

**MINUTES OF THE HARDYSTON TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING HELD APRIL 2, 2009**

**CALL TO ORDER:** Chairman Miller called the meeting to order at 7:30 p.m.

**STATEMENT OF COMPLIANCE:** Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975, adequate notice as defined in Section 3D of Chapter 231 P.L. 1975 has been made to the New Jersey Herald and a copy is posted on the Bulletin Board at the Hardyston Township Municipal Building.

**ROLL CALL:**

William Walsh	Present
Santo Verrilli	Present
Gerald Laughlin	Present
Candace Leatham	Present
Mary Ann Murphy	Present
Roger Kabbash	Present
Hugh Krone (Alt. 2)	Excused
Carl Miller	Present

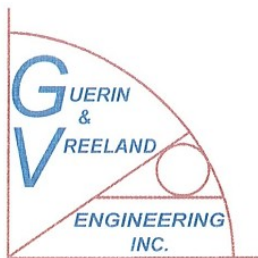
**OTHERS PRESENT:** Michael Vreeland, P.E., P.P.; Richard Brigliadoro, Esq., and Anne-Marie Wilhelm, Secretary.

**APPROVAL OF MINUTES:** *Minutes of the Hardyston Township Zoning Board of Adjustment Meeting Held March 5, 2009:* A motion to approve was made by Gerald Laughlin and seconded by Santo Verrilli. Roll Call: William Walsh – yes, Roger Kabbash – yes, Carl Miller – yes. The motion carried.

**APPROVAL OF RESOLUTIONS: ZB-3-07-1A, Schappert, Christopher M., “D” Variance, Minor Subdivision, “C” Variance, Block 17 Lot 12.08:** Please see the application’s minutes below.

**APPLICATIONS:**

**ZB-3-07-1A, Schappert, Christopher M., “D” Variance, Minor Subdivision, “C” Variance, Block 17 Lot 12.08:** William T. Haggerty, Esq., appeared on behalf of the Applicant. Board members reviewed the following report.



272 Route 206 - Suite 215  
Flanders, NJ 07836-9081  
Tel (973) 252-9340  
Fax (973) 252-3069  
[www.guerinvreeland.com](http://www.guerinvreeland.com)

ROBERT P. GUERIN, P.E., P.P.  
[bguerin@guerinvreeland.com](mailto:bguerin@guerinvreeland.com)

MICHAEL G. VREELAND, P.E., P.P.  
[mvreeland@guerinvreeland.com](mailto:mvreeland@guerinvreeland.com)

1 March 20, 2009

*Board of Adjustment  
Hardyston Township  
Municipal Building  
149 Wheatsworth Road  
Hardyston, New Jersey 07419*

*Re: Variance & Minor Subdivision  
Christopher Schappert  
Block 17, Lot 12.08*

*Application No. ZB-3-07-1  
(Our Project No. 1002)*

*Dear Board Members:*

*We are in receipt of the following supplement technical information relating to the above referenced matter:*

- *Plan entitled: "Lot Grading & Drainage Plan, Schappert Properties, Block 17 - Lot 12.08, Situated in the Township of Hardyston, County of Sussex, New Jersey". The plan was prepared by MCB Engineering Associates, LLC, consists of 1 sheet and is dated December 22, 2007 with a latest revision date of March 10, 2009.*
- *Report entitled: "Storm Water Management Plan for Minor Subdivision, Block 17, Lot 12.08, Township of Hardyston, Sussex County, New Jersey". The reported was prepared by MCB Engineering Associates and is dated January 2, 2008 with a latest revision date of March 10, 2009.*
- *A signed and seal copy of Soil Permeability Test Results*

*Based on our review of this supplemental information, many of the comments noted in our previous reports have been addressed from an engineering prospective. The following outstanding items discussed in our previous reports are listed below for the Board's consideration:*

*Page No. 2  
Variance & Minor Subdivision  
Christopher Schappert  
Block 17, Lot 12.08  
March 20, 2009*

- 1.0 *An updated minor subdivision plan should be provided.*
- 2.0 *A stormwater maintenance plan, in accordance with N.J.A.C. 7:8-5.8 for the proposed stormwater management measures needs to be provided.*
- 3.0 *Upon completion of the stormwater system, we recommend that the applicant provide a construction certification from a licensed engineer to document that the proposed stormwater system has been properly constructed.*
- 4.0 *The applicant and their successors and assigns will be responsible to maintain the storm water management measures and structures. We recommend that the Township be granted a right-to-access the property in order to ensure these facilities are functioning properly.*
- 5.0 *Should it be determined at any time that the stormwater management system is not functioning properly, we believe the cost of any corrective actions should be the responsibility of the owner.*
- 6.0 *The applicant should provide an affidavit to this office indicating that they are in receipt of the Stormwater Maintenance Manual. The affidavit should depict the name, address and phone number of the person responsible for maintenance of the stormwater management facilities constructed in conjunction with this project.*
- 7.0 *Prior to the start of any construction, the approved limit of disturbance should be established in the field.*
- 8.0 *The gores noted on the boundary survey should be addressed.*
- 9.0 *The sight distances noted on the plan should be evaluated for adequacy by the applicant's engineer. The adequacy of the available sight distance should be based on sight distance requirements as defined by AASHTO.*

10.0 *The applicant proposes to abandoned the on-site well currently serving the dwelling located on the other side of Crystal Spring Road. A suitable replacement water supply acceptable to the impacted party should be provided.*

11.0 *The applicant should be advised that they will need to address applicable provisions of the Township's affordable housing ordinance. Any deed perfecting this subdivision should include a note to this effect.*

*Page No. 3  
Variance & Minor Subdivision  
Christopher Schappert  
Block 17, Lot 12.08  
March 20, 2009*

12.0 *A driveway and stormwater maintenance agreement needs to be prepared and submitted.*

13.0 *In order to ensure that access is provided to Lot 2, the Board may want to require that the common driveway (included appropriate drainage facilities) be constructed prior to perfecting the subdivision.*

14.0 *At this time, we believe other agency approvals that may be required for this project include, but may not be limited to:*

- NJDEP: well and well abandonment*
- Health Department: well & septic system*
- Sussex County Soil Conservation District*

*Very truly yours,*  
**GUERIN & VREELAND ENGINEERING, INC.**

*/s/ Michael G. Vreeland, P.E., P.P.  
Michael G. Vreeland, P.E., P.P.  
Board Engineer and Planner  
For the Firm*

*cc: Richard Brigliadoro, Esq.  
Patrick McClellan, P.E  
Bernard M. Caffrey, L.S.*

*[mnts.hzb.4.2.09.doc]*

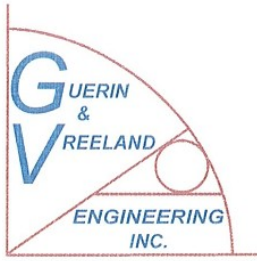
Concerning the above report, the following comments were noted.

