

**\*\*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, May 17, 2011 at 8:00 pm in the Council Chambers of the Municipal Building.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

**ROLL CALL:** Mr. Brennan, Mr. Flaherty, Mr. Galdi, Mr. Hoskins,  
Mr. Raman, Mr. Sandler, Dr. von der Lieth, Mr. Walker

Absent: Mr. Capilli

Also Present: John Ten Hoeve, Jr., Board Attorney  
Brigette Bogart, Professional Planner  
Lyn Beer, Secretary to the Zoning Board  
Robert Ludwig, Zoning Officer  
Eve Mancuso, Borough Engineer (8:25 pm)

**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 18, 2011, setting forth a schedule of regular meetings by mailing of said schedule to The Ridgewood News and The Record on January 24, 2011, 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.

**PENDING CASES:**

<b>CASE:</b> 11-07 <b>Block:</b> 1202 <b>Lot:</b> 19	Application of <u>Gregory Perez &amp; Karen Murphy</u> , 1 Sixth Street for rear yard and F.A.R. variances to construct addition to the existing house in an R-10 residential zone. Hearing begun April 6, 2011, carried to May 17, 2011 for additional information and revised plan.
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WALKER: I have some further items to be marked into evidence.

- Item 12 is the Board Secretary letter dated 4/07/2011.
- Item 13 is a revised plan dated 3/09/2011.
- Item 14 is Floor Area Ratio calculations dated 4/07/2011.
- Item 15 is a 1986 resolution, letters and deck drawings pertaining to the existing residence.

TEN HOEVE: You were previously sworn and you are still under oath.

VON DER LIETH: Okay, Mr. Perez, let me just get some of the information that we have here. I know that we were talking last month about the deck, possibly, we were inquiring about the variance for the owner previous to you, who had built the deck and we have in our possession, I guess, the resolution that was granted and a couple of letters from one of the Board members and then a rebuttal letter from Mr. D'Eletto.

Where are we going to go with this, Mr. Ten Hoeve? I know that the Board has to decide.....

TEN HOEVE: Well, there are several issues. The Board has to decide on the requested variances, the F.A.R. variance, the Board has received calculations from the architect indicating what the nature and extent of the what the F.A.R. variance is. In addition, the deck is shown, on the survey that has been submitted, to encroach onto someone else's property and also was apparently constructed in violation of a resolution

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from 1986, to a prior owner, granting a variance to build the deck, but not to build it directly on the property line, rather 11 or 12 feet from the property line.

That is the background. The Board has to decide whether it wishes to grant the variances and what to do about the deck.

PEREZ: I don't know if I can put these in for your viewing. I took these pictures today, from an elevated view from my second floor, down onto that platform style decking, just to show you a little bit of the rear yard, where that railing.....

TEN HOEVE: You can offer this into evidence. Just have the Board Secretary mark it. Mr. Walker will mark it as the next exhibit. You can tell us what it is.

WALKER: Item 16 is 3 photographs.

VON DER LIETH: They were taken today?

PEREZ: Yes, they were. You can tell by the rain....

BEER: Mr. Perez, would you pull the black microphone a bit closer?

PEREZ: Yes.

VON DER LIETH: Okay, Mr. Perez, we will look at the pictures here. The main point that we have to contend with is the fact that the deck, as it is right now, is actually on the property line or is it over the line?

TEN HOEVE: It is over the line.

VON DER LIETH: It is over the line, so for us to move ahead with this, we have to in sum way, have that deck moved off of the property line, back a little bit, whether it is cut back, Perhaps a different design.

TEN HOEVE: I think that the Board should come up with some suggestions with regard to whether it is inclined to grant the requested variance for the addition and what it believes should be done with respect to the deck.

VON DER LIETH: That just being the case, because if in an event that you sold the house and the deck is on the property line, there could be, even though the neighbors might not mind right now, it would be a big issue.

PEREZ: You can see on the pictures it is really a portion, and again I understand totally where you are coming from as a Board, the picture is showing where that, it is in the very back portion of Mr. Desmond's property and it is behind his shed. Also, he was a little bit surprised that the trees, which were a little bit beyond the railing, are his. Hoping that they really weren't. He was hoping that the railing was actually my property as well as on to the tree line, so when I spoke to him about this, again, he was a little bit dismayed that the cluster of trees that are behind my deck, are actually on his property. I understand fully what you are saying. Again, I have the one hardship of the leaking solarium and that is where I came for the variance and what I am hoping to do is not leave with a second hardship of getting rid of the one and then assuming the other hardship of having this platform and not being able to go forward with the project, of enclosing the kitchen.

I don't know if we could approach this on a bifurcated way. I just don't know.

VON DER LIETH: Well, just to refresh the Board's memory, Mr. Perez came before us to fix the leaking solarium, right? You were going to enclose it and during the process of going over that, we came over the issue of this deck. Is that correct?

PEREZ: Yes.

BRENNAN: Mr. Perez, would you be in agreement to shave back your deck?

PEREZ: Oh, absolutely.

FLAHERTY: The Board can't go to consider the other variances when that one is in place. So, you agree that you will take the deck back if the Board should suggest how far you need to take it.

TEN HOEVE: The Board, in essence, has to grant a new variance if they are going to allow some modified deck to be located somewhere.

PEREZ: I am in absolute, you know, as I said last meeting, that I will be more than happy to go forward and do whatever with that deck. Although, I assumed it with the purchase of that house, and it was an assumed, I didn't know it at the time, again. If I looked closer when I purchased the property in 1995, and went forward and did a little bit more research in it, when the D'Eletto's were walking though the house, and the property, and you know, we just kind of fell in love with the spot and the area and everything and I just said—again,.....

TEN HOEVE: Didn't you get a survey?

PEREZ: We absolutely did.

TEN HOEVE: Didn't the survey show the deck?

PEREZ: I am sure that it did.

TEN HOEVE: It had to show that the deck was over the property line.

PEREZ: I am sure that it did.

TEN HOEVE: And you elected to do nothing?

PEREZ: I just truly, not being in this particular...

TEN HOEVE: You didn't look at it?

PEREZ: I just truly, no, I had it but when you are purchasing a house, you have a check list of things that you need to have done, the attorneys go ahead and tell you. Sure enough, yes, I supplied that to my attorney as well as to the attorney who was representing the D'Eletto's. I couldn't tell you I went through each and every piece of paper that was required.

TEN HOEVE: I guess what I am asking is did the issue come up? Did anyone discuss that issue at the time you purchased the property?

PEREZ: There was no issue brought up at that time.

VON DER LIETH: Well, I think that, I don't know about the other Board members, we could maybe do an informal pole. I am pretty sure that we are all in agreement that if you did get the deck back off of the property line—I am about to ask John, I don't know what the minimum it would have to be?

TEN HOEVE: I can't tell you that. The minimum is what the Zoning Ordinance permits, which is 20 feet. There was a variance granted to allow it 11.7 feet or 11.6 feet. The Board has the ability to grant a variance for whatever it believes is appropriate. The Board Attorney can't tell you what to do in terms of what type of variance.

VON DER LIETH: So it is 11.7, that was the original and it was agreed upon.

TEN HOEVE: Well the Board members should have a sketch of the "L" shaped deck that was originally supposed to be constructed. That was submitted when the first

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variance was granted. In fact, the applicant had originally submitted an application to put it one foot from the property line. That is mentioned in the resolution. The Board refused to grant that providing that the deck had to be the 11.6 feet from the property line. The applicant then took it and just built the deck anyway that he wanted.

Do you have a copy of the sketch that was originally? Do you have this sketch, Mr. Brennan?

BRENNAN: Yes.

VON DER LIETH: What would be talking about if we did take the deck to the original 11.7 feet that was proposed? Does looking at the sketch, how many feet would have to be taken off of the deck as it is right now? You would only have a 5 foot deck.

TEN HOEVE: What is shown on the original approval is 12 feet by 11, but there is no solarium, which apparently was constructed at some time later, that is not shown on this 1986 survey, so it must not have existed. Did you construct that?

PEREZ: No

TEN HOEVE: That was there, also put on sometime?

PEREZ: Yes, that is correct.

TEN HOEVE: The prior homeowner did a lot of construction in violation of Zoning and Building Code.

BRENNAN: So, Mr. Ten Hoeve, the Board can't suggest how far off?

TEN HOEVE: Well sure, the Board can, I can't tell you as an attorney, that is what I am saying. The Board can definitely come up with a suggestion and be willing to grant a variance to .....

BRENNAN: The deck is about ½ a foot over, I would suggest that the applicant shave the deck by about 2 feet to be a foot and a half off the line. Is that something that the Board could live with.

VON DER LIETH: Yes.

RAMAN: If you look at the deck construction, there might be an engineering answer to it also, like, that is what I was looking at, maybe if you can take a triangle off and depending on where the supporting members are, so if he doesn't mind loosing another few feet, it might be actually an engineering question as to where that deck should be cut.

PEREZ: Right, exactly.

VON DER LIETH: He has to get this solarium, I am sure with the rain right now, you are getting choked, right?

PEREZ: I have been through tubes of caulking, in these last few weeks.

TEN HOEVE: Is the Board saying no nearer than 2 feet and if he wants to cut it back more because the structure, he can do that?

VON DER LIETH: That is what the Board is saying, yes.

HOSKINS: I have on more question. How far back from the line is the columns that the beams are supported on?

PEREZ: That particular portion of the deck is more like a platform. It is about a foot, I would say it is about 13 inches off of the ground. What is underneath there is a old

brick style patio and reading through the 1986 and 1987 letters from the previous owner, he put that platform on because of the roots of the trees. They were pushing these bricks. They weren't tile. They weren't bricks that you would have for normal decking. They were just pavers. They were just regular red bricks. The bricks have, again, they have kind of heaved due to the roots growth and again, according to the letter, they became very uneven, so he put this platform over, hence that step down on to that platform deck.

Now, the railing that goes around it, I can, again, you tell me what you want me to do. I will be more than happy to conform to the Board's wishes with this. Again, I came for the one that I want. I want to move forward with my kitchen.

RAMAN: The railing will move with the deck, I guess.

PEREZ: Yes, I don't know where the footings that are supporting that portion of the platform deck. I don't know.

TEN HOEVE: Well, whatever you do is going to have to comply with Building Code. You will have to get a building permit. It will be inspected.

PEREZ: Absolutely.

TEN HOEVE: If I understand the Board, they are telling me that they are willing to have you move the deck so that no portion is closer than 2 feet from the property line, and that the railing will be .....

PEREZ: There will be no railing there. I will take it off. I will take it from, that is not going to overhang.

TEN HOEVE: How high is the deck?

PEREZ: 13 inches off of the ground, that portion of the decking. The other portion, the "L" shaped which is the original plan, is, of course, higher than that.

TEN HOEVE: Is the Board also willing to grant the F.A.R. variance for the addition?

VON DER LIETH: Yes.

TEN HOEVE: So we can, we will discuss it later. I can just prepare a resolution.

VON DER LIETH: Yes, I think we were in agreement on that also. So if we have Mr. Perez comply with everything that we want here, we can get...he doesn't have to come back again in order to do the solarium, right?

TEN HOEVE: The resolution will be adopted at the next meeting, as is normally the course. I will have the resolution, but he doesn't have to reappear. Unless you want to adopt it tonight and have a memorializing resolution done, which you can do as well.

VON DER LIETH: Well, I think that will be prudent just do to the rain. I can sympathize with what you are going through. So, I think the sooner the better if we could do that tonight, if the Board would like to, we should do it.

TEN HOEVE: Yes, there is also a rear yard setback as the Zoning Officer just pointed out, so he will need the deck variance, the rear yard setback variance for the addition, and the F.A.R. variance. Someone will have to make a resolution to approve those three variances.

VON DER LIETH: Okay, fair enough, but we can do it tonight then?

TEN HOEVE: If you want.

VON DER LIETH: Okay. Can I have a motion to approve the 3 variances?

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TEN HOEVE: With the deck no nearer than 2 feet and with the setback for the addition as shown on the plan?

The motion was made by Mr. Flaherty and seconded by Mr. Hoskins. Motion carried.

**ROLL CALL:**

**Ayes:** Mr. Sandler, Mr. Raman, Mr. Galdi, Mr. Hoskins, Mr. Flaherty, Dr. von der Lieth

**Abstain:** Mr. Brennan

**Nay:** Mr. Walker

**NEW CASES:**

<b><u>CASE:</u></b> 11-09 Block: 1312 Lot: 1	Application of <b><u>Todd Walder</u></b> , 65 Fremont Avenue for rear yard variance to construct a deck to an 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 4/25/2011.
- Item 2 is certification of service dated 5/04/2011.
- Item 3 is legal notification dated 5/06/2011.
- Item 4 is proof of payment of taxes dated 4/11/2011.
- Item 5 is the deed dated 6/26/2006.
- Item 6 is the survey dated 4/21/2011.
- Item 7 is 10 undated photographs.
- Item 8 is the letter of denial from 3/31/2011.
- Item 9 is undated sketches of the proposed deck.
- Item 10 is second letter of denial.
- Item 11 is the Board secretary letter dated 4/05/2011.

BEER: Let the record show that Mr. Raman has left the dais.

TEN HOEVE: 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?

WALDER: I do.

TEN HOEVE: Please state your name and address.

WALDER: Todd Walder, 65 Fremont Avenue, Park Ridge, NJ.

VON DER LIETH: Hello Mr. Walder. Could you do us a favor and just take us through exactly what you would like done here?

WALDER: Yes, what I would like to do is, I would like to replace the existing concrete stoop in my backyard and put a deck in its place. The way that it is arranged it would encroach into the setback required by the town. So, I would like to apply for a variance basically to get that extra 2 feet.

Looking to work with the setback, if I were to work within that confines of the way the Ordinance is, it would leave me with a deck that is only 11 foot 3 inches of usable deck. So, basically, I don't want to go to my property anymore. I don't want to take up anymore lawn space or anything, I just want to replace what is there.

