

**Town of Milton  
Planning & Zoning Commission  
October 16, 2007  
7:00 p.m.**

**Members Present:**

Linda Rogers	Dean Sherman	Ted Kanakos
Bill Brierly	Gene Steele	Bernice Edwards
Louise Frey	Virginia Weeks	Michael Filicko

**Others Present:**

Robin Davis	Bob Kerr	Debbie Pfeil
John Brady		

**Linda Rogers called Public Hearing to order at 7:08 PM**

**Item #1:**

The applicants, Lesa and Paul Howard, are requesting a conditional use and preliminary site plan approval for a physician's office to be located at 506 Union Street. The property is currently zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-16.00.

Linda Rogers: Is there anyone present on behalf of this application? And anyone wanting to make comments, please come up, identify yourself and speak into the microphone.

Eric Howard: Thank you, Miss Chairperson. I am here on behalf of the applicants, Paul and Lesa Howard. As you recognize as you of course said this is a conditional use application for a professional doctors office at 506 Union Street in Milton. I'm not going to spend a lot of time speaking, I think you don't want to hear from me, you want to hear the applicant. I'm just going to make a couple of general introductory comments and then turn the mic over to my sister-in-law and brother, Lesa Howard and Paul Howard. This is an application for a conditional use of course, and I don't want to overly belabor this point but I think it's important that you start at the ordinance itself. There have been comments I've heard, that this is not zoned for commercial use. Well, if it was, we wouldn't be applying for a conditional use. You look at the ordinance. The ordinance specifically contemplates that there are going to be uses that are essential or desirable for the general welfare and convenience of the community that are not zoned, or are going to be put in a district that is not zoned for that, and that's how you deal with it and that's how the ordinance deals with it. It's says you make that a conditional use. You say you look at the particular application. You say is that application, is that proposed use appropriate for this site and if it is say yes and approve it. If not, if there is evidence that that particular use is not appropriate for this particular site, then there you can deny it on

that basis, but to say that well this is a commercial use in an R-1 district throws the ordinance out. You say we don't care if we have a conditional use ordinance. We don't care. You know we're not following that. We don't like this use in a residential zoned district. The ordinance contemplates commercial uses in an R-1 district if you comply with the mandates of the ordinance. And we believe that this is a classic, perfect conditional use application. It is a professional doctor's office and you will hear testimony; you'll see letters that we've submitted, that we will submit, that say that the patients, the community want this. They think it's a good idea at this site. Traditionally doctor's professional offices have been in residential areas. I think you can bring your life's experiences to that, and know that for a fact. Dr. Howard will testify to that too that traditionally doctor's offices aren't in strip malls or heavily commercial areas. They're in somewhat residential areas. The basis for denying an application for conditional use would be that if you find that it would have an adverse impact on the surrounding properties. Well, let's look at that and apply this to this case. Every single immediately surrounding property to this proposed use supports the application. How can you say that there's going to be an adverse impact? The neighbor immediately to the south supports the application. The church and the parsonage to the north supports the application. The properties across the street support the application. What are you relying upon to say that you would have a detrimental or adverse impact on surrounding properties? There is no evidence of that. So, please consider the evidence you are going to hear tonight and keep in mind that conditional uses are conditional uses and you're going to be, you're always going to be approving a use that is not specifically permitted in that district; that's what a conditional use is all about. You have to go through the analysis of whether or not this is a use that serves the public need and convenience and whether or not there is going to be any detrimental, adverse impact on the surrounding properties. And we believe that the evidence will clearly show that it is a use that will serve the public convenience and welfare and that there will be absolutely no detrimental impact on the surrounding properties. In fact, they all support the application. In that being said, I would like to call Lesa Howard.

Lesa Howard: Hi, Lesa Howard, and if you'll humor me for just a minute, I want to repeat something I've said before. Milton is my home town. Milton was my mother's home town, my grandmother's and my great-grandmother's. My grandfather had a, he was a farmer, and he had a button shop behind his house. My mother ran a flower business next door for over 25 years. She contributed to the Lion's club, the churches, the little league; she participated in the parades; she participated in the anniversary, or 150<sup>th</sup> birthday and my... I lost my train of thought, I'm sorry. My grandfather on the other side was a school administrator for many, many years. He contributed positively to educating the children of Milton and I think that our family has a long history of positive influence on the town and it is my wish that you give us the opportunity to do the same. I think we have, like Eric mentioned, I think a lot of the citizen's of Milton agree with us, that we will have a positive affect on the town.

Eric Howard: Mrs. Howard, I'm just going to ask you just a couple of questions about you contacting any people. Did you contact any people to what their position was?

Lesa Howard: We did.

Eric Howard: Tell the board if you would what you did.

Lesa Howard: We contacted about 400 people within the Milton zip code. We received letters back from half which I thought was a great return. Not only some were patients. A lot were town residents and friends and family that know the family and have known for a long time and all were...we didn't receive any negative input from anybody.

Eric Howard: Let me ask you about some of the immediately surrounding properties. Do you know a Miss Argo is?

Lesa Howard: Of course.

Eric Howard: Who is Miss Argo?

Lesa Howard: Miss Argo lives kind of catty-corner across from the house and ...

Eric Howard: There's a 501 Union Street?

Lesa Howard: Probably, I'm not sure. She was not at all opposed. She was a little upset because of the cost that we had to spend in postage and letting everybody be made aware of the meetings and things but that was the only input she had.

Eric Howard: Do you know who a Miss Daria Horn is?

Lesa Howard: Yes, she is directly next door to us.

Eric Howard: 502 Union Street?

Lesa Howard: I assume...

Eric Howard: What was Miss Horn's position regarding the application?

Lesa Howard: She was not opposed. She had some natural concerns as far as lighting and water run-off and that kind of thing and I think we addressed those with her and you know; she also sent a letter and didn't have a problem.

Eric Howard: Do you know a Mr. Paul Simonson is?

Lesa Howard: Yes that's the reverend of Grace Church.

Eric Howard: And did you speak to him about what his position was?

Lesa Howard: I did and he again, he had no reservations and he again sent a letter.

Eric Howard: And again, you know who Mr. & Mrs. Spencer are?

Lesa Howard: Yes, Bill and Ima Jean. They live on the other side of the church.

Actually the driveway, or parking areas, between them and again they had no problems with it.

Eric Howard: And, I'm going to show you 4 letters and those are the letters you received from those 4 individuals?

Lesa Howard: Yes. This one is from Miss Pearl. That one's Daria's. Mr. Simonson, yes. And Bill and Ima Jean's. And I don't think Bill and Ima Jean were within the radius that required them to get a letter from us stating that this meeting was going to take place, but I spoke to them because I was made aware that they had not. And also, across the street from the church, Lisa and Jim Sumstein, I spoke to them because they're there fairly close. Did you guys get a letter?

Lisa Sumstein: Yes.

Lesa Howard: Okay. And again, they had no opposition to it.

Eric Howard: If I could I would like to submit these 4 letters in. We submitted that same pack that we submitted before and I would just ask that those be reintroduced. How many...you received approximately 200 letters back in support?

Lesa Howard: Yes.

Eric Howard: Did any of it, the immediately surrounding neighbors say they had any kind of an issue with this application?

Lesa Howard: No.

Eric Howard: Did you also speak with any realtors about the application?

Lesa Howard: We did. We contacted 2 to get their...Mr. Lingo, who is a broker and then Mr. Millman, who is an appraiser...to get their opinion on the affect that it would have on property values and both of their letters stated that they saw no...thought it would have no adverse affect on the property values.

Eric Howard: Mr. Millman, is he new to the Milton area?

Lesa Howard: No, Mr. Millmans' family has been here forever.

Eric Howard: He grew up in town?

Lesa Howard: Yes.

Eric Howard: And he's also a licensed real estate appraiser?

Lesa Howard: He is.

Eric Howard: And he said he felt that it would have no impact at all on the value?

Lesa Howard: Nope.

Eric Howard: And I believe that same letter was previously submitted also. Miss Howard, as far as the going into the specifics of the plan and the hours and those kinds of things, would you defer to your husband, Dr. Paul Howard...

Lesa Howard: Yes. He would be the best one to answer those questions.

Eric Howard: That's all I have for Miss Lesa Howard, unless the commission has any questions.

Linda Rogers: Does anyone have any questions?

Louise Frey: I do. Is the property vacant now?

Lesa Howard: It is.

Louise Frey: How long has it been vacant?

Lesa Howard: The lady that lived there...it was a year in July. She tragically was killed in a motorcycle accident.

Louise Frey: Thank you.

Virginia Weeks: I have a question. Do you live in Milton.

Lesa Howard: Not at this time?

Virginia Weeks: So your family is no longer in Milton.

Lesa Howard: Not at this time.

Virginia Weeks: Thank you.

Lesa Howard: We do plan on eventually relocating. We have children that are in school and until they are out, we don't like to pull them from their friends and what they're used to.

Eric Howard: Did you grow up in Milton.

Lesa Howard: I did. My mother actually sold tickets in this very theatre when she was a teenager.

Eric Howard: Do you have any immediate family besides your husband and your children...do you have any other family members that live in Milton?

Lesa Howard: Yes, my brother has a produce business right on the edge of town and he lives up on the hill there.

Eric Howard: Does your other brother own a property in Milton also?

Lesa Howard: He does.

Eric Howard: Which property is that?

Lesa Howard: That's the one across from King's Ice Cream Store.

Eric Howard: That's the property he is currently renovating?

Lesa Howard: Yes.

Eric Howard: Thank you.

Linda Rogers: Does anyone else have any questions?

Bill Brierly: Lesa, just curious, is that the white house across from King's that's being worked on?

Lesa Howard: It is, yes. We actually lived on Chestnut street for many years and after my brother was killed in Vietnam, I think my mother couldn't hardly bear to be in that house and so the house across from...could be very interesting to me, may be boring to you...but the house was up for auction, closed bids, and my father laughed at her and said there's no way they are ever going to accept that bid, and besides we don't have enough furniture to ever fill that house. But yes, that's the house, across from Kings.

Linda Rogers: Does anyone else have any questions? If not, you can proceed.

Eric Howard: Thank you. I call Dr. Paul Howard.

Paul Howard: Hello, Dr. Paul Howard.

Eric Howard: I'm just going to turn the mic over to you and tell the commission what it is you'd like to do and why you'd like to do it.