Comment 1: Mr. Vreeland stated the plan was provided, and the plan will be a subject of the next report.

Comment 2: Mr. Vreeland stated the plan was provided, and the plan will be a subject of the next report.

Comment 6: Mr. Vreeland clarified that the stormwater maintenance manual identifies the homeowner's responsibility for the stormwater system. He stated the manual is supposed to be attached to the deed.

Board members reviewed the next report.



272 Route 206 - Suite 215  
Flanders, NJ 07836-9081  
Tel (973) 252-9340  
Fax (973) 252-3069  
www.guerinvreeland.com

ROBERT P. GUERIN, P.E., P.P.  
bguerin@guerinvreeland.com

MICHAEL G. VREELAND, P.E., P.P.  
mvreeland@guerinvreeland.com

1 March 23, 2009

Board of Adjustment  
Hardyston Township  
Municipal Building  
149 Wheatsworth Road  
Hardyston, New Jersey 07419

Re: Variance & Minor Subdivision  
Christopher Schappert  
Block 17, Lot 12.08  
Application No. ZB-3-07-1  
(Our Project No. 1002)

Dear Board Members:

We are in receipt of the following supplement technical information relating to the above referenced matter:

- Plan entitled: "Minor Subdivision Prepared for Lot 12.08, block 17, Situated in the Township of Hardyston, County of Sussex, New Jersey". The plan was prepared by Cafrey and Associates and MCB Engineering Associates, LLC, consists of 3 sheet and is dated August 21, 2006 with a latest revision date of November 18, 2008.
- Manual entitled: "Storm Water Management Measure Facilities Operation and Maintenance Manual for Shappert Properties Minor Subdivision At Block 17, Lot 12.08, Township of Hardyston, Sussex County, New Jersey". The manual was prepared by MCB Engineering Associates and is dated March 11, 2009 with no subsequent revision date.

**1.0 Stormwater Management Measures O&M Manual**

The proposed manual is generally acceptable from an engineering perspective. However, we recommend that the following items be added:

1.1 Photographs should be included as part of the inspection program.

Page No. 2

Variance & Minor Subdivision  
Christopher Schappert  
Block 17, Lot 12.08  
March 23, 2009

1.2 Copies of completed logs along with photographs should be submitted annually to the Hardyston Township Municipal Building to the attention of the Township Stormwater Program Coordinator

**2.0 Minor Subdivision Plan**

In order to avoid some of the issues noted below we recommend that the two plan sets (i.e., minor subdivision and grading/drainage) be combined into a single set.

- 2.1 *Lot numbering acceptable to the Tax Assessor should used on the plan.*
- 2.2 *Sheet 1: The signature lines should indicated Zoning Board rather than Planning Board.*
- 2.3 *Sheet 1: The information in the Zoning Table does not correspond with the latest proposal.*
- 2.4 *Sheet 2: The driveway profile and detail do not correspond with the latest proposal. If the two plan sets are combined we believe that this information can be removed from sheet 2.*
- 2.5 *Sheet 2: The driveway layout does not correspond with the latest proposal and it is unclear if the easement is sufficient. In addition, if an easement is provided for the proposed drainage system we recommend that it be included on the plan.*
- 2.6 *An electronic copy of the final subdivision map will need to be provided to our office as well as the Tax Assessor's Office.*

*Very truly yours,*

**GUERIN & VREELAND ENGINEERING, INC.**

**/s/ Michael G. Vreeland, P.E., P.P.**

*Michael G. Vreeland, P.E., P.P.  
Board Engineer and Planner  
For the Firm*

*cc: Richard Briigliodoro, Esq.  
Patrick McClellan, P.E.  
Bernard M. Caffrey, L.S.*

*[mnts.hzb.4.2.09.doc]*

Chairman Miller opened the meeting to the public for questions and commentary on the matter. No member of the public addressed the Board. The meeting was closed to the public.

Board members reviewed a resolution prepared by Richard Briigliodoro, Esq. Corrections were made. A motion to approve the following memorializing resolution was made by William Walsh and seconded by Roger Kabbash. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Mary Ann Murphy – yes; Roger Kabbash – yes; Carl Miller – yes. The motion carried.

**RESOLUTION  
TOWNSHIP OF HARDYSTON  
ZONING BOARD OF ADJUSTMENT  
IN THE MATTER OF  
CHRISTOPHER M. SCHAPPERT  
APPLICATION NUMBER ZB-03-07-1A  
DECIDED ON APRIL 2, 2009  
MEMORIALIZED ON APRIL 2, 2009  
MINOR SUBDIVISION APPROVAL  
WITH DENSITY VARIANCE RELIEF  
PURSUANT TO N.J.S.A. 40:55D-70d (5) AND  
“C” VARIANCE RELIEF FOR LOT DISTURBANCE  
AND PLANNING VARIANCE RELIEF**

**WHEREAS, CHRISTOPHER M. SCHAPPERT** (hereinafter “Schappert” or “Applicant”) has made application to the Township of Hardyston Zoning Board of Adjustment (hereinafter “Zoning Board” or “Board”) for minor subdivision approval density

variance relief pursuant to N.J.S.A. 40:55D-70d(5), planning variance relief and “c” variance relief for lot disturbance in regard to property known and designated as Tax Block 17, Lot 12.08 on the Tax and Assessment Map of the Township of Hardyston, located along Crystal Springs Road, Hardyston, New Jersey in the C-R Commercial Recreation Zone District (hereinafter “C-R Zone”); and

**WHEREAS**, public hearings were held on December 4, 2008, March 5, 2009 and April 2, 2009 after the Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by William T. Haggerty, Esq. of the Law Firm Dolan & Dolan; and

**NOW, THEREFORE**, the Zoning Board makes the following findings of fact, based on evidence presented at its public hearings, at which time a record was made.

The application before the Board is a request for minor subdivision approval density variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(5), planning variance relief and “c” variance relief for lot disturbance for property known and designated as Block 17 Lot 12.08 as shown on the Tax Map of the Township of Hardyston, located along Crystal Springs Road, Hardyston, New Jersey in C-R Zone.

Testifying on behalf of the Applicant was Christopher M. Schappert (hereinafter “Schappert”) Patrick D. McClellan a licensed professional engineer in the State of New Jersey (hereinafter “McClellan”) and Robert A. Michaels, P.P. a licensed professional planner in the State of New Jersey (hereinafter “Michaels”). McClellan provided an overview of the application and explained that the Applicant proposes a two (2) lot subdivision. McClellan stated that it was the Applicant’s intent to design the application with a smaller lot closer to Crystal Springs Road and a larger lot in the rear. He stated this was done in an effort to reduce the area of disturbance. McClellan also confirmed that there was one (1) driveway off of Crystal Springs Road running along the common boundary line with Crystal Springs Golf Course that will service the two (2) properties. The application proposes to subdivide the existing 4.212 acre parcel into two (2) lots. McClellan also stated that the site topography and grading for the septic locations for the proposed dwellings and stormwater management facilities necessitate the lot disturbance. However, all of the aforementioned facilities can be accommodated on the subject property.

