

**TOWNSHIP OF MOUNT OLIVE  
PLANNING BOARD**

Public Meeting  
Thursday, August 20, 2020 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 August 20, 2020 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. Schaechter, Mr. Forlenza, Ms. Natafalusy, Mr. Mania, Mr. Nelsen, Mr. Ottavinia, Mr. Batsch, Mr. Weiss

Excused: Ms. Mott, Mr. Ouimet

**Board Professionals** in attendance were:

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

**Development Applications**

PB 20-02 Erlandson, John & Lindsey, 14 George Street, Block 4407, Lot 22

Mr. Weiss: Thank you. Welcome everybody. We are going to get right into our developmental matters for this evening's meeting with the first one being PB 20-02 which is for John and Lindsey Erlandson, here for a variance at their home at 14 George Street, which is Block 4407, Lot 22. Dane, it looks like John Erlandson is on, so if you can promote him?

Mr. Westdyk: John, I am going to promote you. You are going to drop out of the meeting and you are just going to reconnect automatically and you will be able to participate...so, hold on one second.

Mr. Weiss: And Mary, for the record, Paul Ottavinia is here.

Ms. Strain: Thank you.

Mr. Weiss: Welcome Paul.

Mr. Forlenza: Hey Mary, it's Ken. Can you confirm on this application that both John and I are not available to vote?

Ms. Strain: I have that John is available. John Mania or John Batsch?

Mr. Forlenza: John Mania. It is not use variance, is it?

Ms. Strain: No, it is not, but I believe you were excused at the meeting, Ken.

Mr. Forlenza: Oh okay...okay, okay, okay...

Mr. Weiss: But let me...before we get too far, Ed...?

Mr. Buzak: Yes, I am here.

Mr. McGroarty: Ed...Mr. Chairman, mind if I just get this...

Mr. Weiss: No...please Chuck, go ahead because I know this is a continuation of a previous...

Mr. McGroarty: Yes, this is a continuation but Mr. Erlandson changed his plan. So, the testimony...we really didn't get into much testimony last time. The Board Members that were not here, should they or can they participate in this part of the hearing?

Mr. Buzak: I think Mary had raised this question to me earlier and I am not sure that we are going to be able to distinguish some of the information that we got last time concerning the property and the concerns that Mr. Erlandson had that generated...you know...the manner in which the deck was designed and so forth...so since we have plenty of members to vote on the application, I think just to keep us safe I would rather not have someone who was not here and I think that is just one, I think it is just Ken who was excused and not participate and in this way. I don't have to worry about whether that information was going from an earlier meeting or from this meeting.

Mr. McGroarty: Okay. Thank you.

Mr. Weiss: Fair enough. Thank you very much. Okay, so as we just said, this is technically a continuation but as Chuck just noted to everyone, Mr. Erlandson changed the plans so perhaps...let me turn it over to Mr. Erlandson. Let's talk about what has happened since you were in front of us last, the changes that you made and what prompted such change.

Mr. Erlandson: Yes. So, thank you for your time everyone and we...

Mr. Weiss: Wait...I wanted to talk a real quick...just for the record Mr. Buzak, Mr. Erlandson is still sworn in from the last time?

Mr. Buzak: That is correct, Mr. Chairman. I was just going to say that.

Mr. Weiss: Thank you very much. Alright John go ahead. I am sorry.

Mr. Erlandson: So, we basically had a deck on the backyard but on the side over the patio and what it was doing was it was causing the need for basically two variances because you had a side

yard variance and you had a back...you know...back yard variance or the back of the property line. So, what we have done is we shrunk the deck down to avoid any issues around total coverage, so we thought that could be another potential variance and the new design has basically been moved to the center of the house. It is more of extending the current deck now than a complete kind of rebuild in the back yard which takes us down to one variance needed for the back property line in the back yard.

Mr. Weiss: Okay, so just to review...your application has now one variance which is a rear yard setback variance?

Mr. Erlandson: Yes, sir.

Mr. Weiss: So, let me catch up with...go ahead Chuck.

Mr. McGroarty: Mr. Chairman, technically it is a side yard variance.

Mr. Weiss: Correct because it is a corner lot. Correct?

Mr. McGroarty: Right.

Mr. Weiss: So the standard then Chuck, let's make sure we have everything right. The standard for the side yard setback in this zone is...is it 35 feet?

Mr. McGroarty: No. This zone 20 feet. Side yard setback is 20.

Mr. Weiss: I am sorry. Okay, so we have a 20 foot side yard setback. So, Mr. Erlandson why don't you testify for us and tell us with this new deck what kind of encroachment are you going to have into this setback.

Mr. Erlandson: So we we'll be 9 feet from the property line...at its furthest or its closest length basically.

Mr. Weiss: Okay. Let us talk about where is that closest point. We're looking at a map...we are looking at the map...let me see on...Chuck, we have Chuck's report. Everyone has Chuck's report. It is Page 2 that I am looking at.

Mr. Erlandson: Yes. So the line where it says nine feet I know it's a little small...it is the right line that points back next to the 21 foot which is the amount of feet the house is from that side property line. So, that would be the closest corner.

Mr. Weiss: Okay and that appears to be, just for the conversation, right...kind of...right in the center of the property line.

Mr. Erlandson: Yes, sir.

Mr. Weiss: Okay.



Mr. Erlandson: The lot behind it, obviously, it's a narrow lot and the lot behind it is wooded area. My understanding is much of it is wetlands but it is something Toll Brothers said at some point somebody could build on but...you know...there hasn't been anything that I have been notified that that is happening anytime soon.

Mr. Weiss: Okay, so I very much appreciate that you made some changes to help remove some of the variances, but there is an obligation, Mr. Erlandson, about just making some proofs as to why there is a hardship and some of the criteria that is required for the record to talk about why we need this to make this happen. Talk a little about your property, talk about some slope with me. We are looking at a picture and granted it is on the corner, giving you two side yard setbacks. Tell me a little bit more about the property. Is there another place, another spot on the yard on the property where the deck could maybe work without a variance?

Mr. Erlandson: No. I do not believe there is actually anywhere because of the way Toll Brothers built the house and where they positioned it on the lot. Basically, if you look at any place whether it is the side deck over the patio or right there, you are going to need some sort of variance because they just made the backyard so narrow.

Mr. Weiss: Yes, so it looks like...let's call this, I don't have the orientation but as I'm looking at the map on Page 2 the side of the house to the right, for lack of better direction, it appears that the house right there is right on the building envelope. Would you agree with that?

Mr. Erlandson: Yes, sir.

Mr. Weiss: So putting a deck, if you could, on that side wouldn't really work and if you would be able to go to the left side, it appears that although there might be some room...to me it doesn't make a lot of sense. I don't know if you would agree with that comment.

Mr. Erlandson: I would absolutely agree. The driveway is right there, the neighbors are right there and there is a huge hill that you would be building on top of.

Mr. Weiss: Okay. So that's helpful testimony. So, if you were to say I'll build a conforming deck and if you put it onto the left side as we look at Map Number 2, you would actually be encroaching on to a neighbor having to cover a steeper slope?

Mr. Erlandson: Correct.

Mr. Weiss: And the fact that, it sounds to me like you are telling me that if you are going to build the deck to the rear, you are probably going to provide a little bit more of a shelter, if you will, from the neighbor's house by putting it in the back, is that kind of accurate?

Mr. Erlandson: Yes, sir. This puts you way more towards the woods where it is almost not visible by the neighbors.

Mr. Weiss: Does it make more sense to add on to this deck where the deck is already existing?



Mr. Erlandson: So, essentially that is what we are doing. So, now the material will change but that core part of the deck that is already there, it will extend five feet towards the property line and then it will become...you know...it will be 36 feet wide and I believe today it is about eight feet wide, so that is 28 feet in width.

Mr. Weiss: And I suppose and I am kind of jumping all over but I'll sum it up for you in a second. I suppose that a deck in your neighborhood is fairly common. Is that an accurate comment?

Mr. Erlandson: Yes, sir. Neighbors, actually all three neighbors I am surrounded by...the two on the sides here have decks and the one up has a deck as well...pretty much everybody on the street.

Mr. Weiss: And would you say that a deck is kind of a common structure to build in a single family residential neighborhood?

Mr. Erlandson: Yes.

Mr. Weiss: Mr. Buzak I am going to turn you for a question. It sounds like with the testimony that Mr. Erlandson told us with the fact that moving the deck to the back even though it would require variance would be less of an impact on the neighbors plus the fact that decks are kind of rather common in this residential neighborhood, would you say that's proven the negative criteria?

Mr. Buzak: Well, I think it is part of the positive and part of the negative. I think that how it's going to affect the neighborhood and his neighbors...is part of the positive criteria in the testimony if I understand it correctly is that at least from Mr. Erlandson's view it is going to have minimal impact on his neighbors and in fact the manner in which he located it should reduce the visibility of it as well and that his neighbors have decks...I would ask a question, are the decks, sir, of your neighbors similar in size as your deck?

Mr. Erlandson: There are actually two...actually all three would be larger. The one that is the closest neighbor which would be 16 George Street probably is about the same size and then the two neighbors beyond that or the one on the other side...inaudible...so 18 and 12, the decks are substantially larger closer to...inaudible... square feet.

Mr. Buzak: And how about the location of those decks as it relates to...technically the side yard is, I believe is your rear yard?

Mr. Erlandson: Correct. Almost identical now...when we were designing before, our deck would have been very unusually, the one we proposed at the first meeting would have been very unusual for the neighborhood. This deck is almost identical to pretty much every other neighborhood deck that I have seen.

Mr. Buzak: And is it identical in the sense of its location as it relates to the, again, I will use the rear yard even though technically I recognize it is a side yard?

Mr. Erlandson: Yes, sir.

Mr. Weiss: Chuck, when we look at the...I am going to go back to you for a second Chuck...when we look at the positive criteria, are we looking at a C1, or C2 variance? Chuck...are we...where is this going to fall? I don't think...go ahead.

Mr. McGroarty: I don't know...

Mr. Weiss: I don't think it qualifies for A or B.

Mr. McGroarty: I thought Mr. Erlandson will take a shot at that but...I don't think...I don't think C1...I don't think the C1 (a) fits because this is a normal sized lot out there...not really sure about the others either but probably if you're...I mean the C2 variance is again, it is supposed to benefit not just the owner but it is supposed to be a better zoning alternative and should also meet a larger objective than just that of the property owner, perhaps in this case as we've talked about on one or two other occasions, it can do that by virtue of the improved aesthetics. I mean there are some characteristics about this property that I am not sure are unique but they are probably few and far between in that development, in that it's a corner lot, it has got a paper street which creates that corner lot situation and the house is basically pushed back...I can't really say that that is a hardship...they built...Toll Brothers built a big house or whoever built this one...I guess it was Toll Brothers. So, they built it right to the back of the building envelope, so basically there is no other place to put a deck except as you both discussed earlier on the west side, the left side. So, I am not really sure which one it really fits, to be honest.

Mr. Weiss: Chuck...with the Planning Board obviously if we were to...if Mr. Erlandson, we asked him to put the deck on the west side where maybe it could fit and it would be certainly right in the forefront, right in the face of the neighbor's property, we might be able to avoid the variance process but at the same time I don't know if we would be doing anybody a service...

Mr. Erlandson: I do believe that I will also get an objection from that neighbor if I were to build there...I will pretty much be guaranteed.

Mr. McGroarty: Well if it is in the building envelope, it is in the building envelope whether they object or not.

Mr. Erlandson: Okay.

Mr. Buzak: Mr. Chairman, may I ask Chuck a question please?

Mr. Weiss: Sure...Sure Ed, go ahead.

Mr. Buzak: What is the rear yard setback typically in this zone?

Mr. McGroarty: Forty feet, so it would be double...what he is looking...

Mr. Buzak: So actually the fact that he is a corner lot or considered a corner lot because of the paper street and that rear yard is technically a side yard under the ordinance, he actually benefits from that situation...is that correct?

Mr. McGroarty: He benefits...how so?

Mr. Buzak: Well, he would otherwise, if I understood what you said, have to have the rear yard would be 35 feet back...I am sorry, 40?

Mr. McGroarty: 40...yes.

Mr. Buzak: Oh 40. So, if this were not a corner lot, he would otherwise to comply have to have a 40 feet rear yard, now he only has to have 20 feet rear yard, right?

Mr. McGroarty: Yes.

Mr. Buzak: Right?

Mr. McGroarty: Yes, right.

Mr. Buzak: So the fact that he can encroach and still have nine feet, he is probably better off with that than he would be had he had a 40 feet one and had to encroach that much into it...I guess you are right...I...

Mr. McGroarty: I think it is the reverse.

Mr. Buzak: I withdraw my point. Thank you...I had something but it is not right.  
Thank you.

Mr. McGroarty: Believe me I know the feeling.

Mr. Weiss: Does anybody else on the Planning Board want to chime in on what we are trying to accomplish here?

Mr. Nelsen: Would...I have a thought. If it were to put on the west side of the on the side of the house actually, where you do have a little room in the envelope, would that interfere with the garage?