Dr. Paul Howard: Well, what we would like to do with the property is add on to it. We don't have any intention of taking the building down, but adding on to it to make it of a size and configuration that works for an office. In my growing up and I would venture most of you had the same experience, professional offices are intermingled with residential properties and that's certainly has been most of the doctors that I've seen, whether it was here or in other communities and I'm not just talking about Sussex County. Even metropolitan areas. I think that patients as a rule would prefer less congestion and not having to deal with commercial areas. Now there are, I know, in a lot of metropolitan areas, there are "professional buildings", but even those are a bit intimidating to a lot of patients. I think traditionally doctor's offices, if you look back and I can tell you many of them in the communities throughout the county as well as in other communities, are intermingled with residential areas, because this is kind of the area, the kind of the setting the patients prefer, where they don't have to deal with fighting for a parking place, etc. I will say that this street a numbered highway. It's Rt. 5. I don't think it can be compared to some cul-de-sac or some subdivision. It's Rt. 5. I don't think that a professional office is going to add that much traffic to the area that would not be there otherwise for other reasons. Being on a major highway like that, I mean you know, in another town this would be called Main Street. It's called Union Street in Milton, but it is the main road in town and main roads in towns, Main Street, have businesses on them. And I think this particular type of business is of a sort that will draw a given number of people. There's not an infinite number of people that are coming by my services. There might be an infinite number of people that want to go to the convenience store but there's an infinite number of people that I can see and I think that it is the type of setting that would be appropriate. So, what I would like to do, what we would like to do, is convert this building to this use. It is a professional office use, not just an open commercial use.

Eric Howard: Dr. Howard, I do want to ask you a few kind of technical questions that are necessary I think to make the record so if you'd bear with me for a second. Tell if you could about the plans. You had had Griffin Home Builders prepare plans?

Dr. Paul Howard: Correct. They did them on the computer, correct.

Eric Howard: And the plans that were most recently submitted to the Town, is it fair to say that that's a revision to the original set of plans?

Dr. Paul Howard: It's a revision in the sense that we indicated some siding; we added a porch, a portico; tried to indicate some of the roofing that would be done. The initial plans that we submitted were very much an initial blue-plate if you will.

Eric Howard: Is it fair to say that the intent is to make the structure consistent with the residential use on the...

Dr. Paul Howard: That was our intent all along, it's just that the original set didn't show things like siding and roofing and window treatments, if you will.

Eric Howard: The property would have clapboard style siding?

Dr. Paul Howard: Yes.

Eric Howard: With shutters on the windows?

Dr. Paul Howard: Correct.

Eric Howard: The grid windows?

Dr. Paul Howard: Correct.

Eric Howard: And it would have a front porch with columns?

Dr. Paul Howard: Correct. The portico and a side porch likewise with columns. That is, we are not fixed into a given "style" and if you go down the street, I think there are a variety of styles and we would be willing to change some of that style, okay. So we're not locked into anything that's on there. It's to give a sense of what we would like to do with it, but again, I mean column styles, roofing styles, etc., that's something we would negotiate on. Correct?

Eric Howard: The...what size of structure do you propose building?

Dr. Paul Howard: I haven't looked at the blueprints in a while except as we walked in but it's close to 3000 s.f.

Eric Howard: Tell the commission, if you could, so approximately 3000 s.f.?

Dr. Paul Howard: Correct?

Eric Howard: How, in your visualization, or visualizing the other houses on the street, how does that compare with the other houses on Union Street?

Dr. Paul Howard: I think there's a wide variety of sizes and I do remember at a previous meeting a comment that it was a "medical complex", I would venture to guess that some of the people in this building have a house that's that size. I don't think something approximately 3000 s.f. and I'm being, I am approximating, you've got the numbers right in front of you I think on your plans.

Virginia Weeks: 3700 s.f., plus

Dr. Paul Howard: Okay. I thought it was about 3200.

Virginia Weeks: Second floor.

Dean Sherman: The second floor is not to be used for seeing patients is it?

Dr. Paul Howard: That's correct.

Virginia Weeks: It's still part of it.

Dr. Paul Howard: I wasn't trying to mislead anybody. I haven't looked at the plans in for a while. I truly have not, but again, my office that I'm using now is about 3000 s.f. It's the same size I'm using now as a single practitioner.

Eric Howard: Why do you think that size is appropriate? Why do you need that much size?

Dr. Paul Howard: Obviously if you to an office, you've got exam rooms. There's also rooms for filing, a lot of room for filing charts. Nurses need room and I have, being in the field that I am in, a need for audiology and dispensing of hearing aids, that takes up room. The sound booth alone is 8 x 8, you need room around that, so...

Eric Howard: What hours would you see patients?

Dr. Paul Howard: We would be seeing patients at...my office hours start at 9am and we run until...when is our last appointment? 4 o'clock? We finish later than that...3:30 to 4...some days. It depends on the day, but like 9 to 5.

Eric Howard: Do you have weekend hours?

Dr. Paul Howard: No.

Eric Howard: Do you have evening hours?

Dr. Paul Howard: No, except in unusual circumstances if I'm trying to make up time for having been on vacation. I don't have Thursday hours either. And I don't have Friday afternoon hours. Its 3-1/2 days, except as I said if I've been out of town and we're trying to help get rid of a backlog of patients.

Eric Howard: Why don't you have Thursday hours?

Dr. Paul Howard: I'm in the operating room.

Eric Howard: Lighting. What type of lighting do you feel you would need on the property?

Dr. Paul Howard: That's, you know in the winter time I would be worried about...it gets so dark so early, I would be worried about safety issues, but beyond that I have no preference on the lighting. And I would be willing to do whatever the town wants on that.

Eric Howard: So you don't per say you don't need any or want any lighting for signage or anything. The only lighting you would want would be safety for employees getting out the door and to their cars.

Dr. Paul Howard: That is correct.

Eric Howard: How about signage?

Dr. Paul Howard: Again, whatever the town wants us to put out we would put out. I don't have any special plans for a sign.

Eric Howard: No large sign intended? No lit sign intended?

Dr. Paul Howard: No. Well, I wouldn't like certain signs myself anyway. But no, I do not have anything in mind and we would comply with any requests in that regard.

Eric Howard: How many employees do you have?

Dr. Paul Howard: Well, that fluctuates. We have about 5 right now.

Eric Howard: Does that include you or on top of you?

Dr. Paul Howard: Well, as I said, that fluctuates. There's somebody that, you know like any business, staff come and go. Right now, there is 5, but again, that is subject to change depending on circumstances and we're looking to get a new computer system that might reduce some need there but it's kind of a shame when my Dad ran his office when he first started with one person. It's gotten to be a complicated business in a lot of senses, unfortunately. So it is 5, I didn't mean to make a long answer of that, but it is subject to change.

Eric Howard: Does the side have adequate space for parking as required by the town ordinances? Do you have the parking spaces to comply with the town ordinance?

Dr. Paul Howard: We could have, that's correct, yes.

Eric Howard: So you don't need any kind of variance for parking?

Dr. Paul Howard: Correct.

Eric Howard: How would you landscape the...you saw the letter from Miss Horn that she had no opposition to the application...

Dr. Paul Howard: Correct.

Eric Howard: And Miss Horn is a neighbor immediately to the south...

Dr. Paul Howard: Right.

Eric Howard: How would you...what type of buffer would you put on the property between your property and Miss Horn's property?

Dr. Paul Howard: Well, anything that is considered desirable by her and/or the town. A partial fence, I think that would be unattractive frankly to have a fence the full length of the property line. I think that would be unattractive.

Eric Howard: What would your preference?

Dr. Paul Howard: Some vegetation and maybe partial fences.

Eric Howard: Maybe trees interspersed with fences?

Dr. Paul Howard: Correct.

Eric Howard: Do you believe that your use of the property as a medical office would have any adverse impact on any of the surrounding properties?

Dr. Paul Howard: No, I don't. I wouldn't have, Lesa and I would not have made the request if we did. I don't think, again, I think that a medical office is not the same as running a commercial establishment where people are coming in to buy things. I think the hours and the nature of the business is such that no, I don't think it would be at all. I think in terms of the town in general, I think it would be a very positive thing. I think that again, I don't think most patients want to go to a doctor's office that's next to a Subway for instance. I think in a strict commercial zone you don't find too many doctors there. You just don't, and I think that's not just because the doctor's want to be there, I think that's where patients would rather have their offices.

Eric Howard: That's all I have, thank you. I'm sure the commission has some questions.

Linda Rogers: Does anyone have any questions of the applicant?

Bernice Edwards: I hope I heard you correctly, if granted the conditional use that the outside of your building would have the same appearance as the said properties that surround it.

Dr. Paul Howard: Well, something compatible. It has siding on it now that we would maybe not necessarily the same color but the same type of siding and we want to try to make it "residential looking". You know, people have different opinions about what that means but it would be similar style to what it is now.

Bernice Edwards: And in the other you said that the average employees that you have you average probably about 5. Give or take a few.

Dr. Paul Howard: We have about 5 right now. Yes, ma'am. Again, as you get better computer systems, maybe you can use a 4-1/2 time for a while, you know and I mean that's always been fluctuating and then people leave to go to do something different. We had somebody not too long ago that decided to do EMS work. So it's fluctuating but as it is with the last couple years, we've had about 5 people fairly regularly.

Bernice Edwards: So actually in reality, in looking here, you are probably going to be open three 8 hour days.

Dr. Paul Howard: Correct. Three full days and a half day. By myself. And what I mean by that is and I was quite open on this in previous meetings, I would love to have a partner. I have sought a partner. You may have read in the papers that it's difficult to attract people here in certain respects.

Linda Rogers: Is that all?

Bernice Edwards: Yes

Linda Rogers: Bill, Dean?

Michael Filicko: Dr. Howard, could you please explain the run-off system for the parking lot?

Dr. Paul Howard: Well, I am told, I am not the engineer. We have got somebody that is doing work on that and I don't know how far along they are, I don't know if they've put it on hold because of the situation, but I'm told that run-off would conceivably be better and not worse. The plan, and I would be willing to put in pavers as opposed to pavement for at least the, I mean if it's a look or if it's an appearance issue, I'd be willing to put in pavers in lieu of some of the pavement,. But I'm told with the underground drainage system that the run-off could conceivably be better and certainly no worse if it's done properly. That's not for me to do or design. It's certainly not my field, I'm just telling you what I've been told that there should be no increased run-off if it's done properly.

Gene Steele: If you do get an associate, does that mean you will be open more than 3-1/2 days?

Dr. Paul Howard: No, I think we would be sharing. Well, more than 3-1/2 perhaps, but night hours and weekend hours, I don't conceive of that. But, when I am in the operating room, it is a shame to have a building; it's a shame to have the office I'm in right now sitting empty during that day. But, I'm telling you the reality of my life is that for some time I sought and it's a difficult thing drawing people to the area considering cost schedules and the like.

Virginia Weeks: You have 5 employees at present. If you get a second doctor will the number of employees increase?

Dr. Paul Howard: I would not anticipate that because there's down time when I am not there.

Virginia Weeks: I believe you previously gave testimony that you see about approximately 35 patients a day?

Dr. Paul Howard: I would say on a full day that's average.

Virginia Weeks: So we would have 70 patients a day if we had a second doctor?

Dr. Paul Howard: No.

Virginia Weeks: Plus the 5 employees, so that would be 150 cars coming and leaving on Union Street a day.

Dr. Paul Howard: In answering your question, if we were sharing the space, it wouldn't be possible to see that many. In other words, you only so much physical space and people would be stumbling and tripping over people and you'd have to adjust your schedule if it were shared space.