McClellan discussed stormwater management and noted that he conferenced with Michael Vreeland, P.E. the Zoning Board engineer. A maintenance plan, in accordance with

N.J.A.C. 7:8-5.8 for the proposed stormwater management measures needs to be prepared pursuant to the directives of Mr. Vreeland. McClellan subsequently submitted the maintenance plan to the Board Engineer.

The Applicant's attorney Mr. Haggerty indicated that an additional "c" variance was required for lot disturbance. Haggerty also represented to the Board that the proposal was reduced from three (3) lots to two (2) lots, the houses were moved closer to Crystal Springs Road and a common driveway was proposed using design techniques in order to reduce the amount of lot disturbance.

McClellan also stated that one (1) wall at the common property line on proposed Lot 1 ranges in height from 1 feet to 4 feet. He further testified that additional walls will need to be constructed at the back of the driveways. In order to further reduce lot disturbance, additional walls would need to be constructed. These walls would not provide any benefit other than reducing disturbance. McClellan submitted a letter to the Board dated January 3, 2008 that further discussed alternate means of property development that were considered to reduce the requested lot disturbance variance.

This matter was opened up to the public in regard to the testimony of McClellan and the Board was addressed by Mr. Stickle. Mr. Stickle stated he and another party maintained the proposed road on the westerly portion of the property. Stickle stated that it is a 50 feet right-of-way and the power company has easements on it.

No other members of the public addressed the Board at this time.

Haggerty submitted to the Board a letter from Wade Wander of Wander Ecological Consultants dated August 23, 2007. Haggerty represented that it was Mr. Wander's opinion, having reviewed the site, that the Applicant is not affected by wetlands or wetlands transition areas.

Next testifying on behalf of the Applicant was Robert Michaels, P.P. a licensed professional planner. Michaels submitted to the Board a photo array and a blown up portion of a Tax Map. He discussed the location of the subject property and the property surrounding it. Michaels stated that the Applicant is limited to a density of .3 units per acre relative to the MIDD Zone. Michael stated that proposed Lot 1 is to be approximately 1.4 acres and proposed Lot 2 is to be 2.8 acres with access from the driveway on the east side of the property. He stated the easterly property line borders the golf course. Michaels further stated that the density that is being proposed is .47 units per acre and requires density

variance relief under the MLUL pursuant to N.J.S.A. 40:55D-70d(5). Michaels testified in support of granting a d(5) density variance. Michaels represented that three (3) purposes of the Municipal Land Use Law are being advanced pursuant to N.J.S.A. 40:55D-2 as follows:

- a) To encourage municipal action to guide the appropriate use or development all lands in this State, in a manner which will promote the public health, safety and general welfare;
- d) To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the County and the State as a whole; and
- e) To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, community and regions and preservation of the environment.

Michaels stated that this property is uniquely suited for the proposed use given the surrounding land uses, given the fact that the property is adjacent to a golf course on the east side and is across the street from the higher density townhouses. He further stated the proposal is in keeping with the character and lot size of the neighborhood development pattern in Hardyston Township as well as in the neighboring municipality of Hamburg Borough. He stated there is even higher density across the street in Crystal Springs. He stated that given the surrounding uses, the proposal would not impact the surrounding properties.

With reference to the negative criteria, Michaels stated the variance could be granted without substantial detriment to the public good because the proposed development fits into the neighborhood scheme. The proposed lots will be larger than some of the existing lots in the neighborhood. Moreover, having houses setback off of the road was also found in the neighborhood. He stated that the variances can be granted without negatively impacting the intent and purpose of the zone plan and zoning ordinance. Michaels further testified that the residential use is the same as exists in the neighborhood and that dwellings can be sited and landscaped to compatibly fit with the adjacent golf course as well. Michaels further reported this proposal is compatible with the adjacent recreation uses and is compatible with the neighborhood. Michaels also testified that one of the objectives of the master plan is to preserve and to enhance the existing established rural, residential and recreational character of Hardyston Township. He stated that this proposal is consistent with that goal and meets

both the positive and negative criteria as well as the statutory requirements for the granting of a d(5) variance. Michaels once again confirmed that the Applicant is proposing a density of .47 units per acre where .3 units per acre are permitted under the ordinance.

Michaels further addressed the need for ancillary "c" variance relief pursuant to the Municipal Land Use Law under N.J.S.A. 40:55D-70c. Michaels addressed the need for variance relief for lot disturbance. He stated that the positioning of the houses closer to Crystal Springs Road lessens the disturbance that could occur on those properties. Haggerty, the Applicant's attorney, noted that a majority of the disturbance would be replanted.

The meeting was opened up to the public relative to the testimony of the Applicant's planner. No members of the public addressed the Zoning Board during this phase of the proceedings.

Questions arose relative to the orientation of the homes. Haggerty stated the homes would be oriented facing the golf course. Schappert also testified that there is an old quarry wall that is approximately 3.5 feet in height and existing evergreens. Schappert stated he intends to leave this area intact as a buffer zone.

With reference to the proposed lot configuration, Haggerty stated that by making the front lot smaller, the proposed driveway would be shorter, thereby reducing lot disturbance. McClellan stated that the proposed lot lines are a function of the lot development. He explained that a grading plan was done and then the lot lines were put between the units. McClellan stated an effort was made to bring everything as close to Crystal Springs Road as possible. McClellan stated that two (2) equally sized lots do not work with the environmental issues, the stormwater issues and the criteria of the design. McClellan confirmed that disturbance was a problem on both proposed lots.

An issue was raised in regard to the existence of a gore. Haggerty stated the matter was not resolved. Haggerty also stated that it is a title issue and the Applicant is confident of their title lines and the Applicant's title lines are undisputed.

With reference to the existing well on the property that serves the property across the street, Haggerty stated the Applicant would accept the relocation of the well as a condition of approval. He stated that the owner is receptive to having a well relocated to her property, this lot is identified as Lot 14.04.

There were no additional members of the public present expressing any interest in this application.

