

**TOWNSHIP OF EGG HARBOR  
PLANNING BOARD**

**August 19, 2013**

**Solicitor:** Christopher Brown, Esq., (Ted Strickland, Esq., in attendance)

**Engineer:** James A. Mott, P.E., of Mott Associates – (Robert Watkins, P.E., in attendance)

**Planner:** Vincent Polistina, P.P., of Polistina and Associates, present

A regular meeting of the Planning Board of Egg Harbor Township was held on the above date, 5:30 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairperson opened the meeting by reading the statement in compliance with the Open Public Meetings Act.

**Roll Call Taken as Follow(s):**

Manuel E. Aponte, Vice-Chairperson, present  
Committeeman John Carman, present  
Milas Cook, Alt. #I, present  
Charles Eykyn, present  
James Garth, Sr., Chairperson, present  
Frank Kearns, present

Robert Levy, present  
Mayor James J. McCullough, Jr., another engage.  
Peter Miller, Township Administrator, present  
Paul Rosenberg, another engage.  
MD Shamsuddin, Alt. #II, another engage.

**PUBLIC HEARING(S):**

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| <p>1. <b><u>SPPF 18-07 – (Amended)</u></b><br/><b>MTW Realty, LLC – “Auto Lenders”</b><br/>Zone: HB, 9.838 acre site, sewer/water,<br/>Applicant proposes a 2,700 sq. ft. building expansion<br/>onto the existing 14,970 sq. ft. facility. This expansion will provide an additional six (6) automobile service bays. The existing wash bay will be converted into a service bay and a wash bay is proposed within the new building expansion. Pinelands c/f: #2001-0146.004, dated June 10, 2013.</p> | <p><b>Preliminary/Final Major Site Plan</b><br/><b>1703/28, 39, 41 &amp; 42</b><br/>6201 Black Horse Pike<br/>Waiver of Time – <b>Not Granted</b></p> |
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**Checklist Waiver(s):**

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| <p>1. <b>Item #15:</b></p> <p>2. <b>Item #18:</b></p> <p>3. <b>Item #31:</b></p> | <p><b>Site Characteristics Map</b></p> <p><b>Stormwater management plan</b></p> <p><b>Natural Resource inventory</b></p> |
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Charles Rizzi, Esq., introduced himself as attorney for the applicant. He advised the subject application involves a proposed auto body facility. He indicated this is an amended site plan to add six (6) bays to the existing facility and an application for a sign variance to allow for a wall mounted sign on the new addition, as well as, several waivers.

Attorney Rizzi asked that the following individuals be sworn in from Adams, Rehmann, and Heggan. He also noted he may the chief operating manager from MTW speak

Board Solicitor Brown had duly sworn the following individuals, Terry Combs, P.P, New Jersey Licensed Planner, Adams, Rehmann and Heggan, White Horse Pike, Hammonton, New Jersey. Douglas White, P.E., New Jersey Licensed Engineer, Adams, Rehmann and Heggan, White Horse Pike Hammonton, New Jersey.

Attorney Rizzi advised this Board had approved this facility several years ago. He indicated the applicant would now like to add six (6) bays in order to service the cars they sell. He advised MTW sells used vehicles.

Thomas Nicholas, CFO, MTW Realty, LLC, - Auto Lenders, Cross Keys Road, Winslow, New Jersey, sworn in: Mr. Nicholas advised business has been good and thanked the Township for having Auto Lenders within the municipality. Mr. Nicholas stated Auto Lenders is finding they have to schedule service of vehicles four (4) or five (5) days out. He indicated this is not conducive to the business or the customers. He indicated additional service

space for all the cars we have sold is needed. He stated there is an existing wash bay on site and with this proposal we will move the wash bay at the end of the proposed service bay addition.

Planner Combs advised this site was granted preliminary and final site plan approval for the existing 15,000 sq. ft. building, parking area, drive aisles, and service area in the rear. He indicated the site can be accessed from Route 322 and Ivin's Avenue.

Planner Combs explained the proposed expansion is shown in the dark brown shaded area. He advised currently there is an existing wash bay that will be relocated to the end of the proposed addition. He advised there will be a net increase of six (6) service bays. Planner Combs advised the proposed addition will be on top of existing impervious so there is no additional storm water run-off.

Planner Combs advised there will actually be a reduction of storm water because there is a green area proposed. Planner Combs referred to the area in front of the building advising it will be landscaped. He indicated there is actually a reduction since there will be some green area proposed by the service bay that does not currently exist.

Planner Combs advised the area in front of the building will be landscaped with a variety of upright evergreens and low shrubs. Planner Combs advised based upon this expansion there will be a loss of three (3) parking spaces for employees and customers and eight (8) display spaces, however, the applicant is still in access of the ordinance parking requirements even with the proposed elimination.

Attorney Rizzi asked Planner Combs if there were issues concerning storm water. Planner Combs advised the applicant initially had problems at the time of construction with the infiltration of the basin. He stated this was based upon construction issues. He indicated the applicant aerated the bottom of the basin and placed wicks in. He advised he has been to site a number of times after a significant storms and the basin has been working very well.

Mr. Nicholas advised that several years ago the Board approved three (3) signs. He indicated the total size of the signs were less than what regulations allowed. Mr. Nicholas advised to aesthetically balance the site there is a wing coming off the building. He indicated there is one (1) sign on the service canopy and one (1) sign over the front door, however, the third sign was never affixed to the façade.

