

****These minutes have not been approved and are subject to change by the public at its next meeting****

The regular meeting of the Park Ridge Zoning Board of Adjustment has been called for Tuesday, April 20, 2010, at 8:00 pm in the Council Chambers of the Municipal Building.

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL: Mr. Martin, Mr. Brennan, Mr. Walker, Dr. von der Lieth, Mr. Hoskins, Mr. Raman, Mr. Flaherty

Absent: Mr. Capilli

Also Present: John Ten Hoeve, Jr., Board Attorney
Brigette Bogart, Professional Planner

COMPLIANCE STATEMENT:

The Notice for this meeting required by Section 3(d) of the Open Public Meetings Act has been provided by the adoption of a resolution by the Park Ridge Zoning Board of Adjustment of January 19, 2010, setting forth a schedule of regular meetings by mailing of said schedule to The Ridgewood News and The Record on January 22, 2010, and by the posting of said schedule on the Municipal Bulletin Board and the continuous maintenance thereof and by filing the said schedule in the office of the Borough Clerk.

PENDING CASES:

<u>CASE:</u> 09-10 Lot: 5 Block: 1702	Application of <i>Richard and Lynn Bosi</i> , 108 East Avenue for an Appeal of the Zoning Officer's decision with regard to property owned by Jean Cleary, 21 Pascack Road, Lot 2 in Block 1702.
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WATKINS: Good evening Mr. Chairman. My name is David Watkins. I have offices in Closter and I represent the Bosi's.

GRAIFMAN: I am here for the party, the next door neighbor.

TEN HOEVE: Can you identify yourself?

GRAIFMAN: Yes, I am Gary Graifman, from Kantrowitz, Goldhammer and Graifman. I would like to speak also.

TEN HOEVE: Both counsel should have a seat up here and make yourself comfortable. You should just be aware of the fact that you need to use the center microphone.

WALKER: We have a number of items to enter into the record for this application. Instead of an application, we have an attorney's letter dated September 30, 2009.

- Item 2 is certification of service dated 12/24/09.
- Item 3 is legal notification dated 11/27/09.
- Item 4 is proof of payment of taxes dated 10/22/09.
- Item 6 is area map and letters dated 12/22/09 and 8/25/09.
- Item 7 is applicant's attorney letter dated 11/24/09.
- Item 8 is applicant's attorney letter dated 1/19/10.
- Item 9 is applicant's attorney letter dated 1/22/10.
- Item 10 is Board secretary letter dated 1/25/10.
- Item 11 is applicant's attorney letter dated 2/1/10.
- Item 12 is Board secretary letter dated 2/1/1.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 2

Item 13 is applicant's attorney letter dated 1/29/10.
Item 14 is applicant's attorney letter dated 3/1/10.
Item 15 is Board secretary letter dated 3/4/10.
Item 16 is applicant's attorney letter date 3/28/10.

That is all that I have at this time, Mr. Chairman.

FLAHERTY: Thank you Mr. Walker. I am going to ask Mr. Ten Hoeve to give us a little background on this case.

TEN HOEVE: Well, very briefly, this is an appeal from a decision of the Zoning Officer. I understand that there is some history behind the matter, but since this isn't a variance application, the procedure that I suggest that we follow is that we have the individual who filed the objection to the determination of the Zoning Officer, who is represented by Mr. Watkins, present whatever testimony and evidence they would like to present first, and then if the attorney and the client who are on the other end of this application would like to present any testimony or evidence, they can do so.

Naturally, as each witness testifies, the procedure that we generally follow is first that the Board would ask any questions that they would be interested in asking and then either attorney would be permitted to cross examine or ask any questions that they would like to ask of the witness.

GRAIFMAN: I just have one question. There were a number of documents that were read into the record. None of those were provided to us, that I am aware of, certainly not to me.

TEN HOEVE: I think, and I haven't looked at all those either, but I think that they basically consist of correspondence back and forth between the attorney for the individual who challenged the decision of the Zoning Officer, mostly dealing with scheduling. If you would like to see any of those, you are certainly would have an opportunity to do that.

GRAIFMAN: Thank you.

WATKINS: Okay, again, for purposes of the record, my name is David Watkins. I have offices in Closter, and I represent Mr. and Mrs. Bosi.

Mr. Chairman, what I would like to do, with your permission, I want to get this marked.

TEN HOEVE: Whatever the next number is, you can mark it yourself. Mr. Walker what is the next number?

WALKER: It is "17".

TEN HOEVE: Just mark that Item 17, and put a date on it, and then identify it. Would you raise your right hand please? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

HUBSCHMAN: Yes, I do.

TEN HOEVE: State your name and professional address please.

HUBSCHMAN: Michael Hubschman. I am a licensed Professional Engineer and Planner. My office address is 263 South Washington Avenue in Bergenfield.

WATKINS: Just briefly, historically, in April of '08 my clients had complained to Mr. Saluzzi that the neighbor was parking her vehicles in the rear of her property. Mr. Saluzzi, and John can I have this marked please?

TEN HOEVE: Before we do that, did you mark that exhibit? Do you want to tell us what that is for the record? I am going to have to mark this next exhibit after that.

WATKINS: This is a board, a master map, an aerial photo of the neighborhood.

TEN HOEVE: That is enough, aerial photo of the subject property. Then Mr. Walker, you can mark this as the next exhibit and just call it violation warning, dated January 9, '08.

WATKINS: The issue, fundamentally, is this, my clients objected to the neighbor parking her motor vehicles in the rear of her property. My client's property is to the south of the subject site. My client's property fronts on East Avenue, Mrs. Cleary's property is on Pascack Road.

They complained because Mrs. Cleary was parking her vehicles to the rear of the property. Mr. Saluzzi, at that point in time, issued a notice of warning violation. That matter was ultimately adjudicated through the Municipal Court. There was an agreement reached between the Prosecutor and the defendant, Mrs. Cleary, that she would comply with the Ordinance.

The Ordinance is specific, it is 101-24. Essentially what it says is if you want to park in the rear yard of your property, you can. But, it is very specific as to what you have to do. The Ordinance, again, 101-24, requires that screening should consist of evergreen landscape material, 6 to 8 feet in height, sufficient to screen vehicles on site from side and rear property lines. That is not what happened here.

Mr. Saluzzi issued a permit for a 6 foot high stockade fence covering a minimal portion of the property. We have no objection to Mrs. Cleary parking her vehicle in the rear of the property, assuming that she complies with 101-24, if she does. So it is our position that the issuance of that building permit to construct that fence is in clear violation of the terms of the conditions of 101-24.

I have Mr. Hubschman here tonight. I want to qualify him as Planner, so we can place our position on the record.

TEN HOEVE: One question first, just for the record, you made a statement that in the Municipal Court there was an agreement that plantings would be put up. I have a copy of a transcript that was supplied as part of the history of this case, and the transcript indicates on page 4, that the quote is "having said that we are agreeable to doing and the State is agreeable to apply for a fence or a natural screening permit to put up a fence or natural screening in the area".

WATKINS: My position is that

TEN HOEVE: I am not challenging, I mean I am not prohibiting you from putting forward whatever testimony or evidence you want about your interpretation of the Ordinance, I am just trying to correct the record with regard to what was done at the Municipal Court level.

WATKINS: What I said, Mr. Ten Hoeve, was that there was an agreement reached, the way I read the document, to comply with 101-24. I believe that Mr. Saluzzi incorrectly read 101-24, when he agree to settle this case.

TEN HOEVE: I am not prohibiting you from presenting that position. I am just saying that to correct the record, you had indicated that there was an agreement in the Municipal Court that they would put up natural screening. That is not what the record indicates.

WATKINS: I thought they said that they would comply with 101-24.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 4

TEN HOEVE: That is not what it says. The people who were present, by the way, at the time, were the Attorneys, were Mr. Botta, who I guess was the Prosecutor, and Mr. Graifman, who was the attorney. You were not present at that hearing.

WATKINS: We were not present.

FLAHERTY: Mr. Watkins, could you just read again, 101-24, the point that you are trying to make.

WATKINS: Sure. I will have Mike do it because I want to get this on the record. So, I will have Mike Hubschman do it because he has it on the plan also.

TEN HOEVE: You said you were going to qualify him. Are you going to qualify him as both an Engineer and a Planner.

WATKINS: Yes.

TEN HOEVE: Than present credentials with regard to both.

WATKINS: Would you give the Board your address please?

HUBSCHMAN: Yes, I did, 263 South Washington Avenue, Bergenfield. I am a Licensed Professional Engineer, since 1984, which is a little over 25 years. I have been a Licensed Planner since 1986. I own Hubschman Engineering and we design subdivisions, site plans, and we survey in the Bergen County area. We have done a few projects in Park Ridge. I designed the Chadwick Court subdivision about 10 years ago. I have done some other small developments in town.

WATKINS: Mike, just for purposes of the record, would you just give us the benefit of your educational background?

HUBSCHMAN: Yes, I am a graduate of NJIT in 1979. I was licensed as an Engineer in 1984, and as a Planner in 1986.

TEN HOEVE: Just a couple of questions. Where you grandfathered in as a Planner with the massive group of Engineers that were automatically qualified as Planners back at that time?

HUBSCHMAN: I received my Planning License in 1986, based on the fact that I did have Planning courses in college.

TEN HOEVE: Maybe you could tell us a little bit about that? What percentage of your studies were Engineering in college, and what percentage were Planning?

HUBSCHMAN: Probably 90-10, 90% Engineering and 10% Planning. Then, I have appeared as a Planner and been qualified before.

TEN HOEVE: Have you—what percentage of your practice, would you say, is engaged in engineering and what percentage is engaged in planning?

HUBSCHMAN: I would say maybe about 80% and 20% planning.

TEN HOEVE: In terms of testifying before various Boards, would you say that is the same, that 80% of the time that you testify it is engineering and 20% is planning?

HUBSCHMAN: I would say it would be almost... most of the projects involve planning testimony, maybe more like 70-30.

TEN HOEVE: When you say involve planning and engineering, do you testify in those cases as both the Planner and the Engineer for the project or is there a separate Planner.

HUBSCHMAN: I testify as a Planner in most of them.

TEN HOEVE: You have been accepted.

FLAHERTY: It is Mr. Hubschman. Is it? I will accept Mr. Hubschman as an expert Planner.

WATKINS: Okay, Mike, you were the preparer of the plan which is the subject of matter of this appeal, is that correct?

HUBSCHMAN: Yes.

WATKINS: The Chairman had asked the question, would you please refer to your zoning notes as relates to 101-24, please and read it into the record?

HUBSCHMAN: Okay. The excerpt from the Borough Code.. I will read it into the record. It is Section 101-24. It has to do with parking. "Both trailers and recreation trailers or vehicles may be stored on site provided they are located behind the front line of the dwelling unit and the vehicle screened along side and rear property lines. The screening should consist of evergreen landscaping material 6 to 8 feet in height sufficient to screen boats, boat trailers, recreation trailers or vehicles stored on site from side and rear views."

WATKINS: Mike is there, in that Ordinance, is there any where it indicates that fencing can be used or is specific as to the type of screening?

GRAIFMAN: I object.

WATKINS: I am asking him to testify as to what the statute says.

TEN HOEVE: We are not a court. There is considerable leeway, that is granted. The Board can hear what...we don't have a copy in front of us. I am sure that there will be a lot of testimony as to it. I think that it is okay.

HUBSCHMAN: That is the verbatim quote from the Ordinance.

WATKINS: Mike, I want you to refer to A-17 and tell me what it represents please.

HUBSCHMAN: We tried to put together a board to explain to the Board the properties. This is an aerial map and we overlaid the tax map that we received from the Town Engineer. It is the most recent Tax Map because there have been a lot of changes in the area. The Bosi residence, North is to the right on this map, here is Pascack Road, the Bosi residence fronts on East Avenue. You come down Hillside and East Avenue is a dead end.

The Cleary residence fronts on Pascack, it is a through lot, 50 by 352. The East Avenue used to go through and there was another street that was called Hill Street or Hill Avenue, that was vacated back 5, 6 or 7 years ago. East Avenue now ends at the Cleary property, the right of way line. That is the area in question, is that rear portion of the Cleary property, where the vehicles are being stored.

GRAIFMAN: I object.

TEN HOEVE: Is your objection that it is one or two or that it is stored or parked.

GRAIFMAN: Both. It is not stored and it is one vehicle.

TEN HOEVE: You will have an opportunity to cross-examine him and you can ask those questions.

HUBSCHMAN: We just have some photographs for the Board. These were taken in December. I went back out there today and took more photos. It is generally the same as it is, as it was in December.

WATKINS: Mike go through the photos for me please?

HUBSCHMAN: Sure. They are all keyed on the map. Photo P-1 is from the Bosi property looking North, some arborvitae that were planted by the Bosi's. Photo P-2 is looking towards the Bosi house. Photo 3 shows the area where the car, vehicle is being parked at the end, and the fence that was installed. Photo 4 is just the rear yard of the Bosi residence looking towards the Cleary property. Photo 5 is just showing the Cleary residence off of Pascack, just showing that they do have a driveway and a garage, all off of Pascack Road.

WATKINS: Now, Mike you testified

BRENNAN: I just have one quick question. Can you show me the Cleary residence, their driveway?

TEN HOEVE: It is a long narrow lot.

HUBSCHMAN: It is here.

BRENNAN: It is a long narrow lot. I didn't see you point out the driveway.

HUBSCHMAN: They have a driveway on Pascack.

BRENNAN: Okay, got it, thank you.

HUBSCHMAN: That is the picture. It is kind of in the shadow, but that is the driveway. That is the picture from Pascack.

WATKINS: Now, Mike, you testified that you took these pictures in December?

HUBSCHMAN: Yes.

WATKINS: Have you had the occasion, I think you said that you were there again, recently.

HUBSCHMAN: I went there today, and we also took pictures again, today, they were the same.

WATKINS: Based upon 101-24, did you notice, Mike as to whether or not there was screening with 6 to 8 foot evergreens on the side and rear property lines that would have been in compliance with 101-24?

HUBSCHMAN: There was no screening.

WATKINS: I have nothing further for this witness, thank you.

FLAHERTY: Any questions from the Board for the Planner?

SANDLER: Could you just point to the vacated lots or streets on that?

HUBSCHMAN: East Avenue and I think that is called Hill Avenue or Hill Street and those two were vacated.

SANDLER: Where the vehicle in question is parking is on what would have been East Street?

HUBSCHMAN: Right, that would have been, but it was vacated by the Borough and it was deeded to the Cleary's, so that would have been East.

SANDLER: Are there any easements that are granted in that area?

HUBSCHMAN: There is a 15 foot right-of-way, you can see it on the Tax Map. It looks like it belongs to the Borough pump station or something on the corner there.

SANDLER: So they are not touching that 15 foot easement.

HUBSCHMAN: No, they are not touching that 15 feet. We did a little survey detail that shows the gravel parking area is a little to the northwest.

BRENNAN: We saw also the Cleary's driveway. Can you give us a little idea actually how big, it is kind of tough to see it from here, but being there and not actually driving up the driveway, how many cars can it hold?

HUBSCHMAN: I didn't drive up the driveway.

BRENNAN: I know, I understand that, but I just want to get an idea of is it only a one car driveway and that is it? Can you fit a car and turn around in that driveway and get back out? How do the people egress and you know get out of their property?

HUBSCHMAN: It is a one car width. It extends back approximately 120 feet.

BRENNAN: At that 120 feet, are they able to turn around or do they have to back out?

HUBSCHMAN: The one car that I saw there today, the car was facing out, so I don't know if they backed in or, I didn't go in their backyard, so I don't know.

RAMAN: They don't access that spot from East Avenue, do they?

BOSI: Yes.

RAMAN: They do. So, that car that is parked there comes off of East Avenue, not through the driveway?

HUBSCHMAN: I never saw the car there, but it is my understanding that it doesn't drive across the property.

GRAIFMAN: John, this is a question for you. Since we don't have the entire ordinance here, I am looking at, it says Section 101-24, the caption is "outdoor parking".

TEN HOEVE: I have a copy of the Ordinance, the entire ordinance, if you want to see that.

GRAIFMAN: Let me tell you what my question is and then you can tell us if it is even relevant. It may not be. The word used in the item "C" which seems to say appendix or something like that, I am just looking at an excerpt. Vehicles may be stored, they use the word stored, not parked. Is there any other provision in the 101-24, that distinguishes between parking and storage?

TEN HOEVE: Yes, before we discuss that, I would want to ask questions of the witness, so I was going to wait till the Board members were finished. I think you will get those questions answered.

