

DONALD G. MORASH, JR.  
SCOTT AVEDISIAN  
CHAIRMAN  
MAYOR



**CITY OF WARWICK**  
**ZONING BOARD OF REVIEW**  
**WARWICK, RHODE ISLAND 02886**  
**(401) 921-9534**

**WARWICK ZONING BOARD OF REVIEW**  
**MINUTES OF THE APRIL 11, 2017 MEETING**

A regular hearing of the Warwick Zoning Board of Review was held on Tuesday, April 11, 2017 at 6:00 P.M. in the Warwick City Council Chambers, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island. The meeting was called to order by Chairman Donald Morash.

The Secretary called the roll and noted the following members present:

Donald Morash, Chairman  
Everett O'Donnell  
Beverly Sturdahl  
Julie Finn  
Mark McKenney  
Paul Wyrostek

Absent: Fred Sarno

Also present: Diana Pearson, Asst. City Solicitor  
Richard Crenca, Warwick Planning Department  
Amy Cota, Secretary  
Mary Ellen Hall, Stenographer

The Chairman declared a quorum.

The Chairman advised the minutes from the November 15, 2016, January 10, 2017 & February 14, 2017 hearings will be reviewed and approved at the end of the meeting.

The Chairman asked if there were any petitions to be WITHDRAWN or CONTINUED.

The Chairman advised that Petition #10452 of William C. Ruggieri, 1 Country Club Dr., Warwick, RI, was being continued to the May 9, 2017 meeting. Everett O'Donnell moved to continue the petition, seconded by Paul Wyrstek and passed unanimously by the Board that the petition be continued.

The Chairman called the first petition.

Petition #10451

Ward 8

920 Bald Hill Rd.

The petition of The Growth Companies, Inc., 1234 Boylston St., Chestnut Hill, MA, and Rubin Warwick, LLC, 920 Bald Hill Rd., Warwick, RI, request a special use permit to have mixed use in a commercial building. Also seeking a dimensional variance, subject property having less than required landscape buffer, less than required screening/fence abutting a residential zone, less than required screening for dumpster, less than required setback for parking spaces, less than required parking, less than required number of loading spaces and screening for loading spaces. Also proposed sign being higher and larger than allowed, with less than required front yard setback, and seeking continuation of a prior approval for parking in residential zone, portion of lot 38. Assessor's Plat 260, Lot 36 and portion of lot 38, zoned General Business (GB) & Residential A-15.

K. Joseph Shekarchi, Esq. was present and representing the petitioners.

Richard Crenca from the Planning Department read his recommendations into the record.

Mr. Shekarchi stated they have been working for several months on this project. They are relocating an existing trampoline business that will occupy the rear portion of the building, the front portion of the building will consist of several multi-use tenants.

Mr. Shekarchi stated they will not be changing the footprint of the building. There will be a significant improvement to the exterior and interior of the building. He stated they do not need relief for parking, they have adequate parking for the use.

The Chairman asked if there was anyone there to speak in opposition of the petition.

Attorney Raymond Tomasso was present representing the Alan Brian Realty Company, who owns abutting Assessor's plat 260, lot 38. The attorney stated the petitioners are requesting continued parking on a portion of his client's lot. Their concern is the impact it may have in the future and impinging on his client's rights.

Mr. Shekarchi stated he agrees with Attorney Tomasso, and his clients have adequate parking. His clients would have no problem not using this lot, and in the future if parking is needed they can negotiate at that time.

The Chairman asked if there was anyone else there in opposition or in favor of the petition. There being none, Mark McKenney stated it would improve & enhance the area, it would be in keeping with the City Comprehensive Plan and the relief requested is reasonable and fairly minimal, the petitioners are willing to reduce the height of the sign to 34', and moved to grant the petition, seconded by Paul Wyrstek and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10420

Ward 6

2121 West Shore Rd.

The petition of Sports Legend Pub, Ltd., 2121 West Shore Rd., Warwick, RI, and Umbriago Properties, LLC, 70 Summit Dr., Cranston, RI, request a special use permit to have a nightclub/live entertainment in existing restaurant/bar & grille. Assessor's Plat 350, Lots 333, 335, 336, 338 and 341, zoned Residential A-10.

Sanford Resnick, Esq. was present and representing the petitioner.

Richard Crenca from the Planning Department read his recommendations into the record.

Attorney Resnick stated his client has no issues with stipulations #2 through #8, but has something for the Board to consider regarding stipulation #1.

The Attorney stated this property has been the Sports Legend Pub since 1991. His clients spent quite a bit of money, have met with the Fire Department, the Building Department. They had a surveyor and an Engineer design a drainage system. They entered the drainage plan along with a letter from Eric Hindinger, dated April 11, 2017, as Exhibit #1.

He stated his clients have an adequate parking plan that meets all the zoning requirements.

Mr. McLaughlin pointed out an encroachment to Mr. Resnick, which Mr. Resnick nor his client were aware of. The encroachment is shown on the plan as a fence encroachment. He states they have agreed that within a week his client will remove the fence. Mr. McLaughlin has advised them he will put a fence on his property line.