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The pictures that I submitted show that you can see that it is an unsightly structure. It has these concrete planters in it that have no function whatsoever, and we would like to make that space more functional for the property.

WALKER: One of the pictures, it looks like where those Bilco doors, are they not in use today?

WALDER: Those are Bilco doors, yes, they are in use. I plan to build over them, but still have them functional. I am going to have a removable section in the deck.

TEN HOEVE: A removable section?

WALDER: Yes.

TEN HOEVE: How high is the deck?

WALDER: The deck height is going to be 4 ½ feet high. I am sorry, I am new at this. Yes, 4 ½ feet high and yes, at the highest point with the slope of the ground.

WALKER: Is that the only entrance to the basement?

WALDER: No, there is an inside entrance. I was reserving that use or the ability to access those doors in the event that I have to change a hot water heater or some large item. They would stay closed the majority of their life span. It is just that if I ever did need to the basement I would like to have a way, if I had to get something large, rather than bring it up through the kitchen and try to make a turn, which might be a bit tight.

BRENNAN: I noticed in the design that you had a removable section over the Bilco doors, but did you have something that brought you down from the 4 ½ foot height to the level of the Bilco doors, because that is large drop.

WALDER: Yes, in the sketch it doesn't exist, but I am working out and I was going to have wooden stair actually going down. That would follow the same slope or rise of the basement stairs coming up. So, it would be almost like a continuous. There would be, perhaps, two hatches that would come off and be moved to the side and a couple of removable pieces, which I can show you.

I drew a sketch, but it is not to scale, so I didn't want to submit, but I could certainly show you what my idea is. (away from microphone testimony can't be heard)

VON DER LIETH: Just roughly, what was the size of the removable, the actual pieces that were removable?

WALDER: 4 feet.

VON DER LIETH: 4 feet wide.

WALDER: I could make it 4 X 4. The lines would all match the deck. You wouldn't see it once it was in place.

VON DER LIETH: So that would all be made up of what, 1 X 6?

BEER: Mr. Chairman, this is not picking up because he is away from the microphone.

WALDER: The actual decking is 5 quarter by 6.

VON DER LIETH: Not so heavy. You have to have some way to get into the basement, so.....

BRENNAN: If he divides it into 4 X 4 panels, it is still liftable.

VON DER LIETH: It is doable.

WALDER: Yes, if you get a guy on each side, we could just pick it up and move it over.

TEN HOEVE: What are you going to have to do, unscrew it?

WALDER: It would be held in by gravity.

TEN HOEVE: By gravity?

WALDER: Yes, the removable joists and they will be sufficient. They will be 8 inch joists. These are 16 on center but if I work with, again, these are just sketches, but if we work with the construction officer. If he feels that they have to be 12, we can make it 12. It would just be a couple of more hangers and all square cuts.

BRENNAN: Are you running the ledge board on the frame of the house?

WALDER: I am not going to run, this is going to be a floating deck. I don't want it attached to the house, because the house is made of stucco and I don't want to dig into that structure. That is why on this drawing I show that it is going to be supported, I figured a one foot cantilever.

BRENNAN: How far will it be from the bottom of the deck to the Bilco door?

WALDER: The bottom of the deck will be approximately, it will be inches off of the top of the door. The exact inches, I am not sure.

BRENNAN: The back door, isn't that flush with the Bilco doors?

WALDER: Roughly, yes.

BRENNAN: So your deck can't go any higher than the top of the Bilco doors?

WALDER: That is correct.

BRENNAN: You are taking down the stoop?

WALDER: Yes.

TEN HOEVE: Have you checked with the Building Department to find out that this construction method is compliant with code?

WALDER: Yes, as far as the distances?

TEN HOEVE: No, I mean the removable pieces and.....

WALDER: The discussion that I had with the application that I submitted and everything, he said that it is totally workable and that he has seen it before and we could do it. Nothing is written. I still have the application, but I couldn't submit that until we got this.

TEN HOEVE: Right.

WALKER: What is the weight of that removable section going to be?

WALDER: I can estimate it, but I have to get a calculator and such.

WALKER: Would a child be able to move that?

WALDER: No way. No, definitely not. I was thinking 2 grown adults, one on each side having to lift and move it.

VON DER LIETH: Well it is heavy enough to be there just by gravity, its sheer weight, so it has to be.....

WALKER: So you could only enter through those doors, basically? You couldn't exit the basement?

WALDER: No, it wouldn't be feasible.

WALKER: You couldn't move that section and get out?

WALDER: No, the basement is not a finished basement. So, people don't really hang out down there for any reason.

VON DER LIETH: You are talking about egress from the basement and trying to get up being a safety issue?

TEN HOEVE: Yes, that is what he was thinking.

VON DER LIETH: Okay.

TEN HOEVE: Is there a reason that you are not expanding the deck towards Wortendyke Avenue to the end of the house, to give you more room as opposed to coming out deeper into the rear yard?

WALDER: Yes, there is a window there and my kitchen window. There is a kitchen window and a water faucet, a drain vent, 2 basement windows. There are a number of obstructions, plus there is a tree, not a tree, there is a large bush that adds a lot of privacy and shade to that area of the house that would all have to come down if I went in that direction.

VON DER LIETH: Now, that, I know some of the Board members have been by to see the distance from the proposed deck to the property line roughly 17 feet. Is there anybody who has been by there? I know that we are talking about it. It looked a little bit closer, right Mr. Hoskins?

HOSKINS: Yes, I was by there today. Perception was that it was going to be close the line. The drawing is hard to tell. There is a new structure inside that cyclone fence, that is the side of a garage.

WALDER: Yes, as far as I know.

HOSKINS: If you go through with the deck, it is going to be 22.3 feet, from what I had seen.

WALDER: 17.3 feet, from the fence.

VON DER LIETH: Then your neighbor's garage is almost right on that fence right there, right, I mean it looks pretty close.

WALKER: How is your neighbor's garage accessed from Wortendyke or from.....

WALDER: From Wortendyke. Again, there are constructing this brand new, so this garage is everyday it is evolving, but it is .....

TEN HOEVE: The garage is brand new?

WALDER: Yes. It is being constructed. Actually, if you look at the pictures, you can see in the background.....

BRENNAN: The garage was an existing garage?

WALDER: Yes, they tore it down. We watched them tear it down, and they are putting it back up. I believe that it is going to be the same thing. It doesn't have a door on it yet, but it looks like a big hole.

BRENNAN: We dealt with that a couple of meeting ago.

VON DER LIETH: Is there anyone here to speak on this application? Does anyone on the Board have any comments? Okay we will discuss it later. Mr. Walder, thank you very much.

TEN HOEVE: For the record, Mr. Raman has returned to the dais.

<b>CASE:</b> 11-08 <b>Block:</b> 1508 <b>Lot:</b> 3	Application of <u><i>Thomas &amp; Concetta Desiderio</i></u> , 55 North Maple Avenue for expansion of non-conforming use, Floor Area Ratio, height, building coverage and impervious coverage variances to construct an addition to existing house in an R-10 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 4/25/2011.
- Item 2 is certification of service dated 5/04/2011.
- Item 3 is legal notification dated 5/06/2011.
- Item 4 is proof of payment of taxes dated 4/20/2011.
- Item 5 is the deed dated 6/06/1994.
- Item 6 is the survey dated 3/16/2011.
- Item 7 is plot plan and soil erosion dated 4/04/2011.
- Item 8 is the elevations and floor plan dated 2/08/2011.
- Item 9 is 16 undated photographs.
- Item 10 is a soil moving application dated 4/19/2011.
- Item 11 is a seepage pit design dated 4/06/2011.
- Item 12 is the Assessor's records dated 4/27/2011.
- Item 13 is a letter of denial dated 4/14/2011.
- Item 14 is Board Engineer's letter dated 5/13/2011.

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

VON DER LIETH: Mr. Urdang.

URDANG: Yes. I am Elliott Urdang representing the applicant. Good evening, Dr. von der Lieth and members of the Board. I have just one question at the beginning. The first thing that was read off is that this is an expansion of a nonconforming use.

I am not sure that is exactly so. This is a 2-family house, consisting of a 2-bedroom and a 3-bedroom. That is what it is remaining. The structure is being expanded, but not the use.

VON DER LIETH: I am looking for that. I think the latest tax records that we had listed it as a 3-family.

URDANG: No, it has never been a 3-family.

TEN HOEVE: That is one of the issues that the Board can address during testimony. I am not sure that is what Mr. Urdang is talking about now.

VON DER LIETH: It is not, oh, okay.

URDANG: I don't want to get overly technical. I think we are going to be describing what is going to be done and essentially, the 2-bedroom and the 3-bedroom is

going to remain and the expansion that triggers this application has to do with the 3-bedroom apartment, which occupies the lower 2 levels.

TEN HOEVE: I am confused. Just so I understand, is it your contention that if you have a nonconforming 2-family house, that you can expand that structure without getting a “D” variance?

URDANG: Yes.

TEN HOEVE: I don’t agree with that, but.....

URDANG: I didn’t think that you would. None the less, I felt obliged to state it. I think when it all comes out, at the end, .....

TEN HOEVE: You are also aware of the fact that Park Ridge has a unique ordinance that deals with nonconforming, pre-existing, 2-families, that says you can expand the owner occupied portion.

URDANG: That is exactly what is happening. I wasn’t aware of that.

TEN HOEVE: We have an ordinance that so provides as long as you do not require any Bulk variances. It is something like that.

URDANG: Well, we clearly require Bulk variances and I don’t want get too much into it, but, there is some question in my mind, and from a strictly academic point of view, as to whether that would be in derogation of the statute.

TEN HOEVE: I have heard that argument before, from other attorneys. It actually helps most applicants.

URDANG: Well, it doesn’t in this case because we need Bulk variances. Perhaps if we can get to it, I think this will be easily explained to the Board. Essentially, what you have here is a house that is 100 years old. It is situated on North Maple, just south of the intersection with Berthoud. It is on the westerly side. There are 3 levels to the house.

The top level is a 2-bedroom. That is in the process of being renovated, pursuant to a building permit that has been issued for that. The lower 2 levels constitute a 3-bedroom apartment, which the applicant’s presently occupy. They have owned the property since 1994. The expansion has to do with the lower level. There is an expansion of the living space and there is also the introduction of a 1-car garage. Presently there is no garage on the subject property.

The application, putting aside the issue whether it is an expansion of a nonconforming use, it does implicate another “D” variance, which is the F.A.R. It also implicates certain bulk variances, that have to do with height, although in this case, it is a “C” variance, not a “D” variance, impervious coverage, building coverage. I think that is it. So, we have one “D” variance and 3 Bulk variances putting aside the issue of expansion of a nonconforming use.

I had planned to have our Architect, David Smith testify, I do have Mr. and Mrs. Desiderio, if you would like them all sworn in, because you may have certain questions of them.

TEN HOEVE: I think that would be a good idea. Would you raise your right 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?

T. DESIDERIO: I do.

C. DESIDERIO: I do

SMITH: I do.

TEN HOEVE: Please state your name and addresses.

SMITH: David Smith, 16 Jessup Road, Warwick, NY.

C. DESIDERIO: Connie Desiderio, 55 North Maple Avenue, Park Ridge.

T. DESIDERIO: Thomas Desiderio, 55 North Maple Avenue, Park Ridge.

URDANG: As I stated, Mr. Chairman, it would be my intention to have the actual testimony come from .....

TEN HOEVE: How will we know what is going on in there, the uses, the tenants, the occupants.... There is an issue. Did you get the exhibits that were copies of the exhibits that were referenced here concerning Certificates of Occupancy for a 2-family nonconforming.... you haven't gotten any of that?

URDANG: I didn't think that there was any question that this is a nonconforming use.

TEN HOEVE: Let me give you these to take a look at.

URDANG: They have owned the house since 1994.

TEN HOEVE: Let me give you these items to take a look at, because I am sure that there will be questions. It is an application for a certificate of continued occupancy in 1994, referencing it as a 2-family house. There is also a second certificate of continued occupancy also in 1994. Then there is a report from the Tax Office, it looks like it is done by an appraisal company, identifying it as a 3-family home.

URDANG: Let me get back to you on this.

TEN HOEVE: I am giving you this, Mr. Urdang, so you understand why I think that there will be some questions that only your clients can answer.

URDANG: Okay. Maybe we should start with this because it has never been a 3-family home.

TEN HOEVE: I am not saying that it has. I am just telling you why I think that it is necessary to hear their testimony.

URDANG: Okay. Mr. Desiderio, can you tell us when this property was acquired?

T. DESIDERIO: Connie and I bought that property in, I believe, June of 1994. It was a 2-family house. There was 2 bedrooms on the main level and 1 bedroom on the basement level. The property comes down hill so the basement in the back, almost winds up ground level. It was never a 3-family house.

VON DER LIETH: When you purchased the home, did it have 3 kitchens?

T. DESIDERIO: No.

VON DER LIETH: Because the appraisal company, I guess they had done it, identified 3 kitchens. One in the basement, one on the first floor, and one on the second floor.

T. DESIDERIO: When we first purchased the home, there was a small summer kitchen, so the realtor said, when we purchased the house. But, it was never 2 apartments downstairs.

VON DER LIETH: No, but it was 3 kitchens. There was always 3 kitchens.

T. DESIDERIO: Then the kitchen was removed because the town didn't want it. Nancy Russell came by and the other inspectors and they said to remove the stove, and cap it all up, which we did. We complied. Also, we removed the sink because it wasn't working properly.

TEN HOEVE: When was that?

T. DESIDERIO: About 5 years ago.

VON DER LIETH: The one in the basement was removed?

T. DESIDERIO: Yes. The one on the main level is there and that is where Connie and I live now and the one on the upper apartment is there also. There is no kitchen in the basement for at least 5 years and it was never used anyway.

TEN HOEVE: Then you never replaced the one in the basement? Have you lived there since 1994?

T. DESIDERIO: No, we moved in November after we sold our house in Waldwick. We lived there for 30 years.

TEN HOEVE: Did you rent the house out to tenants after you purchased it?