Virginia Weeks: And how do you perceive...in a conditional use one of the reasons that use is conditional is that it's temporary. This is not a permanent use. And when you finish, it has to go back to residential. The way you have configured this office, by your own testimony, you said that it is of the size and configuration that works for an office.

How do you envision it going back to residential? Will you be responsible for returning it to a residential property?

Dr. Paul Howard: Well, I think that people with imagination can do that. I tried to take the building that's existing and incorporate that into what we "need" for an office. One could easily tear down that building and forget about that.

Virginia Weeks: Would you be willing when that practice closes you tear down that building and return it to the size of what was originally there?

Dr. Paul Howard: Excuse me?

Virginia Weeks: When your practice is no longer there, would you be willing to return the property to as it was before the conditional use?

Dr. Paul Howard: You mean take the building down? I think that would be...that wouldn't make a lot of sense to me as a person.

Virginia Weeks: Would you be willing to reconfigure the insides to make a residential use?

Dr. Paul Howard: Well, I think anybody with an imagination could do that. That's what I was trying to say is one could take bulldozers and take that building that's there now down or one can add on to it and try to incorporate that into the use and I think that anybody with imagination could do that with this building.

Virginia Weeks: Would it not be, since you are granted this privilege of having a conditional use there, would it not be only right that you return the property to a residential use as it was when you took it over?

Eric Howard: (unintelligible) Ms. Weeks, but it seems to me she is being argumentative with the witness as opposed to asking a question.

Virginia Weeks: No, I just want to know is it going to return to a residence when the conditional use is no longer in place. I think that's a fair question.

Dr. Paul Howard: Well, if I can answer that, I think the conditional use is to use it as a medical office.

Virginia Weeks: As long as you're in it. Then it disappears and then it returns to residential.

Dr. Paul Howard: Well, so you're saying that if I get a partner, and I get disabled tomorrow, that I have convert it to a house. Is that what you're asking? I'm not trying to be argumentative; I'm trying to understand your reasoning.

Virginia Weeks: No, you're right. I believe...

Dr. Paul Howard: If I get a partner and I get disabled tomorrow, it can longer be an office?

Virginia Weeks: It must be a medical office.

Dr. Paul Howard: Ok.

Virginia Weeks: Is that not correct?

Dr. Paul Howard: Well, that is what we're asking for is for use as a medical office.

Virginia Weeks: Mrs. Rogers, I realize the attorney isn't here, but are they allowed to sell it as a medical office?

Linda Rogers: The attorney is not here. My understanding is once you grant a conditional use for a medical office, as long as it complies with the regulations and any stipulations that are put on it, it can continue as a medical facility.

Virginia Weeks: Ok, thank you.

Linda Rogers: I don't know that there's a limit unless the conditional use should put a time limit on it and you are going to have to ask the attorney for sure but I believe it can stay a medical office.

Virginia Weeks: Ok, thank you.

Linda Rogers: In the event the medical office should shut down for a certain length of time, which I think is 12 months, then it reverts back to residential use and could not be used for anything residential use without another public hearing.

Virginia Weeks: Ok, thank you.

Eric Howard: When the Town Council approved this before we came back, one of the stipulations that they, I would agree with Chairperson Rogers analysis, but one of the stipulations was that the property that the Council put on at it was that it could not be transferred to another owner without that second owner getting a conditional use approval, for whatever, even if they wanted to use it for a doctor's office again. I think that is within the province of the Council to put that condition on it but traditionally a conditional uses would be transferable, as long as it's the same use.

Virginia Weeks: I noticed also that on the plans that you submitted this time a lot of the roof areas have been squared off, another words, there is now more room under roofing, more square footage under roofing, usable square footage under roofing, than it had been. Are you planning to use that space for something? I can show you on your plans if you'd want to.

Dr. Paul Howard: Well, the changes in the plans were made to make the place look more residential.

Virginia Weeks: It's a very squared off office building.

Dr. Paul Howard: If you're asking do we plan to have a use for the upstairs and make it a second floor, is that what you're asking?

Virginia Weeks: Exactly.

Dr. Paul Howard: Other than, the answer is no, except for what is already existing. There are two small rooms in the existing building. All of the changes that you see there were made because the original plans that you saw were very preliminary and I didn't even have a chance to sit down and spend time with the person that was working with the computer with this CAD and tell them no, I didn't like this, no I didn't like that, and some of the things that were objected to I didn't like myself, frankly, and the changes that were made were to try to make it more compatible with the neighborhood. Any changes in the roofline were attacking that same issue. And that can be changed.

Virginia Weeks: Do you know what the height of the building is going to be? There's no height on the plan. There's no dimensions.

Dr. Paul Howard: Well, if there's...I believe the height is to be the same as the height of the present building.

Virginia Weeks: So it will be no higher than that present building.

Dr. Paul Howard: You know, give or take a small amount for structural reasons, but again, there's no...I'm not an engineer nor, you know, I don't want to be lambasted later because it's 6" taller than the old building. The idea is to have it pretty much the same across and if you look at the, I don't have one of those plans in front of me, but if you look at...

Virginia Weeks: You see, what I'm talking about is like all of this...all that has been added and so I was wondering....

Unintelligible conversation back and forth between Paul and Virginia pertaining to the plans.

Virginia Weeks: That's all, thank you.

Linda Rogers: Okay.

Virginia Weeks: Oh, I have one more question. I'm sorry. No, that's all. Thank you.

Linda Rogers: Is there anyone else that would like to make a comment in behalf of this application?

Jim Sumstein: Yes, I would. I live at 509 Union Street, right across the street, and we've spoken to the Howard's quite extensively. I'm not a lawyer, I'm not a real estate agent, I'm just a guy that lives on the street, and we've got zero problems with the doctor's office proposed opening across the street. In fact, as a layman, there's a doctors office that's sitting empty, not even a 100 yards away and traffic was never a problem; in and out, not a problem; parking, not a problem; lighting, not a problem. It's going to be the same thing, it's not going to be a problem.

Linda Rogers: Thank you. Anyone else that would like to make a comment in behalf of this application? Is there anyone that would like to make any comments in opposition to this application?

Jim Welu: 30231 East Mill Run, Milton. I'm a little confused, I wish Mr. Brady were here, because I'm not sure of the ongoing legal status of a conditional use. It's my understanding that it's there for the applicant and it ends with the applicant stops using it; that he cannot sell it to someone else. It would have to revert back to residential, but I don't know if that's accurate, which brings up the comments that have been made by Ginny Weeks. Will the property be able to be really turned back to residential when it's no longer used as a medical office complex? And it raised two questions in my mind. One, is the current house going to be reconfigured in such a way that it itself would not remain appropriate for residential use down the road? And then the question of the addition, would it be appropriate for anyone, I mean this would be a hardship on the part of the owner coming in saying well it can't be used for residential so we really ought to keep it in some type of special use which is non-residential. You could put the obligation on the developer of this property not to look for a creative use of the property after they no longer use it as a medical complex but they would do...be creative in designing it in such a way that it could always be used as a residential property. Put the burden on the developer to make this a residential property that's, with all the expansion of 3000 s.f., but they're going to use it for their medical office. Put the creative burden on Dr. Howard rather than on the future user when the conditional use is no longer there. One of my concerns is the appropriate use in the community, and I don't think it's just the matter of does the neighbor to the right and to the left and across the street find this appropriate. Does the community find it appropriate? I own residential lots a block away to the north. I own a residential house one block to the south. I think it's a residential community. Sure it's Rt. 5. I lived on Rt. 320 for 25 years but it was a residential community. We didn't allow any commercial properties to be developed. And I think the impact of this is going to have a negative affect on the overall residential community from Rt. 16, down Union Street, till we get to the Town Center. You have approved a couple of conditional uses I believe, they're supposed to be owner-occupied, which is appropriate conditional use. Now whether one of them is still owner-occupied I don't think so, but we know that the dog biscuit treats place is residential. I think those are appropriate. It's in the

tradition of Milton for people to have businesses in their homes or they have a business on the same lot as their home. Russ McCabe I think said that in 1850, there were 25 commercial establishments on residential lots where people live. I think that's appropriate. I don't know if you all have had a chance to review the 200 positive responses that were provided to the Town. I spent, not too long, but some time at Town Hall looking through all 200 of them. I would say about 20 of them were a letter sent out by Dr. Howard talking about moving to Milton and looking for his patients to, I presume it was mainly his patients, to support this. Twenty people sent the same letter back that he sent to them with a little comment on the bottom that was fine with them. Another 180 approximately of the letters as I recall were a form letter which was about a ½ page long in which the people signed their name. Some of them put their address, some put little comments on the bottom. One that stood out, there weren't a whole lot of comments, but one was...it's always been appropriate for doctors to have offices in their homes. Well, this obviously wasn't what the letter was intended to say, but it's basically a form letter that you know patients sent in. Most of them did not have addresses on the letters so I did not see where they lived, but I recognized some names, one in my community, where we would not allow. And this is a member of the Board of Directors of our community. They wouldn't allow a commercial venture in any home in our community. I think a lot of the people that signed these letters are patients who would probably prefer to drive to Milton rather than down Rt. 1 and into Lewes, but I don't think the letter really explained that this was being plopped down right in a residential neighborhood. So, I think the 200 letters have to be looked at with a little bit of a stance. I think that in a way what is being proposed is almost a spot commercial re-zoning. It is a conditional use. Question is, is that condition going to continue on and on because of the nature of the building, the nature of the changes that are made to the building. According to the documents of the town code, charter, rules and regulations, this medical complex, and it is a medical complex, its 3000 s.f., certainly larger than the medical one that is a block further up the road. Is it appropriate use according to the town documents in the Town Center zone? They've specifically say this is an accepted use in the Town Center zone. There is nothing in the special exceptions for residential use for a medical complex. The only thing that comes close to it is an owner-occupied business of the 10 or 15 things that are listed. The only thing that even approaches some type of use like this is an owner-occupied business and the doctor and his attorney have stated very clearly that doctors don't live in their offices anymore so it's not an appropriate use according to the town regulations to be put into a residential zone. And I think we need to look at this not does neighbor X, neighbor Z across the street, you know say this is fine with them. I think we have to look at the community and that this is, at this point, a fragile residential neighborhood for about 4 blocks from 16 going down towards the Town Center, and I think it is very inappropriate to allow anything other than a residential use. I appreciate the fact that they own the property, they would like to use it, but I think a more appropriate thing would be to sell the property, take all the equity out of it, take one of the commercial zones that we have in the town area and build their own commercial medical building there. That is why we have commercial zones and that doesn't mean that people are coming into some big, impacted commercial area. They are coming into an area that zoned commercial, they can have their own building; there's land available in the community. Thank you.

Linda Rogers: Is there anyone else that would like to speak in opposition?

