno
✓	Karla Castaneda
	Sue McElligott
	Beverly Sanchez (Alt. #1)
	Charlotte McNair (Alt #2)
✓	Evelyn Azcona (Alt #3)
✓	Chris Sumano (Alt #4)

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETINGS ACT)

Dan Dominguez (Director, Department of Planning, Community and Economic Development): Good evening and welcome to the May 4 Zoning Board of Adjustment Meeting. Please be advised that the meeting was delayed for 20 minutes and we are now beginning, and as such I will begin with a public service announcement. New Jersey Governor Phil Murphy has issued executive orders limiting the size of public gatherings of individuals until further notice. Furthermore, the CDC has issued guidelines to limit gatherings of groups. The city Zoning Board of Adjustment intends to meet on a regular schedule, will meet using the guidelines of the Open Public Meetings Act by utilizing teleconferencing system. Public participation at public meetings has been revised, and the public may participate through a conference call-in system. The public is encouraged to call into the conference system through the phone numbers and access code transmitted in the change of location notice to the Home News Tribune and Star Ledger and posted in the back vestibule of City Hall visible to the public through the window. Board professionals will also be available via conference call during the meeting. All parties on the conference call will have the opportunity to hear the Zoning Board meeting. During the portions of the meeting that are not open for public comment, all calls from the public

will be muted and the Board will not be able to hear any public comments through the conference call system. During the public comment periods, those on the conference call-in lines who have an interest in addressing the Board will be organized by last name and then called upon to speak. After all organized members of the public speak, the process will happen again until all the public has had an opportunity to speak once and for no more than five minutes in any given public meeting portion. The timer will time at the completion of each five-minute period and I'll notify you that your time has expired. Public needing assistance accessing the call number should call City Hall at 732-745-5007.

### III. SALUTE TO THE FLAG

### IV. RESOLUTIONS OF MEMORIALIZATION

None.

*(Recorder was turned on)*

**Mr. Dominguez:** My apologies to the Chair as the recorder was not recording during the public announcement and roll call. Aravind, would you like to me repeat them?

**Aravind Aithal (Board Attorney):** That is not going to be necessary as long as the minutes can reflect that the recorder was not recording during that time.

**Mr. Dominguez:** Thank you. It is turned on now. Sorry about that.

### V. PUBLIC HEARINGS

#### A. 78 EASTON AVE. URBAN RENEWAL, LLC / 88 EASTON AVENUE / BLOCK 56, LOT 1.04 (ZB-2020-03)

Variance application for two signs on a previously approved nine-story, mixed use building. The applicant proposes variances related to sign area and thickness. The site was previously known as 78, 92 and 94 Easton Avenue (Block 56, Lots 1.01, 1.03 and 14). Zoning district C-3B/R-5A. (Thomas Kelso, Esq.)

**Thomas F. Kelso (Applicant's Attorney):** Hello members of the Board. We appreciate your consideration. The Board I am sure is familiar with this project and which is currently under construction at the intersection of Easton Avenue and Hamilton Street. With that said, we are here before you today to request approval of two variances for signage to be constructed on the building itself. Those two sign variances are associated with sign area of each sign, which is 35.34 square feet where a maximum sign area of 6 square feet is permitted, and a projecting sign thickness of 14.25 inches where a maximum of 8 inches is permitted. We are proposing one of these signs which are identical on the Easton Avenue façade and on the Hamilton Street façade. My intent is to call two witnesses for you today. The first is Mr. Christian Roche, our Civil Engineer, and Mr. Sean Moronski, our Planner. Unless the Board has any questions at this point, I will call on Mr. Christian Roche

**John Cox (Zoning Board Chairman):** Go ahead, please call your first witness.

*Christian Roche is sworn in*

**Mr. Kelso:** Mr. Roche, rather than me asking you questions, as awkward as it is under current circumstances, I am just going to ask if you could give us the basis of your findings. Feel free to reference the exhibit which have been provided on the city's website for purposes of public review. Have the exhibits been marked?

**Mr. Dominguez:** Mr. Kelso, the exhibits have been pre-marked in the supporting documents folder as A-1 titled "Sign Location Plan."

**Mr. Kelso:** Okay, thank you. Mr. Roche, if you could then refer to the exhibits and give us the basis of your findings for this application.

**Christian Roche (Applicant's Engineer, Langan Engineering):** Sure. So, in order to simply this application, myself and Mr. Moronski, our planner, are only going to refer to the exhibit marked as A-1 throughout our testimony tonight. To get everyone clear with the project site, it is bounded by Easton Avenue to the north, Hamilton Street to the east, Guilden Street to the south, and residential uses to the west. Tonight's application is to propose two building identification signs, and as Mr. Kelso mentioned, these signs are identical to one another. One sign will be placed along Easton Avenue and the other will be placed along Hamilton Street. All signs will display the building name, which is "Verve: Student Living." The signs will be mounted on the building as projecting signs, which are permissible in the C-3B Zoning District. The sign will be 35.34 square feet in area and will be approximately 3 feet wide by 11.75 feet in height. The signs will have a thickness of 14.25 inches and will also be internally illuminated. Relative to one another, the sign on Easton Avenue will be placed 240 feet west from the Easton Avenue and Hamilton Street intersection, while the sign on Hamilton Street will be placed approximately 120 feet south of that same intersection. All signs will be mounted approximately 17 feet above surrounding grade, which far exceeds the minimum mounting height of 8 feet. Relative to the variances that we are seeking here tonight, we are seeking a total of (3) variances, which Mr. Kelso mentioned, where two of them are relative to the sign size, specifically our sign area of 35 square feet where 6 square feet is permitted and a projecting sign thickness of 14.25 inches whereas a maximum of 8 inches is permitted. The last variance is for internal illumination of the sign. Our planner, Sean Moronski, unless there are any questions for me, can now go through the variance proofs.

**Mr. Cox:** Does any member of the Board have any questions for this witness? Seeing none, Tom, call your next witness please.

**Mr. Kelso:** Yes, at this time I will call Mr. Sean Moronski for testimony.

*Sean Moronski is sworn in*

**Mr. Kelso:** Mr. Moronski, rather than me asking you questions, I would just ask you if you could run through the basis for the variances that have been identified and that we are requesting.

**Sean Moronski (Applicant's Planner, Langan Engineering):** Okay, they are all in a sense tied together. Your ordinance permits 6 square feet in maximum sign area as Chris mentioned, and we're proposing 35.34 square feet. The sign permits the specific sign to be seen from the intersection and other locations. This is especially important given the distance from 120 feet to the south of the intersection and 240 feet west as well. As you go to the east toward Easton Avenue where you have other types of signs that are projecting signs, these signs are not out of scale. They are proportional to signage that you would see in the area. The sign thickness allows for internal illumination, which is another variance that we are requesting and the internal illumination would allow for sufficient identification throughout the day and night particularly when viewing from the intersection of Easton Avenue and Hamilton Street. We promote purposes of the zoning by encouraging municipal action with appropriate use of development in a manner which promotes the general welfare. The variances requested will allow for placement of the signs that effectively identifies the building from multiple locations to promote a desirable visual environment. Signs are relative to the street and the size of the building, which provide adequate sight distance but are not disproportional to the signage in the area. In terms of the negative criteria, there are no substantial detriments to the public good and the sign results in a de minimis light increase. It would not adversely affect neighboring development and the proposed signage is certainly not out of proportion given the length of the building and the height of the building. There is no substantial detriment to the intent and purpose of the zone plan, since we do meet other criteria for projecting signs, including the number of signs per frontage, clearance setback, and this is consistent with your master plan document, the 2004 Master Plan which talks about mixed use buildings recommended for the site. The proposed signage contributes to the overall development of this site. Therefore, for the reasons provided, we believe that you can grant the request variances all under the "c(2)" criteria. Thank you.

**Mr. Kelso:** I have no further questions for Mr. Moronski. If the Board wishes to direct that.

**Mr. Cox:** Does any member of the Board have any questions for Mr. Moronski? Seeing none, Tom?

**Mr. Kelso:** I would just like to indicate that the D&R Engineering Review letter dated May 1<sup>st</sup> and the Bignell Planning Review letter dated April 30<sup>th</sup> have been reviewed and that there is nothing in those reports that actually need to be addressed. We just like to indicate that in Mr. Bignell's report, with regard to previous conditions being applicable. Other than that, there were no further questions, therefore we will comply with both of those reports. That concludes our presentation.

**Mr. Cox:** Thank you, Tom. At this time, I would like to open the meeting to the public for comment.

*Open for Public Comment*

*Evelyn Azcona is written into the record as being present*

*Charlie Kratovil is sworn in*

**Charlie Kratovil (New Brunswick Today):** I just want to start with a point of process. I heard that there is a time limit of five minutes. That is kind of a new thing and I wanted to bring this up at the last meeting. Is there any reason for that time limit? I know that sometimes with these applications, you need more than five minutes to get all the questions and answers on the record.

**Mr. Aithal:** Mr. Chairman, this is Aravind, the Board Attorney. I would advise the Board that the questions and comments have to be directed towards the application. If there is a general question, Mr. Kratovil can certainly bring it up at the end of the meeting.