**NOW, THEREFORE,** the Zoning Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The application before the Board is a request for minor subdivision approval, ancillary “c” variance relief for lot disturbance and d(5) variance relief for density and planning variance relief for property known as Block 17, Lot 12.08 as shown on the Tax Map of the Township of Hardyston, located along Crystal Springs Road, Hardyston, New Jersey in the C-R Commercial Recreation Zone District. The application proposes to subdivide the existing 4.212 acre parcel into two (2) lots. The plans indicate that a common driveway, intersecting with Crystal Springs Road, will provide access to the lot. The property is currently undeveloped. Proposed Lot 1 is 61,028 square feet or 1.401 acres and proposed Lot 2 is 122,447 square feet or 2.811 acres.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both

these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Applicant requires a lot disturbance variance pursuant to N.J.S.A. 40:55D-70c because the maximum lot disturbance within the MIDD-3 district is 50% of the lot area or 25,000 square feet which ever is less, and the Applicant is proposing 35,700 square feet and 25,700 square feet of disturbance on the proposed lots. The Board accepts the representations of the Applicant's engineer and planner indicating that the positioning of the houses closer to Crystal Springs Road has lessened the disturbance that could occur on the properties as well the representations that a majority of disturbance would be replanted. The Board also concludes that the increase in lot disturbance is acceptable due to the size of the proposed lots and conditions existing thereon.

Based upon a review of the testimony presented, the Board determined that the proposed subdivision would be in keeping with the character and lot size of the neighborhood development pattern in Hardyston Township as well as in the neighboring municipality of Hamburg Borough. The Board also recognizes that there is greater density across the street in Crystal Springs. Nevertheless, given the surrounding uses, the Board concludes that this proposal would not negatively impact the surrounding properties. The Board also determines that the proposed development fits into the neighborhood scheme, albeit the lots will be larger than some of the lots in the neighborhood. The Board also accepts the representations of the Applicant's Planner that the location of the houses setback off of the road is consistent with other houses found in other areas of the neighborhood. Moreover, the residential use as proposed is compatible with other residences in the area and fits in with the adjacent golf course.

As such, the Board concludes that ancillary "c" variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. Furthermore, the Board concludes that the benefits of the approval would outweigh any conceivable negative detriment. Under these circumstances, it is appropriate for the Board to grant ancillary "c" variance relief for lot disturbance of proposed lots 1 and 2 as more specifically set forth herein.

Under the Municipal Land Use Law, a Board of Adjustment, when considering a "d" variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance.

In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

A density variance pursuant to N.J.S.A. 40:55D-70d(5) is required because the maximum density within the MIDD-3 District is 0.3 units per acre and the Applicant is proposing .47 units per acre. In Grubbs v. Slothower, 389 N.J. Super 377 (App. Div. 2007), the Appellate Division considered the appropriate standard of review to be applied to variance applications seeking deviations from density requirements in a particular zone. The Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(5) governs density variances. The Court in Grubbs held "density variances for permitted uses in the zone should not trigger the application of Medici's more stringent standard for the same reasons expressed in

Coventry Square. A density variance seeks a departure from certain regulations applicable to a use the municipality has chosen to permit, not prohibit in the zone.”

Furthermore, the Court in Grubbs stated that “Zoning Boards of Adjustment should focus their attention on whether the Applicant’s proofs demonstrate that the site will accommodate the problems associated with a proposed use with [a greater density] than permitted by the ordinance.” Id. at 389. The Court further held “a successful Applicant for a density variance therefore must show that despite the proposed increase in density above the zone’s restrictions, and, thus, the increased intensity in the use of the site, the project nonetheless served one or more of the purposes of zoning and was consistent with the overall goals of the MLUL.” Id. at 389.

In Grubbs the Court also addressed the negative criteria. “The Applicant would need to demonstrate that the increase in density would not have a more detrimental affect on the neighborhood than construction of the project in a manner consistent with the zones restrictions.” Id. at 390.

The Board in reviewing the application under the standard enunciated in the aforementioned Grubbs decision determines that the Applicant has satisfied the positive and negative criteria under the Municipal Land Use Law for granting a density variance pursuant to N.J.S.A. 40:55D-70d(5). The Board makes this decision based upon the proofs presented in this case. The Board concludes that the property is uniquely suited for the proposed use given the surrounding land uses, given the fact that the property is adjacent to a golf course on the east side and is across the street from greater density townhouses. The Board also concludes that this proposal is in keeping with the character and lot size of the neighborhood development pattern in both Hardyston Township and Hamburg Borough. The Board is satisfied that the proposed two (2) lot subdivision would fit into the neighborhood scheme and that the lot sizes are appropriate in this neighborhood. The proposed two (2) lot subdivision is also compatible with the adjacent recreational uses and compatible with the established rural residential and recreational character of Hardyston Township. The Board also determines that it makes better planning sense to have two (2) lots for the construction of single family dwellings than one (1) excessively large lot with one (1) single family dwelling.

The Board therefore concludes that the Applicant has satisfied the positive and negative criteria and is entitled to d(5) variance relief under the Municipal Land Use Law.

The applicant also requires a planning variance under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-35 and 36 with respect to proposed Lot 2 in Block 17. Section 35 requires that no permit for the erection of any building or structure shall be issued unless the lot abuts the street giving access to such proposed building or structure. Proposed Lot 2 in Block 17 does not abut Crystal Springs Road. As a result, proposed Lot 2 does not front an improved public street and, therefore, requires a planning variance.

In connection with applications for planning variances, the Courts have looked at conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout as shown on the official map. Furthermore, in Kligman v. Lautman, 53 N.J. 517, 543 (1969), the Court held requirements for street frontage may be dispensed with provided adequate access for emergency vehicles is assured by some lesser means of access which will also protect any future street layout shown on the official map or on a master plan of streets duly adopted by a Planning Board. In addition, Amato v. Randolph Twp. Planning Board, 188 N.J. Super. 439 (App. Div. 1982) and Philips v. Westfield Board of Adjustment, 44 N.J. Super. 491 (App. Div. 1957) all provide that planning variances may be granted when the Board is satisfied that there is adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or on the general circulation plan of the municipal master plan. Therefore, the Board determines that the proposed common driveway is in conformance with the Township standards. The Board further concludes that the proposed common driveway provides adequate access for emergency vehicles to access the site based upon the fact that it meets the Township standards for a common driveway.

Upon consideration of the plans, testimony and application, the Board determines that the proposed minor subdivision plan approval has met the minimum requirements of the Municipal Land Use Law, case law, and Township ordinances to a sufficient degree so as to enable the Board to grant the relief being requested. The Board further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of the Township of Hardyston that the application of Christopher M. Schappert for real property known and

designated as Block 17, Lot 12.08 on the Tax and Assessment Map of the Township of Hardyston, located along Crystal Springs Road, Hardyston, New Jersey in the C-R Zone, requesting minor subdivision approval, ancillary “c” variance relief for lot disturbance, density variance relief, and planning variance relief pursuant to the Municipal Land Use Law is determined as follows:

1. Minor subdivision approval for the creation of two (2) building lots for the construction of single family dwellings is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47;
2. A density variance under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(5) in order to create two (2) building lots is granted; and
3. Ancillary “c” variance relief pursuant to the Municipal Land Use Law under N.J.S.A. 40:55D-70c for lot disturbance is hereby granted.
4. Planning variance relief is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-35 and 36.