Mr. Nicholas advised with the addition they would like to now place the third sign on the front of the new addition. He indicated it will say "A Smarter Way to Build a Car". Attorney Rizzi referred to **Exhibit A1**: landscape plan showing landscaping and signage of proposal. Planner Combs advised during the original application for the construction of the existing facility the applicant was permitted one (1) façade sign, however, the Planning Board granted relief for three (3). He indicated the applicant placed up only two (2) façade signs and stayed under the allowable square footage.

Planner Combs stated the applicant would now like to place the third sign up and locate it on the façade of the proposed addition. He indicated the third sign approved previously was for a 15 sq. ft. area, however, proposed sign being requested is 75 sq. ft., which is still under the square footage. Attorney Rizzi advised even though the applicant is seeking a larger square footage than what had been previously approved it is still under the square footage permitted by at least half. He indicated the ordinance allows 250 sq. ft. for one (1) façade sign.

Planner Combs advised the proposed façade sign is not an intrusive sign and he sees no detriment. Board Planner Polistina stated variance relief is being requested at this time based upon the additional square footage requested. He indicated previously the Board approved three (3) signs with a total square footage of 72 sq. ft. The applicant is now seeking approval to allow for 124 sq. ft. total area for the three façade signs previously approved.

Attorney Rizzi advised the variance relief requested will not impact the neighborhood. Township Administrator Miller asked who will see the sign. Mr. Nicholas stated hopefully a lot of people, however, it is mostly customers who are already on the lot. He indicated the sign will not be seen from the east bound lanes of the Black Horse

Pike. Board Member Cook asked if the sign is illuminated. Mr. Nicholas stated the sign is channel letters and they are illuminated within. He indicated they do not blink on and off.

**Motion Kearns/Eykyn to open public portion. Vote 8 Yes.**

**May the record reflect no one came forward.**

**Motion Kearns/Eykyn to close public portion. Vote 8 Yes.**

Planner Combs advised there are checklist waivers that are necessary. He indicated this is a developed sign and plans were submitted for the improvements. He indicated the applicant will submit a digital plan, he advised the site characteristics map is sufficient, the storm water has been addressed, he advised there really will not be traffic issues on site. He indicated the applicant is seeking a waiver from providing fiscal impact. He indicated this is an existing commercial site. He also noted the applicant is seeking a waiver for the natural resource inventory.

Board Engineer Watkins and Board Planner Polistina stated they had no problem with the applicant seeking waivers with respect to the checklist. Township Committeeman Carman stated he had no problem with the variance relief being requested. He indicated the applicant is seeking approval for three (3) signs, which were previously granted approved. However, only two (2) of the three (3) were installed. Township Committeeman Carman stated he had no problem with the square footage being sought. He advised the original square footage when approved was 72 sq. ft. and the applicant is now seeking 124 sq. ft., which is still under the ordinance requirements for one sign which is 250 sq. ft.

**Motion Aponte/Carman to grant requested checklist waiver(s). Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

**Motion Carman/Kearns to grant variance relief to allow for three (3) façade signs in lieu of one (1) sign permitted and sign area 124 sq. ft. total (for all three signs) in lieu of 250 sq. ft., permitted. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

**Motion Carman/Eykyn to grant conditional amended preliminary/final major site plan approval. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

<b>2.      <u>SPPF 09-13</u></b>	<b>Preliminary/Final Major Site Plan</b>
<b>Hope &amp; Comfort a NJ Nonprofit Corporation</b>	<b>8701/5.04</b>
Zone: CRW, 22.42 Acres, septic/well, applicant	170 Wharf Road
Proposes to construct a 9,331 sq. ft. building to be utilized	Waiver of Time – <b>Not Granted</b>
as a 15 bed hospice facility with 18 off-street parking spaces. Other improvements include a storm water management facility, landscaping and a free standing sign. CAFRA	

**Motion    /    to open public portion**

**Motion    /    to close public portion**

**Checklist Waiver(s):**

- 1.      Item #17:      Copy of any existing and/or proposed protective covenants/deed restrictions**
- 2.      Item #37:      Purpose of any proposed easement of land reserved or dedicated to public or common use shall be designated, and the proposed use of sites other than for residential uses shall be noted.**

Charles Gemmel, Esq., introduced himself as attorney for the applicant, Hope and Comfort. He advised the applicant is seeking approval for a fifteen (15) bed hospice. Attorney Gemmel advised the subject parcel is a 22 acre site with five (5) acres being woodlands and seventeen (17) being marshland.

Attorney Gemmel advised this property is within the CRW zone. He explained the Municipal Land Use Law provides for group facilities to be placed in all municipalities within their residential zones. He then referred to Section 40:55D-66 of the Municipal Land Use Law and Section 40:55D-66.2 which defines a hospice. Attorney Gemmel advised the applicant will have a maximum of 15 terminally ill resident's within the facility. He advised under the requirements of the Municipal Land Use Law this development is applicable to the standards of a single-family residence.

Attorney Gemmel advised he believes the applicant complies with all the single-family requirements within the CRW zone. Attorney Gemmel stated in June, 2013 an issue was brought up concerning a 250' buffering requirement. He stated upon reviewing the file he found when the property was subdivided by this Board in 2005 it included this requirement be placed on the applicant's subject lot. He advised this requirement advised there would be no lot clearance from the street to the end of this 250' buffer.

Attorney Gemmel stated this requirement was found within the resolution of approval, however, the restriction was not found on the recorded subdivision plat, which is what was relied upon when the purchase of the property occurred and the preparation of the site plan. Attorney Gemmel stated the applicant has financing for property but did not realize the restriction exist. He indicated the applicant did homework and a title search was performed. He indicated there is no restriction filed therefore it is not binding upon the property.