T. DESIDERIO: Yes.

TEN HOEVE: Did you have a separate tenant at any time in the basement area?

T. DESIDERIO: No.

TEN HOEVE: So you have never rented it out as anything other than a 2-family house?

T. DESIDERIO: No. The bottom apartment was 2 levels, but one apartment.

VON DER LIETH: So the bottom apartment consists of both the first floor and the basement?

T. DESIDERIO: Right. The other apartment is up a full flight of stairs. It was an older colonial 1-family that was converted, I don't know when, to a 2-family.

TEN HOEVE: Did you visit the premises from time to time between 94 and when you first moved in, to make sure who was occupying it?

T. DESIDERIO: Always.

TEN HOEVE: It has never been occupied by any separate family in the lower unit.

T. DESIDERIO: No.

TEN HOEVE: Thank you.

VON DER LIETH: Just one other thing. There is a bathroom on each, technically speaking, if you are living on the first floor, you are living on the first floor and basement, so there is a bathroom on both the basement level and .....

T. DESIDERIO: There are 2 bathrooms on the lower apartment.

VON DER LIETH: Any reason why there was a kitchen on the lower, if it was always one unit, why there would be 2 sinks.....

T. DESIDERIO: When we bought it, the realtor said it was a summer kitchen. As I said, the property came down, so you could walk right out and sit in the backyard, and patio. You wouldn't have to walk up the stairs to use the sink or anything, so they had a little sink and a stove down there. As I said, it was removed later because the town didn't want it and so we took it out.

URDANG: Let me just ask a couple of questions. Presently you are occupying the lower apartment, the one on the first floor and the lower level. Is that correct?

T. DESIDERIO: Yes.

URDANG: Okay. If this variance is granted, would it be your intention to move temporarily to the upstairs apartment, the 2-bedroom apartment?

T. DESIDERIO: While the renovations are being done.

BRENNAN: So that is vacant right now?

T. DESIDERIO: It is almost done.

VON DER LIETH: But the second floor is vacant so you can move up?

URDANG: When the construction is completed on the expansion, if the variance is granted, it would then be your intention to move into the lower apartment and to rent out the upper apartment as a 2-bedroom, correct?

T. DESIDERIO: Correct.

URDANG: Do I understand and do you understand that the house is strictly limited to a 2-family house. There are 2 apartments. Do you have any intention whatsoever of creating more than that?

T. DESIDERIO: No.

VON DER LIETH: And the upper portion, Mr. Urdang, is just being remodeled and not expanded, correct?

URDANG: Correct. That is in process. The permit building was issued for that. I would like to say that if there is any concern on the part of the Board, as to the downstairs apartment being used for more than one, we will, number 1, consent to that as a condition of approval if granted and if you want that memorialized by deed, we are willing to do that. There is no intention to create a third apartment.

VON DER LIETH: Can you do us a favor, am I rushing this to kind of get to this soil removal?

TEN HOEVE: You need to hear testimony with respect to the several variances that are being sought. This was just some background information that I know the Board was concerned about because of the nature of the use.

URDANG: I would like then to proceed with the testimony of the Architect, Mr. Smith. You are a licensed Architect in the State of New Jersey?

SMITH: I am

URDANG: Have you testified before this Board previously?

SMITH: I have not in front of this Board. My last testimony was in Ramsey.

URDANG: Would you give the Board, then, the benefit of your education and your professional experience including testimony before other Boards?

SMITH: I graduated from the University of North Carolina in Charlotte, in 1994. I have been working in the field of architecture ever since and licensed and working on my own for the past 3 years. I have been in front of several Boards. The latest was in Ramsey, New Jersey.

URDANG: You were accepted by those Boards as an architectural expert?

SMITH: I was.

URDANG: I will offer him as architectural expert.

VON DER LIETH: That is fine. We will accept that.

URDANG: Are you familiar with the lot environment?

SMITH: Absolutely.

URDANG: Did you prepare the architectural plans that are presently before the Board?

SMITH: I did.

URDANG: Let's turn first to the existing condition. Where is the lot located and what zone is it situated?

SMITH: As we have already talked about, there is an existing 2-family house in the R-10 zone on North Maple Avenue. It is an existing 100 year old house, plus or minus, semi-Victorian style. You walk into the main, sort of lobby area. There is a living room right off of that, kitchen beyond that, some bedrooms in the back. There is a front porch that wraps around the front of the building, which is enclosed. Obviously, at some point, there is glass there currently.

You go down to the basement level. There are a few different levels, steps, that are in the basement, but it is essentially a walk out basement in the back due to the topography of the land sloping away quite a bit. Then again, the upstairs bedroom.

URDANG: With reference to the lot itself, are there a number of existing nonconformities, which are reflected on the site plan of the plot that was prepared by Azzolina and Feury Engineering?

SMITH: Yes.

URDANG: Those would include area lot, front yard and side yards?

SMITH: Correct.

URDANG: With respect to the topography of the property, is there a slope to this property?

SMITH: Yes, it starts out at the street level for walking at the main level, the first floor and then it slopes gradually down to the back of the house, where you have a walkout at the back.

URDANG: And, is the differential between the front property line and the rear property line approximately 10 feet?

SMITH: Yes.

URDANG: Do you characterize that as a significant change in topography?

SMITH: Yes, I mean it drops quite a bit. You can definitely can notice it as you are walking down. It is a fair slope.

URDANG: Can you tell us a little bit, have you looked at the neighborhood and can you tell us what sort of houses are located within the immediate neighborhood?

SMITH: There is a variety of houses. Some of them are older, as the Desiderio's house is. A couple of houses are newer. Some have been remodeled, some are not. It is definitely a variety of different styles and eras.

URDANG: Immediately to the North of the property, what is located there?

SMITH: It is a vacant lot.

URDANG: It would appear from the key map on the Azzolina and Feury plot plan, that the lot is significantly larger than the subject property?

SMITH: Correct.

URDANG: And that is vacant?

SMITH: Correct.

URDANG: Can you tell us what is proposed in regards to this expansion?

SMITH: What we are looking to is to create a master bedroom suite towards the rear of the house. We are looking to get a renovated kitchen, trying to create a little more .....

URDANG: Just so the record is clear, what you are talking about is the downstairs apartment.

SMITH: Correct.

URDANG: The upstairs apartment is already being remodeled, it is a 2-bedroom?

SMITH: Right the upstairs is essentially being cleaned up. It is being refreshed. It is updated, not changing its size in any manner. The downstairs apartment, where the Desiderio's intend to reside, is being expanded to gain a little bit larger kitchen, some larger bedrooms, trying to update the house as it is currently very compartmentalized. There are very small rooms, single bathroom on the main floor. We are trying to bring it into a more contemporary usage.

URDANG: Can you explain what is going to happen on the upper floor of the downstairs apartment? What is being put in there? What is the expansion consisting of, or is there any expansion that pertains to that floor?

SMITH: The upper floor of the house is a master bedroom and a second bedroom or the shared bath, redoing a kitchen, dining room, and living room, sort of freshening up this powder room that is existing there.

URDANG: You are essentially taking the existing space and just creating different rooms. Are you expanding that floor or is it the floor above that is being expanded?

SMITH: We are expanding both, the basement level to create the garage and a living space, a den space, and then above that, we are creating this where the master bedroom and second bedroom are located.

URDANG: Okay. Can you tell us what is going to be done with the lowest level?

SMITH: The basement level is the living room space, or den space, the garage, the mechanical area, the equipment that is there is going to stay. We are trying to clean up sort of a, an existing bathroom that is there and sort of a wet bar area.

URDANG: Is it a single garage, a one bay garage?

SMITH: Right, we are adding a single bay garage.

URDANG: Are there any changes being proposed to the exterior of the house?

SMITH: We are looking to get new siding on throughout the house. Again, trying to freshen up some existing windows, some of them in their openings. The windows along the existing front porch are very thin and shaky, currently. We are looking to replace them with better quality windows.

URDANG: Is there evidence of similar type of renovations within the neighborhood?

SMITH: Yes, there have been several houses that have been renovated in the area, some enlarging and updating themselves.

URDANG: Let's turn to the variances and let's turn first to building height and actually reading from the plot plan. What is allowed is 32 feet and what is proposed is 34.02 feet. Is there any actual increase in the height of the building as it exists now? Is that being pushed up at all?

SMITH: No. All of the new construction is much lower than the existing house is. The reason we have to seek a variance now, is because the mean area of the base of the house, because we are working in the back, is lower than the house is presently. So, by bringing down that average grade level, our relationship to the existing ridge is higher.

URDANG: Okay, so the expansion is occurring in the rear and as it goes towards the rear of the topography slopes towards the rear, and in order to ascertain height under the ordinance, you have to measure at specific intervals around the home. So as ground gets lower, the height relative to that is higher.

There is no change, with respect to the streetscape, there is no change whatsoever in the height of the existing house?

SMITH: No, all of the work is in the back. From the front it will look very similar to what it is now.

URDANG: Okay, now with respect to building coverage, again, what is allowed is 20% and what is provided is 23.3% and that is an increase of how many square feet?

SMITH: It is about 309 square foot increase in coverage.

URDANG: Is all of this increase occurring in the rear of the property, again consistent with the slope?

SMITH: Yes it is. All of the expansion is in the rear. It is essentially the master bedroom with the garage below it and the den space.

TEN HOEVE: Just repeat that again. The total increase in square footage is 309 square feet, is that what you said?

SMITH: Over coverage, we are over our limit by 309 square feet.

TEN HOEVE: Okay, so you are not saying the total increase in the building coverage from what is there now is 309 square feet.

URDANG: Oh no, I am sorry.

TEN HOEVE: You are saying that it is over the maximum by 309?

URDANG: That is correct. Can you tell us what the building coverage attributable to the garage is?

SMITH: It is about 360 feet, is the size of the garage.

URDANG: Is it fair to say, then, that the increase in building coverage is attributable to the garage?

SMITH: To the garage.

TEN HOEVE: It could also be attributable to other portions of the addition that you are putting. You can't allocate it to the garage. If you didn't have the garage, and you put building there, you call it some part of the building that is over. Is there some reason that you say the increase is attributable to the garage rather than some other portion of your proposed addition?

SMITH: It is just the size of the garage closely matches the size of overage, I guess.

URDANG: If you didn't have the garage, then you wouldn't be exceeding coverage.

TEN HOEVE: And if you didn't have some other portion of the proposed addition other than the garage.....

URDANG: There is a reason for having the garage, Mr. Ten Hoeve. If you would let us finish.

RAMAN: But there is a space above the garage, right?

SMITH: Yes.

RAMAN: There is a living space above the garage?

URDANG: Yes there is. The building coverage deals with the footprint. F.A.R. deals with interior space. There is a difference. If you didn't have the garage, we would not be exceeding, I understand Mr. Ten Hoeve's point, but.....

RAMAN: That would change the whole building. If you didn't have the garage, the whole building would shrink by that much. You would still have an upper level, but the building would shrink by that much.

URDANG: Right, but the thing that, well.....with respect to impervious coverage, what is allowed is 40% and what is provided is 41.71%?

SMITH: Correct. There is a difference of about 160 square feet over what is allowed.

URDANG: In your opinion, if someone were standing at the periphery of the property, would the difference between a conforming impervious coverage and what is requested here, be perceptible to that person?

SMITH: No, I don't think it would. It is a very small overage.

URDANG: Is the increase, or at least part of the increase, in the impervious coverage, due to the driveway, that leads down to .....

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SMITH: Absolutely, because we are going from 2 gravel driveways, currently, to, leaving one gravel driveway alone and paving the significant portion to get to the garage in the back.

URDANG: Turning to the F.A.R. variance, what is allowed is 30%, and what is proposed is 35.2%, that is a difference of how many square feet?

SMITH: 488 square feet, again, over what is allowed.

URDANG: Where is that increase in floor area occurring?

SMITH: It is all in the back of the property. It is essentially where we have added the master bedroom and the garage space.

URDANG: Is there any change to the streetscape from this increase in the F.A.R.?

SMITH: No.

URDANG: That remains the same?

SMITH: Right.

URDANG: Do you believe that the site as a whole can adequately accommodate this deviation to the property?

TEN HOEVE: This is from an architectural expert standpoint.

URDANG: Okay, and aesthetically?

SMITH: Yes, I don't think we are creating such a visual overload on this site, by any means.

URDANG: That would be attributable in part due to the topography.

SMITH: Right, we are working with the topography as the topography is stepping down, so is the building.

URDANG: Dealing with these requested variances, both individually and cumulatively, do you see any substantial aesthetic detriment to the neighborhood?

SMITH: No, I think we are improving this house and the neighborhood in general by doing the things that we are proposing. It is going to bring up the tone of this house and the surrounding area.

URDANG: And from, again, looking at the property from the street, is the streetscape adversely affected in any way by what is being proposed?

SMITH: No, I don't believe that it is.

URDANG: Is there any demerit of light and air to the neighboring properties as a result of this application?

SMITH: No, I don't believe so. We are not increasing any violation, side yard setback and so forth. It is an existing nonconformity that we are not increasing in that nature.

URDANG: To your knowledge, are there drainage impertinences being proposed that will take care of any additional issues.

SMITH: The Engineer is fairly elaborate, a series of dry wells that can take care of the extra square footage of roof and so forth. (moved away from microphone and

testimony is not picked up, voices from Board member conversations only thing being picked up while witness is testifying about the drainage system)

URDANG: That is a question that I was going to ask. Are you going to supplement these.....(again Board member speaking over the testimony).

SMITH: Testifying about shrubbery, but being overstepped by Board members.

GALDI: I guess what it comes out to is that we are looking at 4 variances, 3 of the 4 are really very close. Height, building coverage and impervious coverage. Have you looked at other options? I mean we are just talking about a couple of feet here. Have you looked at some other options?

SMITH: Yes, we have been through the design process several times trying to make something that fits. Unfortunately, if I build along the side of the house, we are closing in windows, living rooms, bedrooms, are in that area that we would block light to the house, block egress windows, so, it is a major problem to try add to it.