**IT IS FURTHER RESOLVED** that the application for minor subdivision, ancillary “c” variance relief, density variance relief and planning variance relief is granted subject to the following terms and conditions:

1. The subdivision of this parcel shall be implemented in accordance with a minor subdivision plan prepared by Caffrey & Associates, Inc. dated August 21, 2006 with revisions through November 18, 2008 consisting of three (3) sheets and any subsequent revisions thereto as directed by the Zoning Board or Board Engineer.
2. This approval is granted strictly in accordance with plans prepared by MCB Engineering Associates, LLC dated December 22, 2007 and last revised on March 5, 2009 and any subsequent revisions thereto as directed by the Zoning Board or Board Engineer.
3. The Deed recorded and memorializing the subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicant shall record the Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render the approval null and void.

4. This approval is granted strictly in accordance with any recommendations set forth on the record by the Zoning Board during the course of the public hearing process on December 4, 2008, March 5, 2009 and April 2, 2009.

5. Applicant represents that all of its representations and stipulations made by or on behalf of the Applicant to the Township of Hardyston Zoning Board are true and accurate and acknowledges that the Zoning Board specifically relied upon said stipulations in the Board's granting of approval. If said representations and stipulations are false, this approval is subject to revocation.

6. The Applicant shall comply with the recommendations contained in the Board Engineer's review reports dated November 24, 2008, February 23, 2009, March 20, 2009 and March 23, 2009.

7. The granting of this application is subject to and conditioned upon the Township of Hardyston Tax Assessor assigning appropriate lot numbers in connection with this approval.

8. The granting of this application is subject to and conditioned upon the submission of revised plans in accordance with the directives of the Zoning Board and the Board Engineer's review letters set forth herein.

9. The granting of this application is subject to and conditioned upon the approval of the submitted stormwater management maintenance plan in accordance with N.J.A.C. 7:8-5.8 for the proposed stormwater management measures. Photographs shall be included as part of the inspection program. Furthermore, copies of completed logs along with photographs shall be submitted annually to the Hardyston Township Municipal Building to the attention of the Township Stormwater Program Coordinator. The approved stormwater management maintenance plan shall be recorded in the office of the Sussex County Clerk contemporaneously with the recording of the subdivision deed.

10. The granting of this application is subject to and conditioned upon a construction certification from a licensed engineer to document that the proposed stormwater system has been properly constructed.

11. The granting of this application is subject to and conditioned upon the Township of Hardyston being granted a right to access the property in order to ensure the stormwater management facilities are functioning properly. The Applicant and their successors and assigns shall be responsible to maintain the stormwater management measures and structures.

12. The granting of this application is subject to and conditioned upon the Applicant or their successors and assigns being responsible for the cost and expense to undertake any corrective action or remedial repairs required to ensure that the stormwater management system is functioning properly.

13. The granting of this application is subject to and conditioned upon the Applicant providing an affidavit to the Board engineer's office indicating that the Applicant is in receipt of a stormwater maintenance manual. In addition, the affidavit should depict the name, address and phone number of the person responsible for maintenance of the stormwater facilities constructed in conjunction with the project.

14. The granting of this application is subject to and conditioned upon the Applicant's engineer providing confirmation of the adequacy of the available sight distance for the proposed driveway in conformance with AASHTO standards, which shall be subject to the review and approval of the Board engineer.

15. The granting of this application is subject to and conditioned upon the Applicant complying with any and all ordinances of the Township of Hardyston relative to COAH/Affordable Housing compliance. The subdivision Deed to be recorded in the Sussex County Clerk's office shall include a note to this affect, which shall be subject to the review and approval of the Board attorney.

16. The granting of this application is subject to and conditioned upon the granting of a driveway access easement in favor of the proposed rear Lot 2. In addition, a Driveway Maintenance Agreement as well as a Stormwater System Maintenance Agreement shall be drafted by the

Applicant's attorney and recorded in the office of the Sussex County Clerk contemporaneously with the recording of the subdivision deed. The subject Easement and agreements shall be subject to the review and approval of the Board engineer and Board attorney.

17. The granting of this application is subject to and conditioned upon the Applicant constructing a common driveway inclusive of appropriate drainage facilities prior to perfecting the subdivision, in order to ensure that access to proposed Lot 2 is provided.

18. The granting of this application is subject to and conditioned upon the Applicant abandoning the on-site well and providing a suitable replacement water supply acceptable to the owner of Lot 14.04, which shall be at the Applicant's cost and expense. This condition shall be satisfied before the Applicant perfects the minor subdivision approval.

19. The granting of this application is subject to and conditioned upon Sussex County Planning Board approval, if required.

20. The granting of this application is subject to and conditioned upon the Applicant receiving Sussex County Soil Conservation District approval, if required.

21. The granting of this application is subject to and conditioned upon Township of Hardyston Health Department well and septic system approval, if required.

22. The granting of this application is subject to and conditioned upon New Jersey Department of Environmental Protection approval including, but not limited to, well and well abandonment, if required.

23. The granting of this application is subject to and conditioned upon the Applicant's engineer and the Board engineer establishing in the field an approved limit of disturbance prior to the start of any construction.

24. The granting of this application is subject to and conditioned upon the Applicant resolving the issue of the gores on the boundary survey which shall be subject to the review and approval of the Board engineer and Board attorney.

25. The granting of this application is subject to and conditioned upon the submission by or on behalf of the Applicant of an electronic copy of the final subdivision map to the Board Engineer's Office as well as the Hardyston Township Tax Assessor's Office.

26. Certification that taxes are paid to date of approval.

27. Payment of all fees, costs and escrows due or to become due. Any moneys are to be paid by the Applicant within twenty days of said request by the Board Secretary.

28. Subject to other applicable rules, regulations, ordinances and statutes of the Township of Hardyston, County of Sussex, State of New Jersey, or any other agency or entity having jurisdiction hereunder.

The undersigned secretary certifies that the within Resolution was adopted by the Zoning Board on April 2, 2009 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 2, 2009.

/s/ Anne-Marie

Wilhelm

Board Secretary

IN FAVOR: 6

AGAINST: 0

ABSTAINED: 0

BOARD MEMBERS ELIGIBLE TO VOTE: William Walsh; Santo Verrilli; Gerald Laughlin; Mary Ann Murphy; Roger Kabbash; Carl Miller

C:\Users\repasyw\Documents\Downloads\mnts.hzb.4.2.09.doc rev 04-03-09

**ZB-2-09-1, Crystal Springs Builders, L.L.C., "D" Variance, Crystal Springs North Soil Removal Operation, Block 14, Lots 22.01, 24.01, 24.02, 24.04.; ZB-2-09-2, Crystal Springs Builders, L.L.C., Preliminary and Final Site Plan, Crystal Springs North Soil Removal Operation, Block 14, Lots 22.01, 24.01, 24.02, 24.04.**

M. Richard Valenti, Esq., appeared on behalf of the Applicant. Mr. Mulvihill provided an overview of the revised plan. With reference to concern about traffic conflicts in the area of the restaurant, he stated the restaurant is closed and that most of the previous tenants were operating on nights and weekends. He stated a maximum of 120 truck trips per day is projected. He stated the CAVA Winery is generally open at night and on the weekends with occasional special events. He stated he did not see this as an insurmountable issue.

