

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, July 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. Capilli, Mr. Brennan, Mr. Walker,
Dr. von der Lieth, Mr. Hoskins, Mr. Raman, Mr. Flaherty

Absent: Mr. Sandler

Also Present: John Ten Hoeve, Jr., Board Attorney
Brigitte Bogart, Professional Planner
Eve Mancuso, Borough Engineer
Lyn Beer, Secretary to the Zoning Board

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 thereat and by filing the said schedule in the office of the Borough Clerk.

FLAHERTY: If anyone is here for the application of 94 Lafayette Avenue, Ron Dema, Case: 10-08, Block: 1003, Lot: 2, that case will not be heard this evening. It will be heard, hopefully, on August 17th.

PENDING CASES:

<u>CASE:</u> 10-06 Block: 1103 Lot: 11	Application of <u>L.C. Developers, LLC</u> , 14 Lakeview Avenue for Floor Area Ratio variance and Soil Moving Permit to construct replacement house in an R-10 residential zone. Hearing begun June 15, 2010 carried to Jul 20, 2010 for F.A.R. testimony.
---	--

DEXTER: Good evening Mr. Chairman, and members of the Board. Bruce H. Dexter appearing for the applicant, L.C. Developers. This evening I would like to present planning testimony to the Board, with regard to the pending application.

FLAHERTY: Before you start, the attorney would like to make a statement relative to this case.

TEN HOEVE: There were 2 issues that I thought were open after the last hearing. One was whether you intended to present any planning testimony and obviously the answer to that is yes. There was also a question concerning a boundary dispute and my recollection was that there was going to be some discussion or interaction with respect to the adjacent property owner and your client and or surveyor.

DEXTER: We have resolved the issue, the boundary line issue. I wouldn't call it a dispute.

TEN HOEVE: Okay, that may be a mischaracterization.

DEXTER: The people are here tonight, the adjoining neighbors. I think that they are satisfied, but they can speak for themselves.

TEN HOEVE: Great, okay, thank you very much.

DEXTER: May I have Mr. Karlebach sworn in?

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?

KARLEBACH: I do.

TEN HOEVE: Please state your name and professional address?

KARLEBACH: David Karlebach, and the address is 38 East Ridgewood Avenue, Ridgewood, New Jersey.

TEN HOEVE: Thank you.

DEXTER: Sir, what is your profession, your occupation?

KARLEBACH: I am a Licensed Professional Planner.

TEN HOEVE: I think that he has testified here before, and has qualified before this Board.

DEXTER: Thank you Mr. Ten Hoeve.

BEER: Mr. Dexter, would you share the black microphone with Mr. Karlebach? Thank you.

DEXTER: Mr. Karlebach are you familiar with the site in question?

KARLEBACH: Yes, I am.

DEXTER: Are you also familiar with the proposed project?

KARLEBACH: Yes.

DEXTER: Are you also familiar with the Zoning Ordinance of the Borough of Park Ridge?

KARLEBACH: I am.

DEXTER: Could you please tell the Board, the existing land use for the property in question?

KARLEBACH: Certainly, there is a single-family dwelling currently on this lot. The lot is large, exceptionally large for the zone. It is 18,321 square feet. It is an interior lot. The zone allows single family homes on 10,000 square foot lots. The property is nearly rectangular in shape and it is surrounded on all side by residential uses.

The proposal is to demolish this existing home along with a detached garage and existing driveway and sheds that exist on the property and replace it with a new single family home.

DEXTER: Can you go over the present Zoning for the district in question?

KARLEBACH: Yes, this is an R-10 zone, which permits homes on 10,000 square foot lots. The variance, actually, doesn't pertain to the Floor Area Ratio per say, and I say that because, if you look at the zoning table that is on the site plan, I believe that it sites the floor area ratio as .215, and the zoning actually permits .30, so it is actually undersized relative to the floor area ratio. The ordinance also caps the square footage on

single family homes in this zone, to 3,333 square feet. What is being proposed is a home of 3,953 square feet including the garage.

Of course, that 3,333 I spoke of is inclusive of the garage, so it is over that amount. If you were to subtract out the garage area, which is approximately 700 square feet, you would be left with a structure that is 3,254 square feet and it would then comply. So, basically we are here, not because of the floor area ratio, but more because the garage expands the structure to a figure over the 3,333.

Now, I think this Board still maintains jurisdiction over this application because the way the regulations are sited in the bulk table, it actually couples the maximum floor area with the floor area ratio. They are entwined. To my knowledge, I don't think a maximum floor area cap is treated as a "C" variance. I think it is more properly treated as a "D" variance. So, I think this is a proper venue to hear this particular application.

So, for the purpose of my testimony, I will treat it as such, as a variance similar to a floor area ratio variance, but actually addressing the floor area cap, so to speak.

DEXTER: With that explanation, sir, which I appreciate, would you discuss the positive criteria for the members of the Board?

KARLEBACH: Certainly. With every variance application for a floor area ratio, it must be accompanied by a proof of special reasons the negative criteria. I believe that there are several special reasons for the purposes of planning that are advanced by this application.

The first special reason is to guide the appropriate use and development of lands to promote the general welfare. Now, this is an appropriate use because single family homes are permitted in this zone. This is a single family home, so the use is not contrary to the zoning ordinance.

I think that the construction of 3,200 square feet of living area is certainly consistent with modern day homes. Homes built in the 90's are 50% larger than homes built in the 70's. There is a reason for that. It is because people require them. People today don't want a Pullman kitchen. They don't want a bathroom with only one sink. They don't want a 1-car garage. They would prefer to have a 2-car garage. They just are families that have different needs today then they did back in the 70's and that is why we have larger homes.

Certainly, I think this is consistent with the homes that are modern day homes that are being built today. The lot is exceptionally large, certainly large enough to accommodate this type of development. That is evidenced by the fact that this meets all of the bulk requirements in the zone. It is not excessive. This is not an excessively large house, considering the needs of a modern day family.

The second special reason that is advanced is to establish appropriate population densities. The proposed development density is 2.37 dwelling units per acre. That is actually less dense than the permitted density of 4.35 dwelling units per acre. So this is advanced.

Finally, to promote a desirable visual environment through creative development techniques and good civic designs and arrangements. Something very important is being proposed for this site and that is that this older, obsolete house, which is not being maintained on a regular basis is going to be replaced with a new structure, with modern architectural treatments. The old pavement is going to be removed and replaced with new durable pavement. A number of sheds that are dilapidated, are going to be removed from the site, and a detached garage is going to be removed from the site.

So, I think that all of those things in concert, actually promote that desirable visual environment.

DEXTER: Does the project, in your opinion, sir, also meet the negative criteria of the statutes?

KARLEBACH: Yes I think that the Board may not only focus on what is being proposed, but they may also focus on what is being removed. As I said, what is being removed is an outdated structure, an existing 1,866 square foot driveway, which is going to be eliminated, and that driveway is going to be replaced with a much smaller driveway at the site. The elimination of that driveway also provides for some greenery between the proposed structure and the lot line to the West, which is lot 12. Right now, the driveway occupies that area. When that driveway is removed, it is going to be replaced with greenery. That is a supreme planning benefit to the owner on Lot 12.

Even with a larger home at this site, the amount of impervious area over the entire site is actually going to be decreased. The existing driveway is nonconforming because it is closer than 5 feet to the existing side lot line. Two nonconforming framed sheds and a nonconforming detached garage are also proposed to be removed. So, I have actually sighted a minimum of 5 nonconforming conditions, or if you prefer to call them, variance conditions, that are being eliminated by virtue of this proposal.

If we are talking about the framed shed to the northwest side of the property, the minimum rear yard requirement for that frame shed would be 5 feet, and existing right now is approximately 1 foot. That is eliminated. The frame shed to the southeast side of the property requires a minimum rear yard of 5 feet and what is existing is plus or minus 4 feet. So, that variance is eliminated.

