

**MINUTES OF REGULAR BOARD OF ADJUSTMENT
MEETING HELD ON TUESDAY, JULY 10, 2018**

Chairman Byrne called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice dated July 2nd, 2018 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall. All stood for the Pledge of Allegiance.

PRESENT: BRACCHITTA, *BYRNE, ERICKSON, FOREMAN, KUBISKY, WOLFSON, ZAPF, DUBOWSKY (ALT. #1) AND ZALEWSKI (ALT. #2)

ALSO PRESENT: BOORADY, ENGINEER AND ALEXANDER, COUNSEL

ABSENT: NONE

Chairman Byrne stated the first order of business is the approval of the June 12th minutes.

Ms. Ward mentioned we have some additions to the minutes. The equipment stop recording near the end of the meeting and Tom has some additions to be added.

Mr. Zapf stated on the first page Pat's name is spelled wrong.

Ms. Ward stated okay spell check didn't pick that up.

Mr. Zapf stated on page 13 where the recording system stopped, Mr. Leeds during the public hearing got up a second time and asked for assurances from the property owner and the architect that the construction vehicles would not be blocking their driveway. Mr. Merkaj said they were going to make sure there were no issues on Mountain Heights Avenue.

Second of all I raised the point that the third floor looked very spacious and that we were asking for a deed restriction that in the future the third floor would not be converted to living space. The architect said it only had pull downstairs and I commented back that it was very easy to put stairs in and that looked roomy enough, especially with the height of the roof line to put two more bedrooms up over each unit and that would be prohibited in the future. They agreed to that and that needs to be put in the resolution.

Ms. Ward mentioned that has to be recorded prior to them getting a C.O. the deed.

Chairman Byrne stated I had also asked about heating and air conditioning units up in that space and I believe they said there was.

Ms. Ward mentioned they said they could also put the air conditioning in the backyard.

Mr. Zapf stated that was the exterior. We asked what was going to be in the third floor space and there is going to be HVAC on the sides but you can remove that and convert that into rooms.

Mr. Alexander asked for the purpose of the resolution are we defining it as the third floor attic space.

Mr. Zapf stated we discussed it as third floor space accessible by pull downstairs.

Chairman Byrne mentioned right.

Mr. Alexander asked and the restriction is it can't be converted to living space.

Chairman Byrne stated for either unit.

Mr. Zapf stated my comment was when you drive down the road you see a lot of the older homes now with air conditioners sticking out of the third floor windows and that brings up issues of fire escapes and whatnot to make that living space as well. They agreed that they would put a deed restriction on it that it would not be converted in the future.

Chairman Byrne stated okay. Anything else on that?

Mr. Zapf mentioned no that was it.

Chairman Byrne stated all right.

Mr. Zapf made the motion to accept the minutes with the corrections/additions.

Ms. Ward mentioned the members that can vote on the minutes are Erickson, Kubisky, Wolfson, Zapf, Dubowsky and Zalewski.

Mrs. Kubisky seconded Tom's motion.

Chairman Byrne asked can I vote too.

Ms. Ward stated yes, you were just few minutes late, sorry about that.

Chairman Byrne stated no problem.

Roll call:

Yes: Zapf, Kubisky, Erickson, Wolfson, Dubowsky (Alt. #1), Zalewski (Alt. #2) and Byrne

No: None

Abstain: None

Ms. Ward mentioned I'll make the corrections and additions, sorry the equipment cut out.

Chairman Byrne stated it happens.

Next order of business is variance application #2017-05 and Grading Permit Application #G17-02 by Artur Merkaj, on property known as Block 36, Lot 24 on the municipal tax map, also known as 70 Mountain Heights Avenue. This is a consideration of a resolution.

Ms. Ward mentioned the members that can vote on the resolution with the addition --

Ms. Zapf stated Craig was not here.

Mr. Alexander stated the only correction is to add the deed restriction about the third floor living space.

Mr. Zapf mentioned correct.

Mr. Alexander stated okay.

Ms. Ward asked do you want anything in the resolution about blocking the driveway.

Mr. Alexander stated that's already in the resolution it is traffic.

Mr. Zapf stated it was kind of an indication of good faith but it was on the record. They indicated that the exterior HVAC units would be around the back and not on the side.

Ms. Ward mentioned they can't be on the side they already violate the side yards.

The members that can vote on the resolution are Byrne, Erickson, Kubisky, Wolfson, Zapf, Dubowsky and Zalewski.

LINCOLN PARK BOARD OF ADJUSTMENT
RESOLUTION

**Variance Application #2017-05
Grading Permit #G17-02**

WHEREAS, Artur Merkaj (the “Applicant”) has filed an application before the Lincoln Park Zoning Board of Adjustment (the “Board”) with regard to property known as 70 Mountain Heights, Lincoln Park, New Jersey, also identified as Block 36, Lot 24 on the official tax maps (the “Property”); and

WHEREAS, all persons located within 200 feet of the Property have been notified according to law and a public hearing was held before the Board on June 12, 2018; and

WHEREAS, based on the hearing and a review of all the testimony and documents submitted in conjunction with the application, the Board makes the following findings of facts:

1. The Property is located in the R-15 zone. The Property is currently improved with a single family dwelling, a detached garage, a large shed, and retaining walls. The Applicant has requested approval to demolish the existing structures (except for one retaining wall to the right of the driveway) and to construct a new two-family dwelling, which is permitted in the R-15 zone provided the criteria set forth in Borough Code Section 28-41.B is satisfied. The new dwelling is proposed to be a 2 ½ story structure with a one car garage for each unit. Both garages will be adjacent to each other and served by a separate driveway separated by a 1.27 foot wide mulched/landscaped strip. A new retaining wall with a permanent fence is proposed 10 feet from the driveway and offset from the existing retaining wall that will remain.

2. The Applicant submitted to the Board for its review the following material:
- i. Standard Development Application Form (Section 17-82.1-A);
 - ii. Checklist for General Information (Section 17-82.1-B);
 - iii. Checklist for Board of Adjustment Variance Application (Section 17-82.1-D);
 - iv. Checklist for Grading Permit (Section 17-82.1-L);
 - v. Preliminary and Final Site Plan, prepared by AWZ Engineer, Inc., consisting of eight (8) sheets with the following issue dates and revisions:
 - a. Sheets 1 thru 3, issued June 22, 2017, bearing three (3) revisions through April 25, 2018;
 - b. Sheet 4, issued April 25, 2018, no revision;
 - c. Sheet 5, issued June 22, 2017, bearing three (3) revisions through April 25, 2018;
 - d. Sheet 6 thru 7, issued June 22, 2017, bearing one (1) revision, dated April 25, 2018;
 - e. Sheet 8, issued February 28, 2018, no revisions;
 - vi. Two Family Home for Artur Merkaj plans, prepared by Steven Corso, Architect, LLC, consisting of one (1) sheet, dated March 19, 2018, no revisions;
 - vii. Regatta light cut sheet, received April 24, 2018;
 - viii. Topographic & Boundary Survey, prepared by Sun Land Surveying, Inc., consisting of one (1) sheet, dated May 11, 2017, bearing one (1) revision dated April 2, 2018;

- ix. Stormwater Management Report, prepared by AWZ Engineering, Inc., dated December 18, 2017, and revised February 28, 2018; and,
- x. Soil Erosion and Sediment Control Plan Certification, from the Morris County Soil Conservation District, dated May 23, 2018.

3. The Applicant has requested the following variances: (i) lot area (18,219 square feet existing and proposed; 22,500 square feet required); (ii) lot frontage (90.07 feet existing and proposed; 130 feet required); (iii) left side yard setback (17.71 feet proposed; 25 feet required); (iv) right side yard setback (17.71 feet proposed; 25 feet required); and (v) retaining wall – right side yard setback (+/- 4 feet existing and proposed; 10 feet required). The variances for the lot area, lot coverage and retaining wall setback are for pre-existing conditions that will continue unchanged. The Applicant also requests a variance to disturb 89% of the existing steep slopes of between 15% and 19.9% slopes where 50% disturbance is permitted. With respect to the proposed retaining wall and permanent fence, a variance is required to permit a fence installation on top of the wall with no offset spacing from the bottom of the wall. Since the wall and fence will have a combined height of eight (8) feet as calculated per the Borough Code, a height variance is also required where a maximum of six (6) feet is permitted.

4. The Applicant and his architect, Steven Corso, testified at the hearing. During the hearing, the Board Engineer reviewed his report dated May 31, 2018 and the Applicant agreed to the requirements set forth therein. The following exhibits were marked into evidence at the hearing: Exhibit A-1: photograph of existing garage; Exhibit A-2: photograph of existing house.

5. The Applicant's Engineer clarified that the lights on the Regatta cut sheet submitted will not be used. The Applicant's Engineer testified that the light shown on the plans is a residential light and will be used for the new dwellings.