Mr. Resnick stated his client rents the property, which includes four lots. Rather than merging the lots, he has suggested placing a restrictive covenant on the property, so long as they are using it as a restaurant/pub with a liquor license, all four lots must be conveyed together if sold. In the event this property is no longer being used as a restaurant/pub with an entertainment license, the owner of the property could actually end up with a three lot sub-division. He stated they would like to meet the intent of what the Planning Department is asking for, but do it in a form of a restrictive covenant, so in the

event there is a change in use, the applicant won't have to go through the expense of coming back to the Planning Department and paying for a sub-division.

Richard Crenca stated as long as the restrictive covenant requires the applicant to continue using that parking for the restaurant/pub as long as he is operating, he doesn't have an issue with it.

The Chairman asked if there was anyone there in opposition of the petition.

Attorney Tim Dodd was present representing his client Mr. McLaughlin. He stated he would like the Board to include in the decision that the petitioner will remove the fence from Mr. McLaughlin's property within a week. The Chairman stated that will make that a condition of the decision.

The Chairman asked if there was anyone there to speak in favor of the petition. There being none, Mark McKenney moved to approve the application subject to the modifications noted, specifically in respect to the encroachment to rectify the fence be moved, and with respect to the restricted covenant, that so long as a restaurant/pub with an entertainment license is there, all properties must be sold together. With that said, based on what the department having outlined their concerns, Mr. McKenney asked that these concerns be modified, be incorporated by reference into the decision, it would appear it meets the criteria for relief being requested and would be appropriate, so with all those findings Mark McKenney moved to approve the petition, seconded by Paul Wyrostek and passed unanimously by the Board that the petition be GRANTED WITH AMENDED STIPULATIONS.

Petition #10442

Ward 9

98 Overhill Rd.

The petition of Gordon Moss, 64 Eagle St. #5, Providence, RI, and Gilbert Grossman, 98 Overhill Rd., Warwick, RI, request a dimensional variance to demolish existing detached garage and construct a new two story accessory use structure for a recreation room on the first floor and a study on the second floor. Subject property being an undersized non-conforming lot. Proposed structure having less than required side and rear yard setbacks. Assessor's Plat 219, Lot 8, zoned Residential A-15.

Gordon Moss, Architect & Builders, 64 Eagle Ave., Providence, RI, was sworn in by the Chairman.

Laura Moss, Architect & Builders, 64 Eagle Ave., Providence, RI, was sworn in by the Chairman.

Richard Crenca from the Planning Department read his recommendations into the record.

Laura Moss stated they are not requesting to have plumbing in the structure. They are proposing to demolish the existing structure and construct a new 21' x 19' two story accessory use structure that will have a recreation room on the first floor and a study on the second floor.

The petitioners stated it will not be living space, as they cannot add another bathroom with the septic system being at full capacity.

The petitioners agreed to all the stipulations.

The Chairman asked if they spoke to their neighbors. The petitioners submitted a letter of support from neighbors who abut their property in the rear, Louis & Rebecca Sperling, 86 Dagnillo Drive, Warwick, RI marked as Petitioner's Exhibit #1.

They also submitted a letter of support from neighbor Joyce DiPippo, 90 Overhill Dr., Warwick, RI, marked as Petitioner's Exhibit #2.

The Chairman asked if there was anyone there to speak in opposition or in favor of the petition. There being none, Everett O'Donnell stated the petitioners have agreed to all the stipulations, and went out of their way to speak to the neighbors, who are in favor of it, and moved to approve the petition, seconded by Beverly Sturdahl, and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10443

Ward 4

45 Royland Rd.

The petition of Eileen M. Cullinane, 45 Royland Rd., Warwick, RI, request a dimensional variance to construct a 5' x 12' farmer's porch. Proposed porch having less than required front yard setback. Assessor's Plat 328, Lot 84, zoned Residential A-7.

Eileen Cullinane, petitioner, was present and sworn in by the Chairman.

The Chairman asked the petitioner was she is looking to do.

The petitioner stated she has a little ranch house, and she would like to have a little front porch.

The Chairman asked if there was anyone there to speak in opposition or in favor of the petition. There being none, Everett O'Donnell made a motion to approve the petition, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.

Petition #10444

Ward 6

71 Northup St.

The petition of Dale Rappaneau, 71 Northup St., Warwick, RI, request a dimensional variance to install a 10' x 16' shed. Subject property being an existing undersized non-conforming lot & proposed shed having less than required rear yard setback. Assessor's Plat 360, Lot 324, zoned Residential A-7.

Dale Rappaneau, petitioner, was present and sworn in by the Chairman.

The petitioner stating he is looking to install a 10' x 16' shed for his tools.

Everett O'Donnell asked if the lot next door is occupied, and if there will be much runoff the roof onto their property. The petitioner stated he can place a gutter on that side of the shed.

The Chairman asked if there was anyone there to speak in opposition or in favor of the petition. There being none, Mark McKenney made a motion to approve the petition with the stipulation that there shall be no additional runoff and the petitioner will install a gutter on the shed, seconded by Everett O'Donnell and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10445

Ward 9

20 Somerset Rd.

The petition of SMD Realty & Construction, 2570 Warwick Ave., Warwick, RI, and Lou & Amanda Lepere, 20 Somerset Rd., Warwick, RI, request a dimensional variance to construct a 12' x 16' one story family room addition and a 23' x 5' front deck to an existing non-conforming dwelling, proposed addition having less than required front yard setback. Proposed front deck having less than required front yard and front corner/side yard setback. Assessor's Plat 203, Lot 58, zoned Residential A-10.

Joseph Brennan, Esq. was present and representing the petitioners.