With respect to the detached garage, it requires a minimum side yard of 20 feet and only 2 feet is existing. The rear yard setback requirement for a detached garage is 20 feet and plus or minus 2 feet is existing. So, those are 4 variances that are eliminated. The fifth one has to do with the driveway being closer than 5 feet to the side lot line. A total of 5 variances are eliminated.

There are no setback encroachments proposed by this development application. This dwelling is not going to interfere with penetration of light or air on to the adjoining properties. It is not going to jeopardize any open space. As a matter of fact, less impervious area is proposed at this site. This lot area is 1.8 times greater than the lot area that required by the zone.

There are other homes of similar size in this immediate neighborhood. I had an exhibit, which I will pass around. The home on Block 1103, Lot 19 is 3,400 square feet. That is with the garage excluded, which would make it a larger home. The home on Block 1103, Lot 20 is 4,053 square feet, with the garage excluded, also larger.

This dwelling is approximately 3,250 square feet, excluding the garage. Now, I have one exhibit, which I will enter into evidence. I don't know what we are up to right now.

WALKER: That is item 13. Could you just describe what these are?

KARLEBACH: I will describe them now. The first exhibit, which I think we are calling A-13, is a series of 3 photo refs. Those are existing conditions on 3 different properties. I believe the top photograph is 142 Pascack Road, which is the corner lot. It is at the intersection of Lakeview Avenue and Pascack Road. That is actually a historic home and it is 3,700 square feet in area. The photograph in the middle, is 7 Lakeview Avenue and the bottom photograph is 11 Lakeview Avenue. All of these home are directly across the street and moving close to the Pascack Road intersection. They are pretty large in area. The reason that I selected those 3 homes is that if you look at the bottom 2, which are number 7 and number 11, they actually look very similar in size in the photograph. In fact, one house is almost twice as large and the reason is because the back of the house has been expanded and possibly it contains additional living area in the basement. I can't say for certain.

The tax records clearly indicate that home is 4,000 square in area. It does not look oversized and it does not look like it is incongruous with the other homes in the neighborhood. Other factors which contribute to what I am calling the visibility or the prominence of the structure has to do with the topography and vegetation in the area.

If you look at the second exhibit, A-14, that is actually a photograph of the site and from that particular vantage point it is very difficult to see the existing residence. There are many trees on the property. There are many shade trees lining Lakeview Avenue. You have some very tall Norway Maple trees and Silver Maple trees. There is a very large Japanese Maple tree on the property. From that particular vantage point, I think it shows that the house is very well screened and I think the future house will be screened to some extent, maybe not to that extent, but there is some buffering provided. Not only that, but, the house is actually going to sit, I believe, almost a full 2 feet lower. So, it is not perched up the way a lot of builders like to do that. They like to show off their work, and actually, doing earth work or creating soil berms and putting the homes on top of them, to make them more prominent. That is clearly not the case here. The home is actually lower in elevation than what exists.

I will just conclude by saying that this is a very large lot. It is deserving of a large home. It is not so large to be inconsistent with the neighborhood. It meets all but one of the zoning requirements in the R-10. This proposal is not going to impact negatively upon the surrounding properties. In fact, I think it provides many planning benefits including the elimination of many variance conditions that exist on the site and modern architectural design. I will just call it an enhanced visual quality by virtue of the redevelopment. I think many of the homes on this block are small, relative to modern standards and those homes are likely to be expanded at some time in the future. I mean there is no reason why those homes can't be redeveloped to be larger, and that is already happening.

There are no perceptible community impacts that I see. I don't believe that there is going to be any substantial impairment of the zone plan and zoning ordinance and I don't believe that there is any substantial detriment to the public good. I will just conclude by saying that I reviewed the 2009 Master Plan. The Master Plan does recommend the concept of floor area ratio for a single family homes, but does not recommend capping the maximum floor area for single family homes, which is what the variance is that is being sought.

Also, the Master Plan recommends a mix of housing sizes and styles for new single family projects. There is no reason why that shouldn't also pertain to older neighborhoods. You like to maintain a balance of smaller and larger homes. One of the criticisms we have of suburban neighborhoods, is that they are so sterile and mundane, because the homes all look alike and they look like there were built by the same builder. They are all the same size. I think it is refreshing to have a change of housing styles and housing types.

So, I will just conclude by saying that I believe that under law, that this floor area variance can be granted.

FLAHERTY: A couple of questions. You made a statement about the Master Plan. Are you saying that the ordinance is contrary to the Master Plan? Maybe our professionals can comment on that, as well? Is that your interpretation of it? You mean the Master Plan does not suggest any FAR caps? Is that the case?

KARLEBACH: It suggest FAR does not suggest capping the maximum floor area, at some amount. In this case it is 3,333 square feet. I don't know how that figure was derived. Quite possible in the next examination of the Master Plan, that recommendation will be made. I don't know. Quite possible, the governing body, when they adopted the ordinance, did so with a majority of the governing body, in which case there wouldn't have to be consistency with the Master Plan in that particular aspect.

TEN HOEVE: But you would have to give statements as to why you were adopting an ordinance that you believe to be inconsistent. I don't think it is inconsistent but I will let the Planner comment on that.

BOGART: I am just wondering how you arrived at that conclusion. Have you read any of the goals and objectives in the Master Plan pertaining to maintaining the scales in family neighborhoods, and insuring that new development and redevelopment is consistent with the surrounding development patterns and that to insure that new single family dwellings do not overly impact the existing character of the neighborhoods that they are located in?

KARLEBACH: Yes I read that. I am just saying that there is no specific recommendation in the Master Plan to limit the maximum floor area of a residence. There is a very specific recommendation that FAR should be used as a bulk control for single family homes.

TEN HOEVE: Master Plans do not include specifics with regard to bulk control. The master plans speak in generalities about goals and objectives and why you are going to have those bulk controls.

One question that I have. I understand all of your testimony. The one thing that I don't agree with is, I think you said that you believe that a cap on a floor area shouldn't be considered part of a floor area ratio variance and therefore it should be a "C" variance rather than a "D" variance. Is that correct?

KARLEBACH: Well, I

TEN HOEVE: I understand that you have testimony to support it as a "D" variance.

KARLEBACH: I think that I said that I would treat it as a "D" variance because they were somehow entwined. If you look at the statute specifically, if you look at the way that the Municipal Land Use Law describes the situations that would arrive from a "D" variance, it doesn't say anything about maximum floor area. It does say floor area ratio.

TEN HOEVE: What do you think the purpose of a floor area ratio ordinance is?

KARLEBACH: Well, floor area ratio is just another bulk control to limit the size of the structure that you put on a lot.

TEN HOEVE: Exactly, and if you had perhaps a 50,000 square foot lot that happened to get stuck in the middle of this R-10 zone, if you applied the percentage you would by definition permit a massive structure that probably by definition was not in conformity with any other structures in the neighborhood, correct?

KARLEBACH: Yes.

TEN HOEVE: By providing a cap, in addition to the percentage, doesn't that accomplish the goal and objective that you said was the purpose of an FAR.

KARLEBACH: I think I said that they were entwined. They were very closely related and I would submit testimony in support of a "D" variance, because they were so closely related.

TEN HOEVE: I thought you did. I am not challenging, this is more of a philosophical question than anything else. I am not challenging your testimony with regard to whether you gave substantial reasons in support of this requested variance. I am just asking that question. Do you know of any case that says that?

KARLEBACH: No, I don't think so. There is a case in Rumson that deals with maximum floor areas as opposed to floor area ratio. I didn't have the opportunity to read

through that case and maybe it makes some mention of it. The only reason that I mentioned it at the onset, is because, the letter of the law is that a "D" variance is required for a floor area ratio and it ends there. It doesn't go on to describe other instances where it is likely to occur. So, I just wanted to point that out. I just wanted to make that distinction. Maybe it is hair splitting, I don't know. But, I thought it was important to make that distinction.