Marion Jones: Behringer Avenue. I am grateful for the opportunity to stand again and reiterate what I said at the last meeting. This has nothing to do with the applicant and everything to do with the application before you on the agenda. I agree completely with Commissioner Weeks. It is arguable whether or not this is a simple conditional use. I believe it would be difficult to revert a 3700+ s.f. building back to residential use with 19 parking spaces attached. And that's the only issue. It has nothing to do with the credibility of Dr. Howard. I've known him for a very long time. It has nothing to do with the longevity of Dr. Howard's wife's family. It has to do with conditional use, and the letter of the law again I believe is arguable that this cannot revert back once it is turned in to this proposed building. I keep hearing whether or not the neighbors feel this would have an adverse affect upon the surrounding properties. As a board, I would hope you will look at it as whether or not it has an adverse affect on the residential neighborhood it sits in the middle of and the community as a whole there. I believe you're setting a dangerous precedent in spot zoning and I would ask what's going to happen when the next property owner in R-1 zoning wants to open a business. At the very least, I have to say I admire the fact that you turned this down the last time and I would hope that you would at least do that again. Send it back to the mayor and council and make them make the decision. And make them make the decision. Thank you.

Linda Rogers: Would anyone else like to speak in opposition of this?

Lynn Ekelund: 406 Union Street. I really have a question. Dr. Howard was talking about this is not main street, it's Rt. 5, it's Rt. 5, it's a two lane road. Yes it is a state road and my question is, is there any evidence that the Howard's or Mr. Howard have contacted DelDOT to see what kind of impact a 105 patients using your current schedule or as I recall from the last hearing you were talking about having a hearing aid center with a technician who was trained to operate that center, which for me would seem there were going to be more than 105 people. My question is primarily how is this going to affect Union Street's traffic patterns? Thank you.

Linda Rogers: Does anyone else have any points of opposition? Does the council have any other questions of the applicant?

Eric Howard: I apologize, without Mr. Brad to speak out, do I have a moment for rebuttal? Is that typical practice?

Linda Rogers: You can rebut. Limited time.

Eric Howard: I would be grateful. Just a couple of things. Mr. Welu referred a couple of times to his community. I think his community is Overbrook Shores.

Linda Rogers: Well, we're not going to get into his location.

Eric Howard: The idea that the conditional use ordinance requires a home occupation is a fiction. There's nothing in the ordinance that says anything about a home occupation. The ordinance doesn't talk about to the extent the commission says we want to superimpose that requirement on it. It's a requirement that I would suggest is illegal because it's not...the ordinance doesn't say anything about that. To say we are only going to approve conditional uses that are home occupations, that's pulling another section out of the ordinance that has nothing to do with conditional uses and superimposing it on conditional uses that have nothing to do with it and it's not legally mandated. I believe it would be arbitrary and in violation of your own ordinances to the extent you are going to start saying that's the only conditional uses we are going to

approve. The idea that it's something that can't be undone, the approval itself is what says it has to be undone. I mean if the applicant says I want to build an office and I want to have it in a residential area, when it's done it's done, it's done. They can't say that it's built now and you can't do anything about it. The conditional use says it's a conditional use for an office, for a professional doctor's office; that's what it is. I mean, is it going to end to when the doctor...it has to, that's what your approval is. You can't come in and say oh it would be a hardship now; that's the applicants' problem. That's exactly what a conditional use is. It's conditioned to that specific use. That's all we're asking for; that's all the commission's approving. Lastly, the question about the entrance, we, it's one of those things you don't want to go running down a road unless you know you have approval. We know we have to get DelDOT approval. We have to get an entrance permit from DelDOT that's one of the things we have to do. Dr. Howard alluded to the storm water management. That's another thing we know we have to do. Chuck Adams is working on an underground storm water plan that we know we have to get approval from the soil conservation district. We know we have to get DelDOT approval. All those things down the road that we know we can't do, there's no point in doing unless until the Town approves the conditional use.

Debbie Pfeil: I just have one comment and I'm not sure if Mr. Eric Howard knows about this, but in the current zoning ordinance the definition of conditional use is a temporary special exception use which is non-conform in nature and which is granted by the Mayor and Town Council for a period of 1 year or less.

Eric Howard: When I talked to John Brady when we were here last time that again, I suggest that is...your approval is if you come back and say you didn't do what you said you were going to do, you said you were going to do this and that's not what you've done. I know that the other conditional uses have been approved. I don't think they've been back here every year asking for a new approval. To the extent, they're not doing what they said were going to do and that's a real problem. That, again, you put...that's the hammer you have over the applicant that anytime they aren't doing what they said they were going to do, you have the right to say you haven't complied with the mandates of what we told you so you no longer have proof.

Linda Rogers: Does anyone on the board have any further questions?

Louise Frey: I do. Conversation you had with our attorney, is that on the record? Can I see evidence please.

Eric Howard: I believe it is on the record. If not, it was a (??) we had last time.

Louise Frey: Do we have the minutes?

Eric Howard: I believe it's part of the transcript.

Linda Rogers: Any other questions?

Dean Sherman: I've got a question. I'm trying to fill in the blanks here because I haven't followed as closely as some others. Am I right in saying that this has been to Mayor and Council and they approved it with conditions but it had to be reprocessed because of a technicality?

Eric Howard: If I can respond to that, thank you.

Dean Sherman: That may be over-simplifying what happened.

Eric Howard: The Town Council approved it 4 to 1 and it was determined that the notice of the meeting was not correctly posted in the Town Hall.

Dean Sherman: That's why we are going through this?

Eric Howard: So we elected to start over.  
Dean Sherman: Okay. I just wanted to make sure of that.  
Linda Rogers: Does anyone else have any questions?  
Jim Welu: I'd like to comment on his response.  
Linda Rogers: We are done with the public comment right now.  
Jim: That was not a vote. That vote...  
Linda Rogers: Mr. Welu...  
Jim: That vote was illegal.  
Linda Rogers: Mr. Welu, we are done...  
Jim: The council did not approve anything. The council didn't approve anything because that vote was negated.  
Linda Rogers: Mr. Welu. Does anyone have any further questions of the applicant? If not I will entertain a motion to close this public hearing.  
Dean Sherman: I make a motion.  
Linda Rogers: We have motion is there a second.  
Louise Frey: Second.  
Linda Rogers: All in favor of closing the public hearing say "Aye". Opposed – None.  
Motion Carried.

**Item #2:**

**Linda Rogers called the regular meeting to order at 8:09 p.m.**

**Item #3:**

Linda Rogers: Are there any additions or corrections to the agenda? If not, I will entertain a motion to approve the agenda as submitted.  
Louise Frey: So moved.  
Linda Rogers: Is there a second?  
Dean Sherman: Second.  
Linda Rogers: Motion and a second to approve the agenda as submitted. All in favor say "Aye". Opposed?  
Virginia Weeks: Weeks is abstaining. I didn't get a chance to read them. I was out of town.  
Linda Rogers: The agenda?  
Virginia Weeks: Oh, the agenda. I thought you said the minutes. I'd like to abstain from each (??), but yeah.  
Linda Rogers: You want to abstain from approving the agenda?  
Virginia Weeks: No. No. That was a joke.  
Linda Rogers: Okay, now we're down to the minutes.

**Item #4 & #5:**

Linda Rogers: Does anyone have any changes or corrections to the minutes? Would someone like to make a motion to approve the minutes as submitted?  
Dean Sherman: So moved.  
Linda Rogers: Is there a second?  
Gene Steele: Second.

Linda Rogers: We have a motion and a second to approve the minutes as submitted. All in favor say "Aye". Opposed?

Virginia Weeks: Weeks is abstaining.

Linda Rogers: Motion carried with one abstaining, Ms. Weeks.

**Item #6a:**

Linda Rogers: First item on our agenda is the Preliminary Site Plan Approval:

The applicant, The Cape Henlopen School District, is requesting preliminary site plan approval for a parking lot at the Milton Elementary School located at 512 Federal Street further identified by Sussex County Tax Map and Parcel # 2-35-20.11-03.00.

Edwin Teneffoss: I'm with Davis, Bowen & Friedel. We're the site engineers for the project. We have went back, I believe that you guys all received the, I included a letter in with the application where I tried to address all your concerns from two months ago where we had looked into the different issues; the different concerns that you guys had. If you'd like I can go through those or if it is all clear that's fine too, but basically I guess a couple of the main points was with the request to make it one way; to make the complete drive one way. Again, I don't feel like that is the best option. I don't feel like it is the safest option. We did add two new "Do not enter" signs here at the...so that if you come in here, you can go to the parking lot, and the parking only, so it would not interfere in the morning where parents were dropping students off so that it would continue; it would be a one way as far as once you came through then you drop off and you continue going. You don't have cars trying to cross each other and kids walking in front of vehicles. It would be a continuous loop this way and then they would continue on through. And also, we added a "Do not enter" up at this part here behind the gym so that once they came this far, then there was no, again, with this being tight confines behind the gym area, we don't have cars trying to criss-cross back here, but once you basically come through, then you do need to continue through. However, I did not want to make it required everyone to come this way, because in the afternoons, I don't want to force all parents to come through here because this area back in here is where the children cross back and forth to the playground and that's kind of a bottleneck area where to me that is the biggest safety area and I don't want to require all people to have to come through this area if they just want to come in and pick up their children. They can come in here and leave there and I don't require everyone to cross around the back side of the school. So that is my main concern with the safety of requiring it to be a one-way around. Another concern was adding sidewalk; to have some sort of area where they could walk. We did add a sidewalk along the side closest to the building so at least half the parking has the unobstructed walkway plus then most people would probably cross the...just have a direct cross across the parking lot rather than walking down; that they would be able to then cross over and walk down the sidewalk to allow a safer use of the parking lot. Also, a point of clarification was there was concern about the children just walking out to the parking lot unattended and that was a safety concern. The school does not allow the students to get, that do not get on the bus, do not just get free reign to leave. The parent has to come in and get the child and then return to their car with them. It's

not a okay here are your kids and the kids just stand outside and when they see their parent go take off. The parents must come get them out of the auditorium area; they are held in there until the parent comes to get them. We did add lights at the parking lot. I believe they should be shown there on the property. There's two lights between the parking lot and the tennis courts to provide the lighting that would be necessary. I believe you received the revised landscape drawings and we did look into the pervious concrete as requested and pervious concrete is a great application in the warm weather states where it's primarily used right now; it's California and Florida. The main reason for that is because snow removal is not...does not work very well. When you have ice you just can't throw salt down to get rid of the ice because the salt just kind of goes through. It starts to melt basically and falls right through into the concrete and you don't that brine build-up where you are actually able to generate like a small layer of salt water and so it's very difficult to get the ice off of this. DelDOT had a parking lot that they built out of the pervious concrete and I guess the first snow came and they couldn't get the snow off. They ended up just basically filling it in and now it no longer operates as a pervious concrete. They just basically filled it in with sand because they could not get the ice off of it. And with this being a school, I don't feel like that's a...to jeopardize people walking across the parking lot...I don't feel like that's a step that the school can take at this point, safety-wise, and so we are keeping the parking lot as pavement rather than proceeding, rather than continuing with pervious concrete. With that, I guess I would, if you have any additional questions, I would be happy to answer.