Attorney Gemmel stated in the alternative if the 250' ft. requirement is deemed necessary by this Board the applicant has designed the proposed project with a 350' ft. buffering. He stated the applicant can live with the lot disturbance going from 250' ft. to 350' ft.

Township Committeeman Carman asked if the applicant will be within the marsh lands with development. Attorney Gemmel stated there will be a little over an acre of additional disturbance on a property that is 22 acres, however, it will not be within the marsh lands. He advised the applicant is seeking an amendment or a modification of the 2005 requirement if the Board requires.

Attorney Gemmel advised the applicant has present the Design Engineer, the Architect, Junetta Dix, Environmental Consultant and Dolores Triboletti, Hope and Comfort (applicant). He advised the applicant has provided public notice for this hearing.

Nicholas Talvacchia, Esq., introduced himself. He advised he is present this evening representing Mr. Marc Hattman who lives one (1) lot away from the proposed. He advised the 2005 restriction is a legal issue and just because they did not see the restriction on the plan it does not mean it is not applicable. He advised the restriction was placed within the resolution.

Board Solicitor Strickland had duly sworn the representatives of Hope and Comfort. Board Solicitor Strickland advised he wants to make clear the position of the applicant. He stated, as he understands, it is the applicant's position before the Board that condition applies and the applicant is seeking a removal. Attorney Gemmel stated it is the applicant's position that it does not apply and if the Board would like to remove or modify they can. He advised the Board can hear the application with variance relief and then make a determination.

Board Member Aponte stated the applicant is asking this Board to determine if something was done wrong eight (8) years ago or are they asking to modify previous approval. Attorney Gemmel stated the Boards condition from 2005 was not memorialized within the subdivision plat. He advised the Board must understand the project in order to determine if the 250' ft. or the 350' ft. is applicable.

Township Committeeman Carman asked if Attorney Gemmel had read the transcripts of the meeting to determine why the 250' ft. restriction was imposed. Attorney Gemmel stated he relied upon minutes and reports of the 2005 application. Township Administrator stated there was an environmental study done by the applicant and was presented to the Boards environmental consultant at the time. He indicated the consultants spoke between

themselves. He advised based upon what the consultants agreed the Board placed the restriction within the Decision and Resolution. Township Committeeman Carman stated he would like to see the original reports and review them. Board Engineer Watkins stated it does not matter that the restriction was not recorded on the final plat. He advised it was within the resolution of approval. Township Committeeman Carman stated if the applicant wants the Board to overturn requirement he wants to see everything.

Board Planner Polistina stated he reviewed the file and not much detail. He indicated the subdivision was for the creation of four (4) lots for the placement of single-family homes. He stated the 250' ft. restriction was placed on the lot and it would have been acceptable for a single-family home.

Board Member Aponte asked what controls, the decision and resolution or the plan. Township Administrator Miller stated the decision and resolution trumps the plans. He stated he does not know why the applicant did not get a copy of the decision and resolution before the purchase.

Attorney Gemmel stated the applicant relied on subdivision plat that has an error. He stated the decision and resolution does not trump the plat. Board Member Aponte stated if someone has a site plan and a mistake is made than this trumps what the board required. Attorney Gemmel stated if a restriction is not recorded and you purchased a property you have rights.

Board Member Aponte asked if Attorney Gemmel looked at the decision and resolution before property was purchased. Attorney Gemmel stated there is a benefit to hindsight, he advised it would have been a good idea to have reviewed the decision and resolution. .

Board Solicitor Strickland stated Attorney Gemmel will be referencing his position on record with respect to a case known as Island vs. New Jersey Department of Environmental Protection. He further noted that Attorney Talvacchia will also discuss case. Township Administrator Miller stated Attorney Gemmel may discuss his position and then Attorney Talvacchia will discuss his position and then Board will discuss with Board Solicitor Strickland.

Attorney Gemmel stated there are three (3) cases that have dealt with the issue, which is when you have a governmental requirement that does not find its way of being recorded. He stated the first case is the Aldrich case, which Attorney Talvacchia will discuss. He stated it is regarding a property on Long Beach Island. He advised certain variances were granted and some conditions were placed on application concerning the variance. He advised a portion of the property could not be developed.

Attorney Gemmel stated plat of approval did not get recorded and some purchased the property and then submits for a building permit that ended up getting denied because the condition attached to the variance had not been met. He stated this was than litigated and the Court felt they did not want to eliminate the condition of the approval and the Court relied upon the decision and resolution that had prevailed.

Attorney Gemmel stated the next case is the Island Venture case, which was a New Jersey Supreme Court ruling. He explained this case dealt with a condition imposed by the Department of Environmental Protection. He stated the property owner was to have recorded the restrictions from the D.E.P. Many years later the property was sold and the buyer comes along does a search and finds no restrictions, however, they get turned down for a permit. After being litigated the Supreme Court ruled the new property owner prevailed.

Attorney Gemmel explained there was discussion within the Island Venture case as to whether the Supreme Court, based upon their decision, actually overruling the Aldrich case. Attorney Gemmel advised the last case is the Mintz case which dealt with conditions attached to a subdivision. He stated the conditions did not work their way into the decision and resolution. He advised during this litigation both the Aldrich and the Island case were discussed, however the Aldrich would not be applicable because the condition was not placed on a variance.

Attorney Gemmel stated in this situation the condition was not part of a variance. He stated he believes the Island Venture case is applicable and he believes the government restriction should be overlooked because it was not on subdivision plat and applicant purchased property not knowing there was a 250' ft. restriction.

Township Administrator Miller asked what was the decision concerning the Mintz case. Attorney Gemmel stated the Mintz case was easier and since the condition was not in the decision and resolution and not on the map the court sided with the property owner.