WALKER: Mr. Karlebach, I am looking at your board here, item 13. I am looking at 2 identical houses that you have one listed at 2,144 square feet and another one at 4,050 square feet. How did you obtain the measurements for these?

KARLEBACH: Those came directly from the Tax Assessor.

WALKER: For all intents and purposed, they are the same house.

KARLEBACH: They look like it, absolutely. The smaller house, by the way, actually has a gigantic deck in the back. The larger house has an addition in the rear that projects out quite a bit. It still doesn't look like a 4,000 square foot house, which led me to believe that maybe additional living area on the basement floor.

FLAHERTY: I think that you made some points that most of us would agree with. Eliminating that driveway and the garage in the back, visually, I think it is an upgrade to the neighborhood. I know that you were kind of harping on the garage, but we do have to count that as we do the basement.

DEXTER: That is why we are here tonight.

FLAHERTY: Obviously. So, did you or your architect, did you pursue any other options that might just be able to trim this down and get it closer, if not under the cap, and still achieve the number of bedrooms or bathrooms that you are looking for?

CHIELLINI: Yes

DEXTER: Basically the lot is an oversized lot, which the applicant feels warrants this size of house, 600 feet in total floor area over. The 600 feet is rather minimal, if I may characterize it to that effect.

FLAHERTY: Well it is unique in that it doesn't require anything on the East side. There are no variances required on the West side either, right?

CHIELLINI: Correct. The pictures that I provided last time, were where I built the same house on a smaller lot and it is very spacious and it worked out very well. They had side load garage whereas here we have the front load garage. So, you will have more greenery on the other side.

FLAHERTY: Was that other home in Park Ridge?

CHIELLINI: Yes.

FLAHERTY: Did that require a variance at the time?

CHIELLINI: No.

DEXTER: You have the photos for that property.

CHIELLINI: That was a side mount garage on that lot and this lot is wider and deeper and it is a front load mount.

FLAHERTY: Are there any questions or comments from the Board?

CAPILLI: What kind of buffer are you putting in. You said that you were putting in some kind of buffering, landscaping, in.

KARLEBACH: I did not say landscaping. I think I remarked that there would be greenery there. I guess in the present case, it could be lawn, but there is no reason why additional landscaping couldn't be provided, either by the owner.....

FLAHERTY: The evidence, that number 14, which was the view of the home, kind of looking westerly, it is hard to see because of the trees. Are those trees going to stay? Or, are some of them going to stay? Do you know what the plan is for the trees?

CHIELLINI: On which part?

FLAHERTY: Well, I think it is from the existing order that you are looking at it.

CHIELLINI: The only one that is coming out is that Magnolia, right center of the house. The Maple in the front, which is huge, we are going to try to elevate that a little bit. The buyer would like to keep it, but they don't want to block their house either. They want it so that people can see the house.

TEN HOEVE: For the record, it is Mr. Chiellini speaking. He was previously sworn and he is still under oath.

FLAHERTY: Well, it is a unique situation that we have in that you do have a sizable lot. You are not looking for variances on the side and you understand that there are some regulations that we have to try to come in under with the cap. Is there anyone from theyes, yes, well okay. There were 2 other topics that we have to talk about. Soil movement, is that okay?

BEER: There are 2 applications that we have, one for soil and one for the FAR.

FLAHERTY: Do you have anything to add about the soil movement?

DEXTER: I think we put in our case last month with regard to the soil movement permit. The Engineer is present tonight if anybody has any additional questions, but I think we have covered that.

FLAHERTY: Okay. So about the situation of survey in the back. Can you take us through what has gone on in the past couple of weeks, where you said that has been cleared up?

DEXTER: Yes, there was an issue with a fence, a chain link fence, running through the back of the applicant's property. If you look at the submittal, I think it is pretty easy to see it is sort of up in the northeast corner. The applicant has had discussions with the property owner of Lot 7, that is the adjoining lot on the corner. He has decided to enter into a boundary line agreement whereby the fence would be clearly on the residents property. Therefore, it would eliminate any dispute as to who owns the fence or what property it is on.

FLAHERTY: So, who will own the fence?

DEXTER: The adjoining land owner.

TEN HOEVE: A boundary agreement, what do you mean?

DEXTER: A boundary line agreement would be entered into.

TEN HOEVE: Are you talking about some type of easement or.....

DEXTER: No, no, no, we are moving the boundary line.

TEN HOEVE: You are going to move the line?

DEXTER: Yes, to the extent of 67 square feet.

TEN HOEVE: You have to...that has to be made part of the subdivision application. There has to be a redivision of the lot line then.

DEXTER: I don't think that is necessary for a boundary line.

TEN HOEVE: Yes, it is.

BOGART: I am sorry but that is going to change the FAR calculations, the impervious coverage calculations because there will be less land area.

DEXTER: 67 square feet is diminimous. It doesn't change our argument.

TEN HOEVE: I disagree. You can't move the property line without securing a redivision. We have had many such applications and it could be done as, I would think, as part of this application as well. It would require, naturally, the participation and consent of the adjacent property owner, but you can't simply convey the property to that person without getting the approval of the Board.

DEXTER: It is a question of relocating the property line, not conveying property. That is the distinction between the two.

TEN HOEVE: Relocating would involve conveying.

DEXTER: It is just the property line.

TEN HOEVE: Yes, but if it currently titled to the current owner or the contract purchaser, once he buys it, you can't just address that by saying, okay, we are going to give it to the adjacent property owner. Eve and Brigette, do you agree?

MANCUSO: Well, I am not sure I fully understand. Are you saying that you agree with your neighbor's survey?

DEXTER: The neighbor's survey doesn't address the fence issue.

MANCUSO: I am not talking about the fence per say, the property itself. Are you saying that, was there an overlap there that you are going to relinquish any property?

DEXTER: I don't think so, if you look at all 3 surveys.

MANCUSO: It appears that was the dispute, that there was an overlap that 2 different parties were claiming that

DEXTER: They may have given you that impression, but I don't believe that is the case.

MANCUSO: It was my understanding the testimony was that there was a certain strip of property in the rear that both parties thought was part of their lot and that was the issue, that there was an overlap of property lines that needed to be resolved, either way, not that it is going to effect the application all that much, but it needs to be shown.

DEXTER: I see it as a fence dislocation rather than an overlap. I don't think that the surveys

MANCUSO: That is the question, is it in fact, just a fence that is moving or is it a piece of property with the fence.

DEXTER: The boundary line is moved.

MANCUSO: Okay, than it is not just a fence, it is a piece of property.

DEXTER: Mr. Ten Hoeve is smiling, he doesn't think that it is proper, but I think a boundary line agreement, if there is a dispute, as to where a boundary line is, that is the way that 2 neighbors resolve it.

MANCUSO: With a lot line adjustment?

TEN HOEVE: Yes.

MANCUSO: Correct, and that requires a subdivision.

DEXTER: I don't think a subdivision is necessary.

MANCUSO: Well it can be called a lot line adjustment, but essentially you are reducing or modifying the perimeter or the boundary of your property to some extent, even though it is as you said, diminimous, it still needs to be shown.

DEXTER: I disagree, respectfully.

FLAHERTY: The neighbor addressed the Board last month, and would the neighbor like to address the Board again? If you could come on up, please.

TEN HOEVE: For the record, your name and address again and you are still under oath.

CUSHMAN: My name is Megan Cushman. My address is 197 Woodfield Crossing. I live in Rocky Hill, Connecticut. I am the granddaughter of Marie Cushman at 154 Pascack Road. Per the Board's recommendation, to have a conversation, Marie Cushman obtained an attorney, Tom Randall. We provided Tom Randall with all 3 of the current surveys that Marie had. One went back to 1951, 1972 and 1994.

Upon speaking with Attorney Tom Randall, he decided that all surveys were correct and accurate and there wasn't a discrepancy between them in any way shape or form. So, he then told us that he would have a conversation with these gentlemen. That was the previous, not this past Friday, a week before last Friday.

