

**TOWNSHIP OF MOUNT OLIVE
PLANNING BOARD**

Public Meeting
Thursday, April 15, 2021 at 7:00 pm
Remote/Virtual Meeting

In accordance with Township Ordinance # 26-09 the Mount Olive Planning Board is authorized pursuant to N.J.S.A. 40:55D-25(c)(2) to hear all variance applications including the six variance categories set forth in N.J.S.A. 40:55D-70d.

MINUTES

Public Meeting / Remote Virtual Meeting of the Mount Olive Planning Board of April 15, 2021 commenced at 7 pm.

The Pledge of Allegiance was recited.

Open Public Meetings Act Statement was read into the record by Ms. Strain, PB Secretary

Roll Call

Present: Mr. Scapicchio, Mr. Forlenza, Ms. Mott, Ms. Natafalusy, Mr. Ottavinia, Mr. Batsch, Mr. Ouimet, Mr. Weiss

Excused: Mr. Schaechter, Mr. Mania, Mr. Nelsen

Board Professionals in attendance were:

Present: Chuck McGroarty, PP/AICP, Board Planner
Michael Vreeland, PE, Board Engineer
Susan Crawford, Esq. Board Attorney
Edward Buzak, Esq., Board Attorney
Mary Strain, Board Secretary

Audio and video technology and platform.

Meeting Minutes

November 12, 2020 Public Meeting

Mr. Weiss: Thank you, Mary. So our first item on the agenda is a review of the meeting minutes from November 12, 2020. We all have a copy of that so I would like someone to move the minutes from November 12, 2020.

Mr. Scapicchio: Mr. Chairman, I make a motion to move the minutes of November 12, 2020.

Mr. Weiss: Thank you, David. Second, please.

Mr. Ouimet: Second.

Mr. Weiss: Thank you, Joe. Comments, questions? Seeing none, roll call, Mary, please.

Roll Call:	David Scapicchio	Yes
	Ken Forlenza	Yes
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes
	Howie Weiss	Yes

Ordinance Review 10-2021 Review

Mr. Weiss: We move into a quick ordinance review. Ordinance Number 10-2021 which is a review of the ordinance amending Article VI, Zoning, of the Township Code to prohibit the operation of any class of cannabis business within the township's geographical borders. Chuck, do you want to tell us what we need to do here?

Mr. McGroarty: Yes, Mr. Chairman. This is an ordinance the Township Council has introduced first reading. This would essentially opt-out, as the phrase goes, the Township Council has decided at this time not to allow recreational marijuana permits or licenses be issued. The Township Attorney has decided the best place to locate the ordinance is in the Land Use Ordinance.

Inaudible

Mr. Buzak: It should be in the municipal...inaudible...like parking or other police power regulations that are adopted.

Inaudible

Mr. Weiss: Here is where my concern is when I looked at this. Inaudible. I think the Planning Board is opening up a can of worms to even touch this. Very much what like you said, I don't think this should come to us. I think when the township determines when they are going to determine when they are going to opt-in, is when we should get involved. I don't know if we have an option to tell them, thank you but no thank you? I agree with you 100 percent, Ed, this is kind of out of our regulations. We don't want to start offering variances for an illegal activity. And it's extremely inconsistent to what we do when we are talking about things that are not allowed. Maybe there should be zones where murder is allowed only in a certain zone. It's not a crime but that's the case. I know that is an extreme example, but I don't like this coming in front of us.

Mr. McGroarty: Can I suggest, Mr. Chairman?

Mr. Weiss: Yes.

Mr. McGroarty: The Planning Board then submit...and I can do this for you...a brief memo to Council saying there is no inconsistency with this policy, with the Township Master Plan, but for reasons we can elaborate on or choose to be very brief about, we recommend, the Planning Board recommends, it be located somewhere else in the township code. Which I think is going to happen anyway.

Mr. Weiss: If that's what they are looking for, for us to let them know that it's not inconsistent...

Mr. McGroarty: Well, that's what the Land Use Law asked for.

Mr. Weiss: And that's what they are asking us to do? To make sure that it's not inconsistent, correct?

Mr. McGroarty: Correct.

Mr. Weiss: I don't think we have a problem doing that. Anybody else have any comments on that? Then I see none, so let's then give Chuck the permission to let Council know that it's not inconsistent with our Master Plan. But keep the letter short and brief.

Mr. Buzak: Again, Mr. Chairman, I think it's also to make the recommendation that it be located elsewhere, not in the Land Use...Land Development Code.

Mr. Weiss: Yes, of course. Keep it on the legal side, perhaps. Okay. Anybody else have any comments on that? Otherwise let's give Chuck that direction to respond to Council.

Mr. Buzak: You need a quick motion Mr. Chairman and a voice vote would be good.

Mr. Weiss: Okay. So let me make a motion. Let me see if someone would please make a motion to allow Chuck to respond to Ordinance 10-2021, as we discussed?

Ms. Mott: I'll make a motion.

Mr. Weiss: Thank you, Kim. Second?

Mr. Batsch: I'll second.

Mr. Weiss: Thank you, John. And then all in favor say Aye?

All: Aye.

Mr. Weiss: Any opposed? Okay. Sounds like we have the direction for that.

Mr. McGroarty: All right. Very good.

Resolutions

PB 20-21 J2SC, LLC, 26 Mount Olive Road, Block 3700, Lot 46

Mr. Weiss: Okay, thanks for that Chuck and Ed. We move forward. We have a bunch of Resolutions. We have copies of all of them. Let's go right in order. PB 20-21 J2SC, LLC, 26 Mount Olive Road, Block 3700, Lot 46. Would someone please move that Resolution?

Mr. Scapicchio: I'll move Resolution PB 20-21.

Mr. Weiss: Thank you, David. Is there a second?

Ms. Mott: I'll second.

Mr. Weiss: Thank you, Kim. Any comments? Seeing none, roll call Mary.

Roll Call:

David Scapicchio	Yes
Ken Forlenza	Yes
Kim Mott	Yes
Catherine Natafalusy	Yes
Paul Ottavinia	Yes
John Batsch	Yes
Joseph Ouimet	Yes

PB 20-11 Keinan, Yoram, 6 Bartley Chester Road, Block 6900, Lot 19

Mr. Weiss: Thank you everybody. Then next one is PB 20-11 Keinan, Yoram, 6 Bartley Chester Road, Block 6900, Lot 19. This is a Resolution to deny the application. Someone please make a motion?

Ms. Natafalusy: I'll move PB 20-11...inaudible...to deny.

Mr. Scapicchio: I'll second.

Mr. Weiss: Thank you. Who seconded that?

Mr. Scapicchio: David.

Mr. Weiss: Thank you very much. Any comments or questions?

Mr. Scapicchio: I do. I do, Chairman.

Mr. Weiss: Go ahead.

Mr. Scapicchio: The question I have is, I mean this applicant continues to utilize this facility and I think that the...what concerns me is the automobiles within a facility that also contains a daycare. I do understand that the applicant said, he drained the gasoline from gasoline tanks, but you never completely eliminate the fumes, or the potential for fire. So although I'm going to vote yes on this application, what is the Township going to do to make sure that...inaudible...

Mr. McGroarty: I can answer that.

Mr. Scapicchio: ...operation, ASAP.

Mr. McGroarty: I'll answer that. I was waiting for tonight, for the Resolution to be adopted. He will get a letter from me tomorrow, telling him he has 30 days to vacate the premises. He is in violation of the ordinance and his use variance was denied. If he appeals, he appeals. If he doesn't appeal and he doesn't leave, we'll take the appropriate action at that time.

Mr. Scapicchio: Chuck, if he appeals, is he allowed to continue to leave those vehicles inside?

Mr. McGroarty: I'm going to ask Ed to help me on that. I don't think...I think if someone appeals the Board's decision, I think it puts a stay on our action but I'm going to ask Ed to...

Mr. Buzak: I do believe that's correct. I know that any appeals from a Zoning Officer's determination to the Planning Board...Board of Adjustment...Planning Board acting as Board of Adjustment, staying. I'm relatively sure the same applies to a use variance appeal. I will check that and if there is no automatic stay, I'll so advise Chuck. I'll advise him one way or another and in that case...then other actions may be taken if he refuses to vacate the premises. That will be done by the township not by the Planning Board.

Mr. McGroarty: We are going to start tomorrow, though. We are going to start tomorrow. We are waiting for this Resolution.

Mr. Scapicchio: Thank you.

Mr. Weiss: Okay. Thank you. Any other questions? Seeing none. We have a motion and a second. Mary, roll call please.

Roll Call:	David Scapicchio	Yes
	Kim Mott	Yes
	Catherine Natafalusy	Yes
	Paul Ottavina	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes

PB 19-01 364 Route 46 LLC, 358 & 364 Route 46 West, Block 8200, Lot 5 & 6

Mr. Weiss: Thank you. The next Resolution is PB 19-01 364 Route 46 LLC, 358 & 364 Route 46 West, Block 8200, Lot 5 & 6. Someone please move this?

Mr. Batsch: I'll move PB 19-01 364 Route 46 LLC.

Mr. Weiss: Thank you, John.

Mr. Ouimet: Second.

Mr. Weiss: Joe, thank you very much. Do we have any comments? Seeing none. Roll call.

Roll Call:	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes
	Howie Weiss	Yes

PB 20-20 Luthra, Gaurav, 27 Vista Drive, Block 7610, Lot 13

Mr. Weiss: The next item, PB 20-20 Gaurav Luthra at 27 Vista Drive, Block 7610, Lot 13. Would someone please move this?

Mr. Ouimet: I'll move PB 20-20.

Mr. Weiss: Thank you, Joe. Second?

Mr. Batsch: Second.

Mr. Weiss: Thank you, John. Do we have any comments? Seeing none. Roll call, please?

Roll Call:	Ken Forlenza	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes

PB 20-12 Albertson, Sandra, 36 Main Road, Block 5400, Lot 1

Mr. Weiss: Next item on the agenda is PB 20-12 for Sandra Albertson for property located 36 Main Road, Block 5400, Lot 1. I'll look for a motion to move this?

Ms. Natafalusy: Make a motion to approve 20-12.

Mr. Batsch: I'll move PB 20-12.

Mr. Weiss: Got it. Thank you Catherine. John looks like you got the second on that one.

Mr. Batsch: Yes.

Mr. Weiss: Thank you very much. Any questions or comments. Seeing none. Roll call.

Roll Call:	Ken Forlenza	Yes
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes
	Howie Weiss	Yes

PB 21-01 Fratelli Beretta USA, Inc., 700 International Drive, Block 104, Lot 4

Mr. Weiss: Final Resolution tonight PB 21-01 which is for Fratelli Beretta USA, Inc., 700 International Drive, Block 104, Lot 4. I'll look for someone to move this Resolution please?

Mr. Ouimet: I'll move PB 21-01.

Mr. Weiss: Thank you, Joe.

Ms. Natafalusy: Second.

Mr. Weiss: Thank you, Catherine. Any comments? Questions? Roll call, please.

Roll Call:	Ken Forlenza	Yes
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Joseph Ouimet	Yes
	Howie Weiss	Yes

Development Applications

PB 19-12 Kraig Kalashian, 15 East Forest Road Block, 4118, Lot 44

Mr. Weiss: This takes us to the first developmental matter of the evening. First one on the agenda tonight is PB 19-12 Kraig Kalashian here for a variance on a single family home. Whose property located at 15 East Forest Road, Block 4118, Lot 44. I do believe this application is being represented to me by Jack Spinella. So perhaps let's bring him up too.

Inaudible

Mr. Weiss: I don't know if it's Jack Spinella, himself or somebody representing the firm. I don't have a name. So maybe we can ask Kraig?

Mr. McGroarty: I do have a Spinella here.

Mr. Weiss: Okay, let's bring him up because...

Inaudible

Mr. McGroarty: Is there anyone else that you have...Mr. Spinella? Do you have anyone else? You're muted.

Mr. Spinella: Good evening. I believe my client...I see his name on the screen, Kraig Kalashian is...

Mr. Kalashian: I'm here as well as Walter Brandt, from our office as well.

Mr. McGroarty: We need to see you, Mr. Kalashian.

Mr. Weiss: Okay, and you said you had somebody else that we want to bring up for the evening?

Mr. Kalashian: I don't know if he will be speaking but he is on the call if we need him, Walter Brandt.

Mr. Weiss: Okay. So that being said, you're here for the first time on this application, Mr. Spinella and so welcome. Let me turn it over to you and you can tell us what the application is about.

Mr. Spinella: Yes. Good evening members of the Board. The application is for a variance for the structure that's in place, the foundation at the subject location, 15 East Forest Road. It is I believe on one corner of the structure a half a foot above the maximum setback and the other side, two and a half feet. My client will testify about the rational for that and how it fits within Item Number 5 on Mr. McGroarty's report. We'll provide the positive criteria for why the variance should be granted. Mr. Spinelli, will you be bringing in a planner for that testimony on Article 5?

Mr. Spinelli: I will not be, at this point. Unless necessary.

Mr. Weiss: No, it's your call. I was just curious. Okay. So why don't we go through it. Again I'll let you control this. Tell us what's going on. What's happening?

Mr. Spinelli: I asked my client to provide his testimony as to what the current state is if that would be more efficient.

Mr. Weiss: Perfect. For what we'll do, let's swear in Mr. Kalashian. Is that correct, Kraig?

Mr. Kalashian: Yes, Sir.

Mr. Weiss: Okay so Mr. Kalashian, we're going to have our attorney swear you in. He'll take it from here.

Mr. Kalashian was sworn in for the record.

Mr. Kalashian: Absolutely. My name is Kraig Kalashian. It's K A L A S H I A N. My address is 29 Hedges Road, Chester, New Jersey.

Mr. Buzak: Thank you, sir. Mr. Spinelli, you may speak.

Mr. Spinelli: Yes. Mr. Kalashian, do you hold licenses in any profession?

Mr. Kalashian: Yes. I'm a licensed architect in the State of New Jersey.

Mr. Spinelli: The variances you are aware, is for the...because of the front yard setback in the R-3 zone is 40 feet and the southeast corner of the foundation is 37 point...inaudible. Is that...are you aware of that?

Mr. Kalashian: That's correct.

Mr. Buzak: Mr. Spinelli, I'm going to interrupt you for one minute. You mentioned or Mr. Kalashian mentioned that he is a licensed architect. Is he testifying tonight as an expert? As an architect? Or is he testifying as the owner or principal in the ownership of the property?

Mr. Spinelli: He is going to be testifying as the principal.

Mr. Buzak: Okay. That's fine. So we don't have to get into qualifications beyond what you just said. Thank you, sir. Please proceed.

Mr. Spinelli: The rationale...the southeast corner of the foundation is 37.6 feet from the front lot line.

Mr. Weiss: I think you have that backwards?

Mr. Spinelli: Okay. I was reading from the December 2nd McGroarty report.

Mr. Weiss: Okay, so right the southeast corner is 37.6. Southwest corner is 39.6. I don't want to interrupt. I just want to make sure that's what you said.

Mr. Spinelli: That is correct.

Mr. Weiss: Okay. I'm sorry about that.

Mr. Spinelli: Mr. Kalashian, did you review the town ordinance about setbacks prior to constructing the structure that exists at 15 East Forest Road?

Mr. Kalashian: Yes. That is correct. We had previously submitted a site plan that was approved that showed the proper setback. In the act of constructing the foundation, under the permit that we had, the grade of the site presented challenges as the rear of the site falls off fairly sharply. Under the basis for variance relief one of the criteria, positive criteria, by reason of exceptional topographic conditions. So, we were able to put the foundation that allowed our access points to work. During the process we re-submitted a storm water management plan that showed the location of the foundation as now being non-compliant and so we stopped construction and applied for the variance as currently on the table.

Mr. Spinelli: Okay. So the positive criteria is the topographic conditions and the physical features of the property?

Mr. Kalashian: Correct. And the property only has two neighbors. One at the rear and one at the side yard. Both of those setbacks are compliant. The one that is non-compliant obviously is the one, the front yard as we are talking about and the site sits across the street from a protected green

space. So, there would not be any negative effect to any other property owner or structure. If the variance were granted.

Mr. Spinelli: Mr. Chairman, do you have any specific questions as to this issue?

Mr. Buzak: I'm sorry Mr. Spinelli, I didn't quite hear your...inaudible.

Mr. McGroarty: Let me interrupt. The Chairman has just advised me, he lost his internet. So perhaps we wait. Or Dave?

Mr. Scapicchio: Let's give him a couple of seconds here.

Mr. McGroarty: Okay.

Inaudible.

Mr. Weiss: I'm very sorry everybody. I'm back.

Mr. Spinelli: I don't know where you last heard my client's testimony. The last question I asked is if you had any questions?