Mr. Brigliadoro confirmed that Andrew Mulvihill, Principal, and Joseph Golden, P.E., P.P., were previously sworn and still under oath.

The following exhibits were entered.

A-5: Traffic Control Plan, *Crystal Springs North*, Block 14, Lots 22.01, 24.01, 24.02 & 24.04, Twp. of Hardyston, Sussex County, NJ, Dated 04/01/09, Sheet 1 of 1, prepared by Golden & Moran Engineering, LLC

- A-6: Site Photographs 1, *Crystal Springs North Soil Removal*, Block 14, Lots 22.01, 24.01, 24.02 & 24.04, Twp. of Hardyston, Sussex County, NJ, Dated 4/01/09, Sheet 2 of 2, prepared by Golden & Moran Engineering, LLC
- A-7 Site Photographs 2, *Crystal Springs North Soil Removal*, Block 14, Lots 22.01, 24.01, 24.02 & 24.04, Twp. of Hardyston, Sussex County, NJ, Dated 04/02/09, Sheet 1 of 2, prepared by Golden & Moran Engineering, LLC
- A-8 Soil Removal Cross-Section Exhibit, *Crystal Springs North Soil Removal*, Block 14, Lots 22.01, 24.01, 24.02 & 24.04, Twp. of Hardyston, Sussex County, NJ, Dated 04/01/09, Sheet 1 of 1, prepared by Golden & Moran Engineering LLC

Referencing Exhibit A-5, Mr. Mulvihill discussed the circulation pattern. He confirmed that the trucks would remain on company owned property until they reach Route 94. With reference to emergency access, Mr. Mulvihill stated a crew could get to the base of the hill and walk up.

Referencing Exhibit A-6, Mr. Golden discussed the traffic control plan and signage. Michael Vreeland, P.E., P.P., stated he preferred the prior plan.

The Applicant discussed dust control measures. Mr. Golden stated that from soil erosion control, emergency access, and dust control perspectives, the revised proposed route is the preferred route. Mr. Mulvihill noted that trucks could be covered, gravel could be put down, and calcium chloride could be utilized. Mr. Mulvihill stated that improvements were not yet made to the rear of the office building property. He stated the office building is used by Crystal Springs employees only and the traffic pattern is typically – employees come in the morning and leave at night. Mr. Golden noted that a tracking blanket could also be utilized. Mr. Golden noted that the truck route would be “reasonably close” to the restaurant structure. With regard to structures located in the vicinity of the office building, Mr. Golden stated they are about 50' away.

Referencing Exhibits A-4 and A-7, Mr. Golden discussed the route and adequacy of the truck paths. He stated the sand is very stable and the trucks will make the pathways better before they make it worse. He stated snow fencing would be installed to delineate the routes. He stated this would keep the trucks moving slowly. He confirmed that maintenance of the existing pathway would be necessary.

Chairman Miller opened the meeting to the public. Ms. Peg Kurlander was sworn. She suggested that everyone that speaks come to the mike as it is difficult to hear. Ms. Kurlander asked about the timing of a truck trip. Andrew Mulvihill stated it would be about a ten-minute trip from when the truck is loaded, through the parking lot, and then a little longer afterward. Mr. Golden stated it would not take that long. Mr. Mulvihill confirmed there would be no two-way traffic. Ms. Kurlander questioned the calculation and asked if someone would time it. She stated that she had walked alongside the office building where it was spongy and there was a lot of standing water. Mr. Mulvihill confirmed that improvements were not done in that area. Ms. Kurlander asked about the emergency road and Mr. Mulvihill clarified that the road was the same as the proposed road. Ms. Kurlander asked how far the trucks would be running from her property line. Mr. Golden stated it would be 50'. Ms. Kurlander asked about the existence of rules governing quarrying operations and asked if there would be a wash area before the trucks entered Route 94. Mr. Golden stated there are strict rules regarding the migration of soil off the site and dust control. Ms. Kurlander asked how the Applicant would cross the stream. Referencing Exhibit A-4, Mr. Golden stated that they would go over the stream. Mr. Mulvihill noted there was an existing pipe there. Mr. Golden confirmed that the pipe was structurally adequate.

Ms. Kurlander stated she would like to witness a test of the noise impact from the trucks. Mr. Golden stated that the contours and topography would act as a natural sound barrier.

Referencing Exhibits A-5 and A-6, he identified flat areas where trucks would not have to rev their engines.

Michael Vreeland, P.E., P.P., asked if the operation would hinder the restaurant operation. Mr. Mulvihill stated the winery operator was "o.k." with the proposal.

With reference to the timing of the trucks accessing the property, Mr. Golden stated you would sit at a traffic light for three cycles for one of the trucks to go by. He stated it was a minimal effect. Mr. Mulvihill stated he would stipulate that he would run sixty trips in and sixty trips out per day. Mr. Kabbash asked if a restaurant operator wanted to run both breakfast and lunch, how that would impact the soil operation. Mr. Mulvihill stated he could not run the trucks behind the restaurant due to the existence of a vineyard in that area. Mr. Mulvihill stated he would assess the matter and select the operation that was the most profitable for him.

Mr. Ed Rolando was sworn. He stated it was his truck that went on the property and the road was stable. He noted it was the worst time of the year to go in. He stated they went in fully loaded. He acknowledged the climb was steep and there were no problems. He stated the trucks would not be going that fast. He stated he could use the work and the material. He stated there would be maintenance of the road. He stated the truck fully loaded weighs 22 tons.

Mr. Brad Sparta was sworn. He stated he was the golf course superintendent of Ballyowen Golf Club. He stated that from a company standpoint, more people have been laid off this past winter than ever before. He stated he has a skeleton crew and he would like to see this happen for another revenue stream for the company so they could keep people working.

Mr. Russell Law stated he is a Hamburg Borough Councilmen. Mr. Briadoro confirmed that Mr. Law was sworn at the prior hearing and was still under oath. Mr. Law asked if a water truck would be on site for dust control. Mr. Mulvihill stated a truck would be there as necessary. Mr. Mulvihill confirmed that he would not tap into the Hamburg Borough hydrants for water. Mr. Law stated that he was assured by OEM (Office of Emergency Management) officials that Hamburg Borough, regardless of what happens on the site, could handle it between Hardyston and Hamburg. With reference to the potential truck traffic, Mr. Law stated that he and Hamburg Borough would like to see the proposal happen now, before the major construction takes place. He stated the Route 94 and Route 23 intersection is substantially done. He stated the truck traffic could be handled with ease. He stated that Crystal Springs is asking for economic relief. He stated he highly recommends the proposal be passed.