The builder contacted me on Wednesday, this past Wednesday and said do you have the survey, and that is when I informed him that we had hired representation at that point in time. I then got a phone call on Friday, Attorney Randall asking permission for the builder's surveyor to come on to Nana's property.

I explained that it was Friday, and the hearing was Tuesday, there is no way that I can get to New Jersey to have that happen until Tuesday. So, our Attorney worked it out for the surveyor to come on to the property this morning and look at the property. My understanding of the conversation with the surveyor was that Nana's property has a fence that goes around 3 of the sides fairly substantially and it is not just a piece of fence, it is an entire chain link fence that has been painted green and has been there for a long amount of time, I guess.

My father tells me it was there when he was a child, and that is the best that I can tell you. When the surveyor came out and spoke with myself and looked at the greenery that was around said fence, he determined that the fence had been there for long time. He then picked up the phone and had a conversation with the builder. I wasn't privy to what went on either side of that conversation, but when he got off of the phone, he said that they were going to agree that the fence was on Nana's property and that they were going to say that she owned 6 inches of land off the end of the property.

Now, I was also told that originally Lakeview Avenue was a one-way street, and now it is a two-way street. So, depending on how the boundary was originally determined, there may be an issue in the length of the property based on the fact that the street got widened at some point in time on Lakeview Avenue, which would have butted into Nana's property.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of July 20, 2010 – Page 11

That is all that I know at this point in time. We are not objecting to the agreement, to agree that the property line is 6 inches from the end of the fence, which seems to be close to the accurate point of view. They tried to find the pins at the back of the property, they were unable to do so with all of the greenery that was there, and the different time frames, which is why he went to the conversation with the builder. I can not articulate what that conversation was because I wasn't privy to either side.

DEXTER: May I submit this drawing, Mr. Ten Hoeve.

TEN HOEVE: I am just confused by the 6 inch reference.

CUSHMAN: I think what you have is half of a copy of the survey. I don't think you have the whole thing. So if you tell me what the top piece is that he submitted, I can probably provide you with the bottom.

DEXTER: If you look at the plan, on the northeast corner of the subject property, there is a common barrier line approximately 28.98 feet in length, between Lot 7 and Lot 11.

TEN HOEVE: Can I just ask a quick question? We are not really talking about 6 inches, she meant 6 inches beyond where the fence is.

CUSHMAN: Exactly.

DEXTER: That is correct.

TEN HOEVE: You are really talking about close to 3 feet on one end and close to 2 feet on the other end, is that right?

CUSHMAN: Exactly, 6 inches off of the fence.

DEXTER: That is correct.

TEN HOEVE: Okay, now I understand.

DEXTER: It is a total area of approximately 67 square feet. We are proposed to that by changing the boundary line of that particular piece of property, by way of a boundary line agreement, between 2 neighbors.

TEN HOEVE: I have never seen that done. I know of no way that you can do that without this Board treating it as a redivision of land, whereby the property is going to be....if you contend that it is not currently owned by Lot 7, where it has to be conveyed by the owner of Lot 11, to Lot 7.

CUSHMAN: No, well yes but

TEN HOEVE: You claim that you own it now.

CUSHMAN: We own it, and the surveyor was here today and told me that we own it, so the clarity was to make the line definitive for these guys. But, he told me that according to everything that you had the property was Nana's. I am not sure how else to articulate that. I am not sure what the legal terminology was, the solution that was provided through the attorneys was to simply articulate that in the documentation to be required on the records that says yes, in fact, Nana does own the fence.

TEN HOEVE: She is saying something different from that which you have said, Mr. Dexter. You are claiming that you own it, but you are willing to relinquish it and give it to her.

DEXTER: Exactly correct.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of July 20, 2010 – Page 12

TEN HOEVE: She is saying that she owns it and that you have no claim to it and it belongs to her. Frankly, if she is correct, you don't need a redivision, you can just.....

CHIELLINI: She owns it.

TEN HOEVE: It can't be done that simply.

DEXTER: We are trying to accommodate a neighbor who has concerns, which you know, we are trying to do it as simply as possible. I have don't it that way before and maybe I could discuss the issue with you, Mr. Ten Hoeve, and resolve it, hopefully.

TEN HOEVE: Perhaps and discuss it with our Engineer as well.

DEXTER: I guess.

TEN HOEVE: Have you seen that done, Eve?

MANCUSO: No.

TEN HOEVE: Nor have I, ever. I don't think that you can do it without, certainly not legally, when there is an application before a Board. I am sure people from time to time, effect transfers of property without securing approval from Municipalities. That is certainly not the proper way to do it. It is not a way that this Board would allow it to be done.

CHIELLINI: What happened with the area, the area is very messed up. Pascack Road was moved. So, all of the surveys, you know, Azzolina and Feury pulled from Pascack Road all of these people. He did his survey and through the whole neighborhood.

TEN HOEVE: It might be easier for you to submit proof to the Board that the adjacent property owner does own it and revise your plan and that is certainly an option in my opinion. Do you agree?

MANCUSO: I am running some numbers.

CHIELLINI: I think the Engineers have calculations that it wouldn't effect us in any way. We did the calculations with loosing the 67 square feet.

TEN HOEVE: I am not talking about the variances or the FAR variances. It is not going to have any significant impact on any of that. I am just dealing with a buyer that has lost another month and they are not happy at this point.

CUSHMAN: I understand that, but all we want to do is keep a straight line. I feel like an honest property is a straight line. That is all we want here.

RAMAN: Didn't you say all 3 surveyors agreed?

CUSHMAN: There are 3 surveys.

RAMAN: Then why is it that his survey doesn't agree? That means that your survey doesn't agree, right? So, I think you have 4 surveys and 3 of them agree that this should be their property. Then all you have to do is correct your survey. I mean, I think John's point was probably.....I mean regardless of what happened with Pascack and Lakeview, if 3 surveys are right, I would imagine this is the wrong one. If you agree that those 3 are right.

DEXTER: Not all the surveys agree as to the boundary line. The applicant is just trying to accommodate an adjoining property owner.

RAMAN: But you are saying exactly the opposite of what she said.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of July 20, 2010 – Page 13

TEN HOEVE: Yes you are saying exactly, the total opposite of what she has just testified to.

MARTIN: Can I point out a illogical inconsistency which might help us to understand what we are perceiving here? What Ms. Cushman here, is telling us that the professional that came out today, verified that the existing surveys that she previously presented, are valid and that it is their property. You keep claiming that you are making an accommodation. If the professional that was out there validated and then agreed in theory with Ms. Cushman, that the property belonged to them, there is no accommodation here. What it is, is that you guys have to understand that it has been certified by various folks that the property is already theirs. There is no accommodation or conveyance or nothing. It is their property.

TEN HOEVE: Did you ever have your surveyor talk to her surveyor?

CHIELLINI: Today.

TEN HOEVE: What did they decide?

CHIELLINI: No, they talked to her today.

TEN HOEVE: No, did the 2 surveyors ever speak?

CUSHMAN: No.

CHIELLINI: It was Azzolina and Feury that spoke to them.

TEN HOEVE: What did they resolve?

CHIELLINI: The call that I got today, again, I am trying to just get through this, is that the property is really mine. Everything checks out all the way around. She claimed that the fence has been there for 50 years, squatters right or whatever.....

TEN HOEVE: No, that is not what her surveyor said.

CHIELLINI: I am willing just to give her the property.

TEN HOEVE: Listen to my question, Mr. Chiellini. Did your surveyor speak to her surveyor?

CUSHMAN: No, his surveyor came out to my property.

CHIELLINI: I don't know.

TEN HOEVE: Okay, because wouldn't they be able to come to a resolution if the 2 of them met?

CHIELLINI: He eluded it to her today, but she could not understand him.