Inaudible

Mr. Buzak: Mr. Vice Chairman, while we are waiting for Mr. Weiss to switch computers, since I don't want dead air on these things. Let me mention two things. Number one. I wanted to publically thank Susan Crawford for the effort that she put into those Resolutions that we adopted tonight. We had a busy couple of months. We had a slew of Resolutions. She did an outstanding job. So I wanted to acknowledge her efforts to the Board. The second thing is, at the last Resolution we adopted was our Fratelli Beretta Resolution that we had a couple of weeks ago, as you recall. Anecdotally, I happen to be in a Costco in Brick Township and I walked past the display and there was a Fratelli Beretta pack of Italian anti-pasta meat in a package. Prominently, you may know this, but I was quite impressed on the front of the package with the Fratelli Beretta name and insignia was a legend that said, made in Mount Olive Township, New Jersey. So, I wanted...I know that you would be very happy to know that they are very happy here and they acknowledge that to the world that they live in. Which, is a pretty big world.

Mr. Scapicchio: Thank you Ed. And Susan, thanks for the Resolutions. I'm sure they were difficult to produce.

Ms. Crawford: More than welcome. Happy to help out here.

Mr. McGroarty: Mr. Chairman? Is he back?

Mr. Scapicchio: Yes.

Mr. McGroarty: I don't know where he is.

Inaudible

Mr. Weiss: I'm working on a different computer. We can move on. I can hear.

Mr. Scapicchio: That's good enough Howie, you can move forward if you can hear.

Mr. Weiss: We can move on. I'm truly sorry about this.

Mr. Scapicchio: Why don't you begin with your question to the Chairman?

Mr. Spinelli: Mr. Chairman, the last question I had asked was if you had any specific questions of myself or my client as to this application?

Mr. Weiss: No. With the little disruption that we had. It appears that the foundation was built previously and because of the grading, that's where the deviation from the 40 feet happened. Is that correct? Is that where we left off?

Mr. Kalashian: That's correct.

Mr. Weiss: I don't necessarily have any questions.

Mr. McGroarty: Mr. Chairman, if I may, jump in just to move this along. I think the applicant should also address...I raised the point in 6.2 in the report...I didn't actually cite this section of the statute that talks about appeals. This property actually does not front on an improved street. East Forest, the pavement for East Forest actually ends just at or just before the frontage of this property. As I indicated in the report, the applicant is designing this lot such that its essentially a driveway to continue down East Forest Lane...its actually East Forest Road, by the way, that should be corrected. There is two things here. One, they should address the statutory about not fronting an improved street. Secondly, if the Board were to approve this application the applicant would still need permission from the Township Council...well I guess there is a couple of things. One, perhaps improving the street to required standards for a street or to get some type of leave from the Township Council to put a driveway in a public right of way. I think those things should be addressed as well.

Mr. Scapicchio: Chuck, I have a question. There's an improved road that's already there that's stopped at some point, correct?

Mr. McGroarty: Just before this lot, yes.

Mr. Scapicchio: Just before this lot?

Mr. McGroarty: Yes.

Mr. Scapicchio: If there was an improved road, are there any other potential building lots that can be built upon in that area? That would gain access from that public road?

Mr. McGroarty: I would have to say, Dave, I don't know. I'd have to check. One of the properties that's in this vicinity is owned by the Township. I think it's the one opposite that is on the south side. There's a developed property to the east which is off the...if you continue on East Forest

Road...past the woods. I don't know if there is another vacant lot there that might be developable. I would have to check unless the applicant...inaudible.

Mr. Scapicchio: I guess the question and the thought I have, Chuck, is if this paved driveway was accessed to this only, property, I would be okay with that. But if it's leading to access to multiple properties I would look at it a little differently.

Mr. McGroarty: I believe also, if I may, also they...the paved driveway is 15 feet as it's shown. The proposed paved driveway is shown at 15 feet. The idea that they have to front on an improved street means not only for police and first aid but for the fire department to get there. And you want to make sure that there is adequate means for those vehicles to get to the house in the event they had to.

Mr. Kalashian: If I might just answer the Chairman's, sorry Mr. Scapicchio's question really quickly. There is only one other potential lot across the street as Mr. McGroarty mentioned. The south side. That lot as I understand it is currently zoned as protected green space and is owned by the town. It is our intent to pave, to improve the road, that goes up to our driveway as well as our driveway obviously. Once we complete the construction of the house we also still have to tie into the sewer which is our responsibility so ultimately we have to do some digging to tie in the sewer line and then obviously there will be some equipment to construct the house. It's our intent to pave...improve the road and the driveway at that time.

Mr. McGroarty: But your plan does not...the town engineer and the Board engineer can address...can deal with the question...but your plan does not show a detail to improve the road to township standards.

Mr. Kalashian: I was just addressing the comment in the report that said that the road needs to be improved. I guess I'm not familiar with whose responsibility that would be.

Mr. McGroarty: Well that's yours.

Mr. Kalashian: Yes. It would always be in our privy to do that. I guess one of the conditions would be, we would have to get a plan in front of the town, to do that.

Ms. Mott: Wouldn't that be something that comes first?

Mr. Kalashian: Well we have to dig up the road to connect to the sewer, so, I wouldn't want to pave a road and then dig it up.

Mr. McGroarty: No, I mean it's just your plan shows...inaudible...driveway so you're changing your... in other words you are not seeking that relief, that appeal process under the statute under the Land Use Law then. You're actually proposing to actually do an improved section for the road, to township standards.

Mr. Kalashian: I don't know if the road factors into the variance application or if it's just a condition of approval of the variance. I guess I don't understand the question.

Mr. Vreeland: I think that the question is are you proposing just to install a driveway or to continue the road and improve the roadway to the township standards?

Mr. Kalashian: The latter would be our intent.

Mr. McGroarty: Then we need a plan showing this. Your plan tonight doesn't show that. Your plan shows a driveway.

Mr. Spinelli: My client can certainly, as a condition of the permit, supply a plan that would meet the standards of the township.

Mr. Weiss: I know when...when I was last connected we were talking...Mr. Kalashian, you mentioned positive criteria and you talked about the steep slope which affected your ability to put the foundation where it goes. Have you addressed the negative criteria?

Mr. Spinelli: We haven't. Mr. Kalashian, could you provide any testimony about...regarding the relief that you are seeking not resulting in a detriment to the public good and not substantially impaired intent and purpose of the zone plan and zoning ordinance?

Mr. Kalashian: If we were granted relief on the front yard, as I mentioned...the front yard does not neighbor any adjacent residences or structures. Its opposite of that town owned lot. The house only, the lot only has two neighboring structures at the rear and the side and the variance doesn't affect them as both of those sides are compliant. So we don't believe that the variance in the front yard setback would affect any other homeowner, landowner or affect the town plan in any way.

Mr. Weiss: Okay. Does anybody have any other questions about the testimony regarding the proofs of the positive or negative criteria?

Mr. Buzak: Mr. Chairman, I have some but I'm going to defer to the Board before I ask any of mine.

Mr. Weiss: Okay and I know while I was not on for a bit we did address the sustainability of the road? I think that's when I came back on? Chuck, is that correct? When we were talking about the road itself?

Mr. McGroarty: Yes. It's the applicant's testimony as I heard it tonight that he will revise his plan, if its approved, and show a road to township standards or subject to Mike's review to extend East Forest Road.

Mr. Kalashian: That's correct.

Mr. McGroarty: Not a driveway. Right.

Mr. Weiss: Okay. And we also have...Mike, we have your report. Is there anything in your report you'd like to talk about?

Mr. Vreeland: Yes. The code requires some kind of storm water provision for a single family house. Generally, based on other similar type of applications it involves connecting the roof into dry

wells. At least the plans that we saw didn't address that. Would be our recommendation that that be addressed. That section of the code, be addressed. And if storm water measurements were proposed and constructed, we would recommend that the applicant confirm that they would be responsible for maintaining those improvements. We are also suggesting that the applicant include on his...inaudible...the elevation of the sanitary sewer. They are going to make the connection, to make sure that the location, the elevation work with what they're proposing. Any sewer cleanout should be fitted with brass caps so that they can be located. Soil erosion, sediment control measures should be included on the plan. Area of disturbance is more than 5,000 square feet. They'll need a soil erosion sediment control certification. Based on our site visit out there, there were going to be some trees that were going to be removed. Through testimony or a revised plan, I think, should be prepared indicating how many trees are going to be taken down.

Mr. McGroarty: Mike, on that...the ordinance exempts single family homes from that.

Mr. Vreeland: Okay. I wasn't aware of that. Thank you, Chuck.

Mr. McGroarty: Then there is going to be a significant amount of fill that is going to be brought in on the property. As you are aware the township recently adopted...inaudible...dirt ordinance and we recommend that the applicant comply with the requirements of that code...section of the code.

Mr. Spinelli: Certainly my client will address each of those issues. As far as the storm water, I thought that the...meaning...plans and it was on the plans, but if it was not we will certainly address that condition of the permit. And any of the other issues you discussed.

Mr. Weiss: Chuck, was there anything else you wanted to cover?

Mr. McGroarty: No. I've covered my comments. Thank you.

Mr. Weiss: Okay. So, let me see, does the Planning Board have any other questions?

Mr. Buzak: I have a couple before you open it to the public.

Mr. Weiss: Perfect. Ed, why don't you go ahead?

Mr. Buzak: Yes. Mr. Kalashian, you testified that the lot begins to slope down significantly toward the rear and that is what caused the relocation of the foundation when it was built. My question is, could the foundation have been put back, the 40 feet? First of all, that's the first question. And could it have been put in a place where it complied 40 feet back?

Mr. Kalashian: I mean, had they...they would have had to rotate the house into the steep section and I think they chose to lay it out in a way that mitigated any potential sliding of any of the forms. So, I imaging it could've been rotated further but that it would have required additional site work which would have been difficult to do at the time.

Mr. Buzak: What is the degree of slope that we are talking about here that would have been infringed upon if the foundation were moved back two and a half feet, I guess, or so to comply with the ordinance?

Mr. Kalashian: The slope of the existing site you're saying?

Mr. Buzak: Well, here is the point. The house is supposed to be put back 40 feet from the front yard. It was...the foundation was installed and it was installed deliberately, apparently, at 37 1/2 feet because when you went out there...not you necessarily. I don't know who built the foundation, but when the foundation was built it was determined, unilaterally, okay its going...we really can't move it back because the slope that we have there and I guess that's a downward slope if I'm reading the topo correctly. So it would be more expensive, more effort, more whatever, to do that. Consequently we are going to shift it and either no one thought about the fact that we don't have any room here to shift it. Or you thought that...not you again, whoever built it...thought that they were still in compliance and later found that they were not. So, my question is there are steep slopes throughout this and as I'm looking at the plan here that topography is not unique to that section. It looks to me that those topographic lines run pretty much in that whole area, so I'm trying to find out why this foundation could not have been put back?

Mr. Kalashian: Well obviously when we filed for the original permit it was our intent to meet the criteria of the setbacks. So we filed originally for a building permit with a site plan that showed the house sitting within the appropriate setbacks. As it was mentioned one of the challenges is that there is not an improved road and the markers for the site were difficult apparently for the excavator to read. So when we discovered that the foundation had been not installed per the plans, as you may observe, as you said it was kind of a surprise to us. It was explained to me that the reason it got installed where it did was because of the site falling off and then not being able to get an accurate measurement and they installed it where they felt it would be most stable. So, it was our intent to install it within the setback, but the lot is already fairly unique in shape as well as topography and so we find ourselves having a foundation in the ground that as you said varies from half a foot to two feet in the setback. So, I'm not saying it could not have been installed, it was our intent to install it. It's just that the unique conditions of being in front of a non-improved road and then on a fairly steep back site, caused the excavators to apparently not be able to put it in the exact spot where the plans show. So we find our-self in this situation, trying to get it mitigated as effectively as possible but we do have a foundation that's in the ground at this point. So, I...whether or not it could have been is unfortunately...unless we are going to dig it up and move it in which case we'll just, you know, have to go in a different direction. It was our intent to install it in the spot but there were some unique circumstances relative to the road and the site that apparently drove it to its current location.

Mr. Buzak: Okay. I guess so that's where I was coming at. I was coming at it from the perspective of was there a mistake made? And now the request is, yes there was a mistake made. We thought it was going to be 40 feet. It wasn't and the alternative is to get a variance or to rip up the foundation or rip apart the foundation. That's one thing. Or is it that well, it's not a mistake? We intentionally put it there because the topography and the conditions of the land were such that we were unable to put it where we were supposed to put it? Those are two different things. I'm trying to get to what was there basis for what happened here?

Mr. Kalashian: Our intent was to install it in accordance as of right with the variances...

Mr. Buzak: Not the variances. With the ordinances.

Mr. Kalashian: Sorry, with the ordinance. Without variance. Correct. Our intent was to install it as of right without variance from the ordinance. What ended up happening, was a change was made

in the field without our consent due to what we were told were field conditions. And now we find ourselves having to apply for this variance. So, whether it was a mistake, I mean obviously it was not our intent to be here years later at this point, but we are requesting the variance so that we can finish and we don't believe it incurs a hardship on any other adjacent owner or the town.

Mr. Buzak: Thank you, sir. The other question, Mr. Chairman that I have is with regard to this extended road of East Forest Lane. I have on one of the set of plans that you have here there is a... it almost looks like a circular driveway. Well, not it almost looks like, it is a circular driveway that connects to the extended road. And again it was...inaudible...when you refer to extending the road are you intending to extend the roadway, your entire frontage? Or are some portion of that frontage...cause as I understand it and again Chuck, maybe you can help me out here, in terms of the house being on an improved road or front on an improved road is it fair to say that the road is supposed to be covering the frontage of the property? In other words, the road should run the entire frontage of the property? Just so we have that clear now.

Mr. McGroarty: I think that's a very good point. I ready the ordinance that way, yes. Not the entire frontage of the property necessarily but at least the minimum required frontage which is 80 feet in this zone.

Mr. Buzak: And again, for Mr. Kalashian, I just want to make sure that it's clear because you made a commitment with the Board and Mr. Spinelli made it or emphasized that based upon your testimony. When the township's talking about extending the road and constructing it with township standards, they're talking about...and again Mike and Chuck can help me out here...a 30 foot wide road with, I assume, drainage and curbs and all that stuff in it. It's not a 15 foot or 20 foot wide road. But I stand to be corrected by either of the other professionals that know much more about it than I.

Mr. McGroarty: Well I can tell you, Mike can tell you, what he will be looking for from an engineering standpoint. East Forest Road is not an improved road, 35 feet wide. I'm not sure the exact width of the road. It's a rather narrow road.

Mr. Buzak: Okay.

Mr. McGroarty: Having said that, I'll let Mike decide what....

Mr. Vreeland: And I think we would be falling back on the residential site improvement standards for the classification of roadway. I don't know exactly what that would translate tonight but that would be what we would be looking at as a guideline for the improvements on the roadway.

Mr. Buzak: Okay.

Mr. Kalashian: Just so I'm clear. When you talk about improving the road, you're talking about improving it from the edge of the existing improved road as far as would be required in front of our site, not improving all of East Forest Road, correct?

Mr. McGroarty: Correct. Just on your frontage.

Mr. Kalashian: Okay.

Mr. Spinelli: When the plan is submitted by my client, the plan that'll be in conformance with the township ordinances. That'll all be laid out Mr. Buzak. Your questions will be addressed as part of that submission.

Mr. Buzak: Thank you, sir.

Mr. Weiss: Just so I'm clear the road will go right through the end of the property line of Lot 44? Because it looks like the circular driveway ends somewhere prior to the end of Lot 44 by maybe two-thirds?

Mr. McGroarty: Well at least 80 feet, Mr. Chairman. Which would be the required frontage. I think the lot has 100 feet of frontage there, theoretical frontage. I don't know if the extra 20 feet is required.

Mr. Spinelli: The submission will be in compliance with the ordinance.

Mr. Weiss: So, just so I'm aware that the ordinance calls for 80 of the 100 feet has to be...

Mr. McGroarty: In this zone district, front, yes...80 feet of... frontage of 80 feet, minimum.

Mr. Spinelli: Okay. And according to the plan that I'm looking at, do you think that it is at 80 feet now, or it needs a little bit longer?

Mr. McGroarty: The lot itself has...the survey information shows it has 100 feet in length.

Inaudible

Mr. McGroarty: 191 feet. I'm sorry, 191 feet. So, it's actually two lots. That's what it is. And they were combined so that they should show that. The total is 191 so, we certainly wouldn't need to improve the road that entire length.

Mr. Weiss: I just have one other question. It looks like that your permits put in this foundation was in 2015. Why the delay now that its 2021? What caused you to stop the construction?

Mr. Kalashian: We wanted to understand how difficult it would be to move forward for our purposes. I was originally building the house as a residence for myself. When we were delayed I bought another residence in Chester, to move into. And now, we find ourselves at a point where we have the...having bought another house the resources I had allocated to build this house were used up on the other house and so not I had to save enough to come back and finish this. I obviously don't want to leave a foundation in the ground. It's a blight to the neighbors to have a construction site there. We've been maintaining insurance on the property for all of those years, so I just had to gather enough resources to be able to complete it having had planned on moving into this house previously.

Mr. Weiss: And Kraig, as a follow up. When did you realize or when were you notified that the foundation was not in conformance with the zone?