Attorney Brennan stated his clients are requesting two variances. The petitioners are proposing to construct a 12' x 16' one-story addition with a front setback of 9.20'. (25' required). They are also proposing a 23' x 5' front deck with stairs with a front setback of 3' (25' required) and a 10' setback to the front/corner street (Baycliffe Dr.) setback (25' required).

Mark McKenney made a motion to approve and noted the stairs are minimal and the addition will not encroach on the neighbors, and both will enhance the property, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.

Petition #10446

Ward 7

99 Janet Drive

The petition of Roberts Construction, Inc., 47 Mendon Ave., Pawtucket, RI, and Alfred Millard, 99 Janet Dr., Warwick, RI, request a dimensional variance to construct a 24' x 24' one story detached garage. Proposed garage having less than required front corner/side yard setback (Oak Tree Ave.). Assessor's Plat 364, Lot 440, zoned Residential A-10.

Richard Crenca from the Planning Department read his recommendations into the record.

Alfred Millard, petitioner, 99 Janet Drive, Warwick, RI, was sworn in by the Chairman.

Donald Roberts, Roberts Construction, 47 Mendon Ave., Pawtucket, RI, was sworn in by the Chairman.

The Chairman stated he agrees with the Planning Department's comments and thinks the petitioner should either construct an oversized one car garage or move the building back to accommodate a two car garage.

The contractor stated he will have the surveyors go back out and he will re-submit it to the Board.

There was discussion amongst the Board Members in regards to continuing the petition. It was decided instead of continuing the petition, the petitioners agreed to submit a new survey to the Building Department, showing the proposed garage with a minimum setback of 5 feet to the front corner/side street (Oak Tree Ave.) and a minimum setback of 8 feet to the property in the rear abutting Plat 364, Lot 508.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none Everett O'Donnell stated the petitioner has agreed to all the stipulations, and there are no objectors. They will submit a revised survey to the Building Department. The motion was seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10447

Ward 4

617 West Shore Rd.

The petition of Lonnie L. Barham, Conimicut Village Association, 4 Shawomet Ave., Warwick, RI, and Kenneth G. Kazarian, 103 Wilson Ave., Rumford, RI, request a use variance & a dimensional variance to install a 24 sq. ft. welcome/bulletin board sign. Proposed sign being larger than allowed & internally illuminated by a solar panel. Assessor's Plat 318, Lot 100, zoned Village.

Lonnie L. Barham, petitioner, 4 Shawomet Ave., Warwick, RI, was sworn in by the Chairman.

Mr. Barham stated they would like to install a welcome sign on the North end of the Village. They have received permission from Mr. Kazarian to install the sign on his property. They are seeking relief for the size of the sign. The Village Zoning district allows 16 sq. ft. for signs and doesn't allow internally illuminated signs. The petitioners are proposing a 24 sq. ft. sign and also seeking relief for the sign to be internally illuminated by a solar panel.

The petitioner states there will be four to five events per year in the Village, so the sign won't change often. The sign also has vandal resistant plexi-glass that locks, and will need to be unlocked to change the lettering.

The Chairman asked if there was any objection to the sign and if there was anyone there to speak in opposition or in favor of the petition. There being none, Everett O'Donnell stated the sign is reasonable and will help with the Village events, and moved to approve the petition, seconded by Mark McKenney and passed unanimously by the Board that the Petition be GRANTED.

Petition #10448

Ward #9

250 Bay View Ave.

The petition of Gwen Tarbox & Brian Dorman, 250 Bay View Ave., Warwick, RI, request a dimensional variance to construct a garage addition. Proposed garage having less than required front yard setback. Assessor's Plat 219, Lot 66, zoned Residential A-15.

Gwen Tarbox, petitioner, 250 Bayview Ave., Warwick, RI, was sworn in by the Chairman.

Brian Dorman, petitioner, 250 Bayview Ave., Warwick, RI, was sworn in by the Chairman.

The petitioners stated the house currently has a single car garage and they are looking to add a two car garage. They stated they are seeking relief for the front yard setback. The proposed garage will have a setback of 24' (30' required).

The Chairman asked if they spoke to their neighbors. Mr. Dorman stated most of the neighbors are his family.

The Chairman asked if there was anyone there in opposition or in favor of the petition, there being none Everett O'Donnell made a motion, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.



Petition #10449

Ward 2

1551 Warwick Ave.

The petition of Personal Touch Car Wash, C/O Vincent Porzio, 95 Berlin Rd., Cromwell, CT, and Russell M. Yates, Jr. & Hoxsie Corp., Inc., 35 Sayles Ave., Warwick, RI, request a special use permit to construct a new 5,770 sq. ft. car wash facility. Also seeking a dimensional variance for proposed car wash having less than required setback to a residential zoning district & the wetland feature, less than required frontage & width, and for a new pylon sign to be located on abutting lot, proposed Lot #1. Assessor's Plat 312, Lots 309, 310, 315, 390 & 391, zoned General Business (GB).

Joseph Brennan, Esq., was present and representing the petitioners.

Mr. Brennan stated currently there are five lots on Warwick Ave. at Hoxsie four corners. They are proposing to subdivide the five lots into two lots. Proposed lot #1 will be in the front and proposed lot #2 will be in the back. The proposed car wash will be on lot #2. Lot #1 has no proposed use right now.