GALDI: I guess I just think, you know, building coverage, impervious coverage. I mean impervious coverage, you are less than 2% beyond what is required. I mean less than 2% over. Couldn't you just trim it back a little, so you wouldn't even require the variance.

SMITH: The biggest problem with some of that is, you know, driveways, things like that are, because it is just such a tight space to try to get, using the existing the curb cuts to the side loading garage. It takes a little space. We are close. We tried to get it in as close as we could, but it still is very tight.

GALDI: How about the height? Again, 2%, I understand the roof line with the yard pitch's depth. So the plan is to continue the roof line?

URDANG: You have to use the microphone, Mr. Smith. Just take the microphone with you.

SMITH: The existing height of the house, when looking from the side, is here. Because we are building down in this area, that is why we have a height variance situation. We are down, we are only building, I think it was 21 feet or so above the ground. But, it is this height, the existing building height that is a problem, because where we measure at the ground level, has dropped relative to the house. We are building much lower. We are not even coming close to the total height of the house.

GALDI: The existing, that is what we are measuring?

HOSKINS: You take an average.

URDANG: What is happening, is you have to measure from around the periphery of the property, of the building. As we expand the building towards the rear, and given the topography, the rear is much lower than the front. So, it creates more of a height differential. Even though we are not changing any of the existing height.

GALDI: Did you say it is from an average. I recall this from another application. You have to average the highest and lowest?

URDANG: Exactly.

SMITH: From the street side of the property, which is what you would see from the road, we are just under 27 feet to the highest point of ridge. It is just because the property drops and the way that the measurements are taken, it creates that increase in average.

GALDI: What is the maximum height of the lowest point of the new structure, roughly?

SMITH: About 30 feet.

GALDI: So, if it is only 30 feet, from here to the top?

RAMAN: Looking at the scale, it looks more like 36 to the ridge.

MANCUSO: Mr. Chairman, if I might assist in describing the height. What happens in our ordinance, there are 2 components to measure height. You have the average that is taken by taking a point on the elevations 6 feet away from the face of the building around the full perimeter at the corners and at the mid point of any wall. That determines your average height.

In addition to the average height, the ordinance also addresses the maximum height at any one façade. As the architect has demonstrated, since he did work the addition into the existing grades, the addition actually drops down in the back to work with the grade dropping down, so the height of the addition is actually below that 32 requirement.

The reason the measurement is of the existing height is getting above the 32, is because when you do the average and you take the grades that drop down, that is what is altering the resulting height even though the height is really not changing on the existing structure, if you understand that.

TEN HOEVE: Yes, I understand everything, but my only question, if you look at the drawing that is on an incline there, the bottom drawing, you are saying that the height on the bottom right on that façade to the peak is going to be less than 32 feet?

MANCUSO: It appears to be, but I don't have, I didn't have the benefit of the architectural drawings when I did the review.

TEN HOEVE: Do you see the point that I am talking about on that sketch there?

MANCUSO: Yes on the far right.

SMITH: Again, because of the sloping terrain, it changes.

TEN HOEVE: I understand that, but the ordinance provides that, that measurement from the bottom, if you look at that drawing, from right there to the top of the peak can't be more than 32 feet.

MANCUSO: Correct.

SMITH: That dimension is not over 32 feet.

TEN HOEVE: Okay, that is my question.

MANCUSO: IF you notice around the full perimeter, there are a lot of different elevations to the roof line, so they are breaking up the expanse of the structure. There are a lot of varying roof lines and projections, so you don't have the mass, even on the downhill side, you won't see a 45 foot expanse.

GALDI: So just for the record, you point out that it is not 32 feet. How much is it.

SMITH: 22 feet, give or take. I don't have a measurement on that.

GALDI: Mr. Smith, what is the width of the garage?

SMITH: 18 feet wide at the garage door.

GALDI: It is 18 feet wide with the garage door.

SMITH: Yes.

GALDI: Is there any reason that could not be cut down to be a smaller width?

SMITH: 18 feet is inclusive of the door, not the door.

GALDI: No, that is the whole width of the garage.

MANCUSO: Again, we don't have the benefit of the floor plan of the addition, so maybe if you walked us through that it would be helpful.

SMITH: Essentially, this is the front of the house, at the main level. You come in to the sun porch, coming in to the existing part of the house. We have sort of a front room, a parlor if you will, which leads to a couple of sliding doors to a living room space. This is currently where the kitchen is located. It is going to be redone. This is an existing bedroom that we are converting into a dining room space. There is currently a set of stairs that wind to the basement level. We are going to rebuilt those stairs in their current location, a little wider and more legal, less steep.

The hallway comes around to the master bedroom, his and hers walk-in closets, a bathroom with shower and tub, a laundry space in the middle off of this hallway. Then the second bedroom is also towards the rear there. As you come down the stairs, we have sort of a family room with a fireplace, a 1-car garage. This is an existing den space. There is currently a bedroom in this area. We are also going to open up that existing bedroom and make that a little bit larger. It is currently second office space or storage area that is in the back. The mechanical rooms are here. This is an existing bath. We are looking to, again, renovate that as well.

The bedroom is here, and the garage is the same width above it.

GALDI: So the bedroom then becomes how large? It is 18 foot wide?

SMITH: Well, it is 18 at this point it is 11 foot 11. So it essentially 18 by 12. Then you have 2 walk-in closets, a limited closet and a walk-in closet and the shared bath. I didn't feel that we are making an egregiously large spaces that were, you know, we are trying to keep this to the scale of the house. Like I said, we are trying to open up the corner of this wall. This wall is closed. This bedroom is, again, fairly small space. It is a very compartmentalized house. You know, we don't live the way our grandparents did.

WALKER: How come the garage is a side loading instead of front load, where you.....it doesn't look like as much turning radius.

VON DER LIETH: Wouldn't it be easier to drive straight into the garage.

SMITH: Not with the topography. The way the slope is coming down, we have a real problem getting enough pitch from the driveway to get that to work properly, to get a front loaded garage. I also believe that a side loading garage is a better looking garage. You are not seeing the garage doors. You know, from a visual standpoint, it is a better look.

WALKER: How are they going to maneuver out to get back on the street?

TEN HOEVE: It looks like that driveway is right on the property line, from the plans. Is that true?

SMITH: It is very close to the property line.

TEN HOEVE: Are you aware that the ordinance requires it to be 5 feet off of the property line? It looks like the rear portion as if it is directly on the property line.

SMITH: Well, it is pretty close. It is within a foot of the existing property line.

TEN HOEVE: That is an additional variance that is required.

MANCUSO: At one point, it measures 1 foot 3, but it appears that the line is not parallel to the property line. So, as it goes towards the rear, it looks like it gets closer.

SMITH: It gets fairly close right down into this area, that is where it is at its tightest spot.

TEN HOEVE: That is a nonconformity.

SMITH: We have a space to back out of the garage, so that we can make the “K” turn in this driveway. It is a little tight and it is a small garage. It is not a garage that is meant for Escalade. It is a garage that is meant for a sedan, or small car.

URDANG: Can you enlarge the door to get more of maneuverable area.

SMITH: Currently we have a 9 foot door, which is a little bit wider than a standard 8 foot wide garage door. The hope was that was going to provide enough room to begin making your turn a little earlier, you know, so you are not feeling like you are penned in. You know, we have a single garage door in this building.

TEN HOEVE: My question is, can you move the driveway so that it complies? Can you move it back 5 feet off of the property line?

SMITH: We would be very hard pressed to be able to back out of the garage if it were 5 foot shorter.

TEN HOEVE: So, with this design, you couldn't do it?

SMITH: Correct. It is 19 feet from the edge of the door to the edge of the driveway, which is, I believe, doable, but.....

TEN HOEVE: 14 feet would not be? What is the total square foot that you are adding to this structure, garage, everything? How much are you increasing the existing dwelling by and square feet on all of the.....

SMITH: The current basement is 597.7 square feet, and we are adding with the garage, 629 square feet to at total of 1,227.

TEN HOEVE: I don't want the totals, just the new. You are adding 629 of garage?

SMITH: Of basement, total basement.

TEN HOEVE: Total basement. Okay, and the next.

SMITH: The first floor is 919, the second floor is 0.

TEN HOEVE: So it I 1,650, roughly, square feet that you are adding?

SMITH: Actually, I was told that the basement square footage.....

TEN HOEVE: I am not asking about F.A.R. I understand. That is not included in the F.A.R. calculation. Mr. Urdang, your plan says that a *Use* variance is required for the extending of the existing 2-family dwelling, are you aware of that?

URDANG: The Azzolina and Feury thing?

TEN HOEVE: Do you disagree with that?

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URDANG: Yes.

TEN HOEVE: Oh, okay.

URDANG: Yes, I do and just so the record is clear, this was presented to me a couple of weeks ago. I had no hand in the preparation.

TEN HOEVE: I am just pointing out that was the case. Your position is that you don't need a *Use* variance when you are expanding a nonconforming...

URDANG: Yes, I don't want to beat it to death, but I think that is the correct position. It was not an expansion of the use.

TEN HOEVE: Oh, well, okay. A couple of more questions for the architect. If you reduce the size of this addition, would you not be able to comply with the bulk requirements of the zoning ordinance? I guess if I am looking at the different requirements, you have an impervious that is 1.71% over, correct?

SMITH: Right.

TEN HOEVE: So that would require a relatively small reduction in the size of the plan in order to comply. Your building coverage is 3.3% over, correct?

SMITH: Right.

TEN HOEVE: Your height, you testified is really just a function of the existing structure, not what you are doing and any portion of what you are doing, complies. The driveway, you told me you can't do with the current plan, but perhaps if you reduced it.....I guess my question is couldn't you reduce the scope of this overall 1,650 square foot addition, so that you wouldn't require bulk variances? Couldn't you design something that wouldn't require those variances?

SMITH: Like I said, we went through several generations of this plan, and I don't believe that we are creating such large spaces that are.....

TEN HOEVE: That is not my question. I am asking you, because we have an ordinance that says if you can expand the owner occupied portion, without requiring bulk variances, then you don't need a *Use* variance, and you can build the addition. I am just asking you, wouldn't it be possible to reduce the size and scope of this so that you could do that?

SMITH: We tried to get it down a little smaller, and it seems like every time that we take something out of, say, the master bedroom, to make it smaller, it becomes much less comfortable.

TEN HOEVE: I understand that.

SMITH: Is it possible? It is possible, but what are you willing to do without, I suppose.

VON DER LIETH: It would be a lot easier for everyone involved. I mean since you are so close.

TEN HOEVE: The last question that I had, is the driveway, you are saying, can't be done.

SMITH: I think at 14 feet, that would be problematic to get into a side loading garage.

TEN HOEVE: I don't have any further questions. I don't know if any of the other professionals have any questions.

MANCUSO: I did prepare a review letter, but I think that we have touched upon most of it. I could just through it very quickly to make sure of that. We talked about the garage, and the backup distance. We talked about the distance from the edge of the driveway to the side property line. It is required to be 5 feet.

Drainage calculations were submitted. Those are acceptable. Soil movement application was submitted. Unfortunately I didn't have the second sheet of the set, but it appears that, as was stated, the proposed addition is working with the topography. It is not excessive fill or anything of that nature being done to this site. It appears that the bulk of the soil movement is due to the installation of the foundation for the addition plus the storm water management system.

I just note that perk test will be required. Again, we weren't in receipt of architectural plans and I did want to double check the height, but it appears from what was presented this evening, the height would comply, but I still would like to see those in detail, those architectural plans in detail. I just not that soil erosion measures were shown. We talked about trees, as was stated earlier. That pretty much addresses all of the items in my review letter.

VON DER LIETH: I didn't ask, Brigitte, do you have anything to add?

BOGART: I didn't review this application. But, I was just curious as to what was included in the F.A.R. calculations?

TEN HOEVE: Did you do those calculations?

SMITH: I did them initially, but then the Engineer had done them again, so this was his.

TEN HOEVE: He just gives a plan. I don't see a breakdown anywhere unless I missed it.

BOGART: The reason I ask, is because it looks like the difference between the percentages of what is existing and proposed in the Engineering plan works out to be about 1,200 square feet of floor area. Your had just indicated that you are proposing over 1,600 square feet.

TEN HOEVE: That included the garage.

SMITH: That is what I said before, the garage is included, but parts of the basement were not. I guess the raw parts of the basement, or the existing part of the basement were not in the F.A.R.

BOGART: Basements are included as long as they are exposed a certain percentage from the grade level. I think it is 3 feet.

SMITH: The new area that we are doing is certainly within that.

TEN HOEVE: Are you saying that it is going to be more than 35.2 that is shown on here?

BOGART: That is what it sounds like.

SMITH: Again, I don't have the exact number with me, but I didn't include the existing part of the basement in the F.A.R.

TEN HOEVE: What did you get when you did your calculations?

SMITH: I had it at 35.2.

TEN HOEVE: What is the additional basement area?

SMITH: 629 square feet.

TEN HOEVE: Do you know what it will bring the total floor area to? Brigitte, there is a maximum of 33.33 in the R-10?

BEER: Yes, 30%.

TEN HOEVE: Right but the maximum is 33.33.

SMITH: The total upstairs apartment and the downstairs apartment, both floors, I have it at 29.37.

TEN HOEVE: Without the 629?

SMITH: That includes the 629. No, I am sorry, it does not include it.

TEN HOEVE: It does not include the 629.

GALDI: Mr. Smith, the new addition.....

TEN HOEVE: That would violate both the percentage and the 33.33 maximum.

BOGART: That does not equate to the 35%.

TEN HOEVE: No, it is going to be higher than that, right.

GALDI: The new addition, lower and upper, is it not the same footprint? Isn't it the same floor?

SMITH: Yes.

GALDI: So why do we have 2 different calculations for upper and lower?

SMITH: Because of the garage.

GALDI: But the garage counts in floor area ratio.

URDANG: That is why we just added it back in.

GALDI: So, they are the same? Okay.

VON DER LIETH: Does the Board have any other questions at this time? Is there anyone in the public who wishes to speak to this application?