**Mr. Cox:** Thank you, Aravind.

**Mr. Kratovil:** Well, the question is about this hearing and the rules regarding it. So, for instance if I ask a question and there is time that someone is answering the question, does that count against my five minutes?

**Mr. Dominguez:** I am pausing the timer when that happens, Mr. Kratovil.

**Mr. Kratovil:** Okay, and in light of the fact that I am the only member of the public that asked to speak on this application, I hope, Mr. Chairman, that you will give me a little leeway if it takes more than five minutes to get these questions and answers on the record, but I'll be as quick as possible. I wanted to first of all ask that this is the project where there was a construction disaster back on July 21<sup>st</sup> when a construction crane was taken down and damaged two buildings. Thank god no one was killed, but this is the same project correct?

**Mr. Kelso:** I'll object to his question. It is not relevant to the application.

**Mr. Kratovil:** It is not relevant if your client hired some contractors to work on this site that caused a calamity like that?

**Mr. Kelso:** This is an application for two signs.

**Mr. Kratovil:** Right, on a tall building that is the subject of the worst construction disaster that I have ever seen in my whole life. So, I am just asking the Board to consider that fact before they give you another bite of the apple for this unnecessary sign. As someone who has lived on this block right across the street, the next house over from the one that got destroyed by this crane, I would like some answers and I would think that the Board would also want to hear some answers about this incident before considering any variance to further allow them to violate the zoning of the city. So, can anyone at the company, is there a representative of the company on the call or maybe Mr. Kelso, has learned a little bit about it. Since he is a property owner and a business owner in the area. What is the cause of the crane collapse on July 21?

**Mr. Kelso:** Let me answer your question again. The answer to your question is specifically that it is not relevant to this application. However, I will indicate to you that notwithstanding that my client and I would not answer any questions with regard to this because everybody knows the crane fell and there is likely pending litigation, and we would not discuss pending litigation anyway.

**Mr. Kratovil:** Okay then maybe you should not be going before the Zoning Board asking for unnecessary variances if the answer to the question was that I am not going to answer the question. To me that is insufficient. If you are asking the city for special permission to do above and beyond what is allowed by the zoning ordinance, then you should atone for what happened, and I'll be frank with you. I reported on this, as you know I am a journalist at New Brunswick Today, and I asked all the parties involved about what happened. Collegiate Development Group was the one party that stood out as the ones that did not respond at all to any inquiries. They did not explain themselves. They did not say what happened and they did not take responsibility for this disaster. I will be honest, I do not want this sign to come flying off the building and kill someone because of their work. I don't believe that is going to happen other than the fact that the people that got involved was a construction company that left the crane upright on a day when there was extreme wind and no one was at the site to supervise, and the crane collapsed. It could have killed many people. Thank god it didn't, but I am just asking for some basic answers because I never got them last summer from your client. So, is there a representative of Collegiate Development Group that can tell us what happened that night and why we should not be concerned about this sign falling off the building in a windstorm and killing someone.

**Mr. Aithal:** Mr. Chairmen, this is Aravind Aithal, the Board Attorney, there were two witnesses that were sworn in and if Mr. Kratovil's questions goes to one of those two witnesses, then I think that Mr. Kelso has indicated that there are no witnesses that can answer that question and he is objecting to the question. Perhaps the Board can ask that Mr. Kratovil move on.

**Mr. Cox:** Certainly.

**Mr. Kratovil:** Okay, so we heard that there is no answer to the question as to how we can be sure that these signs are not going to fall off of the building in a windstorm and kill someone. I think that is a fair question that the folks that put together these proposals should be able to answer before being given the variance. I think that it is reasonable in light of what happened. They should explain themselves. I do not feel that it is inappropriate at all to ask about in this situation and I think that if they were commuting members here, instead of an out of state corporation, they might actually feel like they have more of a need to explain themselves.

**Mr. Cox:** Charlie, this is the Chairman, do you have any question specifically for this application regarding the signs, if not then we have to move on.

**Mr. Kratovil:** Sure, so I am looking at the application here and I see that the document prepared by Benson Signs from Georgia and it has an address here for the project of 129 Easton Avenue. Is that the correct address for the project? I am pretty sure that the Zoning

Board is considering an application for the Shell station at 131 Easton Avenue and I do not think that is the same site, right?

**Mr. Kelso:** The site is formerly 78, 92, and 94 Easton Avenue, so whatever the address is that is on that plan is incorrect.

**Mr. Kratovil:** So, I just want to be clear that the applicant submitted a document as part of this application that has incorrect information about the location of the variance they are requesting?

**Mr. Aithal:** Mr. Chairman, if there are any other questions?

**Mr. Kratovil:** I did not hear an answer to that one.

**Mr. Aithal:** Mr. Chairman, if I may, that sounded more like a comment than a question. I think that the prior answer gave an explanation.

**Mr. Kelso:** If I might interject, I believe that address is of where the construction company is located.

**Mr. Kratovil:** Really, at the Shell station?

**Mr. Kelso:** No, not the Shell station, Charlie.

**Mr. Kratovil:** Well, you're familiar with the...

**Mr. Kelso:** They have the number wrong.

**Mr. Kratovil:** The even numbers on Easton Avenue are on what side of the street? Are they on the side with building and the rental office or are they on the side with the Shell station?

**Mr. Kelso:** It is not the address of the construction site.

**Mr. Kratovil:** Right, it is an incorrect address because the project location is 129 Easton Avenue. And that is not true, that address is on a different block, on a different side of the same street. And I am just pointing out that this is a mistake.

**Mr. Kelso:** You made your point.

**Mr. Kratovil:** We all make mistakes. It is okay, Mr. Kelso, you do not have to lose your cool with me. We all make mistakes and what is important, when we make a mistake, is that we own it and that we make it right by explaining how it happened so we can make sure it does not happen again. This is a minor mistake, however what happened on July 21 was a major mistake and this company, this application, that is asking this city and all of you on the Board to do them a favor by giving them relief from the normal zoning laws that apply to all New Brunswick property owners, and I suggest that for an out of state corporation that has not been willing to make it right and to acknowledge the mistake

that caused this devastation, then they are not worthy candidates for this application. For this approval of a variance. I will first of all allow you to respond to that, if you do want to apologize or explain the mistake.

**Mr. Cox:** At this time, your five minutes is up, Charlie.

**Mr. Kratovil:** Well, then I will just close by saying that this is completely unnecessary. The building is going to have just as many tenants, whether it has a bright sign out or not, and if they could, in any way, make sure that the sign is pointed right at Mr. Kelso's office that would be ideal. But I do not think that this is going to be good for the neighborhood to have a sign that is illuminated all the time and I just do not see why this corporation is worthy of relief for this particular request, especially in light of their track record thus far. This is their first building in New Brunswick, and they had a colossal screw up on their record already. So, coming back to the Board just because Kelso is their attorney, does not mean that you should approve this. Thank you.

**Mr. Cox:** Alright. Thank you, Charlie. Is there anyone from the public that did not place their name on the list before that would like to speak now. Does anyone else want to put their name on the list? Seeing none, Mr. Mora please proceed.

*Julio Mora is sworn in*

**Julio Mora (Planning Assistant, City of New Brunswick):** I just have a quick question for Mr. Moronski.

**Mr. Moronski:** Yes, I'm here.

**Mr. Mora:** In your explanation of the sign variance, you noted that the signs are not uncharacteristic of the commercial because there are others along Easton Avenue that are similar in nature as being projecting signs. I did notice that there are two others along Easton Avenue, however they are both generally set at the 10 foot level, more oriented to the ground, whereas you are proposing the new signs at the 17 foot level. Do you foresee this as affecting the uniform characteristic of the signs? Also, how are the signs still characteristic of the neighborhood if they are larger and placed at a higher level?

**Mr. Moronski:** I think that I get your question. What I was referring to was that the area has a range of signs, projecting signs, and, yes, although the proposed sign is higher, and Mr. Roche had mentioned that there is a minimum sign clearance of which a greater clearance is helpful because the building is higher and you have a longer building frontage with this building as opposed to other buildings on Easton Avenue, significantly higher. So, having the signs at a higher height helps in terms of viewing the sign from the intersection in particular, identifying where the entrance on the longer frontage is as well. So, in terms of the type of signage it is characteristic and in terms of the height it serves numerous positive purposes, among them clearance and more efficient identification.

**Mr. Mora:** Okay, and I just have one more quick question. So, I understand how that makes sense for the side on Easton Avenue, but in particular how does this compare with

the Hamilton Street frontage, where Hamilton Street going south is largely these neighborhood commercial businesses with smaller signs and no one really has a projecting sign, and that's all intermingled with single- and two-family residences. My questions is does this in any way affect your explanation for the sign on Hamilton Street?

**Mr. Moronski:** Generally speaking, it does not from the standpoint of either direction. They're identifying the general area where the entrance is and coming from the north as well. And you want to have a uniform design with signs, as they're both the same size and both at the specific entry location as well. Also, what is noticeable about the type of development on Hamilton Street, while the sign is internally illuminated, it is set at a de minimis light increase, which is one quarter of a foot candle, which would have a de minimis effect in the surrounding area. From a design standpoint, I believe that the variance explanation is the same.