Attorney Talvacchia, again advised he represents Mr. Hattman, he stated in the case of Island Ventures it concerned a CAFRA case not a Planning Board case. He stated if this was not a subdivision than nothing would have been recorded. He stated if you apply the Island Venture case than you would be undermining 560 municipalities within the State that has decision and resolution's and whom set forth conditions within their resolutions.

Attorney Talvacchia stated an applicant can litigate with a Board if their resolution of approval is not adopted within 45 days of the approval. He stated the resolution is prepared to memorialize the approval. He further noted there is a recording statute and the Legislature knows of the Aldrich and Island cases. He stated they never sat down and changed the requirements concerning the resolution. He stated it is a long time practice that resolutions are never recorded. He advised the plans are not the decision and they do not show all the conditions placed upon an application. He advised what the Board approves is what they approve and the conditions are reflected in resolution.

Board Solicitor Strickland stated he does not see within the Aldrich case where the distinction is made. He further noted this case does speak about reasonable research being applied. Township Administrator Miller stated the underlying issue is the decision and resolution being binding or if the recorded plat trumping the action. Board Solicitor Strickland stated he does not believe Island Ventures is binding to this Board. Township Administrator Miller stated with Island Venture it was not a Land Use Board that imposed condition. He stated he does not believe this case is applicable to a local Planning Board.

Board Planner Polistina stated he believes the condition, placed within the resolution of this Board is binding. He advised the restriction is referenced as 240' ft. within the resolution not the 250' ft. as referenced within the testimony presented tonight. He stated the Board should hear the application being presented and Attorney Gemmel should advise why the Board should modify the original condition.

Board Planner Polistina stated he believes the original condition of the 240' ft. restriction is binding and the condition outlined with the original resolution is binding and runs with the land. He stated he believes the Board is on firm ground and there is a 240' ft. buffer, however, he believes the Board has the right to modify this restriction based upon the evidence presented by the applicant.

Township Committeeman Carman stated he agrees with Board Planner Polistina. Township Administrator Miller stated he cannot pre-judge. Township Committeeman Carman asked Attorney Gemmel if the applicant's arguments part of the presentation as to why the Board should change the restriction. Attorney Gemmel stated the Board has to look at the restrictions and what is proposed. He indicated the Board has to hear the application that the applicant is prepared to place. Township Committeeman Carman stated he believes the decision and resolution trumps the plat and he is willing to listen to arguments.

Township Administrator Miller stated when the subdivision was originally submitted there was an Environmental Impact Statement required. He advised the applicant had submitted and it was reviewed by the professionals at that time and recommendations were made as to why the buffer line need to be struck based upon that information. He indicated the Board Members did not just place the restriction on. Township Committeeman Carman stated he does not remember reasons in full. He stated, however, the 240' ft. restriction was not picked-out of air.

Attorney Gemmel advised there are few documents he would like marked for the record. He stated the first is Exhibit A1: resolution for North End Properties. He advised the next is Exhibit A2: copy of subdivision plat dated June 29, 2005, which came from Planning Board file showing a 250' ft. restriction. He then referred to Exhibit A7: recorded subdivision plat showing the 250' ft. restriction was removed. Board Member Aponte asked what professional prepared the recorded subdivision plat. Attorney Gemmel advised the plan was prepared by Vargo.

Attorney Gemmel referred to Exhibit A4: applicant's title policy. He advised the title policy does not state there are any restrictions. He advised it was issued by Stuart Title. Board Planner Polistina stated there are other wetlands and buffers that are shown on the recorded minor subdivision plan, however, they are not referenced within the title report either. Township Administrator Miller advised there were wetlands on the property. Board Planner Polistina stated this is correct and there were other references that were shown on the recorded plat that were not referenced within the title report.

Attorney Gemmel stated there was nothing within the reports from the 2005 hearing with respect to Parsons Brinkerhoff that showed they were going to discuss the 240' ft. line restriction. Board Solicitor Strickland asked if Attorney Gemmel would like the Parsons Brickerhoff report dated April 18, 2005, be considered. However, he did note the person on the report is not present to question. Township Administrator Miller stated he does not have an issue with marking it as an exhibit, however, it may or may not be considered. Attorney Gemmel stated he would like to move the report into record. Attorney Gemmel referenced Exhibit A5: Parsons Brinkerhoff report dated April 18, 2005. Township Administrator Miller stated applicant cannot tell the Board what the report means. Board Planner Polistina stated this is correct. He stated the report must be read by the Board.

Attorney Gemmel also referred to Exhibit A6: Survey prepared by Vargo when property was purchased in 2012. Township Committeeman Carman stated this survey was part of the application package provided to the Board by the applicant.

Robert Bruce, P.E., New Jersey Licensed Engineer, Somers Point, New Jersey, (Applicants Engineer). Engineer Bruce stated he believes the 240' ft. line is from the dedicated R-O-W. Board Planner Polistina stated the R-O-W of Wharf Road was dedicated therefore, the restriction is 240' ft.

Engineer Bruce stated the applicants parcel lot 5.04 is located on Wharf Road and is one of the last lots before the end where Marina is located. He advised the parcel in question is 22 ½ acres, of which 5.6 acres is uplands and 1.5 acres of that can be used for development. He stated there is a 50' ft. wetlands buffer and seasonal buffers that are established from the Department of Environmental Protection. He indicated there currently no improvements existing on lot 5.04.

Attorney Gemmel asked Engineer Bruce to explain the proposed hospice. Engineer Bruce advised the applicant is proposing a 9,300 sq. ft. 15 bed hospice, which will be two (2) floors. He indicated the lot is a long narrow area and the applicant has located the hospice on site so they could provide a large entrance to access the site. Engineer Bruce stated the applicant has a 50' ft. easement for a turn around to Egg Harbor Township along the frontage.