6. Several members of the public (Stephen Leeds, Susan Leeds and Rich Gajdek) testified during the public portion of the hearing.

7. The Board concluded after reviewing all of the testimony, exhibits submitted and documents included with the application, that by reason of the exceptional narrowness, slope and/or configuration of the Property, the strict enforcement of the provisions of the ordinances would result in exceptional and undue hardship upon the Applicant. Further, the Board has concluded that this relief can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

8. The application is consistent with the intent and plan of the zoning ordinances of the

Borough of Lincoln Park and will not adversely impact the neighborhood or surrounding properties.

NOW, THEREFORE, BE IT RESOLVED, that based upon the testimony and facts as found above, the Lincoln Park Zoning Board of Adjustment does hereby grant the application and the requested variances on the following terms and conditions:

1. This Resolution is subject to any comments offered by the Borough's Engineer and Construction Official on the application and the plans. The Applicant shall comply with any requirements imposed by the Borough's Engineer and Construction Official with respect to this application or the plans.

2. The Applicant shall revise the plans in accordance with the comments set forth in the Board Engineer's report dated May 31, 2018. The plans shall include a note that all of the existing structures are being demolished. The revised plans shall be subject to the review and approval of the Board Engineer.

3. All construction work at the Property shall comply with the requirements set forth in the Board Engineer's report dated May 31, 2018.

4. There shall be no changes to the site plan which would create slopes or swales steeper than shown on the final approved plans.

5. The Applicant is hereby notified of the following Borough Code that is incorporated into this Resolution:

Section 17-38. EXPIRATION OF VARIANCE:

Any variance from the terms of the Zoning Ordinance hereafter granted by the Board of Adjustment permitting the erection or alteration of any structure or structures, or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced within one year from the date of entry of the judgment or determination of the Board of Adjustment; except however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Governing Body, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding; except further in the case of a variance which also involves a subdivision or site plan approval, the variance shall extend for the full period of preliminary or final approval or any extensions thereof pursuant to the Act.

6. Before a Certificate of Occupancy may be issued, the Applicant shall record a deed with the Morris County Clerk's Office which shall include a mapped description of the limits of the steep sloped areas, together with a bold print notice that no land disturbance or other activity may be undertaken therein, except in conformance with the requirements of Section 17-195 of the Borough Code. The deed shall be subject to the Board's attorney review and approval.

7. The entire third floor of the dwelling (both units) shall not be used as living space, or occupied as living space, or converted for use as living space. Before a Certificate of Occupancy may be

issued, the Applicant shall record a deed with the Morris County Clerk's Office recording notice of this restriction, which shall run with the Property and be binding on all future owners and residents of the Property. The deed shall be subject to the Board's attorney review and approval

8. The Applicant shall submit eight (8) sets of the final approved revised plans to the Board.

9. Before a Certificate of Occupancy may be issued, the Applicant must submit four (4) copies of an as-built topographic survey as well as the Borough's Project Completion Report, signed and sealed by the Applicant's surveyor. Any remaining balance in the Applicant's escrow account will not be returned until the Project Completion Report has been properly submitted. The Applicant must submit to the Board Secretary a status report from the Borough Finance Officer confirming that all Borough fees for the Property and this application are current.

10. All other rules and regulations of any governmental agency having jurisdiction over the Property shall be complied with, including but not limited to the payment of all taxes, water and sewer charges and application fees and/or charges. No alteration of any construction plans submitted with this application and on file with the Board shall be permitted without the Board's prior written approval.

Mr. Zapf made the motion to approve the resolution with the correction/addition with the deed restriction.

Mr. Erickson seconds.

Roll call:

Yes: Zapf, Erickson, Byrne, Kubisky, Wolfson, Dubowsky (Alt. #1) and Zalewski (Alt. #2)

No: None

Abstain: None

Ms. Ward stated it's approved.

Chairman Byrne stated the next order of business is Variance Application #2018-03 by Norka B. Torres, on property known as Block 46, Lot 81.1 on the municipal tax map, also known as 5 Hunter Road.

Mr. Schepis asked may we be seated.

Chairman Byrne stated absolutely.

Mr. Schepis mentioned I'm here on behalf of Norka and Vincent Torres. Mr. & Mrs. Torres are here tonight seeking variance relief in conjunction with some renovations to their home at 5 Hunter Road in the Borough.

For those of you not familiar where 5 Hunter Road is it is off of Boonton Turnpike, kind of like before you get to the former Road Runner and it is on the right hand side, a little side street that makes its way up and kind of abuts up against Skyline Village. It is on the side of a hill and that precipitates the problem. The storm water that comes off the hill has deteriorated the foundation of the house and the house is collapsing.

Most of the property has rock, a lot of rock outcroppings and if you've been there you've seen it. They have come to the strategy of elevating the house one level, basically creating an at grade finished masonry floor bringing the basement floor up, elevating the house one level. The house post-construction would comply with the height ordinance of the Borough and it would be a two and a half story structure, so basically they are looking to elevate it one level and have an at grade basement below.

In conjunction with this application, they are seeking front yard setback variance relief. It is kind of an unusual situation, when we get into the facts the numbers actually sound egregious where we are looking for a front yard setback of like 5 feet and 40 is required. It kind of makes you think that we are sitting up on the road but when you see the way that the lot is configured and what is designated as the front yard, you are going to see what is existing and what is proposed is in conformance with the pattern of development on the block. We have some pictures for you and also we have a supplemental survey and studies that were conducted in order to show you what exists and how this can be approved.

So that is the nature of the application and in conjunction with the application, we have submitted the Borough's application, a new survey that was conducted recently by Morgan Engineering; and likewise we have an average setback plan which notes the location of adjoining structures on either side, both from their front property lines and also the edge of pavement of Hunter Road. We have some photographs and stuff and hopefully that will convince you to grant the relief that is requested. So that all being said, I'm going to ask that Victor Torres to be sworn in.

Mr. Alexander swore in Mr. Torres.

Mr. Schepis asked Mr. Torres if the introduction was accurate.

Mr. Torres testified yes.

Mr. Schepis stated so everything that I represented to the Board to the best of your knowledge and everything that we have here is what you know to be the truth?

Mr. Torres testified yes.

Mr. Schepis stated in conjunction with this application we've attached some photos to the application and I'm sure the Board members have the photos, and it shows the basement in a state of disarray and collapse and walls buckling. Why don't you tell us a little bit about what's going on with the house and how it is that you are intending on addressing the situation?

Mr. Torres testified well the basement is pretty much buckling. If you go against the supports they are all loose, all the water between the years has been eating it away. My dining room wall is buckling and you can actually see that. My basement is being washed away and I'm thinking the only way to fix it is to raise the house.

Mr. Schepis asked now is this something that you came up with like on your own, or did you seek the assistance of an architect.

Mr. Torres testified no I spoke to an architect.

Mr. Schepis asked who is the architect that you've been working with.

Mr. Torres testified Mike Blanco and Cesar Padilla they are behind me.

Mr. Schepis stated so they are here this evening and they have come up with a strategy.

Mr. Torres testified yes.

Mr. Schepis stated I announced to the Board a little earlier about elevating the house and is that basically the strategy?

Mr. Torres testified yes.

Mr. Schepis stated now the photographs that I was referring to are noted as being existing site conditions April 20, 2018. Does everybody have that?

Mrs. Kubisky stated yes.

Mr. Schepis mentioned okay good. Is that basically what the house looks like presently Mr. Torres?

Mr. Torres testified yes.

Mr. Schepis stated it is a series of 9 photographs. The first sheet shows basically the basement. I noticed the swivel jack, the walls seem to be crumbling and it looks like you have some other attempts to shore up the house going on in there is that true?

Mr. Torres testified yes.

Mr. Schepis stated likewise you have some exterior photos that you can see some rock outcroppings, I'll be it there was some snow back then. Tell us a little bit about the surface of your property in and around the house? I represented to the Board that there is a lot of rock what can you tell us?

Mr. Alexander stated let's mark that as Exhibit A-1 three pages of photographs.

Mr. Schepis stated yup 9 photograph, Exhibit A-1 7/10/28. So why don't you tell us what is popping up out of the ground in and around your house?

Mr. Torres testified we have a lot of rock outcroppings.

Mr. Schepis asked have you considered the possibility of taking the house and elevating it and then moving it somewhere else on the property so that you can comply with the Borough's ordinance, as it relates to the front yard setback or other setbacks.

Mr. Torres testified yes but there are too many rocks.

Mr. Schepis asked what do you mean there are too many rocks and how does that play into the ability to move the house and put it somewhere else.

Mr. Torres testified in the back of the house I have a whole slate of rock and I can't do anything with that. In the middle of the yard I have like a rock outcropping and I don't know how deep that is. If I start blasting or doing anything, who knows how deep you have to go down.