Ms. Peg Kurlander stated her main concerns are noise and dust. She stated the dust was addressed and requested a field review of potential noise impacts. Mr. Law asked if the use of a Jake-brake could be prohibited. Mr. Mulvihill stated he would have no objection. Mr. Miller confirmed that the Applicant agreed not to use the Jake-brake.

Mr. Golden discussed phasing of the soil removal. Referencing Exhibit A-8, he explained what the property would look like as the site is cut and filled. Mr. Valenti explained that Phase I involves taking soil from above the level needed for the residences – approximately 80,000 yards, which will bring the ground down to the level needed for the residential development. Mr. Golden stated that Phase II calculations have not been done but 120,000 yards is estimated. He stated that at the completion of Phase II, the most the property would be below grade would be 10'.

Mr. Mulvihill discussed bonding and stated that if the Applicant were required to bond to fill the hole back up to grade, in terms of a restoration plan for an excavated site, a bond of 1.6 million would be required. He explained that this is difficult to do. He asked for permission to restore the site using plantings and not to be required to bring the grade back up. Mr. Golden provided an overview of the development plan for Crystal Springs North and the Village Center. He discussed the grading plan and explained it was driven by the environmental constraints, which he identified as wetland buffers.

Mr. Mulvihill proposed limiting the application to Phase I for a total of 80,000 yards. Mr. Valenti stated the excavation would be limited to the area that is above the grade and the

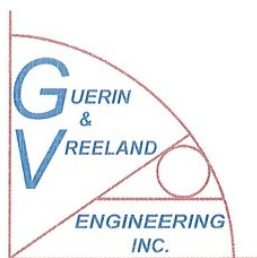
need to bond to bring it up to grade would not exist. Mr. Valenti stated that when the Applicant is ready to proceed with Phase II, bonding for that portion of the development could be posted. Chairman Miller stated he was not comfortable with Phase II and going beyond what the approved grades for Crystal Springs North are. Mr. Mulvihill stated that there are significant expenses with the access permit. He stated 80,000 of the 380,000 would not necessarily work economically. With reference to the bond, he stated he would post it.

Mr. Valenti discussed the special reasons noted in a 1997 Zoning Board of Adjustment approval for soil removal on the subject property. Chairman Miller noted that there was never any intent back then to sell the soil. He stated the intent was to redistribute the soil to other Crystal Spring's projects underway. Mr. Valenti questioned if the 800,000 yards, previously approved, was to be used only by Crystal Springs and used within the three years allocated by the approval. Mr. Mulvihill stated he did not think the sale of soil was excluded. Mr. Mulvihill stated that the intent at that time was to sell some of the soil. Mr. Miller noted the main reason of the prior approval's soil operation was to provide for grades to build the golf course.

Board members reviewed the Applicant's planning report. Mr. Golden stated the public good is met if the site is suited to the use. Mr. Golden stated the quality of the sand and gravel deposits and the distance from the neighboring properties makes it an ideal use of the land. He stated that on a net-net basis, the Applicant is reducing the number of truck trips. He stated that the proposal also lessens the costs. Mr. Golden stated the benefits outweigh detriments. Michael Vreeland, P.E., P.P., stated there are negative aspects also, including wetland buffers and an access route that goes through two or three existing uses. He stated that to say the site is particularly well suited, is a double-edged sword in this case.

Mr. Valenti noted that since 1997, the Applicant has obtained wetland delineations and permits. He stated the ability to protect the environment is better today having gotten the permits. Mr. Mulvihill confirmed that he has spent years and hundreds of thousands of dollars on the project. Mr. Brigliadoro noted that in 1997, the Board concluded that the soil removal was necessary and incidental to the development of the property for its intended use. He stated the Applicant must show that the proposed use is particularly suited to the site from both the Applicant's and the Municipality's viewpoint. Mr. Mulvihill stated he would reduce the request from 380,000 yards to 230,000 yards and eliminate Phase III. He discussed the benefits of the Crystal Springs project to the township. He stated the proposal would provide assistance to keep the project going.

Board members received the following report.



272 Route 206 - Suite 215  
Flanders, NJ 07836-9081  
Tel (973) 252-9340  
Fax (973) 252-3069  
[www.guerinvreeland.com](http://www.guerinvreeland.com)

- ROBERT P. GUERIN, P.E., P.P.  
bguerin@guerinvreeland.com
- MICHAEL G. VREELAND, P.E., P.P.  
mvreeland@guerinvreeland.com

/March 26, 2009

Board of Adjustment  
Hardyston Township  
Municipal Building  
149 Wheatsworth Road  
Hardyston, New Jersey 07419

Re: Variance & Site Plan  
Crystal Springs North Soil Removal  
Block 14, Lots 22.01, 24.01, 24.02 and 24.04  
Application No. ZB-2-09-1  
(Our Project No. 1002)

Dear Board Members:

Subsequent to preparing our February 23, 2009 report, we have received the following additional information relating to the above referenced matter:

- Report entitled: "Crystal North Soil Removal, Planning Report - March 4, 2009, Request for a 'D1' Use Variance Soil Removal Operation, Crystal North, Bl. 14, L. 22.01, 24.01, 24.02 & 24.04, State Route 94, Hardyston, Sussex County". The report was prepared by Joseph Golden, PP.
- Plans entitled: "Soil Removal Plans, Crystal North, Block 14, Lots 22.01, 24.01, 24.02 & 24.04, Township of Hardyston, Sussex County, NJ." The plans were prepared by Golden & Moran Engineering, Inc., consist of 21 sheets, and are dated February 4, 2009 with a latest revision date of March 19, 2009.
- Golden & Moran Engineering, LLC transmittal dated March 20, 2009. The transmittal documents changes that have made to the revised plan.

We have reviewed the supplement information and offer the following additional comments for the Board's consideration:

Page No. 2  
Variance & Site Plan  
Crystal Springs North Soil Removal  
Block 14, Lots 22.01, 24.01, 24.02 and 24.04  
March 26, 2009

#### **A. Planning Report**

- 1.0 The report indicates a "use" variance to allow a soil removal operation at the subject property was granted by the Zoning Board in 1997 and that this application is for a much more limited amount of soil.

**Comment:** In our opinion, the mere fact that an approval was previously granted for a similar and larger operation does not in itself support the granting of the requested variance. This is not to say that this factor may should not be considered, in conjunction with other facts, in considering the variance request, but the variance must rest on more than just this criteria.

We have reviewed the resolution associated with the prior use variance approval. Although the previously approved non-conforming use includes similarities to the current proposal the particular facts relating to the two cases are different. Notable differences include: 1997 soil removal operation was proposed to enable the property to be developed with a nine hole golf course while this application is proposed to enable the property to be developed with residential housing; since the 1997 application wetlands and stream encroachment regulated areas have been established by the NJDEP; since the 1997 application the Cava Winery and Crystal Springs administrative office building are in operation; the proposed configuration and improvements relating to the haul routes have changed. The Board must decide each case upon its own merits in light of the particular facts of the case as elicited from the testimony and exhibits viewed in light of the current statutory requirements.