Mr. Kalashian: We were asked to submit a storm water management plan after the permit was issued to us. Apparently we had not done that. There was a storm water management plan requested which we contracted an engineer to provide. When they did that it required us to get a new survey because the site had a foundation on it whereas the previous site plan obviously didn't. And so during that time we had a new survey done, which again took some time as well, we discovered that the foundation had been installed not in accordance with our original plan. That's what triggered all of the...the need for a variance.

Mr. Spinelli: What year was that, Kraig?

Mr. Kalashian: I think we resubmitted in 2017? If I'm correct.

Mr. Spinelli: And you, on your own when you saw that the foundation was not in conformance with the ordinance, you brought it to the attention of the town...township?

Mr. Kalashian: Yes. Well we decided to submit the plan faithfully at correct as opposed to just kind of misrepresent it a little bit. So yes, we represented it as is and we knew that is was going to trigger a variance requirement.

Mr. Weiss: Okay. Well, those are good answers. Anybody else have anything they want to add?

Mr. Forlenza: Mr. Chairman, I have a question.

Mr. Weiss: Go ahead, Ken.

Mr. Forlenza: I'm looking at the plans that are posted on the site and there is the architectural plan and it shows the side elevation. Which is Page 2 of that. It shows the foundation, which is on the site plan, which is the setback at 37 1/2 feet or whatever. It then shows a roof line that goes well beyond that, what I'm thinking is a front porch.

Mr. Kalashian: Correct.

Mr. Forlenza: So is that within the building envelope window of the 37.7 or is it just the foundation?

Mr. Kalashian: No, the 37 is to the edge of the front porch, not the foundation.

Mr. Forlenza: Okay. That was my question. Thanks.

Mr. Weiss: Anybody else from the Planning Board? Not, let me take a look if there is anybody from the public?

Mr. McGroarty: I know there is one, Mr. Chairman. I'm promoting one, if I may. I know this person is contacting...

Mr. Weiss: I'm glad you see it, Chuck, because I don't. Why don't you bring that person up?

Inaudible

Mr. Weiss: Sir, if you could, you can state your name and address for the record and then feel free to ask a question.

Mr. Chopra: Sure. My name is Manpreet Chopra. My address is 10 Connelly Avenue. I am the property that is to the rear of the property that Mr. Kalashian is building.

Mr. Weiss: Welcome.

Mr. Chopra: Thank you. So, I just had a couple of concerns about this. I have no problem with Mr. Kalashian building. Everybody is allowed to do that. But he has a massive lot because he combined two lots. Anybody from the Planning Board is welcome to come by and look at the site. The way he built the foundation and the walls are so close to my property. Even though he is not in violation of the setback variances for the rear yard, he is only 43 feet away from my property line. After that property was completed, if somebody were to put a deck or a patio or something like that in there, they might as well be in my back yard at that point. And due to the topography even though it's a single family home and he built on such a huge hill behind my house and it's so close to my property line, that I have zero privacy. The house is so high, I believe there is another...and I'm not a...I don't understand the technical jargon...but there is some rule as well, it has to be 1.5 times the height of something of the distance? I don't know it exactly, what that rule is but that house is so high that if I had to get any privacy and it's so close on a huge hill behind my house, that if I have to get any privacy I'd have to request, which I know the town is not going to allow me, but I'd have to put up a 30 foot fence just to get any kind of privacy because that house is so high up and so close to my property line. That's all. I just wanted to voice my objections on that. Rules exist for a reason and I'm just unhappy about the way this is being built, that's all.

Mr. Weiss: Mr. Chopra, the one thing I can comment on is your concern about a patio or deck. That would most likely trigger yet another variance request and of course the objection and impact on a neighborhood would come into play at that point. I certainly understand your concerns but we are looking at the rights that the builder has, the homeowner has...

Mr. Chopra: I understand.

Mr. Weiss: ...to build within the proper building envelope. I know that the topography can't be fixed. It was there before and it's going to be there when it remains. You know the zone plan does allow him to build that 45, 43 feet or so.

Mr. Chopra: Yes, right now the back wall of his house and it's not even finished yet is 43 feet from my property line in the back. I know the variance is you have to have at least 40 feet. I'm just saying that it's right on the edge. The way it's built, it's right on the corner and it's so high up on one side...In fact my neighbor, the other adjacent property, was also complaining the other day to me. I don't know if he's on or not or if he's raised his hand but he said he was going to attend the meeting as well. I received a letter to just say if I had any objections to voice them here and that's all I'm doing as a resident of Mount Olive.

Mr. Weiss: I do appreciate the time. I think you need to understand that the Planning Board has to work within the rules that are out there. So, if the applicant is conforming to his rear yard setback, we don't really have a legal leg to stand on to tell him he's got to move it even further away. Don't know if there's any plans for Mr. Kalashian to put up trees. I don't know if I have an answer for you. But I can tell you that if the homeowner or whoever ultimately lives in this house wants to build a deck or a patio, they are going to most likely go over the setback and that will trigger another variance and at that point, you know like I said earlier, we'll be able to take into account the impact on the neighborhood.

Mr. McGroarty: Mr. Chairman, just to clarify one point. A deck, yes. A patio, no. A patio will not require a variance.

Mr. Weiss: No, of course. A deck...I meant a deck, thank you. Or swimming pool or anything else that might want to be built into that back yard.

Mr. Chopra: I don't know what the rules are on how far or how high a fence I can put for some privacy because the way this house is, you're welcome to come do a site visit and see how close it is to its...its almost in my backyard from my property line. I don't know how high of a fence I'm allowed to put.

Mr. McGroarty: Six feet. Six feet.

Mr. Chopra: Yes. I would need like a 30 foot high fence to get any kind of privacy because this house is... like my house is here and this house is so high up on the hill that even if I put a six foot fence, there is zero privacy.

Mr. Weiss: I'm almost wondering, Kraig, is there any thought to you to put a fence closer to your house? Because a fence closer to Mr. Chopra's house is going to do absolutely nothing. I think if there is a fence for privacy, a planting it would have to come right off of your house in order to protect anything.

Mr. Kalashian: Yes. I mean I know when we designed the house, we only put one window on the main level that would potentially look at Mr. Chopra's house. There is a...inaudible...window in one of the bedrooms that's up high so there would be no way to see Mr. Chopra's house. But there is only one window in that elevation at the main level for that reason. So, we considered that. Unfortunately when you look at the setbacks on the scape of the property we have, the property we have is long and narrow. When you look at the setbacks, there is really only one place you can put the house. That's where we ideally sited it. As you mentioned I can't change the topography but we were sensitive to the privacy of his property in the design of the home. Yes we can certainly look at doing something with a fence closer to our house but the reason we put the deck on the front side and not the rear is...that the idea is that we won't be encroaching on his property with any outdoor space. So, we were trying to be sensitive to that. I appreciate his comments for sure.

Inaudible

Mr. Weiss: Mr. Buzak, we don't really have the right to put a condition in that would require Mr. Kalashian to put up a fence or trees, do we?

Mr. Buzak: No. I don't think you do. If he volunteers to do that it would be a condition but we have no jurisdiction to require that.

Mr. Weiss: I didn't think so...inaudible...Mr. Chopra so you can kind of see I don't have any legal basis to force anything.

Mr. Chopra: I understand. You guys gave me the opportunity to voice any concerns I had and that's what I'm doing as a resident.

Mr. Weiss: Okay.

Mr. Chopra: Rules exist for a reason. If we're going to give variances and allow people not to... sorry I'm, I'm not trying to...no offense to Mr. Kalashian...but you know rules exist for a reason. We all are...I don't want to use the word forced to follow them but we are asked to follow them for a reason. So that everybody...that's why Mount Olive is the town it is.

Mr. Weiss: I certainly appreciate your understanding it and patience and try to do the best...I'm sure Mr. Kalashian is hearing it and hopefully do whatever he can to remediate it.

Mr. Kalashian: What I'd say, Mr. Chopra, if given the opportunity to finish the home, let... you know next time I'm out there or we get a little further with the construction...maybe we can meet and figure out what we can do to alleviate your concerns. I'm certain happy neighbors make good neighbors. So, if we are given permission to go forward, let's just meet and see if we can figure out something to put up a fence or do something that protects your privacy.

Mr. Weiss: Well thank you for that offer. Mr. Chopra do you have anything else?

Mr. Chopra: No. I just want to thank you guys for allowing me the opportunity to speak and bring my concerns. I appreciate it. Thank you very much.

Mr. Spinelli: Thank you. I think Mr. Chopra's comments and concerns kind of highlight and give more credit to the criteria. If the foundation was within the 40 feet, it would be two and a half feet closer to Mr. Chopra's property. So I think under the circumstances, when you take all the factors, serendipitously Mr. Chopra's comments themselves give more weight to the positive criteria as to why the variance would be needed.

Mr. Weiss: Well played, Mr. Spinelli.

Mr. McGroarty: Mr. Chairman?

Mr. Weiss: Yes, Chuck.

Mr. McGroarty: I just want to clarify something that Mr. Forlenza had asked earlier. The porch then, on the architectural plan, if you could look at...if you have with you...Mr. Kalashian, S1? That's one of your plans that you provided to us. Do you have it?

Mr. Kalashian: I'm pulling it out. Sorry, I'm looking at it.

Mr. McGroarty: Okay. So, on the front of the facing East Forest Road there is the outline of the house itself, the foundation. What is that rectangular footprint in front of that? Is that part of the structure?

Mr. Kalashian: So, there's the driveway and then there's a little stair and then there is the porch and then the house, right?

Mr. McGroarty: Okay so that porch is 32 feet from the front setback? Is it not? Not 39...39 is the foundation.

Mr. Kalashian: Yes, you are correct. I'm incorrect. You're correct and this plan it is showing that way, yes.

Mr. Buzak: Well then actually, Chuck, if I might? Or Mr. Kalashian, I saw the same thing and I think that that five feet that you're talking about is that not the distance between the edge of the porch and the circular driveway looks like that's five feet. Looks like the porch is wider than that so I think that if you scale that off it would be even closer to the front line. I think it's...

Mr. McGroarty: That's what I said. That's what I said. The porch, the edge of the porch, then to the front lot line is 32 feet so the variance really, the encroachment is greater in that respect. Its 32 feet whereas 40 feet is required.

Mr. Buzak: What I'm saying, Chuck, is that of you look, I assume you're looking at the five foot and if you look at where the arrows are that's not the width of the porch.

Mr. McGroarty: I know that.

Mr. Buzak: I think, right?

Mr. McGroarty: No, I know. Inaudible...

Mr. Buzak: So is the porch wider than five feet?

Mr. McGroarty: Yes. The porch is about 13, 14 feet wide according to this...14.

Mr. Buzak: So if its 13 feet and the edge of the foundation is 37 feet, don't you have to subtract 13 feet from 37 feet?

Mr. McGroarty: I'm taking an easier approach actually. I'm just putting my scale on the edge of that rectangular footprint and bringing it out to the front lot line and I get about 32 feet.

Mr. Buzak: Okay.

Mr. McGroarty: 30...32...I mean I'm doing it kind of rushed, right now.

Mr. Buzak: Okay. No, that's fine. We're on the same page.

Mr. McGroarty: But I mean I think the record should be clear. The front setback, even though I had it in my report as 39 feet, per the plans, it's actually closer to the street than that.

Mr. Kalashian: The way that the house is designed is that the roof cantilevers on the side elevation. So if you look at the side elevation you see that the roof projects out past the house. That's per the design. So that porch, or what we are referring to as the porch obviously, is like you mentioned in that 32 to 37 foot range. But if required we would have to redesign the building to then have a smaller roof as well. Because it's not just the porch it's the roof as well.

Mr. McGroarty: I'm not...I just want to be clear...it actually looks like 30 feet but again I'm doing it kind of rough, real fast...30 to 32 feet. So, you're setback, the variance really is the 30 to 32 feet, something of that order. Perhaps you can verify.

Mr. Kalashian: Yes. According to my plans it looks like the porch is about seven feet deep, so we can certainly shorten it if required. Again it's tied to the roof structure as well. So, we would redesign the building if required.

Mr. Buzak: Let me jump in here. We've had this happen before. This is not a loosey-goosey operation here. No offense to anyone. Its not was 32 feet its 30 feet, its...the Board is being asked to grant a variance. It's not well, you know it's...here's what it is and we can do this or we can do that. You know, we started out here with...and I thought as well as Chuck...that we were talking at its greatest, its closest point being 37.7 feet from the right of way line or property line so it was a variance being sought of about 2.3 feet at its maximum and then it was less of a variance as you went along, based upon the plans. Now it's become evident that that's not the case it's at least seven or eight feet closer to the property line because of the porch. And if I understood your testimony, Mr. Kalashian, that the roof extends over that porch but extends beyond that. So, if I understand the way the measurement is made it's from the portion of the house irrespective of whether it's a roof or a deck or a porch or whatever, to the right of way line. So, I think this Board is entitled to know what you're seeking. Are you seeking a 10 foot deviation? Are you seeking a five foot deviation? Are you seeking a 12 foot deviation? I think that's important for the Board to know. I have to tell you it's just not clear here at the end of the day when the Board's got to be asked to make a decision, we're the ones who have to write the Resolution, and we need to know what it is the Board is granting. And I think the Board needs to know what its granting before it grants it. So, sorry to go on like that. I don't mean that personally.

Mr. Kalashian: No I agree completely and to answer your question, I think because of the hardship of not being able to put the house deeper in the lot for all of the reasons we discussed, we would be seeking a ten foot variance at this point to be able to construct the house as designed.

Mr. Buzak: Now, Mary, I didn't look at the notice that was given for this application. Does it specify the magnitude of the variance in it?

Ms. Strain: It's the same notice that we give, the sample notice, that says basically any other variances requested but it doesn't go into detail.

Mr. Buzak: But in terms of the variance that's requested, I'm guess I'm asking did it ask for a variance to allow a setback of 37.5 feet? Or did it...I would think it would say something like that, but I don't know that.

Ms. Strain: I honestly can't answer. I really don't remember.

Mr. Buzak: Okay. I think that that's important in terms of again the notice that was given, you know. If a variance is being sought for a 30 setback and the notice says we're asking for a variance for 37 foot setback, that's simply inaccurate. That's not pure because there is some provision in the notice that says...and any other variance... that's not any other variance that's the variance being requested. And you know people come in and say, okay you're asking for a two foot variance, that's one thing. You're asking for a ten foot variance, well maybe that's another thing. People who receive these notices...these notices are going to mean anything, they need to have some accuracy. And it looks like we're off here, but I don't know that. So I don't want to jump the gun here.

Mr. Kalashian: I believe we just mentioned that we were requesting a front yard variance. I don't believe we specified because the dimension changes across the front elevation.

Mr. Buzak: Okay. But in fairness, If that is what it said, the plans that have been submitted really seek...demonstrate that the variance is about two point three feet at its greatest point and then is less of a variance as you go across the frontage. So, inaudible...perturbed here, Mr. Chairman, because again, you know, we need to have a process here that's fair to everybody and that is accurate and not one that we pass things along here.

Mr. Weiss: Is there a suggestion on what we should do?

Mr. Buzak: I would like to see the notice before I say anything, but if the notice is as Mr. Kalashian has represented and just said a front yard variance, then I question if that notice in and of itself is adequate because it should be a little more specific than that when you are talking about a front yard variance. Even given that, if the plans that are there show a 37 1/2 or 37.7 foot setback, and without any change there is no change tonight, it was caught at by actually Mr. Forlenza who raised the issue. Its really not at 37.7 foot variance, it's a ten foot...a 30 foot setback or a...then I think the notice is deficient. I think between the notice and the application, its deficient and you can't come before a Board after, for a public hearing, and say okay, sorry we made a mistake and let's just conform the application to the proofs. I think there is a notice issue here. I hate to say that. I know that this thing has been going on. Mr. Kalashian has finally gotten together to get this thing moving. But I'm just...somebody has got to uphold the process and I guess it's me.

Mr. Kalashian: I can appreciate that and certainly we don't want to have to come back again and again but we've got a significant amount of time and resources invested thus far. You probably know that we were asked to pay a \$15,000 for the privilege of connecting to this sewer before we were even given the first permit. So we've got a lot of resources already tied up in the site. We've got a foundation in the ground. I'm willing to make stipulations if you say that we can't build a deck we need to redesign the house. I'd rather not have to come back to multiple meetings for basically a structure that's already in the ground. But, we felt that the conversation was going to be about the front yard variance and given the fact that there's no neighbors on the south side of the house and there is only one other lot that's town owned, in theory is not even buildable. We don't feel that it creates a negative impact to any other structure or land owner but obviously I respect your comments and we just want to be amenable to move this thing forward.

Mr. Weiss: I don't think Mr. Buzak is challenging any of that, Kraig. I just think from a legal perspective if the entire application isn't noticed properly then the house of cards falls right upon itself. And so, if we are going to grant this variance and your testimony tonight, you're testimony has been very good as far as I'm looking at it. We should probably do it right. We should make sure everything is in place. The I's are dotted and the T's are crossed. Mr. Buzak, unless you have the notice and read it to us and maybe Mr. Buzak can look at it differently. I don't know if you have your notice in front of you? Mr. Spinelli, same to you. Do you have a copy of the notice in your file?