Mr. Schepis asked does it make sense that maybe they put the house where it is because of the rocks.

Mr. Torres testified maybe.

Mr. Schepis stated that being said, why don't you tell us a little bit about the improvements that you are proposing to the house and also there are some other improvement like a proposed deck on the plan.

Chairman Byrne asked Mr. Schepis to give the Board an idea of what we are looking at, like from what angle we are looking at them.

Mr. Schepis stated oh sure.

Chairman Byrne mentioned 6 and 7 are really the ones I'm looking at.

Mr. Schepis stated we have a series of photographs and the chairman has specifically asked for some information about photos 6 and 7 as it relates presumably to your backyard. So why don't you tell us a little bit about the lay of the land, what's above you and what the surface is like and what is going on?

Mr. Torres testified 6 and 7 are pretty much just the backyard.

Chairman Byrne asked taken from which direction.

Mr. Torres testified from the back the house.

Mr. Schepis stated looking up the hill.

Chairman Byrne mentioned all right.

Mr. Torres testified you can't see because of the snow there is a big slate of rock that comes down and there is nothing I can do with it, I mean it is snow covered.

Chairman Byrne asked like directly out the back.

Mr. Torres testified yeah.

Chairman Byrne thanked him.

Mr. Schepis asked him to tell them a little bit about the improvements that are proposed in conjunction with the house elevation. What else do you have going on out there?

Mr. Torres testified we want to put like a porch and a deck in the back and that's about it.

Mr. Schepis mentioned I'm going to refer you to the plans that were prepared by Mr. Padilla and they were submitted to the Board. There is a section on there that basically shows we'll call it a site plan. I imagine everybody has this? This is the plan most recently revised but we don't have a date. It is based on a survey of 5/24/18 from Morgan Engineering and it says it right under the heading of survey of property. Does everybody have that?

Mr. Boorady stated I don't have what everybody else has.

Mr. Schepis asked how about the one prepared by Mr. Padilla, do you have that one consisting of Sheets A-1, A-2 and A-3. I'm referring to Sheet A-3.

Mr. Boorady testified I never got it I guess everybody else got it but me.

Mr. Schepis stated let me see the set Tom. No this is an older version.

Mr. Boorady mentioned yeah.

Mr. Schepis stated Mr. Torres as you noted, there is a proposed deck towards the rear and it is going to be covered with a roof is that fair to say?

Mr. Torres testified yeah.

Mr. Schepis stated and then likewise you have some steps coming up to an open deck to the back? Now will there be any other front entrance to the house that you know of? Will these steps be introduced on the western side of the property? So that is going to stay the same or (inaudible – maps hitting microphone static).

Mr. Torres testified well (inaudible – maps hitting microphone static).

Mr. Schepis stated okay you are going to put more steps in that area.

Mr. Torres testified right.

Chairman Byrne stated because the elevation is going up?

Mr. Torres testified yes.

Mr. Schepis stated so that will still be the front entrance to the house.

Mr. Torres testified yes.

Mr. Schepis stated okay. Now in conjunction with this plan, you had Morgan Engineering do an analysis of the setback of your house in relationship to adjoining houses in and around on either side, is that fair to say?

Mr. Torres testified yes.

Mr. Schepis stated the plan that we submitted to the Board is a one sheet plan dated June 4th, 2018. Now I acknowledge that there were two versions of this and the most recent version shows the separation between the adjoining dwellings and the subject dwelling not just to the property line but also to the pavement. Does everybody have that?

Just for point of interest, one of the things we asked Morgan Engineering is that they show us the separation between the existing structure and the curb on Hunter Road and that notation there is 33 feet and 6 inches, or 33.6 feet. Does everybody see that?

Now the measurement for the front yard setback is that westerly property line so that line in its entirety has been designated as a front yard by the zoning officer. So as you can see, the building itself is setback 33.6 feet from the curb of Hunter Road, but we are only 5.4 feet from that westerly property line which functions as a side yard but has been designated due to the zoning ordinance as being a front yard. We likewise had the setbacks determined as it relates to the adjoining house on Lot 81.02 which is noted as being 34.2 feet to the curb, and then likewise on the adjoining two dwellings on Lot 10 in Block 52 as being 34 feet from the pavement, and then the adjoining one further down the road it was as much as 42 feet to the pavement.

Now you also have some photographs and I'm going to show them to Victor. I'll asked him to take a look at them and I'll mark this as A-2. Victor take a look at those 4 photographs in A-2 and do you recognize what is depicted there?

Mr. Torres testified yes.

Mr. Schepis asked does it look like your house and the adjoining houses on either side.

Mr. Torres testified yes.

Mr. Schepis asked do the photographs fairly and accurately reflect the condition of those houses as we sit here this evening except it maybe a little darker out.

Mr. Torres testified yeah.

Mr. Schepis stated that being said, I'm going to introduce A-2 and I'm going to ask you to take a look at this so that you can see how this appears in the field.

Mr. Alexander asked who took the photographs.

Mr. Schepis stated I took them.

Mr. Alexander mentioned okay.

Mr. Schepis stated on the second page of A-2 is an aerial photograph provided by the Morris County Planning Board so this way you can get a little lay of the land. This is what the county provides based on aerial photography, and they highlighted the subject property in red so that you can readily identify where we are in relationship to the adjoining properties on Boonton Turnpike and Hunter Road, and surrounding dwellings. Does everybody have one or do we need more?

*Chairman Byrne left the meeting (7:30 P.M.) Tom took over the meeting.

Mr. Schepis stated we just left off with A-2, does everybody have a copy?

Vice Chairman Zapf mentioned yes.

Mr. Schepis stated Victor let's walk through A-2. Photo one reflects the house basically on the corner of Boonton Turnpike and Hunter Road is that fair to say?

Mr. Torres testified yes.

Mr. Schepis stated that's your house immediately just below you correct?

Mr. Torres testified yup.

Mr. Schepis asked and your house is the one set back in this photo.

Mr. Torres testified yeah.

Mr. Schepis stated let's go over to photo two. What do you see in photo two?

Mr. Torres testified my house.

Mr. Schepis stated okay very good. Photo three?

Mr. Torres testified the other side of my house.

Mr. Schepis stated so we will call that the western side, the western property line.

Mr. Torres testified right.

Mr. Schepis stated and that is where we are looking for the variance from the 5.4 feet from that property line?

Mr. Torres testified yes.

Mr. Schepis asked what do you see in photo four.

Mr. Torres testified that is my other neighbor's house.

Mr. Schepis stated okay so that is just right next door to you.

Mr. Torres testified right.

Mr. Schepis stated so these photos reflect the houses on either side?

Mr. Torres testified yes.

Mr. Schepis stated okay. There are a few things that came up in Tom's memo and I don't know if you want to take that up now because Victor can address most of them, or whether we should take it later because Mr. Padilla, the architect, is going to come up so we can take care of 90% of them now.

Vice Chairman Zapf asked Tom if he wanted to go through his memo now.

Mr. Boorady stated well those are comments for the architect so I don't know if he wants to come up and address that first? It doesn't matter to me it is up to the Board.

Mr. Schepis mentioned maybe we can walk through it and see how many we can bang out and I will circle the ones that need the architect.

Vice Chairman Zapf asked does he want to come up now and get sworn in.

Mr. Schepis mentioned we can do it as a team effort that's a great idea.

Mr. Alexander asked Mr. Padilla for his name and address.

Mr. Padilla stated Cesar Padilla, 109 Hillwood Terrace in Glen Rock.

Mr. Alexander swore in Mr. Padilla.

Mr. Schepis stated Mr. Padilla I've introduced you as a licensed professional architect, am I correct in that assertion?

Mr. Padilla testified yes.

Mr. Schepis asked tell us how long you've been practicing in that field and when you received your license.

Mr. Padilla testified I received my license in 1989 so I've been practicing since then.

Mr. Schepis asked have you ever testified before any Planning Board or Zoning Board of Adjustment in conjunction with being an expert architect.

Mr. Padilla testified yes in Bergen County, towns in Ridgewood and Glen Rock, Passaic County, Wayne and Paramus.

Mr. Schepis asked did you prepare the plans that are the subject of tonight's hearing.

Mr. Padilla testified that's correct.

Mr. Schepis stated okay. I offer Mr. Padilla in the capacity of a licensed professional architect offering testimony as an expert in that area.

Mr. Alexander stated okay.

Mr. Schepis mentioned we are going to go through Mr. Boorady's memo and then from there we are going to have a couple of other questions for you okay.

Mr. Padilla testified sure.

Mr. Schepis mentioned we have Mr. Boorady's memo of July 9, 2018 and we've gone over it with all concerned, so if we can take up on page 2, Item #1. I can tell you this, the first three items are all technical items with regard to plan details and we agree to all three of those items. So unless you would like me to recite them and say that we agree to all of those items, we can just say we agree to all of those items it is your choice.