TEN HOEVE: Would you raise your right hand before you begin. 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?

LINDSTRAND: I do.

TEN HOEVE: Please state your name and address.

LINDSTRAND: Carl Lindstrand, 56 Linden Avenue, Park Ridge.

GALDI: Sir, where do you live?

LINDSTRAND: On Linden Avenue, directly west of these people's property, almost behind their property. Now, just to give you a little history about this house. It was a one family house at one time. It was owned by Siebs. Mr. Schaffer bought it. It became a 2-family house. Next it became a 3-family house. You are absolutely right. It was a 3-family house.

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She had an elderly person living in the basement there. A separate entrance for her, so she wouldn't get involved with the second floor. There was an apartment above it, which was rented. The town found out about it. I can't remember when, but I know that they came up there and they told them they had to shut the kitchen down, take the kitchen out of it.

This happened two doors down, as well, from me. A man applied for an extension on his house for a garage and an extension. The next thing this house became a 3-family house. The town went up to that house and had it shut down the kitchen. I don't know if you remember the name, but it was DeBalla.

The only thing that I am saying here is that I have a couple of questions. The man swears that it will remain a 2-family house now. They are going to rework the basement, Tom?

DESIDERIO: Yes.

LINDSTRAND: Okay. Is that basement going to extend into the new addition?

DESIDERIO: Yes, a family room.

LINDSTRAND: A family room. What is going to happen to the old apartment down there?

SMITH: This is the basement here, so this bedroom is going to remain.

LINDSTRAND: You are taking the main wall down here between this house, between this old addition?

SMITH: Right. This is the existing back of the house, we are going to open that up. We are taking about a 12 foot section of that wall down. So, as you come down the stairs, you can go left or right with no door into the family room.

LINDSTRAND: Actually I didn't see this plan so I didn't see this. So, this is going to be a rec room up here then? It will have a fireplace. I don't particularly care for the bump out for the garage. I thought maybe the garage would be pushed into the basement.

SMITH: It is, actually, we are trying to keep it as small as we can.

LINDSTRAND: In to the basement, all the way, and eliminate the garage. If they need a house this big, well, so be it. It is huge for 2 people. My idea is that once they push that wall out, downstairs where that illegal apartment was, in 2 or 3 or 4 years from now, I am not saying about that these people aren't being honest with you, but boy, I tell you, it happened in 2 different places in my neighborhood already.

That is all that I really have to say. I thank you for your time.

VON DER LIETH: Thank you, Mr. Lindstrand, appreciate it. Just talking about the garage, you people are going to live there, I mean this is it, right?

DESIDERIO: Yes.

VON DER LIETH: You are okay with that? Because it does seem very difficult to get in and out of with a car. Obviously you are okay or you wouldn't be coming before us. I am just saying, do you have any reservations about the.....

DESIDERIO: No. We are okay with it.

VON DER LIETH: As you stated before, I am not telling you how to do the house, I am just wondering it is an impossibility, to move the garage from the side face to a front facing?

SMITH: We went through several generations and it really didn't work out well. Many significant problems. Every time we did it, it only got higher, you know, because of the grade is such that we didn't want to make an ice-skating rink down to the garage.

WALKER: What are the chances of the Board getting copies of the floor plan and having a little time to look at them?

TEN HOEVE: Is that something that you would want, Mr. Walker?

VON DER LIETH: I would think so, right?

WALKER: I would like to see if it makes more sense than what it makes from what I am looking at.

RAMAN: A lot of these numbers have to be straightened out.

WALKER: Yes, I am not confident with the calculations, as well.

GALDI: Did you look at putting it at grade level next to the top, next to the porch in front of the house?

SMITH: What happens is because the setback is 25 feet, it pushes it right to the side of the living room and dining room. It knocks out the windows and that is the sunny side of the house. There would be no daylight. The sun comes up from the front of the residence and goes back on that side.

GALDI: Just one other thing, those are bedrooms on top of the garage in the back. If they are bedrooms, I guess you need egress windows.

SMITH: Absolutely.

VON DER LIETH: I think that we should, let's take a look at this and we will discuss it later on. There are a lot of things to talk about.

TEN HOEVE: Mr. Urdang may want to make closing statements.

URDANG: Yes. I think that I would. There are a couple of things that strike me about this and many other applications. I am not trying to sound facetious, when I say that. But, nobody wants to have a variance situation. With all respect, nobody wants to come before this or any other Board of Adjustment, if they don't have to.

I can appreciate the comments said of certain of the Bulk variances that we are seeking. There is very little difference between complying with the ordinance and what we are seeking here.

I think the second thing that I have certainly learned over the years, is that there is really no comparison between exterior space and interior space. As for example, if you are violating a side yard by one foot, you say well why can't you comply? Taking one foot of interior space out is much more significant than the one foot of exterior space.

Now, what is happened here is that there are certain limitations with respect to an existing house. There are certain limitations with respect to the physical characteristics of the property. It is a fairly narrow piece of property. There is a significant topography element here. What has been done, is to try to deal with the situation as best they can. In terms of, the section never speaks in terms of physical impossibility. It speaks in terms of practical difficulty.

So, the fact that we have come close to compliance, doesn't mean that we actually can comply, because all of these things are all interconnected. If we analyze the variances that are being sought, let me deal first with the issue of whether this is an expansion of a nonconforming use.

Mr. Ten Hoeve and I obviously have a difference of opinion. Obviously we both think that we are right. Lets look, realistically at what is happening here. You have a.....

TEN HOEVE: This is a unique argument that I haven't heard before.

URDANG: What is that?

TEN HOEVE: That the expansion of a nonconforming 2-family home is not an expansion of the use.

URDANG: Well, lets.....

TEN HOEVE: This the first time that I have heard that argument. I don't think that.....

URDANG: You haven't heard me before.

TEN HOEVE: I am not sure I believe any judges support that argument.

URDANG: I am not sure that they don't. That is what makes baseball. Again, what I am trying to say, lets look at this thing from a practical situation.

TEN HOEVE: Address that issue, because I think that is a significant issue in this case. This is different from someone coming in and seeking some bulk variances for a conforming use for a single family home. The law disfavors the 2-family use. It is my understanding that if it burnt to the ground, it couldn't be replaced with a 2-family dwelling. If it was totally destroyed, it can only be replaced with a single family.

URDANG: I understand what you are saying.

TEN HOEVE: We don't want 2-family houses. We don't want them bigger and we don't want them better. We want them to go away, because that is the concept of the zoning ordinance, so that you have a very different concept of the zoning ordinance. You have a very different hurdle and burden to overcome, than somebody who just comes in and says I want to be 10 feet from the side yard, not 20 feet from the side yard, or I need an impervious surface coverage of 42% instead of 40%. I mean that is the.....

URDANG: I think that the core of the issues is what do we mean by use. I think, not only I, but I think you can grant me this, that the statute differentiates between nonconforming uses and nonconforming structures, okay? The use here is a 2-family house, specifically, there is a 2-bedroom and a 3-bedroom.

Now, I heard what this gentleman said before, that there may have been an illegal use of the 3-family. That illegal use has not existed under this applicant since 1994.

TEN HOEVE: I think he confirmed what your client said. I think he confirmed that your client came in and the 3-family went out.

URDANG: We are not only saying that we have no intention to convert into a 3-family house, we are willing to accept that as a condition of the resolution. We are willing to put it in to a deed, so it is noticed to the world that this is a 2-family house and this is the situation that exists.

The way that I look at the use, the use is a 2-family house consisting of a 2-bedroom and a 3-bedroom. That is what exists now. That is what is going to exist if this variance is approved. I view that as far as the use is concerned, there is no expansion of the use. It is different from, for example, supposing that I have a restaurant in a residential zone or something, or any kind of a business, believe me I am not picking on Peppercorns, but it is just something that occurred to me. If you were expanding the

structure, you are also expanding the use because you are talking about putting in more seats.

That is not what is happening here. So, what I am saying to you, Mr. Ten Hoeve, whether you agree or disagree, with the legal position, if we look at the situation as it exists, there is no change in terms of use. There is no change in the intensity of the use of the property from one to the other. We are still talking about 2-family residing in the structure.

The fact that you are expanding the structure, does not mean, has nothing to do with how many people are occupying the space.

TEN HOEVE: So, if you added to Peppercorns and didn't increase the number of tables, or the number of customers, it wouldn't be an expansion of the use.

URDANG: What would be the point of the expansion?

TEN HOEVE: If you did it....

URDANG: If you had that sort of a bizarre situation.....

TEN HOEVE: You made it better, more attractive, more appealing.....

GALDI: More room in the kitchen.

URDANG: More room in the kitchen is an expansion of the use. The kitchen is part of the use.

TEN HOEVE: Why, if you are not increasing the number of customers, you are saying.....

URDANG: It has nothing to do with the number of customers. It has to do with the amount of space.....

TEN HOEVE: That is what you had said. You said you add tables.

URDANG: If you have a restaurant that is a nonconforming use, and has come on hard times, and it is not attracting any clientele, and you have somebody purchase that restaurant and within the same context, it becomes a busier place. I respectfully submit to you, that is not an expanded use.

TEN HOEVE: It expands the structure, to do those things.

URDANG: That is opposite to what you just asked me.

TEN HOEVE: No, I said they expanded the structure but didn't increase the number of customers, which is kind of the same thing that you are doing here.

URDANG: It will increase the kitchen. The kitchen is part of it. That is part of the use.

VON DER LIETH: I would rather not talk about a restaurant. I know exactly where you are getting, where you are going with that. Please go on, I would love to hear what you are saying.

URDANG: What I am saying, regardless of how you come down, be it on Mr. Ten Hoeve's side or on my side, I am saying to you that as a practical matter, what exists now is what is going to exist in the future and we are willing to insure that will exist. So, there is no change. If that requires a *Use* variance, we ask for that *Use* variance to be granted.

I don't think that is a hard variance to grant, because, the nonconforming use is already there. It is a D-2 variance. We are not introducing a new use that is not permitted in the zone, which would be a D-1. Alright? So there is a difference.

VON DER LIETH: I think we could be potentially splitting hairs on that issue. Right, Mr. Urdang?

URDANG: We are certainly splitting hairs. That is the point that I am trying to make.

TEN HOEVE: Just for the record, I wouldn't agree that we are splitting hairs.

BOGART: Yes, I agree.

TEN HOEVE: I don't think our Planner agrees that we are splitting hairs either. In fact, Brigitte, do you want to make some comments on that?

BOGART: I am just intrigued by your argument, that expanding the structure is not expanding the use. By expanding the floor area of that apartment, aren't you making it more attractive to larger families?

URDANG: You are really not. There is a part in the ordinance that requires that the apartment be owner occupied.

GALDI: Another purchaser could rent both apartments. So, a larger family could occupy.

URDANG: If you have a single family house that is occupied by 2 people and that house is sold to the Brady Bunch, there is no difference in terms of the use.

GALDI: But, that is not a nonconforming use. The single family house is not a nonconforming use. If it were, you would have the same issue, arguably.

URDANG: I am talking about the intensity of the use. The intensity of a residential use as to who can occupy it, is a matter of a Board of Health occupancy.

TEN HOEVE: I think that we understand your argument.

VON DER LIETH: We do.

URDANG: I hope so.

TEN HOEVE: I didn't say that we accept it. I said we understand.

URDANG: I understand that you don't accept it. I felt obliged to make it and I still think it is the right one.

VON DER LIETH: I want to clarify, Brigitte. By splitting hairs, I meant he has one opinion of what a conforming use is and we have another one, which is in the...yes, okay, that is what I am getting at. So, yes, Mr. Urdang, we know exactly where you are going with this.

URDANG: Let me get to some of the other variances that are requested. In terms of the building height, we have already been over that. The variance here is a very technical one. It is related directly to the topography of the property and if that variance is a "C" variance as opposed to some form of *Use* variance, it would be covered under C-1b. There is no real increase in the overall height, it is simply due to the slope of the property.

If we talk about building coverage, the building coverage is over by 3.3%. Part of that coverage, and I understand what Mr. Ten Hoeve said, we are talking about the total area, but what we are producing here is a garage among other things. That garage is

providing, not only an additional parking space on the property, it is providing an additional covered parking space, which doesn't presently exist. Now in ordinary terms, it is generally, I think, as a planning or as an aesthetic matter. It is generally considered to be a better situation from a planning point of view to have a car housed in a garage as opposed to being exposed on the driveway.

VON DER LIETH: Right, and just on that point, the tenants there, that driveway going down to their garage, where would the tenants be parking?

URDANG: There are two existing parking areas on either side of the house. Those will be used by the, again, remember the people occupying the lower unit are the Desiderio's themselves, so one side, probably the northerly side will be reserved for the tenants upstairs in the 2-bedroom apartment.

There is an existing parking area on the southerly side, and there would be this garage space that would provide an additional parking space and as I say, it is a covered parking space and I think that the architect was eminently correct, that besides the physical difficulty of getting a front loading garage, a side loading garage is generally considered to be an aesthetic improvement over a front loading garage.

VON DER LIETH: That depends on where you live. It is the neighbor directly to the left of them in the brick house, I don't know, I am not speaking for them, but I am saying aesthetically for looking from the street.

URDANG: Any problems with respect to that, can be resolved with either a fence or with landscaping. We are not talking about something that is heavy duty activity that is going on.

RAMAN: I have a question. Where are those steps on the side going?

URDANG: I am sorry.

RAMAN: There are some steps on the side of the house. Are they being moved or changed? On the left side.

SMITH: Currently the entrance is at this odd corner of where the porch meets the house, we are trying to rationalize that a little bit by shifting it about 3 ½ feet towards the front of the house, to get that entrance to make a little more sense.

URDANG: Another variance that we are seeking, is the impervious coverage, that amounts to 1.71% over what we are permitted. It is 160 square feet. As the architect testified, that would be an imperceptible difference and it is attributable to the garage because that is part of the increase in the impervious surface, but, again, there is a benefit to having the garage. As I explained before, which is that you now have an additional parking space for a vehicle and it is out of sight, which is generally considered to be an improvement.