**Mr. Mora:** Okay, those were all my questions. Thank you.

**Mr. Moronski:** Thank you, sir.

**Mr. Cox:** Thank you.

**Mr. Kratovil:** Mr. Chair, I have a single yes or no question, may I ask it?

**Mr. Cox:** Yes.

**Mr. Kratovil:** Thank you. Is construction currently going on at the site or has it been ceased under the Governor's Executive Order 122?

**Mr. Kelso:** It is ongoing.

**Mr. Kratovil:** Thank you.

**Mr. Cox:** Thank you. Anyone else from the public? Seeing none, we will close the public portion. One more time, anyone else from the public that would like to speak on this particular application? Last call for public comment on this application? Seeing none, the public portion of this application is now closed.

*Public Comment Closed*

**Mr. Cox:** Mr. Kelso, is there anything else that you would like to speak on?

**Mr. Kelso:** No, I submit to the Board.

**Mr. Cox:** Thank you. Do any Board members have anything for discussion? Seeing none, can we have the conditions of approval to move forward with this application.

*Katie Thielman-Puniello, Principal Planner, City of New Brunswick, reads the conditions of approval into the record.*

Motion to Approve: Chris Sumano  
 Second: John Zimmerman

	YES	NO
John Cox (Chairperson)	✓	
Nancy Coppola (Vice Chairperson)		
John Zimmerman	✓	
Michael Belvin	✓	
Ivan Adorno		
Karla Castaneda	✓	
Sue McElligott		
Beverly Sanchez (Alt. #1)		
Charlotte McNair (Alt #2)		
Evelyn Azcona (Alt #3)	✓	
Chris Sumano (Alt #4)	✓	

*Approved*

- B. **75 PLUM STREET LLC / 75 PLUM STREET / BLOCK 417, LOT 28 (ZB-2019-15)**  
 Variance application for the conversion of an existing one-family home into a two-family home, to contain two three-bedroom units. Second floor additions are proposed over the existing first floor to the front and rear of the building. Zoning district R-5A. (Thomas Kelso, Esq.)

**Thomas F. Kelso (Applicant’s Attorney):** Members of the Board, I am here to represent 75 Plum St, LLC, who is the applicant for this application. As it has been indicated, this is an application to convert a single residence into a two-family residence at 75 Plum Street. The application has been through the Technical Advisory Committee and revisions have been made to the plan to conform with recommendations made by the city planning department. We are hoping that you would see fit to grant the variances, as they are necessary for development. I would indicate that the two-family residence does not require site plan approval, therefore this is strictly for the approval of the variances. My intent is to call two witnesses, including Roberto Hernandez, who is our architect, who will go through the plans and identify the variances and I also have Ms. Kate Keller, our Professional Planner, who will provide justification for the variances. If I may, I will just go through the series of variances that are, for the most part, pre-existing conditions, however, we are required to get these conditions reapproved when we get a change of use such as this. A number of these variances already exist, such as lot width of 37.3 feet, whereas a minimum of 80 feet is required. This is an existing condition. Second, there is a lot area of 3,900 to 3,935.15 square feet, whereas a minimum of 8000 square feet is required. Once again, that is an existing condition of this existing lot. The third is the combined side

yard setback of 4.87 feet, whereas a minimum of 25 feet is required. This is an existing condition associated with the building that is already there. Next is a one side setback of 1.12 feet from the north side and 3.75 feet from the south side, where a minimum of 15 feet is required. Again, this is an existing condition defining the existing footprint of the existing building. Next is a building coverage of 29.5% where a maximum of 20% is permitted. Just so you know, the existing condition is 27.09%, so although this is an increase it is an increase of about 1.5%. It is just a slight change based upon one improvement that is being made. There is an existing floor area ratio of non-conformity that we are asking to increase slightly. A floor area ratio of 0.52:1 is being requested, whereas a maximum of 0.35:1 is permitted. What is already existing is 0.43:1. So we are actually requesting an increase of the existing FAR 0.09:1, so it is less than a 1% increase in floor area ratio. So, there are two additional variances being requested based on the change of use. The first is a front yard setback of 5.51 feet, whereas 10 feet is required. The reason for this is that there is a porch that is being added to conform to the access of the building, which is in line with the existing setback from the street. Lastly, we are requesting a parking variance of one space that is existing, which we have, whereas four is required. So, it is just a parking variance of three spaces and considering the nature of Plum Street and its proximity to Easton Avenue and Rutgers University. Those are all the variances being requested. Again, there are a series of them, of which most of them are existing and being increased only de minimis, if that, other than the last two. With that said, I will be providing two witnesses for you. The first is Roberto Hernandez and I will now call Roberto for testimony.

**Mr. Cox:** Just one second, does any Board member have a conflict with this application? Seeing none, Tom please call your first witness.

**Mr. Kelso:** And I would just indicate that there are six members of the Board present. Although we have six members, all those variances that I have indicated are mostly non-“d” variances, there is just one “d” variance which is the 0.09:1 increase in the FAR. Considering the de minimis nature of that, I am prepared to move forward with the six members, as opposed to the seven members, in an effort to try to move this application along. So, I just wanted to put that on the record. At this point, I will call Mr. Roberto Hernandez for testimony.

*Roberto Hernandez is sworn in*

**Mr. Kelso:** Mr. Hernandez if you will, I identified the variances, so if you could use the material posted on the city’s website and made available to the public. Feel free to make reference to those plans. I would like you to go through each condition of the property, how the floor plan is laid out, and identify the location of the variances.

**Roberto Hernandez (Applicant’s Architect):** Let me start by addressing the picture provided in the Planning Report on page 3. Here you can see the existing conditions of the front of the house. The windows have been removed as they have been broken on the existing single-family home. On page 1 of my plans, you can see the existing foundation plan with the zoning.

**Mr. Cox:** Hold on one second, will everyone in the public please mute your phone. We are getting a lot of feedback. Thank you. Please go ahead.

**Mr. Hernandez:** Thank you. I ask that you refer to page A-1 of my architectural plans, which show the current foundation or basement plans of the building. It has an unfinished basement of 730 square feet. The first floor is constructed of approximately 230 square feet of walkway...

**Mr. Cox:** Excuse me, people on the phone from the public. I need you to please mute your phones because we are having a hard time hearing the professionals talk when you are coming through. Please mute your phone at this time if you are not talking. Thank you. Please go ahead.

**Mr. Hernandez:** I ask that you refer to page A-1 of my architectural plans. The basement plan includes an existing unfinished basement...left unfinished. On the next page, you can see what is currently existing where we seek to remove the uncovered porch to make it a little bit more habitable.

**Mr. Dominguez:** Excuse me, we had a technical issue. So, the public was dropped out for a few minutes. Aravind, will he need to walk us back some of this stuff and start again?

**Mr. Aithal:** Yes, why don't we start with the last exhibit that was introduced, which is the first floor plan.

**Mr. Hernandez:** In that case, I will refer you to Drawing 3A-2. In the lower section there is a small plan, which record our demolition plan on the first floor. This shows you that the area of the first floor is 980 square feet. It is comprised of two living rooms, kitchen, a rear bathroom, a rear sun room, and a hallway with stairs leading to the second floor. Based on this layout, I can determine that the house at some point must have been used as a two-family home. At some point it was converted into a single-family home, and now we are seeking to add a little more square footage for a proposed two-family home. One of the things that we did in order to obtain a little bit more square footage was to remove the existing front porch. Can you hear me?

**Mr. Cox:** Yes.

**Mr. Hernandez:** Okay, the first thing we did was remove the old porch to propose additional habitable square footage by squaring off the front section of the house. This allows me to create a vestibule area that leads to the second floor. We added a front porch, which the dimensions are 9.7 feet by 5 feet in depth. The porch setback is at 10.51, where the minimum front yard setback is 10 feet. Therefore, the front porch is compliant with respect to the front yard setback. Going back to drawing 3A-2, the ceiling height on the attic floor is 6 feet-4 inches and it is to remain. We have decided to reconstruct a little bit of the back portion of the first floor over the existing frame and the reason for that is because by the time you remove the windows you are left with very little lumber. Now we are putting real walls with proper illumination with two sets of doors for each of the bedrooms. So, what you have here is a six bedroom house. We are proposing two

apartments, each one with three bedrooms and three bathrooms. Now I will direct you to page 1A-2, which is the proposed first floor plan. So, in the proposed first floor plan, you will see that we are proposing a brand new covered open porch. The proposed porch is 15.7 by 5 foot in depth. We are proposing an open concept for the inside living room and dining room area. Where the common area there is at 334 square feet even, therefore we meet the minimum requirement for common area. On this floor we have designed three bedrooms with an increase of two. Where each bedroom has a small private bathroom, which all very typical, with a corner shower, toilet, and sink. You will see that on the front of the building we have created an open area, because I think that is one of the problems that it currently has. Now I will ask that you go to 4A-2, which shows the floor plan of the second floor. So, the second floor is 713 square feet and right now it is three bedrooms, a hallway, and a front facing bathroom. So, we are redesigning the second floor. We are constructing a second floor over the existing first floor in the back section which is one story. Therefore, we are not adding any additional building coverage because we are building on top. This will add towards the second floor unit to help accommodate for the total of three bedrooms with three private bathrooms with again an open concept for the kitchen and living room space. Each unit will have a washer and dryer on each floor. Due to the existing height of the first floor basement, we cannot even have a washer and dryer there, therefore each apartment will have its own. I will ask now that we go to page A-3 of my plan, where you can see the proposed front of the house. Which now you can compare to the existing house, where there is a picture of on the Department of Planning report. So, you can compare that with the proposed plan. On the proposed elevation, we will use Hardie plank as a siding material, vinyl siding on the sides, and on the front we will be using decorative stone, just on the front porch of the first floor. So, we have slightly modified the front of the house. On the rear elevations, you can see that there is proposed rear back. The dimensions of which are 24.5 feet by 5 feet. On page A-3, you will see the proposed elevations based on the additions that we are proposing. On the first floor we are only adding 36.6 square feet, additional which would be livable. On the second floor we are adding 303 square feet, which is over existing first floor area both within the front and the back of the house. Does the Board have any questions at this point?