Mr. Boorady stated Item #2 refers to some setbacks.

Mr. Schepis mentioned in addition the architect shall provide dimensions, a good point. There is a proposed a deck. Now we did apply for a variance as it relates to the front yard setback to the westerly property line from the closest most point which is approximately 5 feet. You know for purposes of avoiding an error in having to come back, we'd like to use the number of 5 feet for the building. It is like 5.4 but you never know if there is an extra layer of masonry, you wouldn't want to have to come back for two inches.

So that being said, there is also that deck that Victor testified to, it scales at being approximately 25 feet from that westerly property line. It is behind the building so you wouldn't be able to see it unless you came around the back of Victor's house. Technically it is appropriate to point out that it does violate that 40 foot setback so we would like to petition the Board, likewise in addition to allowing it to be 5 feet from the westerly property line from the elevated house but likewise to have that deck be 25 feet from that westerly property line.

Vice Chairman Zapf stated it is going to be adjacent to the south side of the house.

Mr. Schepis mentioned that's right it is on the south side.

Vice Chairman Zapf stated it is going to be even to the western side but it still has the 5 foot issue.

Mr. Schepis mentioned 25 feet. The deck is going to be set back farther back.

Mr. Zapf stated okay.

Mr. Schepis mentioned you can see it looks like either a concrete or stone area where the propane tank is, but the deck itself starts approximately 25 feet from the westerly most property line is that fair to say Mr. Padilla?

Mr. Padilla testified yes.

Mr. Schepis stated it was scaled and we are in agreement that the deck is going to be 25 feet.

Mr. Padilla testified yes.

Mr. Schepis stated 30 feet is required.

Mr. Boorady asked the prior plan that was submitted for completeness had the deck crosshatched on the east side and a portion of the deck not crosshatched on the south side. The east side I believe was to be covered, the south side was going to be uncovered. The revised plan even though there is no revision date it is based on the Morgan Plan but doesn't crosshatch those areas. Are we still talking about a portion of it being covered?

Mr. Padilla testified yes.

Mr. Boorady stated okay.

Mr. Schepis mentioned just so everybody is clear, why don't you identify what section and where the roof will begin?

Mr. Padilla testified the roof will begin in line with the south building line and start there and move north over the deck on that east side.

Mr. Boorady mentioned so the southern portion of the building won't have any roof on it.

Mr. Padilla testified correct.

Mr. Boorady stated south of the building won't have any roof on it it's all towards the east.

Mr. Padilla testified right.

Mr. Boorady stated okay. Keep going where you left off.

Mr. Schepis mentioned everything else seems to be items associated with changing the zone table and recalculating lot coverage. We don't perceive there will be any problems in addressing those items on a plan revisions so I think that covers 1, 2 and 3.

Mr. Boorady stated I would just like to add to Item #2, you know the plan needs to be modified to show that that portion of the deck will be covered Like I said, the original site plan showed it covered and then that note disappeared on the revised site plan.

Mr. Padilla testified agreed.

Mr. Schepis stated okay very good.

Now we go to the top of page 3, Item #4, it notes the applicant and the architect shall provide testimony as to whether a proposed elevated foundation can support a garage, at least one vehicle by code. I went through this with Mr. Torres and he said he is agreeable to providing a carport which would comply with the ordinance. There are other ways to do this like punch a hole in the side of the building and put a garage under, but your ordinance permits a carport so we will create a carport in a conforming location, basically over the existing paved driveway. Is that acceptable?

Vice Chairman Zapf mentioned so you are going to show that on a plan

Mr. Schepis stated we will put it on a revised plan.

Vice Chairman Zapf mentioned okay.

Mr. Schepis stated I believe the ordinance requires a separation, I want to say 5 feet on a side yard?

Mr. Boorady asked for a carport or garage.

Mr. Schepis stated yeah.

Mr. Boorady mentioned I think that is true of a shed.

Mr. Schepis asked how does 5 feet work.

Mr. Boorady asked can the carport be attached to the house.

Mr. Torres testified no.

Mr. Schepis stated we can agree to that a carport 5 feet off of the northerly property line, basically over a portion of the paved driveway.

Vice Chairman Zapf mentioned the paved driveway is right on the property line.

Mr. Schepis stated yes and that's another issue. We will agree to modify the driveway by eliminating the overlap.

Vice Chairman Zapf stated okay.

Mr. Schepis mentioned it will probably have to be on the opposite of the driveway closer to the house that would make sense.

Vice Chairman Zapf stated yes.

Mr. Schepis stated it will be at least 5 feet. Is that acceptable?

Mr. Boorady mentioned you are supposed to have 10 feet between structures as well. I mean they can agree to it but I'm not so sure that it doesn't raise other zoning questions.

Mr. Schepis asked what if we agreed to put the carport 5 feet from the property line minimum and a minimum of 5 feet from the building, I mean you are dealing with some tight spaces in there. The other alternative would be to forget about the carport and grant the deviations from the ordinance for not having a carport. It is not as though the Torres really want a carport but they certainly don't want to just ignore the ordinance requirement.

Mr. Foreman stated I was kind of thinking that because I mean how long has this property existed the way it is?

Mr. Schepis mentioned they never had a garage. I mean look they prefer not to have a carport it seems that it is not going to be a problem.

Mr. Foreman stated I mean I recognize it is trying to bring it more into conformance but is it really worth it? We could agree not to, correct Tom?

Mr. Boorady stated yeah. Without seeing something; the dimensions and what the setback really are, you would be giving them an open license with some 5 foot on each side.

Mr. Foreman stated but if you kept it off, just deal with the elevation and not worry about this other whole issue we could right? I'm kind of leaning that way with my thought process because it has been that way for so long and they don't really want it, so why jam it down their throat and create an issue.

Vice Chairman Zapf mentioned the space between the property line and the corner of the house is 30 feet and then it goes out to 44, how wide would a carport be? What are they 10/12 foot?

Mr. Boorady stated but it is at an angle so it goes back to 30. You know without seeing something it is really very hard for the Board to agree and for me to comment on it. It is something we don't have a plan on a carport, you know we are playing with angles and trying to draw it up but Ken raises a good point.

Vice Chairman Zapf mentioned I don't want to be difficult, I mean if there was a garage there before and it was removed is it really going to be a benefit? I mean to me a carport is a lot more beneficial when it is up against the house as opposed to being out in the middle of nowhere. A covered space has a reason but a carport with no sides on it, or anything like that basically doesn't have a whole lot of purpose if it doesn't have a wall at least on one side. I would be amenable to what Ken raised too.

Mr. Schepis stated terrific so we can put that request before you to consider granting the relief or not, we'd ask for relief from the covered parking space.

Vice Chairman Zapf mentioned okay.

Mr. Schepis stated Item #5 the existing setback of 3.8 feet over, I spoke to Victor and Victor you agreed to relocate the shed?

Mr. Torres testified yes.

Mr. Schepis stated the shed was there when they purchased the house correct?

Mr. Torres testified yes.

Mr. Schepis mentioned it was not like you installed it and put it over the line.

Mr. Torres testified no.

Mr. Schepis stated it was there and you agreed to move it to a conforming location, and I believe Mr. Boorady pointed out 5 feet so you can make it 5 feet off the property line.

Mr. Torres testified okay.

Mr. Schepis stated there is also a notation that the driveway pavement overlaps the property line in some places a little over a foot. Do you agree likewise to have that addressed so that that encroachment will be eliminated?

Mr. Torres testified yes.

Mr. Schepis stated so I think we have 5 covered.

Item #6 there is a notation about an abandoned well. Can you tell the Board whether or not you know there is a well out there?

Mr. Torres testified no. As far as I know there is no well. I've moved the dirt around a couple times and there is no hole showing a well in my yard.

Mr. Foreman stated it would seem odd that there would be a well on the property with so much rock wouldn't it?

Mr. Torres testified I've never seen a well I couldn't tell you.

Mr. Schepis stated I think there may have been a notation somewhere. There is something in the back it has like a box that says abandoned well. See in the corner? Have you seen anything out there?

Mr. Torres testified there is nothing back there.

Mr. Boorady stated that survey was from 2004 which was fairly recent. I guess when you took title to the property --

Mr. Foreman asked what do you do in situation if there is a well at that time.

Mr. Boorady stated they have to seal it and insure that it was done in accordance with state regulations to seal a well. There would be a record on file with the Health Department if it was sealed properly.

Vice Chairman Zapf asked could it be an old septic tank because the whole town had septic tanks when all these houses were built.

Mr. Boorady stated I couldn't tell you.

Vice Chairman Zapf mentioned whether you had rock or not you had to have a septic field.