Mr. Erlandson: Well, so the biggest problem...it would not because it would be behind it. It would definitely make it very difficult to park the car because sometimes the tip of the car comes over that grassy area. When I say objection, I guess what I should have been clear on is I still have to go to the HOA to get it approved and my neighbors will have to sign off before I can build anything and so once I went to do that the HOA would get the objection and they wouldn't allow me to build even if it was inside the envelope.

Mr. Nelsen: Okay.

Mr. Weiss: Okay. So looks like I suppose...you know...we are just kind of struggling with which criteria we are going to fall under whether it is C2. Have you spent any time considering that answer, John?



Mr. Erlandson: I apologize the difference between C1 and...oh there it is...sorry, it's in the report.

Mr. Schaechter: Mr. Chairman, I have a question regarding the...

Mr. Weiss: Go ahead, Brian.

Mr. Schaechter: Your homeowner association...they haven't looked at these plans yet? If we approve it and they deny it...are you going to be back here?

Mr. Erlandson: No, so, they cannot...they actually don't make the decision. The neighbors make ultimately the final decision. So, you submit the plans to the neighbors. If the neighbors sign off, you are good to go. So, I have with both of the neighbors good enough relationship where they know what I am doing. So, I am, you know, 100 percent confident that I will get that sign off.

Mr. McGroarty: Just out of curiosity, Mr. Erlandson, ARD owns that lot behind you, I believe?

Mr. Erlandson: Yes, sir.

Mr. McGroarty: Do they sign off on this too?

Mr. Erlandson: They do not because they are not part of the neighborhood so technically that has always been a really interesting gray area. If someone were to buy that land my understanding is they are supposed to fall under association rules but they have to do a deal with the HOA and if they cannot, they still could build and it would just be kind of under different neighborhood rules. Unfortunately, that is the way it was explained to me by Toll Brothers.

Mr. Weiss: And the owner of Block 21 was clearly notified of this application, right?

Mr. Erlandson: Yes, I think there are three different addresses. So, I guess I would say, you know, C1(c) the way I understand it, would probably it is a peculiar...I guess it's a hardship based on the way they...you know...developed the lot. I think that seems to be...you know...the reason.

Mr. Weiss: Okay. Chuck, is there any other issue we want to talk about, anything else we might need to go over?

Mr. McGroarty: No.

Mr. Weiss: I know we have addressed this before and you know we have kind of come to the agreement maybe as a Planning Board that...hold on one second...let me just go back...C1(c) there are many corner lots in town, there are many lots that are developed in this manner, just by the nature of the purchasing a lot like this but in this case I don't necessarily have a problem with it. I know that I try not to make that a kind of an easy decision to approve the positive criteria but I am not sure where else we need to go with this particular application. So, kind of, like in Chuck's case, I am a little bit not troubled by it but I am not sure where else we can go with it. I think like I said earlier the fact that you made some changes, there's one variance. I think the fact that you are not putting it where it might really fit because it would protect the lifestyle or

the daily living of the neighbor to your left is sufficient for me. Anybody else from the Planning Board wants to chime in on that?

Mr. Scapicchio: Mr. Chairman, I agree with you. I think that where he has that deck placed is probably the most appropriate place on the back of that house.

Mr. Weiss: Okay.

Ms. Natafalusy: Yes, I was going to say I don't see him putting it on the side of the house, on the other side because how would it access it? That would be a whole new, I mean, probably have to put a door in and...

Mr. McGroarty: Yes, I think it is almost like a stark choice here. This is not a house and this is not a lot that is going to have a deck that conforms. So, if it is going to have a deck, it is going to have to encroach somewhere...I say it is going to have to, it would be subject obviously to Board approving it. The west side is completely impractical for the reasons that have been said already and it would also stand out like a proverbial sore thumb on the street. It would look silly. On the east side to the right, as we pointed out last time, there are wetlands or at least there is a buffer area and it is represented by that dotted line. Not that you could do much on that side anyway but that's where the original deck was moving over in that direction. So, it is either...now I don't know if all those things combined make this extraordinary and exceptional but there's probably not too many lots like this in the development although there are corner lots, but it's a corner lot with a paper street...not a real one...which may or may not ever come about and the house takes up almost the entire building envelope. So, it's again...the only place for a deck that makes any sense is on the back of the house and there is no way to do it without the variance other than the little deck that they have today.

Mr. Weiss: And so I think it would be acceptable for the Planning Board to accept C2 (c)...or sorry C1(c) as the reason for the negative criteria, and I do think that you have proven...I'm sorry the positive criteria...and I do that that you've proven the negative criteria in your former testimony. Unless Mr. Buzak disagrees with me, I think the proofs have been made. I think we are dealing with a situation that this will not be the last and we are going to just have to deal with each one individually as they come up. So with that said, I don't know if you have anything else to say...any other testimony Mr. Erlandson on that?

Mr. Erlandson: No, thank you very much.

Mr. Weiss: Okay. So, is anybody else from the Planning Board have any comments or questions before I open it to the public? I don't see anybody from the Planning Board. Let's take a peek. Dane, stay with me here if you can. I don't see anybody from the public raising a hand.

Mr. McGroarty: Mr. Chairman?

Mr. Weiss: Yes Chuck, go ahead.

Mr. McGroarty: I do want to point out as I said in the report and make it part of the record, so Mr. Erlandson understands this...inaudible...that with the deck if it were approved as proposed

it would be...the lot would be virtually at the total coverage that is permitted in the zone district. So...all right...

Mr. Erlandson: This is the last thing we are building ever that without another variance, but I get it. There is no intention on my wife's part to build anything else.

...inaudible...

Mr. Weiss: There you go...I like that. I guess, Ed the Resolution will kind of make comment as such that it was discussed and agreed upon that there is virtually no room to build anything else on this lot?

Mr. Buzak: Yes, and I think the C1(c) is probably the best category as I looked at the C2, I likewise, couldn't really see anything that we can look to. I think the C1(c) talked about the exceptional and extraordinary situations and/or the structures lawfully existing there on, I think it is really the location of the structure on that lot which takes up as...inaudible...the entire building envelope and as Chuck said...you know...if you are going to put a deck on, unless you put it on that west side which doesn't make a lot of sense, you are going to have to seek approval from the Board for deviation. So, I think we are good Mr. Chairman if the board is so inclined.

Mr. Weiss: Thank you. So I see nobody from the public had any questions. At this point, I am going to just double check one more time, in case there was a last minute...alright so nothing from the public. So, I am going to close it to the public, and at this point, let me see if any...

Ms. Natafalusy: Howie?

Mr. Weiss: Oh I am sorry, Catherine...go ahead.

Ms. Natafalusy: Can I just ask a question? That patio we discussed last time that bubble part or that part that seems to encroach in that other yard, is that still there?

Mr. Erlandson: The pool is not there but the sandbox is...it's there. It's sand. I did have to spray it for bees because you couldn't get anybody to come take it out...I mean taking a tape measure, it does, being perfectly honest, seem to sit right on that property line, just measuring from the house. So, we do need to rip it up, but nobody will rip it up without the bees being removed. So, if you look back, now there is growth on everything. I just got that done and my thought was when the construction crew comes to do this, I will have them take care of that and plant the grass at the same time.

Ms. Natafalusy: Okay. Thank you.

Mr. Weiss: Mr. Buzak, let's make that a condition too. That will come out when the construction starts.

Mr. Buzak: Yes. Is that...I don't have my notes from the first time. Was that on the east side or the west side of that?



Mr. McGroarty: East side.

Mr. Buzak: East side. Okay. Thank you.

Mr. Weiss: Okay. So with that being said, if there are no other comments from the Planning Board, if someone would please make a motion to move this application.

Mr. Scapicchio: I will move application to approve PB 20-02.

Mr. Nelsen: I will second it.

Mr. Weiss: David and Dan thank you very much. We have a motion, we have a second. Any comments, questions? I see none. Mary, roll call.

Roll Call:	David Scapicchio	Yes
	Brian Schaechter	Yes
	Catherine Natafalusy	Yes
	John Mania	Yes
	Dan Nelsen	Yes
	Paul Ottavinia	Yes
	John Batsch	Yes
	Howie Weiss	Yes

Mr. McGroarty: Okay, wait, wait, wait...

Mr. Weiss: Let us finish the roll call. I may have a comment afterwards.

Ms. Strain: I am sorry.

Mr. McGroarty: Did John vote?

Mr. Weiss: That is going to be the part of my comment. There is no reason to be muted.

Mr. McGroarty: Who is...I am sorry.

Mr. Weiss: Mr. Erlandson, good luck to you. The process now...wait a couple of weeks, probably a month or so, the Resolution will be prepared, you will pick it up and go get your building permits and good luck to you.

Mr. Erlandson: Okay. Thank you very much everyone and I appreciate all the help and patience.

Mr. Weiss: My pleasure. As we get prepared for the next application, I urge the members of the Planning Board it slows down the entire process if we have to wait for you to go find the mute button and then unmute yourself. So, as we are going forward can you please keep your unmute button off or keep it so that you can answer immediately. It clearly slows us down when we have to wait for you to go reach for that button.

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

We have the next application which is PB 19-23 BCM Enterprise Properties, LLC, here for a variance for their property at 5 New Street, Block 3308, Lot 7. Let's take a look. I am not sure who the person is from...

Mr. McGroarty: Collin, Lori Jean Ryder and their attorney is here...Mr. Rubin.

Mr. Weiss: Okay. Perfect. So, let's...inaudible...

Mr. Westdyk: Mr. Rubin and Mr. Ryder you are going to get knocked out of the meeting and then you will just automatically rejoin and you will be panelist and you will be able to participate, so just hang in there for one second.

Mr. McGroarty: I don't know about the other people, Mr. Chairman.

Mr. Weiss: Okay, if we need to we will keep our eye on the attendees and if we see anybody needs to join us, we will take the lead from Mr. Rubin.

Mr. Rubin: Good evening everyone...Michael Rubin. I have two other witnesses, Collin Maurer and Christopher Nusser.

Mr. Westdyk: I will promote Christopher right now and he will be joining the meeting in a second.

Mr. Weiss: And Mr. Rubin if you find that you need somebody else, do let us know. We will do the same thing to make sure that your experts and anyone who wants to testify will be available.

Mr. Rubin: Thank you very much.

Mr. Weiss: We will just give it a second and then I will turn it over to you, Mr. Rubin. You will tell us about the application. Collin, are you here?

Mr. Maurer: Yes.

Mr. Weiss: Okay. So, it looks like your folks are here Mr. Rubin. Let me turn it over to you. Welcome this evening and tell us about your application.

Mr. Rubin: Thank you Mr. Chairman, Members of the Board. My name is Michael Rubin. I represent the applicant BCM Enterprise Properties, LLC, with respect to the property located at 5 New Street, Block 3308, Lot 7. This is application PB 19-23. This is the application to build a single family home on an undersized lot. The lot is undersized as to width and area. There is one additional variance necessary to construct the home which is side yard setback variance, 12 feet is required on both sides. One side will be 12 feet. The other side will be 10 feet as proposed. We have three witnesses tonight. One is Mr. Maurer...Collin Maurer...who is the managing member of the applicant. The second is Lori Jean Ryder who is a registered architect at Master Design

Architects and the third is Christopher Nusser, a professional engineer and professional planner at E & LP. Without further ado, I have no other comments. If there are any questions, I will be happy to answer them. Otherwise, we would prepare to commence.

Mr. Weiss: Mr. Rubin, is Mr. Nusser going to testify as a planner and an engineer or just an engineer?

Mr. Rubin: Both.

Mr. Weiss: Both, okay. So, I suppose what we could do is Mr. Buzak, do want to swear the witnesses in?

Mr. Buzak: Do we have everybody here? We do. Yes, can all the witnesses, Mr....is it Collin...I didn't get the last name for Collin.

Mr. Rubin: Maurer...M A U R E R.

Mr. Buzak: And are you appearing by telephone, Mr. Maurer?

Mr. Maurer: No I should be on.

Mr. Buzak: Okay you are not on yet. So why don't we get you on...

Mr. Weiss: There you go.

Mr. Buzak: Can each of the three witnesses raise your right hands. Do each of you swear that any testimony you will give tonight will be the truth, all truth, nothing but the truth.

Mr. Maurer: I do.

Mr. Nusser: Yes.

Mr. Buzak: Thank you very much...Mr. Rubin.

Mr. Rubin: Yes, my witness will be Collin Maurer, please. Mr. Maurer, are you the managing member of the applicant, BCM Enterprise Properties, LLC?

Mr. Maurer: Yes, sir.

Mr. Rubin: And in November of 2019, did you authorize an attorney Erica Edwards to send letters to your adjacent property owners.

Mr. Maurer: Yes.

Mr. Rubin: And did those letters to the adjacent property owners both offered the property for sale as well as an offer to purchase land in order to make this lot conforming?

Mr. Maurer: Yes.



Mr. Rubin: And is it true that you received one response from an adjacent property owner, Steve Masotti...

Mr. Maurer: Yes.

Mr. Rubin: Who is at 13 Chatham Road? A

Mr. Maurer: And did you speak to Mr. Masotti subsequent to the letters being sent?

Mr. Maurer: Yes.

Mr. Rubin: And can you please just explain to the Board the substance of that conversation?

Mr. Maurer: He was offering \$5,000 for the land and that was way below.

Mr. Rubin: And do you believed \$5,000 to be fair market value?

Mr. Maurer: No, sir.