FLAHERTY: Is there anyone else on the Board with a question for the Planner?

BOGART: You said that you were there today, and there were pictures taken today, and you did not see the vehicle?

HUBSCHMAN: I did not see a vehicle parked in the rear today, no.

BOGART: And you did not see a vehicle every time that you have been there?

HUBSCHMAN: I have been there during the day and I was there 2 or 3 times and I didn't see a vehicle parked in the back.

BOGART: So, in your, I am trying to understand, are you suggesting that the vehicle is stored in that spot or it is parked in that spot?

WATKINS: It is both.

TEN HOEVE: Let's hear the witness, because it is his testimony.

HUBSCHMAN: The vehicle would be parked in that spot.

BOGART: Okay, thank you.

TEN HOEVE: I have questions along that same line. You have the entire 101-24 in front of you, I assume.

HUBSCHMAN: Yes, I do.

TEN HOEVE: There is an initial section, 101-24 entitled outdoor parking and Section "A" describes prohibitions against vehicles that are parked in a yard, correct?

HUBSCHMAN: Yes.

TEN HOEVE: It gives a list of unregistered vehicles, busses, trailers, trucks, a variety of different vehicles that you can't park in a yard. It specifically uses the word parked, correct?

HUBSCHMAN: Yes.

TEN HOEVE: And if you look down to the section that you cited, under boats, trailers, recreational trailers, it uses the word stored on site.

HUBSCHMAN: Yes.

TEN HOEVE: Do you think that there was any different meaning intended when the ordinance was drafted and they used those two different terms, "stored" in one section and "parked" in another section?

HUBSCHMAN: I didn't differentiate between the two. I think of them as the same.

TEN HOEVE: You think that they are the same?

HUBSCHMAN: Yes.

TEN HOEVE: Do you know if the vehicle that we are talking about here is registered?

HUBSCHMAN: I don't know.

TEN HOEVE: Do you believe it to be a vehicle that comes and goes on the property, or is it kept there on a daily basis continuously?

HUBSCHMAN: That it was stored there on the weekends, is what I heard. I didn't get a chance to go out there on a weekend.

TEN HOEVE: That wasn't my question. That is kept there on a continuous basis or comes and goes at the site?

HUBSCHMAN: That it comes and goes.

TEN HOEVE: Okay. If you look at 101-24C, there is specific references that are included as to what types of vehicles you can store on a site. It lists boats, boat trailers, recreation trailers or vehicles. Do you think that the meaning of that phrase is that a recreation trailer is separate from vehicle or does it mean recreation trailer or recreation vehicle? What is your interpretation of that?

HUBSCHMAN: Is that it is separate, that it is recreations trailers or vehicles.

TEN HOEVE: Okay, if that were the case, why wouldn't that be something that would be covered in "A". If parking and storage is the same, and if it means all vehicles, just like vehicles in "A", why would you have to put that there?

HUBSCHMAN: I am sorry, could you repeat the question?

TEN HOEVE: Well, you can't park vehicles in the yard, according to 101-24A.

HUBSCHMAN: Right.

TEN HOEVE: If you are saying that storage and park mean the exact same thing, if I understood what your testimony was, it was store and park mean the exact same thing.

HUBSCHMAN: Yes.

TEN HOEVE: Then, if you have already said you can't park a vehicle in a yard, why at the bottom do you have to say that you can't store a vehicle in a yard, if it means something other than recreation vehicles. It is saying the exact same thing again. Do you understand my question?

HUBSCHMAN: I really don't understand the question. I took the word stored to mean that it is parked. If you are storing something, you know, a boat is eventually going to be moved out.

TEN HOEVE: But, it is not going to be on a daily basis. It is going be sitting there for long periods of time, right?

HUBSCHMAN: It may or may not be. I didn't right the ordinance. You know, I interpreted it to mean that it was parked and stored over the weekend. How long is stored? There is really no definition here.

TEN HOEVE: Do you think that you would be putting those conditions up with requiring screening and certain height and certain, if you were just going to have something there on a very temporary basis?

HUBSCHMAN: Do I think that

TEN HOEVE: That the ordinance would be drafted with that in mind.

HUBSCHMAN: I would think that you wouldn't want that the ordinance intent, I mean that you are asking about that, that I wouldn't want to look at someone's car parked next to my house. I would want it screened, whether it is there for a minute or two minutes.

TEN HOEVE: The last question, it has the same language at the end of Section "C", which has sufficient to screen boats, boat trailers, recreation trailers or vehicles. There is no additional coma after the recreation trailers, coma, or vehicles. Does that lead you to believe that the phrase means recreation vehicle as opposed to just any car or vehicle?

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 10

HUBSCHMAN: No, I really would think that anyone who drafted the ordinance would have said or recreation vehicles. My interpretation was that it means vehicles, automobiles.

TEN HOEVE: I have no other questions.

GRAIFMAN: I had several questions, but fortunately the Board asked a lot of the questions that I was going to ask you. I think it made clear some of the points that I was getting at.

I just want to make a few things clear. One is, this is the picture of the fencing that you are talking about that was erected, correct?

HUBSCHMAN: Yes.

GRAIFMAN: There are no vehicles there, correct?

HUBSCHMAN: Yes.

GRAIFMAN: In fact, that vehicle is being operated as far as you saw, on a regular basis. Isn't that correct?

HUBSCHMAN: I saw, I did not see the vehicle what I understood from speaking to the Bosi's, was that the vehicle was there on the weekend.

GRAIFMAN: It is regularly driven in and out, isn't that what you understood from the Bosi's?

HUBSCHMAN: That is what I understood.

GRAIFMAN: It is not being stored in that spot for any length of time, is it?

HUBSCHMAN: Once it is there, and turned off, I would take that it was stored.

GRAIFMAN: So, if it there for 10 minutes, that is your definition of stored, 10 minutes, or 5 minutes?

HUBSCHMAN: It is parked yes.

GRAIFMAN: If I leave the engine running for 1 hour and go back in, is that being stored?

HUBSCHMAN: Is it being stored, I don't know.

GRAIFMAN: Don't you have a very limited definition of what stored means?

HUBSCHMAN: I think if the people park it there overnight, and it is there for a weekend, that it is definitely stored.

GRAIFMAN: That is your definition of stored?

HUBSCHMAN: That would be my definition, yes. It has to be screened in accordance with the ordinance.

GRAIFMAN: If it falls under "C", correct? If it doesn't fall under "C", it does not have to be screened according to my definition.

HUBSCHMAN: My interpretation was vehicles that are stored have to be screened with evergreens.

GRAIFMAN: The question is, though, if it doesn't fall under "C", it doesn't have to be stored, correct?

HUBSCHMAN: If it doesn't fall under "C".

GRAIFMAN: "C" is the section that says if it is a stored vehicle.

HUBSCHMAN: My opinion is that it falls under "C". If it doesn't, then I don't know.

TEN HOEVE: Time out. Time out. One person has to talk at a time. Otherwise, when we actually have transcripts prepared as minutes of our meetings, and it is very difficult for the person who does that if everybody is speaking at the same time.

GRAIFMAN: In other words, if it is not stored, and it doesn't fall under "C", it doesn't need that type of screening. You are a planner, isn't that correct?

HUBSCHMAN: Which question do you want me to answer? The first or the second?

GRAIFMAN: First.

HUBSCHMAN: Could you repeat it please?

GRAIFMAN: Yes, sure. If it is not a stored vehicle, and therefore, does not fall under that section "C", the requirement for screening does not apply, correct?

HUBSCHMAN: If it is not a stored vehicle, if it is a moving vehicle, if it is not a stored vehicle, right, then it doesn't have to comply with that section.

GRAIFMAN: Let's talk about the driveway. The driveway that the Cleary's have, the driveway is a very narrow driveway, is it not?

HUBSCHMAN: It, you know from the road, 10 or 12 feet maybe. It is like a one-car width.

GRAIFMAN: There is no turnaround on the driveway, is there, that you saw?

HUBSCHMAN: When I was there, I saw the car, in the back, was actually facing out, so I don't know if they backed it in or they turned around. There probably is room to turn around somewhere in the back, but I didn't want to go on their property.

GRAIFMAN: So, you don't know, is the answer.

HUBSCHMAN: Correct. I saw the car facing out, and it was parked way in the back.

GRAIFMAN: Do you know if there is a turnaround in the driveway, or not?

HUBSCHMAN: I don't. I am just telling you what I observed when I was there.

GRAIFMAN: Pascack Road, it is a busy road, is it not?

HUBSCHMAN: It is a County road.

GRAIFMAN: East Avenue is more of a quieter road, correct?

HUBSCHMAN: East Avenue is just a dead-end. It only serves one house.

GRAIFMAN: Do you know how long the Cleary's have been using that back to park their car so that they can get in and out on East Avenue instead of Pascack Road?

HUBSCHMAN: No, I don't.

GRAIFMAN: Now, with regard to the use of fencing. Did you read the transcript in the complaint? The settlement in the complaint that your client's filed in Criminal Court, did you read the transcripts that was referred to by the Board earlier?

HUBSCHMAN: I didn't. I am just familiar with it from talking with Mr. Watkins.

GRAIFMAN: So, as you sit here today, you do not know that it says that fencing would be acceptable to resolve this particular dispute?

HUBSCHMAN: As part of their settlement, I mean I just look at this as more of a planning issue, and the interpretation of the Ordinance.

GRAIFMAN: So, you don't know anything about the settlement?

HUBSCHMAN: I really don't know anything about the settlement.

TEN HOEVE: I don't think that it really matters. We are not, we don't have the jurisdictional authority to enforce settlements of any type. It hardly matters what happened in some other venue. We are called upon, the only issue in this case, as far as the Zoning Board is concerned, is to make a determination as to whether the Zoning Officer's decision in this case, was incorrect or not. It wasn't a decision reached in the Municipal Court.

GRAIFMAN: Right, I understand that. I mean, obviously, our position would be that the Borough has discretion to, and the Zoning Officer has discretion, to allow the fencing material, if it resolves an issue with regard to a.....

TEN HOEVE: That is a different question, as to whether there was an agreement in the Municipal Court.

GRAIFMAN: It would help the Board tremendously. I am just speaking for myself, it would help me tremendously. I know we have gotten to this point where we are looking at the ordinance and saying okay, is this an RV? Is it a car? Is it what? Prior to that, I would like to know what the reason behind this whole scenario. Why must the car be parked back there instead of up top. That would help a lot.

TEN HOEVE: Are you going to have a witness, because you can't testify.

GRAIFMAN: I am sorry, I was just.....

TEN HOEVE: As long as you are going to have a witness, we will support what you are going to say.

GRAIFMAN: If I may just briefly explain.

TEN HOEVE: Are you finished or do you have any other testimony.

GRAIFMAN: I have no witness.

TEN HOEVE: Please raise your right hand. Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

BOSI: I do.

TEN HOEVE: Your name and address?

BOSI: Rich Bosi, 108 East Avenue.

WATKINS: Rich, you are the owner at 108 East Avenue, correct?

BOSI: Correct.

WATKINS: Did you have reason to file a complaint with the Zoning Officer of this Municipality?

BOSI: Yes, we did.

WATKINS: Would you describe to the Board what your complaint was?

BOSI: Based upon our interpretation of the Ordinance, as said, was a vehicle parked in the rear yard.

WATKINS: Do you know whose vehicle that was?

BOSI: Yes, the Cleary's, Jean Cleary's.

WATKINS: Do you know, do you have personal knowledge as to what, if anything, occurred after you filed the complaint with Mr. Saluzzi?

BOSI: She was issued a summons based upon that. There was a court hearing where, I guess, an agreement was derived at, that we weren't privy to....

WATKINS: No one asked you to come to court?

BOSI: No. Nobody invited us to come to court that day.

WATKINS: You were the complainant, correct?

BOSI: We were the complainant, yes, that is correct.

WATKINS: Tell me about Mrs. Cleary and what she does in the rear of her property, which is the front of your property?

BOSI: Most of the time, it occurs on the weekends, where she drives down East Avenue, parks the car there. There is nothing more demoralizing than coming out the front of your house and seeing a car parked right in your front yard, to be honest, okay. It has been an ongoing dispute. We have gotten nowhere to this point.

I think it was in September that the judge did issue an infraction of the following ordering her not to park there and she continued to park there.

GRAIFMAN: I object.

BOSI: Just let me finish Mr. Graifman.

TEN HOEVE: What is the basis?

GRAIFMAN: He is testifying of something that happened and he has no documentation and it is just hearsay.

TEN HOEVE: Did, again, we are not a court. Is it your contention that it didn't happen, that there was no fine?

BOSI: There was no fine within the context of the hearing that happened at the settlement. At the prior hearing in front of the judge, the first judge. She was fined court cost came to, I think, \$35.00, and was ordered by the judge not to park there anymore. That is when we went back to the Zoning Officer to have it enforced. I can testify.

TEN HOEVE: I am going to let you keep testifying. I just have one quick question. You mentioned court costs? Was it a fine?

BOSI: It was a fine plus court costs.

TEN HOEVE: Fine plus court costs. So, the \$35.00 was the court costs.

BOSI: I don't have the exact number. I have it at home. I can get it to you. Then the judge ordered that she was not supposed to park there. The parking continued after several months.

GRAIFMAN: Object. He is making a statement that the judge supposedly said. It didn't happen.

TEN HOEVE: I made the statement earlier, that our job isn't to enforce something a judge said, or to determine whether an agreement took place or enforce an agreement. It is simply to interpret an Ordinance. That is all that we are allowed to do.

GRAIFMAN: Okay.

WATKINS: Go ahead Rich.

BOSI: So, the judge said that she is not to park there. Okay. So, that being said and done, the next thing you know, the car is being parked back there. We have called the Police Department, because all of this happens 99% of the times, on the weekends. So, it is hard to get a Zoning Officer or anybody there. We need a third party independent person to observe the facts, so we called the Police Department. They are all filed and if you want I can go and get them. There are numerous things.

So, then, we kept on going after Nick Saluzzi to enforce it. Another summons was issued and then they got an extension to put the fence there, or address the issue. They come up with a compromise of putting up the fence that is there right now, which doesn't meet the Ordinance. At that hearing, we were not invited there. Again, nothing is more, we paid a lot of money for that house, and the last thing we want to see is a car facing our front yard.

WATKINS: The car itself, you say it is parked there on the weekends, how many times is it parked there on the weekends?

BOSI: During the summertime, it is parked there regularly. In the winter months, because of snow and all of those conditions, it is not there. But, you know what, we are not outside that much during the winter, but in the summer months, when we are out there, there is a car parked there.

WATKINS: When you say parked there, is it parked there and moved every day or is it parked over the weekends, what is it?

BOSI: Most of the times it is there on Saturday and or Sunday. There are also other vehicles that park there other than Jean Cleary. I know that the daughter parks there on Sunday mornings. There have been a couple of incidents where it has stayed overnight as well.

Also, look, I am not an attorney, and I don't profess to be an attorney, but she has to access points to her property, which I don't think you can have because I don't have it, so why can somebody else have it.

WATKINS: Are you familiar with Mrs. Cleary's property.

BOSI: Yes.

WATKINS: Are you familiar with the driveway?

BOSI: Yes.

WATKINS: I had asked you this earlier, how many cars are typically parked in the driveway?

BOSI: Typically, there is probably, I think there is usually her car and there is a pick-up truck that is there and there is another truck, or another vehicle in the garage. There is enough space again, I mention just personally, it is a gut feeling, you could fit 5 or 6 cars in that driveway very easily, to accommodate them.

WALKER: Can you turn the car around in that driveway, or do you have to back out on to Pascack Road?

BOSI: If the driveway is clear, you can, it is a double car, the detached garage is a 2-car garage, so you would be able to make a K-turn.

WALKER: There are 2 cars in the driveway already and I am the third car, can I turn around?

BOSI: Would it be easy? No, doable, yes.

WALKER: In a 12 foot wide driveway, I could turn around?

BOSI: It is not 12 foot, it is a double garage. It is a 2-car detached.

WALKER: The driveway is as wide as a 2-car garage?

BOSI: No, it goes like this. It looks like a “V” It is big up at the front where the detached garage is, and then it funnels down to one. So, could they, yes. Would it be easy? No, but doable, yes.

GRAIFMAN: More importantly, I would like to know because I have seen when you go down Hillside to East, when the car is parked off East Avenue, it is a kind of tight spot, how does that car leave and get back out on East and get back on Hillside to get back on Pascack, once the car is parked there?

BOSI: She just drives out of her property.

GRAIFMAN: She drives out of her property, she is not coming backing up and going down East Avenue and going back out, do you know what I mean, driving forward?