Linda Rogers: Does anyone have any questions of the applicant? Bernice, got any questions?

Bernice Edwards: You said that you feel that the suggestions that P & Z gave you, you didn't think that it was a good idea.

Edwin Teneffoss: Well, it's not that it's not a good idea, I don't physically have room to put it in there, I can no longer treat my storm water without providing a pond and then essentially I am losing my ball field and I feel like this, what I did provide, was adequate to address the safety of the parking lot. It provides a safe walkway without having to basically take away a portion of the playground that the kids use. I mean if I had the room, I would have been more than happy to do it, but unfortunately that it restricted...it basically left me not enough land to be able to provide my quality treatment that the conservation district requires without having to go to something more like a pond or something similar to that.

Linda Rogers: Ted?

Ted Kanakos: My only concern is do you actually need all these parking spaces?

Edwin Teneffoss: We currently, the school currently has about 40-50 parents that pick up their children and so I feel like I would not want to reduce the amount of parking spaces, no.

Ted Kanakos: But you have 11 more than is the absolute requirement. What I'd mentioned last time was if you were to take any one row of this parking, you have like 15 in each, if you were to take one of those rows and add 4 more, which would give you your required parking, and you could take away the other whole row and you'd have the required. You would give yourself twice as much...

Edwin Teneffoss: I don't feel like the minimum was, is adequate that I don't feel like to meet the minimum requirement actually meets the schools need. If we have 40 people

picking up their children, they can't just pull up and honk. They have to park and go get their child and then come out.

Ted Kanakos: Well they would park. You could even go up a little further. What I'm saying is that just by extending...

Edwin Teneffoss: Well, we'd be forcing them to park on the grass.

Ted Kanakos: Yeah, extending one line up 4 or 5 more spaces, you would have the requirements, or 1 more, and you would have all this other space free for cars to go in and turn around and come back.

Edwin Teneffoss: So we have, you're saying I provide 20 spaces for 40 vehicles?

Ted Kanakos: No, I'm saying you're not applying for 30, you're applying for fewer. You're applying for a total of 87, not 98.

Edwin Teneffoss: Right, I understand, but I'm using the ones I have now.

Ted Kanakos: Now if they park on the grass, I don't know, I'm not discussing that issue. What I'm saying is that add a little more to one and it would be much easier for cars to come in and come out. I mean, you're gaining at least 20 feet. All those parking spaces on this whole row is gone, plus another 20. You open up an enormous area. You're forced to think within this rectangle because this is the number you want. It impedes the ball field; it impedes drainage; it impedes your tennis courts; and it impedes people going around the building. You're positively stuck with this rectangle.

Edwin Teneffoss: No, I'm stuck with a need for a certain amount of spaces. As an engineer, I cannot design something that doesn't meet the need.

Ted Kanakos: So your requirements are more than zoning allows or calls for?

Edwin Teneffoss: That's correct.

Ted Kanakos: And what basis is that now?

Edwin Teneffoss: Because I know I'm using all my spaces and I know I've got about 40 cars that I need to be able to park.

Ted Kanakos: You're coming and going.

Edwin Teneffoss: I am. They are coming and going but they're going to about at that same time.

Linda Rogers: So what you're saying is at the end of the day, or beginning of the day, you estimate that you have 40 parents that are stopping, parking, getting out of their cars, going in and taking their child either in or out of school? Not including the fact that the school sometimes has events that these parking spaces are not adequate for to start with because you've got all the parents there at one time?

Edwin Teneffoss: That's correct.

Linda Rogers: So you feel that you need more than what our zoning ordinance requires to keep your school functioning properly. You need more parking than what we are going to require you need, so therefore, you've come up with a plan providing more parking than we're asking for?

Edwin Teneffoss: That's correct.

Virginia Weeks: Madame Chairman?

Linda Rogers: Just a minute.

Ted Kanakos: No, I'm done.

Linda Rogers: Bill?

Bill Brierly: No.

Dean Sherman: What's the amount of time from when the school dismisses to when the parents pick them up when the bus leaves? Are you talking about a 10-15 minute window?

Edwin Tennefoss: Yes, that's correct.

Dean Sherman: Again, to help try and clarify you are talking about 40 cars in a 10-15, not 40 cars over a period of several hours?

Edwin Tennefoss: That's correct. Right.

Dean Sherman: So that's why you feel strong about keeping the parking count up.

Edwin Tennefoss: Yes, if I felt like 20 was going to be adequate, I'd be more than happy to only provide 20, it'd be cheaper for the school. I mean, certainly that has advantages but I don't feel like it...

Dean Sherman: So tell me, how many parking, what do you got?

Virginia Weeks: 28.

Dean Sherman: So you got 28 and you've got 40 people, so 28 people come and park, walking across, picking their kids up, walking back. I can see where you are actually going to be a little tight even with what you've got.

Edwin Tennefoss: That's correct.

Bill Brierly: Ed, I was wondering if you did extend, as Ted to my right was suggesting, if you did extend the number of parking spaces on say the sidewalk side that you show here to at least meet the minimum, and leave the other side open, at least for a while? You could still, it seems to me, you could still go back to the other side if you ever want to down the road and build, if you really needed that extra space; the extra spaces.

Edwin Tennefoss: The, I mean, then I'd also, right now I have the funding to do the project now. That's the other part. I'm just a business where I've got the money, I can spend it now, and if I choose not to spend it all, well then I can spend it again in a year. I'm a school district where I've got a pot of money, if I don't use it, it's gone and then I have to acquire to try and find the funding again.

Linda Rogers: Gene?

Gene Steele: No questions.

Louise Frey: No.

Virginia Weeks: I'm really not happy with this. You claim that you need a lot because you need to have it but yet you're going to have 40 parents coming within a 10 or 15 minute space to pick up children and you're only providing 28 spaces. Where are the others going to park?

Edwin Tennefoss: There is an overlap. I mean, there's not...they're not necessarily all going to be there; there are going to be some that get there early. I mean if I get into it and find out that okay, well this isn't enough, well then I would have to add additional parking at that point.

Virginia Weeks: Well why don't you add it now? And then make it so it's safe.

Edwin Tennefoss: Again, which side do you want parking or you do not? I mean I feel like I am getting hit from both sides here. Do you want parking or do you not. I mean one side say no, don't provide so much parking; one saying, oh yeah now you got to. I mean, I feel like...how do you want me to answer here?

Virginia Weeks: My only concern here is I do not like cars parked facing in opposite directions and backing out when you have 40 people for 28 spaces trying to pick up

children. There's going to be a lot of walking down the middle, and with SUV's and vans and the cars people have today, they are nothing to see children behind them.

Edwin Teneffoss: Again, that's why they are accompanied by an adult. I mean, they are just not children running around, it's accompanied by an adult.

Virginia Weeks: I don't know any person. I know about 5 people who can be sure their child is standing next to them in an absolute step with them is to go as they leave school.

Linda Rogers: This is an elementary school, I would be willing to bet.

Edwin Teneffoss: It is. But again it's, you know, it is the parent's responsibility to watch their children. If I'm a parent, I know okay, cars are backing up. My child is going to be by my side. I mean, that's it. Period. I will have a hold of them if I feel they are not going to obey. We can try to say okay well we need to account for people who don't listen or we need to make sure that people that don't, then, I mean...

Linda Rogers: Okay. Just a minute. Mr. Brady has something to say.

John Brady: Good evening. They have met the minimum requirements. If they...if you reject it because you don't like the design, I lose in court because they only have to meet the minimum requirements. They have proposed something greater, and just because you don't like that design portion, it's not going to survive in court. Okay? Thank you.

Virginia Weeks: Are we not responsible for the safety issue? Who considering safety?

John Brady: We look at safety as a factor. It is a private parking lot. The design meets the standards of the zoning code for the Town of Milton and we put on that we didn't like the angle or we didn't like a potential thing, a court is going to say that they exercised too much discretion and that the commission abused its discretion. You have to be very careful. If they did not meet the minimum, then it would be a valid discussion. But if they meet the minimum and we're arguing over whether we project, we feel we believe that there could be a safety issue without any hard facts, then in a court in competent jurisdiction trying to defend that would be virtually indefensible. And I don't think you want to waste time on things you can't defend. I think you want to look at things you can and that's why you have to go through this review procedure. But the presenter for the school district is correct. If they feel based on their usage that they need to propose more parking spaces than our code says, then that's within their discretion. We have to look and see if the design complies with the code requirements for the town, and if the design complies, then speculation about a possibility is not something that's within the preveue of the commission.

Virginia Weeks: Then why are we here? If it complies, why doesn't it just get a rubber stamp to pass him?

John Brady: Because it still has to be approved and you have to review and there are questions you can ask about the review. But the zoning, the planning and zoning commission doesn't micromanage each and every design detail. What it does is to ensure that what has been proposed is in compliance. I'm just telling you what the court decision's have been recently where you can, if they are asking for something, but if your comments are because you feel there are too many parking spots and they want to use, and you don't think they should use their property in that manner, that's beyond the preveue of what your role is as the planning and zoning commissioner.

Virginia Weeks: I do not feel there are too many parking spots. I feel that the configuration of it with cars backing out towards each other is problematic with children,

that's all. And when somebody is hit, and the town is sued, I hope that the court doesn't make us pay because it was in conformance with the zoning ordinance.

John Brady: The town can't be sued and that won't come up as a factor because the town does not own the property and if just because it meets the town's codes and the states codes, it doesn't give the right to sue against the town for doing something in compliance with its zoning law. You are administrative. You are not legislative as a planning and zoning commission.

Linda Rogers: Is there a particular reason why a sidewalk wasn't placed on the side next to the tennis courts?

Edwin Teneffoss: To answer that, I didn't feel like it would get used, because everybody is walking the other direction. So to get out of your car and then turn and walk the other direction to come down, I felt they would come across the parking lot and then walk down.

Linda Rogers: But I mean, if you put sidewalks there do you not feel that people would have a tendency, I mean if you brought the sidewalk down across and over, you don't think that people would follow the sidewalk with elementary aged children? I mean, I'm not disputing that in High school or when I go to a school that I cut across the parking lot, but...

Edwin Teneffoss: If it were me, I'm crossing it but... My honest opinion would be no, I don't think it would get used very much just because people still just want to take the quickest route across. That is human nature. I mean, that's the reason I didn't provide it basically, I didn't feel like it would get used. Yes.

Ted Kanakos: When you say take the quickest route across, you mean run across the cars?

Edwin Teneffoss: You would cross the parking lot over to the sidewalk.

Ted Kanakos: Across the parking lot. These are the cars backing that are in fact backing out? This doesn't make too much sense.

Edwin Teneffoss: Possibly. I...

Ted Kanakos: Well if they all have...if they pull in, they have to back out.

Edwin Teneffoss: That's correct.

Ted Kanakos: And there's a real mod of them. At least 30 of them at a certain time. So, some will pull up to a sidewalk, the others will just pull up to whatever it is. I mean, I know, I've seen a many times with parents with children stay on the sidewalk until they get the car open; they stay on the sidewalk with their brother; they do this or that.