They held a neighborhood meeting on January 23, 2017 in conjunction with the Planning Department and they went before the Planning Board for Master approval on March 8, 2017, in which they received a favorable recommendation to come before the Zoning Board.

Attorney Brennan states they are seeking a special use permit for the car wash, as well as a dimensional variance for having less than required lot frontage. The plan shows the only frontage to Warwick Avenue for lot #2 is at the Southern side of the lot with 52.92' of frontage. There will be a 30' easement for access to lot #2, which will be granted to them by the current owner of proposed lot #1. The plan also proposes a fishing access easement on lot #1.

The access easement road to lot #2 will have the option to enter and exit, both right and left on Warwick Avenue. The other entrance, closer to Hoxsie Four Corners, will only allow you to enter the carwash by taking a right from Warwick Avenue and to exit, you will only be able to take a right onto Warwick Avenue. At the Planning Board master approval they asked the petitioner to install a triangle island that doesn't allow vehicles to turn in from the left, or turn out left, and the petitioners have no opposition to installing that.

Additionally they are proposing a 20' buffer to the residential zoning district from the storm water system (40' required).

The petitioners met with the Warwick Sewer Authority about sewer usage. Attorney Brennan stated the Sewer Authority actually prefers the carwash because the water and soap helps clean it out.

The Chairman asked if they recycle the water. Attorney Brennan stated they do recycle as much as they can, but not all gets recycled.

The petitioners are also seeking a dimensional variance to have their pylon sign located on abutting proposed lot #1; as well as for having less than required setback to the wet-land feature.

Although proposed lot #1 will not be developed at this time, they will be providing three (3) parking spaces for pond access. Once the lot is developed, those three (3) spaces will remain to be parking spaces for pond access. These spaces will be marked with signs and will be for the use of pond access only.

Mr. Brennan stated the proposed car wash is a high tech facility. People will drive in from the top, there are three (3) lanes to enter. It's all automated systems, the customers select the type of wash they want and pull around back and go through one (1) car at a time. He states the reason they maneuvered the building the way it is on the lot, is because when the cars come out of the front that is where the vacuum blowers are, and they wanted to diminish any noise to the neighbors.

The vacuums are also state of the art. They are built somewhat underground with a noise cancelling system, so all you will hear is a suction of a hose. They will also be providing screening with landscaping and buffering to help with any noise to the neighbors.

At the neighborhood meeting, the neighbors had a concern about the lighting of the establishment. All the lights will be on a timer, so when they are closed, everything will turn off.

Attorney Brennan states there will only be a carwash. They will not have auto detailing or any other type of auto repair use there.

The attorney also stated the only person who showed up for the neighborhood meeting was former Councilman Thomas Chadronet, who was in favor. They did speak with current Councilman Jeremy Rix, he had no objection, although he hasn't seen the actual plans, Mr. Brennan and Mr. Rix had a thorough conversation about what they were proposing. There were neighbors who showed up at the Planning Board hearing on March 8, 2017, but he believes they addressed their concerns.

Everett O'Donnell asked the petitioner what the hours of operation will be.

Vincent Porzio, petitioner, was present and sworn in by the Chairman.

Mr. Porzio stated the hours of operation will be 7:00 a.m. to 9:00 p.m.

Everett O'Donnell asked if there will be personnel on site. The attorney stated during peak hours there will be 5-6 employees and non-peak hours there will be 2 employees.

The Chairman asked if there was anyone there to speak in opposition or in favor of the petition. There being none Mark McKenney stated the petitioners laid out the essential facts, based on that and his discussion with Mr. Crenca stating this has gone through the Planning Department and they've worked out what seems to be an appropriate use of the property, moved to approved the petition, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.

Petition #10450

Ward 7

121 Grand View Dr.

The petition of Susan L. Aldrich, 100 Timberline Rd., Warwick, RI, request a dimensional variance to construct a detached garage with an accessory dwelling unit in the rear of the garage. Proposed detached garage with an accessory dwelling unit in the rear having less than required lot width, frontage & side yard setback. Assessor's Plat 367, Lot 288 zoned Residential A-7 & A-10.

Richard Crenca from the Planning Department read his recommendations into the record.

Susan Aldrich, 100 Timberline Rd., Warwick, RI, was sworn in by the Chairman. The Chairman asked the petitioner if she agreed with all the stipulations. Ms. Aldrich stated she agreed.

The Chairman asked her if she spoke with her neighbors. The petitioner stated there were no neighbors who were not in opposition.

Everett O'Donnell stated it's pretty straight forward.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Everett O'Donnell move to approve the petition, seconded by Mark McKenney and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10425

Ward 7

708 Greenwich Ave.

The petition of Colbea Enterprises, LLC, 2050 Plainfield Pike, Cranston, RI, and RI-DOT, Two Capitol Hill, Providence, RI, request a special use permit to demolish existing one story building, canopy, gas pumps & concrete pad/island and construct a new 3,600 sq. ft. convenience store, a coffee shop with a drive-thru, a new canopy, and six (6) new gasoline dispensers (12 total fueling positions). Also seeking a dimensional variance for less than required front yard setback to the canopy, less than required setback to a residential zoning district, proposed pylon sign being higher than allowed, less than required interior landscaping, and wider than allowed driveway. Assessor's Plat 266, Lot 69, zoned General Business (GB).

Richard Crenca from the Planning Department read his recommendations into the record.