TEN HOEVE: I am not talking about her. I am not talking about her. I am talking about the 2 professionals. If your professional spoke to her professional, I would think they could reach an understanding as to which is correct.

DEXTER: I don't think there is a discrepancy between the surveys, in my opinion, I looked at them. The problem is the fence is not on the property line, which is a common situation.

TEN HOEVE: That is not what the surveyor told her.

CUSHMAN: That is not what I am saying.

DEXTER: I am trying to give you what my opinion is, looking at the surveys. I am looking at the fence that is mislocated.

CUSHMAN: All of the surveys are a rectangle. The exact perfect rectangle. There are no jigs or jags or wiggles or triangles or anything in that, as technical as that is. If you look at what his survey says, it would be taking a rectangle out of the rectangle. All of the rectangles going back to 1953 are rectangles. If you look, there are still, which his surveyor found today, 2 points, which are 2 pipes on the current survey on the bottom on Nana's property. If you draw those straight back it makes a rectangle. Straight lines don't make jigs.

RAMAN: Can I ask you something? You are willing to convey the land, so why don't you just correct the drawing? If that is the case, I mean maybe I am speaking out of turn, but who cares who is right? If you are willing to concede the land, correct the drawing, make it back to a rectangle that will agree with the other survey and no harm no foul, right?

DEXTER: It is not that easy, but.....

MANCUSO: If Mr. Chiellini doesn't object to that determination, the reduction, you said it was 657 square feet?

DEXTER: 67.

MANCUSO: Well that is even less then. It effects the 100th place of the calculations on the table. So, if the agreed to modify that rear line, maybe that is something that could be a condition of approval, that the modified map is submitted with the correct boundary line.

DEXTER: I think a boundary line certificate, which is statutory, could adjust to the one common property line. It will have to be shown on the map then also.

CUSHMAN: Do you need copies of the rectangles?

TEN HOEVE: Not if he is going to do what he is saying that he is going to do and give us a revised plan that chops that off and shows it as being part of your property.

DEXTER: We will clearly revise the plan and resubmit the plan with that adjustment on it.

FLAHERTY: Are there any questions from the Board, comments? Anyone else from the public that wants to address the Board on this matter? Okay, well we thank you for your time.

TEN HOEVE: The Board will discuss this tonight and you can give Mrs. Beer a call in the morning.

CASE: 10-07 Block: 503 Lot: 8,9	Application of <u><i>Lollipop Day Nursery School</i></u> , 67 Spring Valley Road for modification of prior approval to enlarge garage, move sign and change trash enclosure fence in an R-20 Residential Zone. Hearing begun June 15, 2010 carried to July 20, 2010 for corrections to submitted map.
--	---

TEN HOEVE: The significant issue that arose at the time of the last hearing concerned a shed that had previously been located on Lollipop property, which pursuant to the Board's most recent resolution in the Lollipop case, was supposed to have been removed. The Board wasn't aware of the fact that the shed hadn't been removed but had been relocated to the adjacent property, property that was not supposed to be involved or used for Lollipop purposes in any way. In fact, all prior resolutions indicate that, that property was supposed to remain purely residential as a buffer against the non-residential Lollipop use in the residential zone, the houses that surround it.

The Board, I think, and the applicant weren't fully aware of what had transpired with regard to the relocation of that shed. It appears as if a permit had been obtained by Mr. Angelillo for the relocation of that shed. The Borough attorney has been involved and he is, in fact, here this evening, with discussions with the Construction Code Official, who entered the permit. I believe that he may have also had discussions with Mr. Urdang, who represents the applicant. And, the understanding, as far as I am concerned, is that the Board isn't going to consider that as part of this application to make minor amendments to the existing resolution and site plan approval. But, the Borough intends to revoke the permit that had been issued for the relocation of that shed and that the issue as to what happens with that structure will be dealt with, either by future variance applications, or some modifications. It will be dealt with administratively by the Borough Attorney, the Construction Code Official and the applicant, maybe this Board again if any future variances are required or sought.

That is my understanding, and I think it is Mr. Urdang's understanding as well.

URDANG: That is correct.

TEN HOEVE: So that, I don't think there was any further testimony in connection with any of the other issues. Is that correct? I certainly wouldn't preclude the Board from any other questions or statements, or if Mr. Urdang wants to add anything.

URDANG: Not to what you said. I never had the opportunity to sum up last time and there was a point raised at the last meeting by Ms. Bogart, that I will address if you are done with this procedural issue.

TEN HOEVE: Yes, why don't you do that first and the public can comment on any issues.

BEER: We have to let Mr. Walker put in the new map, please.

WALKER: The revised plan is Item 8 and is dated June 17, 2010.

URDANG: First the point that was raised last week by Ms. Bogart. There was an issue with regard to the setback for the sign. I discussed it with her the following morning and there was some confusion between the property line and the easement line. It is set back sufficiently from the property line. Again, there was some confusion and you may confirm that with her, of course.

With respect to what is being sought here, I think that this is a classic C-2 variance. The benefit being conferred is that for the purposes of snow removal and for large deliveries we are creating an area that will not result either in taking existing parking spaces or interfering with the drop off and pick up line, in other words, with the traffic circulation on the site. This relates directly to a public benefit in the sense that the whole reason for redesigning the site was to ease the congestion that was occurring under the former plan on Spring Valley Road.

That benefit is not only public, it substantially outweighs any detriment. The reason being, number 1, all we are talking about is a very small area. Number 2 it is a flat plain. Number 3 it is at a substantial distance both from Spring Valley Road and from the rear property line. Number 4 the rear property line is very substantially buffered with mature evergreens. So, it doesn't appear to me that there would be any detriment to the public good, much less a substantial detriment.

FLAHERTY: Okay, any comments from the public? Please come forward.

TEN HOEVE: You testified last time, Mr. Cornell, for the record it is Edward Cornell and you are still under oath.

CORNELL: I came here loaded for bear. But, your statement in the opening session of the Lollipop application, by the way, I would like this on the record.

TEN HOEVE: It is.

CORNELL: Alright. The Borough Attorney went a step further. He told me that it is going to be converted to a garage. You didn't say that. I think we left Lollipop off the handle. We got rid of him. He is going over his plan now, he thinks it is fine. Now, we get another thing next door also owned by Mr. Angelillo.

We have a shed that is an eyesore and you want to make it bigger and better. For no use to Lollipop, why would you be doing that is beyond me, except to shut me up, and I kind of resent that. I think that Elliott thinks he was wearing me down at the last meeting. I think that is in the minutes. He is NOT. Because, the neighborhood is getting rather upset. I think that what you should do is let him go ahead, revoke that permit, take the shed down and wait to see what happens. That makes logic. It is not political, it is logic.

I think that what is going on is political. I hate to say that to you guys. I don't know. I wish I knew more of you, but I don't. You are letting the Zoning Board get away from the Mayor's appointments on the Zoning Board. I hate to say it, but the Attorney's run this show. I have been here enough to see it. I think you should start paying attention to the neighborhood, to the residents of the Borough, to the tax payers. He lives out of town. He lives out of town. They live out of town. Who is watching the store? Who is watching it for us? I really think that is what should be done.

He is not going to have that shed. He is going to have a garage. What for? How does that logically end this dispute? Can you tell me?

FLAHERTY: Mr. Cornell, the application, last month, we discussed was for a patio. I think the Board went well beyond the discussion on a patio.

CORNELL: What patio?

FLAHERTY: For the snow dumping area.

CORNELL: I had nothing to do with that. I could care less about that and the sign and I said so.

FLAHERTY: But, that is what the Board was tasked with determining whether or not we should approve. I would, quite honestly, I would have thought you would have been a little more pleased with the way the Board let the conversation.....

CORNELL: I am a former Mayor. I know what is going on in town. I zoned this town. It is an R-20 zone. I am concerned about it. What is next, a gas station next door to me, or maybe next door to you and that is alright with you, Mr. Flaherty.