Mr. Rubin: Could you just tell the Board what you paid for it?

Mr. Maurer: \$40,000.

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

Mr. Weiss: Mr. Maurer, when did you buy the property?

Mr. Maurer: Back in I think January of 2019.

Mr. Weiss: What were your intentions when you bought it?

Mr. Maurer: To build a home.

Mr. Weiss: Where you aware of the zoning before you bought it?

Mr. Maurer: Yes.

Mr. Weiss: And I know you made an offer if anyone would buy your land. Did you try to buy anyone else's land?

Mr. Maurer: Yes, it didn't work out with anyone else's properties due to the side setbacks. Nobody had enough to give.

Mr. Weiss: Understood. Okay. So, your only option would be to sell your land to one of the adjoining neighbors? Your only offer was \$5,000 on a piece of property that you paid \$40,000 for?

Mr. Maurer: Yes sir.

Mr. Weiss: Okay. I am just curious when you went to purchase this property and you currently own it now, right? You are not a contract purchaser?

Mr. Maurer: Yes.

Mr. Weiss: You own the land? And did you have a strategy in place when you bought a piece of property that was you know 6,000 square feet in 10,000 square feet zone?

Mr. Maurer: Well, I did research of what the neighboring lots were, and being that everybody pretty much had the same situation, I figured it shouldn't be that much of an issue other than just doing my due diligence.

Mr. Weiss: Okay. Anybody else have any questions for Mr. Collin Maurer?

Mr. Buzak: I have a couple questions about...

Mr. Weiss: Go ahead Mr. Buzak.

Mr. Buzak: First, can you give me the spelling of Mr. Masotti's name. You said Steven Masotti?

Mr. Rubin: I can do that Mr. Buzak. It's S T E V E N M A S O T T I.

Mr. Buzak: So when were the letters sent to the adjacent property owners?

Mr. Rubin: I can answer that also. They are in the possession of the Board. They were dated November 25, 2019. They were sent by certified mail return receipt requested and the cards were attached.

Mr. Buzak: Okay. I did not see those. So, I apologize.

Mr. Rubin: That's okay.

Mr. Buzak: They may have been in my file and I just didn't see them.

Mr. Rubin: The only reason I knew they have them because Ms. Strain sent them out for us. I didn't have them either.

Mr. Buzak: Let me see if I have the...so you didn't have a dollar number in there? You just had a general request as to whether they were interested in purchasing your lot and asking them to make an offer...is that what I understand?

Mr. Maurer: Yes, I believe there was a number in there.

Mr. Rubin: No, there is no number in there.

Mr. Buzak: I am sorry.

Mr. Rubin: There is no number in the letter.

Mr. Buzak: Right. Okay.

Mr. Maurer: I think it...inaudible...the letter was part of the Nash Act and I think that stipulates that it has to be a fair market value.

Mr. Buzak: Are the surrounding properties all improved properties? That is with houses on them...they are not vacant?

Mr. Maurer: No. They have houses and they are fairly up-to-date.

Mr. Buzak: I have no further questions Mr. Chairman.

Mr. Weiss: Anybody from the Planning Board have any questions for Mr. Maurer? I will turn it to the public. I don't see anybody from the public with a question.

Mr. McGroarty: Well I don't know if...I know there is at least one member of the public...Mr. Chairman I assume they know how to raise their hand. Is that the process that they will follow?

Mr. Weiss: Yes and thank you for reminding me. If anybody from the public has any questions, there is a button on your screen that you raise the hand. If you have any questions, you can simply push the button. We will recognize it and call up on you to ask your questions. I don't see anybody with a question. So, let me close it to the public and turn it back over to you Mr. Rubin.

Mr. Rubin: Thank you Mr. Chairman. My next witness will be Lori Jean Ryder.

Ms. Ryder: Hello.

Ms. Rubin: Hello Ms. Ryder, how are you?

Mr. Weiss: And Ms. Ryder...you are testifying today as an architect, professional architect, right?

Ms. Ryder: Yes.

Mr. Weiss: Give us a little bit of background about yourself, if you would?

Ms. Rubin: Yes, please give the Board the benefit of your professional and educational background.

Ms. Ryder: I have a Bachelors and a Masters from NJIT and I have been licensed since 2001.



Mr. Rubin: Is your license current?

Ms. Ryder: Yes it is.

Mr. Rubin: And have you regularly appeared before Planning Boards and Zoning Boards throughout the state of New Jersey?

Ms. Ryder: Yes, I have.

Mr. Rubin: Could you give me an estimate of approximately how many?

Ms. Ryder: Under 10.

Mr. Rubin: And were you qualified as an expert on each of those occasions?

Ms. Ryder: Yes, I was.

Mr. Rubin: I ask that she be qualified as a registered architect.

Mr. Weiss: Ms. Ryder, have you even been in front of Mount Olive Planning Board?

Ms. Ryder: The last time.

Mr. Weiss: For the last meeting. Prior to that, no, right?

Ms. Ryder: No.

Mr. Weiss: Well I don't have any problems and I certainly, unless I see anybody to object, I welcome you back here to Mount Olive, Ms. Ryder, and welcome.

Ms. Ryder: Thank you.

Mr. Rubin: Ms. Ryder, were you retained by the applicant to design the dwelling to be constructed on this lot?

Ms. Ryder: Yes.

Mr. Rubin: Could you please describe to the Board what you did to prepare to design the dwelling and then the actual design of the dwelling?

Ms. Ryder: Well we looked at the bulk area requirements for the lot and we tried to design it within those parameters. However, being a narrow lot and requiring the 12 feet setback on each side wasn't enough width to make the house usable. So, that is why we are requiring extra two feet for the side yard variance.

Mr. Rubin: What is the width of the lot?

Ms. Ryder: Fifty feet.

Mr. Rubin: And what is the requirement in the zone?

Ms. Ryder: 80 feet.

Mr. Rubin: And what is the width of the dwelling?

Ms. Ryder: The last time we were before the board, it was 30 feet. We reduced it to 28. We took two feet off, so now that we only need one side yard not two.

Mr. Rubin: And what was the effect on the dwelling of reducing those two feet? In terms of the design of the dwelling, interior layout, the floor plan, etc.?

Ms. Ryder: We took every ounce of extra space we could to really tighten it up...you know...to a point where it really can't be reduced any further without making it unusable.

Mr. Rubin: And so what you are saying is that each of the individual rooms are about the minimum square footage they could be before they become not practical?

Ms. Ryder: Yes.

Mr. Rubin: With respect to all the other setbacks involved and all the other bulk requirements, are those met?

Ms. Ryder: Yes.

Mr. Rubin: And in both the building coverage and the lot coverage, correct?

Ms. Ryder: Correct.

Mr. Rubin: Now, the lot coverage on your plan, because I remember that included a paved driveway, correct?

Ms. Ryder: It does.

Mr. Rubin: Okay, and we will talk to Mr. Nusser about how why his number is different from yours and why the paved driveway that he proposed would be pervious, that is correct?

Ms. Ryder: Correct.

Mr. Rubin: Okay. In the building coverage, I believe there was a slight discrepancy and that is because the engineering plans did not include the covered porch and you did it, correct?

Ms. Ryder: Correct.

Mr. Rubin: And because covered porch has a roof, it should be included within building coverage, correct?

Ms. Ryder: Correct.

Mr. Rubin: In addition, there is a slight change in the design of the deck and the location of the bilco doors in your most recent plan versus what is shown on the engineering plans, could you please just described those changes to the Board?

Mr. Ryder: The reason I changed the stairs originally was to fit within the envelope and... you know...meet my 35 feet setback but then I didn't want the stairs to necessarily sit within the deck but I changed that because this way looking out of your sliding glass doors, you have a clear view to the backyard if the stairs aren't accessed with that door. It is just more aesthetically pleasing and that is why I switched it.

Mr. Rubin: And you were able to move the bilco doors inside the building envelope by doing that, is that correct?

Ms. Ryder: I believe they were always inside that building envelope.

Mr. Rubin: I think now the engineering plans show that they are not...that is the discrepancy, but in your plans, they are and that is how it would be constructed, correct?

Ms. Ryder: Yes, it would be within the building envelope.

Mr. Rubin: Okay. Thank you. I have no other questions.

Mr. Weiss: I suppose the question is I look at your architectural design. You are not suggesting that this is the exact house but this is the type of the house that can be built. I suppose that your submission shows that you could build a house of this size to meet the standards as we are talking today with the very few variances, correct?

Ms. Ryder: Correct. I would imagine that this house as...inaudible...what would be built but that is the intention.

Mr. Weiss: Okay. Anybody from the Planning Board have any questions for Ms. Ryder? I see none. Let me...

Mr. Buzak: Mr. Chairman?

Mr. Weiss: Yes, go ahead.

Mr. Buzak: What is the square footage of the house, the aggregate square footage?

Mr. Rubin: Mr. Buzak, you mean both the first floor and the second floor? Because either case...

Mr. Buzak: Yes.

Mr. Maurer: Okay...inaudible...is shown on the plan.



Ms. Natafalusy: What was that? I didn't hear that.

Mr. Rubin: I am sorry and there is an unfinished basement too...1,792 square feet is what is shown on the plan.

Mr. Weiss: Okay.

Mr. Rubin: And there is an 896 square foot unfinished basement.

Mr. Weiss: Okay.

Mr. Buzak: I'm sorry. What was the living area? The unfinished basement is 896 square feet?

Mr. Rubin: Correct. The living area is double that, 1,792 square feet.

Mr. Buzak: That's what I didn't get. I thought you said 1,092 and I couldn't figure the math out.

Mr. Maurer: We do the best we can under these circumstances.

Mr. Weiss: Okay. If anybody else has any questions? Otherwise I am going to go back and look if there is anybody from the public. Again if there is a question, please hit the hand raise. I see nothing.

Mr. Buzak: While you are looking Mr. Chairman, may I ask another question?

Mr. Weiss: I am going to...hold off one second. Dane, do you agree that I see nothing and you see nothing?

Mr. Westdyk: No one is raising their hand.

Mr. Weiss: Okay. Mr. Buzak, go ahead.

Mr. Buzak: Yes. Is the house as designed similar in size to the neighboring houses on each side of this lot?

Ms. Ryder: Yes. You can see the aerial photo in Van Cleef's report. That shows the neighboring houses.

Mr. McGroarty: Just to be clear Mr. Buzak, Mr. Chairman, to that comment, Mr. Masotti's property which is to the right is a commercial property. It is a store, sports store. So, there is a house to the left. To the right is a commercial building fronting on Route 46.

Mr. Buzak: Okay and that was the individual who offered the \$5,000, is that correct?

Mr. McGroarty: Right.

Mr. Buzak: Okay. Thank you.

Mr. Weiss: Okay. So, I see nobody from the public. Does anybody else from the Planning Board? I see none. So, let's thank Ms. Ryder for your testimony this evening and I will pass it back over to Mr. Rubin.

Mr. Rubin: My last witness is Christopher Nusser. Mr. Nusser, are you present?

Mr. Nusser: Yes.

Mr. Rubin: How are you tonight?

Mr. Nusser: Doing good.

Mr. Rubin: Mr. Nusser, we are going to qualify you as both a professional engineer and a professional planner, okay?

Mr. Nusser: Correct.

Mr. Rubin: So, if you could give the board the benefit of your educational and professional background.

Mr. Nusser: Sure. Again, it's Christopher Nusser with Engineering Land Planning Associates, 140 West Main Street, High Bridge, New Jersey. I am a licensed professional engineer and planner in the State of New Jersey in good standing, both of those licenses. I graduated from Rutgers University in 2006 with a Bachelor's of Science in Civil Engineering. I have appeared before over 60 boards in both capacities as a professional engineer and planner and have been accepted as such there. I appeared before your Board a number of years ago in my capacity as a professional engineer but it has been probably six, seven years since that happened.

Mr. Rubin: Inaudible...to be qualified as both an engineer and a planner.

Mr. Weiss: Okay, so real quickly. Mr. Vreeland, do you have any questions for Mr. Nusser?

Mr. Vreeland: I assume your licenses are valid?

Mr. Nusser: Yes.

Mr. Vreeland: That is the only question.

Mr. Weiss: Okay. And Chuck, any questions from the planning perspective?

Mr. McGroarty: No, Mr. Chairman. Thank you.

Mr. Weiss: Okay. So, Mr. Nusser, welcome back to Mount Olive and we will accept you as both the professional engineer and planner for this evening's application. Mr. Rubin back to you.

Mr. Rubin: Thank you. Mr. Nusser, we're going to start you off as an engineer. You retained or your firm was retained by the applicant to design a plot plan for this dwelling, is that correct?

Mr. Nusser: That is correct.

Mr. Rubin: There are some interesting problems with it both in terms of its size, width and the fact that it is not serviced by water, is that correct?

Mr. Nusser: That is correct.

Mr. Rubin: All right. So, if you could please describe the property in its current state as well as...as it is proposed to be upon development and we will carry out your engineering testimony in that fashion.