Engineer Bruce stated the front of the site will have parking. He indicated there will be a portecochere along the front and the rear will be used for service and delivery. Engineer Bruce advised the applicant is proposing a septic system and it will be in accordance with Department of Environmental Protection requirements. He advised the applicant is proposing 130 plantings on site and there are existing buffers that must be maintained on site. Engineer Bruce stated the applicant proposes lighting that will be in accordance with the Township Ordinance requirements. He further noted the applicant will move the proposed free standing sign and will comply with the Ordinance requirements, therefore, variance relief is not needed.

Engineer Bruce advised the Fire Official has asked for a water tank to be placed on site. He advised the applicant will be providing a 6,000 gallon tank. Attorney Gemmel asked if there is any proposed building mounted signs. Engineer Bruce stated no. Attorney Gemmel asked Engineer Bruce where most of the landscaping is proposed.

Engineer Bruce stated there will be a heavy amount of landscaping along the northern property line, which will also have a board on board fence that runs length of property. He advised the applicant is proposed because this is the property line with a vacant parcel, which is possibly a building lot.

Attorney Gemmel asked if Engineer Bruce has prepared an overlay plan for the site plan. Engineer Bruce advised he has shown the 240' ft. line from the proposed R-O-W. He advised the within this 240' ft. area there is parking, landscaping, septic bed and a portion of the hospice. Attorney Gemmel stated the site improvements comply for the construction of a single family home. Engineer Bruce stated the project was designed variance free. Township Administrator asked Engineer Bruce if he prepared a plan showing the applicant could meet the 240' ft. requirement if the building was moved forward. Engineer Bruce stated it would not fit. Township Committeeman Carman asked if the applicant looked at scaling down in order to meet the 240' ft. requirement. Engineer Bruce stated it would not fit the needs of the applicant.

Attorney Gemmel stated he would like to clarify Exhibit A6, which was previously noted. Attorney Gemmel stated A6 was previously referenced as the Vargo survey, however, the survey was submitted as part of the original submittal from the applicant. He asked that Exhibit A6 now be marked as the overlay prepared by Robert Bruce, P.E. Board Member Levy asked if the Board agreed to move the line would the septic system fit within what would now be a 350' restriction versus the 240' ft. Engineer Bruce stated yes. Chairman Garth stated he understands the applicant is seeking a 100' ft. extension, however, how wide is it. Engineer Bruce stated it is 120' ft. in width. He indicated the area is .3 acres which is about 12,000 sq. ft.

Board Member Aponte asked when Engineer Bruce prepared the site plan did he look at the decision and resolution from the subdivision approval. Engineer Bruce stated he relied upon the survey presented by Mr. Vargo for the purchase of the site.

Junetta Dix, Environmental Consultant, Linwood, NJ, duly sworn previously. Consultant Dix stated she inspected the property in question on three (3) different occasions. She advised the first was prior to its purchase to perform a soil assessment. She indicated she has spent at least six (6) hours on site. She advised she reviewed the wetlands approval, mean high for the CAFRA Permit, the inventory of vegetation and again, the soils.

Consultant Dix advised there are tidal wetlands regulated by Department of Environmental Protection and there are forested wetlands under fresh water wetlands requirements. She stated the forested wetlands have buffers and the transition areas also have buffers. She indicated the site does have a number of wetland areas, however, there is a forested uplands that can be built upon.

Consultant Dix stated she performed a site survey after reviewing the reports and the filed map with the topography for the test pits with respect to the basin and the septic. She indicated that when the question arose concerning the 250' ft. restriction she stated she went back to site to see what happens at the 250' ft. restriction that would have required. She stated she looked to see if the topography changes, if the soils do, if there is an issue with the canopy. She stated she found nothing. She stated there is nothing magical that she can reproduce that justifies the 250' ft. restriction. She stated she cannot find a feature or constraint for the 250' ft. restriction. Attorney Gemmel asked if this restriction was a requirement of the Department of Environmental Protection or another agency. Consultant Dix stated not that she is aware of. She advised the applicant has honored the buffers for the State requirements.

Consultant Dix referred to Exhibit A8: photographs (aerial) from the Department of Environmental Protection Landscape Map, which she advised has layers of information that can be placed on the map. She stated one photograph shows the four lot subdivision. She advised the lot in question is the southernmost lot. She indicated from these photographs you can see the forested line, the forested wetlands, and the meadows. She stated another photograph shows the other three (3) lots of the four (4) subdivision. Consultant Dix advised the aerial photograph also shows two (2) red lines she indicated there is no forested vegetation between the 250' ft. or 240' ft. restriction.



Consultant Dix advised that from what she could determine the 250' ft. setback/restriction seems to have been a concern over bald eagles. She stated at this time the subdivision was approved this was identified as a foraging area. However, the nest was not located on the property. She stated the nest would have been in the area, but they are not identified in order to keep the information secret so they are not harassed.

Consultant Dix explained, however, the best foraging areas are located at the edges of expanse open water and meadows. She indicated by providing additional woodlands in an enclosed canopy does not serve the purpose, which is the area restricted. She stated though the foraging for the eagles was not specifically somehow came the 240' ft./250' ft. restriction. Attorney Gemmel asked if the 240' ft. was to protect the bald eagles foraging area could the restriction be moved to 350' ft. and still serve the same purpose. Consultant Dix stated this is correct.