- 2.0 The report indicates that the location is particularly suitable for the intended use and therefore promotes the general welfare.

**Comment:** If the use is not one that inherently serves the public good, the applicant must prove to the satisfaction of the Board that the use promotes the general welfare because the proposed site is particularly suited for the proposed use. We do not dispute that the subject property has some unique features that are particularly suited for the proposed use (i.e., sand and gravel

deposits, distant to neighboring properties, etc.). However, in our opinion it is clear that the activities as proposed will also conflict with site features, existing uses and nearby properties. These conflicts are most evident along the proposed access route where heavy equipment and dump trucks will traverse through: environmentally sensitive areas; the rear yard of the newly constructed Crystal Springs administrative office building; the parking lot for the Cava Winery and former Hayloft Restaurant.

Page No. 3

Variance & Site Plan

Crystal Springs North Soil Removal

Block 14, Lots 22.01, 24.01, 24.02 and 24.04

March 26, 2009

- 3.0 The report and applicant have indicated that a market exists for sand and gravel and that selling sand would return the applicant a larger profit than selling other excavated materials.

**Comment:** In our opinion, this is not the test by which a variance application should be measured.

- 4.0 The report indicates that the application reflects the intent and purpose of section 40:55D2m of the Municipal Land Use Law (i.e., To encourage coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to more efficient use of the land). The report indicates that the soil removal is necessary to facilitate and advance the use of the property. The removal will create an on-site location to dispose of excess material that will be generated at a later date.

**Comment:** Based on our review of the information provided it is unclear how this application, as currently proposed, reflects the intent and purpose of 40:55D2m. Nevertheless, we agree that a limited volume of soil removal is necessary to prepare the subject area for construction of the site plan previously approved by the Planning Board.

## **B. Soil Removal Plan**

- 1.0 Based on the Golden & Moran transmittal dated March 20, 2009 we understand that the following changes have been made to the revised plans: the location of a portion of the haul route has been moved, cross sections illustrating finished grades of the site plan approved by the Planning Board have been added, an analysis of the volume of soil that will need to be reinstated in order to construct the site plan previously approved by the Planning Board has been added, a sheet illustrating the approved townhouse development has been added.
- 2.0 The revised haul route illustrated on the plans is somewhat different than the alternate route proposed at the hearing. The route illustrated on the plans still crosses Lots 24.04 and 24.02 and will take vehicles through the Crystal Springs Administrative Office and the Cava Winery/Former Hayloft Restaurant sites. As previously indicated, we have serious concerns relating to conflicting traffic and uses in these areas. The applicant's professionals should address the safety, environmental and maintenance issues that will be created by the proposed access.

Page No. 4

Variance & Site Plan

Crystal Springs North Soil Removal

Block 14, Lots 22.01, 24.01, 24.02 and 24.04

March 26, 2009

- 3.0 The soil "refill" analysis indicates that approximately 280,000 cubic yards out of the 360,000 cubic yards will need to be reinstalled in order to construct the site plan that has been approved by the Planning Board. If the Board is amenable to this proposal we would suggest that the Board consider requiring performance guarantees to ensure that the site can be restored in a manner that will allow construction of the approved site plan.
- 4.0 As previously indicated Sheet 2 entitled "Existing Conditions" is outdated. In addition, the note on Grading Plan-2 indicates that existing cartways will be used for soil removal operations, however the haul route does not appear to follow the illustrated trail. In order for the Board to evaluate this proposal with respect to current conditions, we recommend that the applicant's engineer address these discrepancies.
- 5.0 As previously indicated stormwater management plan will need to be prepared and submitted. Based on the information provided, we believe that the applicant will need to obtain authorization from the NJDEP pursuant to General Permit (R13) for Mining & Quarrying Activities.
- 6.0 The comments noted in our previous reports should be addressed.

Very truly yours,

**GUERIN & VREELAND ENGINEERING, INC.**

*/s/ Michael G. Vreeland, P.E., P.P.*

Michael G. Vreeland, P.E., P.P.  
Board Engineer and Planner  
For the Firm

cc: Richard Briigliodoro, Esq.  
Joe Golden, P.E., P.P.  
Richard Valenti, Esq.  
Dale Pierson

[mnts.hzb.4.2.09.doc]

Discussion was held regarding the removal of sand versus rock. Mr. Mulvihill noted that rock would need to be removed and that he did not understand the difference if he removed rock or sand at this time. Mr. Mulvihill suggested that he would provide additional information concerning the projected excess stone that has to be removed. Chairman Miller stated that would be helpful. He also asked for the calculations for Phase II and more specifics about how much rock. Mr. Walsh requested a definite proposal. Mr. Mulvihill agreed to meet with Mrs. Kurlander. Mr. Valenti asked that those members not present at a hearing, listen to the recording. Chairman Miller directed the arrangement of a site inspection. The matter was carried to the meeting of May 7, 2009 without further notice required.

**BILLS:** A motion to recommend payment of the bills cited below to the Township Council was made by William Walsh and seconded by Gerald Laughlin. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Candace Leatham – yes; Mary Ann Murphy – yes; Roger Kabbash – yes; Carl Miller – yes. The motion carried.

**HARDYSTON TOWNSHIP ZONING BOARD OF ADJUSTMENT  
ESCROW REPORT  
APRIL 2, 2009**

**Michael G. Vreeland, P.E., P.P.**

Invoice WO787C	Zoning OE	\$ 546.00
Invoice 706G	ZB-3-07-1, Schappert, C.	1176.00
Invoice 796A	ZB-2-09-1, Crystal Springs Builders, L.L.C., [Crystal Springs North Soil Removal]	2467.50

**Richard Briigliodoro, Esq.**

Invoice125336	Zoning OE	450.00
Invoice 125337	ZB-2-09-1, Crystal Springs Builders, L.L.C., [Crystal Springs North Soil Removal]	630.00

**New Jersey Herald**

Invoice 2204410	Zoning OE – Legal Notice	22.20
-----------------	--------------------------	-------

**CORRESPONDENCE:** There was no correspondence scheduled for review.

**DISCUSSION:** Chairman Miller inquired about a matter, which had an April 2009 compliance deadline. It was noted that an application was filed and in process.

**PUBLIC PARTICIPATION:** Chairman Miller opened the meeting to the public. No members of the public addressed the Board. The meeting was closed to the public.

**ADJOURNMENT:** Having no further business, a motion to adjourn was made Gerald Laughlin. All were in favor. The motion carried. The meeting adjourned at 10:20 p.m.

Minutes respectfully submitted by:

Anne-Marie Wilhelm  
Board Secretary