Mr. Nusser: Okay. So the subject property which is known as Block 3308, Lot 7 is in your R-4 zone district where you talked about just a little bit. It is 10,000 square foot minimum lot area required and 80 feet minimum width required. The subject property is 50 feet wide and 120 feet deep. So, it is 6,000 square foot lot, so in its existing condition it is both deficient in lot area and width. The proposed development in front of you is to construct a house consistent with the zone that it is in and again consistent with the homes that are located on the street in size...inaudible. The proposed house is at 896 square foot footprint dwelling with a covered porch on the front and a proposed deck on the rear. There is a driveway proposed coming off of New Street. This would be number 5 New Street. The proposed driveway would be a pervious pavement driveway to help offset any storm water impacts from the construction on the property. The grading of the property, it's a fairly level property. There are no steep slopes located on it. There are no constraints regarding that that exist. Again, the property is bounded on almost all sides by residential properties except for to the right the commercial property that we had just been speaking of. The house itself will meet all of your bulk requirements except for the side yard setback on the left side, so that is nearest to the residential property. The idea behind that is to keep it further from the commercial property and maintain the setbacks there. Overall, it is a pretty straightforward development as far as single family houses go. Utility-wise, this is served by public sewer, gas, telephone and electrical cable and there would be a proposed well in the rear of the property to service the water demands of the house.

Mr. Rubin: Was the feasibility of the well studied by a firm that is an expert in that particular area?

Mr. Nusser: Yes it was.

Mr. Rubin: And was the report submitted to the Board?

Mr. Nusser: That is my understanding.

Mr. Rubin: Could you just please summarize what the findings and conclusions of that report were?

Mr. McGroarty: What report?



Mr. Nusser: There was a report prepared and I did note Chuck it was not your memo that you had reviewed it but it is my understanding that it was submitted certainly. We'll make sure you have a copy of it. There was a report prepared by M2 Associates, Matt Mulhall.

Mr. McGroarty: We don't have any report.

Mr. Nusser: Okay. Then we will certainly provide that to the Board.

Mr. Rubin: Do you have a copy of it that you could share?

Mr. McGroarty: Let me...Mr. Chairman?

Mr. Weiss: Go ahead Chuck.

Mr. McGroarty: Before I say the wrong thing, I have the file. Let me just quickly look, I don't remember seeing it.

Mr. Rubin: No, Ms. Strain do you have it?

Ms. Strain: I don't remember seeing one.

Mr. Rubin: Then, that is my fault. I apologize. I thought that that was part of all reports that were submitted and sent back...inaudible.

Mr. McGroarty: No, we don't have it.

Mr. Nusser: Okay. Do you mind if I share it on my screen here?

Mr. Weiss: No, not a bad idea. Let's mark it as A-1 and tell us what is this report is...okay...

Mr. Nusser: So this report...it's in a letter format. It is dated March 4, 2020, prepared by...

Mr. Buzak: Can I just stop for a second here?

Mr. Nusser: Yes.

Mr. Buzak: Mr. Nusser, this report was not prepared by you, is that correct?

Mr. Nusser: That's correct. I have reviewed the report and agree with its conclusions.

Mr. Buzak: Okay and I appreciate that but the difficulty is that we can't cross-examine the report, as you know, you are testifying as to...I recognize you putting it up on the screen and you could submit it but in terms of evidential value it is much to be desired from the Board's point of view. So, if the Board wants to listen to it, to your testimony and understand I am not critical of you but there is no way that we can ask questions...

Mr. Nusser: No offence taken.

Mr. Rubin: If I may... This is a report which basically discusses the feasibility of a well on the site. Obviously if a well is not feasible, he is not going to be able to construct anything. So, ultimately this is going to have to be reviewed at some point when its permits are sought and the Engineering Department reviews the well and the feasibility of the well and it seems to me that this really is not within the Board's jurisdiction anyway as to whether or not the well is feasible. That is something that is going to be subject to further review at a later time no matter how we treat this or who testifies about the letter.

Mr. McGroarty: Well, Mr. Chairman?

Mr. Weiss: Yes, Chuck.

Mr. McGroarty: You know I have my earlier reports on that. I thought at the time Mr. Clerico from Van Cleef was with the Board and tonight of course Mr. Vreeland is here but I thought in one of my earlier reports I raised a question about the potential impact on neighboring wells.

Mr. Nusser: Yes...and that's what the letter does.

Mr. McGroarty: So I agree that the Board does not review the analysis whether the well works on this site, they have to meet whatever standards. The question, if I remember my initial question correctly, was had they investigated the potential impact on neighboring wells?

Mr. Rubin: And that is what this letter does and again that would have to be reviewed by the Engineering Office of the municipality at the time the permits are sought and the data supporting this letter and all the appropriate submissions would have to be made before any permits could be issued.

Mr. McGroarty: Well, I am not sure I agree with that. I think our ordinance says at the time of an application to demonstrate the feasibility of providing potable water and sanitary treatment...I don't have the exact language in front of me. It is hard to do this if we didn't get this report. Now, of course, I wouldn't have been qualified to review it but Mr. Vreeland or someone in his office perhaps would have. It is up to the Board how you want to proceed.

Mr. Buzak: I do have a question for the engineer...I guess you are testifying now as the engineer or are you still a planner?

Mr. Nusser: I'm an engineer at the moment.

Mr. Buzak: Okay does this report address the two issues? One the feasibility of a well on the site for this particular proposed dwelling house and secondly the impact of this proposed dwelling house and a well on neighboring wells.

Mr. Nusser: Yes, it addresses both of those.

Mr. Buzak: Okay.

Mr. Weiss: So are you going to testify Mr. Nusser about the impact of the neighbors' wells?

Mr. Nusser: If the Board will allow me to...yes.

Mr. Weiss: Because I see Chuck made a point and I do go back to his first report which was point 5.3...I take it back, it wasn't 5.3. He did mention the request for the impact on the well. It was...

Mr. McGroarty: It was 5.2, Mr. Chairman.

Mr. Weiss: Yes thank you, 5.2.

Mr. Nusser: Yes, so this was commissioned in response to that concern and so far as it wasn't submitted to the Board in advance, we certainly apologize and would ask that obviously nobody has had a chance...Mr. Vreeland hasn't had a chance to review this but any approval this Board may grant in this case, I guess we could ask that it be a condition that we satisfy Mr. Vreeland with this letter. Again, I can go through with you Mr. Mulhall is a very well-respected hydrogeologist and he does make rather definitive conclusions in here.

Mr. Weiss: Mr. Buzak, I have a question. If we are asking for engineering questions, obviously done by this report, if it was done by an engineering type of person, for lack of better words, and the applicant's professional engineer is willing to testify to the content of the letter, shouldn't that be okay to accept the testimony of the professional engineer that we have accepted today?

Mr. Buzak: Well, I think the difficulty...and I do not want to get overly technical here, but it actually becomes hearsay...you know...Mr. Maurer is able to independently make determinations and has the expertise to make the determinations that's one thing. If he's simply and I say this respectfully, regurgitating what someone else has said, and said, well Mr. Mulhall who I worked with myself in another municipality and I certainly recognize his expertise and agree with his characterization but that Mr. Mulhall said this or that and the other thing... well, that's fine but we don't have Mr. Mulhall here to ask him any questions and we do not have any expert testimony making those statements. We just have the report. So, that's the challenge, I think.

Mr. Weiss: I suppose the challenge falls on the shoulders of Mr. Nusser if he is to state as the expert engineer and testify using this report as the basis for his opinion without referring to the report, shouldn't we accept that?

Mr. Buzak: Well, look, as I said I think, as Chuck said it is the Board's determination as to what they want to hear and what they don't want to hear. I think it is difficult to lend credibility to the conclusions of someone who is just reading the report and saying that's what that report says. We understand that's what it says and when we get it we can read it and we will understand what it says but the question is in terms of testimony, in terms of the ability to cross examine, we can't do that. So that is the challenge.



Mr. Rubin: If I may, is there any reason why we can't submit the report and any approval should the Board deem that to be appropriate be subject to the review and the submission by Mr. Mulhall with any additional information the municipality may seek?

Mr. Buzak: I think and someone else had mentioned this, if the Board is comfortable with including any condition if they are going to approve the application and it's subject to the review and acceptance or approval of this Engineering Report or this Hydrogeological Report, that's fine, that's a different story but I think in terms of putting testimony on, Mr. Nusser is put in a difficult position while I appreciate what he is trying to do I think he is being put in a position that he should not be put in.

Mr. McGroarty: Mr. Chairman?

Mr. Weiss: Go ahead Chuck.

Mr. McGroarty: Just a question to Mr. Buzak. Mr. Buzak, I don't know if this is the case but if there are members from the public that have questions about the report, how is that going to be addressed? Because if it is going to be deferred to an administrative process subject to the Board's action tonight, then how does that get addressed?

Mr. Buzak: Well, I think that is a good question and that is a decision I think that the Board, the Board has to make and perhaps when we open it to the public we will get a better handle on that.

Mr. McGroarty: Okay.

Mr. Schaechter: Hey, Howie?

Mr. Weiss: Yes, go ahead.

Mr. Schaechter: It's Brian. You know I would have liked to have maybe our hydrologist ask questions on this report, should it have been submitted ahead of time? You know aquifers of Budd Lake are pretty sensitive anyway and there are a lot of people that have been complaining of wells being dry. We don't have the expertise without our hydrologist here to even...you know...look at this report. I am totally not comfortable with the report.

Ms. Natafalusy: I have to agree and also if you go back to Mr. Clerico's report dated December 6, 2019, on Page 5, he talks about...you know...getting a report and having a hydrologist provide testimony, so I presume that the applicant got a copy of Mr. Clerico's report back in December. How come we do not have somebody here to testify to that tonight?

Mr. Maurer: That letter was his testimony.

Ms. Natafalusy: Excuse me?

Mr. Maurer: He sent that letter as his...as his word instead of testifying.

Ms. Natafalusy: But as Mr. Buzak said we cannot cross examine a letter.

Mr. Batsch: Mr. Chair?

Mr. Weiss: Yes, John go ahead.

Mr. Batsch: The situation is critical, especially for the neighbors if they do not have the opportunity to ask questions, I think it is unfair to them as well.

Mr. Weiss: Well, I think this is a fairly easy decision because we have been very consistent. We cannot and we will not accept documents that we can't cross examine, so...in this case we are not going to accept this letter unless you want to bring him to testify or if you can figure out a way to testify to the information in the letter and use it as your own knowledge Mr. Nusser but otherwise we are not going to refer to that letter for the obvious reasons as stated by Mr. Buzak. We need to be able to digest it and as Mr. Schaechter said we need our professional to review it and make sure that it is accurate and it meets the concerns that we have here as a municipality.

Mr. Nusser: Understood.

Mr. Weiss: So, I am not sure if we want to continue to look at the Van Cleef report. I know Mr. Nusser you were referring to it. There seems to be a lot of detail that probably should be testified to on the record as to what is the outcome of the comments and so whether you want to do it or have Mr. Vreeland go through it and have a dialogue together, there is a lot of things out there that need to be resolved and identified on the record.

Mr. Rubin: I believe Mr. Nusser is prepared to go through the report.

Mr. Weiss: Fair enough, let's do that.

Mr. Nusser: Okay, so we are going through the December 6, 2019, report?

Mr. Weiss: Yes, December 6, 2019. Mr. Vreeland, that's correct, right?

Mr. Vreeland: That is correct and just for the record although Mr. Clerico prepared the report, I had the benefit of reviewing the report, the file and also went out to look at the site...inaudible.

Mr. Weiss: Okay, Mike thanks so much.

Mr. Weiss: So Mr. Nusser, let me...let you go through it. I know it is not an overly lengthy report but there are some issues that needed to be discussed so why don't we take it from the top.

Mr. Nusser: Absolutely, and I will note that some of these issues may have been resolved in the interim time. Again, this is from December 6<sup>th</sup>. We have made a submission on March 6<sup>th</sup> to the Board responding to those comments in his report, so the Board should have as part of their package our response letter to those comments where we discussed those items. So, starting on Page 2 of the report, the question on Item Number 1 regards the survey, the questions involved in part there is an area shown on the tax map to the rear of the property which is labeled as Lot 6

though there is no actual Lot 6 on your tax records if you would search for it, it does not come up. It is labeled as a gore, so basically that area the title is unclear whether it belongs to our property or to the properties behind us. It is not something that we have resolved or sought to resolve and that area while it would add to the overall square footage of this lot and make it slightly more conforming in subject to our application...our deed calls to a 50 x 120 lot and so that is the land that we own and that is the land we are here for. Otherwise, there are some cleanup items survey wise in there that would need to be gone through regarding a utility pole cleanout on the property and certainly those items from an administrative standpoint we will take care of.

Mr. Vreeland: Our concern was that...you know...there is a utility pole and a cleanout and there could be restrictions associated with those features that could impact the development of the property. So, I guess your testimony is that that hasn't been looked into and resolved?

Mr. Nusser: The utility pole is shown on...so on the westerly property line, there is the utility pole is shown, the driveway is immediately adjacent to it. So, the driveway is not impacted by the utility pole. They are in close proximity as proposed but it doesn't affect the ability to construct the driveway as shown.

Mr. Vreeland: That's assuming that there are no easements associated with that utility line, correct?

Mr. Nusser: That's correct. There is an overhead line that goes along the property line to the rear as well as there's a cleanout located on actually the neighboring property to the west which is Lot 8 that is also a question as to the disposition of that but again that is not on property.