Township Administrator Miller asked if Consultant Dix prepared a report for the Board. Consultant Dix stated no. She also advised there are no specific reports that substantiate the foraging area. Township Administrator Miller stated if you take line from Wharf Road down it would be a perfect place for eagles because of the wide expanse. Consultant Dix stated for them to forage. She stated the Department of Environmental Protection provided a 150' ft. setback on the property because of this. Township Administrator Miller stated if you follow the tree line to Wharf Road he asked what is the distance from red line #1 of your Exhibit A8. He stated it appears to be about 240' ft. to 250 ft. Consultant Dix stated it would be pretty close. Consultant Dix also noted that most of the tree line area that crosses onto lot 5.03 also has a protected area. She stated the applicant will honor all wetlands and wetlands buffer areas around the site.

Consultant Dix stated the applicant will have buffer from the forested wetlands. Township Administrator Miller asked how Consultant Dix knows lot 5.03 will not be able to clear much area. Consultant Dix stated they have limited uplands area. She referred to Exhibit A3 advising that on lot 5.03 there is a forested wetlands line that goes to Wharf Road. She stated the forested wetlands has a 50' ft. buffer, but makes a turn. Consultant Dix added that the Department of Environmental Protection has designated a small area of 5.03 which can be developed.

Consultant Dix advised that in 1970 within the State of New Jersey there was one (1) pair of bald eagles and in 2012 there are 135 pairs.

Chairman Garth announced the Board does not take any new business after 9:00 p.m. and the Board adjourns by 9:30 p.m. He advised this matter may have to be carried to next month.

Stephen Sgro, Costana, Spector, Clauser, New Jersey Licensed Architect, Moorestown, New Jersey, noted he has been a Licensed Architect since 1996, duly sworn previously. Architect Sgro stated the design of the Hospice was a concerted effort by the applicant to create a residential atmosphere.

Architect Sgro stated the proposed is a hospice facility and could have proposed a box, but the applicant chose to push and pull the plan element in order to create diversity with the elevations. He advised there are smaller scale elements in order to break up the roof line. He advised the roof was designed as a hip roof that is commonly seen with residential development.

Architect Sgro stated the windows and the window design are residential and the applicant has proposed a Spanish Theme to the design. He then referred to Exhibit A21: Architectural Plan advising in the top left corner of plan is the elevation from Wharf Road. He indicated elevation II shows the east side of the facility, which is the back of the property. He advised the south elevation is located closer to the buffer and the last elevation being shown is facing parking area.

Architect Sgro advised the applicant has used common materials for the design of the building. He advised there will be a Spanish clay roof and stucco will be utilized for the facades. He indicated there will be some stone veneer to break up the look. Township Committeeman Carman asked Architect Sgro if he feels a 9,300 sq. ft. building fits in with the character of neighborhood. Architect Sgro stated the design was based upon client's request. Township Administrator Miller asked if Architect Sgro designed based upon the 240' ft. buffer. Architect Sgro

stated no he did not. He stated the design was done to finding out about the buffer restriction. Township Administrator Miller asked the length of the building in front of the portecochere. Architect Sgro stated it is about 30' ft. and it will not be covered.

Township Administrator Miller asked where the utilities will be located. Architect Sgro stated they will be located on the south side elevation were it turns away from the buffer. He advised there is a fire pump house located in the rear between the septic bed and the parking. Township Administrator Miller stated what Architect Sgro advised does not match the plans submitted. He advised many of the utilities are not shown on site plan. Engineer Bruce stated they are not shown and there have been equipment changes since the plans were submitted.

Township Administrator stated sheet 2 of 5 is a trash enclosure. He asked if there will be any generators or air conditioners in this area. Architect Sgro stated the only elements will be the fire pump house and the medical oxygen. Township Administrator Miller asked what the oxygen will be stored in. Architect Sgro stated they will be in cylinder storage tanks. Ms. Triboletti stated she will have one tank and it must be 50' ft. from the building. Stated she is not sure what the size will be. She stated there will also be oxygen tanks inside of the building.

Township Administrator Mill stated he would like to get a handle on the oxygen tanks and how many. Township Committeeman Carman stated they will need protections. Ms. Triboletti stated she provided to the mechanical engineer the specifications. The patients will have oxygen for 12 to 18 hours a day. Ms. Triobetti stated each room will have an oxygen connection and then will have back up cylinders for patients to move from room to room.

Dolores Triboletti, Founder and Executive Director for Hope and Comfort. Ms. Triboletti stated she has a MBA in business with a minor in gerontology. She indicated in 1996 she worked with hospice. She stated in 2010 she had a fellowship with hospice care in Southern New Jersey. Ms. Triboletti stated currently within Atlantic County there is a population of 310,000 individuals whom are 65 and older. She indicated this also does not take into consideration the senior population in Salem, Gloucester or Cumberland Counties.

Ms. Triboletti stated there are no free standing hospice or acute care facilities like what she is proposing. She stated there are many people who do not have anyone that can take of them, therefore, she is proposing this hospice. She stated beds will be available and they may cost \$7,000.00 a day that will be covered by Medicare. Ms. Triboletti stated a feasibility study was performed and it was supported.

Ms. Triboletti stated she also has received support from the Mayor of Egg Harbor Township and from Assemblyman Van Drew. She stated they have received funding from the USDA and she will be the first free standing facility. Ms. Triboletti stated they have received her certificate of need. She advised she was originally told they could have 20 patients, however, she is sticking with just 15 beds at this point.

Attorney Gemmel asked Ms. Triboletti is seeking to construct at this location. Ms. Triboletti stated she wants the patients to fell at home and not be a sterilized area. She advised the residents will not hear ambulances coming in and out. She stated there will be a bereavement area for the families. She advised food will be brought to side daily and this site will create more jobs for the area. Township Committeeman Carman asked how many times a day food will be delivered. Ms. Triboletti stated lunch and dinner will be brought in. She advised she is not purposing a commercial kitchen. .