BOSI: She is driving forward, yes. She pull in.....

GRAIFMAN: So the car is backed in to that stockade fence.

BOSI: She drives in and turns on her property, parks it there and when it is time to leave, she leaves facing out.

GRAIFMAN: What I am getting at is she doesn't have to make a “K” turn in her driveway on your property?

BOSI: No. She drives out. Again, I am not an attorney, but you can't have 2 access points to your property.

WALKER: Are there no parking sign on East Avenue?

BOSI: No.

WALKER: If Mrs. Cleary or anyone else wanted to park in front of your house, except between the hours of 2 am and 5 am, could they do so legally?

BOSI: I assume that you can.

WALKER: When you have guests visiting your property, for whatever purpose, do they park on the street in front of your house?

BOSI: If my driveway is full, yes. If I have a barbecue and there is no more room in the driveway, yes.

BRENNAN: I have a question. I understand that this East was a street and that it was closed off at some point. Did you own the property then?

BOSI: No, we didn't.

BRENNAN: So, when you purchased the property, this was closed off?

BOSI: Yes.

BRENNAN: You are aware that at one point, this was a street?

BOSI: Yes, we were aware and just a little history, before we purchased the house, we dealt with Mary Rathgab, because that was a concern of ours, and Mary said that she can't do anything until we purchase the house because we legally didn't own the house at that point in time, but, that situation would be addressed after we purchased the house.

Here I am 4 years later and it is still not addressed, because Mary, who issued the first summons, had the same determination of what the Ordinance says. You can't park there. It has to be a 6 to 8 foot high evergreen barrier. Look, my wife works at home, 90% of the time and when the car is parked there, she looks out of her office to a car that is parked there.

Do you know what I am saying? We paid a lot of money. We did a lot of improvements to that house. To see a car parked there.

BRENNAN: She sees the car there.

BOSI: Occasionally.

BRENNAN: She works from home during the week and she sees the car parked during the week while she is working at home. I thought it goes out during the day during the week and it is only there on weekends?

BOSI: No, there have been times when, most of the infractions happen during the weekend, but there are times when it does happen during the week.

BRENNAN: Infraction?

BOSI: I view it because the Ordinance, parking, storage, whatever you want to call it.

GRAIFMAN: If she was to park in the street in front of your house, would the view still be the same as if she parked where she is parking now?

BOSI: Well it would be legal.

RAMAN: But is there a difference in terms of her viewing or the ambiance of looking out your window?

BOSI: Look at the end of the day, is it the neighborly thing to do? Probably not, because I wouldn't park in front my neighbor's house. Do you know what I am saying? I have room in my driveway or in my front of my house. I wouldn't do it. I wouldn't do it, okay? I would do it as a last resort. If I am having people over I would park my car over there and I would say, look, I am going to park my car in front of your house.

We had work done on our house and we told our neighbor next door, look, we are having construction vehicles. I am going to park my car in front of your house. I gave

them the courtesy of telling them that. You can't prevent it, but it is not the neighborly thing to do in my eyes.

FLAHERTY: If you had guests and you had a lot of cars, would you ever consider parking on your own lawn?

BOSI: Absolutely not. Absolutely not.

RAMAN: In your backyard, how far down is the driveway go, if you are looking at the 2-car garage out of your back window...

BOSI: No, our backyard neighbor put up a fencing now, plus we put up arborvitae and other things, so we can't see any vehicles that they park on their property.

HOSKINS: Just one question. In your estimation, the driveway ends, how much grass is there between where the driveway ends and the disputed spot?

BOSI: Seventy-five feet.

WATKINS: Could you just rephrase the question.

HOSKINS: Where the driveway ends, off of Pascack, where the driveway ends and there apparently is grass after that, how much grass is there before that spot?

BOSI: Where she parks the car?

HOSKINS: Yes.

BOSI: It is probably 100 to 120 feet probably.

FLAHERTY: Yes, it is a 350 foot yard, so it is.....

HOSKINS: 150 feet.

RAMAN: I have a question. Your objection is that it is not trees, is that it, and it is a fence?

BOSI: Yes, agreed, yes.

RAMAN: What is the difference, if it is green?

BOSI: It is the aesthetics. It is aesthetically pleasing. The fence that is there now, is

RAMAN: So, it is a matter of aesthetics, not that we don't want them to park there? How can you see through a fence?

BOSI: You can because if you come down East Avenue, where she parks the car, you can still see the front of the vehicle as you approach East Avenue. We have people come to our house saying what is a car doing over there?

FLAHERTY: The Ordinance would almost be a "U" shape of plants. Is that what you say?

WATKINS: We have to go back to what the Zoning Officer did. There was, and no one denies this, it was an issue of a violation of 101-24.

GRAIFMAN: Excuse me, there was no violation of 101-24. I told Mr. Bota at the criminal hearing, that I will try that case and I will appeal it, because that statute is, A, unenforceable, and B, it doesn't apply at all to this situation, period. So that statement is wrong.

TEN HOEVE: It is not wrong. He said that there was a summons issued.

GRAIFMAN: I thought that he said there was no disagreement.

TEN HOEVE: That a summons was issued, right that is what he said.

WATKINS: I just want to bring focus on the real activity here. The settlement as far as I understand it was in violation of 101-24. The fact that you say is a fence better than screening the Ordinance was very specific, and this is what you have to decide. The ordinance is very specific. Mr. Saluzzi indicated that there was a violation of 101-24. There was a settlement, put up a fence. Even if we were to put up a fence, if you read the Ordinance, it is very clear, you can't. But, if you assume that you could, then that fence has to be on both sides of the rear of the property.

FLAHERTY: So it is your interpretation that Mr. Saluzzi interpretation was incorrect.

WATKINS: That is why we are here.

TEN HOEVE: You subpoenaed Mr. Saluzzi, right?

WATKINS: Yes.

TEN HOEVE: Well he is here and we can ask him.

RAMAN: My question is if there was a fence and a gate to that fence, that would satisfy the two sided ...

WATKINS: No, no.

RAMAN: There would still be a problem. You can't see the car from the house.

TEN HOEVE: If I understood the answer. I just want to ask you client. I thought he said that you couldn't see it from the property, you could only see it if you drive down East Avenue? The fence blocks your view from your property.

BOSI: From the ground floor, it blocks the view. But from where my wife works, looking out, she is on the second floor above the garage, you can see over the fence to that.

TEN HOEVE: How high is the fence?

BOSI: Six feet, I guess.

TEN HOEVE: Wouldn't the natural material be 6 feet under the Ordinance as well?

BOSI: It would grow each year.

TEN HOEVE: Yes but you would still see it, if they put 6 foot bushes up, right?

BOSI: The difference is this, in order for them to do that, if you are going to comply with the Ordinance, that screen has to be on both side yards, and the rear property lines. You just can't put up 3 sections of fence along the property and say that it complies.

TEN HOEVE: That is a different issue. I understand that argument and that is what the Board is going to have to decide. I understand that.

RAMAN: Let me see if I understand that. It has to be all around the entire property? If it applies?

TEN HOEVE: That is the question. The question that this Board has to decide, is does the Ordinance apply to this fact situation. Is what is taking place here, the storage of a type of vehicle that is prohibited by 101-24C. If it is, then what the Ordinance require? That is the issue. That is the issue before this court.

WATKINS: I understand that. I am not trying to waste the Board's time. There was a settlement based upon an alleged violation of 101-24. My position is very clearly, that if you read 101-24, Mr. Saluzzi's interpretation allowing that fence in that particular case is in violation of 101-24. He can't change the Zoning Ordinance in settlement.

RAMAN: The question of whether 101-24 applies, Counsel, is that a determination that we can make?

TEN HOEVE: Yes.

RAMAN: Are we permitted to review Mr. Saluzzi's definition?

TEN HOEVE: Correct, that is the reason that we are here. That is the entire purpose of the appeal.

RAMAN: So, part of that review, Counselor, might be to determine if 101-24 applies, whether he did it correctly or not.

GRAIFMAN: Just to be clear, our position has unwaveringly been that it does not apply, period.

RAMAN: I have one last question. Did you purchase the property knowing that there was an area there where cars were parked?. Was it there when you purchased the property?

BOSI: That is correct. Again, we couldn't do anything until we owned the property, but Mary Rathgeb said she would address it and take care of that when we became the property owners.

RAMAN: I have a question, John, we said that 101-24A, allows parking without fencing?

TEN HOEVE: No, the questions that I was asking really had to do with the Planner's interpretation of the words "parking" and "storing", because 101-24A prohibits the parking of certain types of vehicles in areas, some prohibited and some not, but the use of the word "parking" of vehicles, not storage of vehicles.

RAMAN: So, this is a parking issue then there is no fence required or shrubbery or anything?

TEN HOEVE: Well.....

GRAIFMAN: It is the interpretation of what type of vehicle it is.

TEN HOEVE: Correct.

WATKINS: But, John, that is a mute question.

TEN HOEVE: Yes, I understand your question, that would have to be a determination that the Board would have to make as to whether that was prohibited or not.

RAMAN: If it is parking, it doesn't matter, then there is no tree or shrubs or fence or.....

TEN HOEVE: The Planner seems to, their Planner takes the position that it is prohibited under the Ordinance.

RAMAN: It is similar to parking.

TEN HOEVE: Identical to parking, storage and parking are interchangeable.

RAMAN: And the difference in vehicles makes no difference, whether it is a sedan or a recreation vehicle.

TEN HOEVE: Correct, that I is the Planner's position. I am sure that is not the position of the objector. I think that we can hear from our Planner to get an opinion on the Ordinance as well. That is the issue that the Board is going to have to resolve.

FLAHERTY: Parking versus storing cars versus RV.

TEN HOEVE: Exactly.

BOSI: If you allow this to continue, then you are basically allowing people of Park Ridge, anywhere you are, as long as they can get access to their backyard, to park a vehicle in their backyard. That is exactly what you are saying.

GRAIFMAN: That is not what is happening here.

TEN HOEVE: That might be true. There might be a deficiency in the Zoning Ordinance. That is a possibility,. I don't know that.

GRAIFMAN: I don't think that the intent here is to take advantage of a loophole.

TEN HOEVE: That is irrelevant. I don't think that he is arguing that. Mr. Bosi is not arguing that. Do you have any other testimony that you would like to provide.

WATKINS: No. Do you have any questions that you would like to ask?

GRAIFMAN: Mr. Bosi, when you bought this property, you were aware that there was a car back there, correct?

BOSI: There was a truck parked back there.

GRAIFMAN: You had an attorney at the time, I assume?

BOSI: No.

GRAIFMAN: Did you get an opinion as to.....

BOSI: We had an opinion.

GRAIFMAN: And you were hoping to do something, but you understood that the car may have to stay there?

BOSI: No, the interpretation...let me be very clear here, Mr. Graifman, we spoke to Mary Rathgeb. She said that we could not do anything until we physically owned the house. Please let me finish. You interrupt me and.....

TEN HOEVE: You ask a questions and then start another question before he can answer. Let him answer the question.

BOSI: We purchased the house. Before we purchased the house, we went to see that house probably 5 or 6 times, most of the times on the weekend, and a couple of times during the day. There was a black pickup truck parked in the backyard there, all of the time. So, before we put a bid on the house, we sent an email to Mary Rathgeb, because I looked up the Ordinance, and it is the same Ordinance that is standing here today, which was clearly defined.

So, we inquired to Mary Rathgeb, saying, you know, can this happen? She said that she would address it and take care of it once we became the property owners. If you would like, we have documentation and emails from Mary Rathgeb, stating to that fact, that if we could apply to the Planning Board showing that once we purchased the house, that issue would be addressed.

GRAIFMAN: You understood that if she was wrong about that, or if you couldn't get rid of it, that car was going to stay.

BOSI: Mary led us to believe.....

GRAIFMAN: Answer the question.

BOSI: I am answering the question.

GRAIFMAN: You are stating what Mary led you to believe.

BOSI: Yes, it is. Yes, I am answering the question that was posed to me. Mary Rathgeb led us to believe once we owned the house, she would be able to enforce the Ordinance, because her understanding was that you needed to be a "U" shaped with 6 foot high evergreens. It was very simple. Mary made it very clear. We have the documentation from Mary to provide.

GRAIFMAN: The question is, and listen carefully, if she was wrong, if she was wrong, then you would understand that there would be a car parking there.

BOSI: Okay, we had Bob Greene, from Shapiro and Krone, review it. He was our closing attorney, and had the same understanding that Mr. Watkins has as well, that it needs to beIt is not hearsay.

TEN HOEVE: It is hearsay and hearsay can be factual or not factual.

GRAIFMAN: Can you take a look at this map here, please turn around. Would this be the front of your house, over here, facing East Avenue?

BOSI: That is correct.

GRAIFMAN: Is it correct that the car is parked over here on the side of your house? It is not the front of your house, is it?

BOSI: It is right here.

GRAIFMAN: That is the side of your house, correct?

BOSI: You are getting into semantics. It is the front of my house, when I walk out the front door, or look out my living room door, it is in the front of my house.

GRAIFMAN: Sir, is this the front of your house?

BOSI: This over here is the side. Right here is the front, okay. Where she parks is the front of my house when I look out the windows.

GRAIFMAN: Let me show you. You recognize what this is?

BOSI: This is very convenient. This is for show. So, I am not even going to respond to that.

FLAHERTY: This is getting out of hand.

TEN HOEVE: Stop, you have to first of all (Fire siren starts blaring)

FLAHERTY: I think that you are harassing him. I think you have to let him answer your questions.

TEN HOEVE: Stop a minute. Wait (nobody is getting anything while that siren is going off, wait.) First of all, if you are going to ask any questions, we have to mark the photos, as, at least for identification purposes, are you going to do this as a package, or are you going to mark them individually?

GRAIFMAN: I prefer to mark them individually.

TEN HOEVE: Then why don't you mark them right now. Each one will be "O" for objector and then number it and put today's date on it. O-1, O-2, O-3, etc.

WATKINS: Mr. Ten Hoeve, I will need some qualifications for those pictures as to when they were taken, etc.

TEN HOEVE: If they are going to go into evidence, he certainly would have to do that. I think he just wants to ask questions now.

GRAIFMAN: I thought it was a very simple, straight-forward question.

TEN HOEVE: Just ask the question.

GRAIFMAN: The question is, do you recognize what that is?

BOSI: Yes, I do.

GRAIFMAN: This is the fence that the Cleary's constructed, correct?

BOSI: Yes.

GRAIFMAN: This is the car that is behind the fence, the car she currently parks there, correct?

BOSI: That plus another car, yes.

GRAIFMAN: This house on the other side of fence, is that your house, over there?

BOSI: That would be my dwelling, yes.

GRAIFMAN: So, you are saying that from this house, here, you can see that car?

BOSI: From my wife's office at the top, you can. Secondly, okay, look, I could bring pictures here that

GRAIFMAN: Just answer the question.

BOSI: Yes.

VON DER LIETH: I would like to say that many of the Board members have been to this property, and I can see the picture that you are holding in your hand and I am sure that we will see it very close up in just a few seconds. When you get into semantics, of what the front of this house is, Mr. Bosi's house is, and the side of his house, you are getting very close there, because it is almost, the fencing is almost catty-corner.

You can't say that we are getting close, when we see the photos, I think we will have some more comments, but technically speaking, if you said that is the fence, that is the fence.

GRAIFMAN: Can I show you this?

VON DER LIETH: Absolutely, we would love to see it.

TEN HOEVE: No, not yet. Put them in through your witness, whoever took the pictures, identify when she took them and how she took them, etc.

GRAIFMAN: Now, in addition...

TEN HOEVE: Are those all marked?

GRAIFMAN: No, not yet.

TEN HOEVE: You can't ask him questions. No one will know if this case ever gets appealed, which photos you were asking him about.

GRAIFMAN: Now, I am going to show you another picture. Now, this would be the end of East Avenue, would that be correct?

BOSI: That would be correct.

GRAIFMAN: There is a trailer here and a pile of gravel, is that a trailer and a pile of gravel that you put there?

BOSI: No, okay, that was there for probably a day, when we had to put in a seepage pit in there, so it was a one day thing there. So, to bring this up to me is pointless, since it was a one time event.

TEN HOEVE: Is that O-2?

GRAIFMAN: Yes, that is O-2. But, it would have blocked her, Mrs. Cleary, from coming in.

BOSI: Yes, if she would have, but again, 2 points of access to a property.

GRAIFMAN: And you say this is marked as O-3. It is the same point at the end of East Avenue, right?