**Mr. Cox:** Does any member of the Board have any questions for this witness?

**Mr. Hernandez:** By the way, each floor would have just a little bit over 1,000 square feet, including hallways and stairs.

**Mr. Cox:** Thank you. Does any member of the Board have any questions for this witness? Seeing none, Mr. Kelso, you can move on to your next witness.

**Mr. Kelso:** Before I move on to my planner, I just want to point out that upon reviewing the proposal and a bedroom count, we have agreed to limit occupancy in this building to eight persons. As you can see, we have three bedrooms per floor and each bedroom has a bathroom, so it would really become an upscale living situation. So, we thought it would be appropriate to limit the occupancy to eight. Mr. Hernandez, if you can, could you describe the proposed attic space because there is attic space in the building correct?

**Mr. Hernandez:** Yes, the attic is unfinished and is currently uninhabitable. Whether you want to finish it or not, there is insufficient height as the ceiling height is only 5 feet-7 inches. Therefore, the attic is totally unfinished and no one would be able to live in it.

**Mr. Kelso:** Based upon the plans that you have done, the building height at all is not changing in this location correct?

**Mr. Hernandez:** That is correct. I guess on the previous application before we went to the Technical Advisory Committee meeting, we were proposing a third level, a finished attic level with raised knee walls. It was suggested that we not proceed with that part, so we removed it from the plans and will go back to the original roof and attic space.

**Mr. Kelso:** And does the existing building height of the building conform with the requirements of the zone?

**Mr. Hernandez:** Yes, it does.

**Mr. Kelso:** Ok. I also pointed out in my testimony that the variances of the existing conditions with regard to the setback such as the combined side yard setback and the lot area, was I in any way inaccurate when I pointed out those variances?

**Mr. Hernandez:** You were accurate in everything you said. Those variances are due to existing conditions. With regard to the floor area ratio, what I can say about it is that we do have a real challenge with the current lot area being less than 50% of what is required in the R-5A Zone should be, which is 8,000 square feet. So, that is a hardship, in that if we had an 8,000 square foot lot, meeting the minimum requirements, the FAR, would otherwise not be an issue.

**Mr. Kelso:** Also, if I may, the FAR increase is actually only 0.09 from what is there today.

**Mr. Hernandez:** That is correct.

**Mr. Kelso:** And if I might ask, the one parking space, where is it located?

**Mr. Hernandez:** It is on the front left side of the property. It is an existing one car driveway. There was really no space for additional off street parking, so we could only seek to retain the one car driveway there.

**Mr. Kelso:** Okay, and again four parking spaces is the requirement for this type of proposal, correct?

**Mr. Hernandez:** Yes, four is the requirement.

**Mr. Kelso:** Again, I have no further questions for Mr. Hernandez.

**Mr. Cox:** Hi Tom, it's John Cox here. I am not sure if the applicant would be able to obtain more parking permits from the parking authority or not, but could they limit the number of permits that can be taken out to what is currently at the site right now?

**Mr. Kelso:** To limit the number to what is at the site right now?

**Mr. Cox:** Correct.

**Mr. Kelso:** Yes, we can do that. We would agree to limit the parking permits permitted to be taken out to what is currently there now.

**Mr. Cox:** Okay, Thank you. Does any other member of the Board have any questions for this witness? Seeing none, Mr. Kelso, please call your next witness.

*Kate Keller is sworn in*

**Mr. Kelso:** Rather than ask you specific questions, I am going to ask if you could go through your analysis of the variances that are being requested provide the necessary support to convince the board to grant those variances.

**Kate Keller (Applicant's Planner):** Sure. Thank you. So as Professional Planner for this application, my role was to review the appropriateness of the variances being considered from a planning perspective. In doing so, I inspected the site and the surrounding area. I reviewed all the application materials and consulted with the other professionals which you heard from tonight. Since a description of the project has already been provided, I will not repeat that. As well, you have also heard the variances that we are requesting this evening, of which I will just go over again very briefly. To begin there are pre-existing conditions related to the lot area and lot width. We are requesting variances for those due to the change of use, since those are slightly higher for a two-family use in the zone as in the R-5A single-family use. In addition, there are three existing conditions that are not changing with regard to the side yard setback and we are requesting one new "d(4)" variance, which is for the aforementioned floor area ratio. In which 0.35:1 is the maximum permitted floor area in the zone and the existing condition is 0.43:1. We are proposing at this time 0.52:1, which is an increase of just over 350 square feet. So, it is very minimal in this context. As I will discuss in my testimony, it really speaks to the lot size of the lot that we are dealing with here. In addition, there are a number of bulk "c" variances that we are requesting. One is for building coverage, which is very de minimis, which we are seeking 29.5% percent, where 27% exists and 20% is permitted. The second is front yard setback from the porch, which 5.5 feet will be the setback to the front porch where 10 feet is required. And again, we are proposing one parking space, where four are required for these two three-bedroom apartments in total per the city's standards, which are based off of the Residential Site Improvement Standards. Just briefly, I will start with the "d(4)" variance. To the Board's memory, the standard for granting FAR variances is set forth in Randolph Town Center case. Regarding these types of variances, the Board must have testimony that supports that the lot can accommodate a greater floor area than what is permitted. To begin, two-family dwellings are a permitted use in the zone, so the density that we are proposing is compatible with what is appropriate for the area. And again, we meet the

impervious coverage and the height requirement even with the undersized lot. As Mr. Hernandez testified, we are really dealing with an undersized lot in this case, as it is half of the area that is required. I think that the fact that the project can meet the impervious coverage and height standard also shows that the additional FAR can also be accommodated without impairing the zone plan or the zoning ordinance. This is also a house that is compatible with the neighborhood. I did a brief review of the tax records in this area, and I came across that there are many two-family dwellings, which is understandable as it is a permitted use in this zone. In addition, almost every lot is undersized in this block, and many appear to be at either at or above the floor area ratio that we are proposing here. Therefore, it conforms with what is typically present in the neighborhood. Basically, what we have here is that the applicant is proposing a permitted use with an aesthetic upgrade with a new façade, porch, and landscaping, which is what Mr. Hernandez spoke to. Therefore, the FAR is consistent with the surrounding neighborhood. I believe that this furthers purposes (e) and (g) of Municipal Land Use Law, where we are rehabilitating housing in an appropriate location that is consistent with the city's goal according to the Master Plan Re-Examination Report of 2012. Also, purpose (i) that will enhance the visual and aesthetic character of the place. For those reasons I believe that the "d(4)" FAR variance can be granted without substantial detriment to the public good or substantial impairment to the zone plan or the zoning ordinance.

And just to address the bulk "c" variances, the first that I will discuss is the front porch that is located 5.7 feet from the front property line where 10 feet is required. This is really an aesthetic upgrade to the site that will allow for a new access point on the front yard and is consistent with conditions on the block. Although I was unable to get exact measurements, most of the houses on this street do have very similar porches and some even go up the sidewalk. It is generally consistent with the street that is being provided here. The next variance that we are requesting is for building coverage, which according to Mr. Hernandez, is very minimal in this context where we are only adding a small addition in the front portion of the house. Therefore, we are adding an increase of just 2%, where 20% is permitted. It is about 7 square feet when you take into consideration the proposed front porch and the front yard addition, which will not be going further than the existing wall. It will be added to match the front wall, and so it will not create any negative visual impact or stormwater issues. And it will create no detriment to the public good, as it is consistent with the surrounding context. The last variance that I will address is the parking space where one is being provided on the site, where four would be required. The existing space is 30 feet long by 13 feet wide, which per the RSIS can accommodate one vehicle. Therefore, it requires a de minimis exception, as well as a "c" variance relief. The city's parking standards are based on the New Jersey Statewide Residential Site Improvement Standards, which do not always reflect local conditions and for that reason the state gives municipalities great flexibility, in their language, to allow deviation based on factors that encompass local characteristics, such as proximity to mass transit, urban v. suburban locations, and other reasons. In this particular reason, where mainly students would not need a car to live in this location, where it is located within walking distance to campus and in close proximity to various transportation options, including shuttles, NJ Transit train and bus service, which are a few amenities that would be useful. In a location like this it is very appropriate to limit available parking for the site, so as to encourage residents to take advantage of transit and other amenities. With that said, I believe that

this meets condition (a) of the Municipal Land Use Law, which promotes the health, safety, and general welfare and does not provide any substantial detriment to the public good. For tonight, the applicant has agreed to limit the overall number of residents to eight people across those units and then second of all, as you have just heard, has agreed to not request any additional parking permits over what is currently there. So, for all these reasons, just so you know this is an upgrade to the existing site for a permitted use and I think that we are providing an acceptable level of parking given the surroundings. I have nothing further unless the Board or Mr. Kelso has any questions.