Mr. Boorady stated we are not going to solve it tonight so I would just say put it as a condition.

Vice Chairman Zapf mentioned okay.

Mr. Boorady stated make sure it is sealed up. We don't want somebody falling through a hole.

Vice Chairman Zapf mentioned that is what I was thinking.

Mr. Schepis stated absolutely. We agree that if there is a well it will be properly sealed, but if it has already been filled or whatever, we will demonstrate that it has been sealed.

Vice Chairman Zapf mentioned perfect.

Mr. Boorady stated we had an old one last month that the DEP supervisor and I looked at, and the person just had a cavern in their side yard and it was an old septic system that was never abandoned even though the property has been on the sewers since the seventies so you just never know. Just put it as a condition in the resolution to do a little investigation and make sure the Health Department signs off on it and be done with it.

Mr. Schepis stated perfect.

Okay Item 7 the applicant shall provide information on how existing floor drainage conditions will be eliminated or minimized. Where will roof leaders discharge and will the new basement have a sump pump and if so where will it discharge? Details are required to insure runoff does not adversely affect neighboring properties and public roads. Victor do you anticipate having a sump pump in this new elevated basement floor?

Mr. Torres testified no.

Mr. Schepis stated okay so you are not going to put a sump pump and you are basically bringing everything up so you don't get water in it.

Mr. Torres testified yes.

Mr. Schepis stated with regard to roof leaders and in conjunction with the updated survey, we did locate the closest storm drain. I believe that is on the survey from Morgan Engineering and located closer to the intersection of Boonton Turnpike.

Vice Chairman Zapf mentioned it says inlet.

Mr. Schepis stated it says inlet and that is the closest inlet, is that fair to say Victor?

Mr. Torres testified yes.

Mr. Schepis asked so there are no inlets immediately adjacent to the front of your property.

Mr. Torres testified no.

Mr. Schepis asked Mr. Boorady did point out that there is a manhole located somewhere in the vicinity of the curbing. Now can you tell us right now where does the storm water go from your property where does it flow? Does it go into your neighbor's property or what have you seen over the years of residence there?

Mr. Torres testified it goes onto the driveway and into the street.

Mr. Schepis stated do you see any of it going on to the neighboring property below?

Mr. Torres testified no.

Mr. Schepis asked once it goes in the street does it stay on your side of the street or cross over the street?

Mr. Torres testified it stays on my side of the street.

Mr. Schepis asked it follows the curb to the storm drain.

Mr. Torres testified yup.

Mr. Schepis stated now I note that the area where you are proposing the covered deck from the photos, and from my personal observations, it is basically all rock is that fair to say?

Mr. Torres testified yes.

Mr. Schepis asked do you see any kind of problem based upon what you are proposing here raising the house and putting this deck over rock.

Mr. Torres testified no.

Mr. Schepis stated it is an unusual situation because there is just a lot of rock out there and I think if you really counted up all the rock you would probably find that most of the property is impervious already. So based on the minimum improvement and the fact that it is already solid rock, we'd ask the Board not to require Victor to hammer out a pipe channel and then tie it into either the manhole or go down the block so that is our request.

Vice Chairman Zapf mentioned the house that is downhill his driveway comes out the side, between the driveway from the Torres' house and the inlet, where the water is supposed to go and runs fully across the end of that fellow's driveway and do you see that any of those circumstances would change by what we are doing on this property? I'm just thinking of ice.

Mr. Boorady stated I don't know if there would be a significant impact on the neighbor below. They opened up their testimony with the fact that there seems to be an awful lot of water coming into the basement and then obviously the leaders are going to be redone. They are adding on a porch with a roof where is all that water going to go so that it doesn't impact their own dwelling, let alone coming off the driveway and into the Borough's road. There is a manhole practically in the front yard and my suggestion is to tie the roof leaders into the manhole and it doesn't seem like an impossible task.

There is a sanitary lateral that runs nearby and I don't know if there is rock in the front yard, but you obviously have a sanitary lateral and there is obviously a water line that they ran. I don't know what the rock condition is in the front yard but maybe there is rock in the backyard I can see that. I'm concerned about their own dwelling, they are going through all this expense to drain and elevate the house, where is that water going to go? It is going to set up against the new foundation, I just don't know the answer and I'm asking.

Vice Chairman Zapf asked do they have to do cartwheels or anything to be able to tie into that manhole.

Mr. Boorady stated no. They just have to coordinate it with me and the DEP.

Vice Chairman Zapf stated if they could that would be more preferable. If you look at the Morgan Plan, the single page Morgan Plan, where if you look towards the north it says adjacent dwelling #196, to the left where it says 32.3 feet that is the guy's driveway and beyond there is the inlet I'm just thinking about ice.

Now if they have an opportunity to prevent all that water from going across their driveway to drain it away from their property more efficiently that is probably an improvement. My concern would be they are raising the house but they are having a roof put on over the deck and I would really hate to put them through something horrible just to be able to tie into a manhole cover. If you think it is relatively easy, I would recommend that would be a step that they try to take.

Mr. Boorady stated it appears to be easy if you look at the fact that there is a manhole there now. There is sanitary, water and there is no natural gas I'm guessing because you have propane. I had the DPW pop the manhole because the surveyor didn't pop it, he just called it a manhole so I didn't know what it was. We lifted it and it is storm sewer coming from upper Hunter and then it makes a left turn and goes down 202. It is a storm manhole and it is right in the front yard, and if it were my house and I had water issues, I'd love to pipe the water away from my roof and away from the foundation if nothing else is feasible. If they hit rock and they can't run a 4 inch PVC from the roof leaders underground to the manhole, then we can give them some dispensation you know in the field.

Mr. Schepis mentioned we can live with that. I went over with Victor as we were sitting here and he said he can live with that as long as there is some discretion. If we run into like basalt and he has to look into bring in a hoe ram for like two weeks that's costly.

Mr. Boorady stated I don't want anybody to blast rock and really this is for the homeowner's own benefit to get the water away from their foundation. If you ever had a roof leader blocked up and it goes against your block wall, it is just going to go in and create another water problem and I really don't want you to have another water problem again.

Vice Chairman Zapf stated it sounds like Steve and the homeowner are amenable to accepting that.

Mr. Schepis stated Victor is amenable. I don't pay for any of these improvements so it is his call.

Vice Chairman Zapf mentioned okay for #7 you'll agree to kind of work under Tom's guidance to see if there is an alternative for managing the water runoff.

Mr. Schepis stated okay very good.

With regard to Item #8 I believe that was the same thing. Basically 7 leads in to 8 so it would be tying to that manhole if it is feasible.

Mr. Boorady stated I would just say that the architect draw a simple line on the plan that does cross the property on Hunter because the right-of-way and property lines are kind of unique, you almost have to come down along the driveway. Just show on the plans without a lot of detail 4 inch PVC connected to the storm inlet to be coordinated with the DPW and Borough Engineer. A note on the plan with a line.

Mr. Padilla testified that sounds good.

Mr. Schepis mentioned Item #9 Mr. Padilla that is for your HVAC pads if it is necessary, and you are going to have central air. Can you locate those pads and provide that amenity to this house along the easterly side line of the property in conformance with the setback requirement behind the house?

Mr. Padilla testified we will. It will be on the easterly side north, directly north of the deck.

Mr. Schepis stated the odd thing is that may still be within the required front yard.

Mr. Padilla testified you could be right.

Mr. Schepis stated why don't you tell us whether or not the HVAC will still be within 40 feet of that westerly property line. If we are, we should ask the Board for a waiver.

Mr. Padilla testified yes it will.

Mr. Schepis asked how far is it.

Mr. Padilla testified midway point it is 40. I mean we could push it out a little bit and make it work.

Mr. Schepis stated if we could ask the Board should there be an HVAC or a generator pad on this house that we can locate it along the easterly side line. Mr. Padilla can you give us an exact number?

Mr. Padilla testified 38.

Mr. Schepis stated 38 feet.

Vice Chairman Zapf stated right now to the corner of the house it is 30.4 to the northern property line so you would make the 40 feet going that way.

Mr. Schepis stated I think that's a side.

Vice Chairman Zapf mentioned it is hard to tell on this property.

Mr. Schepis stated the side is 20 so 38 feet, 40 required; 38 to the HVAC and generator pad.

Vice Chairman Zapf stated right now nothing is planned, but if you do that --

Mr. Padilla testified we will show it on there.

Vice Chairman Zapf mentioned okay very good.

Mr. Schepis stated Item #10 the applicant, homeowner, architect, general contractor and subcontractors shall note the proposed locations, dimensions, setback dimensions of all proposed improvements and they cannot be revised; in other words, that's why we are doing this now Mr. Padilla. I asked the Board to give us a deviation of 5 feet from the westerly property line where the house is going straight up and then 25 feet from the deck to the uncovered portion, and then likewise the generator pad and/or HVAC 38 feet from that line. Can you think of anything else or we've it all? The only other thing I can see are the steps.