BOSI: That is the same point, yes. That is probably standing up and the garbage man didn't take it, so it fell over after the garbage didn't take it. I think you are just trying to play games here with these pictures, personally.

GRAIFMAN: Excuse me, is the debris that is here.....

BOSI: The debris was there standing up with the garbage cans there. The garbage man didn't take it so the cabinets that we got rid of fell over, not by my doing, by the sanitation department not taking it, it fell over. Did it block her driveway? Is that what you are looking for? Yes Mr. Graifman, it was probably there maybe for 3 hours and gone.

TEN HOEVE: What is the point?

GRAIFMAN: He was testifying before that he walks out of his house and he says that he sees the car, which he doesn't, but

BOSI: You can't read my mind.

GRAIFMAN: Meanwhile he is dumping his stuff there.

BOSI: I do not dump stuff there.

WATKINS: Counsel, I think the question was what does the subject of those photos have to do with what we are hear listening to.

TEN HOEVE: Correct.

BOSI: Absolutely nothing.

GRAIFMAN: Because they don't see this far.

TEN HOEVE: But aren't these all temporary conditions that existed for brief periods of time, that you are showing us.

BOSI: Absolutely.

GRAIFMAN: It goes to show that he is harassing my client.

VON DER LIETH: We are not here to decide whether they are harassing your client or not, we are here to decide whether the zoning officer decision was correct or not, so please stick to the topic that we are here for.

GRAIFMAN: I understand that, but he did testify to this.

BOSI: Again, that is probably a 3 hour thing versus an ongoing issue for 4 years now, okay.

RAMAN: Let me understand this again. I probably have asked this question earlier. If it was screened with trees, along the side and the rear, your objection would go away?

BOSI: I don't have any choice, because that is what the Ordinance says. I don't have, unless I want to go an appeal the Ordinance, that is what the Ordinance says, so I am for full compliance of that Ordinance, 6 to 8 foot high arborvitae, down the sides and the rear of the property line. That is all that we have ever wanted since day one, was that Ordinance enforced.

FLAHERTY: If the 6 foot bushes through the end and the sides all the way to the end, obviously a car could not drive in or out, because there would be bushes there.

BOSI: That is correct.

WATKINS: I think that is the intent behind the Ordinance.

GRAIFMAN: It does say storage, so maybe that could be an intent.

RAMAN: But then they could still, and I don't know, somebody else may be able to, can you drive all the way from the front driveway, all the way to the back?

BOSI: Yes she has done that, yes, on a couple of occasions, yes.

RAMAN: If you did this, it would close off the rear exit.

BOSI: Exactly, yes. By base of the Ordinance, that is what it would be, It would be a "U", down the sides and the back. If she can get a car back there, I can't argue that Ordinance the way that it is written.

TEN HOEVE: Mr. Bosi, let me ask you a question. If you are aware of the fact that there are through lots. Do you know what a through lot is?

BOSI: I probably do but

TEN HOEVE: It fronts on 2 streets.

WATKINS: Which this one doesn't do.

TEN HOEVE: That is an issue, but you are aware that there are lots that front on 2 streets? If they hadn't, East Avenue extends now up to this, but before it was vacated, it went right through. So, you could access this property from both sides. You are aware of that?

WATKINS: That is an improper question, because that is not the reality. It is not a through lot.

TEN HOEVE: No, but I think that Mr. Bosi is of the impression that in no lot in the Municipality can you ever access the lot from 2 separate streets and park in 2 separate areas and have 2 front yards. I think that is what he believes. I am just asking him if that is what he believes.

WATKINS: With respect, that is a misdirected question because that is not the facts of what we have here.

RAMAN: Why is it not a through lot. She is saying that it is a through lot.

TEN HOEVE: I think that we will hear testimony later, I don't know. I just wanted to get his opinion as to whether he is aware of that fact, that there are many situations where that exists.

BOSI: Okay, if you tell me it exists in Park Ridge, that is fine. I am not going to argue that.

VON DER LIETH: I just want to clarify something, if your assumption is correct, and if everyone agrees, and they may not, that the particular Ordinance that you are reading from, requiring rear and side yard shrubbery, 6 to 8 feet plantings, if that did apply, you would have exactly the same screening as you would if it was a fence, in terms of what you could see from the first level, the second level or the third level. From a higher point in your home, you would see whatever is parked behind shrubbery, or behind a fence and from the lower level, you would either see a fence or shrubbery.

Now, from an aesthetic point of view, you may very much prefer to see shrubbery than a fence, the height of the shielding would be exactly the same, is that correct?

BOSI: I am not answering the question, but that absolutely is not correct. A fence doesn't grow. A fence is 6 foot forever.

TEN HOEVE: Yes, but you can top anything that is planted as well. You could top it at 6 foot every year.

BOSI: John, I am not going to argue with you about it. That is not what the Ordinance says.

TEN HOEVE: I am just saying in response to you, no one says it has to grow.

BOSI: It does say evergreen.

RAMAN: Actually arborvitae thin out if they are allowed to grow higher. The lower sections thin out.

BOSI: I will take my chances with the arborvitae.

FLAHERTY: Down the whole length of the side.

BOSI: Exactly like the Ordinance is written, down the side and the rear of both sides.

RAMAN: Is it specified as arborvitae.

BOSI: The answer is yes, there is.

TEN HOEVE: My question was just going to be, do you have any more witnesses or testimony?

GRAIFMAN: We want to hear from Mr. Saluzzi, who I know is here.

TEN HOEVE: Do you have any witnesses or testimony? Would you raise your right hand? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

CLEARY: I do.

TEN HOEVE: Please state your name and address.

CLEARY: Elizabeth Cleary, I live at 14 Hudson Street, Hoboken, NJ. I just wanted.....

TEN HOEVE: Can I just ask you who you are in relation to the owner of the property?

CLEARY: I am the daughter.

FLAHERTY: Do you want to give us some history?

TEN HOEVE: First the attorney is going to ask questions.

GRAIFMAN: I would like you to first explain how long your mom and your dad, when he was alive, started parking there and why they parked there, and how often parked there, and then I am going to ask you some questions.

CLEARY: We have been at that address for 45 years. My parents have lived there. We live on a busy street. It is very narrow and yes maybe we can fit 5 cars in there, but what happens if the first car want to get out, you have to back up all of the cars and stop traffic on Pascack Road. So, we have that and I park back there sometimes on the weekends when I go to visit my mom.

I have a lot of sisters, and we use that so we don't get blocked in. That is it. When I want to go, I move it.

GRAIFMAN: Do you know when your parents started parking there. How long have they been doing that?

CLEARY: I guess since we have been teenagers.

GRAIFMAN: Was it more than 35 years?

CLEARY: Yes. We were 4 kids and it is dangerous to back out onto Pascack Road.

GRAIFMAN: Now, I am just going to ask you some questions. I was showing some pictures before, and I just want to let me show you what has been.

TEN HOEVE: The only 2 photos were 01 and 02. Hold on a minute. Can I make a suggestion. The Borough Planner is here and she has to leave to attend another meeting. Can we ask her a couple of questions? Do you have time to do that?

We need to swear you in. Would you raise your right hand? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

BOGART: I do.

TEN HOEVE: You are....

BOGART: I am Brigitte Bogart. I am the Professional Planner and I have been working for the Borough for the last 9 years.

TEN HOEVE: You have heard the testimony. You heard Planning testimony. Do you have any comments with regard to interpretation of the Ordinance or anything else concerning this application?

BOGART: I have 2 comments. Just for, well I have a couple of comments, actually, the clarification is that this is actually considered a through lot, based on the definition of the Ordinance. The Ordinance basically says that any lot that has frontage on 2 streets that do not intersect on the property. So this property actually has 2 front yards.

Further, the Ordinance in section 101-21 permits parking in the front yard as long as it is in the driveway area. You have heard from the Planner that this is parking of a vehicle. I think that in accordance with the Ordinance, that it would be permitted as long as this is a driveway area, regardless of the screening.

Beyond that, I want to also address 101-24, which deals with the outdoor parking and the storage of vehicles. As a Planner, we constantly deal with the parking of vehicles versus the storage of vehicles. Storing cars for a long period of time, versus permitting parking. I know that the section 24 was strictly put in place to address the storage of vehicles, non-operating vehicles, recreational vehicles, things that were going to remain on the site for a long time and if you look, typically what Planners and those who use Zoning Ordinances on a regular basis, you first have to look at the top of that section, 101-24.

The first thing that it regulates is vehicles that are inoperable, buses, trailers, trucks, everything that is completely prohibited. So, right there, in 101-24, the first section, is basically prohibiting inoperable vehicles or vehicles that would be potentially be stored over night and that would not be able to be driven off site.

The next section, Section B, goes into trailers. The section that we are discussing tonight is Section C, which deals with recreation vehicles. If you look, when I first read it my question was, well it says vehicles may be stored on site, but then when you go back to Section A, you realize that they can't be stored on the site, because there originally prohibited in Item A. They are allowed to be parked on site, because they are permitted in 101-21.

So, then I went back and I finished reading the Section 101-24C, and the last sentence clearly states, and you will see that the Planners really get technical, the last sentence clearly states that, when it is talking about the screening, that the screening has to be sufficient for boats, coma, boat trailers, coma, recreation trailers or vehicles and there is no coma in between trailers and vehicles. It is clearly talking about recreation vehicles being stored on site for a long period of time. In the Planning world, there is tremendous difference between parking, parking in the street, parking for a commercial use, or retail use versus storing a vehicle on site.

When a patron pulls up to a store and parks for 5 minutes to get out, you are not suggesting that they are storing their vehicle there. If someone is going to spend an hour or two in a store, you are not storing that vehicle. It has been parked the entire Ordinance talks about regulating parking from that perspective but this Section 24 clearly talks about the storage or long time storage of vehicles.

Just reading those two sections, it clearly states that not only is parking permitted in that front yard area, it doesn't need to be screened at all. That is it.

FLAHERTY: Brigitte, help me understand how this is a through lot.

BOGART: The definition of through lot in the Zoning section under lot, number D is through lot. It says that a parcel of land which extends from one street to another and where the streets do not intersect at the property.

FLAHERTY: How does that extend to another street?

BOGART: That lot extends from Pascack down to East.

FLAHERTY But it doesn't front on East? It sides on East.

BOGART: It does. That little section is actually frontage.

VON DER LIETH: Even without a continuous blacktop, you know what I mean? There is no continuous drive through from front to back. There is a driveway, there is grass and then there is the parking spot.

BOGART: If you look at the Ordinance. I think it is front lot line. It is a line which separates a publicly owned or controlled street right-of-way, from a private property. Therefore, that is a front lot line. A front yard is defined as anything that goes from a front lot line back.

RAMAN: There is a difference of a corner lot.

BOGART: Yes, and that is why the last caveat says that where streets do not intersect, because on a corner lot those two streets would intersect.

TEN HOEVE: Can I ask a question. Did I understand you to say that there is a limitation that it can only be on a driveway?

BOGART: Yes.

TEN HOEVE: Does that mean it would have to be paved?

BOGART: Yes, and that is how back when the Planning Board amended that section of the Ordinance, we tried to regulate how much pavement would occur on a residential property, because we don't want someone to put a driveway through their entire lot. So it is regulated through the impervious coverage regulations. So we say that parking has to be on a driveway and obviously that is regulated through the impervious coverage, because anything that is paved is automatically counted towards impervious coverage.

RAMAN: Can a driveway be on town easements?

BOGART: No, it has to be on your property.

RAMAN: So this section would be, if in fact a driveway had to be constructed there.

BOGART: Yes, nothing can be constructed between the easement.

TEN HOEVE: You can have a driveway that crosses town property and if there is a sewer easement running through it is not as if you can't have your driveway over it.

BOGART: Drainage easements you can't construct anything. This is access easements.

GRAIFMAN: Has there ever been an occasion where you had cars on your front part of the driveway facing Pascack, where you have taken those cars and said you know what, I don't want to back this out, I am just going to drive straight down through to the end and then and start off on East? Has there ever been occasions where you people have done that?

CLEARY: No.

TEN HOEVE: Please speak up and make sure that the microphone.....

RAMAN: Ms. Cleary, I have a question for you. Behind your home, before the detached garage, I can't make out in the photograph but can you actually do a K-turn there?

CLEARY: No.

RAMAN: What is that?

TEN HOEVE: May I just interrupt for a second? The Planner had to go to another meeting, so before we go to other questions of the witnesses, maybe we can find out if the attorneys have questions of the Planner.

WATKINS: I have no questions.

GRAIFMAN: I have no question.

RAMAN: The photograph is not clear, so, what is behind that section where it flares out. It looks almost like you could

CLEARY: It is a garage. The garage is there. A one car garage.

RAMAN: So there is a 1- car and then a 2-car?

CLEARY: A 1-car garage, it is very narrow and then my dad just widened it a little bit so that at the end you could fit 2 cars. It is very narrow.

HOSKINS: How many feet in front of the garage, approximately, is there driveway? In other words, if you pulled up on the far right, where you dad widened, can you make a left and just back in and go out on to Pascack Road?

CLEARY: No, absolutely not. It is just enough to pull up there.

BOGART: Mr. Chairman, I think that Mr. Sandler has a question.

SANDLER: Brigitte, you distinguish between whether there is a comma or not, for the storage and parking, okay, just to be clear, parking doesn't have to be 5 or 10 minutes or an hour, parking can be for a weekend? That is not storage?

BOGART: Right.

SANDLER: That is important, thank you.

GRAIFMAN: Just to be clear, I am going to show you a copy of the Ordinance, 101-24. Is the vehicle that is being parked back there, is it an unregistered vehicle?

CLEARY: No.

GRAIFMAN: It is an inoperative vehicle?

CLEARY: No.

GRAIFMAN: Does it fit in any of the other categories of Section A?

CLEARY: No.

GRAIFMAN: Is it a recreational vehicle?

CLEARY: No. It is a car that we drive and have parked there sometimes.

GRAIFMAN: Who's vehicle is it that parks back there?

CLEARY: Usually, if I visit my mom on Saturday, I will park it back there.

GRAIFMAN: Most of the time if you are not there, it would be empty?

CLEARY: It would be empty except if my mom has a person coming to fix something at her house then she will put it in the back so that it doesn't get locked in by the person.

GRAIFMAN: This is not being parked on Borough property?

CLEARY: No. This is our driveway that we made a driveway.

GRAIFMAN: Now, I am going to just show you the picture that I showed before, which was O-1. Do you recognize that picture?

CLEARY: Yes, that is my car.

TEN HOEVE: Did she take it?

GRAIFMAN: Did you take it?

CLEARY: I was with my sister when she took it.

TEN HOEVE: Does it accurately reflect the condition of the property?

CLEARY: Yes, absolutely.

TEN HOEVE: Do you want to question on that at all?

GRAIFMAN: This fence is the fence that we are talking about?

CLEARY: That is the fence that we built, yes.

GRAIFMAN: And the house on the other side is whose house?

CLEARY: That is the Bosi's house.

GRAIFMAN: Is it your understanding that this is the front or the side of their house?

CLEARY: This is the side.

TEN HOEVE: That is totally irrelevant.

GRAIFMAN: He said that he walks out of the front of his house.....

TEN HOEVE: It doesn't okay, he sees it from the front you mean?

CLEARY: It is behind a fence.

GRAIFMAN: Is the property on the other side of this fence the Bosi's property.

CLEARY: No, it is ours and theirs.

GRAIFMAN: Well what about these trees, whose property.....

WATKINS: She is not a surveyor. I don't know how she can testify to that at all.

GRAIFMAN: Whose trees are

CLEARY: I see the property line on their property, because they have the sticks in there.

GRAIFMAN: Whose trees are those?

CLEARY: They might be ours, I don't know. I think that they are ours, but I could be wrong.

GRAIFMAN: Would you object to the Bosi's putting up any arborvitae on the other side of your fence?

CLEARY: No.

GRAIFMAN: May I present this to you?

TEN HOEVE: Sure. O-1 is photo.

GRAIFMAN: Just for the sake of moving it along, can I ask her just to identify O-2 and O-3?

TEN HOEVE: Do you want to show them to Mr. Watkins.

WATKINS: You are just wasting more time with those.

GRAIFMAN: With regard to O-3, can you tell me this part of the fence, what part does that face?

CLEARY: The front of the yard.

GRAIFMAN: So you not only does the fence face the side but also blocks the front.

CLEARY: Yes.

GRAIFMAN: This is going to be identified as O-3. With regard to using fencing materials, did you have a discussion about whether to use fencing or evergreen material? Where you involved in those discussions?