Mr. Nelsen: May I interrupt?

Mr. Rubin: Mr. Nusser?

Mr. Nusser: Yes, sir.

Mr. Nelsen: I have a question. On the boundary on topography survey at the back of the property and mostly on Lot 6, it says concrete foundation, what is that?

Mr. Nusser: There is a concrete foundation, an old concrete foundation that exists there. It partially straddles on to our property and the vast majority of it is located within that that gore area...that Lot 6 that has no known ownership on it. So, it appears to be something that was constructed obviously before the present owner took title to the property.

Mr. Buzak: Is the intention that that would be removed from your property if the Board grants the variance and the house is built?

Mr. Nusser: I think the applicant is probably better to ask if he wants to...

Mr. Buzak: I see him nodding his head, so I assume the answer is yes.

Mr. Maurer: Yes, that cleanout that you are discussing is my old well pipe. I used to have a split well working with the neighbor on the west side and then I talked to JCP & L. They said that



pole was strictly for the old house that used to be on my lot and it is merely just a request to have it removed.

Mr. Nusser: And then the concrete foundation in the back?

Mr. Maurer: That will be removed as well because that shows in Lori's plan as nonexistent anymore and it is all going to be just backyard.

Mr. McGroarty: Up to your property boundary?

Mr. Maurer: Yes, up to the gore pretty much.

Mr. Batsch: Mr. Chair?

Mr. Weiss: Go ahead, John.

Mr. Batsch: Will the utility pole remain there as well?

Mr. Maurer: No, they said I have to file a request and they will take it down 30 days later and connect the power to the house.

Mr. Batsch: Thank you.

Mr. Weiss: Okay. Let us move on with the report.

Mr. Nusser: So, we are going to Page 4 now. Page 3 is aerial photographs of the properties. The Item Number 2 is the survey shows that the vacant property is relatively flat, it is slightly graded to the west towards the joining Lot 8 in order to document the ability to construct the home, proposed grading plan should be submitted, so I would note that we became involved in this project subsequent to this letter's issuance and what we have prepared and supplied to the Board was the grading plan. Again, Number 3 is compliance with your storm water management regulations providing a drywall system for the dwelling. We did perform soil tests on the site. You can see them located on the plan. They're rectangles labeled S1 and S2 in the front and the rear yard. We advanced soil logs there and the outcome of that was that there wasn't sufficient permeability within the soils to support a drywall per the code. There was less than half an inch an hour of permeability within the soils and therefore a drywall would not function correctly and meet the requirements of the state code. Again, as I noted earlier, we are still proposing a porous pavement driveway that will help to offset some of the runoff especially considering that is immediately adjacent to the westerly property line. So, that documentation was provided along with the plan.

Mr. Vreeland: And with regard to the porous pavement for the driveway, the State's BNP manual has some guidance information with regard to constructing porous pavement. I don't think the detail that you provided quite meets what the intent of the BNP manual was with regard to the...

Mr. McGroarty: Mr. Chairmain?

Mr. Vreeland: If the board was to approve the application, I would ask that the applicant take a look at the design details and the State's BNP manual for proper modification...inaudible...

Mr. Weiss: Hey Mike, would you say that again? It was a little bit hard to hear.

Mr. Vreeland: If the board was to approve the application, I would recommend that a condition be that the applicant's engineer review design information and the State's BNP manual and make some modifications to the detail for the porous paved driveway.

Mr. Nusser: And that would be acceptable.

Mr. McGroarty: Mr. Chairman?

Mr. Weiss: Go ahead, Chuck.

Mr. McGroarty: Just if I can jump in on a question here. Mr. Nusser, if in the future that driveway gets paved over as a conventional driveway, how does that affect the issue of storm water control as you're testifying this evening?

Mr. Nusser: There would be a slight increase to it. Ultimately, the driveway is pitched towards the street and not towards that neighboring property, so the impacts to that would be very minimal, just noting that there wasn't much that we could do on the site, given the permeability issues here and trying to be sensitive to the surrounding properties, you are...you know...putting in this porous pavement driveway to try and help offset some of the impacts, noting that not all of the impacts, but it kind of the best that we can do given the site constraints.

Mr. McGroarty: Yes, Mr. Chairman, the only reason I bring that up is pulling on some 30 years of experience when the Board approves something, it doesn't always happen later in life. I mean, I have no question that if this is approved, the porous driveway will go in, but without some way and deed restrictions on it, that could be all kinds of stuff, but at some point, unless everyone is consciously aware of the Resolution, and even if the Resolution is attached to a filed deed, the driveway may get paved. So I just wanted to make sure that in that sort of worst case scenario, if you will, it's not going to have an adverse impact. If the testimony was relying on that porous pavement to stay porous in perpetuity, I would have serious questions that that's going to happen.

Mr. Nusser: And I would say that I don't disagree with your point at all. And again, I will reiterate that if they were to pave it, worst case scenario, 20 years down the line, somebody just comes in and hires a guy to come in and pave committed this, again, the water is coming to the street and not going directly on to the neighbor because we are fairly close to it and there would be limited to no impact from it.

Mr. McGroarty: Thank you.

Mr. Rubin: You would also remain under the current standards for the impervious coverage, correct?

Mr. Nusser: That's correct.

Mr. Vreeland: Did your office look at any other measures like rain gardens or harvesting rainwater from the roof or anything like that or are you just relying on the...inaudible...

Mr. Weiss: Is anybody else having any trouble hearing that?

Mr. Ottavina: Howie, I can I reiterate that I did hear...I can...Mike, if you, do you want to try again and you want me to...

Mr. Vreeland: I'm sorry, I was curious if his office looked at any other measures in addition that could be utilized in addition to the pervious pavement, such as a rain garden or rain barrels or anything else like that to supplement their proposal.

Mr. Nusser: We didn't look at any surface features simply by the nature of the lot. I mean, we're talking about 6,000 square foot lot and to put any surface basin in, I think, back to Chuck's comment, the second property owner is going to come in and fill it in and turn it into a garden or put a swing set on it or something like that. We wouldn't want to rely on that again in perpetuity and...you know...given the limited slope on the property, again, it's really flat trying to create in a basin or some sort of surface feature would be problematic.

Mr. Weiss: All right, let's continue on, unless Mike, did you have anything else before we move forward?

Mr. Vreeland: No.

Mr. Weiss: I do have...I have a...Chris, before we move forward, Mike Vreeland, if I look at your report on Page 4, Number 2. Mr. Nusser did say that he submitted the plan. We have a copy of it. Did you have any input? Did you get to review the plan? Any commentary on their submission?

Mr. Vreeland: I did review the plan and I had it in hand when I went out and looked at the property. A couple general comments that I had would be the...you know...any roof leaders, downspouts that get installed, that they don't get directed towards any property or to the street.

Mr. Nusser: Mike, I'm sorry, not towards an adjoining property and towards the street or not towards the street?

Mr. Vreeland: Not to direct runoff onto any of the adjoining properties or the roadway.

Mr. Nusser: Because we can't put a drywall in here. We don't really have a choice but to send it in one of those directions. I just want to make sure we have a clear...inaudible...

Mr. Vreeland: I mean, the point...I guess the point I'm trying to make is I don't want to see a pipe right from the roof all the way to the street. You should provide an opportunity to retain the water on your property to the maximum extent possible.

Mr. Nusser: Okay, so basically send it front and rear, don't send them to the sides where they're close, give it a chance to dissipate across the lawn?



Mr. Vreeland: Correct.

Mr. Nusser: Okay, I think that's perfectly reasonable.

Mr. Vreeland: Also, it looked like you were proposing to utilize an existing sewer stub. We would recommend, if that's the case, that that get...inaudible...to confirm the condition and the viability of using that existing sewer stub.

Mr. Nusser: Yes, that's...I think, in the applicant's best interest as well, so.

Mr. Vreeland: And there was a comment, I guess, about sump pumps and...you know...the one issue that we come across a lot with sump pumps is if they...we have a wet winter, again similar to the rain...you know...we don't want that to discharge out to the street and create an icing issue on the roadway. So similar to the roof runoff, I think that should tried to be contained and given the maximum opportunity to infiltrate into the ground on the applicant's property.

Mr. Nusser: Understood.

Mr. Weiss: Okay...inaudible...

Mr. Vreeland: Those were our primary comments, Mr. Chairman.

Mr. Weiss: Okay. Mike, thanks for that input. I think we're going to come back. Chris, I think we're left off somewhere in the 3 and I think maybe A or B?

Mr. Nusser: I think I covered that broad brush, not piece by piece.

Mr. Weiss: Okay. Which one?

Mr. Nusser: So I think some of the other items under B talking about roof leader locations, I think...you know...we've just got all that.

Mr. Weiss: Okay. Is there anything on Page 5 that you need to discuss?

Mr. Nusser: Number 4 is the comment that Mr. Vreeland just mentioned about the sump pit, making sure that it's not discharging directly on the street.

Mr. Weiss: Got it. Okay, Mike, you find anything open on your report that you need to discuss with Mr. Nusser?

Mr. Vreeland: No, thank you.

Mr. Weiss: Okay. Thanks for taking the time for that gentlemen.

Mr. Nusser: If I may, Mr. Chairman.

Mr. Weiss: Sure.

Mr. Nusser: Add one more thing to my testimony here. Obviously, we will submit the report that does not exist regarding the well, from an engineering point of view, though, there was a dwelling on this property previously. As the applicant noted, there was a well that served both this property and the adjacent property that was shared at that time. So there was...you know...this is a new well and it's a new demand on this aquifer. We understand that, but historically, this aquifer has supported a home on this lot. The amount of water required to service this house is around, it's less than four hundred gallons a day. It's not a significant amount of water demand for this property, and therefore, again, my testimony as a professional engineer would be that given the historic use of well water on the property and the limited demand that there would be no impacts on the neighboring property owners, and we would certainly support that assertion with a report to your professional satisfaction.

Mr. Weiss: Okay. Mr. Buzak, I think that's a little bit on the...nothing that we do all the time, but would that work?

Mr. Buzak: Well, it works as it relates to the...I think Mr. Nusser can give that testimony based upon the background that he just outlined. It's up to the Board as to whether they are willing to accept that or seek additional information beyond that.

Mr. Batsch: Mr. Chair?

Mr. Weiss: Sure, go ahead John.

Mr. Batsch: Mr. Nusser, how long ago was that house on this property and being served by that well?

Mr. Nusser: That actually might be a better question for the applicant not to redirect it, but if you know better when that was removed?

Mr. Maurer: I do...I believe it was back in 2010? I will see if I have an exact file.

Mr. Nusser: It does show up on the 2002 aerial photographs within the Van Cleef report.

Mr. Batsch: I was just curious that...you know...things do change over time.

Mr. Nusser: Understood.

Mr. Batsch: And perhaps the aquifer could support two wells, but that's quite certain now, so that's all.

Mr. Maurer: Well, I did just pull the well records for the neighboring lots and the sports store on 46 has a 4 to 5 GPM, which is pretty good and then the neighboring residential lot has the 10 GPM, which is excessively good.

Mr. Weiss: Collin, where is this report that you're reading from?

Mr. Maurer: We pulled this, I think, in my original meeting, I actually had my well company pull the state records because both those wells were redone in the past, I think two years. So...

Mr. Nusser: The Board does not have the benefit of that information in your file and as...

Mr. Maurer: They don't?

Mr. Nusser: No, and that would be again, that information would be submitted along with the not shown M2 Associates letter.

Mr. Weiss: Thank you for that Chris. Did you have any other testimony from an engineering perspective?

Mr. Nusser: Not from an engineering perspective.

Mr. Weiss: Mr. Vreeland, did you have anything else you wanted to add?

Mr. Vreeland: Not at this time.

Mr. Weiss: Anybody from the Planning Board have any questions for Mr. Nusser?

Mr. Nelsen: I have a question...

Mr. Weiss: Go ahead Dan.

Mr. Nelsen: Regarding the well, is there some assurance that the neighboring wells won't be negatively affected? I know we've talked about this, but is there some assurance that those neighboring wells will not be negatively affected with the new well coming in.

Mr. Nusser: Yes, and that's where the follow up documentation that would be provided to the Board's professionals that they could agree to that, but my testimony would be that we would not have any negative impacts on the neighboring properties or on their wells. I cannot as your attorney stated, I can't go into exquisite detail as to why, that's why we need to submit to you and to your professionals for their review the hydrogeologist's report.

Mr. Rubin: I can make a proffer that that was the conclusion of the geological report that will be submitted.

Mr. Weiss: It's an interesting question, Dan, because we address this almost every time we have a new well being drilled, when there's existing wells and we sometimes simply make our decision based on the testimony that's delivered. So I think your question is valid and you're hearing what the answer is.

Mr. Nelsen: Thank you.



Mr. Weiss: Okay, at this point, with no other questions from the Planning Board, I turn to the public. If anybody from the public has any questions, you can quickly raise the hand button. I don't see anybody asking questions. We'll give it a couple more seconds. If anybody from the public has any questions for Mr. Nusser based on the testimony that he delivered and I see nothing from the public. So let me close it to the public. I'll turn it back over to you, Mr. Rubin. I'm sure we'll come back to Mr. Nusser in the form of his planning testimony.