Ms. Triboletti stated deliveries for food will be daily, linens will be at least once a month. She indicated Fed-Ex will be frequent. Ms. Triboletti stated pharmacy deliveries will be once a month along with oxygen. She stated there will not be a large amount of traffic. Board Member Cook asked who her clients will be. Ms. Triboletti stated they will be Medicare or Medicaid recipients. She advised they may be coming from private homes and hospitals. She advised they must be critically ill and have less than six (6) months to live.

Board Member Cook stated there will be many, unfortunately, coming to the facility. Ms. Triboletti stated when she prepared their study it was anticipated in the first year it will have 70% capacity and in three (3) years it will be 85%, however, the doctors affiliated believe it will have 100% in the first year.

Ms. Triboletti stated no one under the age 18 will be accepted, therefore, there will be no children. Township Administrator Miller asked what is the average length of stay. Ms. Triboletti stated up to 43 days is the average. Township Administrator Miller stated if Ms. Triboletti anticipates ten (10) or 15 people will they have a visitor every day. Ms. Triboletti advised she does anticipate a few during the week. Advised there will be more in early evening then in early morning.

Ms. Triboletti stated there is not going to be medication or equipment that you will see in hospital at this facility. She stated there will be oxygen and a medical safe for morphine. Board Member Cook asked how many nurses will be on staff. Ms. Triboletti stated there can be one (1) nurse per eight (8) patients. However, she has proposed two (2) per eight (8) people. She indicated there will also be aides. She advised there will be three (3) shifts daily. She advised she will oversee staff, as well as a director and the vice-president. Township Administrator asked if there will be ten (10) to twelve (12) on any given shift. Ms. Triboletti stated they will be scattered between shifts. She stated there will not be ten (10) employees coming in at one (1) time.

Chairman Garth asked if Ms. Triboletti has spoken with any of the neighbors concerning the water levels in this area. Ms. Triboletti stated she has not met with any of the neighbor's. She advised she did go out the day after "Sandy" and it was not flooded. Township Committeeman Carman stated the proposed is a needed service, however, feel it is out of character for the neighborhood. Ms. Triboletti stated the proposed hospice is proposed at this location because it is quite serenity of the neighborhood. Attorney Gemmel stated this is an example as to why the Municipal Land Use Law allows for this type of use.

Township Administrator Miller stated in 15 to 20 years we will be dealing with generation "X", whose population is not as large. He asked if at that time Ms. Triboletti could sell as a single family home. Ms. Triboletti stated believe with the new Medicare Laws facilities such as this will be expanded to other areas. Township Administrator Miller stated he agrees, however, once the building is constructed it will be filled with "Baby Boomers". He indicated the next generation, generation "X" which is from 1964 to 1977 is the smallest generation and there is less population. He indicated he is concerned with a 9,300 sq. ft. mansion at this end of this street. He stated he is just asking if Ms. Triboletti foresees a market for this site if his hypothesis is correct. Ms. Triboletti stated she believes there will be more free standing facilities such as what she is proposing. She advised she can only address immediate concerns and needs.

**Motion Carman/Eykyn to open public portion. Vote 8 Yes:**

Tony Formica, 124 Wharf Road, Egg Harbor Township, sworn in: Ms. Formica stated she has lived here for 24 years. She stated her mother lives on Wharf Road. Ms. Formica stated her family will place her mother in wheelchair and bring her down the road, which is not very wide. She stated the proposed is too big and does not belong on Wharf Road. She stated Wharf Road will not be able to handle the traffic. She stated the road is not made for the proposed. She stated sidewalks would have to be installed. She indicated there is a tremendous amount of flooding and the residents have a horrible time trying to get out. Ms. Formica stated this is the wrong place for this facility to be and it will take away the quite area the residents have.

Margret Gioconda, Wharf Road, Egg Harbor Township, sworn in: Ms. Gioconda stated she has lived on Wharf Road for 32 years. She stated the last few years the flooding has been so bad that the Township Police have come around and handed the residents slips telling them to get out because of the flooding.

Ms. Gioconda asked how will the applicant remove the 15 patients from this facility. She advised she is against where this is going. She advised there is no water or septic. She advised this is not a road to place a hospice on. Ms. Gioconda stated "Sandy" was very bad. She stated they lost their heater and water heater and she stated the

water was in areas that she has never see it go before. She stated it went all the way to the road. She indicated where they want to construct this there was no way to get to it.

Ms. Gioconda stated when they have a very bad snow storm Wharf Road is bad. She indicated the Township plows came down to help the people who live on Wharf Road get out, but the plows go stuck. She stated she could not get out for six (6) days. She stated she feels bad for the patients because of the location. She stated she cannot understand why they are proposing such a big place. She stated in Louisiana they lost a lot of people in nursing homes because they could not reach them. She advised this site floods a lot.

Barbara Kerrigan, 103 Wharf Road, Egg Harbor Township, sworn in: Ms. Kerrigan stated she moved here for the peace and tranquility. She stated she was looking for a lot for over a year, before purchasing on Wharf Road. Ms. Kerrigan stated she cares for her 80 year old mother, whom lives with her.

Ms. Kerrigan stated she has in interest in the shifts of employees, the hurst, the linen trucks or the food trucks coming to site. She stated the road is small and if it is improved may mail boxes and poles will have to be removed. She stated she has the upmost respect for hospice, however, this is not the place for a hospice to be.