Elizabeth Noonan, Esq., Adler, Pollock & Sheehan, Providence, RI, was present and representing the petitioners.

Andrew Dellicarpini, owner & CEO of Colbea Enterprises was sworn in by the Chairman.

Angelo Ruo, Vice President of Operations, was sworn in by the Chairman.

Thomas Breckel, Vice President of Operations Environmental & Compliance, was sworn in by the Chairman.

Attorney Noonan stated she had three expert witnesses to testify.

Paul A. Sylvia P.E. was presented as an expert witness as a Civil Engineer (Motion was made by Everett O'Donnell, seconded by Mark McKenney and passed unanimously by the Board). Petitioner's Exhibit #1 – Paul A. Sylvia, P.E. Curriculum Vitae. Mr. Sylvia was sworn in by the Chairman.

David Damico was presented as an expert witness as a registered P.E. and also a Traffic Engineer (Motion was made by Paul Wyrostek, seconded by Mark McKenney and passed unanimously by the Board). Petitioner's Exhibit #2 – David M. D'Amico, P.E.. FNSPE Curriculum Vitae. Mr. Damico was sworn in by the Chairman.

Edward Pimental was presented as an expert witness as a Certified Planner (Motion was made by Paul Wyrostek, seconded by Beverly Sturdahl and passed unanimously by the Board). Petitioner's Exhibit #3 – Edward Pimental, AICP Curriculum Vitae. Mr. Pimental was sworn in by the Chairman.

Attorney Noonan stated they are before the Board for the proposed demolition and rebuild which requires a special use permit for the gas station as well as the dimensional

variances that were outlined in Mr. Crenca's presentation. There was an additional one that was listed which Mr. Crenca didn't mention, which is the width of the curb cut exceeds the 30' requirement, they are proposing a 40' curb cut. The subject property will be going from five (5) curb cuts to two (2) curb cuts, one of those being at the request of the neighborhood.

Attorney Noonan stated it is their position that there is no zoning relief required for the drive-thru. That it is in fact allowed under Table 1 Use Regulations #503 in a General Business district, and contrary to what Mr. Crenca said, there are discussions of the drive-thru in the #503 Use Table, we can go through the technical part of it, but for example, in the Intermodal district, one of the footnotes, 15b, it specifically says you cannot have a fast food use with a drive-thru in the Intermodal zone.

Attorney Noonan stated she wants to be clear on the relief they are seeking and it is their legal position, and Mr. Pimental will address this also that in the City of Warwick there are drive-thru's at banks, pharmacies and fast food restaurants that do not require relief.

Ms. Noonan pointed out a case she litigated, and the Supreme Court reported on last year, CCF Vs. Pimental, 130A.3D807 RI 2016 where it came to the exact question of the interpretation, in this case it was a McDonald's. Clearly the restaurant use was allowed, it was a question whether the drive-thru usage was allowed. Supreme Court read those Ordinances similar to yours, where it contains footnotes, and in this case it is her opinion that the drive-thru is an allowed use.

Attorney Noonan stated the property has gone through some changes over the years. Colbea Enterprises has acquired property and worked with DOT on reconfiguring that whole area. They do own the land now and will be merging the lots.

In terms of the conditions put on by the Planning Department with the exception of the removal of the drive-thru, they agree with all the other conditions. She stated clearly they have a disagreement over the drive-thru, and they will show through their witnesses what they've done to minimize that impact. But first she would like Andrew to talk about the background with DOT and how this intersection has evolved. Ms. Noonan directed the Board to Exhibit #9 aerial photographs showing road improvements over time.

Andrew Dellicarpini stated he remembers being in front of the Board eighteen years ago when they were building the site that it there today. He stated the neighbors had concerns back then, which they addressed and they built the facility. It opened in February 2000 and unfortunately seven years ago the State decided to move the road in front of the facility, and now the building is setback about eighty feet (80') from the road.

Mr. Dellicarpini stated they take pride in their facilities, they own four in Warwick. He stated about three years ago there was a tragedy that happened on the side of the property, someone who was cutting through their facility to get to the side street on the opposite

side ended up getting killed. The DOT came to them to see if they could look at doing something with the side curb cut on the property and that started an extensive project. The way to restrict that traffic going across the property was to pull the driveway on the side down and basically create an obstacle where we had cars going directly in the side of the canopy. The flow on the property didn't work. That led to the purchase of the property from the DOT, with the agreement to do all the improvements the DOT requested.

They re-designed the property and his partner Angelo met with the neighbors to try to get everyone's take on it, because they pride themselves on being good neighbors, they are from RI, this is a family business and they know their customers are their neighbors and they want to be good neighbors.

After the neighborhood meetings, they made a lot of changes to plans and designed a plan they feel will work best. Because of the way the existing building is configured, it doesn't work on the piece of property there right now. So they are here in front of the Board asking to build.

Attorney Noonan stated as a result of the neighborhood meeting, the curb cut on Chapmans Avenue will be closed. There was discussion about the abutting property behind, there are no specific requirements in the Ordinance as to how that has to be buffered. Angelo has met and agreed with the neighbors and agreed that Colbea would fill in the trees for a continuous hedge, there will be some repairs to the fence, and clean up some of the existing trees.

The Chairman asked if they plan on installing buffering along Chapmans Avenue. Ms. Noonan stated they have the Engineer Paul Silvia, who will speak about what is happening at the site and specifically on Chapmans Avenue.