Sidewalks are safe havens and to have 15 cars in a row with no sidewalk in front of them, and 15 and maybe 20 children in and out, I think you do need a sidewalk on that side. I mean that's a safety issue.

Linda Rogers: Would you have an issue with adding a sidewalk to that side?

Edwin Teneffoss: That will be fine.

Virginia Weeks: Will there be crosswalks marked?

Edwin Teneffoss: Not at...I mean at this time I didn't propose it.

Linda Rogers: If you run a sidewalk down to the road, can you add...

Edwin Teneffoss: I can add a crosswalk at that point.

Linda Rogers: Does anyone else have any questions or comments about the plan?

Someone like to entertain a motion? This is a preliminary site plan.

Gene Steele: That we accept the plan with the addition of the sidewalk. I make a motion that we accept the plan with the addition of the sidewalk and the crosswalk.

Bernice Edwards: I second.

Linda Rogers: We have a motion and a second. Roll call vote starting with Miss Edwards.

Bernice Edwards:	Yes
Ted Kanakos:	Yes
Bill Brierly:	Yes
Dean Sherman:	Yes
Linda Rogers:	Yes
Michael Filicko:	Yes
Gene Steele:	Yes
Louise Frey:	Yes
Virginia Weeks:	Yes

Linda Rogers: Okay, MC.

Debbie Pfeil: Just for clarification, that was preliminary? They have another step to go through for final.

#### **Item #6b:**

##### Conditional Use/Preliminary Site Plan Approval

The applicants, Lesa and Paul Howard, are requesting a conditional use and preliminary site plan approval for a physician's office to be located at 506 Union Street. The property is currently zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-16.00.

Linda Rogers: Yes. Okay, Mr. Brady, I have a quick question.

John Brady: I'm sorry I ate the **bagnays** on the way back from New Orleans where I had breakfast this morning where I gave a speech. And when I told the town when they scheduled this meeting, I told them be well because I'll be in New Orleans and I got a fast, earlier flight back.

Linda Rogers: Now can I ask a question?

John Brady: Yes you may. I'm waiting.

Linda Rogers: This is an application for a conditional use and preliminary site plan. So do we have to handle this in two ways which is first for review for conditional use and then proceed with preliminary site plan? Because it's done as both.

John Brady: Under Article 8, Section 3, a preliminary site plan complying with requirements of Article 10 shall accompany an application for approval of conditional use under this article. Together with such information as may be required for determination in the nature of the proposed use, and its affect on the comprehensive plan, the neighborhood and surrounding properties.

Linda Rogers: So it's a combo?

John Brady: It's a combo.

Linda Rogers: Okay. We also have a question, Mr. Brady, before we get started in reference to the length of time a conditional use is granted for.

John Brady: There is a definition. In the front of the definitions it says it's for less than one year. You also go back to Section 8, Article 8, Conditional Uses, and it says approval valid one year, which is Section 4, and it says there that you have an approval and if you have substantial underway during that one year period, you can have an extension by the zoning commission for good cause, before the one year expires for two, one-year extensions. And then it becomes permanent if they build it during that three year period. However, I think another question you had earlier was is any conditional use shall expire upon abandonment or expiration of use. So the conditional use can't be transferred to a new applicant, what happens is if they move out or if you recommend its approval and its approved by Town Council and they operated for 7 years, after that 7 years if they no longer operate and they abandon it, then that conditional use expires and it stays whatever structure that that neighborhood is permitted.

Linda Rogers: Okay, for example, if this were to be granted for use as a doctor's office, doctor takes on a partner, doctor retires, the partner continues to practice, does the conditional use continue?

John Brady: If the business is, say for example, its, I am going use make-up names to make it easier, well Doctor MD associates and they sell that business entity to somebody else and there's a continuation of the doctor's office there, that use does not expire. However, if the use, if they move out and 3 months later somebody wants to move in, they have to go through the process again.

Linda Rogers: So as long as there's no down time?

John Brady: The way it has been (???), there's no down time. They've been allowed to freely sell a restaurant to somebody else for conditional use and that stays, but if there's down time, it's out of business. The conditional use expires based on Section 4. The definition that's in the front says less than one year, but the Section for Article 8 was adopted after those definitions through my research and legislatively you go to the last section that's adopted. We also have in there a section that talks about definitions and it has interpretations on definitions as well.

Linda Rogers: Does anyone have any comments they'd like to make? On the board?

Virginia Weeks: Madame Chairman, after a motion is made, will there be a discussion period of that motion or do we go immediately to a vote? For example, if a motion is made to pass it, will people have an opportunity to say why they are going to vote the way they are before the vote is taken?

Linda Rogers: If you want to.

Virginia Weeks: I would like to have a discussion after whatever motion is made. I would like to have a discussion period.

Linda Rogers: But I mean, don't you want to have a discussion about the application before we make a motion? I mean, what are your concerns, you're for or against, what...you want just somebody to make a motion and then you talk about it?

Virginia Weeks: I just think it's important that in most cases when you're voting, you tell why you are voting the way you are.

Linda Rogers: Well, does anyone have any comments or concerns or anything they'd like to discuss about the conditional use before a motion is entered on to?

John Brady: The process should be as that you should have a motion then you have discussion.

Linda Rogers: Okay. Somebody want to make a motion?

Michael Filicko: Dr. Howard?

Linda Rogers: No. We're done that part. We're discussing here.

Michael Filicko: Alright.

Linda Rogers: So our procedure is we have to have a motion and then talk about the motion? Mr. Brady, is that what we're supposed to do now? Because we're all like changing how we do everything every meeting.

John Brady: I'm trying to be consistent. What we've done is, you're now at Section 6b of your agenda. And you have...they've requested a conditional use and preliminary site plan. If you are asking me, and I'm trying to clarify because, are you asking if you can have discussion for contingencies before a motion is made?

Linda Rogers: I'm just asking how we're supposed to do it because before we used to talk about whether we did or didn't want something and if we did, what conditions we would want and we don't, why we don't want it, but now you're saying we have to make a motion and then...

John Brady: No, I'm sorry. I thought that somebody was trying to make a motion at that point.

Linda Rogers: No, they were saying do we have to do it first and then discuss the motion?

John Brady: Okay. I heard Mrs. Weeks question about on the voting can she say what how she feels. Yes, on a roll call vote you can do that. Right now, you are up for general discussion of Agenda Item 6b, before somebody makes a motion. Just like the practice you just did in 6a.

Linda Rogers: Okay. So Mike, ask your question.

Michael Filicko: It appears that some trees will have to be removed. I'm wondering if there is a place on the lot to replace those trees that are being cut down if conditional use is approved?

Linda Rogers: We could require greens screening and we could require landscaping. Is there a landscaping plan with this? There is this part on the site plan. If you wanted to add more, then you could say I don't think this is enough, I want more or I want something else. Does that answer your question?

Michael Filicko: Yes.

Linda Rogers: Does anyone else have anything?

Gene Steele: The problem with that is they are using 86% of the site. There will be no room to add anything to it. R-1 should be limited to 70% of the site.

Linda Rogers: Is that in our ordinance to limit it to 70%?

Virginia Weeks: Yes.

Gene Steele: Well, I'm just stating what the engineers, based on Cabe Associates.

Linda Rogers: We will go over his comments as well. Does anyone else have any concerns?

Virginia Weeks: Madame Chairman, point of order. If indeed it's exceeding the lot coverage from 70 to 87%, does that not need to go before like the Board of Adjustments to have a variance given?

Linda Rogers: Mr. Brady, would it be required to have a variance because they covering too much of the lot?

John Brady: No.

Linda Rogers: No? No.

Bernice Edwards: If we grant conditional use, could that be one of the conditions that we ask that it get back to the 70%?

Linda Rogers: Well, let's go over Mr. Kerr and URS's comments and see if the parking requirements are met to the minimum, and if there is anything that could be changed.

Louise Frey: Madame Chair, can I ask another probably very silly question.

Linda Rogers: Sure.

Louise Frey: On the site plan requirements, there's an awful lot of information that has not been provided, from Mr. Kerr.

Linda Rogers: Yeah, we're going over Mr. Kerr's comments right now.

Louise Frey: But how are we going to make a decision if we don't have this information or he hasn't had the information?

John Brady: If you look at 11.1.3d. It says the Town Council will review the site plan and requirements established by P & Z Commission, established conditions of their own or deny the application in it's entirety. When I re-read it, and when one of the reasons why it was sent back in my mind, was that you did not look at both the site plan at the time, I am properly splitted off, and when it had to come up because of the reason it was sent back was first off because of the public notice issue, the Town Council did not have that agenda properly posted where it was supposed to. The second factor when I looked at everything again, was that D was not complied with; that when it came from P & Z, it didn't have the site plan, that's why I just told you, you have to look at the site plan and you have to go through all those conditions and that before Town Council can look at it, they have to look at the site plan and the requirements established by P & Z. That's why I told you a few minutes ago that you'd have to look at the site plan tonight in, I think Madame Chair called it combo, with the application, so all the information can be sent to Town Council.

Linda Rogers: Yes, it needs to go through site plan review, so Bob, will you go over your comments please?

Bob Kerr: Just a moment please, Linda.

Virginia Weeks: Madame Chairman, while we are waiting, I'd like to ask Attorney Brady where we are cited with the authority to allow increased coverage of the lot.

Linda Rogers: Well, I think you better hold your question because they are over there discussing something.

Debbie Pfeil: Could you stand by, Mrs. Weeks, for just a minute please?

Linda Rogers: Then you can ask your question.

Virginia Weeks: Okay. I didn't realize they were in conference.

Linda Rogers: We're on hold right at this minute.

Bob Kerr: Sorry for the delay. Bob Kerr, Town Engineer. I did break my memorandum down into the conditional use items and site plan items, since it was broken up that way before, but just quickly, the property is presently zoned R-1, Single Family Residential. The 2003 Comprehensive Plan indicates this and the surrounding properties are designated for residential use. A medical office is not allowed in the single family residential use as either permitted or special permitted use, therefore the applicant has

requested a conditional use for a medical office and the requirements are found in Section 11.1 of the Zoning Ordinance. 11.1.3 contains the procedures for conditional uses. A current legal description of the property and a proposed current site plan are required. As far as I know, a legal description has not been provided; I have not seen one. The commission should first determine, this was my opinion before and John has corrected it this evening, that whether it is suitable for this site as a conditional use should be determined in accordance with the 11.0 and then once the approval was given, it was my opinion that that's when you get into looking at the specific details of the preliminary site plan. And as an alternative, there was a...this could be re-zoned as a Commercial-1. There was testimony given this evening about another doctor's office that is close by that isn't a C-1 zoning, or commercial zoning, for that particular property. Excuse me a moment.