Mr. Boorady stated the platform and the steps are almost to the property line, maybe a foot or maybe less.

Mr. Padilla testified if we are at five/four and we have to make 5 four foot steps, so we are about a foot off the property line, four foot wide to the steps.

Vice Chairman Zapf stated there are steps there now correct.

Mr. Padilla testified correct.

Vice Chairman Zapf asked that's what you consider your front door on the right hand side of the house

Mr. Torres testified yup.

Mr. Schepis stated if you take a look at A-2 it is clearly depicted in photograph #3 you can see the set of stairs going up.

Mr. Boorady mentioned it is a 4 foot wide platform at the top is that wide enough? I don't know if there is any code on that?

Mr. Padilla testified it is fine.

Mr. Boorady stated okay. So if you could put a dimension on the revised plan.

Mr. Padilla testified sure.

Mr. Boorady stated if it is any wider you might go over the property line.

Mr. Schepis mentioned Mr. Padilla you are basically going to have to elevate that so it is going to be a new set of stairs but it will be going up along that side line uncovered, but it will be a foot off the property line.

Mr. Padilla testified yes.

Mr. Alexander asked so a variance is needed for the steps.

Mr. Boorady stated it really is.

Mr. Schepis mentioned uncovered steps and platform.

Mr. Alexander asked 1 foot from the property line.

Mr. Boorady stated some ordinances give some direction on stairs and platforms that are uncovered but Lincoln Park doesn't, so technically your front stoop even though it is uncovered needs a variance because it violates the front yard. It is safer to ask for it now and memorialize it that way when the Building Department gets this they can approve those stairs.

Mr. Schepis mentioned 40 foot required 1 foot proposed. I think everything else we have exhausted if that's fair to say Mr. Padilla. Do you see anything else that jumps out at you as it relates to the structure in relationship to the property lines? You've got the steps, the house, the deck, the HVAC and a generator pad if it happens.

Mr. Padilla testified correct.

Mr. Schepis stated Item #11 all those items are fine so Item 11 we are satisfied with.

Likewise 12 and 13 for additional plan sets and other items those are acceptable as well.

Mr. Alexander mentioned the variances we have pre-existing for lot area and lot frontage, setbacks for the house, deck, stairs, HVAC pad.

Mr. Schepis ask how is 40 feet required 5 feet proposed. The steps 40 feet required 1 foot proposed. The HVAC and generator pad if necessary, 40 feet required 38 feet proposed. The deck 40 feet required and 25 feet proposed. Then I think the last thing was the covered parking space; no covered parking space, one required and none proposed.

Mr. Alexander stated so 6 all total.

Mr. Schepis mentioned I count 5.

Vice Chairman Zapf stated lot frontage, lot area, setback, step setback, HVAC/generator pad setback, deck setback and no covered parking space.

Mr. Alexander asked how about the elevation of the house, the building.

Vice Chairman Zapf asked in height.

Mr. Alexander mentioned not the height just the expansion of the pre-existing.

Mr. Schepis stated the height conforms.

Vice Chairman Zapf stated okay I still have 6.

Mr. Schepis asked does anyone have any more questions of Victor.

Vice Chairman Zapf asked anybody. At this time if anybody from the public would like to question the folks sitting at the table, please come forward. Seeing no one coming forward I will close the public portion.

Any members of the Board have any further questions about anything that we discussed?

Mr. Boorady asked how is the foundation going to be finished on the outside.

Mr. Padilla testified it will be stucco parch coat.

Mr. Boorady asked will it be colored in anyway

Mr. Padilla testified just a natural concrete.

Mr. Boorady stated so we won't be looking at block?

Mr. Padilla testified no.

Mr. Boorady stated we will be looking at a parched surface.

Mr. Foreman asked is there going to be a slab on the inside because I don't know what was there because it is deteriorated.

Mr. Padilla testified it will be a slab that will be 66 inches higher than it is now.

Vice Chairman Zapf asked what is your floor now dirt or cement.

Mr. Torres testified it is dirt.

Vice Chairman Zapf stated okay.

Mr. Schepis stated if I could I'd like to ask Mr. Padilla a couple of clean-up questions.

Vice Chairman Zapf stated go ahead.

Mr. Schepis stated you heard what Mr. Torres testified to with regard to the structural issues associated with the house. Can you tell us whether or not that is accurate or whether you have anything that you can add to that?

Mr. Padilla testified that is accurate.

Mr. Schepis asked have you considered other alternatives apart from elevating this house like possibly putting in some kind of storm drainage in an effort to allay this situation.

Mr. Padilla testified right, but with the rock issues it is just not feasible.

Mr. Schepis asked how about the alternative basically picking this house up and moving it somewhere else on the property to meet the setbacks is that something that is practical.

Mr. Padilla testified no we don't believe so.

Mr. Schepis stated tell us what it is that you are going to be saving from the existing foundation and how the existing conditions out there kind of like prohibit you from moving this?

Mr. Padilla testified we are going to try and save as much of the footings and foundation as we can. The footing and foundation mostly on the south side is deteriorated but wherever we can we are going to try to save the foundation. The footings will mostly stay.

Mr. Foreman asked the elevation will be additional concrete block.

Mr. Padilla testified correct.

Mr. Foreman asked how does that inside slab get set.

Mr. Padilla testified we have to raise the grade there, stone.

Mr. Foreman stated okay understood. Will there be access to that raised basement?

Mr. Padilla testified yes.

Mr. Foreman asked and it will be like a dry storage area.

Mr. Padilla testified dry storage and that is actually the utility room/mechanical room.

Mr. Foreman stated okay.

Mr. Wolfson asked when was the house built.

Mr. Padilla testified I'm not sure.

Mr. Torres testified I want to say 1940.

Mr. Wolfson asked do you really think there are footings under it.

Mr. Padilla testified yes.

Vice Chairman Zapf mentioned there is no need for a sump pump in the utility room.

Mr. Padilla testified we don't believe so now that it is elevated, we won't have that water issue.

Vice Chairman Zapf stated okay. Tom anything further?

Mr. Boorady stated not from me no. Everything was in my report and as long as they've agreed to revise the plan with all the things that we discussed tonight I'm okay with it.

Vice Chairman Zapf stated I believe Steve you have agreed to all of those.

Mr. Schepis mentioned yes everything we discussed this evening; the plan revisions and the other concession Mr. Torres agreed to. Likewise his wife is technically the property owner and she has been involved with this and she agrees to this is that fair to say Victor?

Mr. Torres testified yes that is correct.

Mr. Schepis stated Mrs. Torres is here in the audience.

Mr. Torres testified yes.

Ms. Ward mentioned we will need 8 sets of revised plans.

Vice Chairman Zapf stated I have five variances; the lot frontage, the setback for the house at 5 feet, the steps at 1 foot, the deck at 25 feet, the HVAC eventually at 38 feet and then the no covered parking space requirement.

Mr. Alexander stated lot area pre-existing too.

Vice Chairman Zapf mentioned okay lot area pre-existing. I think this is beneficial to the homeowners and actually will help the neighbors by not having the neighbor's house implode on them during the next rainstorm. I'm thinking this is a good thing definitely for the family and the neighborhood as well to get this taken care of because the house won't deteriorate. Anybody have any further comments?

Mr. Foreman stated I agree with everything you said Tom.

Vice Chairman Zapf made the motion to pass all 7 variances as stated.

Mr. Dubowsky seconds.

Roll call:

Yes: Zapf, Dubowsky (Alt. #1), Bracchitta, Erickson, Foreman, Kubisky and Wolfson

No: None

Abstain: None

Mr. Schepis thanked the Board, we appreciated everybody's time and consideration.

I have one question. There are some municipalities that will make a recommendation to the construction official like to review the plans pending adopting of the resolution. Is that something that can happen or we have to wait the month? The reason is they are trying to get started with the construction before the school year starts with the kids in school.

Vice Chairman Zapf mentioned the faster the revised plans come in the faster we can consider doing that. Tom and Craig would you be okay with that?

Mr. Boorady stated the issue is giving the Building Department plans that haven't been revised by the architect.

Mr. Schepis mentioned understood. At least if something comes from the Board saying that you recommend it, then you know at least it doesn't seem that you have an objection to it.

I would like to thank the Board and Tom Boorady for the rapid review of this application. We realize that you moved this along as quickly as one could possibly move it along, and we did our best to try to get everything that you asked for in order to make an informed decision and it is appreciated. Victor and Norka really appreciate you giving this prompt attention in light of the structural concerns that they are facing, so again thank you very much for your prompt and courtesy response.

Vice Chairman Zapf mentioned have a good evening.

At this point and time we have a presentation to be made by Craig that we are all required to sit through.