Mr. Spinelli: I believe I do.

Mr. McGroarty: While they're looking for that, Mr. Chairman, one possibility may be to continue the hearing and that would give Mr. Kalashian time to have his engineer or whomever or perhaps himself will do it, is to show the details for the road extension. Rather than the driveway. And he can clean up some of the other matters as well.

Mr. Kalashian: I have a copy of the notice in front of me. It basically says, notice to property owners and newspaper of appeal and or application filed an appeal with the Township of Mount Olive Planning Board for a setback variance. That's all it says. From the requirements of the Land Use Ordinance as to permit completion of house on premises known as 15 East Forest Road, Block 4118, Lot 44. So it specifically states the word setback variance. It doesn't say five foot setback or ten foot setback.

Mr. McGroarty: It doesn't say front either, does it?

Ms. Natafalusy: Doesn't say front or rear either.

Mr. Kalashian: It doesn't.

Mr. Scapicchio: Mr. Chairman?

Mr. Weiss: Yes, David, go ahead.

Mr. Scapicchio: He either has to come into compliance with the setbacks that are on the present lands or I think he has to re-apply.

Mr. McGroarty: Or re-apply...

Mr. Scapicchio: And re-notice.

Mr. Buzak: I think Mr. McGroarty's suggestion would be a reasonable alternative that if we are going to keep the plan the way it is, that there being re-notice to set forth exactly what it is including the accuracy of the factors of the variance. Then I think it is a good idea to get the road aspect resolved and this way then you know, everybody knows what's going to be going on and that notice could be done relatively quickly to...I don't know what our agendas are. I know we're pretty crowded. We can carry it to a date certain anyway but we can keep this application open so we don't lose all of the testimony that has already been given by Mr. Kalashian.

Mr. Kalashian: I apologize, I was reading the newspaper notice. The legal notice actually does state front yard setback. There's several notices. I apologize I was reading the newspaper one. The legal notice by remote / virtual meeting does state front yard setback.

Inaudible

Mr. Buzak: Okay. Well they should be the same, yes. The public notice should be the same as the individual notice. So you can clear that up hopefully for the next...whenever that is.

Mr. Kalashian: Yes, unfortunately, I don't know that we'll get to the next time, but that's fine.

Mr. Weiss: I'm not really sure we have much of a choice from the notice standpoint. I think that the testimony has been pretty good. Again, this is my opinion. The positive and negative proofs have been addressed. We need to clean it up slightly and if it's a matter of you know if the notice is ten days is before the next meeting...is that correct, Chuck?

Mr. McGroarty: Yes. I was just thinking though, that the positive criteria had to do with the topographic conditions of the property where the foundation is, but that doesn't address the front porch.

Mr. Weiss: Well, I certainly am not going to testify for the applicant but I suppose it all...if that's where it starts then the end product is certainly there as well. The front porch is connected to the next piece which is connected to the foundation. Again, I'm not going to testify but I don't necessarily have a problem with it.

Mr. McGroarty: Well I'm just saying I'd think you'd want something on the record since it's a...it's an impertinence to the house that triggers a variance. Without the porch, the variance is less. But you can have this, I think we have room on the May, 13th? Mary, am I right?

Ms. Strain: Yes. Yes.

Inaudible

Mr. Spinelli: Add to that, we can address the other issues as you...inaudible.

Mr. McGroarty: Which I think is good because then we have a plan that shows the road improvements and Mr. Vreeland can review that prior, too.

Mr. Weiss: Okay. So, let's then...we'll carry it until May 13th.

Mr. Buzak: Mr. Chairman, before we do that, Mr. Kalashian and Mr. Spinelli, I'm not sure of the amount of work that's involved in developing the road, specs and design or whatever, so if you don't think that you are going to make it, being able to have that at least ten days prior to the 13th of May, which would be around the 3rd of May, because they have to be before the Board and the Public has to have access to them ten days before. If you don't think that's going to work I would suggest we carry it to a different meeting. I'm not trying to expand it but we have a very active agenda and applications run they get carried you sort of reserve the spot and the spot opens up but nobody else can come in because they have the same requirement that they had to get it in ten days before.

Mr. Kalashian: No. I was just going to state the same thing. Given the amount of work required and engineering and designing given the status of things right now with the pandemic. I don't see that it would be realistic for us to complete all of that work in two weeks. So I would request that we apply for a future meeting date. We can coordinate that with the township going forward.

Inaudible

Mr. Buzak: I'm sorry, Mr. Spinelli, I didn't mean to interrupt you, go ahead.

Mr. Spinelli: We could do it that way. Or if at the next meeting, if they are not prepared if we can get a conditional approval based upon the site work to be performed on the road. If that was a possibility? At least we can get this on the calendar, go forward, even provide the notices and then the approval would be conditioned upon the road submissions?

Mr. Weiss: Are we comfortable with that plan? It would really fall upon Mike and Chuck.

Mr. McGroarty: I'm not, I'm not sure I understand what the proposal is. To what date? Are we trying to propose...?

Mr. Weiss: Let me try to summarize. It sounds like Mr. Spinelli is suggesting, get the notice right. Get some of the plans in. And any kind of open issue we discussed during the meeting and if it's not finished in time, make it a condition of the approval. Is that correct, Jack?

Mr. Spinelli: That's correct.

Mr. Scapicchio: Mr. Chairman, I'm not sure that is fair to the public that's going to get this revised notice.

Mr. McGroarty: I think if there are other issues that surface then that happens. I think right now we know what... The plan has to show the road. Or the improvements to the road. The extension that is. Per RSIS Standards or whatever, Mike recommends in terms of design and width. It will revise the front yard setback to reflect the fact that there is a porch there, unless that changes. If there is a re-notice, then the notice will be very specific that it is x amount of feet front yard setback variance sought. I don't know what else...I mean and then Mike had a lot of technical details about drywells, etc. that also should be shown on the plans. What...am I missing something though?

Inaudible

Mr. Buzak: I think you're right, Chuck. I think there were a lot of open items here. I think that the Board was considering...I don't know if they got to the point that they would go forward, but they were considering making these things all conditions. Again, as I said earlier, these are important factors in terms of this project and they really should be before the Board for the reasons that Chuck and Mike gave. I, with all due respect to Mr. Spinelli, I think that they ought to get the plans in order so we know what we're looking at. We've seen them and we can make a rational determination on the request. So maybe we can carry this to a date unknown, right now? Since it's going to be noticed anyway. New notice given. We don't have to set a date tonight because there is going to be new notice given? But the application will be continued and carried to an uncertain date. New notice will be

given and this way, again, what was the testimony that was given tonight should be...remains relevant to the decision of the Board will make based on the revised plans, is already in the record. We don't have to reiterate that. Not that it was all that long. We probably spent more time figuring out what we are going to do as opposed to getting the testimony in as to what the proofs were. Anyway, I think we should do it that way, Mr. Chairman. This way we get a clean application. We have everything that we need. The public will have everything that it needs. Mr. Kalashian will know whether he's got a...he's going to go forward or not go forward and that's fair to him.

Mr. McGroarty: Let me just understand. So, they'll be re-noticed. Present application has a deadline at the end of this month, April 30. So, do ask for an extension then?

Mr. Buzak: Yes. Yes. Because this application will remain the same application. Mr. Kalashian is not going to refile the application. He's going to submit amended plans. He's going to give new notice. That's it. I think we can do it that way unless there is some administrative reason we can't.

Mr. McGroarty: So, an extension to...?

Mr. Buzak: What do you think, Mr. Kalashian, in terms of getting your work done?

Mr. Kalashian: Obviously I think it's a challenge for us to get it done for May 13th, so with respect if could extend it to June 30th, for now? If that's acceptable?

Mr. Weiss: That's certainly acceptable. You'll do the paperwork to extend it to June 30th?

Mr. McGroarty: Can I suggest...? Can I suggest one last thing? I would suggest July 30th. June is a jammed...inaudible. This just protects you. Doesn't mean...inaudible.

Mr. Kalashian: That's fine. I...you know...

Mr. Weiss: Thank you, Chuck. Well let's extend it to July 30th. Mr. Spinelli, I'm sure Mary will contact you to give that extension. At whatever point you feel you're ready to bring it back to the public, Kraig, you can do your re-notice, which allows me to say the meeting will be carried. There will be additional notice coming to the list of neighbors...200 feet within you property line. I don't have anything else. If anybody else has anything to add? Otherwise we'll leave it like that. Again the meeting will be carried. There will be further notice, to schedule the date. Anything else I should add?

Mr. Buzak: No, Mr. Chairman. I think that's it.

Mr. Weiss: Okay. So with that let's bring this hearing to an end. We'll look forward to seeing you back again to just clean up these open issues.

Mr. Kalashian: All right. Thank you for your time.

Mr. Weiss: We're going to bring up our next applicant but we're going to take just a little break. We'll just do five minutes if everyone is okay with that. I'm going to try to recoup my other computer.

Mr. Buzak: That's about 8:40, Mr. Chairman?

Mr. Weiss: Yes. Its 8:35 pm. 8:40 pm is fine.

Break

PB 19-23 BCM Enterprise Properties, LLC, 5 New Street, Block 3308, Lot 7

Mr. Weiss: Our next application is PB 19-23 BCM Enterprise Properties, LLC, for a variance at a single family home at 5 New Street, Block 3308, Lot 7. I do believe we do have Michael Rubin with us. This is a case...this is an application that's been carried since July 8th, 2020, if I'm correct on the date? Before I turn it over to Mr. Rubin, I believe that we have one exhibit which is A1.

Mr. McGroarty: Mr. Chairman, while you're doing that... Mr. Rubin, I don't see your client by name here. Am I missing your client to bring up?

Mr. Rubin: There are two. One, his name...first name is Angelo. The other's name is...inaudible. Maybe ID Designs? I'm not sure what his number will say. He should just raise his hand.

Mr. McGroarty: That's a good suggestion. There we go. Okay.

Inaudible

Mr. Rubin: Thank you.

Mr. Weiss: Okay with that being said, Mr. Rubin let me turn it over to you so you can kind of bring us back to where were are...to what brought us this evening.

Rm. Rubin: Good evening everyone. I hope everyone's well and made it through the winter. This is an application to build a single family home on an undersized, isolated lot located at 5 New Street. It's sort of a hole in the doughnut or a hole in the smile so to speak. There are single family homes to the west, three of them that are very similar. All of which have...are on the same sized lots as this one. All of which are non-conforming as the side yard setbacks. As you may or may not recall this application needs variances because it's undersized as to width and to area. Because the dwelling would encroach by two feet into the westerly side yard with 12 feet required and ten feet proposed. Previously we had testimony from the architect, Lori Jeanne Ryder from the engineer and planner, Christopher Nusser, who testified in both capacities. The Board requested that we have now tonight, testimony from the hydrogeologist who submitted a report to the Board. It's dated March 4th 2020. I think that might be an incorrect date. I think it should say 2021 but I'll let Matt Mulhall speak to that. With the Board's consent I would call Mr. Mulhall, now.

Mr. Weiss: Okay. Mr. Mulhall, what I'd like to do, lets swear you in. I'll turn it over to Mr. Buzak.

Mr. Mulhall was sworn in for the Record.

Mr. Buzak: Please state your name and business address for the Record, spelling your last name.

Mr. Mulhall: Matthew J. Mulhall. M U L H A L L. Address is 56 Acres Drive, Hampton, New Jersey, 08827.

Mr. Buzak: Thank you, sir. Mr. Rubin?

Mr. Rubin: Mr. Mulhall, would you please give the Board the benefit of your educational and professional background?

Mr. Mulhall: Okay. I am a...I have a Bachelor's degree in Geology from Lafayette College. Master's degree in Geological Sciences from Northwestern University. I've been practicing in this field for over 36 years. I've testified in front of Planning Boards on numerous occasions. I've been accepted as an expert witness in courts in several different counties in New Jersey. I've been in Federal Courts and my background is primarily in Hydrogeology and Geology.

Mr. Weiss: Mr. Mulhall, have you testified in front of Mount Olive Township before?

Mr. Mulhall: Yes. I have, sir.

Mr. Weiss: I don't have any problem. Anybody from the Planning Board have any issues? Otherwise let's accept Mr. Mulhall as our expert Hydrogeologist. Welcome back Mr. Mulhall.

Mr. Mulhall: Thank you.

Mr. Rubin: Mr. Mulhall, were you retained by the applicant to perform a hydrogeological study of 5 New Street in Budd Lake?

Mr. Mulhall: Yes I was. I'm going to save Mr. Rubin the heartache but that word is hydro-geologic.

Mr. Rubin: Thank you. If you will, could you please describe to the Board, the activities which you undertook as well as the findings and conclusions?

Mr. Mulhall: I was originally retained in March of 2020 by BCM Enterprises to evaluate the hydrogeology of the lot in question here, Lot 7 or 5 New Street. At that time we were responding to a request made by Mr. McGroarty and his June 19...inaudible...memorandum regarding would there be any impacts on neighboring wells. On March 3, we attempted...of 2020...we attempted to do an actual test at the site. Samuel Stothoff Company was the well driller. I was the geologist. We arrived at the site and found out that the well that was on that site that had previously served both the house on that lot and the neighboring Lot 8, New Street, sorry the block numbers and the lot numbers confused. There is one well but that had been decommissioned. The well at, on Lot 8 had been replaced and a new well had been installed in 2016 on that...for that lot. We were originally intending to pump the well on Lot 5. We had obtained permission from the owner of 3 New Street to allow us to monitor water levels on his well as well. That was also a fairly new well that was installed in 2012.

But we couldn't do the...inaudible...test. So the next thing that I did was I went back because we didn't have a well on the land. I went back, I evaluated the water demands for this particular project and I looked at the project from a hydro-geologic conditions. I have done other work in Mount Olive as well. Since it's a three bedroom home we knew that water demand would be about 320 gallons per day, per person. That's based on the residential site improvement standards. If I looked at Mount Olive housing density and the DEP standards for water supply it would be probably be closer to about 273. So, I chose to use the 320 gallons a day. I calculated a peak day in the end which is typically twice that at 640 gallons per day. Which comes out to an equivalent pumping rate of about .44 gallons per minute. Slightly less than half a gallon per minute. The well on Lot...Block 8 produces ten gallons per minute. Lot 8, excuse me the one Lot 3 or Lot 5 excuse me, right next door has a capacity of four gallons per minute. As I said before, the well that used to be on Lot 5 was capable of providing water to both the home on Lot 5 and the well...home on Lot 8 at one time. So I determined the demand...the next thing as I looked at the geology of the site. This particular property is on a fault block with two major faults in between the Turkey Brook fault and the reservoir fault which actually goes right beneath Budd Lake. Meaning that the rock itself is very fractured. As a result of that and since ground water moves and is transmitted through fractures it's a high likelihood that we would see quite a bit of water on this property. Not only does the well records indicate a high probability that the well installed would have sufficient yield, the geology would point to that too because I have these two normal faults on the property. The next thing to look at is the hydro-geologic aspects of it and as I said I've done testing in that area on that same fault block about 1,900 feet to the northwest I ran two aquifer tests. In the same exact geology. And in that aquifer test I determined a transmissivity of the formation of 2,070 gallons per day per foot. And a storage component of one point one times ten to the minus four. What that means is the aquifer is transmissive, actually it's quite transmissive for this type of rock. And it also is a confined aquifer. I then took it the next step using that information. I followed the standard DEP process for evaluating the radius of influence for this type of well pumping of one day at one point three two gallons per minute, or basically three times the peak day demand. What I ended up calculating a radius of influence of about two and a half feet from the well. We aren't going to have an impact much more than two and a half feet from that particular well. So, in other words, pumping the new well will not adversely lower water levels within the aquifer and will not adversely interfere with wells on neighboring lots. Which, is what Mr. McGroarty was looking for in his memo. Basically, in conclusion, what I calculated was that the yields of the wells on the neighboring lots are more than sufficient to meet the demands on those lots and it also points to a good aquifer. The bedrock aquifer beneath Lot 7 has, is part of a fault block, the well formerly on this well...on this lot was capable of producing water for two homes. The new well will only be a three bedroom home and it should have more than adequate water. On top of that the aquifer has more than sufficient transmission capacity and storage coefficient to meet the demands of the proposed home, without resulting in adverse impacts to the wells on existing neighboring properties. Or adverse impacts to the aquifer. In other words, you can put a well on Lot...on this lot and supply to the three bedroom home and it will not have an adverse impact on the neighboring wells or on the aquifer system and there is more than sufficient capacity in the aquifer to meet the demands of the home.

Mr. Rubin: Mr. Mulhall, if the Board was to see fit to grant this application and the applicant were to construct a home on this lot, what agency would be responsible for approving the construction of the well.

Mr. Mulhall: The NJDEP.

Mr. Rubin: So, would it be fair to say that in your opinion, should the Board grant this approval they can make it conditioned upon a DEP approval for construction of the well?

Mr. Mulhall: Yes. It's a domestic well that has to be a New Jersey licensed well driller that would apply for the permit and drill the well.

Mr. Rubin: Thank you. I have no further questions.