Mr. Silvia stated this will be a new 3,600 sq. ft. state of the art facility. He stated he knows certain issues are very important to the community and he would like to point out that the new facility will incorporate a complete drainage system to capture runoff from the site so there is absolutely zero new increase in runoff. This system will decrease the existing runoff by 50%. He states they have 33 parking spaces (22 required). Handicap accessibility has also been addressed. There will also be more green space than what is currently there now.

Mr. Silvia also did a sound study at this property in the last year and after testing several other sites, they found that based on the speaker location the ambient noise within 60 feet of this building blends in, meaning it becomes part of the background noise. The speaker box modulates as the ambient noise in and around the facility decreases, so the effect will be even less as night-time approaches.

Attorney Noonan asked Paul Silva if he could address the landscaping and the truck turning pattern.

Mr. Silvia stated it is important for safety reasons not to interrupt the pattern of people using the facility. He went on to state how the gas delivery truck enters the property. The trucks have more than adequate space to discharge and their supplier has provided them with documentation, after having reviewed what is proposed, that this facility absolutely works and proposes no problem to his unloading and also to the folks using the facility when the trucks are there.

The Chairman asked what the hours of operation for unloading for the delivery of gas. The attorney stated there are no restrictions. The petitioner stated they monitor the inventory in the tanks, and they schedule deliveries accordingly. They don't come during the peak hours if they can avoid it. In cases where there is an emergency or if they know there is a snow storm coming, they tend to cap off the tanks, keeping them as full as possible.

Attorney Noonan stated in reference to the audio study that Paul was talking about, that is included in Petitioner's Exhibit #5. It talks about the different studies done on the site. Additionally there is a letter, which is marked as Petitioner's Exhibit #8 and that is from J.P. Noonan transportation, talking about how the new layout will be better for their delivery trucks.

Andrew Dellicarpini stated the existing tanks are located near the street curb cut and it is very close to the neighbors on Chapmans, so the new location of the tanks will be located towards the front of the property, further away from the neighbors.

Everett O'Donnell asked if there will be any signage at the speaker indicating no loud music. He stated one of the Board Members lives right across from a Dunkin Donuts and that's what she hears in the summer. Mr. O'Donnell stated it might be advisable to put up some signage. Andrew Dellicarpini stated they would have no objection to that.

Richard Crenca asked if the trucks delivering to the convenience store cut through the neighborhood and if that will stop in the future. Mr. Dellicarpini stated they have so many distributors, but most are box trucks not tractor trailers, and once the curb cut is closed that will eliminate them going out that way.

Attorney Noonan stated David D'Amico did the Technical Traffic memo, which was marked as Petitioner's Exhibit #4, dated August 18, 2016. Ms. Noonan asked Mr. D'Amico if it was actually dated August 16, 2016 and if he reviewed the revised plans submitted. Mr. D'Amico stated it is dated August 16, 2016, and he did review the revised plans and his opinion still holds up based on the revised plans.

Mr. D'Amico stated the study they do is not a full blown traffic study. He has worked with Colbea on numerous sites, especially along state highways. He states when they do these, their thought process is the physical alteration permit they have to receive from RI

DOT. When they compare the existing with the proposed, obviously if you are increasing the square footage and increasing the amount of gas pumps, they will show more traffic. Roughly 78 more vehicles in the morning going to this site, that's with 25% pass-by traffic, which is extremely conservative. He stated Warwick has plenty of Dunkin Donuts so they don't see people from other areas of the City making a trip to this facility. He stated RI DOT does not require a traffic study because there will be no impact with the extra 78 vehicles.

Mr. D'Amico stated in the early 1990's he worked on the concept of this intersection with the way the facility sits now is that it almost looks like there is a direct access to the side street, it's not quite, but if you're standing there it looks like you can go right across, and they believe that is what the accident was about. They tried to move the entrance down further along Main Ave, but it put it right into the pump isles. The new design is positive and has a protected left hand turning lane.

The Chairman asked if you can go left out of that driveway. Mr. D'Amico stated you can go right or left out of the driveway.

The Chairman noted there won't be a big impact to the traffic on the street but asked if there will be more traffic within the compound itself. Mr. D'Amico said there will be more traffic with the extra pumps, the drive-thru and a bigger facility, but they gained 12,000 square feet of land from DOT. One of the positive things they were able to get is the bypass lane at the drive-thru, there is full circulation and with the improvements on Main Avenue, that will really help the facility.

Richard Crenca asked Mr. D'Amico how many cars can que in the drive-thru. Mr. D'Amico stated from the menu board they calculated five cars, from the window, another three, and that is at peak hour.

Attorney Noonan stated the last witness she has is Mr. Pimental, whose report was marked as Petitioner's Exhibit #6, but wanted to say they didn't solicit the DOT for the additional land. The DOT did improvements and left them with these conditions. Their hardship is nothing they brought upon themselves, it is due to DOT improvements.

Everett O'Donnell asked if they had a walk-in Dunkin Donuts business there now, and if they see the walk-in business dropping off and the drive-thru business picking up. Mr. Dellicarpini stated they are trying to eliminate some of the congestion on the property. When they do these type of expansions by putting more fueling islands, putting more parking and allowing that traffic flow around, they don't think they will see a large increase in traffic.

Edward Pimental stated he thinks it is important to address what is actually permitted, what is prohibited and what is allowed by special use. For both the staff's concern's, recommendations, as well as how they addressed the development as a matter of right.