Mr. Rubin: That's correct. Mr. Nusser, I now ask you to use your other expertise and analyze this application from a planning testimony with respect to the side yard setback variance as well as the legitimacy of the request for variances for the lot, the existing nonconforming lot area and lot width.

Mr. Nusser: Certainly. So, I think the easiest place to start is on the existing nonconformities that this lot has. So, again, as I stated earlier, this is a 6,000 square foot lot. So it's deficient in a lot area where the 10,000 is required and it's also deficient in width where 80 is required, we only have 50 in this case. This is a hardship inherent in the lot given its shape, its size. It's specific to this lot. The applicant has, as he has testified earlier, reached out to neighboring properties in order to both sell the lot to a neighbor, so they could add it to their lot or to acquire additional property, which as you also heard from the applicant, these are all developed properties surrounding and they're all proximate to their setback lines and there's not really an opportunity for them to shed a portion of their lot when they're already nonconforming. So the only option is to combine lots in this case and since those lots are developed, that's not a realistic possibility. So for that reason, this is a clear hardship on a lot of these existing nonconforming conditions that can't be rectified by acquiring additional land.

Mr. Weiss: Mr. Nusser, I got to jump in real quickly. Not that long ago, when you started giving your engineering testimony, you did talk about the lot and the nature of the lot and you said they're relatively flat, relatively rectangular, and now you are telling me from a planning perspective that the hardship is inherited by the lot due to its size and shape. So that sounds to me like a complete contradiction or maybe I misheard how you said it two different times. Can you go back and explain that to me?

Mr. Nusser: Yes. If you look at the standard, it's the shape. It's the size. Nothing to do with the topography of the lot. This isn't a topographical issue that's having us situate a house in a location that is...you know...outside of a steep slope or some other topographic condition or swale, something like that. This is...yes, it is a rectangular lot, it's a normally...it's a normal looking lot, however, it is an existing undersized lot. So the size of the lot...the existing deficiency in the size of the lot is the hardship. It's something that exists to the lot and that we can't rectify by getting other property. We can't sell this for fair market value as we've attempted to do, and we can't acquire additional property to make this lot conforming. So given that it is a hardship upon the lot, if you want to call it exceptional narrowness of the lot, because it's narrower than your standard. And that's why we have a lot width variance. It's something that, again, we can't acquire additional property in order to satisfy that condition. The property to the east, the sports store is about five feet, their building is about five feet off the property line, the building, the house to the west, to the left, they are about eight feet off the property line. So there's not an opportunity for us to expand the width of a lot and the narrowness of the lot, the shape of the lot as it relates to the size being 6,000 square feet is something that we cannot change and therefore it's a hardship on the lot.

Mr. Weiss: Let me ask you a question. You were talking about the buildings around you. Can you timestamp them at all? Do you know when those other homes and businesses were built, when those structures were built and the properties that surround your property?

Mr. Nusser: I have not done an analysis of that.

Mr. Weiss: Would you say they are pre-1950?

Mr. Nusser: I don't know.

Mr. Weiss: Fair enough, I asked the question, you don't have to know that answer. Okay, I don't know if I agree with your answer to me, but that's okay. I've been doing this long enough. I thank you for your answer. Let's continue to move on then.

Mr. Nusser: Certainly.

Mr. Rubin: Mr. Nusser, if I may, I just want to ask you another question about the lot width and lot area and the variances. This is a vacant infill lot, correct?

Mr. Nusser: Correct.

Mr. Rubin: And it's generally considered good planning to eliminate vacant infill lots, correct?

Mr. Nusser: Yes.

Mr. Rubin: And in fact, it's generally deemed to advance the general welfare of the community to eliminate vacant infill lots, correct?

Mr. Nusser: Yes.

Mr. Rubin: And the only way to really develop this lot, because it is an undersized lot, is either to sell it to neighboring property owners or to allow variances to allow it to be built. Isn't that correct?

Mr. Nusser: Yes.

Mr. Rubin: And since the property owner has tried to sell this lot to adjacent property owners who require additional lands, the only way this property can be built upon is but through the grant of variances. Isn't that correct?

Mr. Nusser: That is correct.

Mr. Rubin: Okay now, thank you. If you would just now deal with the side yard setback variance?

Mr. Nusser: Certainly so in order to start that, I'm going to share my screen again. Bear with me one second. Again, it's my understanding that we submitted this exhibit in advance. Am I



correct? Just want to make sure that the Board has this in advance. If not, we'll just enter it as an exhibit.

Mr. McGroarty: When did you submit that?

Mr. Nusser: I believe as part of the package, but I can just provide it as an exhibit to the Board now and this could actually be A-1.

Mr. McGroarty: Well, I just want to make sure if you said that was it part...it's not part of your plan sheets, which are Sheets 1 through 3, correct?

Mr. Nusser: Correct.

Mr. McGroarty: I don't have that.

Mr. Rubin: I believe it was submitted digitally, but I am not...I don't want to make that representation on the floor, but there was a point in time where there were plans submitted through part of Mr. Nusser's...Wayne Ingraham digitally to the town...and I don't know. I don't recall frankly, specifically when that was, but I can try to find that.

Mr. Weiss: Well, I'll tell you what, being that nobody seems to have it, let's just enter it as A-1 and discuss it because we don't have it, regardless of who thought who did what. We don't have it. So let's enter it as A-1. Let's talk about what it is, if Mr. Nusser you could tell us what it is?

Mr. Nusser: So A-1 is titled BCM Properties, Exhibit A, it's dated July 8, 2020. It was prepared by my office. It is an exhibit showing the proposed dwelling overlaid on top of an aerial photograph showing the surrounding properties, including the sports store to the east, which is on the right of page here and then the three properties to the west and their setbacks. So what this exhibit does for us is it helps us understand the placement, the scale of the houses that exist adjacent to our proposed dwelling. Again, I'll zoom in because now that everybody's screen...especially on Zoom. So, again, the commercial property to our east, they are about five feet off of their property line. The property adjacent to us to the west, Lot 8, is about eight feet set back off of one property line. Obviously, they comply in the other direction, deficient on the side closest to us at eight feet. The next lot down Lot 9, they are approximately ten feet, which is similar to what we're proposing with our lot on the one side, with the other side being conforming. And then again, Lot 10, the lot three down to the west, on the east side of the house, they are about 15 feet off the property line and on the west side they are about nine feet set back from the property line. So the point being on here is that this proposal is consistent with the other homes on this street, the scale of the house, as you can see from the footprint and then the footprints that these homes take up on the aerial, it is commensurate with the scale of those homes. This isn't an opportunity here that the applicant is taking to try and put a house that doesn't fit in scale or character with the neighborhood. A review of the architectural plans as proposed shows that the house is being designed to fit in with the character and neighborhood and to infill this lot and use it in an appropriate manner. An 896 square foot dwelling is not a particularly large dwelling. It's not a particularly small dwelling per say but again, it is appropriate for this area. You heard testimony already from the project's architect as to the things that have been done to minimize the relief requested. The house was shrunk two feet in width to reduce the one side yard variance. So instead of needing it on both sides, this proposal only requires it for the west side. The house cannot get any smaller as you heard from her testimony, and



again, it is my opinion that it is an appropriate...is an appropriate size and placement, location of this house, consistent with the neighborhood at large from a C2 perspective. I believe it's better planning to build a house that's in character with the neighborhood. It promotes a desirable visual environment, which is purpose I of the MLUL to do that. Again, this is an attractive dwelling. It doesn't tower over any of the neighboring properties. It has similar rooflines and architectural features as to the properties on the street. And again, we think it will be a very beneficial addition to the neighborhood as opposed to having a vacant, underutilized lot. We don't see negative impacts to the zone plan or the public good from this development. The encroachment over the sideline is minimal. It's two feet over. Again, it's not going to look out of character as it's consistent with all the other homes on the street, and by allowing that deviation again, what we get is a better...better house, a better design from it.

Mr. McGroarty: Mr. Chairman, just a question, just so I understand the exhibit if I may?

Mr. Weiss: Sure Chuck, go ahead.

Mr. McGroarty: Mr. Nusser, what was your data source for determining the boundaries of the adjacent lots?

Mr. Nusser: Tax maps.

Mr. McGroarty: Sorry.

Mr. Nusser: The tax maps.

Mr. McGroarty: The tax maps. So...

Mr. Nusser: We used the subject property and then extended the tax from the tax map down.

Mr. McGroarty: So you didn't actually use deeds or no other source? You just relied on the town assessments.

Mr. Nusser: That's correct.

Mr. McGroarty: All right.

Mr. Weiss: Chuck, I have a question. Actually, I am going to hold off for a second and see if Mr. Nusser has any other testimony from a planning perspective.

Mr. Rubin: Mr. Nusser, did you complete your testimony.

Mr. Nusser: Yes.

Mr. Rubin: I have no further questions.

Mr. Weiss: Thank you. So I have a question and then we will see if the Planning Board...Mr. Nusser you could drop the screen down.

Mr. Buzak: Mr. Chairman, this is Ed. I'm sorry before you drop the screen done...

Mr. Weiss: Go ahead Ed.

Mr. Nusser: I will put it back up.

Mr. Buzak: All right. Can you just put it back up? I'm sorry, Mr. Chairman.

Mr. Weiss: That's okay.

Mr. Buzak: Mr. Nusser what are the sizes of those adjacent lots to the west? They look larger than the lot in question, but I can't tell exactly based upon the tax map. Did you do that calculation?

Mr. Nusser: Yes, they're all equal size. They're all 50 x 120 feet.

Mr. Buzak: Okay, thank you.

Mr. Vreeland: Can I ask one question before the exhibit comes down, Mr. Chairman?

Mr. Weiss: Sure, go ahead.

Mr. Vreeland: Why was the house placed with the encroachment on the west side rather than the east side?

Mr. Nusser: The reason for that was to provide an additional buffer space from the commercial property to the east. Because the commercial property, the store to the east, again, they're only five feet off the property line, and again, it is a commercial property. So we were trying to get further from that space.

Mr. Vreeland: The reason I ask the question is, I understand from the applicant standpoint that probably provides a benefit, but...you know...the way the lot is graded to the west and the fact that it's a residential property to the west, I don't know if that's an ideal location for impact on the surrounding properties.

Mr. Rubin: Mr. Nusser, do you really believe that a two foot encroachment will be a substantial impact on the adjacent property?

Mr. Nusser: I don't.

Ms. Natafalusy: Can you go over how far the house to the left is from the property line? I can't read that.

Mr. Nusser: It's about eight feet.

Mr. Weiss: Maybe, Catherine, you might be able to answer my question. I'm going to pick your brain a little bit. Do you have any idea of the ages of these homes on New Street?

Mr. Natafalusy: I honestly don't, but I have to agree with what you said before. I think they were built prior to 1950 because most of the Budd Lake area were bungalows built back then.

Mr. Weiss: Okay. I have a question. You could drop the screen now, nobody else has a question about it. Chuck, I want to turn a question to you, a planning question. I heard Mr. Nusser agree with Mr. Rubin that the following comments about planning in that they both agree that it's good to eliminate vacant lots. I've never heard that as far as planning practices. Do you have a comment on that? Is it good to eliminate vacant lots in overall planning scheme?

Mr. McGroarty: It's also good to abide by zoning. So, I mean, no I suppose one has to take each of those things and evaluate it. If you're in an urban environment...you know...and you're looking at a streetscape and there are vacant lots or and buildings have come down, that gives a very different feel. And sometimes, yes, you have to fill those slots in. But urban environments have different zoning. So I guess in the abstract, is it a good idea to take a vacant lot and you turn it to some productive use? Yes...but on the other hand, what the Board has to also think about is there's a reason why there is zoning in place and whether...you know...they have the basis to persuade you to deviate from the standards, which clearly don't apply to this, clearly cannot apply to this, no...I'm saying it wrong, as applied to this property, there's no way they could ever meet the R-4 standards. You'll have to decide if the fact that the character of the street as it's been described to you presents a higher purpose, as it were. That's the question. I guess, Mr. Chairman, that's a wordy answer, but I don't think that in and of itself filling a lot just because it's out there, vacant supersedes all other considerations. And I would ask another question, actually, of their planner, Mr. Nusser, as he is testifying to the planning aspects.

Mr. Weiss: Go ahead Chuck.

Mr. McGroarty: We had some discussion earlier or the witnesses verified, I think Ms. Ryder explained in her plan the coverage versus your plan, and as I understood the explanation, I think Ms. Ryder's analysis is right. So her coverage numbers, I think, are the correct ones, and if that is the case, we're going to be almost at total impervious coverage, even if that's a porous driveway for the purposes of our ordinance. So this lot, if it's approved, the house is built, someone comes in for a storage shed, 80, 100 square foot, 200 square foot storage shed, it may or may not exceed the permitted coverage and then the owner will be back in front of the Board for variance or for a small swimming pool. I think I saw on your aerial, looked like there might have been a pool on someone else's property. So I'm not saying these things don't happen, but was that...how did you...as a planner, how did you consider those scenarios in the future with respect to the town, to the impact on the town zone plan?

Mr. Rubin: Before you go there, may I just ask for clarification? Are you saying that the pervious driveway is included in pervious cover calculation?

Mr. McGroarty: Yes, it is, because Mount Olive's ordinance does not have a provision, as does say, for example, the city of Hoboken. We do not have a provision which calculates pervious coverage differently than...we don't call it out as a separate category. So that driveway would be considered impervious.