Mr. Weiss: Does anybody on the Planning Board have any questions for Matt? I certainly don't and I appreciate your testimony to the report that you delivered to us last month. It was a little bit smoother hearing it from you than trying to read it.

Mr. Buzak: Mr. Chairman...

Inaudible

Mr. Weiss: Ed. Go ahead.

Mr. Buzak: Mr. Rubin had mentioned when he introduced this that the date of the report is dated March 4, 2020 and Mr. Rubin speculated that it was probably March 4, 2021 and we never got that clear. So, why don't we clear that up for the record. Mr. Mulhall is the date of your report supposed to be March 4, 2021?

Mr. Mulhall: No. The date of the report is March 4, 2020. I wrote this report last year, with anticipation we were going to come in front of the Planning Board. But at that time, March 4th of last year was just as Covid was hitting and a few days later everything was shut down. That's why we were are having a meeting tonight. This report was prepared last year.

Mr. Buzak: Okay.

Mr. Rubin: I apologize, Mr. Buzak.

Mr. Buzak: No, that's fine, Mr. Rubin. I just wanted...I thought you were correct. I thought I was going to verify what you said but I wound up disputing it. That wasn't my intent but we got it on the record.

Mr. Rubin: Mr. Chairman, unless the Board wants to hear from the architect or it needs more engineering testimony, just seem to me, it might be prudent to just have Mr. Nusser summarize his planning testimony very briefly since its been so long since we first conducted this hearing. If the Chairman and the Board are willing to engage us in that.

Mr. Weiss: Tell us again, Mr. Nusser, you are the...inaudible...planner?

Mr. Nusser: I am the Engineer and the Planner.

Mr. Rubin: He was previously qualified as such for both expertise.

Mr. Weiss: Okay, so you are going to testify...I'm sorry I don't remember. I don't have the notes. So you're going to testify as the planner, now.

Mr. Nusser: Yes. I had already done testimony as both. I was just going to summarize my planning testimony.

Mr. Weiss: Yes that would be very helpful. Thank you, Chris.

Mr. Buzak: And sir, you remain under oath from the last time.

Mr. Weiss: Before we do that let me open it to the public. If anybody from the public has any questions for the Hydrogeologist testimony? Let's give the public an opportunity to ask any questions. I don't see anything from the public. Anything else from the Planning Board? For Matt Mulhall? Okay. Thanks again, Matt. Go ahead Chris.

Mr. Rubin: Before I begin, Mr. Chairman, I just want to note for the record and perhaps mark for the record, that I submitted through the Board Secretary, two letters that were sent to the adjacent property owners by certified and regular mail dated March 19, 2021, offering the subject property for sale to either of them for \$50,000 based upon an analysis that was performed by a real estate agent and the analysis was attached to the letters, which summarized the comparables that she used. That's just relevant to Mr. Nusser's testimony as to the positive criteria. I just don't know whether the Board, as a matter of course, would mark these as exhibits? Or whether they wish to just note them for the Record?

Mr. Weiss: I don't think we need to mark them, Ed, unless you think otherwise. I know they were sent in. Inaudible...noted. Ed? Do you think we need to mark them?

Mr. Buzak: Yes. Mr. Chairman, I do believe we should mark them because it does become relevant as Mr. Rubin mentioned, with regard to the positive criteria. If I recall correctly, there had been previous letters sent out before this one. Is that correct?

Mr. Rubin: Yes, but they did not include an offer price. And I was not representing the applicant at the time. Now I do and now I sent letters out with an offer price.

Mr. Buzak: Okay.

Mr. Weiss: We're referring to the two letters that were sent to...inaudible...correct?

Mr. Rubin: That's correct.

Mr. Weiss: Okay.

Mr. Buzak: We can mark them, I guess this would be A2 if I have it correctly?

Mr. Weiss: A2, lets...we can go A2 is the letter to Mr. and Mrs. Masotti and A3 to Tonnesen. Okay. That's A2 and A3.

Mr. Buzak: Okay. One last thing. Mr. Rubin, since letters were sent out by you, I don't happen to have it in front of me for some reason but they were sent out by you, is that correct?

Mr. Rubin: Yes. They were sent out by me, by certified and regular mail and I have received no responses.

Mr. Buzak: Okay. That was going to be my question. Thank you, sir.

Mr. Rubin: You're welcome.

Mr. Weiss: Okay. So let's...inaudible...if we're ready for it. Chris, you're going to summarize your planning testimony.

Mr. Rubin: If I could I'd just like to preface it with a couple of questions?

Mr. Weiss: Go ahead.

Mr. Rubin: Mr. Nusser, With respect to the block that this property is on and particularly with respect to the three homes to the west, all those three homes are built on the same size lot, is that correct?

Mr. Nusser: That's correct.

Mr. Rubin: And all three of those homes have or encroach into at least one of the side yards. Isn't that correct?

Mr. Nusser: That's correct.

Mr. Rubin: Is it fair to say that you would...that this house would conform to the street scape that is currently on the north side of new street.

Mr. Nusser: Yes, and it's also consistent on the south side of New Street as well. The lots here are similarly, those interior lots are the same 50 by 120 lots.

Mr. Rubin: So this entire neighborhood is developed with non-conforming lots, correct?

Mr. Nusser: That's correct.

Mr. Weiss: Let me follow up to that question if I can, Mr. Nusser. What year were those homes built? On the street? Do you know?

Mr. Nusser: I believe we discussed this last time. I don't remember the exact year. But it was considerably long ago.

Mr. Weiss: So if we were to suggest that perhaps they were build 1950 or prior, would that be an accurate statement?

Mr. Nusser: I believe that would be accurate.

Mr. Weiss: So those homes were built well before there was any zoning in place? Just to continue with your testimony.

Mr. Nusser: Right...inaudible....the house that had previously existed on this property.

Mr. Weiss: Fair enough.

Mr. Rubin: Now, you heard that we had sent letters to the adjacent property owners offering the property for sale and that no response has been given, can you explain how that is relevant to the positive criteria when seeking variances for undersized isolated lots?

Mr. Nusser: Absolutely. Part of the standard proof when seeking a hardship variance for having existing undersized lot is that you have to show that you attempted to one, sell the lot to a neighboring property owner that they could add theirs' to make is more conforming in their cases. Or, to try an acquire land otherwise, from people, which those letters had been previously sent as part of the application. So without having a response from somebody, where they are willing to purchase the lot for the fair market value, it is purely a hardship on the lot that if you are not able to develop it in the matter of course that its permitted to be, which in this case is a single family home, then it can't be developed in any way and the rights to the property are lost. In fact its...nobody wants to take it.

Mr. Rubin: Mr. Nusser, if you'll note on what was marked at exhibit A1 which is your aerial which shows the adjacent properties you'll note that the property to the east has a five foot setback from the subject property and the property to the west has an eight foot setback from the subject property. So, in your opinion would it be practical for this property owner to purchase any adjacent land to widen the lot?

Mr. Nusser: No.

Mr. Rubin: With respect to the fact that the proposed dwelling as well as the lot in question, conform to the development pattern in the neighborhood, how does that affect your analysis of the negative criteria?

Mr. Nusser: Well, again, I think if you...as we had talked about last time which again I understand that was in July and it was a long time ago... When we're developing this house which is consistent in scale and scope to the other homes in the neighborhood, this home is not larger than those homes in any meaningful manner. It's being developed with almost a consistent street scape or the size and width of the home. It's placement on the lot and sizes of the lot...its not just on this street but the majority of the streets in this particular neighborhood here between 46 and Budd Lake. So maintaining that consistency goes to the negative criteria in that it is better to have a consistent development pattern than to have this one home that is an outlier in some way. So, having the consistency in my opinion shows that there is no negative impact.

Mr. Rubin: Thank you. I have no other questions, Mr. Chairman.

Mr. Weiss: Anybody on the Planning Board have any questions for Mr. Nusser based on his testimony?

Mr. Ottavina: I do Mr. Chairman.

Mr. Weiss: Go ahead, Paul.

Mr. Ottavina: Just again to refresh the memory because it was a while ago. The current owner purchased the property. The previous house had already been torn down?

Mr. Rubin: That is correct. The house was torn down in 2006.

Mr. Ottavina: Okay, so he purchased it and that obviously would have been after, it was rezoned knowing that any house that you would most likely try to build would be non-conforming, correct?

Mr. Rubin: Right which is why the law has set up this process whereby you offer the property to adjacent property owners. If they don't purchase it then you are deemed to have met the positive criteria. If you can meet the negative criteria which essentially revolves around whether you are building a house which is consistent with the development pattern in the neighborhood as we've demonstrated we have, and the variance is entitled to be granted. Otherwise we have a regulatory taking. Thank you.

Mr. Ouimet: I have a question.

Mr. Weiss: Joe, go ahead.

Mr. Ouimet: Just as an undersized lot, how do you determine the value of 50,000? Wouldn't you say that an undersized lot that technically can't be built upon, would it have much less value and if it was offered to the neighbors, they might buy it?

Mr. Rubin: The law allows or requires the value to be set at the value with an approval. So, on a lot that can be built upon and so when you look at the analysis that were done, that was taken into consideration by the real estate agent in determining the value. You'll see that we are under every other home that was comparable by a substantial amount in many cases. Still the value that we are entitled to offer it and are entitled to receive is the value as if there was an approval to build a house on it.

Mr. Ouimet: Thank you.

Mr. Weiss: This property was acquired...was this property acquired through a tax sale?

Mr. Rubin: I don't know the answer to that, honestly.

Mr. Weiss: David, you had a question?

Mr. Scapicchio: I do. What was the square footage of the house that was demolished?

Mr. Nusser: I'm not aware of what is was.

Mr. Scapicchio: What is the square footage of the house proposed?

Mr. Nusser: The footprint of the house is proposed at 896 square feet.

Mr. Rubin: 896 square feet.

Mr. Buzak: Footprint, right?

Mr. Nusser: Footprint of the house, yes.

Mr. Buzak: And what's the size of the house in total?

Mr. Scapicchio: Now earlier on you mentioned that there were three homes you compared...or three lots that had homes on them, compared to yours. What are the square footage of those homes?

Mr. Nusser: I'm going to put up...I believe its A1...on the screen her for everybody. Can everybody see this? So you can see on A1 here's the three houses to the west. I don't know their specific sizes but you can see the shading here which is the proposed dwelling. Then you can see the roof outlines of the...of these homes. You can see that it is consistent in size with those homes.

Mr. Scapicchio: What I'm trying to determine for myself, is whether or not the house proposed is the same size as the house that was demolished. Because if that was the case I can certainly see myself supporting this application. If that's not the case, I would probably look at it a little differently.

Mr. Rubin: With all due respect, sir. I'm not sure I understand the relevance? We're looking at whether or not the new house fits in with the street scape as it exists today. Whether this house was twice the size proposed or a little bungalow that you can barely even live in, I don't understand why that's relevant, with all due respect.

Mr. Scapicchio: Well in my mind it does, because it's an undersized lot. It's a new application. And it's a new house proposed.

Mr. Rubin: But it's consistent with the adjacent homes. And that's what matters from a planning perspective.

Mr. Buzak: Mr. Rubin, excuse me, sir. With all due respect, you don't have a right to object to a question of a Board member. You may not agree with the relevance and certainly at the conclusion of the testimony you can summarize and you can comment. But I would caution you and caution the Chair, that with all due respect a Board member has a right to ask a question and the question should be answered. So, why don't we go on from there? Thank you.

Mr. Weiss: David, did you have another question?

Mr. Scapicchio: No. I just wanted to know the difference between the old house that was demolished and the new house proposed. The difference in square footage?

Mr. Weiss: Is there anybody from your team that can answer that question, Mr. Rubin?

Mr. Rubin: I don't believe so.

Mr. Weiss: Okay. That's fair enough.

Mr. Weiss: Anybody have any other questions from the Planning testimony? I have a comment and I sit here and I get a little annoyed. I think these attempts...we were talking about making an attempt to purchase the existing properties, very noble. Perhaps part of the process. But I don't think the inability or the unwillingness for the neighbors to sell the house is a hardship. I think this is a classic case of a self-imposed hardship. Perhaps we can live with that self-imposed hardship because the lot is the lot. It's a 6,000 square foot lot in a 10,000 square foot zone. You can't just dismiss the fact that every other home on that street was built prior to zoning. So what was then, doesn't apply now. We have zoning now. If we are just going to come back and say, well that's the way it was and that's what's there now, we have new zoning in place. We have it for a reason so if we're just going turn our head then why even have any zoning whatsoever? It's not a matter of just the lot size. You know, 40 percent undersized. You're also asking for a house with side yard setback variance. Almost, I'm looking at...there's no reason to ask for that. You are asking the Planning Board to waive 40 percent of the lot size and you're asking for a house that's encroaching on the side yard setbacks, that when I looked at A1, there is no reason it has to be there. It's not up to me to tell you how you are going to present your case. But I just think that this house is too big for this zone and I'm not ever going to agree with the comments that it's better to have consistent development patterns. It's better than what? Having open space? Having some open land? Listen, that's an opinion. I'm not so sure if I'm buying into the consistent development plan because nowhere does it say in proper zoning practices that every inch of land needs to be developed. So if you bought, or the applicant bought a piece of property that is not buildable, then that's not a hardship. That's self-inflicted hardship. That's my opinion. I hear you trying but I don't necessarily buy into it.

Inaudible

Mr. Rubin: Mr. Chairman, may I respond to that?

Mr. Weiss: Sure.

Mr. Rubin: I think the law is absolutely clear that it would only be a self-created hardship if the applicant was responsible for the subdivision that resulted in the undersized lot. These undersized lots were created long before the applicant ever had any interest in this property. And thus, the hardship argument is applicable.

Mr. Weiss: Okay. Well, difference of opinion. Does anybody else have any questions for Mr. Nusser? Did I open it to the public? I think I did? Chuck so you see anything?

Mr. McGroarty: I don't. I think you opened it to the public after Mr. Mulhall did...inaudible.

Mr. Weiss: I think I did too.

Mr. McGroarty: I don't see anybody raising their hand.

Mr. Weiss: So then, thank you for your testimony, Mr. Nusser. Mr. Rubin, do you have anything else?

Mr. Rubin: I have no other witnesses, sir.

Mr. Weiss: Okay. Do you have anything else you'd like to present to us before we close it?

Mr. Rubin: I think that the law is absolutely clear that we're entitled to a variance. That we've met the proofs. That it's an undersized, isolated lot. The law has established how to go about gaining the right through variance to build on that lot. This is not a self-created hardship. This is a...that would be like saying that if the owner of the lot... Let's say, for example, the house that formerly existed on it burned down, to the ground, the owner of that lot would have to come before this Board and get a variance just like we're going to have...we are asking for a variance.

Mr. Scapicchio: For the same sized lot?

Mr. Rubin: The same lot. The same lot.

Mr. Weiss: Same size house.

Mr. Rubin: Whatever house they wanted to build. They would have to come before this Board and get a variance to build on that lot because it's an undersized, isolated lot. They would need the same variance we need. We stand in the same shoes they do, legally. We are in no different position than they would be if it was their house that burned down and they were before the Board, to be rebuilt. If you think you would have the right to deny their right to build on that undersized lot then that's fine. I believe you're mistaken. But you cannot, in your mind, say that you could grant that application and deny this application. The law does not permit you to make that distinction. Thank you.

Mr. Weiss: Okay. I just have now a comment to that. Mr. Rubin, I understand your comment that you feel you met the proofs. I completely disagree. I completely disagree with that. There's no reason to ask for the side yard setbacks. There is no hardship shown. The negative and positive criteria has not been met. And as far as your proofs for a 40 percent undersized lot because your other houses are there does not work. It's not in my mind that's not criteria. I think when we talk to the Planning Board and I'm going to direct these comments to the Planning Board, I'm going to take a completely different approach with my comment. We have to be realistic. Is the development of this house, as much as I think it's wrong, is it better for the township verses having a vacant lot that will most likely, if we turn it down, end up the way it's been? It will be an eyesore? I've got to imagine the applicant is going to walk away. No reason to pay taxes on it. It will fall back into the townships hand. You're going to have a property maintenance issue. And not that these are issues for us but that's something to consider. What is the lesser of two evils? I know I've given you opinions on both ends of it. I don't want to sway anybody's vote. I'm kind of torn here. I think from a planning perspective, they have no way met their obligation to prove hardship on this variance. I'm going to still hold tight on my comment that it's self-inflicted. If you had a 10,000 square foot lot and lost a little bit to a steep slope and maybe a little bit that the township took the road and now you're at 9,000. That's a hardship. But you bought a lot that was 6,000 square feet in a 10,000 square foot zone. That is self-inflicted, I don't care how you slice it or dice it. And that's my opinion and I don't know if anybody else wants to chime in. If I see no other...

Mr. Buzak: If I can respond to a couple of things?

Mr. Weiss:

Go ahead, Ed.