If you listen to the staff's report and they start applying the standards for the granting of the special use permit, basically this going to have some kind of negative impact on the neighborhood. Clearly they are connecting it to the direct nexus of the drive-thru component and not necessarily the service station with the fuel dispensers, which is going to be razed and rebuilt. That is what the request for the special use permit solely pertains to, and he stated he concurs with the Planning staff that when you introduce a drive-thru facility, you have to consider the neighborhood, and you have to design the best, to not have a negative impact on them. You do that with noise control, setbacks, buffering, landscaping, hours of operation, etc., etc., but the reality is they are preparing a record and as a technicality the Special Use standards do not apply to the fast food and drive-thru, they solely apply to the service station.

Mr. Pimental stated when he read the Planning staff's report he found it perplexing from two points. The first and foremost is equating a drive-in with a drive-thru. If he understands the report, they equate the two as being distinctively different. The drive-thru would be permissible when in conjunction with a financial institution or a bank. Looking at the Use Table under financial institutions under subsection 306 and 307, they state there are institutions with and without drive-ins. They don't reference a drive-thru, they reference a drive-in. Most financial institutions do need the drive-thru to be successful, but once again he referenced it says drive-in not drive-thru pursuant to the Use Table. Mr. Pimental contends a drive-thru and drive-in are one in the same. He stated when you look at the Use Table for financial institutions or banks, they reference drive-in windows, and then in the footnotes, they reference drive-thru windows. They are clearly stating a drive-thru and a drive-in have no distinction.

The second component to the argument is that the fast food establishment is outright prohibited with the perspective that they can't be allowed with drive-thru windows. Once again referring to the Use Table, fast food restaurants are allowed in three different zoning districts. It is allowed without any prohibitions in the General Business zoning district. The other two zoning districts have a footnote that states they allow fast food in the zoning district, but prohibit drive-thru windows. It is his opinion that fast food restaurants are allowed with an accessory drive-thru as a matter of right in the district, and that there is no distinction between a drive-thru and a drive-in at all.

Mr. Pimental stated when he did his analysis he did it from the perspective that the special use permit was solely applicable to the razing and rebuilding with the fueling dispensers. There are three main components to this business, the retail component is permitted by right, the restaurant with the accessory drive-thru is permitted by right, and the fueling dispensers or gas station as referred to, requires the special use.

Mr. Pimental stated in the City's Comprehensive Plan, it talks about supporting rebuild and redevelopment of existing commercial sites. He believes they are on point with the Comprehensive Plan. He believes they meet all the standards for the granting of the

special use permit, and if anything, they have reduced the impact of the existing site and this is a much better product.

Ms. Noonan asked Mr. Pimental was his opinion was on whether this proposal is consistent with the City of Warwick Comprehensive Plan and the Zoning Ordinance. Mr. Pimental stated he rendered a determination consistent with the Comprehensive Plan, in regards to the Zoning Ordinance, he would say the redevelopment even furthers the intent. They've diminished the number of deviations on the site.

The Chairman stated the biggest concern that we anticipate from the people here tonight is the drive-thru. He suggested listening to the neighbors to see what they had to say.

There were several neighbor's present in objection and sworn in by the Chairman:

Susan Riel, 1168 Main Ave. (abutter)  
Kristin Conville, 415 Chapmans Ave. (abutter)  
Wendy Hatfield Feinstein, 420 Chapmans Ave.  
Mitchell Feinstein, 420 Chapmans Ave.  
Robert Xavier, 286 Chapmans Ave  
Meg Underwood, 300 Chapmans Ave.,

Wendy and Mitchell Feinstein presented a letter in opposition to the Board marked as Objector's Exhibit #1. There was a petition signed by the neighbors marked as Objector's Exhibit #2.

The concerns from the neighbors were safety issues, screening between the properties, lighting, visibility, traffic, the drive-thru, the noise from the box, and the hours of operation at the drive-thru.

Mr. Dellicarpini addressed most of the concerns the neighbors had in regards to the curb cut, landscaping and the drive-thru and stated he has no problem going on the record saying he will restrict the hours of Dunkin Donuts.

Attorney Noonan stated

Mark McKenney stated that with the curb cut being closed, there will be some buffering installed, which should help with some of the noise. Attorney Noonan noted there will also be a fence installed.

The Chairman stated we run into this on main roadways where properties abut residential and unfortunately there was a commercial business there before, that intersection is all commercial, but stated he thinks things change over time, businesses have to compete, you have to take into light when someone buys a home adjacent or across the street from a commercial property, things do change over time, as you are finding out. The value depicts that. I understand you don't want it intensified, and I think there is some attempt

here to rectify that, if we can curb the night-time drive-thru hours, that will take care of the normal noise in the area. So we need to discuss the hours if we go that route, as to what hours would be acceptable.

After several neighbors spoke in opposition of the petition, the Chairman asked if the neighbors had seen the proposed plan at the meeting in October. Mr. Dellicarpini stated the neighbors were not privy to this new plan, they saw a plan that had the curb cut open, had the voice box and the building closer. He stated a lot of the concerns heard today were more of traffic concerns and the value of homes. They are trying to make this intersection safer, he knows they will be safer by eliminating that curb cut. Mr. Dellicarpini stated everything on the property will be brand new and he believes they have made a lot of concessions to satisfy some of the concerns the neighbors had.