CLEARY: No.

GRAIFMAN: Where you involved with the discussions with Mr. Saluzzi?

CLEARY: No, not really.

GRAIFMAN: Do you know who was?

TEN HOEVE: We can't allow that testimony.

GRAIFMAN: Do you have any understanding why fencing rather than evergreens were used.

WATKINS: Objection. She already testified she had no personal knowledge of it.

CLEARY: No, I do have knowledge of it. They said we could put fencing or the arborvitaes, and we chose the fencing.

GRAIFMAN: Do you know why fencing was used as opposed to the trees?

CLEARY: Why we used it? No, I don't know.

GRAIFMAN: How long has the fence been up?

CLEARY: Almost a year now. About 9 or 10 months.

WALKER: What was there before?

CLEARY: Nothing.

GRAIFMAN: Did you go to the Borough and try to obtain some documents relating to the interpretation of 101-24?

CLEARY: Yes.

GRAIFMAN: Did you obtain these reports?

CLEARY: Yes.

TEN HOEVE: What reports are these?

GRAIFMAN: Well, this is Park Ridge Police Department report re: Cleary/Bosi, subject Borough Ordinance violation.

TEN HOEVE: The Park Ridge Police Department can't interpret Zoning Ordinances. They can't issue summonses. They have to come from the Zoning Officer.

GRAIFMAN: I think these were discussions with, there was one, I thought was.....

TEN HOEVE: What is your proffer? What are you trying to prove?

GRAIFMAN: I mean basically they are saying here and I thought, and I will have to take another look, but these were a discussion between the Police Department and the Zoning Officer, saying that the statute was unenforceable. It says it is unenforceable, but I am trying to.....

TEN HOEVE: The police can't interpret the Zoning Ordinance.

GRAIFMAN: I agree, but I am just, if you would give me one second, to see that it is basically a discussion with the Zoning Officer. I don't have anything else.

TEN HOEVE: Do you have any cross examination?

WATKINS: Your name again?

CLEARY: Elizabeth Cleary.

WATKINS: Elizabeth, would you describe to the Board, please, if you are looking at your house from Pascack, describe please, the location of the driveway relative to the house, whether it is to the right or the left of the house?

CLEARY: There is a house to, looking at our house, to the right of it, driveway and then there is our house and then there is another house to the left.

WATKINS: So, your house and the driveway would be to the right, facing your house, to the right?

CLEARY: Correct.

WATKINS: Would you guesstimate for me the distance between Pascack and the garage itself, how many feet that would be?

CLEARY: I am good at that. I don't know really.

WATKINS: You said before you could fit a certain amount of cars in there. How many cars do you think you could put in there?

CLEARY: I don't know, maybe if you line them up, about 4 or 5.

WATKINS: So, is it safe to say that it is at least between 30 and 60 feet roughly?

CLEARY: Yes.

WATKINS: Does the garage not sit beyond the house, further back?

CLEARY: Yes.

WATKINS: What exists between, if I was walking out your back door, is there grass there?

CLEARY: Yes.

WATKINS: Is that grass contiguous to the driveway?

CLEARY: Yes.

WATKINS: So what would prevent you, not you, but your family, from adding a portion of driveway to that area.

CLEARY: Because my mother can't afford it.

WATKINS: Is there anything from a topographical standpoint, that would prohibit you from enlarging the driveway?

CLEARY: No, there is nothing would prevent us.

WATKINS: So you could do that. If the Board was inclined to say that the issue here is one of safety, you can widen your driveway so that you could do a 3-point turn, so you wouldn't have to use the exit by Bosi's, correct?

CLEARY: Yes.

WATKINS: I have nothing further.

WALKER: Mr. Watkins, that is assuming that one car is in the driveway. If 4 cars are in the driveway, first or second car makes a K-turn, then what does it do?

WATKINS: It is real simple, if they enlarge the area behind the house and the driveway, this lot is 50 by 300, they wouldn't be over impervious coverage and they could have an area to do not just a K-turn, the could actually.....

WALKER: Store cars behind the home?

GRAIFMAN: You have to watch the runoff. You are on a hill, aren't you.

TEN HOEVE: Do you have any other witnesses?

GRAIFMAN: My client, Mrs. Cleary. Could I just have a second.

TEN HOEVE: 2 seconds, go ahead, quick...

GRAIFMAN: No, I don't have any more.

TEN HOEVE: Mr. Watkins, do you want to have Mr. Saluzzi testify?

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 34

RAMAN: I have one question for Ms. Cleary. Just a quick question again. Is there anything that prevents you from parking on East Avenue, when you visit your mom?

CLEARY: The last time that my mother parked on East Avenue, the Bosi's called the police and they threatened to put my mother in jail for harassment. So, that is why we stopped parking on East.

RAMAN: I thought you could park on East Avenue.

CLEARY: That is what happened. She was told she would be put in jail if she parks in front of their house again.

TEN HOEVE: By whom?

CLEARY: By the police office that came to our house. So, we don't want to park there.

GRAIFMAN: Have you ever seen this document?

CLEARY: Yes, that is the document that the police officer said she was harassing the Bosi's and that next time that she parks in front of the house, she would be put in jail on harassment charges.

TEN HOEVE: Do you want to show that to Mr. Watkins?

GRAIFMAN: Yes, sure. It is a Borough record, I would like to.

TEN HOEVE: Lets have him comment on it.

WALKER: What is the date of that?

WATKINS: July 15th, '08. I don't see this as a public record. I don't see any relevance to it at all.

TEN HOEVE: I think it is a public record, if it is a police report, is it?

CLEARY: Yes, that is a police report that they filed against us.

TEN HOEVE: Do you want to mark that?

WATKINS: He is saying that they didn't and that is not accurate.

TEN HOEVE: I am not saying that it is a police report that the Bosi's filed. I am just saying that it is a record of the Park Ridge Police Department.

WATKINS: It may be something that the police officer said but it is not necessarily the Bosi's.

TEN HOEVE: I fully understand that.

GRAIFMAN: I am going to mark that as O-4.

WALKER: I am missing O-2, by the way.

WATKINS: John, if I can ask you a question. What bearing does a police report, who aren't entitled to interpret Zoning Board decisions, have to do with what we are here to adjudicate tonight? What bearing does that have on it?

TEN HOEVE: It doesn't. It only has to do with the credibility of the question, why don't you park in the street, that Sid asked?

RAMAN: So, is it your position that you will get further tickets or whatever, if you park on East?

CLEARY: Yes, that is what we were told.

RAMAN: John, is that legitimate?

TEN HOEVE: Is what legitimate?

RAMAN: Has a ticket ever been issued for parking in there?

CLEARY: No, we got a warning that said

RAMAN: Can you park there?

TEN HOEVE: Yes, if there is no "No Parking", and there is no ordinance prohibiting parking, there, yes you can.

RAMAN: I am just trying to, again, look at all of the options that they have to settle this.

BOSI: But I think the issue is whether it adheres to 101-24 or 101-, what was the other?

(Everyone talks over each other not able to decipher who is saying what)

RAMAN: We already heard that it does not apply to this, so I am kind of confused as to what direction we are going.

GRAIFMAN: The only relevance the police report has is that there was a harassment claim made when they parked on East Avenue, so if they tried to park there now, even though it is not legitimate and I agree, but the police have to respond, if someone calls and issues a harassment report.

TEN HOEVE: That is not true. They have to respond and show up, but they don't have to issue any violations.

WATKINS: And if they did it could be contested.

TEN HOEVE: I would think.....

CLEARY: But I mean, it scared my mother to have a police officer say that.

RAMAN: But isn't the sole contention that this is purely a 101-24 issue.

GRAIFMAN: When Mrs. Cleary testifies I think.....

(Once again everyone steps on each others testimony can't tell who is saying what)

TEN HOEVE: The purpose of this line of questioning was she could park directly in front of the Bosi's residence, and would that be less objectionable to the Bosi's or more objectionable. That is the whole purpose of that question and I think everyone acknowledges that she could park there every time she comes there, any time, all day long, as long as it is not over night, and could do it on a daily basis. Mr. Saluzzi.....

If I could ask you to have your client take a seat back there again, and if you move over one seat, and stay where you are and let Mr. Saluzzi sit there. Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

SALUZZI: I do.

TEN HOEVE: Your name and position with the Borough?

SALUZZI: Nick Saluzzi, Zoning Officer.

TEN HOEVE: Thank you, have a seat.

GRAIFMAN: Mr. Saluzzi, there came a point in time, did there not, that you issued a summons to the Cleary's?

SALUZZI: I issued them a notice when I first came on the scene, because they were parking or storing, I should say, a truck back there, which I wouldn't permit. I told them that wouldn't be allowed.

GRAIFMAN: Did there come a point in time when you issued a violation to them?

SALUZZI: No, I didn't issue any violation to them.

GRAIFMAN: How did you end up in court?

SALUZZI: I didn't issue a summons to them. I think it was Mary, my predecessor, issued the summons.

GRAIFMAN: Do you know what the summons was for?

SALUZZI: I think it was for parking, or storing a vehicle back there. But, I wasn't too familiar with that case. I shouldn't really be testifying about it. It is only what I read.

GRAIFMAN: You are familiar with the Ordinance, are you not?

SALUZZI: Yes.

GRAIFMAN: Who gave the Cleary's the permit to put up a fence. Was that your office.

SALUZZI: I did.

GRAIFMAN: What was the intent behind your giving them the permit?

SALUZZI: To be perfectly frank with you, I never thought that they needed to put up a fence there in the first place. However, it is perfectly legal and if they wanted a fence in there whole back yard, they could. They do need a permit for it, a Zoning Permit, which I issued.

GRAIFMAN: You were not familiar, then, with the litigation that ensued for the summons that was issued by your predecessor?

SALUZZI: Yes, I was. I read that court order.

GRAIFMAN: Would you, just to the best of your knowledge, tell us what that court order said?

SALUZZI: The court order said that a fence should be erected to shield the car from the next door neighbor, and they should come in to the Zoning Office and get a permit for it.

GRAIFMAN: They were getting it for based upon a violation of what particular Ordinance number?

SALUZZI: My ability the 24 Ordinance number.

GRAIFMAN: What I would like you to do, please, if you would look, and that case was settled, I understand in court?

SALUZZI: Yes, there was a settlement. The judge made an agreement with them to put up a fence.

GRAIFMAN: So, in your testimony, there was a violation of 101-24, correct?

SALUZZI: No, no, I didn't say that.

TEN HOEVE: He didn't issue that summons. He didn't think that it should be issued. A prior Zoning Officer did. That is what he testified to.

GRAIFMAN: Were you in court? Were you part of it?

SALUZZI: No.

GRAIFMAN: So who settled the activity, the litigation?

SALUZZI: I guess Mary Rathgeb, yes, I guess Mary Rathgeb did. I don't know who, if we had an attorney here, I honestly don't know exactly what went on there.

TEN HOEVE: I can, do you want me to help? Have you seen a transcript at all?

GRAIFMAN: I read the transcript.

TEN HOEVE: Than you know who was there.

GRAIFMAN: Mr. Saluzzi, you are the Zoning Officer, correct?

SALUZZI: Yes.

GRAIFMAN: There was an alleged violation of 101-24, correct?

SALUZZI: When the truck was stored back there, yes.

GRAIFMAN: Now, if there wasn't a violation of 101-24, based upon the reading of the Ordinance, what would have been required at that time in relation to the fencing?

SALUZZI: I would give them 10 days to remove or abate the violation.

GRAIFMAN: Assuming they wanted to comply with the Ordinance, what would they have to do?

SALUZZI: They would just come in and speak to me. It is simple. And that is what they did. They came in and they asked me if they could just remove the truck, and everything would be fine, and could they park a car back there? I gave them permission to do that.

GRAIFMAN: In order to comply with 101-24, what would they have to do as it relates to screening?

SALUZZI: They are not storing anything back there, so there is no screening required, as far as I am concerned.

TEN HOEVE: I am just going to cut to the chase here. I think what he is trying to ask you is if there was a violation of the Ordinance, would fencing be appropriate or would you need planting?

SALUZZI: No, if there was a violation of the Ordinance, if they were storing a vehicle back there, they would need plantings not a fence.

TEN HOEVE: That is what I think he was trying to get you to say.

GRAIFMAN: Thank you. Did the Cleary's give you the impression that they were just trying to do what would satisfy the Bosi's and make it look good for them, when you spoke to them?

SALUZZI: Well, I think that they thought that maybe the fence would pacify them.

GRAIFMAN: Did you discuss whether a fence or plantings would be better in terms of shielding the car?

SALUZZI: I gave them the option.

GRAIFMAN: Would plantings be less, well, I don't have any further questions.

VON DER LIETH: I have one question. Today looking at what the situation is, is this a 101-24 situation or not?

SALUZZI: No.

WATKINS: Nick, if I could ask you a couple of questions. You are familiar with 101-24, correct?

SALUZZI: Yes.

WATKINS: Okay, based on the original violation which was the truck, would you, in your professional opinion, say that was a violation of 101-24A or 101-24C?

SALUZZI: Oh, I will have to look and see which.....

WATKINS: 101-24A covers the inoperable vehicles, unregistered vehicles, or is that truck considered a violation of the recreational element being "C".

TEN HOEVE: It also covers trucks in excess of 75 hundred pounds.

SALUZZI: You know this truck was not of over 75 hundred pounds, incidentally. It was being stored. Whether it was a car or a truck, if it was being stored, I would have a problem with it.

WATKINS: But you are testifying that the issue that you had with it was the truck, what I am asking was, is that truck a violation of 101-24A or 101-24C?

SALUZZI: C

WALKER: Mr. Saluzzi, is there a time frame that constitutes storage as opposed to parking?

SALUZZI: What is that?

WALKER: Is there anywhere in our ordinances that defines the time frame that separates storage from parking?

SALUZZI: No, I don't believe so.

WALKER: Mrs. Cleary has a car on that property that she used to go to church on Sundays specifically and left it there the other 6 ½ days of the week, would that be parked or stored?

SALUZZI: As Mr. Ten Hoeve said, our ordinances are not always black and white, and there may be a little tweaking here that has to be done. I don't know, but the

way that I interpret this ordinance, if you are going to park a vehicle back there for 2 months or 3 months, then you are storing it. If you are going to come and go every day or every other day. That is an operable vehicle as far as I am concerned and it doesn't apply to this Ordinance.

WATKINS: I don't have anything further.

FLAHERTY: Are there any other questions from the Board? No, okay. Do the attorneys want to summarize?

GRAIFMAN: The issue that came up with the truck, that is not an issue now, to my understanding. My client wanted to explain why it was there.

SALUZZI: That is not an issue anyway. There never was an issue.

FLAHERTY: Before the attorney's summarize, I think we should open it up to the public. Is there anyone from the public who wants to address this hearing or application? Okay, come on up.

TEN HOEVE: Mr. Saluzzi, maybe you could step back so that the witness could sit there. Please raise your right hand. Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

CONTRATTO: Yes I do.

TEN HOEVE: State your name and address please.

CONTRATTO: Cathy Contratto. I live at 25 Pascack Road, in Park Ridge, NJ.

TEN HOEVE: Thank you.

CONTRATTO: I am the northerly neighbor to the Cleary residence. Me and my husband have witnessed this parking situation going on over the last 4 years. Mr. Saluzzi did come on to the property to assess the situation. This was prior to the summons and the settlement in court. Mrs. Cleary and myself, we were talking about the back property with Nick and Nick, we had agreed that shrubbery would, a "U" shaped shrubbery would enclose, that would suffice and the neighbors would be happy with that. He left and that is what we thought was going to happen.

Shortly thereafter, a fence was erected, but it is not a "U" shaped fence. So, from our property we have no problem with Jean parking back there, but we can see because the fence isn't wide enough, because she has to open up her doors to get out, so she pulls it with plenty of clearance, to get out. So, actually, from our property we can actually see her vehicle from our side, so I am here just to say if she could put up some shrubbery, in a "U" shape, tall enough to block it out, that would be nice neighborly settlement.

It would allow the Cleary's to park back there. It would shield it from us and if it was high enough, I have about 11 foot or 10 foot tall arborvitae that block out my neighbor. We have a real good relationship with our neighbor. Everyone wants their privacy. So, if we could just have tall shrubbery to enclose it...

FLAHERTY: Is that a suggestion or a conversation that you had with the Cleary family? Did you suggest that or say that?

CONTRATTO: Yes, Jean and I and Nick were all back there on the property one, I believe it was in the summertime. We had said that shrubbery back there would be a solution. A good solution.

TEN HOEVE: Jean is who?