With respect to the F.A.R., there seems to be some discrepancy as to the quantum of the variance. All I can say is that whatever the quantum of that variance is, all of it is located in the rear of the property. So, from a streetscape point of view, somebody looking at the property from the street, they are going to be seeing the same width of the house, with an improved façade and improved frontage and all of this is not only behind that, but below it.

The gentleman who is behind, was here and testified and while he did express concern about whether it would be used for more than a 2-family house, he expressed no concern with respect to the issue of the addition being located in the back. Obviously he would be the one most effected.

TEN HOEVE: He wasn't actually behind your property. I don't think.

URDANG: He testified that he was.

TEN HOEVE: He is diagonally...he is at the corner of your property. He is right where your north marker is.

URDANG: But he located towards the rear and certainly no body else who came here objecting to it, not that is positive, but for whatever it is worth. Dealing with the negative criteria and we kind of lumped them all together, certainly there is no substantial detriment to the public good in an aesthetic sense, and in effect, this 100 year old building is being improved substantially by the renovations. There is no diminution substantial or perceptible demunition of light and air, again, because the expansion is occurring to the rear.

Again, I understand that there are a number of variances that are involved here, but that is the way it kind of shapes out to try and remodel the existing house. We are not starting from scratch. We are starting with an existing house and we are dealing with an existing topography. We are trying to work within the confines of those structures. What I am saying is that, notwithstanding the number of variances this is an overall improvement to the property and the deviations from the standards established in your ordinance are not so significant as to diminish the improvement that is going to the property.

That is basically our position.

VON DER LIETH: Okay.

TEN HOEVE: Just one factual question before you go. Are all those gravel areas going to remain, that are existing on the plan?

URDANG: Let me just check that.

SMITH: The one on the right side as you are looking at the front of the house, will be tandem parking for 2 ordinary sized vehicles, for the upstairs apartment. On the left side of the front of the house, would be the entrance for us to go down that driveway into the garage and there is enough room up on the top where, if you wanted to park a car, you could.

TEN HOEVE: Yes, so that is the current gravel area that swings around almost looks like it is about 10 feet from the corner of the house? Right against the concrete walk?

SMITH: Yes, on the left side of the house.

TEN HOEVE: Thanks.

WALKER: Do you plan on paving that or are you going to leave it gravel?

SMITH: We want to make it look nice, whatever it is going to take and whatever is allowed by the town.

URDANG: Can the town differentiate between, in terms of impervious surface, between gravel and asphalt?

TEN HOEVE: It requires a driveway. Gravel is prohibited. Obviously asphalt driveways are considered to be impervious, but I think pavers are not. Is that correct, Eve?

MANCUSO: There is now pervious pavements and different types of pavements that can be utilized. But, essentially pavers or black top are impervious.

RAMAN: Can 2-family houses have 2 driveways?

MANCUSO: No, that is another variance. It is one curb cut per lot.

TEN HOEVE: The reason that I was asking that is because those were not included, I guess, in your impervious calculations?

SMITH: The gravel, no.

TEN HOEVE: That would substantially increase all of that, if you paved it to make it comply with the ordinance and you would have to do that.

URDANG: You would, so the ordinance requires that be paved. Okay, so if we paved it than we are increasing the impervious surface. So, if we were seeking relief, we would be seeking relief either from the requirement that it be paved, or from the increased impervious.

TEN HOEVE: I don't know of any variance in 20 years that the Board has granted to allow gravel driveways.

URDANG: We aren't talking about the driveway, we are talking about that area on the top.

TEN HOEVE: No, the whole area is gravel. Everything is gravel.

URDANG: The area on the top.

WALKER: We are talking about the driveway to the proposed garage.

MANCUSO: That is supposed to be paved.

TEN HOEVE: So, that will all be paved. How about the area in the front, that will all be paved as well?

URDANG: You mean where that little parking area is? That is where we are asking about. It is required to be paved?

TEN HOEVE: So the only addition will be the gravel drive area. Okay.

VON DER LIETH: We have quite a bit to discuss regarding this case. So, Mr. and Mrs. Desiderio, thank you. Mr. Urdang, we are going to discuss it, if you would like, you can stay to the end. But, we really need to get to the next case as we might be short on time. So thank you very much.

<b>CASE:</b> 11-10 Block: 604 Lot: 44	Application of <u>Dean and Cynthia Albanis</u> , 176 Colony Avenue for expansion of pre-existing nonconforming use to construct an outdoor dining facility in an R-20 residential zone.
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RUTHERFORD: Good evening, Mr. Chairman, my name is David L. Rutherford. I am an attorney in Ridgewood. I appear tonight on behalf of Dean and Cynthia Albanis, the applicants.

I am accompanied by Richard Burns, a Professional Engineer, over my right shoulder, and Perry Petrillo, our architect, to my immediate left.

We do indeed have a non conforming use. This is a restaurant located in the R-20 residential zone. It has been previously recognized by the Board as a nonconforming use and we do indeed come before the Board seeking a D-2 variance to permit an expansion of this nonconforming use.

We are in receipt of your Planner's report. She addressed section 101-20J of your zoning ordinance that regulates outdoor dining, which is the subject of our application this evening. Our latest report, and she can certainly speak for herself, indicates that while that section may not strictly apply to this application, because we are not in a

commercial zone, nor we are a conditional use in a commercial zone. We do indeed intend to address the criteria set forth in that ordinance.

We comply with virtually all of those and those that we do not, do not comply with the deviation. In our opinion they are quite minor. What we are looking to do here is construct an outdoor covered, open, dining area over an existing portion of the parking lot on this property. As a result, there is no increase in impervious coverage. There is a modest increase in building coverage, still less than what is permitted. We do in fact comply with setback and buffer requirements.

There will be an increase in number of tables. Parking more than complies with the ordinance now, and it will comply after. The tables that are associated with this addition, are installed and pursuant to prior approval of the Board, we have approval for an additional 18 spaces when and if the Board determined it was necessary. So, parking is not an issue here. However, because the addition is being constructed over a portion of the parking area, we are reconfiguring the parking area slightly. Few spaces are being lost and a few spaces are being added. Mr. Burns will talk about that.

So, unless the Board has any further questions of me, I would like to proceed with some testimony from Mr. Albanis.

VON DER LIETH: One second.

WALKER: We have some record keeping to tend to. I have the following items to be marked into evidence in regard to this application.

- Item 1 is the application dated 4/26/2011.
- Item 2 is certification of service dated 5/06/2011.
- Item 3 is legal notification dated 5/06/2011.
- Item 4 is proof of payment of taxes dated 4/21/2011.
- Item 5 is the deed dated
- Item 6 is the site plan dated 4/18/2011.
- Item 7 is elevations dated 3/16/2011.
- Item 8 is undated letter from the applicant's attorney.
- Item 9 is Planner's construction review dated 5/13/2011.
- Item 10 is Board Engineer's review dated 5/13/2011.

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

RUTHERFORD: Thank you, Mr. Walker. Should we have all 3 of my witness sworn in?

TEN HOEVE: Might as well. Dean will you be testifying also? 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?

BURNS: I do.

PETRILLO: I do.

ALBANIS: I do.

TEN HOEVE: Please state your names and addresses.

ALBANIS: Dean Albanis, 176 Colony Avenue, Park Ridge.

BURNS: Richard Burns, 30 Madison Avenue, Paramus, New Jersey.

PETRILLO: Perry Petrillo, Petrillo Architects, 9 Park Avenue, Park Ridge.

RUTHERFORD: Thank you. We will try to be as expeditious as we can. Mr. Albanis you and your wife are the owners of this property, is that correct?

ALBANIS: Yes.

RUTHERFORD: How long have you owned it?

ALBANIS: 27 years.

RUTHERFORD: Are you also the owners and operators of the Peppercorn's restaurant located on the property?

ALBANIS: Yes, I am.

RUTHERFORD: For how long?

ALBANIS: 27 years.

RUTHERFORD: So your ownership and your ownership of the business coincide?

ALBANIS: Yes.

RUTHERFORD: You are here tonight for the relief I outlined a moment ago, which is an approval for an expansion of the non-conforming use in order to construct an outdoor dining area.

ALBANIS: Correct.

RUTHERFORD: Could you tell the Board very briefly why you are looking to construct that outdoor dining area.

ALBANIS: Pretty much to stay up with the demands. Things have changed over the years, the way people go out, the way that they eat. All the surrounding towns businesses are doing it and just a way to keep what I have now, the business that I have now. I mean anyone of the Board would be going out to dinner tonight, they have a choice between my place and a place in the next town, the same restaurant, same menu, same kind of atmosphere, a nice night, they probably would want to sit outside for a couple of hours. That is what I am faced with now, with the surrounding towns, and what is going on. It is just the place has changed since I have been there. I am just trying to keep up with it.

RUTHERFORD: Do you expect that the outdoor dining area that you propose, will, in and of itself, expand the business or is it your expectation that it is going to provide an alternate spot for customers that you already have to dine, instead of eating inside, they eat outside?

ALBANIS: Yes, I think it is going to give an alternate way of dining. Will it expand it? I don't know. I don't think so, not the way things area going right now, with the economy and stuff. Some people might come and try it out for the first time, but basically, it is just giving what I do have now, an alternate way of dining.

RUTHERFORD: You and I have reviewed the provisions of Section 101-20J, of the ordinance, is that correct?

ALBANIS: Correct.

RUTHERFORD: We have discussed the fact that relates to outdoor café's or outdoor dining, perhaps generally located on the public right of way or on private property in commercial districts where restaurants are permitted or identified as permitted conditional use, is that right?

ALBANIS: Right.

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RUTHERFORD: There is some operational standards in there that I would like to review with you very quickly. First of all, it says that umbrellas, awnings, canopies, and heating units are not permitted, so you proposed any of those things?

ALBANIS: None.

RUTHERFORD: You also, it says that amplified music and live entertainment is not permitted in outdoor dining areas, do you propose any of that?

ALBANIS: No, we don't have it now.

RUTHERFORD: Is there any additional site lighting proposed for the property in conjunction with construction of the outdoor café?

ALBANIS: None.

RUTHERFORD: We have also reviewed Section 3 and I am referring to Ordinance 2006-11, which talks about the cleaning of the area, keeping adjacent walks and streets free and clear of debris and litter. You are familiar with that, and you indeed intend to comply with that?

ALBANIS: Yes.

RUTHERFORD: Also, Section 2, VI, alcohol is only to be served in conjunction with food service and in compliance with chapter 75 Licensing Ordinance for outdoor café's, you intend to comply with that?

ALBANIS: Yes,

RUTHERFORD: Just 2 more items, and this relates, Mr. Chairman, and Mr. Ten Hoeve, to that provision of the Ordinance, that talks about outdoor café's, again to the extent that the Board finds this to be applicable, there are hours and days of operation in that ordinance, April 1<sup>st</sup> to October 31<sup>st</sup>, it would be your intent to comply with that time frame for your outdoor activities?

ALBANIS: Yes.

RUTHERFORD: Also, that Ordinance, again, says that outdoor café's may not remain open for business after 11 pm, and all persons occupying the outdoor café shall vacate the same no later than 11:30 pm. Do you intend to comply with that, as well?

ALBANIS: Yes.

RUTHERFORD: Do you anticipate any problems with complying with any of those requirements?

ALBANIS: No.

RUTHERFORD: Can you tell the Board, just generally speaking, right now, what are the peak periods of activity at your restaurant and specifically, when do things start to quiet down for the day?

ALBANIS: Right now, I think after, on the weekends, I would say 10 o'clock, weekdays, I would say 8:30 or 9 o'clock, or 9:30. I mean you can go up there and see, people just don't go out after that. The bar crowds are not like they used to be. It is just a different way of doing business then it was 27 years ago when I started. We don't have a young crowd. We do have an old crowd. A lot of the neighbors. I spoke to some of my neighbors directly next to me and across the street, before I even started this application, and they had no objection to it. They know that when I give my word, I will do something, I do it. Basically after 9:30 or 10 o'clock, it is just different. The dining room is more or less emptied out. We have a late person on and most of the people at that time are just people going to the bar and get something to drink and leaving.

RUTHERFORD: With respect to the outdoor café, you don't propose a different menu, or a different type of seating or a different hours. It is going to be exactly the same.

ALBANIS: Everything is going to stay the same. Nothing is changing.

RUTHERFORD: Do you do special events, such as weddings or showers, things of that nature?

ALBANIS: No, nothing.

RUTHERFORD: No, you do not now and you do not intend to do so in the future.

ALBANIS: No, never did and don't want to do it.

RUTHERFORD: And won't be doing it certainly in the outdoor dining area that you are proposing?

ALBANIS: No.

RUTHERFORD: That is all that I have for Mr. Albanis.

TEN HOEVE: In the interest of time, since you are on this, there are other conditions that were noted in Brigette Bogart's report, with regard to some of the criteria of 101-20J, that you mentioned. It said that the outdoor area can't exceed 15% of the restaurant's dining area. That is the case here, correct?

RUTHERFORD: It is yes. I did not intend to omit that, I felt that I would have Mr. Burns address that.

TEN HOEVE: And it is 6 feet away from any driveway or parking area.

RUTHERFORD: Where 10 feet is required.

TEN HOEVE: Right. There is a screen separating adjacent private property from the outdoor dining area, must be provided. Is that going to be provided?

RUTHERFORD: That is already there. Mr. Burns can address that.

TEN HOEVE: Okay. So if you intend to address all of the other issues, I will wait.

RUTHERFORD: Yes, I only wanted to do the operational, I thought, with Mr. Albanis.

BRENNAN: I have a question for Mr. Albanis. I am just intrigued by your statement. You don't expect any new or increased business. You don't anticipate it?

ALBANIS: There is none out there. Maybe down the road, but no. I just want to keep what we have now. I don't see any increases. It is just a matter of maintaining what you have.

BRENNAN: So you think you need to make this change just to maintain?

ALBANIS: Absolutely, no doubt in my mind.

BRENNAN: Is your business decreasing?