Mr. Buzak: Two things. Number one, this is really not an isolated lot case. Isolated lots are lots where all the other lots are conforming generally speaking in the neighborhood and you have an isolated lot that's not conforming, within that neighborhood. So this is quite the opposite. The argument that is being made is that this lot is the same as all the lots in the neighborhood. Therefore we ought to grant the variance. I think one of the...that's first. Number two, I think that its material to the consideration of the Board and I know Mr. Scapicchio had asked this question...There was a house on this property and the records that were submitted indicate that the property owner at that time was advised...first of all that property owner had applied for permits and had fixed, at first fixed the house up, if I remember the facts correctly. He didn't have permits. At some point he was going to spend more money to fix it up and ultimately decided to demolish the building after he got several violation notices from the Township. At that time, according to the documents that are in the Record, the owner was advised that if he demolished the building, you have to come in and get a variance to build anything else because A, the lot's undersized leaving aside any kind of bulk variances related to the actual building that going to be in there. So the applicant or the owner at that time was aware of the risks that he was taking. He could have taken that house that was there and rebuilt it. And you see this all the time, where you have upgrades in zoning, where houses get dilapidated and what they wind up doing is keeping the foundation, keeping some of the walls up and reconstructing the house on its non-conforming...in its non-confirming condition so to speak. But they improve it so that it is now live-able. And they do that because they don't want to run the risk that if they demolish the house they now have to come in and get a variance and maybe that variance is going to get denied. For the reasons that they elected to demolish the house that was there and give up the right to maintain the house. Whatever size that was. Again, member Scapicchio had asked that question. Whatever the size of the house was that house could have been maintained. It could have been maintained, improved, could not have been expanded but that house could have remained. And it may not have been the house that everybody wanted, but that was the house that was on the property that they had a right to do. So, I think in terms of self-created hardship there's two factors. One, that you mentioned Mr. Chairman, regarding the acquisition of the lot. I think Mr. Rubin's position, in the law, is generally correct. That is, that just because somebody buys an undersized lot doesn't mean that they have created the hardship. It does mean that they went into this with their eyes open, knowing that they would have to obtain a variance. Of course if the law were that you automatically get a variance for it then there would be no need to get a variance. Then it would be that you would be able to build these lots as a right. Nonetheless, without getting into a debate about that whole line...as I said, I think in general Mr. Rubin's position legally is generally valid. I don't agree with everything he said but I think it's generally valid. I think the factor that exists here is the preexisting building that was on that site. This is not a vacant lot, it's a vacant lot now but it was not always a vacant lot. In that kind of case, a subsequent owner has to assume the burdens that predecessors...of decisions that predecessors made. You can't say, well I didn't knock the building down and therefore since I didn't knock it down It's not a self-created hardship. You're allowed to go back in the chain to see where things occurred. Therefore, I think it's a relevant factor for the Board to consider, not necessarily determine, I think it's a relevant factor for the Board to consider if there was a building on there and that the owner of that building, at the time elected, even though he could have kept that building there and improved it, voluntarily demolished that building and created the situation now where you have to come in to get a variance. So, I think that is a relevant factor in terms of the Board's analysis. Thank you, Mr. Chairman.

Mr. Weiss: Okay. Anybody else from the Planning Board have anything to add to the conversation?

Mr. McGroarty: I just would add one thing, Mr. Chairman.

Mr. Weiss: Please, go ahead.

Mr. McGroarty: Okay. Number one, I think Mr. Mulhall's testimony, to me anyway, was very helpful because the issue in these undersized lots generally... Is it going to have an adverse impact on neighboring wells? Certainly Matt has addressed that, I think, without any rebuttal from anybody that I'd seen that is adequate capacity. You know, let me...I've sort of had different thoughts about this application from the beginning and despite what the applicant said initially, I most certainly never said to him that it's just a matter of paperwork. That's not an approach I would take with any applicant. I take this stuff seriously. I don't think it's just a matter of going through the motions. Having said that, your point, Mr. Chairman, you asked about the lesser of two evils kind of thing. Couple things. The house that existed there before, I had actually issued a third report back in October of 2020 which I don't expect anyone to remember looking at. We were able to find the records...the house that existed then, at that time, and Dave I don't know what the footprint of that house was, but it was all the way back in the property. In fact a part of it straddled the...inaudible. So, it was clearly a non-conforming structure. It was one of the very old houses in the Budd Lake area. To make a long story short, he started doing...the owner at the time...started doing improvements. He was stopped and chose to eventually knock it down rather than pursue the variance. So, I wonder though if having this property developed with a house which is conforming except for the side yard setback. That's an issue that you have to decide. You heard the...Ms. Ryder's testimony earlier. I think about the utility of the house itself. If it's more narrow, there's less utility to it or something to that effect? I think one thing to consider, is if this property is left undeveloped it will continue to be a problem for the town. The town has acquired this property before through tax foreclosure. As it has...other lots. I just wonder if this is going to continue going to be a property maintenance nightmare going forward. Nightmare is too strong word but a property maintenance headache for the neighbors and the township going forward. I think that might be something worth considering. Lastly, the zoning that was superimposed on Budd Lake, the R-4 Zone minimum lot size 10,000 square feet and of course that was predicated on having sewers. Sewers are not in place. That removes the issue of having a larger lot for septic. Everyone knew that that zoning wasn't going to fit a good portion of Budd Lake. So, there are the circumstances where the 10,000 square foot standard is simply not going to work. I just offer those observations.

Mr. Weiss: Thank you, Chuck. Anybody else? Okay. That being said, let me see if someone will please make a motion?

Mr. Buzak: Mr. Chairman before anybody makes a motion...I'm sorry. I didn't know where you were going to go to ask for comments. So I apologize for jumping in here but the request is if I understand it correctly. Two Variances...one related to an undersized lot...to build on an undersized lot. The second one is a side yard variance as the Chair has pointed out and Mr. McGroarty has pointed out. I believe those are the only two variances. Is that correct, Mr. Rubin?

Mr. McGroarty: No, lot width too.

Mr. Buzak: Oh, I'm sorry.

Inaudible

Mr. Buzak: Okay. No, you're right, Chuck. I'm sorry. There are three. There's a lot width, lot area and then side yard.

Mr. McGroarty: The lot width, it's just the result of the size of the lot, right. It's not a result of what is being done.

Mr. Buzak: Right. So there are there variances. I know typically when applicants make these applications, you know, they're looking for the three variances and the Board generally looks at it as a package. Either grants or denies the application. In this case given the testimony that's been given and the comments that have been made, I think another alternative here for the Board, is to cross out each...cross out the variances differentiating between the lot size and the lot width as Mr. McGroarty pointed out. Which are existing parameters of that lot for lack of a better way to express it. Verses the elective one that the Chairman, you pointed out about the side yard variance. The house, if I read the plans correctly, is 28 feet wide encroaching, I think its two feet, into that side yard. So it would be a 26 foot wide house. It would be a smaller house, obviously, a smaller footprint but it would be within the footprint, I believe that was created with respect to the rear yard and side yards and I think the front yard. So, that is something else for the Board to consider in terms of this application. To not look at it as a package but to look at it as individual variances and see if any of that is something the Board feels that there has been adequate proofs submitted. Thank you.

Mr. Weiss: Well, Mr. Buzak, that...inaudible...a hard decision to do that, is it?

Mr. Buzak: Well, they applied for these three variances. I don't think the Board has to agree on all three variances. I think the Board can grant one and deny the two or grant two and deny one or deny all three. I think and I say that in this case because of the matter in which the application has been presented. I'm not being critical of the way its being presented but I think you're talking about two physical conditions of the property that are there. The applicant has demonstrated, at least to my satisfaction that they made the effort to try to sell the property to engage the property owners. Have gotten no response. That's the second time that happened. One could question the first notice as Mr. Rubin did and cured that by a second notice. Those conditions are all there. The house is a different story. This applicant could have come in and proposed a house that did not encroach on the side. Just they wouldn't have had that third variance. Whether they want to go forward with that that's another story. But I think that's within the Board's purview to look at the variances that are requested and they have the right to grant some and deny some under these circumstances.

Mr. Weiss: Okay. So, I have to ask, is that up to us to determine how we go forward.

Mr. Buzak: Yes. I just wanted to give the Board the option because I don't want to think well its either we vote yes and everything's granted, which is certainly an alternative. Or we vote no and nothing is granted. Those are two ends of the spectrum. But what I'm suggesting is there is a third position in between those positions. I think it would relate to the side yard variances as opposed to the other two variances which are lot related.

Mr. Weiss: If we vote on the lot area first, that goes down, it doesn't really matter about the side yard.

Mr. Buzak: That is correct. That's correct. Catherine did you have a question?

Ms. Natafalusy: Yes I did. Chuck's report and I think we discussed this at the last meeting regarding the gore in the back of the property. Has that ever been resolved or looked at by the applicant?

Mr. Rubin: No it wouldn't be until the approval was given and they proposed to develop the property and they would work with the town in whatever needed to be done with respect to that.

Ms. Natafalusy: But I thought in Chuck's report it said if he would acquire the gore it would give him more lot area. Am I wrong?

Mr. Rubin: I'm sorry. I'm not sure...do you mean the encroachment in the back of the property?

Ms. Natafalusy: The gore at the rear of the property.

Mr. Nusser: There is a lot shown on the tax map shown as Lot 6 and there is no ownership of that lot. So it's just a gore and it's listed as such.

Mr. Rubin: Yes. We would have no ability to acquire that and frankly I think Mr. Buzak might be willing to agree to this but the law doesn't require us to try to acquire property to the rears, only to the side. There's just no way to acquire that. It's just not practical. We don't know who owns it. The town doesn't know who owns it. No one knows who owns it.

Mr. Buzak: I'll agree with Mr. Rubin with regard to his last point that, because it's a gore and its got an unknown owner I think that we can't expect the applicant to consider acquiring it under those circumstances. I do disagree that under these kinds of circumstances when you have an undersized lot that the ability to acquire a lot of property in the rear to make the lot conforming in terms of lot area, is not something that the applicant would not be required to do. In fact I think we've had some cases like that. So anyway, but that's neither here nor there. In this case, I think, Ms. Natafalusy, that they really don't have the ability to do that. We should not factor that in given the unknown ownership of that gore.

Ms. Natafalusy: Okay. Thank you.

Mr. Weiss: Any other questions?

Mr. Batsch: Mr. Chairman?

Mr. Weiss: Go ahead, John.

Mr. Batsch: Yes. Would the applicant be willing to construct a smaller house to...instead of the 28 feet wide, a 26 foot wide to address that side yard issue?

Mr. Rubin: I think I would defer to the architect to answer that, rather than me. If we could hear from her. She is still under oath. She testified at the July meeting.

Ms. Ryder: Yes, I just wanted to say that when we originally came before the Board, we were asking for several more variances and I think it was rear yard and both side yards. The house was originally 30 feet wide. We narrowed it to 28 feet. The bedrooms are ten foot wide which is minimum for a bedroom. The bathroom is minimum for a bathroom in the center of those. So, we've really shrunk it as tight as we could for practicality. As far as the side yards, we could straddle one foot on both sides as opposed to two closer to that other side. But we've made efforts to tighten up the design to make it as small a footprint as we could.

Mr. Buzak: So, I assume the answer then is no you're not willing to construct a smaller house?

Mr. Rubin: I think the answer to the question is that we're requesting a variance that if the Board denies it we'll have to deal with that.

Mr. Buzak: Okay. That's fine. You have a right to do that, absolutely.

Ms. Ryder: But I'm saying, the bedrooms, if you took off a foot on each side they would become nine feet which is an undersized bedroom for a typical house.

Mr. Weiss: But unfortunately this typical house is in a neighborhood of other very small houses. So, it sounds like on one side the testimony is well, we want to be just like everyone else but we want to be a little bit bigger and I think a 25 foot or 26 foot wide home, its not up to me to tell someone how to live but I don't want to hear testimony that its not live-able, not practical.

Ms. Ryder: But I think it's in following with the other houses down the street and that's what we were working off of. The size of the lot versus the sizes of the houses on them. I don't know if Christopher knows the widths of the houses but...

Mr. Nusser: I don't have it off hand.

Mr. Rubin: But they all encroach into the side yard. Every single one of them.

Mr. Nusser: Yes. That's correct.

Mr. Batsch: So, was the answer then no we would like to build what we have but if it's denied we go back and redesign?

Mr. Rubin: If...we are requesting a side yard setback variance. If the Board denies the side yard setback variance, the applicant will have to decide what they do next. Thank you.

Mr. Weiss: Inaudible. Does anybody else have any comments? Ed, I'm not really sure how to proceed. I think we are going to go forward with all three.

Mr. Buzak: That's certainly the Board's choice. I was just outlining options if the Board wanted to move in that direction.

Mr. Weiss: Any opinion from the Planning Board on if we should break them apart or just go forward with voting on all three requests for variances?

Mr. Scapicchio: My issue is the side yard. If they could meet the side yard requirements I would be satisfied.

Ms. Natafalusy: I would like for us to break it apart.

Mr. Weiss: You would like that? To break it apart, Catherine?

Ms. Natafalusy: Yes. I think we should break it apart. Lot area, lot width and then the side yard setback as separate.

Mr. Weiss: Okay.

Ms. Natafalusy: That's my opinion but it's up to...

Mr. Weiss: Thank you, Catherine I don't necessarily have an opinion either way. But if Catherine suggests and we separate them, unless I see anybody else objecting to that, let's do that. Let's separate...let's take separate votes.

Mr. Buzak: I'm going to ask, Mr. Chairman, if you are going to take separate votes, you start not with the lot size as you were thinking. I think you start with the bulk variance for the side yard.

Mr. Weiss: Isn't that kind of wasteful, Ed?

Mr. Buzak: I don't know. I'm suspecting it may not be. But that's mere reading tea leaves and if I could read the tea leaves I probably wouldn't be sitting here. I'd be...somewhere having won the lottery.

Mr. Weiss: I think based on the fact that if one doesn't build the others are meaningless, therefore I really do think we should have a vote on the lot size. If that fails then we don't need to vote on side yard coverage. Side yard setback, sorry.

Mr. Buzak: That's correct.

Mr. Weiss: Okay, so that being said, someone please make a motion. We are going to separate into three. The first one would be a variance to approve or deny, whatever your motion would be, regarding the lot size. I need someone to make that motion.

Mr. Ouimet: Motion to approve PB 19-23, lot size.

Mr. Weiss: Motion is needed to approve it. Do I hear a Second?

Ms. Natafalusy: Second.

Mr. Weiss: Okay. Thank you, Catherine. Does anybody have any comments?

Mr. Scapicchio: Chairman I need clarification on exactly what we're voting on and what these three separate votes mean.

Mr. Weiss: Right now, David, we going to...Planning Board is going to vote to approve or not, the request for a variance to account for the undersized lot what is 6,000 square feet in a 10,000 square foot zone. If the Planning Board feels that that's appropriate then we'll go forward with the next for variances which was side yard setback.

Mr. Buzak: No, no. It was lot width, Mr. Chairman.

Mr. McGroarty: Right.

Mr. Buzak: It was lot width.

Mr. Weiss: First one on that's on the table is the lot size.

Mr. Buzak: Correct. Chuck am I right and is there a lot width variance as well?

Mr. McGroarty: Yes.

Mr. Buzak: Okay. So I think that would be next, Mr. Chairman. The side yard setback would be the third.

Mr. Weiss: Its funny I thought that there were two requests for two different side yard setbacks. The left side and the right side.

Mr. McGroarty: I originally there was, Mr. Chairman, but as Ms. Ryder had mentioned there was some revisions to the plans.

Mr. Weiss: Okay. That's fine. I'm glad I clarified that. Okay so the motion is made and seconded. The Planning Board to approve the applicant's request for an undersized lot of 6,000 square feet in a 10,000 square foot zone.

Ms. Natafalusy: Mr. Chairman?

Mr. Weiss: Why can't we do the lot width because that is the size of the lot as well? I mean the lot width and the area are preexisting.

Mr. Weiss: We're splitting hairs, I think.

Ms. Natafalusy: All right.

Mr. Weiss: Just my opinion.

Ms. Natafalusy: I just thought it would be easier.

Mr. Weiss: Let's do this first. We have a motion. It's been seconded. Any other comments? I also think before we do that, I don't want to be out of order. Let's open it to the public.

If anybody has anything they would like to add, now would be a good time before the Planning Board votes.

Mr. McGroarty: I don't see any hands raised, Mr. Chairman.

Mr. Weiss: Nor do I. Okay. Let me close it to the public. Mary, roll call.

Roll Call:	David Scapicchio	Yes
	Ken Forlenza	No
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes

Ms. Strain: Wait, I'm sorry. Joseph Ouimet, you were excused August the 20th. Oh No...

Mr. Weiss: It was July...

Mr. Buzak: I have him down for August 20th.

Mr. Weiss: It was July 9th.

Mr. Buzak: I mean August 8th, I'm sorry. I have him down for August 8th.

Mr. Weiss: It was July.

Mr. Buzak: July 8

Mr. Weiss: July 9th.

Ms. Strain: I have that the meeting was August the 20th.

Mr. Weiss: Let's make sure we confirm that because I'm looking at my notes from 2020 and it shows that this application was in front of us on July 9th, 2020. What date do you think it was?