CONTRATTO: Jean Cleary, Mrs. Cleary. When I left the conversation, I was under the assumption that shrubbery, greenery of some sort, and I showed our arborvitae that we put up.

VON DER LIETH: Was there a reason, as far as you know, why that wasn't done or talked about or?

CONTRATTO: I have no idea. Again, if you see the fence, it is not a "U" shape fence.

FLAHERTY: Since the fence has gone up, you haven't had a conversation with the Cleary family and maybe said why did you not put up bushes?

CONTRATTO: No, I just tried to stay neutral, out of it and wondered. I personally met with Nick to express our concern, myself, and my husband wrote an email.

FLAHERTY: Concern for what, what is your concern?

CONTRATTO: A concern that it needed to be a "U" shape, because we can still see a car. We took a picture of it and we did email it over to Nick, even after the fence went up, we said that this is really not a solution. This is what was created and now we can see it, the car. So, I just want to go on record, if they could just put a "U" shape in their greenery, I really think that it would be a proper neighborly thing.

RAMAN: Where are you north of the property.

GRAIFMAN: The lot right next to it.

RAMAN: The house is all the way in the forward.

CONTRATTO: Yes.

BOSI: This is her whole back yard here. So what we are looking for is arborvitae here, back here, and here so Cathy doesn't see it, nor do we. That is what we are looking for. That is what the Ordinance....

CONTRATTO: Just some sort of shrubbery would block it out.

FLAHERTY: Is there anything else that you would like to add?

CONTRATTO: No. I just want to get that on the record.

FLAHERTY: Okay. Is there anyone else from the public? Okay.

TEN HOEVE: Raise your right hand please. Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

MYERS: I do.

TEN HOEVE: Your name and address please.

MYERS: Katy Myers, 61 Second Street. Concerning Mrs. Contratto. Oh, I am Jean Cleary's daughter. The cars have been parked back there for roughly 25 years, you know. Cathy has lived there for roughly, I will say 10 years. Never once did we hear Mrs. Contratto complain about the cars being there. It was when the Bosi's moved in. That is when she started to not like the car there. So, obviously we were doing it for so long, why all of a sudden?

Another thing with the whole issue of the first summons being issued, my father would park back there on the weekends, obviously all of his daughters had moved out.

He would go there on the weekends knowing that my other sister was coming. My father took ill and he had to be in the hospital for about 2 weeks and his car happened to be back there at that time, for 2 weeks and that is what started the whole deal, was that car being back there for 2 weeks because he was in the hospital and he died.

Now, the week after died, we got the summons from Mary. It was only because the car was there for 2 weeks. That was the longest period we ever had that car back there.

FLAHERTY: Is that the pickup truck that we are talking about?

MYERS: Yes. That started the whole thing. So, just to let you know, this car was never stored there. It was only stored there while he was in the hospital.

FLAHERTY: Okay. Thank you Mrs. Myers. Is there anyone else from the public? Okay. We will have both attorneys summarize.

TEN HOEVE: Try to be brief if you can.

GRAIFMAN: I will definitely try to be brief. First of all I want to thank you for your time, I know this was a very extended and long session. For my client, who is an 80 year old woman, she has been doing this for over 35 years actually. It is important for her safety because of the inability to get out quickly or easily to Pascack Road. It is really not a burden on Bosi's and she has tried to do what she can to shield it.

If you look at the pictures, I think you will see that she has tried to put up a nice fence, she has tried to put the car in a way that is protected. All of that aside, as some people have indicated, this is not a violation of 101-24. It is not an inoperable vehicle. It is not an unregistered vehicle. It is not a recreational vehicle or it is not a recreational trailer. It doesn't fit either the "A" category or the "C" category.

There have been similar statutes that have been stricken. I suggest to you that this statute in this context does not apply and is if it did apply, if it were to be applied, in this situation, it would be overly broad in terms of its interpretation. I would suggest to you that if it is interpreted reasonably and I have heard some testimony and some questions from the Board that indicate that certainly it should be interpreted reasonably and I believe that the Board will interpret it reasonably.

It simply does not apply. My clients, as Mr. Saluzzi said, did not have to put up a fence. They wanted to put up a fence. They want to try to appease their neighbors. Mrs. Cleary, being an elderly woman, I mean I know we don't want to get into the harassment, but she has felt a little intimidated by these people constantly, if she parks on East Avenue, they call the police. The police come and tell her not to park on East Avenue. If she parks on her property, they try to issue a summons and we ended up in criminal court.

So, in summary, I don't think that the statute applies. I think that Mr. Saluzzi was well within his authority and the Borough was well within its discretionary authority to determine a settlement that included a fence and the transcript in the criminal case says as the Board members have pointed out, clearly indicated a fence would be put up. That was the agreement. That is what they did. They abided by their side.

TEN HOEVE: That is also untrue. It didn't say, it said a fence or plantings.

GRAIFMAN: Correct, they gave her the choice.

TEN HOEVE: I am just clarifying the record. Your statement is just as incorrect as Mr. Watkins statement. One says it had to be plantings and one says it had to be a fence. It said either one.

GRAIFMAN: It could be a fence, that is all that I am saying.

FLAHERTY: Can I just clear up one part. We said Mrs. Cleary is uncomfortable backing out onto Pascack, understandably. Is she the one parking in the back or is it mostly the visitors and her daughters?

GRAIFMAN: My understanding is that during the week it is her that has been parking back there but occasionally it also, I think the car that you saw was Liz Cleary's car. So the daughters do park back there. But, I think in the past she has parked back there, just like prior to that her husband had parked back there.

I just think it creates an unsafe situation for multiple cars to try to be pulling out on to Pascack Road.

FLAHERTY: The only one home now is just Mrs. Cleary?

GRAIFMAN: You know, I am not sure. She is here, I can ask her.

FLAHERTY: Maybe I should ask this question before, but I will just keep asking until I am told not to. How many vehicles does Mrs. Cleary own?

GRAIFMAN: As far as I know, she owns one. She has a large family. She has 3 or 4—4 daughters. I mean they are all older and they have cars. They live nearby and they come and visit their mom.

WATKINS: How many people live in the home.

GRAIFMAN: I think she is the only one. I mean I can ask her right now. She is here.

FLAHERTY: I think it is only one.

GRAIFMAN: I think it is just her, now that her husband passed away.

WATKINS: There was an alleged violation of 101-24. We know that to be true.

GRAIFMAN: Excuse me, what do we know to be true?

WATKINS: That there was an alleged violation. A summons was issued for an alleged violation of 101-24, we know that to be true. We know that there was a court appearance. We know that there was a settlement put on the record. We know that Mr. Saluzzi said they didn't even need a fence. Then why was the case settled? The issue here to me is fundamental. There was a belief that there was a violation of 101-24. The issue before the Board, in my opinion, is if there was a settlement based upon an alleged violation of 101-24, then what did that settlement have to consist of? I differ with Counsel. You can't take the Zoning Ordinance and say well it requires A plus B and C that is the Zoning Ordinance. But we are going to settle for X, you can't do that.

So, we really have to focus, I think, on what happened. Okay, I will try the case because I believe that there is no violation of 101-24. They didn't try the case, they settled it. If they settled the case then Mr. Saluzzi has an absolute obligation to comply with that Ordinance. He gave them the option of a fence or shrubbery. That is not what the Ordinance said.

You can sit here tonight and say well it doesn't matter, because we don't think it was a violation anyway. That is not what happened. What happened was, there was an agreement between 2 parties, the plaintiff and the defendant, that they were going to settle this case. The violation was 101-24. So, comply with 101-24. That is what we are saying. We are not saying that she can't park back there. We are saying that if she is going to park back there, then based upon the settlement of 101-24, it is this Board's obligation to interpret 101-24. It is not to interpret whether or not it applies or didn't apply. They should have done that when they were in court. They didn't.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 43

SANDLER: You believe that we are not allowed, as a Board, to consider our interpretation of 101-24?

WATKINS: I believe that based upon.....

SANDLER: Are we bound by what that settlement was? Is that what you are saying?

WATKINS: My position is this. Had they come before you, alright, on, lets assume that Mr. Saluzzi had come in and said listen, I think you are violating 101-24, and they were here and they said we don't think we are because of A and B. You have every right in the world to look at 101-24 and say hey we don't believe that Mr. Saluzzi was correct. There is no violation. But, that is not what happened here. They agreed to a settlement after they settled, then they have to comply with the Ordinance as it relates to the settlement.

GRAIFMAN: Counsel with all due respect, the appeal is of the Zoning Officer's decision. The appeal is not of the legal settlement.

WATKINS: I am not going to argue that. I am saying.....

GRAIFMAN: But you are forcing 101-24 down our throat and

WATKINS: You are assuming that it applies

GRAIFMAN: One second, the application is for an appeal of the Zoning Officer's decision, not of the legal settlement. If it was an appeal of the legal settlement, that would not happen in this room.

WATKINS: What I am suggesting to you is that once that case was settled, based upon a violation of 101-24, my position is that there had to be compliance with that Ordinance. You have every right and you can do what you please. I have a right to say well, the person never had to settle anyway because we don't perceive it as a violation. You have every right in the world to say that.

I am suggesting to you that if there was a position of fencing versus screening, and he gave them the option, that had to originate from that Ordinance. It wasn't just something he made up. So if we are looking at what the ordinance says, then there should have been some compliance with the Ordinance.

All my clients want is screening. We are not suggesting to you that she can't park back there. But, to put 3 pieces of fence catty-corner is not what we think is remotely close to the intent of the Ordinance or what it should be. So all we are asking for is some compliance with 101-24. The neighbor is asking for some compliance. So if they are going to be neighborly here, then we can do that. We are going to be strict constructionist, you can say well it doesn't apply anyway and who cares. That is up to you. But, you have neighbors here that have legitimate concerns. All we are asking to is to attempt to address them. Thank you.

TEN HOEVE: The Board isn't going to discuss this case at this point. There are 2 other applicants who are waiting to be heard tonight. They may not even discuss it this evening, depending on how the other applications go. They will certainly keep you posted if you want to call Lyn Beer, who is not here this evening, she will tell you whether it is going to be on the agenda for discussion at any subsequent hearing or whether it was discussed late tonight, which I kind of doubt.

GRAIFMAN: Thank you very much for your courtesy. If it is going to be discussed at another hearing, how would I learn that. Thank you for your time.

TEN HOEVE: Call Lyn Beer.

WATKINS: Thank you, have a good night.

NEW CASES:

CASE: 10-03 Lot: 3 Block: 905	Application of <u><i>Craig and Maryann DeGeorge</i></u> , 19 Pine Drive for front yard setback variance to construct second floor addition and front porch to an existing house in an R-20 residential zone.
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WALKER: Mr. Chairman, I have the following items to be marked into evidence in regard to this application.

- Item 1 is the application dated 3/23/10.
- Item 2 is certification of service dated 4/02/10.
- Item 3 is legal notification dated 4/02/10.
- Item 4 is proof of payment of taxes dated 4/15/10.
- Item 5 is the deed dated 11/16/98
- Item 6 is the survey dated 3/10/10.
- Item 7 is elevations dated 3/26/10.

That is all that I have at this time, Mr. Chairman.

FLAHERTY: Thank you. Mr. Bruno, are the DeGeorge's here?

BRUNO: Yes.

TEN HOEVE: Mr. Bruno, would you raise your right hand? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

BRUNO: I do.

TEN HOEVE: Would you please state your name and professional address?

BRUNO: Joseph J. Bruno, 29 Pascack Road, Park Ridge, NJ.

TEN HOEVE: Will the property owner be testifying, or are you testifying alone?

BRUNO: He will be testifying as well.

TEN HOEVE: Would you raise your right hand please? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

DE GEORGE: I do.

TEN HOEVE: Please state your name and address.

DE GEORGE: Craig DeGeorge, 19 Pine Drive, Park Ridge.

TEN HOEVE: Thank you very much. Mr. Bruno, I suggest that you could move this quickly and one question, is there a soil moving permit required for this as well or not?

BRUNO: No, this is strictly a second floor addition. It is a second floor addition with a small portico, but it doesn't come anywhere near the ordinance. I will be brief.

The house, as it exists, is a 3-bedroom, 1 ½ bathroom split on Pine Drive. It is in the R-20 zone. Actually the property butts up against the Borough brook by Atkins Glen. It is in the R-20 zone on the South side of Pine Drive. The houses across the street on the North side of Pine Drive, are in the R-15 zone.

As stated before, in the application, in the R-20 zone the required front yard setback is 40 feet. We are proposing 33.8 feet. As shown on the survey prepared by

Daniel Dunn, which was also included in the application package, where presently exists a setback of 39.7 feet from the front lot line to the house. As we stated, the 33.8 feet front yard setback is to the top platform where we propose to build the front portico, which is open on 3 sides, so that is to provide for cover from weather, receiving guests, and when Mr. and Mrs. DeGeorge come home with their children, they can at least fumble for keys under cover as well as providing for some aesthetic benefit to the residence.

It is important to note, I took a measurement of the adjacent residence to the East and, oh, before I continue, I apologize, I have 2 sets of photographs that I would like to distribute to the Board. They are both the same.

WALKER: That will be Item 8, 2 sets of 4 photos.

BRUNO: I will describe them in a moment. Photo 1 is a front elevation photo of the subject property. Photo 2 is the house directly across the street. Photos 3 and 4 are of # 17 Pine Drive, which is the house directly adjacent to the East. The first of those 2 photos, shows the house from sort of a head-on angle shot.

The second of those 2 photos is taken from the front of the DeGeorge's house looking due East, which shows the sort of the side front view of # 17 and that house is quite a bit forward of the DeGeorge's property. I took a measurement and found that from the front projection of that adjacent house, # 17, to the curb line is 38 feet 4 inches. If you subtract the 10 foot right-of-way, you have actually 28 foot 4 inch front yard setback to that house, and that is to the front wall of the house, the front enclosed wall of the house.

What we are proposing for the open front portico is 30.8 feet. So, it is quite a bit further away than the existing house. The only reason or the only purpose that we mention that is to demonstrate to the Board that this rather small structure, small, open of 3 sides structure, is definitely not unusual in terms of its setback, relative to other properties in the area.

WALKER: Mr. Bruno, the only variance this property needs is for that 6 foot landing and a little roof over it?

BRUNO: Right, well even, Mr. Walker, that is what is missing on there, but if we had to, for this front, the second floor projection, which we propose to come out flush with the existing projection. That would be at 37.7 feet. So, if we did not have, if we were not proposing the portico, that variance would go away, but we would still have a variance for the front yard setback to the proposed second floor.

WALKER: Will that come out more than 2 feet from the.....

BRUNO: No, it comes out flush with the existing, the 2 feet to the existing bedroom projection, as the house is at this present time.

TEN HOEVE: No, I don't, that is....

WALKER: I thought that a 2 foot overhang was allowed.

TEN HOEVE: I don't believe that is the case. It is for projections for windows, for projections for chimneys.

RAMAN: Things of that nature, but not for entire additions.

TEN HOEVE: Otherwise you could cantilever it significantly closer.

BRUNO: Yes, and even front steps are permitted to encroach, I believe 4 feet into the front yard setback, if I remember correctly. But, even if we did not have the portico, we would still require a variance for the second floor addition, that as you can see from the plan, it would come out no further than the existing bedroom that is a half a

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of April 20, 2010 – Page 46

lever lower. You can see from the front elevation, or the North, is that the existing bedroom is here and we are proposing to build the new addition above what is now the living room, the kitchen, and the dining room, which is a half a level down from the existing bedroom, as is typical of a split level of this type.

TEN HOEVE: So, what will the distance be from the overhang to the front lot line?

BRUNO: That will be 37.7 feet.

TEN HOEVE: Then the portico will extend, that will be the 33.8, and that is an entirely open porch, other than the roof? It is open on all sides?

BRUNO: Open on 3 sides. The one side that is not open is where it abuts the house.

TEN HOEVE: Thank you.

FLAHERTY: Are there any other questions from the Board about this application? Is there anyone from the public to comment on this application? Okay, well thank you. We will consider the application tonight and you can call the office in the morning.

CASE: 10-04 Lot: 24 Block: 2003	Application of <u>Michael McCoy</u> , 4 John Court for front, side and Floor Area Ratio variances to construct addition to existing house in an R-15 residential zone.
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WALKER: Mr. Chairman, I have the following items to be marked into evidence in regard to this application.