ALBANIS: Yes, on certain hours, yes because people have choices. If you were going out with your family, and like I said, you have 2 choices to go to 2 restaurants, and

it is a nice night, and you want to sit outside, where do you go? I mean, you are going to go where you feel comfortable. Dining has changed. I mean years ago, nobody, I mean I never ate outside, you found it in New York and now you see it all over. Anywhere you go, any restaurant, hotel, it is all outside now.

WALKER: What do you anticipate the time to be? I mean how many months do you think you will be able to use it.

ALBANIS: I am restricted by the town ordinance. It is April to October. Truthfully, in October, nobody is going to want to sit outside. It is too cold. I don't want to sit outside. I enjoy July and August, when it is hot, 90 degrees, I mean I wouldn't want to be out there either. So, I think you time period when people will be out there, would be certain times at night.

BRENNAN: You said no awning and no umbrella, I you had that you could get business in the summer.

ALBANIS: No, we are not going with that. No awning and no umbrella, we are going with a hard roof. The Architect will tell you that we are going with a hard roof.

TEN HOEVE: Heating units were also included.

BRENNAN: You said that there would be no additional site light.

ALBANIS: Right. The lights are on the building now. I don't need any more lighting.

RUTHERFORD: Site lighting, you mean outdoor? Our architect is here and he can address what is planned for lighting within the open dining area structure itself..

WALKER: Mr. Albanis, how many seats can you fit in that small area?

ALBANIS: What did we say? 28, if you have been in the restaurant, I don't believe in squeezing people in. I mean it is pretty wide open even though it is a small area. I am not going to, you know, just look at my past history. It is going to be comfortable. Truthfully, I wouldn't want to do that, because I couldn't serve. I mean if it got crowded like that, I am not going to hurt my reputation, not giving somebody service because I am squeezing people in like sardines. No, I don't want that.

RAMAN: Now are you going to serve alcohol outside?

ALBANIS: That is the whole purpose of it.

RAMAN: Will smoking be permitted?

ALBANIS: No.

RAMAN: Is that allowed by code?

ALBANIS: I think you are allowed, yes you are, but I am not having it.

TEN HOEVE: You are going to have to get a new liquor license in order to do that, but that is not something that we control. There is a separate, speak to the Borough Attorney, there is a separate liquor license that you need to get when you have outdoor dining. There are certain restrictions that they will impose, fencing, a way to keep public out. I know from other municipalities where I have been involved in that, there are some separate ABC requirements that they will impose.

RUTHERFORD: You are absolutely correct. You need to expand the definition of the licensed premises to include the outside. This we will also note is a raised dining area, with a low wall around it. So, that will address some of those issues, but we will certainly stipulate for the record, as we would be required to, whether we stipulated to it

or not, we will obviously be required to comply with all applicable regulations that relate to service of alcohol including whatever revision to our license with the Borough of Park Ridge is required.

VON DER LIETH: I guess we better get to, would Mr. Burns be next?

RUTHERFORD: Sure, Mr. Burns. Have you appeared here before?

BURNS: I know that I appeared before the Planning Board. I believe that I must have appeared before the Board of Adjustment. I have been Professional Engineer for 35 years.

TEN HOEVE: I am familiar with you, but I can't remember if you have been here or not.

RUTHERFORD: Mr. Burns, you are a licensed Professional Engineer in the State of New Jersey?

BURNS: For 35 years.

RUTHERFORD: And you are presently associated with the firm of Azzolina and Feury Engineering, Inc.?

BURNS: Yes.

RUTHERFORD: Have you testified as an expert witness in the field of Professional Engineering, before Planning and Zoning Boards in the state of New Jersey?

BURNS: Yes, many times.

VON DER LIETH: That will be fine, Mr. Rutherford.

RUTHERFORD: For the record, Mr. Burns, we are going to be referring to a plan that you have prepared, dated April 18, 2011.

BURNS: It is consisting of 2 sheets, a cover sheet, existing conditions and a site plan to do with the grade.

RUTHERFORD: Why don't we go right, in the interest of time, go right to the site plan and perhaps you can outline for the Board, you can do this in a narrative fashion, what we are proposing and where.

BURNS: We are located in the R-20 zone. I will skip the bulk zoning requirements. We conform with each of the bulk zoning requirements except for impervious coverage, which we remains the same at 46%, whereas 40% is required.

We are not removing any trees. We are proposing to construct the outdoor café on the east side of the existing building. Perry will explain the exact details of the plan. We will wrap a Belgian Block wall around the addition with a paver block. We have a separate landscape plan showing the type of trees and shrubs around the addition.

TEN HOEVE: Can you tell us about that landscaping plan?

BURNS: We are planning one Dogwood, a series of Azaleas, and Euonymus, spreading bushes, and Junipers.

TEN HOEVE: How high are these going to be, high enough so that you can't see into the outdoor dining area?

BURNS: No. The idea is that outdoor dining, you want to have some visibility. This will beautify that area. There are 2 waivers associated with this originally approved back 1990 approval. Off-street parking shall not be located within required front yard.

In the prior application, which was approved, there were 10 spots in the required front yard, on Colony Avenue. We are proposing to re-stripe that for handicapped parking and add one additional spot so we will have 11 parking spaces in that area. Aisle width shall be in co-ordinance with table 1 that was a waiver granted for the diagonal parking right in front of the restaurant, we propose no change in the aisle width at all for that requirement.

Now, associated with the outdoor café configurations, I think it was already discussed that outdoor café's can only be permitted on commercial property or in the restaurant permitted. We are in a residential area, R-20 zoning. Outdoor prep café's can not be located at least 10 feet away from any driveway, we are proposing 6 feet. I will note that is a handicapped parking stall in that location.

RUTHERFORD: Mr. Burns, just so the Board is clear, that is on the eastern end of the addition that you are proposing, is that correct?

BURNS: Yes, it is.

RUTHERFORD: There are a couple of parking spaces there right now, and they are being removed and there is going to be one handicapped space in that area and that is where the 6 foot dimension is, is that right?

BURNS: Yes it is.

RUTHERFORD: Okay, you can go on, thank you.

BURNS: The next item is the number of tables used, I think it was discussed. I had put that 26 seats. I see that the architect has 28 seats in that area. Section B is that the no existing use of structure should be expanded large or causing enlargement of the facility to provide the outdoor café.

Other details of the outdoor café, we are proposing 303 square feet of dining area, which would provide 17.5% of the existing dining area within the restaurant, whereas 15% is permitted. 50 foot distance is required from a residential property, we have 72 feet.

RUTHERFORD: And that is on the northeast corner of the addition, is that right?

BURNS: That is correct.

RUTHERFORD: As the southeast corner of the addition, actually it is 95 feet to the nearest residential lot.

BURNS: 95.8 feet, because the property faces the street that we are closest to. 95 feet is the nearest existing dwelling. It needs to be screened from residential property. We provide 6 foot wood stockade fencing, existing, that will be maintained on site.

RUTHERFORD: There is a photo of that, I believe on page 2 of the site plan.

BURNS: Yes, the existing conditions show that existing wood fence, that would be picture 4 at the bottom of the sheet. While we are on this sheet, photo number 3 shows the location where the addition is. We have the area where the outdoor café would be. Photo number 2 shows the restaurant from across the street with the existing wooded buffer zone and photo 1 is from the buffer along Spring Valley Road.

RUTHERFORD: We are referring back to sheet 3, note 12, we have talked about the screening. The next item is the 10 feet from the parking area, we have discussed that. And now the parking analysis.

BURNS: The parking requirement, we have existing seating capacity for 110 seats, but the we have proposed 28, plus one stall for each employees. There are 50 employees, so it is 136 divide by 3 and one per 15 employees, 51 spaces are required, and we are providing 75 spots. Our count for the existing site was 76 spots. We are loosing 3

where we are putting the addition, and we are putting one back. We are picking up one handicapped stall across from the restaurant and we are also adding another spot across from the exit, by re-stripping and adding one more spot. We are actually only losing one spot.

WALKER: Are you re-stripping the whole parking lot, or just that area?

BURNS: Just that area, was our intention. The existing barrier free entry is the front entrance and that is why we are providing handicapped stalls at those locations.

RUTHERFORD: Mr. Burns, you have referred to a prior approval dating to 1994, that allowed the installation of another 18 spaces, when and if the Board deemed it necessary?

BURNS: Yes, and that is up by Spring Valley Road.

RUTHERFORD: So, if we are proposing 75 spaces, you calculated 61 required even if we added one more space, let's say, because we are proposing 28 seats. We are still more than compliant with the parking requirement, is that correct?

BURNS: That is correct.

RUTHERFORD: I had asked the question of Mr. Albanis, earlier, about site lighting. By that I meant lights in the parking area or lights on and around the building. Are any new lights proposed?

BURNS: We propose no additional lighting.

RUTHERFORD: That is all going to remain the same?

BURNS: Yes.

RUTHERFORD: We went through the zoning analysis earlier, where you talked about impervious coverage being at 46% right now, and we are proposing 46, that is because the outdoor dining area is being constructed entirely over what is now macadam or impervious area?

BURNS: We actually have a minor reduction because we are adding landscaping where there was paving.

RUTHERFORD: For purposes of your analysis, we have the same, but there is a slight reduction there. Okay. Building coverage, I think that you indicated is a slight increase but still far less than what is permitted?

BURNS: Yes.

RUTHERFORD: Actually, this lot is more than 4 times the lot area that is required in the R-20 residential zone?

BURNS: That is correct. We are at 82,000 square feet.

RUTHERFORD: That is all that I have for Mr. Burns, Mr. Chairman.

VON DER LIETH: Okay, thank you. Mr. Petrillo.

RUTHERFORD: Mr. Petrillo, again, you are a licensed Architect in the state of New Jersey?

TEN HOEVE: He has appeared here several times. It isn't necessary to qualify him.

RUTHERFORD: Mr. Petrillo, you have prepared a 2 page plan. It is dated March 16, 2011, without revision, is that what you have on the Board?

PETRILLO: Yes it is.

RUTHERFORD: Why don't you walk the Board through the plan that you have mounted.

TEN HOEVE: Mr. Rutherford, that is the only microphone that will pick up. Maybe if you put it in between or maybe if you have a seat where Mr. Burns is.

BEER: Can you swap with Mr. Burns, Perry, it works out better.

PETRILLO: As Mr. Burns described, our expansion for this outdoor area is a 16 by 24 area to the right. What we have done is created a single access point from the interior to that new outdoor seating area. Then, we have also added additional fenestrations along that side to bring in natural daylight to the interior of the restaurant.

The idea is to sort of to make it feel like it is one space, even though it is indoor and outdoor. We have created a new serving station area to the rear, which will support that space and also support or create a new service entrance that comes in and into the kitchen area.

Basically, the plan, we have a 3 foot knee wall, that surrounds the perimeter. The rear piece, where the service station is, has a glass fenestration facing out towards the parking lot and then, obviously, a door to the rear for a platform and stairs. The structure itself and I will flip it to page 2, the full intent of this, was to put this together so that when it was complete, it looked like it was there the whole time. I think that it is successful in that we have taken what is on the left side, the piece of building that steps back, and sort of created that on the right side, and stepped it back also. So, we have kind of balanced the building out, from what is there today.

The idea, again, was to have this open space. We have done it with a roof structure, as opposed to an awning, for tables. We want it to feel like it is part of the building, not something that happens every now and then, and something that has to be maintained all of the time, and you would have to worry about umbrellas flying away and so on and so forth. So, I think what is there aesthetically works, I think aesthetically it is a total improvement over what is there today. Because, on that right hand side of the building, you have the existing kitchen exhaust fans and things of that nature, which we are going to reduct and take up to the roof line, so no longer are they protruding out of the side of the building.

We have also got the service entrance, which is there today, which basically faces out towards the parking lot, and there is a stair and so on and so forth. So it is right sort of in the middle of the patron's parking area. Now it is tucked away to the rear. So, I think that is an improvement. The landscaping, as mentioned, around the perimeter, is not meant to be above the 3 foot high knee walls. It is meant to soften the foundation wall of the building, let it blend in a little bit and be a little softer. Overall, materials are consistent with what is there today, a cementitious finish on the building, colors the same and things of that nature, roofing material is all meant to match and tie together.

So, I think what we are trying to do is when this is complete again, when you drive by, it looks like it was always there. That is really the intent.

RUTHERFORD: Can you comment a little bit on the roof structure on the inside of the outdoor dining area, how that is going to be setup.

PETRILLO: The roof structure is a gable, which basically follows the pitch of the roof line of the existing main gable. Obviously, it is smaller in scale, given the depth of the area. We basically stepped it so it is a double gable, one protruding out of the other, as is shown here on the front elevation. The thought was that what we would like to do is open this up underneath and create a little volume of the space. It gives them a

few options with either ceiling fans or things of that nature to help the air to blow a little bit out there. Also, what it does is that it provides a nice way for us to provide down-lighting and yet that down-lighting would be sort of screened because at night it is not going to spill outside of this space, because it is going to be within the volume, and that cone of light would be basically reflected back in.

RUTHERFORD: That leaves the outdoor dining area open and there is going to be no windows or anything else. The only door is going to be in the rear by the service entrance and the service area.

PETRILLO: That is correct. Looking at the elevation, here, this is the door that goes into the restaurant on the main wall that exists. These are the 2 fenestrations that go adjacent to it. This is the window over the serving area, and basically this whole space is open.

RUTHERFORD: Your plan also shows the various windows and fans and ducts and all of that kind of stuff that is going to be removed on that east side of the building?

PETRILLO: That is correct.

RUTHERFORD: That is all that I have for Mr. Petrillo, Mr. Chairman, thank you.

GALDI: How easy would it be to convert this to an indoor space?

PETRILLO: How easy, I mean.....

GALDI: How easy would it be to enclose this to be a permanent space?

PETRILLO: You know, obviously, it is something that could happen, but I don't think that is their intention at all.

GALDI: No, not Mr. Albanis. Suppose you sell it or 2 years from now things change, and everybody wants to go inside, how easy would be just to enclose.