Ms. Kerrigan stated she feels for the people who lived on Wharf Road for years. She stated the homes are beautiful in this area, many have built their dream home and now they have to deal with traffic. She stated she pays taxes for the serenity and the beauty of this area. She stated she came here about a setback that was referenced in a decision and resolution, which she thought was a ruling on a law. She stated instead they are discussing how it can be modified. She stated it is this panel's obligation to make sure that setback is maintained. She stated rules matter. Ms. Kerrigan advised she just spent a lot of money for her peace and tranquility. She indicated she has not even had a tax assessment performed yet. She stated the original ruling should be and they should not be building a hospice on Wharf Road.

Keith Bell, Wharf Road, Egg Harbor Township, sworn in: Mr. Bell stated he owns all property opposite the proposed. He stated he has lived her for 30 years and he constructed the home himself. Mr. Bell stated he has raised his children here and now has grandchildren. He stated we should prohibit this type of thing from happening. He indicated this is the last pristine area in the Township because of Attorney's and Environmentalist.

Mr. Bell stated he has dealt with full moon tides, blowing storm tides and he has walked every single bit of this area. He advised he has walked out in this area with water up to his chest. He stated there is not enough ground on this parcel to sustain this type of building. He indicated people will be endangered.

Mr. Bell advised during "Sandy" he brought his horse out of his barn area with water up to its neck. He further noted there is no street for this. He stated the applicant will have staff, service, maintenance people and visitors. He stated there will be about 150 cars a day, who will not be looking for my granddaughter riding her horse.

Catherine Bell, Wharf Road, Egg Harbor Township, sworn in: Ms. Bell advised she agrees with everyone else. Stated she is fifth (5<sup>th</sup>) generation on this street. She indicated she is for hospice. However, besides the floods and the weather in this area the patients will not be able to go outside or to the garden area they propose because of the mosquitos. She stated there are lots and lots of bugs in this area. She stated when the applicant came in with subdivision the guy promised the buffer so that he could get four (4) houses. He stated he was appealing the neighbors who opposed the development that has happening in Egg Harbor Township. She asked the Board to examine their conscience and see what Egg Harbor Township was based on. She asked the Board to take the opinions of the residents for their children and grandchildren. .

Richard Sykes, 120 Wharf Road, Egg Harbor Township, sworn in: Mr. Skyes stated he owns eight (8) acres and only two (2) were buildable and did as he had too. He indicated if they get setback removed, and everyone else abided by the law, it is not fair.

Joe Burchell, 119 Wharf Road, Egg Harbor Township, sworn in: Mr. Burchell stated there is only one (1) way in and one (1) way out of Wharf Road. He indicated the residents rely on this road and they walk on this road. He stated this is not a place to construct this type of facility especially where there is other buildings around. He stated two (2) fire trucks could not pass each other on Wharf Road. He also added Wharf Road would not be able to take the additional weight. He stated there is ditch that was filled in a few years ago that would present a problem. He stated the road is not practical.

Ms. Kerrigan asked if she could add one more thing. Chairman Garth allowed. Ms. Kerrigan asked if anyone has thought about the wildlife that is present.

Attorney Talvacchia asked advised his client hired an Environmental Consultant from Marathon. He stated it is not fair to present his witness and he be crossed examined when they have not submitted an environmental report. He stated they are asking for a waiver and they should have good environmental reasons as to why it should be removed. He also stated more discussion should be presented concerning the proposed generator. He asked how often will be tested considering the noise generated will be on the south side which is near his client. He stated he would like to see a plan showing where utilities are located because the impact it will have on neighbors.

Township Administrator Miller stated he has no problem continuing this application until next month. Township Committeeman Carman stated he would like more information concerning the buffer/restriction and why requested. Township Administrator Miller stated he would like to see revised plans for utilities and decibel readings.

Township Administrator Miller stated it should be presented ten (10) days before the September 16<sup>th</sup> meeting. He also asked for a written report from Ms. Dix. Attorney Gemmel stated he would like the objectors professional's to also abide by the same time period with information. Township Administrator Miller stated the information provided to the Board is the Applicant's responsibility.

**Motion Kearns/Eykyn continue application to regular planning board meeting of Monday, September 16, 2013, at 5:30 p.m. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

**MEMORIALIZATION OF RESOLUTION(S):**

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| 1. <b><u>SPPF 05-13</u></b><br>Michael Eisele | <b>Preliminary/Final Major Site Plan<br/>2303/11<br/>3168 Fire Road</b> |
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**Motion Miller/Carman to memorialize resolution granting requested checklist waiver(s), design waiver(s), variance relief, and conditional preliminary/final major site plan approval. Vote 6 Yes:** Aponte, Carman, Cook, Kearns, Levy, Miller. **1 Abstention:** Garth

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| 2. <b><u>SD 13-13</u></b><br>Seaview Water Company | <b>Minor Subdivision<br/>9501/62 &amp; 63<br/>Longport Somers-Point Boulevard</b> |
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**Motion Kearns/Carman to grant requested checklist waiver(s), variance relief, and conditional minor subdivision approval. Vote 5 Yes:** Aponte, Carman, Cook, Kearns, Levy. **1 No:** Miller, **1 Abstention:** Garth

**SUMMARY MATTER(S):**

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| 1.     Discussions of matters pertaining to the Board: <b><u>SECTION I</u></b> : | a.     General public discussion |
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**Motion Aponte/Kearns to open public portion. Vote 8 Yes.**

**May the record reflect no one came forward.**

**Motion Kearns/Cook to close public portion. Vote 8 Yes.**

**Motion Aponte/Kearns to adjourn at 9:08 P.M. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

Respectfully submitted by,

Theresa Wilbert, Secretary