Mr. Nusser: Yes, I mean, that leaves us with...you know...it is a small amount of area. It is 124 square feet, certainly enough room for an 8 x 10 or 10 x 12 shed on the property. Can you build out that backyard and put in a shed and put in an in-ground pool or even above-ground pool with a big deck around it? No, you wouldn't be able to do that. And that's...you know...that is a restriction on the lot. But again, there is a...you know...this isn't a situation where we've built a house and we're trying to add a deck to it or any accessory use to the backyard or patio, a deck, anything like that, where it's not possible. We're already proposing that deck...you know...can you do a deck and a shed? Yes, you can do a deck and a shed. Can you do a deck and a shed and a pool and start adding all these things? No. And that's really a function of what the lot is. Yes, there's a restriction on it and can you have everything? No. But can you reasonably develop this lot and provide features in the back yard? Yes. I don't know how it's any different than any other lot that gets developed close to an impervious coverage limit, certainly wouldn't be the first. And...you know...whether it's an acre lot or a 6,000 square foot lot...you know...could somebody put something on there that would exceed that and have them back in front of the Board? Yes, but that would be a separate application before this Board and the Board would have to weigh that at that time.

Mr. Weiss: Fair enough. Anybody else on the Planning Board have any questions for Chris based on his planning testimony?

Mr. Buzak: Mr. Chairman, I have a question, if no one on the Board has a question.

Mr. Weiss: Go ahead.

Mr. Buzak: What is in rear of the commercial property to the east? You said it's five feet off the line. Is that just a rear wall of the building? I assume there's not much activity if it's five foot off the line.

Mr. Nusser: So the building itself is about five feet off the line and there is impervious coverage. There's a stairwell actually that goes, that leaves the backside of that building, that comes actually about a foot off the line, down onto the impervious surface that, again, is fairly close to that property boundary.

Mr. Buzak: I was just picking up. I can't remember who it was...Ms. Natafalusy or someone else who raised the issue of the location of the house and while I understand that if you moved it, if you obtained the variance for the east side as opposed to the west side, it is closer to the nonresidential use, but as was pointed out, on the west side, the lot on the west side, the house on the lot on the west side is only eight feet from that side yard. So as opposed to the 12 feet that was there, so now with this, it just gets a little bit closer than it would have otherwise been.

Mr. Nusser: So the question is...or what I'm hearing is, is that there seems to be...the question is, would we be willing to, instead of asking for this relief of being ten feet off on the west side, would we consider having the relief ten feet off on the east side?

Mr. Buzak: Well, I'm not asking that...I am really asking from a planner's perspective, from your own...from your own testimony, would it be a better situation from your perspective as a planner in supporting a variance on the east side as opposed to the west side...or is it from your perspective?

Mr. Nusser: I think the preference would be the way it's proposed because it keeps the dwelling and the actual...the use of the building further away from the commercial use that's adjacent.

Mr. Weiss: Ed, wouldn't that be really north and south rather than east to west? Because if you look at the highway, north, east and west would be going from the street to the back, north and south would move it closer or further from the commercial business, I guess, Is that accurate?

Mr. McGroarty: No, it is east and west.

Mr. Schaechter: It is east and west.

Mr. Weiss: Okay. All right, that's fine. I just wanted to make sure we are all thinking the same thing.

Mr. Rubin: Yes, north is to the rear property line.

Mr. Weiss: Okay. I am only saying that based on the orientation to the highway, that's all.

Inaudible

Mr. Nusser: I think it's just one of the portions of 46, the bend and around the lake.

Mr. Weiss: You're probably right. That's okay. As long as we all understand that we're moving no further or closer towards the commercial property.

Mr. Nelsen: Mr. Chairman?

Mr. Weiss: Yes, Dan, go ahead.

Mr. Nelsen: To Ed's point, if the variance were to go to the other side. I'm not an engineer and I'm not a planner, but if the variance would go to the other side and leave the 12 foot on the west side, that would actually kind of free up the driveway. Where the driveway right now is, it's showing it's ten feet wide and it's right on the property line. It seems to me it would create a better scenario for a driveway there, given a little more room on that side and it would be separating the two residential properties a little bit more, just two feet more.

Ms. Ryder: Can I make a comment?

Mr. Weiss: Sure, go ahead.

Mr. Nelsen: I'm sorry.

Ms. Ryder: I would say that with the architectural plan, the stairwell is on that side, the utilities like the powder room, the washroom is on that side. So it's a more buffered side of the house than a side with a view and also, I would bring up that there's the fence between the two properties which fixes their property line. You know, so they are houses...whether you have more

space there or not, they have their fence up, which...you know...the space that they have on that side is fixed, so I don't think that two feet makes much of a difference as far as open space to them.

Mr. Buzak: Is that a vinyl opaque fence or is it...I'm sorry.

Ms. Ryder: Privacy fence.

Mr. Nusser: Yes, it is.

Mr. Maurer: A white vinyl.

Mr. Buzak: Okay, thank you.

Mr. Nelsen: The driveway...that wouldn't open up the driveway a little bit more, create a little more space for the driveway where it wouldn't have to be directly on that property line?

Mr. Nusser: The driveway is actually just so we are clear, the driveway is actually two feet off of the property and it's ten feet wide. So there's...I know if you're looking at the plan, depending on which one, there's some...you know...there's the existing overhead lines that are going to get removed, the overhead wires, that's kind of on the edge of the property line but the actual...the driveway is set two feet off of the property line.

Mr. Nelsen: Okay. I'm looking at a June 26th plan.

Mr. Nusser: Yes.

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

Mr. Weiss: Go ahead, Mr. Schaechter.

Mr. Schaechter: The applicant Mr. Maurer testified that when he purchased the property, he knew it was undersized. So the question is related to the planner, say if someone knows that the property doesn't meet the standards to build on it, is it really a hardship?

Mr. Nusser: Yes, it's still a hardship. Just because you purchased the property that has that condition on it you cannot create a hardship. If you were to have purchased the property and sold off a portion of it for some reason or maybe...

Mr. Schaechter: That creates a hardship because you sold the property but this property right from the start doesn't meet the standards. So, the applicant could have just walked away. They chose not to...

Mr. Nusser: That's correct, but that doesn't...that doesn't change the fact that there's still a hardship for the property.

Mr. Schaechter: Right.

Mr. Nusser: It is inherent to the property itself, not necessarily to the owner.



Mr. Schaechter: So when one talks about market value for a piece of property that has an inherent hardship, which you're now testifying for is, wouldn't market value be less than the going rate of a lot? So, the market value is actually \$5,000.

Mr. Rubin: Let me answer that. By law, the market value is determined as if the variances were granted.

Mr. Nusser: I would say that the applicant purchased the property and the purchase price...you know...was higher than any offer by eight times that he received, and if the purchase price is a fair price for that lot then...you know...an offer of \$5,000 isn't a fair, fair market value offer of that land.

Mr. Schaechter: But isn't it...hold on. So, I paid a certain amount of money for my house 20 years ago, and if I don't happen to get that amount, is it not the same market value...the market sets what the fair market is. So the fair market is \$5,000 today, that's \$5,000 today. That's the market...that's what...it's not a historical value.

Mr. Rubin: If I may, let me repeat, the law says that the fair market value for purposes of selling the property has to be the value, including the value if variances were to have been granted.

Mr. Schaechter: Mr. Rubin...

Mr. Rubin: That means that is the value, as if it was a buildable lot, not a non-buildable lot.

Mr. Schaechter: But Mr. Rubin, it's a non-buildable lot, according to the code.

Mr. Rubin: No, it's not. It's just an undersized lot. It doesn't make it a non-buildable lot. All these homes in the neighborhood are undersized lots that are being built upon. It needs a variance. It doesn't make it a non-buildable lot. It needs a variance, that's all.

Mr. Weiss: Hold on Mr. Nusser...hang tight for a second.

Mr. Rubin: And the law says that the market value offer has to be with variances granted, so it is a buildable lot.

Mr. Weiss: So maybe the question to ask is how did \$40,000 become the established price? Was there an appraisal done? Maybe you overpaid for the lot, Collin? I don't know. How did you come up with \$40,000?

Mr. Rubin: Excuse me, if I may, the \$40,000 was paid without any approvals. So, it's not the fair market value under the law that a neighboring property owner would have to pay. A neighboring property owner would have to pay the fair market value assuming approval.

Mr. Weiss: I know. I'm just trying to find out how did we determine fair market value?

Mr. Nusser: If I might, I can help this a little bit.

Mr. Weiss: Go ahead...

Mr. Nusser: I pulled up the tax records. This is one of the benefits of being virtual. I can pull that up sitting here in my basement.

Mr. Weiss: That's okay. I'll take your word for it.

Mr. Nusser: The assessed value that...the value your assessor has put on this property is \$89,400. So he paid \$40,000. The assessed value by your assessor, which...you know...they're going out and they are looking at how much this property is worth. They're saying it's \$89,400 is the assessed value of the...that's the land. There's no improvement value associated with it, simply the land. So we're talking about almost \$90,000 as the assessed value of the land. So that's...again, that's maybe not independent. It's independent of us, but this value has been set on the land that an offer of \$5,000 would clearly be insufficient based on that evaluation or the purchase price of \$40,000, which again as Mr. Rubin said, took into account that there was no approvals on it, if there were approvals on it, it would be worth more and your assessor says that value is \$89,400.

Ms. Ryder: And I also add that...you know...the three properties to the left didn't have this zoning when they were built. So either the zoning changed because none of them meet the zoning of today and they all have...you know...they would have required variances. So...you know...the zoning is being applied to this lot that couldn't have been applied to when they were built.

Mr. Schaechter: So, they are pre-existing nonconforming, that's different. This doesn't have a house on it.

Mr. Rubin: It's a pre-existing non-performing lot as the size and width.

Mr. Schaechter: But the fact it doesn't have a house on it. The other lots have houses on them. They are pre-existing nonconforming to whatever zone was...

Ms. Ryder: You are saying that it seems as though this...inaudible...built.

Mr. Schaechter: The property didn't have a house on it when Mr. Maurer bought it.

Inaudible

Mr. Weiss: I'm sorry, say it again.

Mr. Buzak: I said I'd like to comment when this discussion is...

Mr. Weiss: Go ahead, Ed...why don't you chime in?

Mr. Buzak: I think that Mr. Rubin has generally stated accurately what the law is, despite the counter intuitiveness of it that Board Members recognized, but here's the concern that I have about it. Typically, when these letters are sent out to adjacent property owners, there's a price set in there and that price, in other words, that the property owner says I either want to purchase property

of yours to bring mine into conformity, and I understand that, and I think it's logical that to make that request, given the undersized nature of the other lots and the fact that they're improved that it would be an exercise in futility. But on the other hand, to say we're asking you to...if you're interested in purchasing a property or make an offer. You know...it's like when you go in to buy a car and they say...and the salesman says, well...you know...give me an offer, you're not going to give me your best price. You're going to give them the lowest price you can get because you're going to move up from that. So here...there was not a price set by the owner based upon the criteria Mr. Rubin has correctly pointed out is the criteria that is the value of the property as if it was a building lot. Again, I recognize the counter intuitiveness of all of that because it's not...it doesn't have the variances but the property owners who got the letter look at it and say, well...you know...if the letter said, pay me \$40,000 for the lot, that's what I'm looking for, that may have evoked a different response. I don't know. But if the letter itself and I haven't seen the letter, so I'm just relying upon the representations that have been made. If the letter just said, make an offer for the property, you're really not fairly, I think, giving that adjacent property owner the opportunity to make a rational decision because you're leaving it up there, whatever offer that person may make and as I said, generally, when you're going to be negotiating something, you're going to come up with a low ball figure to see if that's going to work. It wasn't, hey, you get one shot at this, take it and I'll tell you whether it's right or wrong. That's not the way this works. Because of the fact, as has been pointed out, the intent is to eliminate non-conformity. That's the whole theory of this. And eventually, when you have upgraded zoning, the idea is to eliminate non-conforming lots, particularly non-conforming vacant lots, and to do that without...or to attempt to do that without putting a number in when you...when you send those letters out, I think it's problematic and I'm concerned about that because I'm not sure that both adjacent property owners were not given the opportunity to reasonably evaluate the possibility of purchasing that property because they didn't know what that number was. The one didn't respond and I get that. If they don't respond, you don't respond, but maybe they would have responded had the number said, I'm willing to sell out that lot for \$40,000, that's what I think the fair market value is, that may have evoked a different response. So I am somewhat concerned about that. Thank you, Mr. Chairman.

Mr. Weiss: Okay, any new conversation, any other questions...

Ms. Natafalusy: One other thing, Howie.

Mr. Weiss: Catherine, sure.

Ms. Natafalusy: To address, Ms. Ryder...if you look on the records for the properties, the houses to the left were built in 1943 or 1948, I think, the one right next door and if I remember correctly, our first zoning ordinance was 1950, Chuck is that right? Mount Olive's first zoning ordinance was 1950. So, they were built prior to our zoning.

Mr. McGroarty: Right.

Mr. Weiss: Catherine, where did that information come from?

Ms. Natafalusy: I went online and then looked at the addresses...I tried to get to the tax assessor's records, but I couldn't get there.