**Mr. Kelso:** I have no further questions.

**Mr. Cox:** Does any other member of the Board have any questions or comments for this witness? Seeing none, I will open it up to the public.

**Mr. Kelso:** Mr. Chairman, could I inject for just a moment?

**Mr. Cox:** Yes, go ahead, Mr. Kelso.

**Mr. Kelso:** Yeah, just in reviewing the planning report that was provided to us, there were several items that we wanted to just address, and I neglected to ask Mr. Hernandez. I would point specifically to item three, which is the request that if there is any new lighting that is being proposed and I will ask Mr. Hernandez to confirm this.

**Mr. Hernandez:** Yes, I did include lighting. If you look at page A-2, drawing 1A-2, I added three lights in the ceiling of the new porch unless we are required to have some full mounted exterior lighting, I can always add that to the drawing. But the exterior lighting that I have are three light fixtures in the ceiling of the front porch on page A-2, drawing 1A-2.

**Mr. Kelso:** So that is identified on the architectural plans?

**Mr. Hernandez:** Yes, it might have been missed when it was reviewed.

**Mr. Kelso:** Okay, then there is item four with regard to the height of the attic and the attic is not being utilized, and so we did provide that. Two other comments for item six and seven, with regard to the screening of mechanical equipment. Mr. Hernandez, I assume that we can comply with that requirement?

**Mr. Hernandez:** Yes, we will comply with the evergreen plantings.

**Mr. Kelso:** And then item seven with regard to the screening of the refuse area with a form of decorative plantings be provided to screen these areas. I assume that we can comply with that?

**Mr. Hernandez:** Yes, we will.

**Mr. Kelso:** Okay that is all I have. I think all the rest of the planning report was just comments with regard to compliance with previous comments. With that said, that concludes our presentation.

*Open for Public Comment*

**Mr. Cox:** I will now ask that members of the public, that would like to speak on this specific hearing please make yourself known.

**Mr. Cox:** Any other member of the public? Last call to comment on this particular hearing. One more time, any other person? Seeing none, Charlie go ahead.

**Mr. Kratovil:** Thank you, Mr. Chairman. I will be brief. Other than the fact that the attorney for the application is also the same attorney for the county government, my biggest concern with the application is parking. I used to live on this block and parking is really bad. One of the worst in New Brunswick when it comes to finding a space on that particular street. The city's parking permit system is a mess and because the area just so happens to be right on the border of the Fifth and Sixth Ward, it's really not a good situated for the folks on the Fifth Ward side of things in terms of what a parking permit gets them. But nevertheless, I thought you, Mr. Chairman, asked a good question when you asked about were they willing to waive some of the parking permits and it wasn't clear. The answer was that they won't get any additional, but how many do they have now for this property?

**Mr. Cox:** Charlie, this is John Cox, the Chairman. I am not sure if Mr. Kelso or anyone else has any information at this time.

**Mr. Kelso:** I do not have the exact number, but it was a single-family residence. So, as a single family residence, they would be entitled to whatever a residence of that nature would get.

**Mr. Kratovil:** So, you are suggesting that it would double, but you are waiving the doubling?

**Mr. Kelso:** Yes, that is correct.

**Mr. Kratovil:** Okay, I would respectfully ask that since there is an on-site parking space and there is not very much on-street parking, would the applicant be willing to forgo the one that they have? You know, the house for the longest time was owned by a couple that I think had under two cars and on the block, it has only gotten harder to park over the years. Would the applicant be willing to waive all parking permits for the site?

**Mr. Kelso:** No, we have already indicated what we are willing to do at the request of the Board.

**Mr. Kratovil:** Okay. Well, I would encourage the Board to ask for more because the parking situation is bad there and giving permits out to people does not create spaces, so

those permits are not going to be very worthwhile anyway, but it would put people under the false impression that they might be able to find parking when they sign up for a lease. You might as well as just waive them and I would encourage the Board to ask about it from the applicant. You know the applicant is asking you for quite a bit here and I am not against the project itself with expanding the house, but I do think that they could do more to mitigate the parking problem if they are supposed to have four spaces. Well, they have one and they could make up for it by giving up the three permits they have now, which I believe that is the way it works. That is just my request, I would hope that the Board would ask that. I do not expect Mr. Kelso to do it for me, but maybe he would do it for you.

**Mr. Cox:** Thank you, Charlie. Is that it?

**Mr. Kratovil:** Yes, sir.

**Mr. Cox:** Alright thank you very much. At this time, I will check to see if anyone else from the public that was not on the initial list would like to speak on this application? One more time, anyone else from the public that would like to speak on this particular application? Last call for public comment on this application? Seeing none, the public portion of this application is now closed.

*Public Comment Closed*

**Mr. Cox:** Mr. Kelso, is there anything else that you would like to speak on?

**Mr. Kelso:** Nothing further. We submit to the Board based on our testimony.

**Mr. Cox:** Thank you very much Mr. Kelso. Does any Board member have any comments at this time or discussion about this application? Seeing none, can we have the conditions of approval move forward with this application.

**Ms. Thielman-Puniello:** I just had a quick question. Aravind, we want the eight person occupancy to be set as a deed restriction, correct?

**Mr. Aithal:** Yes, I would recommend to the Board that it should be a maximum number as part of the deed restriction and that the applicant agrees to indicate that in a lease.

**Mr. Kelso:** We have no objection to that.

*Katie Thielman-Puniello, Principal Planner, City of New Brunswick, reads the conditions of approval into the record.*

Motion to Approve: John Zimmerman  
Second: Evelyn Azcona

	YES	NO
John Cox (Chairperson)	✓	

Nancy Coppola (Vice Chairperson)		
John Zimmerman	✓	
Michael Belvin	✓	
Ivan Adorno		
Karla Castaneda	✓	
Sue McElligott		
Beverly Sanchez (Alt. #1)		
Charlotte McNair (Alt #2)		
Evelyn Azcona (Alt #3)	✓	
Chris Sumano (Alt #4)	✓	

*Approved*

*(2-Minute Recess Break)*

**Mr. Dominguez:** And we're back. Aravind, since we took a break will we have to re-do role?

**Mr. Aithal:** Yes, since we did take a break, you will have to re-do roll again.

*Roll Call*

✓	John Cox (Chairperson)
	Nancy Coppola (Vice Chairperson)
✓	John Zimmerman
✓	Michael Belvin
	Ivan Adorno
✓	Karla Castaneda
	Sue McElligott
	Beverly Sanchez (Alt. #1)
	Charlotte McNair (Alt #2)
✓	Evelyn Azcona (Alt #3)
✓	Chris Sumano (Alt #4)

**C. RARITAN HEIGHTS PHASE II, LLC / 19 US HIGHWAY 1 / BLOCK 703, LOT 17.02 (ZB-2017-07)**

Amended site plan application with bulk variances for a previously approved mixed-use development. The applicant is seeking approval for the following changes: reconfiguration

of the parking lot; reconfiguration of a retaining wall; removal of several parking stalls; relocation of electrical vehicle charging stations; modification of accessible routes; and updated site landscaping. Zoning district C-5. (Thomas Kelso, Esq.)

**Thomas F. Kelso (Applicant's Attorney):** Members of the Board, on behalf of the applicant, Raritan Heights Phase II, LLC, we are before the Board this evening seeking amended site plan for those variance items that were identified. I am sure that the Board is familiar with this site, this is the site that is known as the Loew's Theater Site. I am getting a lot of feedback myself.

**Applicant's Stenographer:** I actually see a lot of unmuted phones, so maybe if everyone can mute except Mr. Kelso?

**Mr. Kelso:** I will keep trying. Again, a number of these changes are changes that are being requested by the applicant as a result of conditions in the field. I am really getting feedback. I will keep going. I will make it brief. In addition to the changes that were identified in the application, we also have a number of variances that are being requested. The first is an impervious coverage rate change of 81.27%, whereas 65% is permitted. The Board should be aware that there is already 80.54% impervious coverage, therefore the increase is really just less than 1%. Secondly, the two freestanding signs along the frontage would make a total of four signs, whereas a maximum of two signs are permitted. And finally, a parking variance where there is a minimum requirement of 1,539. We had originally indicated a reduction to 1,513. Our testimony this evening will be as a result of changes requested by the city for the new circle that is being installed, also known as a roundabout. As a result, there will be a loss of a few parking spaces in order to accommodate a new circle as per the city's comments with regard to that. However, we feel that this is a de minimis change considering that we are still proposing 1,513 spaces. After further review of the application, I think that the Board will be aware that a lot of the residential buildings are completed now and are ready to be occupied. This is also the same location where the Starbucks was the most recent addition to the site, which is now operating. I am going to call three witnesses for you this evening. First is Mr. Ron Aulenbach, who is the Director of Engineering, Planning, and Development for Edgewood Properties which is the designated redeveloper of this site. Second will be Mr. Karl Pehnke, Traffic Consultant, who assisted us with the review of the design of the roundabout which was requested by the city. Finally, we have Ms. Christine Cofone, who is our Professional Planner will provide testimony with regard to the variances. With that said, I am ready to call my first witness.