TEN HOEVE: Mr. Cornell, I think you have been around for 25 years of litigation that has taken place with regard to Lollipop School. I think you have to be aware of the fact that this Board, and while it was constituted with entirely different members, when we first litigation.

CORNELL: I know that. I am not blaming them. I am saying

TEN HOEVE: When the first litigation took place, the Board has been extremely conscious of and protective of the rights of the neighbors and residents. It has litigated the issue repeatedly, at Borough expense, in order to protect those rights. It has gone out of its way to make sure that the residents rights have been protected.

CORNELL: You can not prove that to the people 200 feet away from this applicant. He has been doing this since when I was Mayor. That goes back 40 years ago. You are laughing, it is not a laughing matter.

TEN HOEVE: No, I am not laughing. I am smiling because I think.....

CORNELL: This gentleman just paid over \$600,000.00 for the house across the street. He was never even told there was a problem with Lollipop.

TEN HOEVE: I am just saying that I think that you know the extent of the litigation that has taken place with regard to this, and how at times, even over the Borough's objection, or the findings of the Board, the Court has rendered rulings that have permitted expansions.

CORNELL: The Mayor and Council did not protect the people in that court case. Mancinelli did not send anybody to that court case. You of course, you are the Zoning, but as far as the Borough, backing us up, they even told D'Anton to step aside. Nobody represented us at that court case. It is just getting to the point...I am 80 years old now, by the way, happy birthday, but I am fed up with it. I can't do much more.

VON DER LIETH: Mr. Cornell, I do—your points are very well taken in terms of people that live in town, and we want to make sure, the last thing we would ever want to do is to have something put up where it would be an eyesore for you guys living in the area. I wanted to ask you, because right now, what they are doing over there, everything is laid bare, honestly, when all the shrubbery and foliage that is due to go up, is going to go up, do you think that you will be able to see, just say that the shed is still there, do you think that would be prominent enough for you to be upset, and I am not being smart about this, I want to know the truth, would it bother you? Do you think you would be able to see that with all the foliage that is due to go up, something of that size, that shed back there?

CORNELL: Let me just try to tell you a little bit of the history.

VON DER LIETH: No, go ahead.

CORNELL: I am not going way back. Every time that they have come in for an application, they set themselves up for another one, and another one, and another one. They were pushing the envelope as far as they can.

The school itself, we picked out the best of the plans. You have to see what they wanted in the beginning. We actually picked out the plan for that building. That is why I said it is beautiful. I have no doubt about that. It doesn't bother me that parking lot. It bothers the rest of the neighborhood. It is down the block a little bit. I think that this man has to look out his window and see something better than it is going to be. Beyond that, you have the parking lot. You have the drainage. You have no drainage on the other side. I don't know whether the Engineer knows that. There is no drainage. It comes right into Spring Valley Road and it lays there.

VON DER LIETH: And I don't live across, and that is why I am saying that I thought, I looked at that parking lot, because I do not live across the street, but more beneficial because I do drive by it, that there will not be any more traffic.

If I had to live there, I would rather it not have the traffic getting into my street. I am just making a point, rather than wait there for people, possibly get creamed coming out and then going in, that is all.

CORNELL: He wouldn't be as far as he is if we didn't accept a lot of things. We went along because we had no choice. We have no choice.

CAPILLI: I think that is the point, there a lot of things that come in front of us, particularly this application, where you say we don't have a choice. When you have a beneficial need, there are certain legalities that we are bound by.

CORNELL: Alright, mark my word, that garage he is building in a couple of years, will probably be 2 classrooms. He is on a spread. This is what has been going on. No laughing, there is no laughing about this thing. This is my neighborhood, not your neighborhood. This is where he lives, not where you live.

CAPILLI: I hear you. I think it is a matter of principle, that they keep pushing the boundaries, and you are afraid, you are looking forward to the next one. What is it.....

CORNELL: He is already making offers, he made offers already, I shouldn't say making, I don't know if he is doing it yet, but the houses behind him, he is making...coming out on Spring Valley Road, around the corner, he was making proposals with people.

The house that we are talking about now, with the shutters on, was a guy by the name of Taylor, and he made a deal years ago...if you want to sell, you sell to me. This is what is going on and we have to stop it and the only thing I was told, by John, you told it to me, I am sorry, Mr. Attorney, you told it to me that as long as they make applications you have to address it. We can't put a stop to what is going on in the neighborhood. He can make it, somebody here said it before, it is now Lollipop Day Nursery, tomorrow it is going to be Lollipop Prep, and then it is going to be Lollipop College and then University, and he is going to take over the whole town, because that is what this man has been doing. I didn't say that. He said that.

You know, what is going on? That is all that I ask. I know we have people that are new, and I know that none of you people really, except for you, Mr. Walker, you have been on from the beginning. Talk to him

WALKER: I have been around for awhile, Mr. Cornell.

CORNELL: Talk to him. Read your minutes. Mr. Urdang knew last month that he had a permit to move that shed. It is not his fault. He applied for a permit and he got it. Now, that we know that it was illegally given to him and I think the Borough Attorney and probably the Mayor is trying to save Saluzzi's back, and the town from a suit. If it comes to that, it comes to that, but you know that doesn't mean that we have to accept the skeleton of the remark. I was told it was going to be a garage. Is there talk about a driveway? What are you going to put in the garage, the busses?

I mean there is a lot more questions that come up...

TEN HOEVE: Mr. Cornell, I can just repeat that you know that this Board has always required that, that lot remain residential, that it remain a buffer between the Lollipop School and the adjacent residential properties, notwithstanding the fact that Mr. Angelillo uses it, and that it can't be used for any school purposes.

CORNELL: Absolutely.

TEN HOEVE: That is the position that this Board has taken every time that there has been an application. You know that.

CORNELL: Yes, but he got up last month and you are right and you keep saying and that is true and that is the way it should be, right? But, he already wants to change the bus garage into a storage shed. Now, what do you think I think is going to happen, if that gets a 2-car garage there, for rented people? I mean they already have a garage, they don't do antique cars or anything.

TEN HOEVE: I hope that you monitor it carefully.

CORNELL: That is another 30 years, you know.

RAMAN: I am a little confused. We are not talking about this garage, we are talking about.....

CORNELL: Talking about a new garage. And, by the way, when you opened this, tonight, again, you mentioned enlargement of a garage. That was a mistake in last month's agenda and it should have been wiped out. You keep saying that he is not here for those three items, the snow removal, the sign, and the garage, it said on your agenda.

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of July 20, 2010 – Page 19

TEN HOEVE: No, it is a platform next to the garage. It is the enclosure of a dumpster area. And, it is the relocation of a sign.

CORNELL: Let me get my agenda.

URDANG: It is clearly stated here.

CORNELL: It should be corrected, it shouldn't be carried forward. All of a sudden, you guys are going disappear and he is going to say

TEN HOEVE: No, that is not what the resolution will say.

URDANG: I promise I won't seek.....

CORNELL: Well I have to watch every move.

URDANG: Okay.

CORNELL: Alright, I have had my say and Elliott is a very aggressive guy, and so is he, but that doesn't mean that we have to lay down and be dead, not yet. He said that he would outlive me, from across the street one day. I will be here long after you are gone, right. I guess he is trying to keep that promise. Thank you very much for your time. No offense to the members. I am trying to say I would like you to just get a little bit tougher. If you don't like what is going on, say so, even if the attorney tells you it is okay. Say something. Thank you.

TEN HOEVE: You also were previously sworn in. Just state your name and address. Oh, you weren't, I am sorry. 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?

SHANLEY: I do.

TEN HOEVE: Just state your name and address.

SHANLEY: Tom Shanley, 66 Spring Valley Road, Park Ridge. I will only take a couple of minutes. I just want to clarify Mr. Cornell's statement. His statement regarding the revoking of the permit for the shed. Is the shed going to be removed?