Mr. Weiss: Okay, that's what I was kind of alluding to. So thanks for looking that up.



Mr. Maurer: I have them, too. I've Lot 8, Lot 10, Lot 12 and Lot 16 from a realtor.

Ms. Natafalusy: Who has...sorry, who said that?

Mr. Weiss: That was Collin Maurer.

Ms. Natafalusy: Oh.

Mr. Maurer: I have Lot 8 as 1947, Lot 10 as 1928, Lot 12 is 1921, Lot 16 is 1928.

Ms. Natafalusy: Right and Mount Olive's first zoning ordinance was 1950.

Mr. Nusser: Yes. Again, my testimony doesn't rely on the neighboring properties when they were built as part of...

Ms. Natafalusy: No, I am just responding to Ms. Ryder.

Mr. Nusser: No, understood and I just want to make sure that it's clear that my testimony wasn't...

Mr. Weiss: Okay but you have to keep in mind the reason this got brought up was because the comment was made. While the other houses, you know, they are only five feet and three feet and eight feet, well, there's a reason for that because they were built well before zoning ordinances were in place. Today, it's a new world. It's a different world since 1950 and evolving every few years, the zoning changes, there are now zoning standards. So when you look at the fact that you simply make a comment that...you know...the other houses next door are five and eight feet, there's a reason for that and that's what we wanted to address. That's why I asked the question a half an hour ago is when these houses were built.

Mr. Nusser: And I understand that and I understand they were created before zoning. The purpose of that exhibit and my testimony wasn't to say that they've done it, so I'm allowed to do it. That's certainly not the testimony. I understand you have a zoning ordinance. You know, again, this lot is undersized in width and therefore the available width of development area is constrained on this lot. Again, I was arguing a hardship on this...in this for this variance, I was saying this is better planning. My point was that it's consistent with the neighborhood. I understand those houses were built a long time ago. My point was...it's consistent and it would not be something that's out of place and would create a negative impact because of the placement of the house two feet closer to the property line.

Mr. Weiss: Okay, well, I thank you for that. But I can tell you my takeaway from exhibit A-1 was that look at these houses, they're only eight feet and five feet. So therefore, this one shouldn't be so bad either. That was my take away. That was what you were trying to show us, your explanation helps, but I just wanted to let you know and it looks like other Planning Board Members got the same information. And I just wanted to restate for the record that there's a reason for that. I'm sorry, Catherine, go ahead.

Ms. Natafalusy: No, I just want to say...I go back to Collin when he first started to testify that he said when he was asked about if he knew if the lot was a substandard lot, he said he presumed that other lots were that size, so he thought there'd be no issue. I just really maybe had to do a little more due diligence on that.

Mr. Maurer: I spoke with Chuck before I purchased the lot. I did my due diligence before I purchased it. He said it would involve some paperwork, but it's possible.

Mr. McGroarty: Oh, wait a minute, wait a minute. I can tell you I don't know what I said to you because I don't remember our conversation, but I can tell you that my practice and I've done this for a long time, any time someone asked me, can I get a variance, I say, I have no idea. That depends on the circumstances. That depends on the Board votes. I don't. I never ever opine about the success of a variance, never. So...you know...for me to say it was just some paperwork, it might have been a different Chuck you were speaking with, because, believe me, that's not the answer I give. Mr. Chairman, could I ask Mr. Nusser? I just want to clarify one thing.

Mr. Weiss: Sure, go ahead, Chuck.

Mr. McGroarty: Chris, I just wanted to make sure you did say in your testimony you did talk about the C2 variance. Were you also, though, relying on the C1? I thought you were with respect to the condition of the property, not the topography, but the existing width et cetera. So, I thought you were using both.

Mr. Nusser: For the...yes. To be clear, for the nonconformities that exist on the lot, the lot width, the lot area hardship, the setback of the house, I wasn't arguing a hardship. I...inaudible...the Board wanted to hear it. I would say there are elements of it that are a hardship because of the lot width, because of the narrowness of the lot that it creates a constrained building envelope, certainly. So...I have to offer both arguments to the Board, both a C1 and C2.

Mr. McGroarty: So, the C2 was related to really where the house is positioned and why, but the lot itself is a C1.

Mr. Nusser: Correct. And again, as part of the position of the house, I would...the side yard setback variance, again, I would...I would say there are certainly strong elements of a C1 hardship on here because of the, again, the shape and the narrowness of the lot.

Mr. McGroarty: Thank you for clarifying.

Mr. Weiss: Okay. Anybody else? Let me open it to the public. I'll see if anybody from the public has any questions on the testimony that was presented by our expert planner. Again, you can hit the hand raise button. I don't see anybody raising a hand. I'm sure Dane is checking with me as well, and therefore, unless I'm told otherwise, I'm going to close it to the public. And I will go back to you, Mr. Rubin.

Mr. Rubin: Yes, I mean, I guess I have a question for the Board. Do you need to hear from Mr. Mulhall?

Mr. Weiss: I don't know how to ask that question to the Board. I mean it is your application, if you feel that...

Mr. Rubin: What I mean if the Board needs additional information before they can vote because they haven't heard from someone who they believe is a crucial witness, I think that's information that they could provide to the applicant.

Mr. Weiss: And I'm going to kind of answer your question by saying if you feel confident that you provided enough testimony to convince the Planning Board, then I'm not going to give you any suggestion on who else you should bring up. Mr. Buzak, is that a fair advice?

Mr. Buzak: I think that's correct Mr. Chairman. We've always taken the position that this is an applicant's application. They need to make the determinations, and it's really not our call. We work on what we have.

Mr. Weiss: Thank you, Mr. Buzak.

Mr. Rubin: May I have 5 minutes then?

Mr. Weiss: Let me take a, I think, a 5 minute break. It is 9:17. We'll come back in eight minutes at 9:25.

Mr. McGroarty: Mr. Chairman?

Mr. Weiss: Chuck, go ahead.

Mr. McGroarty: Before we do that to Dane, just a logistical thing? How do we do this on a Zoom meeting, take a break? Is it still...it's not recording. Is that correct, during that five minutes?

Mr. Westdyk: No, actually, it is still recording.

Mr. McGroarty: So everybody be advised. It's still recording, so...

Ms. Natafalusy: So, we just mute?

Mr. Westdyk: You can mute and stop your videos.

Mr. Weiss: Well, I think when Mr. Rubin is asking for a few minutes, maybe they could take their conversation offline to a phone chat or something that would not be privy to us. I don't have a problem with that. We've taken a five minute break before, let's do that now and if the applicant and his team wants to do a phone conference, that's certainly their prerogative.

Mr. McGroarty: Just be aware of what you say, it may be recorded. That's all.

Mr. Weiss: Thank you. That's correct. So we're going to take a seven minute break. We'll come back at 9:25.

Break



Mr. Weiss: Okay, I think, I have 9:25, let's come back into session. Mr. Rubin, let me turn it over back to you.

Mr. Rubin: I've spoken to the client and given the questions raised by Mr. Buzak regarding the efficacy of the letters that were sent by...you know...a predecessor attorney, then me. We're going to go back and revisit the communications between...apparently there may be others that I'm not even aware of between the applicant and the adjacent property owners and make sure that they comply with the law.

Mr. Weiss: Okay. So...

Mr. Rubin: So I'm going to request if you could carry this without further notice, and we will extend all time constraints.

Mr. Weiss: Ok, so let's take a look. I know that we just got together with the tentative schedule. Let me see. I'm going to turn to Mary for a little help on here. Today is...where did it go, the one you just sent me...

Ms. Strain: I sent it to everybody this afternoon.

Mr. Weiss: Here it is. Okay, so Mary, I'll turn to you for some help. If we look to carry this application with no further notice and I'll make that announcement in a second, it looks like the first availability might be on the December 10th meeting. Is that accurate?

Mr. Rubin: Not till December?

Mr. Weiss: We're looking at a schedule that's jammed up every single meeting.

Mr. McGroarty: Well. Mr. Chairman?

Mr. Weiss: Go ahead Chuck.

Mr. McGroarty: I know there's a lot of stuff going on, and on the September 17th night meeting, we have an extension request and we have an open space element of the masterplan, and then, of course, then we have the solar farm application. I don't think that's...the extension request, I think will go quickly. The masterplan, the open space plan, half hour maybe, maybe a little longer, and the solar farm, perhaps an hour or a little bit more, and it's pretty clean there are no variances. So I suppose there's a possibility at the end of the night on that one.

Mr. Weiss: I would much prefer, even if we do that, to look to October 8th, it looks like that might be more, because even if you think of the time schedule you just gave us, Chuck, you know...

Mr. McGroarty: Well, that's probably...that's a better idea. October 8th, yes, we only have one application.

Mr. Weiss: Yes, let's do that. I think that's better because, you know, every time we say it should only take a few minutes, we know that's the curse of death. So, I would actually definitely feel bad as Mr. Rubin is going to come back and then at ten minutes to ten, I tell him we can't hear them. So, I think October 8th is a very safe date. We can put them on after the Budd Lake Storage, I don't know it's the first time they're in front of us, but we can certainly make sure that if it's running late, I could bring that one to a close to give Mr. Rubin and his team enough time to make the rest of their testimony.

Mr. McGroarty: Or do you want this first?

Mr. Weiss: What is it that you want to bring to us, Mr. Rubin?

Mr. Rubin: I just I actually, because of all the letters and all the communications with the adjacent property owners took place before my involvement with this and given the questions raised by Mr. Buzak, I want to just examine all those correspondence and make sure that they comply with the law and if there's any additional correspondence that we need to submit, we can do so in a timely manner or if the decision is made that we need to reissue letters to the adjacent property owners, we will have time to do that as well. The only other thing I would consider is whether I call in Mr. Mulhall and I will need to speak to him before I can make any guess about that.

Mr. Weiss: Chuck, the October 8th application, that's a use variance, correct?

Mr. McGroarty: No.

Mr. Weiss: Okay.

Mr. McGroarty: It is a self-storage...

Mr. Rubin: Frankly, I don't think we can...sorry I need to...I apologize.

Mr. Weiss: Go ahead, Chuck.

Mr. McGroarty: No, it's not a use variance, Mr. Chairman.

Mr. Weiss: Okay. For some reason, I thought it was, so I'm thinking of a different property. We will talk about that offline. I think...let's do it on October 8th. We'll continue to schedule. I don't have a problem putting it first but let me have this chat with Chuck about the schedule, but if it's good with you, Mr. Rubin, let's schedule it for the October 8<sup>th</sup>?

Mr. Rubin: Yes, I'm available on October 8th. I just want to check with Mr. Nusser. Are you available on the 8th?

Mr. Nusser: I am looking right now. Give me one second...

Mr. Buzak: And while we're waiting for Mr. Nusser to respond, to Mr. Rubin...Mr. Rubin, can you ensure that the letters that were sent out be submitted to the Board, if they have not been. I did not get them, at least I don't see them in my file.

Mr. Rubin: Ms. Strain is actually the one who sent them to me. So, she has them and I'm sure that she can circulate them to the Board.

Mr. Buzak: Okay, that's fine. Thank you.

Mr. Nusser: I am available on the 8<sup>th</sup>.

Mr. Rubin: And we will submit this M2 Associates letter right away and have that circulated as well, and the Board will have time if they wish to consult with a hydrologist to review that, that's perfectly understandable.

Mr. Weiss: So with that being said, let's carry this application through October 8<sup>th</sup>, 2020. There will be no further notice. It will be placed on the agenda for that evening. Chuck and I with Mary will determine the place on the agenda, but there's only one other application. I need to learn a little bit more about that other application, so we'll carry it with no further notice until October 8<sup>th</sup>.

Mr. McGroarty: And Mr. Chairman, I just want to ask Mr. Rubin on the record then that we'll extend the deadline for hearing this to say October...

Mr. Rubin: That all time constraints are extended to October 8<sup>th</sup>.

Mr. Buzak: But we want to go beyond October 8<sup>th</sup> just because of risks of not having that meeting, so we normally go to the end of the month, Mr. Rubin.

Mr. Rubin: However, whatever the preference of the Board is, I concur.

Mr. Buzak: That's fine.

Mr. Weiss: Thank you for that, Mr. Rubin, and...inaudible...

Mr. Buzak: Just for the announcement purposes, it will be at 7 pm and at this juncture, it will likely be a virtual meeting, as we've had tonight.

Mr. Weiss: Yes. Thank you for that. Okay and with that being said, gentlemen, thank you very much. Members of the Planning Board, I thank you for working as hard as you do and reviewing the reports in advance. We have no meeting next week, so our next meeting will be, just confirm September 10<sup>th</sup>. Mary will make sure she gets all the information and we'll see you then. Until then, enjoy...Happy Labor Day everybody, and enjoy the rest of the summer. Wait. Let me make a motion to this. Can someone make a motion to adjourn?

Mr. Schaechter: I will make the motion to adjourn.

Mr. Mania: So moved.

Mr. Weiss: Thank you, Brian. Seconded by John Mania. All in favor.

All Members: Aye.



**Adjourn**

The meeting adjourned at 9:32 pm.

Transcribed by Rupal Joshipura

*Mary Staini*

Signature

*January 21, 2021*

Planning Board Meeting Date Approved