The Board took a five minute break.

Vice Chairman Zapf stated we are reconvened, so if we can give our attention to Craig he is going to walk us through Mel's Land Use Liability: Policy and Training Information.

Ms. Ward mentioned we need this for insurance purposes.

Mr. Alexander stated we were going to have a power point presentation but Joan couldn't find us a laptop so we'll work off the handout. This is to discuss ways to avoid being sued. Towns are being sued because of action on behalf of boards so that is why it is called Land Use Liability.

The starting point for land use is the constitution and Supreme Court decisions. I want to try to skip over some stuff that is obvious.

Everyone has the right to use their property in a reasonable manner subject to appropriate zoning codes. Where you get into issues that this presentation is concerned about essentially is violating civil rights of the applicants, involving yourselves in bad faith or conflicts of interest. Those are the three hot button issues that we have to be careful about.

Civil rights violations are particularly egregious because there is an attorney fee shifting provision. If a plaintiff prevails in civil rights case, besides winning damages for their client the

defendant pays the plaintiff's legal fees which are sometimes very high.

Mr. Foreman asked what would be an example of how we would violate somebody's civil rights.

Mr. Alexander stated the examples we have in here are religious institutions. There is a statute in here called RLUIPA and in the news lately with the mosque cases where you essentially zone out somebody to have a religious institution/house of worship.

I was personally involved in a case with a fair housing act violation for a group home that was denied. You have it with adult bookstores, also that is a freedom of speech issue and civil rights issue.

Mr. Alexander stated the issue with group homes is the reasonableness of the zoning code. Now you don't enact the zoning code with the town you just enforce it, so you are not involved in establishing parameters for where an adult bookstore can be located or not, that is not the Board's purview. Where you would get in trouble would be if someone comes in with an application for a house of worship and it gets denied, then you are exposing yourself.

Mr. Foreman stated it would have to be somehow egregious or prejudicial, like we would have been bias and not have been objective right?

Mr. Alexander mentioned houses of worship are particularly tricky, but for any denial you have to have valid justifiable reasons in the testimony; grounded in the MLUL and grounded in the facts of the case that is just across the board in general Land Use Law.

Vice Chairman Zapf asked wasn't there one in Plainfield, South Plainfield, or something going on right now where they passed an ordinance that says you cannot have a hunting store or a firearm shop, or anything like that. They expanded the distance from the schools now so it prohibits those type of stores basically in the town because it is so compact and this is going to wind up being a Supreme Court test case.

Mr. Alexander stated right. So those cases aren't for a Board like this because those are being enacted by the town; but the parameter is so wide, the scope of the restriction is so big you effectively are zoning it out of the entire town.

Mr. Zapf mentioned right, but that is what you said the ordinance is not set by us so we are the enforcer or the workers of it.

Mr. Alexander stated correct. So the slide has some case studies for you to consider. The first case the developer voluntarily offers to contribute \$200,000 to offset some of the costs to the town. There are also cases like this where the developer offers to give a fire truck or a ballfield to the town. The question is is the Board allowed to accept that contribution? The answer of course is no because that is called a pay-to-play or a quid pro quo condition. You have to be very careful about developers, builders, and applicants wanting to be good neighbors but leaving an impression that they are buying approval and that is not appropriate.

The second example concerns a site visit and there is attendance by the applicant and objectors and there is a discussion that ensues. Now the question is, does the member who attended the site visit have to recuse himself. The answer is yes, off the record discussions about the merits of the application are not permitted and you are not supposed to discuss the application with an applicant or an objector before the hearing that is pretty common sense.

To the extent that you do a site visit, you are supposed to place that on the record and acknowledge, and particularly acknowledge what you gained from the site visit, but you want to avoid site meetings with the applicant. It is one thing for you to drive by the site yourself just to see the site and gain knowledge of it; but to meet the applicant at the site, the applicant's attorney or engineer at the site should be avoided because that raises issues.

The next case study the Superior Court orders the town to approve a project and the Planning Board then ignores the court ruling and rejects the application anyway. The Planning Board and Zoning Board is a quasi judicial entity so just like a court it has immunity. It is a governmental agency and you are serving as governmental agents so you have qualified immunity for your

actions, so you can't be held responsible if a Board denies an applicant and the applicant sues you are not going to be responsible you have immunity. However, there are some particular instances where that immunity goes away and we will discuss later on what that is.

In this case study, the Planning Board did not follow the court's order to approve the application and the developer sued the town and the Board members. The question is are the Board members immune from that suit. The answer is they are but the town is not. The individual Board members are immune but you are exposing the town to damages for very improper actions so that should be avoided.

The fourth case study is the case of a religious institution that applies for a variance to build a school in a residential zone. A Board member lived in a nearby development and coached her neighbors on what questions they should ask at the hearing. The Board member did not recuse herself from the deliberation and the question is was the Board member who helped the objectors is that Board member entitled to immunity. The answer is no and here is where it falls into the exception that is bad faith. You are not properly discharging your obligations and duties as a Board member by coaching an objector how to object before the Board. Again that is pretty rationale.

Another example is in a mayoral campaign, the mayor asked all the members of the Planning Board to vote against an application and that was found to be illegal. Again that was because you were not deciding the application on the merits of the case, the testimony, it is for improper reasons.

Another example a developer submitted a conforming application to build a commercial building that included a day care center. The mayor forced the developer to scale back the application and so voted against it. Subsequently it came to light that the mayor had an interest in another day care center nearby so that raises the issues of conflict of interest.

Another case we have a case where the applicant proposed building a senior citizen home and the mayor said this might be a good place for his mother to live once built. The question was did that comment require the mayor to recuse himself from the hearing. The answer is no because he said his mother might move into the proposed location and it was just too tenuous, no conflict of interest.

The mayor owned a nearby competing business obviously that is a conflict of interest. The mayor in that case, though he was a Board member of a church adjacent to this proposed senior center, the court ruled the mayor's vote was a conflict because of his relationship with the church.

Another example, a town purchased land for a parking lot and then entered into an agreement to lease some of the spaces in the parking lot for his business. Subsequently, the town advertised bids to pave the parking lot and awarded the bid. Before the vote on the contract, the mayor was advised by the municipal attorney that his vote on the award was not a conflict of interest even though his business would be using many of the spaces. The mayor was fined by the local finance board and the mayor appealed, the questions is did the mayor qualify for what is called acting under the advice of counsel defense.

What the conflict of interest is there is what is called a safe harbor defense and that applies where before the vote, before the hearing, if you have a potential conflict of interest you have to disclose it to the Board, to the attorney and have the attorney issue an opinion as to whether or not a conflict requires recusal or it is so de minimis that it is not necessary. There is a criteria under which you are entitled to the safe harbor defense but it requires full disclosure before the hearing.

Another issue that comes up from time to time is what is called inverse condemnation which is when the property is essentially rendered unusable because of the zoning codes. One example, there was a DEP flood plain regulation and the DEP rules the property can only be used for open space, parkland or parking lot, and the owner sued arguing that this was inverse condemnation. Now the court rules this was inverse condemnation but that is really not an issue for this Board. I don't think you are going to have to deal with inverse condemnation cases it is very unlikely.

A good example of inversion condemnation or claims of it was the Highlands Act and that was about 10 years ago. That essentially rendered the western part of the state unbuildable and that was upheld by the courts.

The next example is a mosque and the Board denied the application and there were many objectors. The Board denied the application on the basis of traffic, the number of congregants who would be attending the mosque. The court ruled that the Board violated the religious protection statute and the town had to pay \$2.5 million dollars to the developer, as well as legal bills of \$5 million dollars, religious cases are very fraught with risk. It is almost like they can do what they want, you have to be very careful.

The next example, there was a heated application and the applicant and the objector got into a fight during the hearing and it says democracy can be messy. So the question is can a Land Use Board limit testimony to the issues relative to the decision before the Board. Yes obviously, the chairperson has the discretion to limit testimony to make sure it is only relevant testimony, relative comments, and in cases where there are enormous numbers of objectors you can even limit the time period by which each of the objectors can speak. Again, it has to be guided by a reasonable standard, it says a Board hearing is not Speakers Corner in Hyde Park.

Another religious case that is in the news lately is the Orthodox Jewish residents in Bergen County who want to create this Eruv Zones where they essentially put something up on the utility poles that expands the permissible area for them to walk around and do business on the Sabbath. A lot of towns have prevented that from happening and the towns have all been sued. The towns are all losing those suits because the Attorney General's Office is bring civil rights violations against all of them. Anything dealing with religion you have to tread very carefully.

Next question is the New Jersey law allows towns to defend and indemnify their employees if they are sued by the public members in conjunction with their performance as official duties. You are protected as long as you are not acting in bad faith and you are properly discharging your duties and obligations. I don't know if this town has an ordinance that provides for indemnification of its employees. Most towns do.