TEN HOEVE: I don't know that. I said that, I have been told that the permit is going to be revoked. There are different options. There could be an application for a variance to allow that structure, if any variances are required. That would come back before the Board if that were the case. It could be removed. I assume, maybe it could be relocated. There are many options that could take place but unless there is an application for a variance, it won't come before this Board.

SHANLEY: Okay, so if it revoked, then what is required, what happens to the shed? I am just inquiring as to what happens to it.

TEN HOEVE: You should keep in touch with the Construction Code Official and the Mayor and Council, to find out what the status is.

SHANLEY: So, that is not Saluzzi's responsibility, that is my responsibility.

TEN HOEVE: He is the Construction Code Official.

SHANLEY: I see, so I have to stay in touch with him.

TEN HOEVE: Well, if you want to find out what happens, you would have to make some inquiries. Unless there is an application for a variance, it is unlikely that there will be a hearing.

SHANLEY: That is interesting because my wife met with Mr. Saluzzi about the shed, and at no time during the meeting did he indicate that he had granted permission to have the shed there. So, I don't know if I am really, if I am talking to the gentleman, he never mentioned to my wife that there was actually....

I have the letter that my wife wrote, but I am not going to read, obviously, but it talks about the shed. If she knew there was a permit issued for the shed, we wouldn't be having this conversation, so.....

CAPILLI: Our resolution stated the removal of the shed, correct?

TEN HOEVE: The resolution that was adopted, approximately 2 years ago, to allow for the improvement, required that those sheds be removed. That was one of the reasons that approval was granted for the construction of the garage.

CAPILLI: So, even if he proposes to move that shed onto the Lollipop...

TEN HOEVE: If he wanted to do that, he would definitely have to come back.

CAPILLI: So, he can not move it without coming onto that property without.....

TEN HOEVE: On to the Lollipop property, no. It would be.....

CAPILLI: If he keeps it on the existing property, he still needs a variance, regardless?

TEN HOEVE: I am not sure of that. I don't know the size, the location, what it is, where it could be placed. I can't answer those questions but I can, and I am not sure, I don't know the number of variances that would be required to leave it where it is right now. It is my position that if he wanted to modify that prior resolution that called for the removal of the sheds, to put one of them back on that property, I am not saying that is a bad idea, I am just saying that he would have to get a variance to do that.

SHANLEY: So, again, I am a little slow. If the permit is revoked, and the shed is not allowed to be on that residential property, where does the shed go? It is a simple question.

TEN HOEVE: I can't answer that because that is something that is going, he has options. He could make an application to put it back on the property. He would have to get a variance to do that.

SHANLEY: In the mean time, what happens to the shed?

TEN HOEVE: Oh, if he makes applications for any of these Boards, it doesn't get removed while the application is pending, no. Obviously it would stay until some resolution was reached. He could make an application to keep it on that property if a variance was required and come back before this Board. I can't answer those questions. I can only tell you that you would have to keep monitoring the situation, because it may never come back here, and this Board may not have anything to do with it.

VON DER LIETH: Mr. Shanley I wanted to ask you, is it the shed that concerns you or what the shed is going to lead to that is concerning you right now? I know from your house, I am sure that you can see it now, but like I said to Mr. Cornell, it is not finished yet. The landscaping isn't up yet and I was wondering if you might have the same concerns after the finished product is out there?

SHANLEY: Well, my concern is obviously at this date, oversized shed, the size of a 2-car garage, on residential property being used for something other than the rented person who is renting the house. It is clearly not being used by them. It is being used for the school. Up until a couple of days ago, there were hoses on the side that were, I am guessing, being used for the pool. They are not hoses to sprinkle a yard with water, they were used for Lollipop School.

TEN HOEVE: If you find things like that happening, you should go to the Construction Code Official, because they are violations.

SHANLEY: We have, and we are sitting here telling you that nothing has been done. I don't know what we are getting from Saluzzi, to be honest with you, I have never met with the gentleman, my wife has and things have been brought forward, photo evidence, before and after Goggle maps, of what was on that piece of property before and what is there now, and what it is being used for and nothing has been done. So, therefore, I now live across the street and see this out my bedroom window and out my front door.

You know, I know it is a 2-car garage that is being used as a shed for Lollipop School and not for the resident that lives there. Now, I guess the permit that was given him, I guess in error, is going to be revoked, at the end of the day, I still have that damn shed across the street looking at, that is not being used for the resident. So, why bother revoking the permit, if he can keep it there? I don't understand, it seems like we are going in circles here. At the end of the day, I am still looking at the shed.

TEN HOEVE: I didn't say he could keep it there. I didn't say that is a guaranteed result there. I am just telling you what the possible options are. It may have to be removed.

SHANLEY: Yes, it may have to, but not definitively. Okay, the second question I have and this is even to a longer term as the garage, the building that was constructed with the doors, I understand, it was at the last meeting that it is being now stated that it is not going to be used for the busses. Is that going to be used for storage?

URDANG: I am not, the variance that was granted for the garage had to do with the height because it was necessary to install the doors at a certain height, could be used for busses. It was never to be used entirely for busses. It was always to be used in some part for storage.

SHANLEY: Okay.

TEN HOEVE: I think, and this is my recollection, I believe that there was testimony 2 years ago, when that application was granted, that these were going to be built of the size and scope that they were, so that they could hold the busses. I am fairly clear that was that testimony.

URDANG: It is my recollection was that it was not exclusively busses. It was always to be used for storage.

SHANLEY: Well, I will help you with the recollection. Here is the Zoning Board of Adjustment resolution from February of 2008. Paragraph 27, "As indicated, the Board finds that substantial negative impact" blah, blah, blah, "There are also negative impacts resulting for the construction of a detached large garage facility at height of 7 feet greater than permitted. The Applicant, indicated that the height is necessary to park school busses. However, he confirmed that few children are bussed to school, the applicant could also park the busses at some other location, eliminating the need for a garage much larger than permitted in a residential zone."

So, fast forward 2 years, apparently, lots of kids are now taking the bus, we constructed a 2 bus garage, with a door height that is higher than, I guess at the time, that was going to be permitted. Now, all of a sudden, it is going to be used for storage. Nowhere in here was it ever indicated that the facility was going to be used for storage. Why would you build, why do you need the garage doors at that height for storage or for school busses?

So, my concern now is the school busses, that are not in a shed and can't be protected by shrubbery. They are going to be parked out there, which now I have an issue, in clear view of my house.

TEN HOEVE: On the adjacent property?

SHANLEY: On either property.

TEN HOEVE: I do agree with Mr. Urdang, that I don't think there was an exclusive requirement that those garages could only be used for the parking of the school busses. There was testimony that they were going to be used for that purposes. They certainly couldn't be parked on the adjacent property or in that building if it were able to accommodate them.

SHANLEY: So, if it is going to be used for storage, where are the busses going to be parked, I guess, is my question?

TEN HOEVE: Wherever they were parked previously. I don't know where they were parked previously. Weren't they parked outside previously?

CORNELL: We have had this problem all along, with the school busses.

RAMAN: Are the busses allowed to be parked on these properties, in clear view?

TEN HOEVE: There are dozens of uses that exist in that site that are non-residential in nature. It is all part of the nonconforming use that the Lollipop School is, that have been approved or sanctioned by the Court and the Municipality, gradually, over a 30 year period, or maybe longer, for people who weren't on the Board, Lollipop started as a, as I recall, a 15 student day care center in a tiny house.

It did so, I believe, even without approvals. Over a period of, probably, 20 years, expanded with no regulation by the Municipality. But, we are talking about 60's probably, I think.

URDANG: That was before my time.

TEN HOEVE: No, but I think that was the testimony that was provided. It is not before your time, by the way....

URDANG: Not in absolute terms, but I wasn't involved with Lollipop until Bob McGuire got sick.