- Item 1 is the application dated 3/23/10.
- Item 2 is certification of service dated 4/04/10.
- Item 3 is legal notification dated 4/02/10.
- Item 4 is proof of payment of taxes dated 4/15/10.
- Item 5 is the deed dated 8/12/03.
- Item 6 is the survey dated 1/26/10.
- Item 7 is elevations dated 3/26/10.
- Item 8 is 2 sets of 4 photographs, undated.

That is all that I have at this time, Mr. Chairman.

TEN HOEVE: Mr. Bruno, you are previously sworn in and you are still under oath. Would the other witnesses raise their hands, please. Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

MC COY: I do

MC COY: I do.

TEN HOEVE: Please state your names and addresses.

MC COY: Michael McCoy, 4 John Court, Park Ridge, NJ

MC COY: Joanne McCoy, 4 John Court, Park Ridge, NJ.

TEN HOEVE: Thank you.

FLAHERTY: Who wants to take us through the application?

BRUNO: Mr. McCoy will just start out with a brief description of what the need for the addition is and then I will take care of technical aspect.

M. MC COY: We have a growing family and a 3-bedroom house that has 3 very small bedrooms. At this point, we can not have overnight guests. We need another bedroom. Our kitchen is, while very modern, it is cramped and difficult to work in. It has little to no counter space. We also have severe storage issues in the house.

Our storage basically amounts to an average size closet in each of the bedrooms, a small coat closet on the main floor and a small coat closet on the bottom floor. While we have a very large attic, probably $\frac{3}{4}$ of it is inaccessible, due to the fact that there is a skylight for the bathroom and air handling equipment for the air conditioning system, both of which were put in before we bought the house.

We also have a pool on the property, and with that we have a need for an additional bathroom downstairs to make access from the pool area to a bathroom without having to traipse throughout the living areas. Right now, the only way to access a bathroom on the main floor would be from the deck which comes in to the dining room and you would have to go through the dining room, through the living room to get to a bathroom from the pool area.

We would like to put a bathroom in on the lower level to alleviate that. Those are our major needs for this expansion.

BRUNO: I will just explained the existing plan at present. At present, the house is bi-level, raised ranch, however you want to term it. If you look at the front entrance, you will see that the front door is roughly midway between the lower level, I won't call it basement because of the topography it is really, you walk out in the back. So, you walk in at a midlevel and you go down a half a flight to a 2-car garage, and what is essentially a large type family room, and a storage room.

At the main floor, and this is showing everything, but at the main floor you have the stairs, of course, you have 3 small bedrooms, 2 small bathrooms, the kitchen and the dining room. Now, as Mr. McCoy stated, on the site, and I believe that you also got a site plan prepared by Lantelme, Currens Associates, that shows an inground swimming pool at the southwest corner of the property. So, do to the topography, in order to go from the pool to the inside for to use a bathroom or what not, you have to come up the stairs onto the deck, and then through the house and into the bathroom, which poses some supervisory problems, because of small children, bathroom, pool, you get the picture. You know, trying to juggle all of those.

So, the goal here was to create more living space that would satisfy not only the growing nuclear family, but the extended family that are from other parts of the state and the country, coming to visit occasionally family gatherings etc. So, what we would do is to create more of a center hall colonial, where we would be entering at the main floor level, going down a full flight of stairs into the lower or ground floor level as it goes to the back.

We would still maintain the garage, a den area, family gymnasium, utility room, the bathroom, that we stated the need for, with a mud room and storage. There is also a dog grooming area and that is for the McCoy's have a show dogs, that they keep and they take care of.

At the main level, as I said, we create the center hall, a dining room, kitchen, family room, guest bedroom with a bathroom and a closet and a home office. Mr. McCoy works in the city and there are times that he does work from home. It is not the type of office where he has people coming to and from the home, it is strictly for his use and also for managing the affairs with the dog, the show dogs.

Then there would be a deck overlooking the pool on the side and also wrapping around for dining use. Also, I would like to state that we are also proposing a front porch that wraps around the side, a porch for both utility benefit, a nice place to sit. It is a quiet

cul-de-sac, so we would like to be able to enjoy the neighborhood, have the children play on the lawn and ride bicycles in the street, it is one of the joys to buying a house on a cul-de-sac.

Then, at the second floor, we have 3 bedrooms, 2 baths, and a laundry. There is a walkup stair to the attic, but I purposely put the access through the walk-in closet, so that it could never be either used or construed to be used for living space upstairs and with the mechanicals and storage, it wouldn't be appropriate anyway. But, I just mention that to the Board because anytime either this Board or any board sees a full walk up attic, there is always a little nemesis about that, but nobody is going to do that in the configuration that I have here.

As stated, there are 3 variances that are required, front yard setback. In the R-15 zone a 30 foot setback is required and we are proposing 25.4 feet to the porch. It is our opinion, that since the house is on a cul-de-sac, the porch is open on all sides, except the side, of course, that it faces the street, that it will not be imposing. You can see from the North elevation rendering here, that the house presents a very pleasant face to the street and to the neighborhood.

The other variance required the side yard setback, 18 feet is required, and we are proposing 17.4 feet to the porch at the, I believe it is the northwest corner and because the lot goes off on an angle, so it is just at that corner, for a very brief amount of time.

The Floor Area Ratio variance, the way the ordinance is written, and it was recently changed, when we first started to work on the project, before the ordinance was changed, it wasn't a consideration because of the former requirements. The permitted FAR is 25% with a maximum of 4,250 square feet. Now, if you take 25% of the existing lot area, which is 21,825, we would be able to have in access of 5,000 square feet without a problem.

But, the way that the ordinance was written, it is 25% with a maximum of 4,250 square feet. We are proposing is 24.25%, which is below the 25%, but it is 5,293 square feet, which is roughly 1,000 square feet over. I would say that a dual hardship here exists. One is that the property is more characteristic of the R-20 lot then a R-15 lot, due to its size. The R-20 lot being 20,000 square feet minimum and this lot having 21,825 square feet.

Due to the existing topography on the site, while we meet the height regulations, the lower level or the garage, what would normally be considered a basement, due to the fact that it is higher out of the ground then the ordinance allows for it not to be considered in the FAR calculation, that is the reason why we have to count it. So, the topography is the other mitigating factor in this Floor Area Ratio variance requirement.

WALKER: Wouldn't the basement be counted whether it is above ground or below ground?

BRUNO: Not with the new change that was instituted.

TEN HOEVE: It would have been considered under the old one, anyway.

BRUNO: It would have been considered under the old one, but, under the new one we end up not being able to discount it because of the topography.

TEN HOEVE: Right, but that is what he is saying, is, it really hasn't affected your application, because if we didn't change the ordinance, you would still have the same FAR variance.

BRUNO: No, we wouldn't. Even though it was counted, it would still be, there was a much higher permitted square footage with the old ordinance.

TEN HOEVE: The max?

BRUNO: Yes.

TEN HOEVE: Under the R-15?

BRUNO: In the R-15 before the change.

TEN HOEVE: This would have fallen under the maximum in the R-15?

BRUNO: Yes.

TEN HOEVE: I am not sure what it was.

BRUNO: I brought the cheat sheet that I had from the one I mailed. It would have been, the FAR permitted and I have it here, was 35%, in the old ordinance.

TEN HOEVE: Yes, but wasn't there a max?

BRUNO: Yes, the max was 5,775.

TEN HOEVE: In the R-15?

BRUNO: In the R-15. It was cut down by 1,500 square feet. That is my point. Either way we would have had to count the basement but because of the ordinance change and the definition, we would have had to count.....

TEN HOEVE: I know the reason for that limitation is in situations such as this, is to try and prevent, obviously this is an oversized lot in the zone that it is located in. The intent of putting a limitation in was to prevent the construction of homes that would be significantly oversized with regard to other homes in the neighborhood.

BRUNO: If you look in the photos, I don't know the square footage of the house next door, but the second photo in that group is of the house, which is located to the North and West. You are able to see that it is quite a large house as it presents itself to the street.

FLAHERTY: That is an R-15 also?

BRUNO: Yes. My point here is that what we are trying to do is not to create, we are trying to balance the need for the space as well as the scale, because I understand the purpose for the FAR is to not have homes that are out of scale with the neighborhood and so on. As I testified before this Board many times, a number of boards, is that we try and keep the scale of the house down. We are not building monolithic blocks here.

As you can see, the eaves come down below the window head height. A normal window head height is 6 foot 8 inches above the floor, so you can see here even with the old overhang, we are at about the 6 foot 8 plate height. If you go to the side elevations I can demonstrate that a little more clearly.

If you look at the East elevation, for instance, where I am pointing, you see where the roof comes down, it comes down to the same height as the window. The normal thing in this dash line that I am pointing to here, is the 8 foot ceiling plate line. So, normally, in say a normal or usual center hall colonial, you would have this plate line at the 8 foot height, another 1 foot 4 above. So, what we are trying to do architecturally, is by varying the various masses, by varying the roof height, and the roof angles, and by introducing dormers, we are trying to mitigate the overall scale and the box of the house if you will.

We are trying to also give the neighborhood a well intentioned addition or a well intentioned building to look at if, and please don't take offense to this, but if you look at the photo, the existing house, it is just a box with some holes cut out for windows. I think we have been very sensitive to the fact that, and I always say that when you ask for

a variance, you know, you come in with your hat in your hands, there is no question about that.

FLAHERTY: So if you break this down, you are looking at for 3 variances. The side one is from the patio, from the porch, it should be 18 feet and you are looking at 17.4. The front you are asking come in at 25.4 and it should be 30. The FAR.....

BRUNO: We are less than the 25%, but we are more than the maximum in terms of the stated square footage. It is sort of, and I guess, and I can only suppose this, but.....

TEN HOEVE: That is what I explained before. The purpose is to deal with situations just like this, where you have a lot that is much larger than most of the lots in the zone. So, that the FAR square footage maximum limitation was imposed so that someone couldn't come in, and, if you just had a percentage limitation, put up a very large structure that might dwarf other homes in the area. So, it is almost as if the percentage limitations becomes irrelevant.

That is why I asked you the question, are there other homes in the neighborhood that.....

BRUNO: Yes.

WALKER: Could you just make a guess of 6 John Court?

BRUNO: I would probably say, well besides your house, there is one or 2 other houses.

WALKER: The one that is straight ahead when you go into that cul-de-sac.

BRUNO: The one that is straight ahead is, it is very large. I don't know the square footage, but it is massive and it is definitely wider. That I could tell you without even measuring it, that it is wider.

HOSKINS: That is the second house to the right?

BRUNO: That is the house directly to the right as you are looking at this house. Now, for instance, in terms of the, and just to give you just a scale of the house versus the property, we are permitted in the building code to be 20%, we are at 16.5%. So it is not as if we are pushing that envelope, and in my experience houses that are ill-fitting on the lot, are more ill-fitting because of lot coverage than for floor area ratio.

TEN HOEVE: it is not a question of ill-fitting on the lot. Your lot is plenty big enough. It is ill-fitting in the neighborhood is what I am trying to get you to give testimony.

BRUNO: It is not ill-fitting in the neighborhood, that is why I show that photograph.

FLAHERTY: It is ill-fitting when compared to the R-15 numbers.

BRUNO: Compared to the numbers, when you look at just the raw numbers, it is ill-fitting.

TEN HOEVE: I am just trying to get you to tell me that there are many other homes in this neighborhood that are large homes.

BRUNO: The only one that I can testify to is the one directly to its right as you are looking at it. That frankly is the most relevant one.

FLAHERTY: I know the road, I don't know if other members of the Board have had a chance to drive up the road.

HOSKINS: I went passed there today. It actually would fit, in my opinion, it would fit.

FLAHERTY: Okay, it would fit in the neighborhood.

HOSKINS: I mean, the house to the right, this is right now a regular ranch, it would be, in my estimation a good fit.

BRUNO: One vantage point you are seeing the whole part of this house and that is one of the goals. The numbers sometimes don't tell the whole story and in this case, the numbers definitely don't tell the whole story.

SANDLER: We have to take into consideration that this is a big lot for an R-15.

BRUNO: That is correct.

HOSKINS: Exactly.

BRUNO: The lot is more in kin to an R-20 than an R-15.

RAMAN: It is not any wider than the original house, correct?

BRUNO: The width at the, in the front, we are making it wider by 6 feet, and it does comply with the ordinance. The maximum dwelling width would be 69.89 feet, so essentially it is 69 feet 11 inches, and the house is at 59 feet 10 inches, so it is about 10 feet narrower than it is permitted to be.

FLAHERTY: Is there anyone in the audience that wants to address or comment? Come on up.

HOSKINS: I just have one question before. I know that you mentioned it, but the dog run, is that for your dogs?

MC COY: Yes.

HOSKINS: The cubbies are for what, again?

MC COY: The cubbies are for things like shoes, backpacks, and things like that.

HOSKINS: Okay. The dog run is for your dog?

MC COY: Yes.

TEN HOEVE: How many dogs to you have?

MC COY: Two permanently.

TEN HOEVE: Do you breed them there?

MC COY: On rare occasions.

SANDLER: Is that why you have a dog grooming?

MC COY: We have show dogs and they require a significant amount grooming.

TEN HOEVE: Do you do that yourself?

MC COY: My wife does.

TEN HOEVE: Please raise your right hand? Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

FELLOWS: I do.

TEN HOEVE: Please state your name and address.

FELLOWS: My name is Sharon Fellows. I live at 5 John Court. I am the big house you are talking about.

TEN HOEVE: The massive house?

FELLOWS: The massive house. It is a comfortable house. It looks bigger than it is. Actually, Joann and Mike live next door to me. I am in that house almost 7 years. They moved in about a month after we did. They are wonderful neighbors and I am loving this for them. I think it is going to be absolutely beautiful. I think it will be a good addition to our neighborhood. I know our house is kind of big and I think it is going to kind of balance out. It is a cul-de-sac, so I am just here for support.

TEN HOEVE: It is very nice to see neighbors that get along.

FELLOWS: I am just am here for moral support to wish them well in this project.

FLAHERTY: Thank you. Any other questions from our Board members or Professionals?

MARTIN: I just have one question for Mr. Bruno. Understanding that the front aesthetics of this house are not the focus of this application, do you feel that the aesthetics of this house fits in with the rest of the cul-de-sac?

BRUNO: Yes. Whenever I, like for instance, if this house were say on Chestnut, in that area, you know, that area of Chestnut had a lot of California style ranches that were built, so I would look to the vernacular, the architectural vernacular, that has already been established. In this case, the cul-de-sac, it has sort of a traditional feel. I won't say colonial, because that is not what it is, but the traditional American feel.

In that case, and what I do in many of my designs in Park Ridge, I look to go back to the, what I call the original Park Ridge, which is the Park Ridge before the 40's, and look to that. My own home was built in 1980, so I have a great affinity for that and especially with this. To take the established style on the cul-de-sac and then to enhance it and to go back in time, I thought was the right way to go.

The thing is, and I know that every project stands on its own, but if you recall, a couple of years ago, I was before this Board on a project on Mayo Drive and every once and awhile, especially when I have a project that needs a variance, I go back to, as a reality check, to essentially make sure that I did the right thing. Then I look at it and say yes, that was the right thing. As a matter of fact, the McCoy's visited that house and wanted to buy it. So, it actually took a lot of the design cues from that house and invoked them here. Like I said, the architectural vernacular is still very similar. It fits the cul-de-sac architecturally, and it also fits the scale of the houses on the cul-de-sac, particularly the one next to it because is a massive structure as you come up and I think that this will compliment it very, very well.

It seems to be the natural progression of things and you know, like I said, the size of the lot can definitely accommodate it. It is not an over building of the site, by any stretch of the imagination and especially, as I said, when houses are ill-fitted for the lot is more apparent if there is a lot coverage excess than this. So, I would say that it is not excessive for the lot especially since it is commensurate with what is right next door to it.

SANDLER: Is the rest of the street oversized lots with large houses on them?

BRUNO: I have not looked at, I have not studied, just looking at the Tax Map, the look to be commensurate with each other.

SANDLER: So, there are other large houses?

BRUNO: Yes.

WALKER: There are only 3 lots there?

BRUNO: There are only 3 on the cul-de-sac, but others in the area. That area trends to be larger lots than what you would normally expect in an R-15 zone.

FLAHERTY: For the record, can we ask what is the breed of dog?

MC COY: Soft Coated Wheaten Terriers.

FLAHERTY: Thank you for your time. You can call the office in the morning.

WALKER: Actually that is just a couple of hours.

BRUNO: Can we stick around?

TEN HOEVE: No, we have other business to take care of.

BRUNO: Can we stick around anyway?

TEN HOEVE: Sure you can.