Ms. Noonan stated she would like to identify what Mr. Dellicarpini is talking about is incorporated in Petitioners Exhibit #7, site plan L-1, which show prior plans that keep that curb cut open, and the voice box in a different location.

After further discussion regarding the drive-thru, Mr. Dellicarpini stated as a good faith effort to the neighbors, he is willing to commit to closing the drive-thru from 11:00 P.M. to 4:00 A.M.

Attorney Noonan stated in closing, the application for the special use is for the gas station, which is an existing use on the site. They are in a General Business district, which allows the gas station with a special use permit, it allows the fast food restaurant and it allows the retail by right. She states her clients and Engineers have testified. They have had meetings and have done a great deal in hopes of making the neighborhood happy. To highlight the variances they are requesting for the front yard setback, the canopy setback, landscaping, they would like to continue to have one twenty foot (20') high free-standing sign. She believes this proposal to raze and rebuild meets the interest and needs of the clients as well as the surrounding neighborhood and certainly meets the standards set forth in the Ordinance.

The Chairman asked if there was anyone else to speak in opposition of the petition. There being none he asked if there was anyone to speak in favor of the petition. There being none, Mark McKenney asked the City Solicitor to weigh in on the question of "matter of right". City Solicitor Diana Pearson stated the Ordinance is not artfully written. It was added to with comments and footnotes, and although the fast food restaurant refers to drive-in, and understandably there may be a difference between drive-in and drive-thru, Counsels comments and Mr. Pimental's comments are well taken that throughout additional sections and footnotes, the terms became interchangeable and under that interpretation, the Board can use them interchangeably, therefore allowing a fast food drive-thru, even though the wording is drive-in, under that definition. In several areas it is interchangeable, and the Board can see fit to continue that dual definition.

Mark McKenney, stated he will make a motion, he is not thrilled to be making the motion, but feels constrained to in favor of granting the petition. He noted at the onset, the issue doesn't appear to be primarily to the dimensional relief requested, that appears to be straight-forward that did not appear to be a sticking point for the Planning Department or the neighbors. With respect to the special use permit in regards to the gas and fast food restaurant including the drive-thru, he agrees, if they were to deny the petition on that basis, he thinks they would be looking at litigation that would cost the City a great deal of effort, time and expense, and would end up not being favorable to the City, and for that reason, I think it is wise that the parties have tried to work some things out, Mr. McKenney is not entirely convinced everything is worked out with respect to the hours, but it's nice to hear the drive-thru will be closed from 11:00 P.M. to 4:00 A.M. He does hope based on word that was given that they will get that kind of relief. He stated he hoped there will be a continued effort to work with the neighbors. Having said that, the Board has listened to expert testimony today, have laid out in some detail the manner in which efforts have been made to try to mitigate the impact, such that this will not be an adverse effect. As we've noted today, this is a balancing act. We have to accept the fact that things change and there may be an intensification of use but we looked to see if there are factors that will balance that on the other side, clearly in this case there is increased land, the effort to move the pumps and store away from the neighbors. In addition there was an agreement to put in some type of signage that will be helpful to alleviate some of the noise. Based upon the expert testimony and the references that have been made here, and by eliminating that curb cut and installing the buffer where previously there was nothing, that should serve to improve a couple things, one is safety, but also the noise. I think a few people who testified acknowledged that Chapmans Ave. would likely be safer, so with that in mind and for all of those reasons, which I would suggest we adopt these findings, and also incorporating by reference the concerns of the Planning Department, other than stipulation #1, I think we can incorporate all the other stipulations, so eliminating Stipulation #1, Mark McKenney moved to approve the petition, Paul Wyrostek stated he is in concurrence with Mr. McKenney's motion and stated it can get pretty contentious, when they as a Board sit there and listen to both sides and have to make a decision. A lot of times the decisions that they make are not agreeable to everyone. He stated they have seen the effects in different situations, how they play out, how they may play out and sometimes we can make a reasonable prediction as to which way this would go if it went to a higher court, and thinks their assessment as to what they would be facing if they denied this petition, in this point and time would not be in the Board's favor. With that, Paul Wyrostek seconded the motion, the Chairman noted he also was in concurrence with his colleague's remarks and believe there is some confusion in our Ordinance relative to a drive-in and drive-thru, but he does agree with his colleagues and says yes to the petition. It was passed unanimously by the Board that the Petition be GRANTED WITH AMENDED STIPULATIONS.

The Chairman asked for a motion to approve the minutes from the November 15, 2016 hearing. A motion was made by Everett O'Donnell, seconded by Mark McKenney and passed unanimously by the Board that the minutes be accepted.

The Chairman asked for a motion to approve the minutes from the January 10, 2017 hearing. A motion was made by Mark McKenney, seconded by Beverly Sturdahl and passed unanimously by the Board that the minutes be accepted.

The Chairman asked for a motion to approve the minutes from the February 14, 2017 hearing. A motion was made by Everett O'Donnell, seconded by Mark McKenney and passed unanimously by the Board that the minutes be accepted.

A motion was made by Everett O'Donnell, seconded by Mark McKenney and passed unanimously by the Board that the meeting be adjourned. The meeting was adjourned at 9:45 P.M.

BY ORDER OF THE ZONING BOARD OF REVIEW, WARWICK, RHODE IS-LAND

Donald G. Morash, Jr., Chairman