TEN HOEVE: Right, I remember. I do remember. But, I was saying that there was a substantial amount of expansion that took place over a long period of time, with no review by any municipal entity. Then, there started to be some reviews. There has been litigation that has gone twice to the Appellate Division of the Superior Court, with regard to the expansions. It has been a contentious relationship between the neighbors and the school and the Board had been, in the past, involved in extensive litigation.

So, I mean the expansion of this facility has not been without significant opposition from the Board and the Borough.

RAMAN: My question was simply do we even get to consider that. I mean, I know he has an issue with it, but if it is not something we are considering because it has already been, you know, we here only for one particular thing.

TEN HOEVE: The testimony was that busses were outside all the time and we are now going to have a garage that we can put them in. It is going to be nicer to have them inside. Yes, but that is what the testimony was. But, there wasn't a condition that no, you must park every bus in that garage and you can never leave a bus outside and that you can't use the garage for any other purpose.

RAMAN: So, therefore, it is not an issue that we can.....

TEN HOEVE: Right, as long as it is not on the adjacent property. The clear finding of every resolution, and recognized by Courts as well, go on Lot 7.

WALKER: How many busses are currently in use?

ANGELILLO: Two.

WALKER: Are they parked outside over night? Do the drivers take them home?

ANGELILLO: Sometimes one is left out over night.

WALKER: Could they be put in the garage and still satisfy your storage needs with the other bay?

ANGELILLO: Well they can but I don't want be limited to that.

URDANG: Can I just say Mr. Ten Hoeve is absolutely correct and it is completely understood that Lot 7, the residential lot, may not be used for school purposes. That is a given. No parking school busses on there, not using it in any way in connection with Lollipop. We understand and we recognize that. There are some issues as to what constitutes removal. That is going to be designated by the permitting process.

There are some concerns that have been expressed by the residents as to what may happen in the future. We have to wait and see what happens. I can only say to this Board, and some of you people have been on the Board for a long time, but others who haven't, there is not a single thing that we can do on that property that doesn't require us to come back to this Board.

We are coming back to this Board on this application, for 350 square feet of pavement. So, there is really nothing that we can do without coming back to this Board. Has it been contentious? Of course it has been contentious, and for a long time, and will probably remain so. But, what the Board can be assured of, is that there will certainly be vigilance on the part of the neighbors, with respect to this property. There always has been and there always will be. There may be problems that develop and may result in variance applications. They may result in something else.

But, and I appreciate the concerns of the neighbors. We try to address those concerns over the years as best we can, whether it is to their satisfaction, or not, I don't know. But, the issue before you is a simple application and I think that what Mr. Ten Hoeve has said is that the other issues are left to the permitting process and are not Board of Adjustment matters. When all is said, they don't disappear, they are simply not within the jurisdiction of this Board.

TEN HOEVE: They may become Board of Adjustment matters.

URDANG: That is possible, but they are not at this point.

SHANLEY: I am not here to object to the 350 feet for snow removal. I think that makes sense. In good faith, I hear what you are saying, you are making every effort, you say, to accommodate residents, but just the same I don't want to be limited to use of a garage that was clearly designed to put a school bus based on height. He doesn't want to it to be used for a school bus, which is basically saying I may park outside and I may not. I am not really sure how that in good faith, with all due respect, shows good faith to the residents in trying to accommodate us, when basically you are saying, you know, screw you, if I want to put my bus out front.....

URDANG: I am not going to argue with you, there is still one issue that is before this Board, and it is what this application is about. You are free to express your concerns, but those concerns are not appropriately dealt with at this time and in this place.

SHANLEY: So where would that be then?

Minutes of the Park Ridge Zoning Board of Adjustment
Meeting of July 20, 2010 – Page 24

URDANG: That depends how it plays out. I don't know. Initially it will be in the permitting process with the Construction Official, which is why Mr. Ten Hoeve said be in contact with Mr. Saluzzi. I don't know how it is going turn out.

SHANLEY: The guy who didn't tell my wife that he had granted a permit for the shed, despite the fact that the shed.....

URDANG: I don't know, he issued the permit.

SHANLEY: Yeah, alright. That is all that I wanted to say. At the end of the day, I don't think anyone on the Board would like to have a yellow, short school bus parked outside their neighbors house when there clearly is a facility large enough for storage for God knows what, he has a 2-car garage shed, that he is using for storage, what else does he need this structure for additional storage and not park the school bus.

TEN HOEVE: he can't use that shed.

SHANLEY: He is currently. Just go and open it up, there is stuff stored in there right now.

TEN HOEVE: If you make observations, if you video tape things, if you have proof that you can bring to the Construction Official, I, as Mr. Urdang suggested, that the neighbors be vigilant. I think that is the best thing that could take place here.

SHANLEY: But, then again that is something that should be brought to Mr. Saluzzi's attention, right?

TEN HOEVE: Absolutely. We are not an enforcement body. We are more like a court. We make the ruling.

SHANLEY: I understand that. He communicates with you, yes, or no?

TEN HOEVE: No. his legal advisor is the Borough Attorney. He responds with questions and if he seeks advise, it is from the Borough Attorney, not from the Zoning Board Attorney. Because, his determination, if made, is appealed to us. So it would be improper for me to give him advise and then have him come here and I make a determination on what I told him to do.

SHANLEY: Got it. Makes sense. Understood, kind of a conflict. Okay, appreciate your time. Thank you.

FLAHERTY: Any other questions or comments, any other witnesses?

RAMAN: I have a question just for my own. Item 11 on these revisions notes it says for 6/15/10 Zoning Board Hearing. What exactly was changed on the drawing?

URDANG: In the revised plan?

RAMAN: Yes.

URDANG: Don't know.

TEN HOEVE: They were mostly Eve comments, I believe, that were being addressed.

URDANG: I think that is true. There were some.....

BEER: It was the extra generator, they removed that generator pad that you discovered.

URDANG: Oh, that is right, yes, yes, yes. There was a mistake. There was a second generator pad that was shown in the middle of the play area, which the Engineer acknowledged was a mistake, and if I recall.....

WALKER: It was revised to show dumpster area with a 4 sided enclosure, and a drafting showing the second generator pad.

URDANG: Correct.

FLAHERTY: Okay, anyone else from the Board, and other questions or comments up here. Okay, well thank you. We are going to close this application and we will discuss it this evening.

WALKER: Have you made your final comments, Mr. Urdang?

TEN HOEVE: He summed up.

URDANG: Thank you for your time.

NEW BUSINESS:

None

CORRESPONDENCE:

None

APPROVAL OF MINUTES:

The Chairman entertained a motion that the May 18, 2010, minutes be approved as submitted. So moved by Dr. von der Lieth and seconded by Mr. Hoskins.

ROLL CALL:

Ayes: Mr. Raman, Mr. Capilli, Mr. Walker, Dr. von der Lieth, Mr. Hoskins, Mr. Flaherty

Abstain: Mr. Brennan, Mr. Martin

APPROVAL OF VOUCHERS:

None

DISCUSSION OF APPLICATIONS:

The Board discussed the application of L. C. Developers, LLC. The members felt that the issues had been addressed, as far as the shut off for the water. They also felt that it is a large lot that doesn't encroach on the sides or the rear. It is only a little over the FAR. The attorney stated that he felt comfortable with the boundary issue as long as the builder submits a new survey showing that this is how it is. The Board authorized the Attorney to draw a resolution of approval for the next meeting provided the new survey is submitted before that time. If the new survey is not provided by the next meeting, the Board won't adopt the resolution at that time.

The Board then discussed the application of Lollipop Day Nursery School. The Board felt that there was nothing to be discussed and they authorized the Attorney to draw a resolution of approval of the variances for the next meeting. The approval will state that the granting of the modification in no way condones the relocation of the shed from the Lollipop property to the adjacent property.

ADJOURN:

There being no further business to come before the Board, by motion of Mr. Capilli and seconded by Mr. Hoskins, the meeting was adjourned at 9:40 pm.

Respectfully submitted,

Margot Hamlin,
Transcriber