John Brady: Madame Chair, if you go to your book, if the members that have the zoning code with them, the issues under 11.1.3, Procedures for Conditional Use, and what it says here is the property owner or his agent may initiate a request for conditional use or modification of a conditional use by filing an application which includes a legal description of the property and provide as required a proposed current site plan, showing the size and location of the lot, the location of all buildings and proposed facilities including the access drives, parking areas and all streets within 250 ft. of the lot. Plans and elevations necessary to show the proposed development, other drawings or information necessary to an understanding of the proposed use and it's relationship to surrounding properties and a filing fee. That is what Subsection a says. So if your looking and the question came up do we have all the things about what owes a preliminary site plans, the answer is, at this point, the answer is No, because what needs to be shown are the current site plan showing the proposal. What we're trying to say is we're following exactly the wording in 11.1.3.a. Then we go to b and you had the public hearing. C, your review now and what has to go to Town Council is as follows: Subsection c says, the P & Z Commission will review the application and required material for the conditional use to ensure that all the requirements set forth in the zoning ordinance are met and any additional requirements that will be imposed by the P & Z Commission are applied to the site plan prior to it being forwarded to the P & Z Commissioners with the P & Z Commissioners recommendations for Town Council for their review and decision. And if you recommend this approval the conditional use or modifications, Town Council shall not act contrary to such disapproval for recommendations except by a 4/5 vote. So what it was sent back to you for clarification, the issues that I saw was #1, the vote that you took last time was fine to the extent that you voted with the recommendation to deny. However, it did not get forwarded up with the plan for Council to approve. So what you have to look at is does the plan that they file meet the requirements of 11.1.3, is the question before you now. And those elements include a legal description and a current site plan showing the size and location of the lot, the location of all buildings and proposed facilities including access drives, parking and all streets within 250 ft. of the lot, plans and elevations necessary to show the proposed development, other drawings or information necessary to an understanding of the proposed use and it's relationship to surrounding properties and a filing fee. With regard to the question of the filing fee, I believe Robin has indicated that that has been paid, so

you don't have to worry about that. You need to make a review of what's before you to see that the legal description, and Robin, was there a legal description filed?

Robin Davis: As far as, the only thing that was on the site plans shows where the survey.

John Brady: Okay.

Robin Davis: We agreed that that's not a legal description.

John Brady: So it wasn't started, commencing and appointed 15 minutes, 30 whatever and going for a course of 65 ft. then to a point and to another; it did not have the legal description of the property was not attached to the application? Was that asked for?

Robin Davis: No.

John Brady: Okay.

Robin Davis: The same stuff that was brought last time was brought this time.

John Brady: Okay. The...yes...

Linda Rogers: I just have a question. I'm just like a little confused here. We have to review this as though it is coming into us as a site plan review. We have to make sure it complies... No...

John Brady: You are reviewing... See, conditional site plan approval, when they have to file, they have to put a site plan of what they propose and meet the conditions under 11.1.3. This is not a review of all the conditions of our conditional site plan ordinance; that's not required under a conditional use, at this point. Okay? What has to be done is, I'm just following what the ordinance says. The ordinance says...it does not say a preliminary site plan. It says site plan. It says current, proposed current site plan. So we don't follow what's in the preliminary site plan. We look at the factors that are specifically enumerated in Subsection a.

Linda Rogers: So what we look at is this is what we propose to do. We're not reviewing it for any type of compliance?

John Brady: What you look at it is they're asking for conditional use. You have to look and under the conditional use, you have to see whether or not you believe that is provide for certain use which cannot be well-adjusted to their environment, or not permitted in the current zoning district and clearly, based on the application, this type of use would not be permitted in the current zoning. It's a residential district; this is commercial, for use as a doctors office, so that's the first part of 11.1.1. Then you look at the next section. Would this have an adverse affect on surrounding areas and property? That is one of the questions that you have to discuss and answer between yourselves tonight and needs to be addressed in the motion. Then the next question you have to ask under 11.1.1 is this a use that is essential and desirable for the general convenience and welfare of the Town. Then you have to answer because the unusual characteristics of the application, or the special characteristics to the area where they are located, the conditional use requiring special consideration so that it only may be properly located respect to the objectives of the zoning ordinance, they got comprehensive plan and the affect on nearby properties. So the specific questions you have to answer are under 11.1.1. The specific things you have to look for are under 11.1.3. That's your checklist for this application. Not the preliminary site plan previously in the code and the different part, like we just did for the Cape Henlopen School District.

Linda Rogers: So where our agenda said Preliminary Site Plan, that's really not what we're doing?

John Brady: Yes. And your other consultants, your planner and your engineer, followed the agenda that said preliminary. And it should have just said current site plan. So the materials you have reflect the preliminary site plan, and so don't yell at them because they gave you information based on that. Everybody else can yell at me til we did it Saturday; it's been a great week. So, this is what you have to look at; 11.1.1, 11.1.3 and follow that for your consideration right now.

Linda Rogers: So we are not reviewing this as a site plan review?

John Brady: You are not reviewing this as a preliminary site plan review.

Linda Rogers: Okay. We are just reviewing it; this is what they propose and we're deciding whether we want to allow it here or not of what they propose, for a conditional use.

Michael Filicko: So this is...

Linda Rogers: This is subject to change in the event they should get approved, when it came in for preliminary site plan. Okay.

Virginia Weeks: Madame Chairman, I have a question.

Linda Rogers: Oh yeah, you did. To Mr. Brady, right?

Virginia Weeks: Please. Thank you. Yes. Mr. Brady, the last sentence in 11.1.2, conditional use is on page 99, the first paragraph says, unless otherwise specified in this ordinance or specific as a condition of approval, a height limit, yard spaces, lot area and sign requirements shall be the same as for other uses in the district in which this conditional use is located. Are they therefore allowed to just willy-nilly have 17% more lot coverage and if we are to forgive that, where is our power cited to forgive that, please?

John Brady: You have to balance between the number of parking spaces which the conditional

use would require vs. the coverage in the district. So if you recommend approval and recommend less than 19 parking spaces, then you are doing it to maintain the 70% coverage maximum that is founded in an R-1 district.

Linda Rogers: Okay, does anyone else have any comments, concerns, questions?

Because the way I understand it, we are reviewing this as a conditional use that's been submitted to us with a proposed plan and we are either to defer it and act on it with either recommendation of approval with stipulations, or a recommendation of denial. Correct?

John Brady: Your choices are to, under 11.1.3, review the application and required material to ensure the requirements set forth in the zoning or code are met and any other requirements will be imposed or not recommend it. Now, you can recommend, recommend with changes or not recommend. There are your 3 options.

Linda Rogers: Just like that. Defer, yes with conditions, or no?

John Brady: Okay.

Linda Rogers: Correct?

John Brady: Correct.

Linda Rogers: Okay. Does anyone have anything else they would like to discuss about the proposed application? Any comments they would like to make? Would someone like to make a motion of some type?

Michael Filicko: I would like to make a motion that we approve this for conditional use with stipulations...

Linda Rogers: If you've got some.

Michael Filicko: Well, they are in Mr. Kerr's notes?

Linda Rogers: No.

Michael Filicko: Can't use that?

Linda Rogers: What type of stipulations do you want?

Michael Filicko: I'm reading what is in front of me.

Linda Rogers: That's a site plan review, so you can have landscaping and lighting; you can have...

Michael Filicko: Landscaping and lighting? Landscaping, lighting, sign.

Linda Rogers: Anything else?

Michael Filicko: Nothing that I can think of.

Linda Rogers: Okay, we have a motion on the floor to forward this application to the Town Council with a recommendation of approval with the stipulations that they have a lighting plan to show where the lighting is going to be; what the sign is going to look like; and landscaping. Correct?

Michael Filicko: Yes, ma'am.

Linda Rogers: Along with of course, there would have to be a site plan review of the application. Is there a second to that motion?

Bernice Edwards: I second that.

Linda Rogers: We have a motion and a second. Are there any questions on the motion?

Ted Kanakos: Now this is a motion to simply to vote for with conditions?

Linda Rogers: Yes.

Virginia Weeks: And the site plan.

Ted Kanakos: And the site plan?

Linda Rogers: No. This is not a site plan review.

Ted Kanakos: So it's just conditional?

Linda Rogers: Yes. This is to allow the use on this property.

Ted Kanakos: So if I say yes it would allow it and if I say no, it is to disallow it? That simple.

Linda Rogers: The motion is to forward it with the recommendation of approval with the conditions as stated. So you either vote yes, to forward or no to vote against the motion to forward it.

Virginia Weeks: Excuse me, Linda?

John Brady: The conditions that were recommended in the motion are those types of conditions that would be on a preliminary site plan? Let me try and re-read the type of conditions that could be on this. It could be a condition that it can only operate from 9-5, Monday – Friday or 7:30-6, Monday - Friday and no more than 3 hours on Saturday, 9-12. The condition can be on time, it can be on no more than people then the building proposed in compliance with the fire code. They are the type of things that can be done at this point. I don't want you to be confused with what you have in a preliminary site plan because that's not what's in front of you. Preliminary site plan would come back after Council approves a conditional use. You have in front of you under the code a current site plan. And if you're confused, I'm just reading the language for your review out of this ordinance.

Linda Rogers: Can you change it to English instead of out of the ordinance?

John Brady: What I'm trying to ensure that proper procedural due process is provided to the applicant and the concerned citizens of the town. There are still some questions you

have to answer in the proposed motion. That has to be this is a residential zone. The proposed conditional zone if you are recommending favoring, you need to say reasons why this type of use would be appropriate for that zone; how it fits into the comprehensive plan; how the access of medical services are necessary in a growing town; how that these services would be helpful to the residents of the town; how it's within walking distance for a number of residents in town; and that the benefits of the town outweigh any use of a commercial doctors office in a residential area. Further, you have to talk about the time limitations. On a conditional use, usually time limitations. I was not here for the application because I was delayed in getting back but normally you hear the doctors offices are open from 7am until 8pm or emergencies or something. That's the type of time consideration you can put, and the number of days that it can be used. They are the kind of things that you can put on conditions. The 70% is what the coverage area is in the district. The proposed, the site plan that was attached when it was measured was greater than that, to comply with what is required for parking in this zone. You can put a condition on coverage on the lot, and then when the preliminary site plan comes back, if it is approved, then you can put those further conditions. But these are the type of things. Not the conditions you would do on a review just like you did with the past review about the parking lot at the school district because that was a preliminary site plan review. They are two different contemplated in the ordinance and it may be the first time we've been trying to do it the way it says, but that's what we're trying to do.

Linda Rogers: So do we need to rescind this motion and start over? Huh?

John Brady: The requirements have to be met by the motion. You are the determiner for the recommendation. The question that came up was is the legal description which is required under 11.1.3 present? And you've heard that it sounds like that may not have been supplied.

Linda Rogers: So another words, we can't do anything. Again. Is that what you're saying.

John Brady: I would ask the attorney for the applicant.

Eric Howard: I don't believe we heard that at the last one, the planning and zoning meeting that happened before, we submitted a copy of the deed at the meeting.

John Brady: If a copy of the deed was submitted in the record previously, then that is the legal description.