Inaudible

Mr. Rubin: I can clarify if I might?

Mr. Weiss: Please. Thank you, Mr. Rubin.

Mr. Rubin: The hearing was held on July 9th. We were scheduled to come back on August 20th. We did not have Mr. Mulhall available at that time and thus we carried it.

Mr. Weiss: Okay. I see us on the agenda for August 20th but we didn't have any testimony that night, right?

Mr. Rubin: No that was being carried because Mr. Mulhall was not available.

Ms. Strain: Okay.

Mr. Rubin: I came before the Board and explained that at the meeting.

Ms. Strain: Right. Okay. All right. I apologize.

Mr. Rubin: So the agenda that's showing up on the Board's website lists the members who are eligible to vote.

Ms. Strain: Okay. So we're fine then?

Mr. Weiss: Yes.

Mr. McGroarty: I have you at, you've now taken five member's votes is that count correct and you're continuing, Mary?

Ms. Strain: Yes. So now...
Joseph Ouimet Yes
Howie Weiss No

Mr. Weiss: Okay. So the request is been approved for your variance for an undersized lot. I guess we should now turn to a motion to approve or not, request of the applicant for lot width.

Ms. Natafalusy: Can we just go back to the meeting date thing. Because if you go...I was reviewing for today...and the August 20th meeting we had testimony that night. If you look at the minutes on the Township website, there were...inaudible...

Ms. Strain: Yes.

Ms. Natafalusy: ...testimony that night.

Ms. Strain: Right.

Ms. Natafalusy: So I though Mr. Rubin said it wasn't heard that night.

Mr. Weiss: Maybe the testimony was that they can't be heard?

Ms. Natafalusy: No, it went on.

Mr. Buzak: I have the same thing, Mr. Chairman.

Mr. Rubin: I could be mistaken. I could be mistaken. Don't....

Inaudible

Mr. Weiss: Okay. So, maybe technically then we'll ask Mr. Ouimet not to vote because he wasn't there on August 20th.

Inaudible

Ms. Strain: On my records, I have that on July the 9th it was rescheduled because of a deficient notice.

Mr. Rubin: Okay. Then it was August 20th. My notes say July 9th but I just might have not changed the date...

Mr. Weiss: Okay, that's very possible.

Mr. Rubin: Okay. I apologize.

Mr. Weiss: My notes kind of showed that it was July 9th but either way, everyone is good except Joe in question.

Mr. McGroarty: Mr. Chairman, Joe, Mr. Ouimet made the motion.

Mr. Weiss: Oh.

Mr. Buzak: I have down that Mr. Ouimet was there on October 8th. Sorry, on August 20th.

Ms. Strain: I have that he's absent on August the 20th. He was excused.

Mr. Buzak: Mr. Ouimet. Where were you on August 20th?

Mr. Ouimet: You know...I actually believe I was not there. I was in the hospital in Arizona.

Mr. Buzak: I'll defer to our secretary.

Mr. Weiss: We probably need to unwind this because Joe made the motion.

Mr. Buzak: Yes.

Mr. Ouimet: Right.

Mr. Buzak: Correct.

Mr. Weiss: All right. So, let's wipe the slate just to be technically correct.

Mr. Ouimet: I'm Sorry.

Mr. Weiss: No, No. That's okay. ...Inaudible... let's get it right now. So the motion then, we're looking for someone from the Planning Board to make a motion to approve or not, request from the applicant for an undersized lot of 6,000 square feet in a 10,000 square foot zone. Would someone please make that motion?

Ms. Natafalusy: I'll make a motion. We approve PB 19-23, BCM Enterprise, for an undersized lot. Inaudible...10,000 square foot area.

Mr. Scapicchio: And I'll second that, Chairman.

Mr. Weiss: Thank you, Catherine. Thank you, David. Is there conversation? I don't see any so let's have a roll call.

Roll Call:	David Scapicchio	Yes
	Ken Forlenza	No
	Catherine Natafalusy	Yes
	Paul Ottavina	Yes
	John Batsch	Yes
	Howie Weiss:	No

Mr. Weiss: Which my next comment was, yes it passed again. So the Planning Board has approved the variance request for an undersized lot. And so now let's make the next motion to grant or not the applicant's request for a variance for undersized lot width. Someone please make that motion?

Mr. Chairman, I'll make the motion that we deny the applicant's request for a...Ed what should the word be? Lot Width?

Mr. Buzak: Well I think lot width is different from the side yard. This is lot width because it's an 80 foot...Chuck, maybe you can...it's an eight foot wide lot.

Mr. McGroarty: The lot width is synonymous with the lot frontage. So, it's the existing condition of the property, so the property has 50 feet of frontage on New Street, the R-4 Zone requires a minimum of 80 feet. So it's a function of the existing configuration of this property. Fifty feet of frontage is there. There is no alteration from that. Similar to the lot area, it's an existing condition.

Mr. Scapicchio: Okay, so the next vote would be on the side yard setback?

Mr. McGroarty: It's a technical sort of question but the lot...there is three votes. Dave this is the second of the three. This is for lot width. It's an existing condition but nonetheless you still have to treat it as a variance. So the question is, are you approving this lot width? In other words are you going to acknowledge that it doesn't have the current ordinance standards for frontage on the street? Has 50 feet versus 80.

Mr. Scapicchio: Understood.

Mr. Weiss: So there's a motion. I'm looking for a motion to approve or not the request from the applicant for the lot width.

Ms. Natafalusy: Was David going to make that..?

Mr. Weiss: David?

Mr. Scapicchio: I'll make the motion that we approve the lot width as requested.

Mr. Weiss: Thank you, David. Someone second that please?

Ms. Natafalusy: Second

Mr. Weiss: Catherine, thank you. Any conversation? Thank you for correcting that Dave that makes us much more consistent. Roll call.

Roll Call:	David Scapicchio	Yes
	Ken Forlenza	Yes
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Howie Weiss	No

Mr. Weiss: The final request for variance is on the side yard setback. The applicant has requested a variance from the standard and so I'm looking for a motion to approve or to deny side yard setback requested variance. Would someone please make that motion?

Mr. Scapicchio: Mr. Chairman I'm going to make a motion that we deny the applicant's request for side yard setback.

Mr. Weiss: Thank you. Anybody second that?

Ms. Natafalusy: Second.

Mr. Weiss: Thank you, Catherine. Any comments. Keep in mid the motion is to deny, so a yes vote would support Dave's motion to deny. Roll Call, Mary.

Roll Call:	David Scapicchio	Yes
	Ken Forlenza	Yes
	Catherine Natafalusy	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Howie Weiss	Yes

Mr. Weiss: Okay. So here's what we left off that the Planning Board has approved the variance request for the lot size, the lot width but has turned down the request for the side yard variance. What happens now is up to the applicant, I suppose?

Mr. Buzak: That's correct Mr. Chairman. Go ahead. Anything else?

Mr. Rubin: Thank you. Good night everyone.

Mr. Weiss: All right. Good night.

PB 21-03 Condit, Gregory, 5 David Place, Block 7200, Lot 24

Mr. Weiss: Let's Continue. Chuck, let's roll right in because my internet is so strong right now. Let's bring up our next application. Which is PB 21-03 Gregory Condit, for variance for his property at 5 David Place which is Block 7200, Lot 24. Today is April 15th...

Inaudible

Mr. Weiss: So I see we have... Mr. Roth? Are you representing Mr. Condit?

Mr. Condit: He is here on Zoom. I believe he is going to make just a very short first statement and then I'll jump into the testimony.

Mr. Weiss: Okay and your position is?

Mr. Roth: I'm the owner of Roth Engineering, LLC. I'm a...

Mr. Weiss: Oh ok. I didn't know if there was an attorney, that's all. Thank you.

Inaudible

Mr. Weiss: As we start the application, I know Mr. Condit, you're the property owner I assume based on what I just heard?

Mr. Condit: Correct, Sir.

Mr. Weiss: Welcome this evening. I just want to confirm that you are in receipt of Mr. McGroarty's report outlining the conditions from April 9th? You have a copy of that report?

Mr. Condit: Correct.

Mr. Weiss: I just want to jump ahead...as I look to Section 4, which is the basis for variance relief, are you going to testify to that? Or are you going to bring a planner?

Mr. Condit: Michael Roth will testify to that.

Mr. Weiss: Very Good. Okay, thank you. I guess Mr. Condit, why don't you then tell us the situation at hand and explain why you're here tonight?

Mr. Condit: Sure. Absolutely. Good evening everyone. Thank you Board and Chairman for...

Inaudible

Mr. Weiss: Mr. Buzak, if...you can do it. I'm going to need to have you sworn in.

Mr. Buzak: Yes.

Gregory Condit was sworn in for the Record.

Mr. Buzak: Please state your name and address for the Record, spelling your last name.

Mr. Condit: Sure. It's Gregory Condit. C O N D I T. I live at 5 David Place, Flanders New Jersey 07836.

Mr. Buzak: Thank you, sir. You may proceed.

Mr. Weiss: Before you start, Greg, tell us where David Place is. What development is that in?

Mr. Condit: It's in the old Bennington Woods section, I believe they call it?

Mr. Weiss: Yes, they do. I just wanted to make everyone aware of that.

Mr. Condit: Most houses were built in the late 80's. As the homeowner, I purchased the home about five years ago. Going into my fifth year. Getting married this July. My wife will be moving into this home so we've decided we'd like to stay in this home and make upgrades. Create it the way in which we were looking. I'd like to make this my last move. Therefore, my family is increasing so I'm basically coming to you tonight needing a variance to put an in the ground pool with patio, to do that. The reason I'm here for a variance this evening is, was the lot, impervious coverage, was already over when I purchased the home. Unfortunately, I was unaware of that and it was over by 3.1 percent. I'm not sure what put it over. What structure and such from the previous owner. When we submitted the plans for the pool we were going to incur about another three percent. That would put us at 26. Upon receiving Mr. McGroarty's document on Monday, I'd gone back, myself and Mike Roth, had looked at that in the 4.3 Section. The negative, the positive and resent in on Tuesday, and thank you Board for receiving and accepting the new plan where as we decreased the impervious coverage by 1,300 and change in order to bring down back to the original 23.1. So as not to add to the additional impervious coverage that pre-existed. A big part of the reason of wanting to put this pool, like I said, is long term. If the pandemic has taught me anything, its love where you live. Basically I'm able to work from home, my fiancé and I moving forward for the foreseeable future actually. So, I can live anywhere. I really do enjoy my neighborhood. I enjoy Flanders. I would like to stay here and make the home the best it could be. So, that's why I've submitted and am asking your approval for the variance this evening. With that I can hand it over to Mike Roth to walk you through the plans that were submitted and speak to the negative and positive coverage.

Mr. Weiss: Okay. Does anybody have any questions for Mr. Condit? Before we turn it over to Mr. Roth, Let's see if anybody prom the public has any questions about your plan.

Mr. Condit: Sure.

Mr. Weiss: I don't see anybody.

Mr. McGroarty: I do actually. I do, Mr. Chairman.

Inaudible

Mr. McGroarty: Mr. Condit, you purchased about five years ago, so I was trying to determine, and this may come up later, but I was trying to determine how that driveway got to the present configuration. My question to you, Sir, did you ever apply...did you put that driveway in as it exists today or was it there when you got there?

Mr. Condit: It was there when I got here. I've made no changes to the exterior at this point.

Mr. McGroarty: Okay. Thank you.

Mr. Condit: Pre-existing driveway.

Mr. McGroarty: Okay. Thank you.

Mr. Condit: Sure.

Mr. Weiss: Let me ask you a question, Chuck. I know there was no permit for that driveway and that's certainly of no fault of Mr. Condit. Would the elimination of that driveway or going back to what we show as originally there, change substantially, the impervious coverage? Do you think?

Mr. Condit: I'm sorry was that a question for myself?

Mr. Weiss: No I was directing that to Chuck? I didn't know if you were able to any kind of analysis? If the driveway addition, from what it originally was, if that was never done, would it have substantially changed the percentage of impervious coverage?

Mr. McGroarty: I suspect it would and perhaps Mr. Roth will address that. I know he and I have exchanged a few e-mails over the past couple of days on the subject. I know he scaled it back to some extent. I think we should let him tell us what he has done and then we can pick it up.

Mr. Weiss: Okay. Fair enough. If anybody else has any questions for Mr. Condit? Otherwise let's bring up Mr. Roth. Mr. Buzak you could swear in Mike.

Michael Roth was sworn in for the Record

Mr. Buzak: Let's state your name and business address for the record, spelling your last name.

Mr. Roth: Sure. Michael Roth. Last name is spelled R O T H. I'm from Roth Engineering, LLC. The business address is 52 Quail Run, Long Valley, New Jersey 07853.

Mr. Buzak: Thank you, sir. You may proceed and can you just give the Board the benefit of your background?

Mr. Roth: Yes. I'm the owner of Roth Engineering, LLC and have designed and managed a number of projects here in New Jersey, just like the one I will be discussing tonight. I graduated with ...Inaudible...Creative Science and Civil Engineering from New Jersey Institute of

Technology. I'm also a licensed professional engineer and planner in the State of New Jersey. My license is in good standing. I have appeared before this Township's Planning Board for the Paramount Plaza project in 2016 under my previous firm and look forward to discussing this project tonight.

Mr. Buzak: Thank you, sir. Mr. Chairman? Does anybody have any questions of Mr. Roth?

Mr. Weiss: Does anybody have any questions? I don't so let's accept Mr. Roth as the licensed engineer, planner for this application.

Mr. Roth: Okay, great. I'm going to start by sharing my screen to show the most recent plan that was submitted. If I could just get confirmation that my screen does appear for everyone?

Inaudible

Mr. Roth: Although I can't mark this, I will note this as A1 for the purposes of this meeting. This plan is dated January 14th 2021. Last revised April 12th, 2021 and has been prepared for the purposes of this meeting to show the updated layout that results in no change in impervious coverage and is slightly different from the first version of the plan that was previously submitted. For orientation purposes, north is to the upper left of the page where Brendan Drive abuts the front lot line. East is to the upper right where David Place abuts the front lot line. South is to the bottom right and west is to the bottom left. We are here tonight to request a variance for lot coverage as the homeowner is proposing a new pool and pool patio. Starting with an overview of the project the subject property is Lot 24, Block 7200 located at 5 David Place. This 41,171 square foot lot consists of a single family dwelling, located in the R1 zoned district. The property is a slightly undersized lot having a pre-existing non-conforming area of .95 acres where a minimum of one acre is required. The property's current lot coverage is 23.1 percent. Which, is a non-conforming condition, where a maximum of 20 percent is permitted. The project consists of a swimming pool and patio area surrounding the pool in the backyard of the property and that's shown on this right hand view to the west of the main dwelling. Just to take a quick step back the left view is the current site conditions. The right view is what the applicant is proposing. The proposed pool complies with all setback requirements. The existing rear paver walkway from the driveway to the deck, which is in this location if you follow my cursor, will be removed and the circular driveway will be reconfigured to help reduce the existing impervious coverage. As a result the project results in no change in the site's lot coverage, however, a variance is still required since the proposed coverage exceeds the 20 percent requirement. In seeking this variance we started by looking at the current site conditions. The property is a slightly undersized lot and currently has a non-conforming impervious coverage. This site has been in this condition since Mr. Condit bought the property in 2016 and there have not been any proposed increases in the site's impervious coverage since Mr. Condit has been living at this property. We are proposing to reduce the impervious coverage in certain areas to offset the impervious coverage created by the proposed pool and pool patio while still maintaining the functional uses on the property. The situation of the non-conforming impervious coverage affecting this property created a hardship for this homeowner therefore satisfying the positive criteria for the C-1 bearings. Next we looked at the adjacent properties. Since the proposed improvements are limited to the backyard only and the pool meets the setback requirements there's no impact to the property directly to the west. There is also an existing solid privacy fence surrounding the property to provide an offering to the neighbors. The property to the south will not be impacted because the improvements are being proposed on the west side of the backyard and do not encroach closer than the existing site features on the south side of the

property. The property is a corner lot therefore the north and east sides are within the front yards and border the roadways. If approved, we will be preparing a lot grading plan to demonstrate that the proposed create and maintains the existing drainage patterns and does not impact the neighboring properties. In summary the proposed pool enhances the property for this homeowner to be more consistent with current lifestyle trends and as such preserves housing stock. The project results in no change in the site's impervious coverage. We'll be having no impact to the surrounding properties. This satisfies the negative criteria for the requested variance. Based on these reasons, it is my opinion that the variance can be granted without substantial detriment to the public good and that it will not substantially impact intended purpose of the Master Plan and zoning ordinance. We have reviewed the town planner's memo dated April 9, 2021 and testimony was provided to address these comments. That concluded my testimony. I'll be happy to answer any questions.

Mr. Weiss: You can minimize the screen too, if you'd like. Okay. So we heard that brief summary from Mr. Roth. Does anybody have any questions?

Ms. Natafalusy: I'll start.

Mr. Weiss: Go Ahead, Catherine.

Ms. Natafalusy: I'm sorry Chuck. Do you want to go?

Mr. McGroarty: No, no. Board first.