Mel because of this seminar there is additional insurance coverage to protect each one of you if you happen to be sued personally in the course of your duties as a Board member. Again the insurance is only valid if you prevail. If you are found to have violated your oath as a Board member there is no insurance. Those are the highlights.

I'll give you an example of a case I had where I represented an applicant for a mental health group home and the local residents came out to object. The Board denied it for no good reason and gave in to the objectors. I sued the town in federal court for violating the Fair Housing Act and the court overturned the denial, approved the application and awarded damages against the town and awarded legal fees. So this is another example of if you are going to discharge your duties as a Board, you have to follow the merits of the application and the dictates of the statute.

I once represented a Board where there was an objector and they would just deny the application; and the chairman said, well if the court overturns it so what, at least we weren't the ones to approve the application and we can tell the town residents it was the court. Again that is not properly discharging your oath as a Board member you have to decide the application on the merits. Those are the highlights and I don't know if there are any questions?

Mr. Foreman asked why do we do this I'm being sarcastic. I understand why we do it but do we really have exposure here?

Mr. Alexander stated your exposure really only gives rise if you act in bad faith. If you are properly discharging your duties you are protected, you have qualified immunity. It happens in denied applications because they didn't meet the standards for a variance and the developer is upset and they sue but you are going to be protected.

Mr. Foreman stated most of these examples for developers that goes typically more to Planning Board issues where they are trying to get something to build. We wouldn't see that stuff we see stuff where they are altering it.

Mr. Alexander stated it is very unlikely that this Board will ever see any of these. Most of these case studies deal with ordinance enacted by the town which you are not involved in.

Mr. Foreman mentioned right.

Mr. Alexander stated most of them are Planning Board applications, I mean you are just not going to see these type scenarios. You might see cell tower applications but those don't give rise to civil rights violation. That is where you are exposed if you violate someone's civil rights or if you act in bad faith.

Vice Chairman Zapf stated we do have exposure we just need to be wise. We have had things come to us before like during the Bower application where we had testimony. It just went on and on, but the cases that Craig has shown us though can be translated to us in other ways you know having an interest in a neighboring business. You know having a mother-in-law or a nephew who owns a home next to somebody who is applying for something, we have to be careful. When we go out on a site visit, if there are more than 3 of us together at a site visit we should not be doing that. It shouldn't be any more than 2 because we are not keeping minutes and we are off the record and it can be considered a sub-meeting of this group.

Mr. Alexander stated right.

Ms. Ward stated you can have two but you don't want a quorum which is 4.

Mr. Foreman stated there was a lot of discussion I had on the Bower case.

Vice Chairman Zapf mentioned plus in social settings, I mean 4 of us could wind up down at the airport and standing on line waiting to get tables or something like that and say how about that application the other night. Just innocent conversation can bring us into something and it only takes a fifth person to listen to what we are saying. Hey Joe, they were talking about your application that's coming up next week. They were standing on line at the airport and they all went their separate ways and sat at different table so we can be accused on bias. We just need to be careful when we are outside of this room. Plus if you are approached by someone, like Mr. Torres or somebody like that on line at the supermarket, don't get into a conversation with him if they start picking at you. If they have any questions, they should be directed to Tom or Joan because you can get into trouble too.

Well you know you guys passed this resolution and then when I was at the store I saw Mary Kubisky and then we had a conversation and she said don't worry about it, this is how we can get ourselves into trouble.

Mr. Alexander stated right, those are the more likely scenarios where there is an alleged conflict of interest. The best practice is if you are at all concerned about having a potential conflict of interest disclose it to the Board, disclose it to me and get an opinion. If you are really concerned, just recuse yourself so that is the safest way.

Again like Tom said, be very careful about discussing the application.

Vice Chairman Zapf stated most of our applications on the Board have been residential but you know everybody has got a business and god forbid if you should go to somebody's house or a yard sale, or a tubberware party or something like that, and they have been an applicant in the past and they give you something for free, or one of the businesses offers you something; I mean we regularly get invitations from the church on top of the hill that someday wants to build a big building that is going to cross over into Lincoln Park from Towaco. I don't think any of us have ever accepted it but we all look at it and this is a total conflict of interest that's what Craig is trying to talk about as well. Just make sure we don't do anything that hurts the town.

Mr. Alexander mentioned in a case like Bower where it is pretty obvious it is heading towards court, again you just have to be careful about who you talk to about the case.

Mr. Ward stated that case is about to be closed. They will be submitting the as-built surveys and Tom and Sal will have to do a final inspection.

Mr. Alexander mentioned the other area to be careful about is any sort of political activity that can bleed over into an application. You want to make sure you avoid that too.

Vice Chairman Zapf stated I believe that ends our presentation. Thank you Craig very much for doing that without the screen.

Is there any other business that needs to come before the Board?

Mr. Wolfson mentioned we spend a lot of time on these applications for people coming to do things and we give them approvals, and you ride past these houses where we gave these approvals that people are supposed to do certain things and they're not done. Right up the street from this application tonight, a couple of doors up, we approved an applicant for I believe a mother and a child, the kid was handicapped, and it has to be two years or more okay and there is not one pod but two pods out there. If I lived in that area I would be upset. Why are we spending all of this time and it is in the resolution of what people are supposed to be doing and isn't there a statute of limitation?

Vice Chairman Zapf stated there is and they have to get through it. If you see something and I've done it, I've gone past homes where we put a resolution and if something is wrong I will call Sal and put it on his voice mail or Joan. You are Board members and we took an oath, we have put a lot of time into all of these applications and we've heard a lot of things. If something is not right, you definitely have the right to call it out to the right people, but we have no enforcement authority we need to turn it over to the right people.

Mr. Wolfson stated we approved it didn't we.

Vice Chairman Zapf stated yes, but we have to turn it over to the appropriate municipal employee who has the enforcement authority and in most cases that's Sal.

Mr. Wolfson mentioned that's one. Number two, Park Avenue and Ryerson Road that house that they raised.

Vice Chairman Zapf stated where the house burned down.

Mr. Wolfson stated no not the one there, the other one a few doors up. I believe there is a trailer or shed in the back that was supposed to get removed.

Vice Chairman Zapf mentioned call Sal.

Mr. Boorady asked is that Siedel.

Mr. Wolfson stated I don't know which one it is but they raised the house up and in the back in the right hand corner there was either a shed or trailer that was back there and it was supposed to get removed. Did these people go for a C.O.?

Mr. Boorady stated yeah I think that came back after. It wasn't there when we gave him the C.O.

Mr. Wolfson mentioned the other one is right near the people that are here tonight. Did anyone ride down Hunter Road? The house on a main road what's in that yard is a disgrace.

Vice Chairman Zapf asked you mean the one in front.

Mr. Wolfson stated yes.

Vice Chairman Zapf stated oh yeah I called. The garage sale guy? Numerous people have called.

Mr. Boorady stated Sal is looking into that.

Mr. Alexander mentioned this Board doesn't have the enforcement authority, all you can do is pass it onto zoning officer.

Vice Chairman Zapf stated this is an example of one of the ones that got me. I was out jogging and there is a fellow and he has got one of those big sports car trailers on the back of his pickup truck. People down the street are trying to sell their house and the people across the way are trying to sell their house too and he is using this thing as a temporary garage in the road. Basically he had a garage in the street. I called Sal and Sal went down there and within two days it was in his yard. It still to me is an eyesore but at least it was off the road and it had moved.

There was another fellow and he had a boat sitting on a trailer in front of his house for six months. People are trying to sell houses and it is an eyesore to see that. I am not at all shy about calling Joan or Sal on something like that, and I have to say Sal is pretty responsive but he is only one guy. So if you see something, especially something we voted on I would absolutely call it out.

Pat can tell you this story, we had people where we went back two years later and they still hadn't cleaned up their lot, or they hadn't finished siding the house or done something, and Pat knew a lot of them personally because he did site visits, so being on the Board if you drive by and see something report it to Sal.

Mr. Alexander stated Bower was the extreme example.

Mr. Zapf asked that's about ten years now at least.

Mr. Foreman mentioned that started with a violation right that Sal went down and wrote a summons and that's how the whole thing got started.

Ms. Ward stated it originally started with Gary McNabb even before Sal.

Vice Chairman Zapf asked anything else that needs to come before the Board tonight.

Ms. Ward mentioned we will be having a meeting next month, Battaglia should be deemed complete shortly.

Mr. Boorady stated that's the 3-family home on Chapel.

Vice Chairman Zapf asked for a motion to adjourn.

Mr. Erickson made the motion to adjourn.

Mr. Bracchitta seconds.

Meeting adjourned 8:47 P.M.

Respectfully submitted:

Joan Ward, Secretary

Thomas Zapf, Vice Chairman