Eric Howard: It has the meets and bounds of the description. I don't have a copy of this with me tonight but I'm fairly certain that we said here, just as kind of a formality when we were giving the return receipt we also said here's a copy of the deed.

John Brady: Okay. The applicants' agent has stated that the legal description was previously submitted to the Town. Now, the next thing you look at is the current site plan showing the size and location of the lot. You need to look and see if that is there and you've all agreed that that's the size and location of the lot. That's under 11.1.3.a. The location of all buildings and proposed facilities including access drives, parking areas and all streets within 250 ft. of the lot, plans and elevations necessary to show the proposed development, other drawings and information necessary to an understanding of proposed use and it's relationship to surrounding properties and a filing fee. You have previously been advised by the project coordinator, the filing fee has been paid, so what you need to discuss before you can make a proper motion, is those other 6 factors which we can go over one at a time.

Michael Filicko: Okay. Let's do it.

Linda Rogers: Okay, now. We're back up and running again. Okay, we've established we do have an elevation. Correct?

Louise Frey: Yes.

Linda Rogers: Okay. Next.

Dean Sherman: This is for clarification. Everything pertaining to the elevation will be in compliance with the building code R-1 district, correct?

John Brady: It has to be, yes.

Dean Sherman: Okay, there you go.

Louise Frey: Even though it's not stated on the plan, what the elevation is? The height?

John Brady: It is not on the plan. I believe a rough estimate is 27 ft. from the scale and measuring it. The district is 30-1/2 ft...30.5 for R-1 and two stories as a maximum.

Dean Sherman: As part of the motion, we need to make sure that this is because it's not identified on the plan. We need to make sure all the elevation dimensions comply with R-1 building code.

Virginia Weeks: I believe this was asked of the applicant and he stated that the roof of the house at present would be the highest point of the building; that nothing would exceed.

Dean Sherman: I'll be honest with you, that was a doctor talking architecture and I don't think that house is near as tall. I think what you'll find if you go inside you'd probably got a less than 8' first floor and probably something where I'd have to stoop down in the second floor. I don't think that building there is like standard for a two-story house. And again, I know you don't know because you are a doctor, but what little bit I know about the neighborhood and as a Miltonian, I think that's an old two-story which is less than today's spec. So I think it will be a little higher than what's there but it will still be in compliance with R-1 building code.

Virginia Weeks: Well, he just said that it was as high as it was going to be because they are not expanding the second floor, they're only using what's there.

Dean Sherman: They may, and it will be better if you're looking for lower height that'll be better, but I'd be surprised.

Virginia Weeks: Well, it's to keep it within keeping of the neighborhood.

Bernice Edwards: Well, wouldn't be within the 30'? The height? But if you look at the building now, and with even the renovations, as long as you keep it under the 30 ft'.

That's what's going to be very important.

Dean Sherman: That'll meet code.

Bernice Edwards: That will be within code.

John Brady: It's going to have to comply with the code for R-1 and it's also going to have to comply with the fire marshal's review if it's recommended.

Louise Frey: But there is nothing about how the elevations built.

Linda Rogers: No.

Dean Sherman: There's a practical matter even if it's like a fire code matter, they may have to do something. They may have to raise the roof.

Virginia Weeks: I'm just saying that the question had been asked and answered by the doctor, by the applicant by...

Dean Sherman: Yeah, I heard what he said and I didn't think it was correct.

Virginia Weeks: But that's, you know he spoke with his architect, I didn't.

Dean Sherman: Yeah, right.

Debbie Pfeil: Mrs. Weeks, you have to understand that this is just a site plan and the applicant does have to go to the fire marshal. Fire marshal could regulate the roof pitch differently as long as it is under 30-1/2. Also, your commercial building code could regulate the roof pitch to be different with the modifications they have to make. As long as it's under the 30-1/2, that's required by the code, the applicant will be able to proceed. It is too preliminary to get a roof pitch at this point without going through the proper agencies for reviews other than the fact that they have to stay under 30-1/2, because this is not a preliminary.

Virginia Weeks: I'm not arguing that he can't go to 30-1/2. I'm just stating to finish the matter that he has already given testimony of where he intends to go. That's all.

Debbie Pfeil: Some of it.

Linda Rogers: Next. Mr. Brady.

John Brady: Other drawings and information necessary to an understanding of the proposed uses and it's relationship to the surrounding properties. That part of the requirements of 11.1.3 goes back to 11.1.1 that talks about the R-1 district. This is commercial and is desirable for the general convenience of welfare of the town, if you recommend it, and the unusual characteristics. And also about the restrictions you may want to put on hours, coverage of the lot; that comes back under 11.1 and 11.3.

Virginia Weeks: The doctor has stated that the office hours are from 9-5, no weekends and no evenings, except for in an emergency. Correct? Five days a week.

Bernice Edwards: No, I think he said 3. If you answered me correctly, you said Monday, Tuesday, Wednesday 9-5; you're off on Thursday because of surgery, and you're only a half day on Friday.

Linda Rogers: But we can make a stipulation Monday - Friday.

Bernice Edwards: We can say Monday - Friday.

John Brady: If you do not make a stipulation then it is presumed 24/7.

Bernice Edwards: Okay, well, we'll make...

Virginia Weeks: So I would ask for the stipulation of 9-5, Monday - Friday, no evenings, no weekends, except for a dire emergency. The other thing that I would ask is that hearing aids not be sold on the property. This is a doctor's office. Not an audiologist showroom. I think that if you're going to start selling hearing aids, you're going to increase the traffic flow a great deal. I mean hearing tests obviously can be given but if you're going to start selling merchandise that's beyond the venue of a doctor.

Ted Kanakos: So what you'll have then is two businesses then and the possibility of apartment-joining also. We'll see an awful lot of traffic.

Linda Rogers: Am I allowed to ask the doctor questions, or are we done that?

John Brady: You're done that.

Linda Rogers: Oh.

Bernice Edwards: I guess...

Linda Rogers: You mean if I go to a doctor, and I need a hearing aid, you don't get that from the doctor, you have to go somewhere else? I'm asking, I don't know. I mean, because when I get contacts, I get it from my eye doctor, so I don't...

John Brady: Before 2003, hearing aids could be done by people who are not licensed by the state and not medical doctors. That has changed recently in Delaware.

Linda Rogers: So does that mean you have to get them through him, and so he needs to be able to...

John Brady: The state has new regulations under Title 22, Occupations and Professions, on the delivery of hearing aids, grandfathering those hearing aid examiners that were in place at the time the new law took place and putting new requirements on the distribution of hearing aids.

Bernice Edwards: Madame Chair, could I ask this? If you have a doctor, or a specialist, that you are going to that office, and he can provide you that comprehensive care, especially if you're talking seniors who're either going to be transported there, dropped off there, and most of the time you are probably have them transported, dropped off, and the vehicles probably not going to be there. But if he's there and you have that service, I would assume, I would hope that the individual would be able to not only get the test, but get the services they need. You're talking a Town that is constantly growing and most of the people that are coming into this town are retirees, older people, whose going to need his service. Or the ones that have younger kids that's here. I guess it's just...

Virginia Weeks: I agree with you.

Bernice Edwards: It gives me some concerns about every time we as a planning and zoning, it's...we've got to stop being so selective about who we want to come and who we don't want to come.

Virginia Weeks: I agree with you but there's plenty of commercial space available. This gentleman is asking for conditional use for a medical office. Not for a sale and repair of hearing aids. And there's plenty of places in town; there's lots of commercial space for rent, where that can be done.

Bernice Edwards: But you know....

Virginia Weeks: This is a conditional use and I'm trying to keep the traffic in a residential neighborhood to a minimum.

Bernice Edwards: And I think it will be Ginny.

Virginia Weeks: Pardon me?

Bernice Edwards: I think it will be. I think we need it. We need to be honest and fair across the board and I don't see that very much here.

Virginia Weeks: Well, I just don't think that....

Bernice Edwards: And, you know, because what people have a tendency to do, 15 or 20 years ago, once they get into here, they don't want nobody else in. And I have some real problems with that.

Virginia Weeks: I would let this doctor in a flip if the building wasn't so large and the traffic so bad.

Bernice Edwards: Oh. I'm sorry Madame Chair, but I just...that's my feelings.

Linda Rogers: Okay. Yes?

Bill Brierly: I know that there are a many a...an ophthalmologist office and optometrist office that has an optician's office as well located within the same facility. For some people that's a great convenience and I'm not really sure I would see much difference in traffic based on that kind of a set-up myself. I see the same people visiting the doctor just going over to see the optician than really not many people outside of that using the optician services in that particular incidence for instance.

Linda Rogers: Anyone else have any comments? Mr. Brady.

John Brady: I think you've discussed everything under 11.1.1 and 11.1.3. I think now you are ready for a motion because you've established a proper record.

Linda Rogers: Okay. Somebody like to make a motion?

Michael Filicko: I would like to make the motion again that conditional use be granted for a doctors office with the stipulations that were discussed.

Linda Rogers: Say them.

Michael Filicko: The hours, 9-5 unless it is an emergency, Monday - Friday, no weekends again unless it's an emergency.

Linda Rogers: Okay, we have a motion to forward this to Town Council with a recommendation of approval with the stipulation that the hours of operation be from 9-5, Monday - Friday, no nights, no weekends, unless it is an emergency. Is there a second to that motion?

Bernice Edwards: I second that motion.

Linda Rogers: We have a motion and a second. Roll call vote.

Bernice Edwards: Aye

Ted Kanakos: No

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: Yes

Gene Steele: No

Louise Frey: No

Virginia Weeks: No, for the following reasons: I believe the building is too large for the area; I believe that 87% coverage is too much coverage; I do not think that it's in the best interest of the surrounding property and neighborhood even though those neighbors may; Final objection, and I think there are plenty of other places in town where this could occur. This is being asked for because the property is already owned by the doctor and his wife. There is plenty of commercial property available in town for sale or for rent where this could occur. So No.

Linda Rogers: We have 4 voting No to the motion and 5 voting in favor of the motion.

Motion Carried

**Item #7:**

Linda Rogers: Being no other items on the agenda, I will entertain a motion to adjourn.

John Brady: Madame Chair, before you recess, I just want people to know that the next in this process is it goes to Town Council and Town Council will have it on the next agenda. There is no specific public hearing requirement under Town Council, but people can comment in the public comment portion before Town Council considers it.

Eric Howard: Mr. Brady, when will that be?

John Brady: The next Town Council meeting is November 5<sup>th</sup>.

Virginia Weeks: Mr. Brady, will this ever come back to us for preliminary site approval or anything.

John Brady: Only if it's approved by Council.

Virginia Weeks: Thank you.

Bernice Edwards: For those of us voting no, we're not allowed to vote?

John Brady: No, those of you voting no, when it comes back for site approval, are free to vote again. If Council approves it. Thank you.

Linda Rogers: Can we have a motion to adjourn?

Bernice Edwards: So moved.

Linda Rogers: Is there a second?

Gene Steele: Second.

Motion to adjourn at 9:32 p.m.