**Mr. Cox:** Please call your first witness.

**Mr. Kelso:** At this time, I will call Mr. Ronald Aulenbach for testimony. Mr. Ronald Aulenbach, I think that I stated directly in that you are the Director of Engineering, Planning, and Development for Edgewood Properties.

**Mr. Aulenbach:** I am.

Mr. Kelso: And in that capacity, you are familiar with the different improvements that have been done over the years on the Raritan Heights Site or the DNC site as I like to call it.

Mr. Aulenbach: Yes, I am.

Mr. Kelso: And I believe that you have provided testimony previously before this Board with regard to the previous approvals and the amendments to the approvals, and in that capacity, you are familiar with the project.

Mr. Aulenbach: I am.

Mr. Kelso: Aravind, he will only be testifying as a factual witness, not as a Professional Engineer.

Mr. Aithal: I understand. Mr. Chairman, his testimony is not being offered as that of an expert in the field of engineering. He is a fact witness and has first-hand knowledge of the site and the plans that were submitted for the application. Is that correct?

Mr. Kelso: That is correct. Mr. Aulenbach, if you could why don't you take the opportunity, without me prompting you with questions, to go through the various changes to the site plan that we are requesting. Which I think that you can also provide some background as to the variances and the parking variances to supplement that with Mr. Pehnke's testimony.

*Ronald Aulenbach is sworn in*

**Ronald Aulenbach (Director of Engineering, Planning, and Development for Edgewood Properties):** Thank you members of the Board for this opportunity. Again, as Mr. Kelso indicated, I am the Director of Engineering, Planning, and Development for Edgewood Properties, the parent company. I have testified before this Board and as such I am familiar with this site since its inception, going back years ago when we originally came in and got the approvals for what we are currently proposing now. Mr. Kelso mentioned that the first phase of the residential building recently received their first review, so that we can move forward on this project.

What this application tonight is really about is, probably the biggest change to the site plan, is the introduction of the traffic circle where you come in off of Route 1, off the main entrance. There used to be four-way intersection and we are looking to introduce a circle for some traffic calming. That circle ends up initiating some additional site plan changes. Based on some of the comments that we have gotten from the city's professionals, we are looking to make this a gated community, so there are a series of automatic gates and fencing that will secure the residential portion of it. And I will go into more detail as to how that functions. We are proposing two development monument signs, as you come off of the circle, again introducing the residential portion of the project. There are existing signs for the retail tenants on Route 1, these are just two additional signs that say "The Edge at Raritan Heights," which is the name of the project. This is for the residential

portion only. In the back left corner, there were previously some parking spaces. If you are familiar with the site, there is a significant drop off in the back as you go towards the Raritan River. To avoid some construction issues that we had in the back left corner, we are removing some parking spaces to install a retaining wall, that from our Technical Engineer acts as better security of the site. There are several parking spaces, ADA stalls, have been shifting around based on the new layout. So, we did also relocate electric vehicle charging spaces from against the building to across the drive aisle. As Mr. Kelso indicated and that Karl will touch on, the overall parking reduction variance and then Christine will finish up with that. However, I would like to talk about the automatic gate because it did come up in the professional's letters and based on our conversation with the city and its professionals, including building and fire, there are five ways for the gate to operate. The resident gets an electric reader installed in their car, similar to E-Z pass. Therefore, the gate will open when they drive up towards the gate. The resident also gets a physical key fob that they use when they pull up and it opens up the gate. The city has requested several changes for the emergency vehicles, so the system is equipped with a system in case a police, EMS, or fire truck pull up, you simply hit the siren and the gate opens. They also requested a knock box with a fob key in it. Lastly, they also asked if we could install a keypad where the city will have a four-digit code for themselves that they can use to input and the gate opens. There are multiple layers here for how the gate system works, so that not only our residents can get in, but also so that emergency personnel can access the residential. One of the other questions that came up as it relates to the circle was to adjust the geometry to be better in line with national standards and I will let Karl go into that in more detail. But that is what resulted in the parking reduction. The inner portion will need to be hardscape, no landscaping, because any larger vehicle will actually ride over the mountable curb, of which Karl will go into. We will also install whatever wayfinding signs that Karl and the township professionals feel are appropriate for the circle, we will obviously comply with. I believe that is my summary, Tom.

**Mr. Kelso:** Okay, I am just looking to see if we covered everything. I have no further questions for Mr. Aulenbach.

**Mr. Cox:** Does any member of the Board have any questions or comments? Seeing none, Tom please call your next witness.

**Mr. Kelso:** At this time, I will call Mr. Karl Pehnke, you are a licensed professional Engineer for the State of New Jersey, is that correct?

**Mr. Pehnke:** Yes, for the record I am a registered licensed Engineer in the state of New Jersey. I am employed by Langan Engineering and Environmental Services. My license is in good standing and my area of expertise is Traffic Engineering, which I have been practicing for over 35 years. I have been before this Board on prior occasions.

*Karl Pehnke is sworn in*

**Mr. Aithal:** I am sorry Mr. Chairman, this is Aravind. If Mr. Pehnke has appeared before this board on a number of occasions, he has been accepted as an expert witness in the field

of Traffic Engineering, and his credentials have not changed, then the Board should consider accepting him as an expert witness.

**Mr. Cox:** We will accept him as an expert witness in the field of Traffic Engineering.

**Mr. Kelso:** Mr. Pehnke, if you might, I know that Ron gave us sort of an introduction to your testimony, but I would like you to focus your testimony with regard to the roundabout measures that are being proposed here, if you could answer any questions with regard to signage, and if you could review that detail. Also, if you could explain the parking stalls.

**Karl Pehnke (Applicant's Engineer, Langan Engineering):** Certainly, to start, I have been involved with this project since the mid-1990s when it first started to redevelop and I have appeared for most of the amendments that have been granted through the years as you have gotten to the project that is currently under construction in the field. For this application, I had an opportunity to review the professional comments prepared by Mr. Bignell, Mr. Burke, and Mr. Carly in their March and May memorandums. I would say that a common question or comment that were raised by professionals had to do mostly with providing additional details and specific construction items associated with the mini roundabout that we are providing on this site following the Federal Highway Administration guidance. As Mr. Aulenbach alluded to in his testimony, it is in the main entry from the northern driveway as you come from Route 1 of what is today a simple four way intersection, it is proposed to be improved and developed into an entry feature and traffic operational feature which would be deemed in Traffic Engineering to be a mini roundabout. It is designed for the low speed type environment for a residential, mixed use development, such as this and there are very specific criteria that is in the guidance document by the Federal Highway Administration as for the design. We would agree as a condition of approval to abide by those additional details on the plans in accordance with the design criteria which include the details of the median circular island which, as Mr. Aulenbach indicated, is a gated treated area that emergency vehicles can easily overrun or that larger delivery vehicles can easily overrun, which is intended and does provide both a visual cue and a physical cue for motorist such as automobiles and smaller vehicles to circulate the roundabout as intended. There are also other elements of a mini roundabout that include pedestrian crossing and accommodations on each of the approaches that are set back a particular distance from the roundabout, as well as splitter islands on the approaches and signage that meets the requirements of the Manual of Uniform Traffic Control Devices. I have worked recently with EP Design Services, LLP, the designer for the site, and we incorporated those features on the site plan. As a condition of approval, we will provide those details to Mr. Burke and Mr. Carly for their final review and I am sure we will meet for their approval from that standpoint. We will provide for full pedestrian accommodation and ADA accommodation to ensure that there are proper accessible routes through the roundabout. As a result of the final detailing of the roundabout, as indicated earlier, we do trigger the need for a very minor parking variance. The current site plan that is proposed for the residential units, the theater, the restaurant, and the Starbucks, would require 1,533 spaces. We are proposing at the end of the day, 1,511 spaces, or a difference of 22 spaces. Most of those spaces are predominantly on the outskirts surrounding the intersection, which is a four way intersection today, which I am sure that

everyone that is on this phone call is familiar with. There would be pretty much the remotest parking spaces on any of these buildings in the last years, and really are non-essential to the operation of the site. I would suggest respectfully to the Board that the loss of 22 spaces out of 1,500 spaces is really de minimis. It doesn't represent any problem whatsoever in this operation. Anyone that is familiar with the site and the theater, certainly knows that parking has not been a problem. We know that it will not be a problem for the residential and hopefully with successful tenancies, with restaurants, we are confident that the number of parking spaces per ordinance around those buildings will be sufficient to operate the use. I would know that this is a mixed-use environment and that also provides the additional fact that some of these spaces can share parking spaces during the off-peak periods. So, we actually have more than an abundance of parking spaces on this site. Overall, the introduction of the mini roundabout is actually appropriate for this plan. I think that it will actually be an attractive addition as an entry feature for the site. It certainly will accommodate in a good fashion, the traffic flow to the various uses that are on this site. We will operate as intended with the traffic calming feature. I think that it will actually be a nice amenity to this site and the de minimis loss of parking are not detrimental. Certainly, they will have no impact on the adjoining properties or the adjacent street and we are confident that the parking being provided on this site will support the success of the uses on this site.