Ms. Natafalusy: Okay. Couple of questions. Have you considered reducing the driveway more and the size of the pool 59 by 34? Have you considered to eliminate the need for the variance? And my other question is, are there any adjoining properties that have a driveway similar to this? I mean, this is a pretty big area of impervious coverage.

Mr. Roth: So, we'll start with the driveway. We feel that the current driveway, the way it's functioned today, provides many benefits to the property and this is a corner lot so it's slightly different in terms of its design compared to the other properties. It improves the onsite circulation to make for easier turning movements since the roadway opening is offset from the garage and creates a difficult turning movement to get from the roadway to the actual dwelling. The circular driveway also helpful for various truck drivers for drop offs and things of that nature and also provides for more area for onsite parking. Again, being a corner lot close to the intersection, again permit a general traffic safety perspective, we feel that there is benefits to the circular driveway. One other note is that we feel the applicant has made a great effort to decrease the coverage in this area that still maintains the functional use of that driveway as it adds value to the property.

Mr. Weiss: What kind of truck traffic are you talking about?

Mr. Roth: I was meaning in terms of...if there's an Amazon truck or someone who is dropping off a package or something of that sort.

Inaudible

Mr. Weiss: I think we need to live in reality. Those trucks don't come into driveway. I've never seen one come into a driveway. We are trying to make this palatable. Let's not expand on

reality. I think Catherine makes an excellent point. I'm going to go back and I don't mean to interrupt if someone has something to say. But Mr. Condit started the conversation by talking that he is looking for some quality of life for his family. His backyard looks beautifully developed and it's not up to me to tell him what kind of quality to live. But you are asking for it from both ends. I know you have nothing to do with the driveway. But that being said, that driveway is impacting our ability to...or the ability to build your swimming pool without variances. It's the job of this Board to try to remediate some of these things and eliminate variances. To me it's a simple answer. Make your driveway look like every other driveway in Bennington. You don't need the circular driveway. I guess...I shouldn't even say that. I'm not going to tell you what you need. I look at it as, you're developing both sides of the house and I understand that you didn't do the driveway. But it's there and it's affecting our decision. I think Catherine makes a real valid point.

Mr. Condit: Can I speak? Address the Board?

Mr. Weiss: Sure.

Mr. Condit: To kind of expand on that, if you look at where my garage is verses where the driveway enters, it's a hard right then into that driveway area. Before the garages...as of right now when I pull my pickup trucks out, I need, as I pull out of the detached garage, I need that area to back into and then exit my driveway. So, its not...its very a typical, yes, and I believe the previous owner did over step the bounds the width of the circular driveway but just from an entering and exiting and ability to shepherd the cars within the driveway, if I've got my one pickup truck in the driveway the other two cars, my daughter, my fiancée, I'd have to move it every time. I'm also concerned about...on the corner there, if you're backing out...I'd always have to back out backwards and I'm on a corner only maybe ten feet away from that curb on Brendan. That's why I guess the driveway entrance is not a straight shot into the driveway. There is also... I'm going to take cost in actually removing what I'm already proposing to remove to stay at the current coverage and to remove the entire driveway does a couple things other than additional cost for the project, I believe if I were to not stay in the home, it does bring down the value of the home because the driveway is not optimal at that point from usability.

Mr. Weiss: I just want to...listen, you're entitled to that but the value of the homes really have no place here in the Planning Board. It's nothing that we can comment on or certainly base our opinion on. It might be true, Mr. Condit but it's certainly nothing the Planning Board can address. Chuck, you had something?

Mr. McGroarty: Just a couple of things. I think what...number one...when the house was built, there's a two car garage underneath which is typical for the homes in Bennington. The prior owner did come to the town at one point and did get a zoning permit. I was not in the office at that time but did get a zoning permit for a detached garage, which is on the property. However, it was...there's no record in the town files of a driveway permit. So, if the prior owner felt that by putting a detached garage where it's placed now, if it was the owner's position that he needed this very large loop driveway to make that function, he did not indicate that in his zoning permit application. Apparently there was no driveway permit filed because there is no record of it. So I think...you know, I wonder if...well again, the application is what it's... in front of the Board. It is tonight. It's not our job to redesign it. But there is only one other house in the entire Bennington that I'm aware of that has a loop driveway and that's on the end of that cul-de-sac. It's a bigger lot. It's down at the bottom. There may be another one. I'm not aware of it. I'm pretty familiar with Bennington. I just think it

looks out of character, number one and I'm not sure why the applicant can't figure out a way to make it function? Without that big loop. If, again, it's not for me to tell them what to do. If they think that this is going to be their best argument, so be it. I'm not sure it's really a hardship, frankly. I don't know if you can consider it an exceptional and extraordinary situation that is the driveway existing when there doesn't appear to be any evidence that they ever got approvals to put it in in the first place. When I say they, I don't mean Mr. Condit. I mean the person before him. So it's kind of like, well we put it in, and now we have an exceptional situation because it went over the coverage. I'm not sure that's a good argument.

Mr. Condit: So, my question for the Board is, if I were to get denied and I don't move forward with this project because I choose not to remove the driveway, isn't what I'm doing with the pool just a swapping of impervious coverage then?

Ms. Natafalusy: Is it?

Inaudible

Mr. Condit: So it's 23.1 percent, now. So, if I don't move forward with the pool, it's 23.1. If I do move forward with the pool and remove the portion of the driveway that we are proposing, it's 23.1. Is there...

Mr. Weiss: I'm not sure that's accurate.

Mr. McGroarty: But if it is accurate, so it's still, you're still leaving a larger driveway but you are saying, so harm no foul because at the end of the day it's still 23.1 and we're over by three percent but that's the way it was when I bought the property? But you are demonstrating the ability to remove some of the driveway but your choice is not to remove more of it.

Mr. Condit: Well, just...yes. Of course, for functionality and continue to use it in the fashion that I have for the last five years.

Mr. Weiss: Anybody on the Planning Board have any comments?

Mr. Ottavina: I do, Howie.

Mr. Weiss: Go ahead, Paul.

Mr. Ottavina: While, I think, I appreciate what the homeowner is trying to do. Reduce the driveway for the impervious coverage, my opinion is that the driveway was done before he bought the house. Same thing with the garage. You buy a house like this in a neighborhood like this, I don't think it's unreasonable to say, hey I should be able to try to put a pool on there. But it's a really odd shaped lot, the layout of the whole plan is horrible. Again, I don't have a problem holding that against the homeowner. So, I've got no problem with him trying to put in a pool. The sticking point for me would be the size of the pool. It's a really big pool. Again I understand this isn't a negotiation, but more reasonable sized pool would probably be the thing that would help me make a decision. That's just my comment and my opinion.

Mr. Weiss: Thank you, Paul. Anybody else? Okay...

Mr. Condit: I just have one more question for the Board. If denied this evening, on that, could I and Michael Roth and my pool company, can I get direction on what needs to happen as far as a percentage? What would be acceptable to the Board from the now 23.1 to... you know is it I have to get down to 22, 21. Do I have to do this? Do I have to do that? I'm also open to...there's a shed on the plans, in the backyard. That's another...I don't know, Mike, how many square feet that is? I'd be willing to remove that. And that's a concrete pad which would reduce the impervious coverage a little bit further. Outside of that then I guess I can look at the pool and I agree with you. But if I'm able to reduce the pool and do that do I still need to touch the driveway?

Mr. Weiss: I hear your question, Greg. It's important that you understand the Planning Board is not about telling you how to enjoy your life. We have an obligation to uphold the zoning that's in place. So you ask me a question and in a perfect world you're additions and your projects that come in front or to come back at 20 percent conforming is the ideal situation. You have a process in place. Of course you need to go over it. You proved the hardship. Chuck mentioned it before. I personally don't see the hardship. This is something that you want and maybe something that you can have for your family. But as Planning Board we have to uphold our zone plans and regulations that go along with it. Therefore my answer to your question is, bring this in under a conforming plan and you don't need to be in front of the Planning Board. That's just my opinion.

Mr. Condit: No. Of course and I would love never to have to be in front of the Board. I guess if I was already at 20...if the property was conforming before the pool at 20 percent at twenty percent, I'd have to go for a variance and I don't know if that would automatically not be approved? I'm just trying to understand the reason for variance if you are at the 20 percent, in which to go over?

Mr. Weiss: The variance request would be because there is something that makes your plan difficult to build without deviating from the zone plan. And the fact that you want this for whatever the reason and I'm not saying your reasons are wrong, it's not a hardship. If you had a very steep slope and you had to move something property line, that's a hardship. You can't control that. That's something we'd consider. But you're coming in front of us...and I'm not even going to go down the path of the size of your pool. I think you're hearing us loud and clear. You got yourself a nice big swimming pool, you've got a really big driveway and you're 3.1 percent over the max. I don't see you giving us a hardship for it. That's...you have to take that into account.

Mr. Condit: True.

Mr. McGroarty: I think the thing is...not to labor the point...the three bullet points that I site on Page 2 are not, they are not my creations. As Mr. Roth knows these come from the Municipal Land Use Law, paraphrased very slightly. You meet one of those criteria, you get the basis for at least the so called positive criteria. Again, I think Mr. Roth focused on the third which is the extraordinary exceptional situation uniquely affecting this property. If the driveway was put up there, unless there is some documentation to contradict what I'm saying, if the driveway was put there without authorization, I'm not sure and again not by you, by the prior owner, if the driveway was put there without authorization is that the basis to come back later and say please I've got an extraordinary and exceptional situation here. Prior owner put in a driveway without a permit. He put too much pavement down and now I'm stuck with it. I'm not sure that it's...

Mr. Condit: No, it's just from why I looked at the home it was one of the small selling points, the circular driveway was very convenient and such. Is it a hardship? Absolutely not. I would say the first bullet on the whether if your property is shallow or narrow, being on the corner lot you can see how my lot in the backyard goes to a very narrow point.

Mr. McGroarty: Right, but Mr. Condit, you're not asking for side or front or rear setback variances.

Mr. Condit: Okay.

Mr. McGroarty: You have...like the builder's acre that was really built in Bennington back in those days 40,000 square feet. You're at 41,000 if I recall. Something like that. So, you have essentially the same lot area as almost every other property in that development. It's not an undersized lot in other words. When it was built. So I don't think it's because...if you were narrow and it was an unusual shape and you needed a setback variance I think you'd have...inaudible.

Mr. Condit: Okay.

Mr. Weiss: Here is how I see this going and again just take it as my opinion and I normally don't do this. It sounds like the Planning Board is not so convinced that you have a hardship. And I also think and Ed or Chuck, please tell me if I'm wrong, but I think if you were to redesign your plan any way you think is possible to come in at 20 percent, you can avoid this entire process. Go to Zoning, get a permit and start building. I think that's correct? Is that right Ed or Chuck?

Mr. Buzak: Yes.

Mr. McGroarty: Yes. If you conform to the setbacks, just get a zoning permit. We are doing them constantly with pools.

Mr. Weiss: Let's assume that this was approved. You would need to wait a month for the Resolution before you can get your permits. I would think, Chuck or Ed, keep me in line, that if you made these corrections over the next day or two, went to zoning and got a permit based on the corrections that you made you don't need to wait a month. You go right next door for your building permits. It's an instantaneous approval based on the zoning approval. And if you're at 20 percent, you'll get a zoning approval. But we have standards that we have to live by and it really hurts me to take this position because I like to be invited over to the house for a barbeque. You have to understand we have to uphold the land use and that's the job of this Board. Sometimes it comes across as we're not being nice but I think you understand the position that we are in.

Mr. Condit: Absolutely. I can't ever really ever argue a hardship. I have a job, I have a home, so...

Mr. Weiss: I understand. I think my advice although it's an opinion is solid and we can avoid the whole rest of this process if you think you can make some corrections that's live able. Now if you don't think that you can do that you let us know and we'll make a vote and I'm not going to speak for anybody or look to sway anybody's vote. I think you're hearing from the Planning Board how we feel.

Mr. Condit: No, I'll go back to Rin Robyn Pools, who I'm using for the pool and Mike as well, to see what we can do to get it to the 20 percent. If not, just abandon the project.

Mr. Weiss: Well I think you're closer than you think. I think you mentioned the shed. I think the pool is large. Again I'm not going to tell you what size pool you need to have for your family. But maybe a couple of really small tweaks and you're there.

Mr. Condit: Right. Okay.

Mr. McGroarty: Just a question if Mr. Condit decides...if he decides that he doesn't want a vote tonight, he can carry the matter. He can decide whether he wishes to withdraw it later. I just wanted to throw that out there just in case because if he withdraws the application, we're busy and I don't know when we'll schedule again. Again, Mr. Condit may decide he doesn't need to come back to this Board, but if he does...we might offer the opportunity to carry it.

Mr. Weiss: I can take it one step further and I think because we spent some time, it's late as it is. I would suggest that if you're going to carry it we'll get you on. Because I think there's a time of the essence here. It's April. If you want to get your pool started you need to get that done soon. I would imagine, I think we should carry it keeping the date open for you. We can get it done quickly. I'll certainly squeeze it in because we wouldn't need a lot of time if you choose to come back with some things and let's say you're twenty and a half.

Mr. McGroarty: Well we have to specify a date if he's not going to re-notice.

Mr. Weiss: No. Of course and I think we should even look at that...May...what was the date...May 13?

Ms. Strain: Yes.

Mr. Weiss: Which is a couple weeks from now? If you feel you need variance relief we'll keep the date for you. Because I understand that there is a time element here.

Mr. Condit: I'd like to keep the date in case it becomes to like 20.2 and I can't squeeze...

Mr. Weiss: Okay. Well for whatever reason I think we'll keep the date open for you. I'll get you in the schedule. I know Chuck's going to kick me tomorrow. I think because we won't need a lot of time at that point.

Mr. Condit: If I'm...sir, Mr. Chairman, if I'm able to get...if we're able to get it to the 20 percent, than that date just goes away and I do a regular submission?

Mr. Weiss: Correct. I will simply announce it on the 13th or whatever the date it. Nobody moving forward, right through the Zoning Office, right to the Building Office and shovel in the ground.

Mr. Condit: One last silly question, if I may, as it pertains to driveway in Mount Olive Township. Are gravel driveways impervious? If I tore the whole thing up and re-did the driveway?

Mr. McGroarty: Gravel driveways are not permitted.

Mr. Condit: They're not? Okay. Just checking. Thank you.

Mr. Scapicchio: Chairman, I have a comment.

Mr. Weiss: Go ahead, David.

Mr. Scapicchio: As a pool owner, Mr. Condit, you suggested that you may eliminate the shed. Let me suggest you don't need to eliminate the shed. You will need the shed when you have a pool.

Mr. Condit: Yes. I'd like to try to just reduce the pool but I do have the detached garage or a quarter of it is not used and maybe I could. It's a very good point. I just know it has a concrete base so it's encroaching on that. So hopefully we don't have to do that. But thank you.

Mr. Scapicchio: It's just a suggestion. Do what you need to do.

Mr. Condit: Thank you.

Mr. McGroarty: Mr. Condit, I suggest you and Mr. Roth put your heads together and you can give me a call if you wish.

Mr. Condit: Okay. We appreciate that.

Mr. Weiss: I truly think that's the best. I'd hate to see this go down tonight if there is something that you can do to prevent it.

Mr. Condit: We will try our best. Yes.

Mr. Weiss: Okay so we're going to carry this hearing to May 13th. There will be no further notice. Nothing required of you and if you can work it out. Chuck will advise me and I will make the announcement on May 13th if the application has been dropped.

Mr. McGroarty: Mr. Chairman. I don't think there is any public...I don't know if you want to open it to the public?

Mr. Weiss: Thank you. Let me just see what I have here. I see nothing from the public. And so I'll open it to the public and close it to the public. So that being said we'll carry it to May 13th. Mary, I have the right date, right? May 13th?

Ms. Strain: Yes.

Mr. Buzak: Mr. Chairman, May 13, 7:30...

Mr. Weiss: 7:00 pm.

Mr. Buzak: I'm sorry 7:00 pm using the Zoom platform, with the address on the website.

Mr. Weiss: Correct.

Mr. Weiss: And I certainly hope to make the announcement on May 13th that the application has been dropped and it all worked out. It would be an ideal situation. Okay. Thank you gentlemen.

Mr. Condit: Thank you very much for your time, everyone.

Mr. Weiss: Good luck. And I think as we close our agenda, I have nothing else unless anybody has anything they'd like to report on. I see nothing, which means I'll entertain a motion to adjourn.

Mr. Scapicchio: Motion to adjourn.

Ms. Mott: I'll second it.

Mr. Weiss: Thank you. Let me just see, our next meeting will be on May 13th. Correct?

Mr. McGroarty: Yes.

Mr. Weiss: That's our next scheduled meeting. In May it's the 13th and the 20th. Enjoy some nice weather coming up everybody. Thanks for staying in late. It's a little bit later than we go everyone have a good weekend and I'll see you in a couple of weeks.

Meeting Adjourned at 10:30pm
Transcribed by: Karen Grill

Signature 

Planning Board Meeting Date Approved 12/9/2021