PENDING CASES:

CASE: 10-01 Lot: 6 Block: 2006	Application of <i>Julianne and Philip Iocono</i> , 28 Wield Court for rear and side yard variances to construct an in-ground swimming pool to an existing house in an R-20 residential zone. Hearing held March 16, 2010, determination forthcoming this evening.
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WHEREAS, JULIANNE & PHILIP IOCONO (hereinafter referred to as “Applicant”), being the owner of premises known as 28 Wield Court, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also known as Lot 6 of Block 2006 on the Tax Assessment Map for the Borough of Park Ridge, have applied to the ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE seeking a rear yard variance and building coverage variance from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge to permit the construction of a swimming pool; and

WHEREAS, the premises are located in an R-20 Zoning District as same is defined by the Zoning Ordinance of the Borough of Park Ridge; and

WHEREAS, Applicant has submitted a survey of the premises prepared by Robert Cigol, Licensed Surveyor of the State of New Jersey dated January 28, 2010; and

WHEREAS, a hearing was held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on March 16, 2010, upon due notice as required by law; and

WHEREAS, the BOARD has carefully considered the application and all testimony and evidence submitted in connection therewith;

WHEREAS, no person appeared in opposition to the requested variances;

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE that the BOARD hereby makes the following findings of fact:

1. Applicant is the owner of a single-family home located at 28 Wield Court in the Borough of Park Ridge. Applicant’s lot is located in the R-20 Zoning District,

however, the lot fails to comply with several bulk restrictions applicable to the district. The lot has an area of 15,136 square feet rather than the 20,000 square feet required in the R-20 Zoning District. The lot depth is but 98 feet rather than the 50 feet required in the District.

2. Applicant seeks to construct a swimming pool in the northeast corner of the property. The pool will have approximate dimensions of 32 feet by 16 feet. The pool will be surrounded by a concrete walkway approximately 4 feet in width. The pool, however will not comply with three requirements of the Zoning Ordinance:
 - a) The pool will be situated but 8.44 feet from the rear property line at its closest point and but 18.70 feet from the side property line at its closest point. The Zoning Ordinance requires that swimming pools be placed no less than 20 feet from any property line.
 - b) The pool walkway will be situated 12.13 feet from the rear property line. The Zoning Ordinance requires that pool walkways be placed no less than 15 feet from any property line.
 - c) The pool will extend several feet nearer to the front property line than the current rear building line of the dwelling. The Zoning Ordinance requires that no pools be placed nearer to the front lot line than the rear building line of the existing dwelling.
3. Applicant and Applicant's surveyor testified that there is no other location on the property that would allow the installation of the swimming pool, certainly no other location that would also not require variances from applicable provisions of the Zoning Ordinance. Applicant testified that the undersized nature of the, coupled with the location of the dwelling, made it impossible to construct the pool in any other location. Applicant also testified that the property immediately to the north of the Applicant's lot is undeveloped, and that the home located to the rear of the Applicant's property is situated a substantial distance from the rear lot line.
4. The BOARD finds that the unique, undersized nature of the Applicant's lot, coupled with the location of the existing dwelling on the lot, creates a hardship as defined by the Municipal Land Use Law. Moreover, the BOARD is very cognizant of the fact that the Applicant's home is preexisting, nonconforming structure, a home that was constructed prior to amendments to the Zoning Ordinance necessitating the rear yard variance. The BOARD finds that it would be impossible to construct the proposed pool without the need for the requested variances in view of the location of the home and the size of the lot.
5. The BOARD further finds that if certain measures are taken to minimize any impact upon surrounding properties, particularly in light of existing development in the area, there will be no impact on surrounding parcels. Specifically, the BOARD finds that the Applicant shall install a row of staggered plantings (including trees and shrubbery) along the rear property line from the northeast corner of the property to the point of intersection with a "proposed PVC fence" shown on the Applicant's survey, and that the installation of said plantings will eliminate any negative impact upon surrounding properties.
6. With the required plantings, the BOARD further finds and concludes that there will be no negative impact whatsoever resulting from the proposed pool, nor the granting of the requested yard variances.
7. Finally, the BOARD also finds and concludes that the proposed improvement will not result in any substantial detriment to the public good, nor will same impair the intent and purpose of the Zone Plan or Zoning Ordinance of the Borough of Park Ridge in any way.

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE, by virtue of the foregoing, and pursuant to the authority of N.J.S.A. 40:55D-70, that the BOARD does hereby grant the Applicant's requested variances to permit the construction of the proposed swimming pool subject to the following conditions:

- A. That Applicant construct the proposed improvements as set forth on all final plans submitted to the BOARD and that same not be constructed in such a fashion so as to exceed the scope and extent of the improvement set forth on all final documents submitted and described in all testimony presented to the BOARD.
- B. That Applicant comply with all Borough Ordinances and State Statutes with regard to the application for building permits and that the construction of the proposed improvements be in compliance with all applicable codes with all required approvals to be rendered by appropriate officials. Nothing contained herein shall be construed to represent an approval of the specific building plans submitted by the Applicant, said approval to be granted by appropriate Borough Officials.
- C. That the Applicant install staggered plantings along the rear property line from the northeast corner of the property to a point shown on the Applicant's survey as "proposed PVC fence." Said plantings shall be selected by the Applicant from the Schedule of Plantings attached hereto, however, the Applicant shall plant no less than eight (8) evergreen trees and no less than sixteen (16) shrubs from the Schedule and said plantings shall be of the size and spacing included on the Schedule of Plantings. Said plantings shall be subject to inspection and approval of the Borough Construction Code Official. No building permit shall be issued until said plantings have been inspected and approved.

SCHEDULE OF PLANTINGS

8 Evergreen Trees
16 Shrubs

<u>Common Name</u>	<u>Planted Size</u>	<u>Spacing on Center</u>
Yoshino Cryptomaria	6 to 7 feet	10 to 12
Leyland Cypress	6 to 7 feet	10 to 12
Atrovirens Arborvitae	6 to 7 feet	10 to 12
Red Holly	6 to 7 feet	10 to 12

Evergreen Shrubs

Sea Green Juniper	2 to 3 feet	6 feet
Meserae Holly	2 to 3 feet	6 feet
Inkberry Holly	2 to 3 feet	6 feet

The resolution was offered by Dr. von der Lieth and seconded by Mr. Hoskins.

ROLL CALL:

Ayes: Mr. Flaherty, Mr. Hoskins, Mr. Martin, Mr. Sandler, Dr. von der Lieth, Mr. Walker

Abstain: Mr. Brennan, Mr. Raman

CASE: 10-02 Lot: 11 Block: 2206	Application of <u>Albert Kranzo</u> , 1 Crossley Place for rear yard and building coverage variances to construct new larger garage to existing house in an R-15 residential area. Hearing held March 16, 2010, determination forthcoming this evening.
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WHEREAS, ALBERT KRANZO (hereinafter referred to as “Applicant”), being the owner of premises known as 1 Crossley Place, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also known as Lot 11 of Block 2206 on the Tax Assessment Map for the Borough of Park Ridge, has applied to the ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE seeking a rear yard variance and building coverage variance from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge to permit the construction of an addition to an existing home; and

WHEREAS, the premises are located in an R-15 Zoning District as same is defined by the Zoning Ordinance of the Borough of Park Ridge; and

WHEREAS, Applicant has submitted a survey of the premises prepared by Christopher Lantelme, Licensed Engineer and Surveyor of the State of New Jersey dated February 9, 2010, together with sketches of proposed improvements prepared by Joseph Bruno, Licensed Architect of the State of New Jersey; and

WHEREAS, a hearing was held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on March 16, 2010, upon due notice as required by law; and

WHEREAS, the BOARD has carefully considered the application and all testimony and evidence submitted in connection therewith;

WHEREAS, no person appeared in opposition to the requested variances;

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE that the BOARD hereby makes the following findings of fact:

1. Applicant is the owner of a single-family home located at 1 Crossley Place in the Borough of Park Ridge. The Applicant’s lot is a corner lot situated at the intersection of Crossley Place and Clifford Drive.
2. Applicant’s lot is located in the R-15 Zoning District, however, Applicant’s lot is unique in that the lot is substantially undersized, having a lot area of approximately 10,500 square feet as opposed to the 15,000 square feet required in the R-15 Zoning District. The property is also subject to normal bulk restrictions applicable to a corner lot.
3. The Applicant’s lot is improved with a single-family dwelling with an attached one-car garage. The home currently encroaches into the required rear yard, being situated but 25.2 feet from the rear lot line (as define by the Zoning Ordinance) at its closest point rather than the 40 foot rear yard setback required in the R-15 Zoning District. Applicant seeks to expand the existing garage from a one-car to a two-car garage, constructing the garage addition so that same is in line with the existing rear building line of the home and garage. The addition thus will not be any nearer to the rear lot line than the existing home and garage. Since the garage addition will enlarge the existing encroachment in a linear fashion, a rear yard variance is required.
4. The construction of the proposed garage will also result in the need for a second variance. The proposed construction will create a total building coverage of 21.26%, slightly greater than the 20% building coverage permitted in the R-10 Zoning District. Once again, the substantially undersized nature of the Applicant’s lot creates the need for a building coverage variance.

5. The BOARD finds that the unique, undersized nature of the Applicant's lot, coupled with the location of the existing dwelling on the lot, creates a hardship as defined by the Municipal Land Use Law. Moreover, the BOARD is very cognizant of the fact that the Applicant's home is a preexisting, nonconforming structure, a home that was constructed prior to amendments to the Zoning Ordinance necessitating the rear yard variance. The BOARD also finds that it would be impossible to construct a garage addition without the need for a rear yard variance in view of the location of the home and size of the lot.
6. The BOARD further finds that the Applicant has taken measures to insure that the proposed addition will not result in any significant encroachments into required yard areas. The garage will not encroach into the required side yard. More importantly, the BOARD finds that there will be substantial benefits resulting from the construction of the proposed garage. The proposed structure will provide an additional enclosed parking area for the homeowner's vehicles thereby achieving a goal and objective of the Zoning Ordinance of the Borough of Park Ridge and the Municipal Land Use Law.
7. The BOARD further finds and concludes that there will be no negative impact whatsoever resulting from the proposed new addition, nor the granting of the requested rear yard variances. The BOARD specifically finds that the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.) will be advanced by a deviation from the requirements of the Zoning Ordinance of the Borough of Park Ridge. The BOARD specifically finds that the Applicant's proposed improvement will constitute a substantial benefit.
8. Finally, the BOARD also finds and concludes that the proposed improvement will not result in any substantial detriment to the public good, nor will same impair the intent and purpose of the zone plan or Zoning Ordinance of the Borough of Park Ridge in any way.

NOW, THEREFORE, BE IT RESOLVED BY THE ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE, by virtue of the foregoing, and pursuant to the authority of N.J.S.A. 40:55D-70, that the BOARD does hereby grant the Applicant's requested rear yard variance and building coverage variance to permit the construction of the proposed new addition subject to the following conditions:

- A. That Applicant construct the proposed improvements as set forth on all final plans submitted to the BOARD and that same not be constructed in such a fashion so as to exceed the scope and extent of the improvement set forth on all final documents submitted and described in all testimony presented to the BOARD.
- B. That Applicant comply with all Borough Ordinances and State Statutes with regard to the application for building permits and that the construction of the proposed improvements be in compliance with all applicable codes with all required approvals to be rendered by appropriate officials. Nothing contained herein shall be construed to represent an approval of the specific building plans submitted by the Applicant, said approval to be granted by appropriate Borough Officials.

The resolution was offered by Mr. Walker and seconded by Mr. Sandler.

ROLL CALL:

- Ayes:** Mr. Flaherty, Mr. Hoskins, Mr. Martin, Mr. Sandler, Dr. von der Lieth, Mr. Walker
- Abstain:** Mr. Brennan, Mr. Raman

APPROVAL OF MINUTES:

The Chairman entertained a motion that the January 19, 2010 minutes be approved as submitted. So moved by Mr. Sandler, and seconded by Mr. Martin.

ROLL CALL:

Ayes: Mr. Flaherty, Mr. Hoskins, Mr. Martin, Mr. Sandler, Mr. Walker

Abstain: Mr. Brennan, Dr. von der Lieth, Mr. Raman

The Chairman entertained a motion that the February 16, 2010 minutes be approved as submitted. So moved by Mr. Martin, and seconded by Dr. von der Lieth.

ROLL CALL:

Ayes: Mr. Flaherty, Mr. Martin, Mr. Walker, Dr. von der Lieth, Mr. Raman, Mr. Brennan

Abstain: Mr. Hoskins, Mr. Sandler

The Chairman entertained a motion that the March 16, 2010 minutes be approved as submitted. So moved by Mr. Sandler, and seconded by Dr. von der Lieth.

ROLL CALL:

Ayes: Mr. Flaherty, Mr. Martin, Mr. Walker, Dr. von der Lieth, Mr. Hoskins,

Abstain: Mr. Brennan, Mr. Raman

NEW BUSINESS:

None

CORRESPONDENCE:

League of Municipalities re: April 2010 - distributed

APPROVAL OF VOUCHERS:

None

DISCUSSION OF APPLICATIONS:

The first case to be discussed was the application of Michael McCoy. The members felt that the fact that it was an oversized lot should not be the deciding factor in the granting of this application. They discussed that oversized lots were the primary reason for the ordinance. However, the fact that the other homes in the vicinity would be a reason to grant it. They felt that the immediate neighbor's home was quite massive and there was only one other home on the street.

Some members felt that the existing house really doesn't fit in the neighborhood because it is so much smaller than the immediate neighbor. They stated that had the other homes been the same size or smaller, the variance would be more difficult to consider. Attorney authorized to draw a resolution of approval for the next meeting.

The next case to be discussed was the application of Craig and Maryann DeGeorge. The members were all in agreement that the variance should be granted. Attorney authorized to draw a resolution of approval for the next meeting.

The Board then discussed the application of Richard and Lynn Bosi. The members felt that there is no violation and that the property does not apply to the 101-24

ordinance. They felt that no vehicle was being stored. The owner was in the hospital. The attorney advised that when the settlement was reached in court, the Bosi's were not present, and the Zoning Officer was not in court. The only people that were in the court were the Cleary's and their attorney and the Borough Prosecutor. The Prosecutor met with the Cleary's and their attorney and fashioned the settlement. The settlement was to put up a fence OR arborvitae.

They discussed that the settlement is irrelevant. Some members felt that the Cleary's were pressured into making the settlement due to the pressures of the complainant and the police. They discussed that in Municipal Court, in neighbor disputes, it is common for Judges and Prosecutors to attempt to resolve them without litigation and that was the preferred course of action, and that is what those parties were doing, without any in depth analysis of the requirements of the Zoning Ordinance.

The Board felt that they were simply trying to pacify a situation. The Board also felt that it all started with an incorrect interpretation of the Zoning Ordinance. They felt that Mrs. Cleary could legally park her car in the street and there is nothing to stop that. It is legally allowed to do so. They felt that she is allowed to park her car on her property and she doesn't have to put up a fence.

The Board also felt that it was better to park on the property, rather than the street because the street is very narrow. They felt that the entire problem was caused due to the fact that the prior Zoning Officer issued, what they considered, an incorrect interpretation of the Zoning Ordinance. They felt that the prior Officer was a very short term Zoning Officer and that she had not been well trained. She had never appeared before the Zoning Board with any testimony. It was the Board's opinion that in this case, she rendered an incorrect determination that it violated 101-24C and that Mrs. Cleary was storing a vehicle in the rear yard, which was not the case. That is what triggered the entire problem and that is what led to the issuance of the Zoning violation, and that is what brought it to court.

The Board felt that the history of the entire litigation between these parties started with that incorrect interpretation. It is understood how the Bosi's might have relied on that. If that had been challenged, you would have had the same question that there is today. It would just be with a different Zoning Officer's interpretation. You would have someone saying it is a violation, as opposed to the current Zoning Officer saying that it is not a violation and the fence is okay. The Board felt that it is the same exact question. It is just a different interpretation and that the Board has to affirm or reject it. This Zoning Officer feels that it is not the storage of a motor vehicle, as he testified to.

The Board felt that they could affirm the present Zoning Officer's determination that 101-24 does not apply. The Board felt that the parking is not illegal due to 101-24, but rather ordinance 101-21, which states that the area should be paved as testified to by the Borough Planner. The attorney was advised to draw a resolution to affirm the Zoning Officer's decision but that the area should be paved.

ADJOURN:

There being no further business to come before the Board, by motion of Mr. Walker and second by Mr. Hoskins, the meeting was adjourned at 11:05 pm.

Respectfully submitted,

Margot Hamlin,
Transcriber