**Mr. Kelso:** I have no further questions for Mr. Pehnke.

**Mr. Cox:** Does any member of the Board have any questions or comments? Seeing none, Tom please call your next witness.

**Mr. Kelso:** At this time, I will call Ms. Christine Cofone for testimony.

**Mr. Kelso:** Ms. Cofone, you are a licensed Professional Planner in the state of New Jersey, and we all know that, could you give the Board the benefit of your professional qualifications and experiences?

**Ms. Cofone:** Yes.

**Mr. Aithal:** Ms. Cofone If I could just interrupt. Mr. Chairman, Ms. Cofone has appeared before this Board on a number of occasions and her credentials have been accepted by this Board as that of an expert in the field of Planning, I would ask if her qualifications have not changed that she be accepted again as an expert.

**Mr. Cox:** Yes, I will accept her as an expert and Dan still has to swear her in.

*Christine Cofone is sworn in*

**Christine Cofone (Applicant's Planner):** So, the variances that have been identified with respect to the parking for this application, in my opinion, can be granted under the "c(2)" statutory criteria, applying purpose (h) of the Municipal Land Use Law, which talks about promoting the free-flow of traffic. As Mr. Pehnke testified, the deficiency of 22 spaces is really de minimis in light of the overall obligation of 1,500 parking spaces. This represents

a small percent change in the parking obligation. Moreover, they are the outlier spaces, and, as Mr. Pehnke testified and I agree from a planning point of view, those are the spaces least likely to be utilized as they are the most remote on this site. So, I think that when you look at the fact that the subject property is in the C-5 Zone, the overall purpose which is to provide for the development of regional uses which are appropriate along major arterials and you look at the fact that the improvements that are proposed in conjunction with this application will actually facilitate the free flow of traffic, criteria (h) of the Municipal Land Use Law, and the fact that when you apply the negative criteria the fact that you are asking the applicant, not to be held that there is no detriment, just that the detriment is not substantial. That such a de minimis deviation from the parking standard with such outlier remote parking spaces, you can conclude that there is no substantial detriment and that the applicant can be granted variance relief, like I said, under the “c(2)” statutory criteria where the positive criteria is satisfied, as well as the negative criteria. And it certainly meets the intent of the zone plan of the C-5 Zoning District. That pretty much sums up my direct testimony, if anyone has any questions.

**Mr. Kelso:** Thank you, Christine.

**Ms. Cofone:** You're welcome.

**Mr. Cox:** Does any member of the board have any questions or comments? Seeing none, Tom, do you have anything else at this time?

**Mr. Kelso:** I just want to point out that there is one question that Mr. Bignell had in his report and I think that Mr. Aulenbach may have the answer. That is under his comment (h), he was asking the question with regard to the change in FAR and I think that it was 8,412 square feet. I think that we may have answered this at the Technical Advisory Committee meeting, but it is still in the report, but I thought maybe I would ask Mr. Aulenbach again.

**Mr. Aulenbach:** Yes, Tom, we did talk about this at the Technical Advisory Committee meeting. We had added some additional amenity space and that is where the additional square footage came from.

**Mr. Kelso:** Okay, I thought that we would indicate that. That concludes our presentation.

*Open for Public Comment*

**Mr. Cox:** I will now ask that members of the public, that would like to speak on this specific hearing please make yourself known.

**Mr. Cox:** Any other member of the public? Last call to comment on this particular hearing. One more time, any other person? Seeing none, Charlie Kratovil go ahead.

**Mr. Kratovil:** Yes, Mr. Chairman. I would like to start with a question about resolution Z-2011-05, states that the Board Attorney, Aravind Aithal, recused himself from participation in the application and was replaced. The applicant appears to be the same,

their attorney appears to be the same, can Mr. Aithal recall why he abstained and recused himself, and whether those same reasons still might apply today.

**Mr. Aithal:** Mr. Chairman, If I may.

**Mr. Cox:** Yes, go ahead.

**Mr. Aithal:** I believe that it has been over a year, perhaps close to two years, that my firm had represented at that time the parent company for this applicant. My firm no longer represents the applicant, of which more than a year has passed. Therefore, I do not believe that this is a conflict.

**Mr. Kratovil:** Does the one year standard come from any state law or statute?

**Mr. Cox:** Mr. Aithal, do you know if there is a state law or statute for the one year standard? That was the question.

**Mr. Aithal:** I am not aware of any statute. Thank you.

**Mr. Kratovil:** So, it is Mr. Aithal's position that any client that he has had in the past can come before him at this hearing and he does not need to recuse himself if it has been more than one year since his representation, is that his view?

**Mr. Cox:** Mr. Aithal, Is that your view that any client that you had in the past can come before you at this hearing and you do not need to recuse yourself if it has been more than one year since your representation?

**Mr. Aithal:** Mr. Chairman, with all due respect, I am not really sure that is relevant to this application. I have already answered the question relative to this application.

**Mr. Kratovil:** I think that the public and the Board would want to know what the views are of the Board Attorney's conflict of interest and when a recusal is necessary? This member of the public would certainly like to know. Can he tell us how long ago it was, was it one year and one day, or was it ten years ago since he represented Edgewood Properties?

**Mr. Aithal:** Mr. Chairman, I will answer this question again. It has been more than one year, close to two years ago, that my firm did any work for this applicant's parent company. They have not done any work for that company since. I do not believe that there is a conflict.

**Mr. Kratovil:** Well, I would beg to differ and I will want to lodge this objection on the record that I do not believe that Mr. Aithal should be representing this Board. I do not believe that a fair hearing can take place with this conflict that was first of all not disclosed. I had to dig this up in the document to even bring this to your attention. So, I would ask you Mr. Chairman that if you agree with me, would you be willing to suspend the hearing and get a new attorney that does not have this issue?

**Mr. Aithal:** Mr. Chairman, if I may. I think that Mr. Kratovil is not understanding that I have in the past recused myself when the firm that I worked for has represented this applicant. I will put that on the record. The fact that Mr. Kratovil feels as though he has dug it up, I am not really sure that he can take credit for digging up something that is a matter of public record. As far as whether this board is properly represented, I do not have a professional relationship where I represent the applicant or the applicant's parent company. My firm has not represented them for over a year, close to two years.

**Mr. Kratovil:** Okay one to two years, I think that is not quite long enough. That is my view, your entitled to your view, I would just appeal to the Chair and I ask the Chair to suspend the hearing. Are you willing to do that, Chair?

**Mr. Cox:** I am not willing to do that. I am going off of the advice of our attorney.

**Mr. Kratovil:** Okay, well I would shy away from taking his advice on this particular matter with all due respect to all involved. I will move on. The fact that this is going to be gated, are these apartments already open? Do people there want gates?

**Mr. Kelso:** I will answer. It is not open yet.

**Mr. Kratovil:** Okay, gotcha. So, no one is living there. Just so I am clear, this is the same firm that built Fulton Square in New Brunswick and was just before the Housing Authority the other day to expand that? Was Fulton Square was built wasn't that supposed to be a gated community, did that work out? Are the gates functioning there at Fulton Square?

**Mr. Kelso:** I see no relevancy to what is occurring at Fulton Square. So, we are not going to answer that question.

**Mr. Kratovil:** Okay, well I would raise to the attention to everyone that is listening, that Fulton Square promised people a gated community and then the gates were a miserable failure and they did not open for a year. I do not support having the gates, but they sold people's homes under the impression that they were going to have a gated community and then they failed to deliver that. So as soon as I heard that they wanted to do a gated community here on Route 1, immediately a red flag was raised because they have a poor track record and any one of you can see for yourself. Just go down Remsen Avenue or Commercial Avenue and drive right into Fulton Square, unless you want to correct me and tell me that I am wrong, that is the current status. You applied to the city to have a gated community, and then you didn't deliver on it. You broke your promise. I would view this as something that the Board should be skeptical of. I think that the Board agrees that common sense would dictate that you can look at the track record and of the same developer in the town trying to do the same thing and not delivering. That is a concern. Consistency is key here. Unfortunately, the same is true of the other major projects that the developer has undertaken in the Walgreens Shopping Center, which so much of the promises there have been broken there for housing, supermarkets, and now it's in limbo

whether or not they might do a school. But Kelso was telling me last week that it was still going to be a fast food joint and some housing.

**Mr. Cox:** Charlie, can we please stick to the application at hand? Those other projects have no bearing on this application. Please stick to this application and this application only.

**Mr. Kratovil:** Thank you. That is all I wanted to say on those other applications, but I still think you should consider it. It is common sense to look at the same applicant, doing the same thing, in the same city. My concerns also stem from the lack of public transportation at this site. It's nice that you are doing some electric vehicle charging stations, but there is still no component for any public transportation. Is that true?

**Mr. Aulenbach:** I will answer that. Public transportation is something that is not available.

**Mr. Kratovil:** Okay, so no component for that. The retaining wall situation, how bad is it there? I know that it looks bad. Can you tell me is there any danger to the public or the people there of the retaining wall giving out?

**Mr. Aulenbach:** No, the retaining wall is simply a redesign to have a better design of that back left corner.

**Mr. Kratovil:** Okay, well those are my main concerns here. I know that the building is built. I can see it from the highway. It looks nice from afar. I think that it will look a lot less nice with a gate to keep people out and I do not think that there is a real need to keep people out. This is not an area that has a lot of people and I do not think that it is wise to embark on a gated apartment community in this area, especially given what a miserable failure the last time the developer tried to do a gated community. And again, just drive past it yourselves, you know the city just as well as I do probably and you know that Fulton Square is a shortcoming. That was a broken promise. If you look at this developer's track record, they have a history of broken promises like many of Mr. Kelso's clients and they are not the type of people that the Zoning Board should be bending over backwards to let them get variance after variance after variance to keep letting them get what they want. We do not need another gated community in New Brunswick and this is not a good move for the city. I think that especially these days, urban planning experts would tell you that gates are not good. We do not need to build more walls and keep people out. I do not know if any of the people here can weigh in on that, but I do not think that is a good move. I have not heard any justification in the testimony to support that. I did not hear any reason given. Unless I hear a reason, I am not going to support that. I do not think that the Board should support that. I hope that some members will be brave and push back. Yes, Kelso is a powerful guy and, yes, Jack Morris is a powerful guy, but they should not get to do whatever they want. There are laws here and you are in charge of enforcing those laws. And I think that this is a bad plan, at least the part with the gates. I think that you have the power to do something about it, you are in power, and I hope that you will. Thank you.

**Mr. Cox:** At this point we have no one else on the list. At this time, I will check to see if anyone else from the public that was not on the initial list would like to speak on this application? One more time, anyone else from the public that would like to speak on this particular application? Last call for public comment on this application? Seeing none, the public portion of this application is now closed. Mr. Kelso do you have a summarization?

*Public Comment Closed*

**Mr. Kelso:** No, we submit to the Board based upon our testimony.

**Mr. Cox:** Thank you very much Mr. Kelso. Does any Board member have any comments at this time or discussion about this application? Seeing none, can we have the conditions of approval move forward with this application.

*Katie Thielman-Puniello, Principal Planner, City of New Brunswick, reads the conditions of approval into the record.*

Motion to Approve: Chris Sumano

Second: John Cox

	YES	NO
John Cox (Chairperson)	✓	
Nancy Coppola (Vice Chairperson)		
John Zimmerman	✓	
Michael Belvin	✓	
Ivan Adorno		
Karla Castaneda	✓	
Sue McElligott		
Beverly Sanchez (Alt. #1)		
Charlotte McNair (Alt #2)		
Evelyn Azcona (Alt #3)	✓	
Chris Sumano (Alt #4)	✓	

*Approved*

#### IV. OTHER MATTERS OF INTEREST TO THE PUBLIC

**Mr. Cox:** I will now ask that members of the public, that would like to speak on anything please make yourself known.

**Mr. Cox:** Any other member of the public? Last call to comment on anything. One more time, any other person? Seeing none, Charlie Kratovil go ahead.

**Mr. Kratovil:** I am disappointed to not see any pushback on the first and third application and the fact that Mr. Aithal did not recuse on that matter. But you can trust that I will be following up on those. I do want to thank the Planning Director for being so responsive and keeping me in the loop about these meetings. I know that this is a new set up that we have going and I just wanted to again extend my offer to discuss with him ways that these meetings can maybe go smoother. I know that you are using software called WebEx, the same software that was being used at city council meetings. Unfortunately, tonight we had technical difficulties that led to a late start. We had people that weren't able to put themselves on mute. It was hard for people to hear. We had issues with feedback. It was throwing some people off. I can say for the record that I did drop off the call entirely for several minutes for no apparent reason, and then something had to be changed to get the public back on the call. People had to do things over again. So, I would just respectfully submit that the WebEx solution that has been in use for these past few Zoning Board meetings is probably not the best solution and there are other governments using other tools to have more engaging meetings with the public in these times. As I pointed out last time, the planning and zoning matters lend themselves to visuals, and if the witnesses were able to point to a visual and show you what they are talking about, then the audience would be able to comprehend better what is going on. I tried my best to follow along with the documents on the website. I think that I did a fine job, but at the end of the day if I had an expert showing me what they are talking about instead of having to find it in all these documents, it would be easier for me to comprehend and for others to comprehend. I would urge you that if you are going to have another public meeting without using the City Hall room and without getting the public together in person that you pursue a different solution. One that is maybe more 21<sup>st</sup> century and a little less like a 1990s conference call. I mean that with all respect, I know that this is a difficult time, this is uncharted waters, and so I am just offering my assistance to help because I was able to broadcast this entire meeting on the New Brunswick Today Facebook page. I did my best to put up a few visuals for people that tried to follow along with what is going on. But the technology does exist and it could be better, and I think that it should be better. Here in New Brunswick, we should be on the cutting edge of using all the tools available to us.

Finally, I wanted to close by saying that when we look back on some of these votes, when we are driving down Route 1 and we see this ugly gate at the front of a nice apartment building or we see this big, bright sign on Hamilton Street shining into people's homes. And Mr. Kelso's office, I was just joking when I said that I hope that it points to his office. I think that no one deserves to have this unnecessary signage lighting up their homes all into the night. When we look back on this, we are going to think that was during the Coronavirus that the application got rushed through in a telephone meeting. Which was a special meeting set up for three of Mr. Kelso's clients. I do not know of any other attorney that has been able to get such special treatment from the city. I do not think that it is right. I do not think that he should be representing clients to this Board. He has a job and he is our representative to the county government, and he should be focused entirely on that job, not taking on these conflicts. Where he represents all these big developers. I think that it is just not right, and I think that people need to take a stand and I know that it is not necessarily within your power to tell him that he can't come before this Board, but I want everyone who is listening to know that it is wrong. He should be serving the public

and if he wants to earn his money in the private sector, he can leave the public job and do that. But he is paid handsomely to be our representative. He has immense power being the lawyer for the freeholders and the entire county government, which is an enormous operation that is supposed to put our interest first, but we have seen time and time again that Mr. Kelso is representing the interest of the big developers first and then the county maybe second. I do not think that it is right and I do not think that this Board should bend over backwards for him or his clients. I have to be honest, I do not like the attitude of constantly dismissing things that I bring up or others bring up about Kelso and his clients. I think that there is a lot of relevancy to the matters that I asked about, especially the failure of Fulton Square to deliver on what they promised. Ultimately, we need to hold everyone accountable, especially the powerful, especially the lawyers like Mr. Kelso that try to play it both ways to do this public-private thing, where they can decide what matters most to them and put those interest firsts. Certainly, developers like Edgewood Properties that have repeatedly come before this Board and the Planning Board promised things and broken those promises. I think that it is a disgrace what has happened with their two projects, Fulton Square and the Walgreens Site. This was the only decent project they had and now they are coming back to get you to approve a gate. My goodness, we do not need that. Just think, deep down in your hearts, probably the people that have planning expertise would probably realize that this is not good for the community. This is not the type of inclusive development that we want to be having in our city. I do not think that just because a powerful person pays a powerful lawyer a lot of money that they should get a special meeting and that they should be rushed through. I do not think that the attorney that represents the same applicant should be representing the Board. When I questioned Mr. Aithal about it, I thought for sure that this was some matter from 10 years ago, but just a year ago to two years ago. That is really cutting it close. That is really inappropriate to represent this Board. We need attorneys that are going to represent the interest of the public first and for most. Whether that is Mr. Kelso or Mr. Aithal, I can still respect them and be nice to them, but at the end of the day right is right and wrong is wrong. We need to put the public first, and we need attorneys that are going to do the work of the citizens of New Brunswick and the residents of New Brunswick. And not the private developers who pay them a lot of money or have paid them a lot of money in the recent past. That is all I have for tonight. I hope that I did not go on too long, but I thank you for giving me the opportunity to speak. I hope that you got something out of what I had to say. I certainly do this because I do care about the city and I hope you understand that. Thank you.

**Mr. Cox:** Thank you, Charlie. At this point I will ask if anyone else from the public that was not on the initial list would like to speak on any issue? One more time, anyone else from the public that would like to speak on any issue? Last call for public comment on any issue? Seeing none, everything is closed. Do I have a motion to adjourn?

## VII. DISCUSSION ITEMS

### V. ADJOURNMENT

Motion to Adjourn: John Zimmerman  
Second: Chris Sumano