RUTHERFORD: I would say, right now, that we would stipulate that we would have to come back to the Board, because there is no question that the basis of this application is this is an outdoor area designed to meet a specific need of my client's clientele. It is going to be a seasonal use, probably not as much as is permitted by the ordinance, April 1 to, I mean we would be out there yet this year, maybe we would, I don't know. So, clearly, we would stipulate that if it was ever in my client's desire or desire of even a subsequent purchaser to close this in, we would have to return to the Board for relief.

I think that would be absolutely appropriate because that would be, I think, a very much different application to the Board.

WALKER: This is right off of the bar area, so, people aren't going to be able to just get drinks from there and go sit outside or are they?

RUTHERFORD: One of the conditions is that one of the conditions of your ordinance is that alcohol be served only in conjunction with food service, and I believe Mr. Albanis testified to that. We are prepared to comply with that requirement. We understand that can be an issue as well.

WALKER: The bar is often crowded, after work, it just seems natural that people would tend to go outside on a nice day.

RUTHERFORD: We understand that.

VON DER LIETH: How do you enforce that?

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ALBANIS: Most of the people that do come in during the “Happy Hour”, a lot of people do eat. We have specials with the wings and we have these sliders and other stuff, and these pizzas, the majority of people eat and we sell tons of them. That is one of the reasons that they do come in after work. It is one of the ways of bringing business in.

TEN HOEVE: I assume that you would also accept a condition that people in that area had to be seated at tables not standing around.

ALBANIS: Yes, oh definitely. I mean most of the people don't come in, if there is standing at the bar.

TEN HOEVE: You understand Mr. Walker's concern, is that if the bar is crowded, they spill out there and you have 40 people standing around outside, not sitting at tables and eating. A different noise level, from what you would have if you have people sitting at tables eating.

ALBANIS: Correct, and many of the reasons that we talked about putting that hard roof on, I plan on putting wood on top, because it would absorb noise. That is one of the reasons that we did that rather than the canopies that you see in other places, they are loud, snow lays there. After a while they get beat up and they look cheap. I don't want that for my neighbors or for myself. I don't want to run a show like that. With the wood ceiling, and the way we are structuring it, we plan on the view being friendly to the neighborhood.

GALDI: What do you do in the bar now? Do you have music?

ALBANIS: No, we never had live entertainment.

GALDI: Do you have any jukebox, or radio.

ALBANIS: Yes, there is a jukebox, but honestly, it is a dead issue. It is always at a controlled sound level, controlled by the bar.

GALDI: So would it be piped outdoors?

ALBANIS: No. There is no music outdoors.

VON DER LIETH: I think you have a TV in there for games? Would that be outdoors?

ALBANIS: Correct, we have TV. They wouldn't last outdoors. They would fall apart. If I every did put one, to be honest with say they said I was allowed to put one out there, there is never any sound on my TV's. The sound is never on. Once in a blue moon, I might put it on inside if there is a World Series game and stuff like that. I never put my music up or my TV up, because it would disturb my dinning area. I just won't do it.

Some people want to watch a Yankee game some people want to watch the Mets, so there is always something different on the different TV's, so turning the sound on one wouldn't benefit somebody else.

VON DER LIETH: If we did say, if you did want to put a TV outside, which is fine, if you don't have sound. If we put that in as a stipulation, you wouldn't have sound on.

ALBANIS: There is never sound on, I mean very rarely. The only time is maybe in a World Series game, then it is inside at the bar only, or when they had the Kentucky Derby, I wouldn't turn it up so that it is disturbing to the people in the dinning room, or other people at the bar trying to have a meal. Anybody who comes in knows that.

RUTHERFORD: Anyone who dines outside would use the existing bathroom facilities.

ALBANIS: Right. Truthfully, people who come to my restaurant, by 9:30 or 10 o'clock, now a days if you are up there now, it is quiet. It is just a few people sitting around the bar. It is just different now. People's eating habits, everything has changed.

BRENNAN: Is there, I don't know what the rules are, but is there a different time in which the outdoor area closes down on a weekend versus a week day?

ALBANIS: It is 11 o'clock every night.

BRENNAN: Every night, it doesn't matter if it is week day or weekend?

ALBANIS: Correct, every night.

GALDI: Do you plan to serve both dinner and lunch outside?

ALBANIS: We are not sure if we will do the full menu out there or just a limited menu. I am not going to, you know, on the weekend, I don't know if I could serve a full menu. I don't know how it would effect my service in the dinning room. I will be honest with you, we are planning on just a limited menu at this time. Maybe just specials, I am not sure how it is going to work out. I am not going to lie to you, but every restaurant gets that one pop and the kitchen is designed to handle it, if you add too much to it, especially with the go orders, all you are going to do is hurt your existing customers there. I just wouldn't do it. I will just do a limited bar menu at that point in time.

FLAHERTY: In terms of hours that the outdoor meal would be available, would that be afternoon as well?

ALBANIS: For lunch, correct. It would be what the ordinance says.

HOSKINS: Is there going to be a drop down awning in case a thunder storm comes up and people are sitting there?

ALBANIS: No, it is a hard roof, there are no awnings there at all.

HOSKINS: No, I mean on the sides?

ALBANIS: On the sides, where?

HOSKINS: If a thunder storm comes up, and the rain is on an angle and people are sitting there...

ALBANIS: We plan on just putting that one little awning like we have in the front of the restaurant, just to balance it off. On the other side there is nothing. It is wide open. If it rains they wouldn't be out there, they are going to come in. The one awning on the front, I plan just to match what is there now, you know, the green short ones. Just to balance it out so it doesn't look stupid and stick out like a sore thumb.

GALDI: Maybe this question is for Perry, I am not sure, but, on the duct work going to this new roof top, exhaust fan, is that going to be inside or outside the building?

PETRILLO: It is outside. I work with the exhaust system company. They are going to run it up the building and then over, and the fans flip on the hinges to clean it.

GALDI: So in other words, the duct work will be on the exterior of the building. Is that going to be visible from the street?

PETRILLO: No. Because, right now, you have on the side, you have that one chimney going up so it will lay right next to it, and they will paint and change it so you won't even see it. It will look a lot better than it looks right now.

GALDI: We are looking at picture number 3, it looks like there are 3 fans that come out?

PETRILLO: Yes, 2 are exhaust fans and one is an intake.

GALDI: They are all going to run behind that one chimney and up?

PETRILLO: Yes. You see that chimney going up? They are going to run the duct work straight up and then on to the roof. The one fan is an intake fan for the exhaust. The other 2 are exhausts.

VON DER LIETH: Are there any other questions from the Board? Is there anyone in the audience that would like to speak on this. Please come up.

TEN HOEVE: 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?

TRIANO: Yes.

TEN HOEVE: Please state your name and address.

TRIANO: Brian Triano, 166 Mountain Avenue, Park Ridge.

TEN HOEVE: Thank you.

TRIANO: Everything that Dean has said is true. I have no doubt that this is going to be a beautiful and aesthetically great looking thing. I am a loyal patron of the restaurant and I am neighbor. The only thing, and Scott you hit on it, was my only concern is the timing on the week nights. So, I have two 10 year old boys, both their bedrooms face the restaurant and you hear the noise. You hear people talking, so I am just concerned at the time going to 11 o'clock, on school nights. That is my only concern. Everything else, I think it is a great idea. I would love to go there as a neighbor and a patron. I think it is going to be a really nice thing, so I would never want to get in the way of that. It is just from a noise point of view, I do have a concern at the time.

VON DER LIETH: Is the noise, can you hear it right now?

TRIANO: Yes. I hear it in the nice months when I keep my windows open. So, if I close my windows, if there is a fan going, or the air conditioning is on, I won't hear it. You might hear something, but you hear when people are in the parking lot. You hear when people are outside smoking. So, I am not sure what people sitting outside may do, but, that is not really an issue to me. But, if it is after 11 o'clock, you know, up to, you know from 10 to 11, that might be a little bit of a concern as my kids would be sleeping or trying to get them to bed.

VON DER LIETH: I am sorry, you know when you guys were talking about it before, did the hours differ in our ordinance from weekend to week night?

BEER: It is allowed to be open 7 days a week until 11:00 pm, by ordinance. Everyone out by 11:30.

VON DER LIETH: Thank you. Is there any questions for Mr. Triano?

BRENNAN: You still might have room to soften it up with some evergreens on the border of Colony and maybe it would mitigate some of that noise, or buffer that.

ALBANIS: One of my neighbors directly across the street from me, I don't know his name. He just moved in there about a year and a half ago. He said he had no problem with it, the noise, but he asked me if I would plant some trees there. In fact, he said to me that he would split the cost with me. I told him he didn't have to do that. But as you are

pulling off of Colony, he asked me if I would do something there for him. I already told him, regardless if I get this or not, I told him I would work with him to do something to keep him happy. He came over to the restaurant this Saturday, while I was over there and we talked and I showed him the plans.

TEN HOEVE: Are you saying that means yes, you would agree to Mr. Brennan's suggestion, that some trees be planted.

ALBANIS: I already agreed to him. I told him I would do it.

TEN HOEVE: I mean for this property owner.

ALBANIS: He is talking about the same location. When you pull into Colony, they made me put in these trees, I don't know what they were, but they didn't last. He already talked to me about that. Whether I get this or not, I told him I would work with him to do that and put them back a little, but I have a problem, I told him I had a problem with snow removal, you know, where to put the snow. I said I would find something that would keep him happy and keep me happy also. As far as the snow, we said we would work that out. That was a different issue we already talked about.

VON DER LIETH: Brigitte, did you want to add something? Is there something else we could do to mitigate the noise?

BOGART: I think the suggestion is appropriate because they do have an empty berm there, and landscaping will mitigate the sound, especially if you do evergreens in staggered rows. I think that would help tremendously.

TEN HOEVE: How far apart?

BOGART: It depends on what he is planting.

TEN HOEVE: Do you have a recommendation?

BOGART: Do you have a landscape plan?

ALBANIS: Yes, I am going to take down that one tree and a Pear, I don't know what it is. Then I was going to the ones like TD Bank has, those ones that go up and stay kind of close and look kind of nice. I don't know. I was going to talk to my neighbor and talk to him about that also.

WALKER: You don't want to hide the front of your building.

ALBANIS: Correct, I don't want to hide the building, but I don't want to go too light either, because to be honest with you, between the town plowing the snow and my plowing the snow, there is not a lot of room there.

BOGART: Actually, it is in the right-of-way.

BURNS: We are talking about the area to the right of the driveway, the eastern most part of the property?

ALBANIS: Correct, where you pull in.

BURNS: There is very little room on our property. If the Mayor and Council were willing to permit that improvement on the right-of-way.

ALBANIS: I don't know if a fence would be the right way to go, a short fence, because of the snow. The town pushes the snow up there also. I don't know what the answer to that is. It is something that we would work out.

BOGART: I think you would have more of an issue constructing a fence, in the right-of-way, as opposed to landscaping. I think landscaping would be more appropriate.

VON DER LIETH: How do you protect the landscaping from getting bombarded with the snow.

ALBANIS: It would have to be something that doesn't grow too wide. If it stays on the top of the berm, and it only goes in this much, everything would probably work around it. If you put one of those trees that just grow out like that, I will be honest with you, it is not going to last. It is up there pretty high right now. It is several feet above the parking lot. If it goes up to high it isn't going to get any water from the rain, and they are going to die anyway.

GALDI: Is there any kind of an acoustic tile that could be put in the ceiling of the structure? I realize it is a higher ceiling and that whole concept is to help deal with the lighting, but I also wonder if it could help deal with the sound as well.

PETRILLO: I do think it will help mitigate if it is a volume case. It would trap the sound. We could look at even a softer wood, like a Cedar or something like that, which is a little more absorbent. You have to be careful if you start getting into certain acoustic materials, that are very soft, they are just going to become a mold issue. So, I think a soft wood like Cedar or something like that could definitely help.

VON DER LIETH: Sir, if you would like to speak.

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?

KUITERS: I do.

TEN HOEVE: Please state your name and address.

KUITERS: Rich Kuiters, 163 Colony Avenue. I have had my share of food and drink at Peppercorn's. I have enjoyed the staff and the service. The concerns that I have would be the noise. Now, we said that there is going to be a roof and the anticipated roof would be wood, because you said that would reduce the noise. Do you see a noise concern as well?

I know you are considering it, which is good. My concern is after the 11:00 pm, is it going to become a smoking section?

ALBANIS: There is no smoking out there.

WALKER: How is that going to be enforced?

ALBANIS: I enforce it.

TEN HOEVE: The same way that it would be enforced inside.

KUITERS: I Mean it wouldn't be a smoking section, but is there a potential to draw the smokers out to that area?

ALBANIS: No.

VON DER LIETH: I don't think anyone smokes inside as it is now.

TEN HOEVE: You are saying that you would accept a condition that there can be no smoking in the outdoor dining area?

ALBANIS: Correct.

WALKER: But that doesn't stop people from going out in front of the restaurant in the parking area and smoking.

ALBANIS: I have no control of that.

WALKER: Mr. Albanis can't control that.

ALBANIS: I have no control over that, but anybody who knows me, that I don't tolerate any in my restaurant. I mean in 28 years, 27 years, I have had only one time when the police came up there for noise and that was after the Park Ridge football, they came up there and the coaches went out put that to an end. I don't tolerate that. I don't tolerate people coming in there intoxicated or anything. I am there. You can ask my neighbors, I am there every weekend cleaning the parking lot. I am there 7 days a week. So we don't tolerate that there.

KUITERS: As it is now, there is no trouble with the restaurant.

ALBANIS: And there never will be.

KUITERS: The only other question that I have is during the off season, between October and April, what is going to be happening with that space. Are table going to be stored there or are they going to be moved off site?

ALBANIS: It is closed. The tables are probably brought inside and stored in the basement or somewhere else. They are not going to stay outside, they would just get damaged. No, it will be left clean, just the way that the building is now.

KUITERS: My only concern was about people being drawn out for smoking.

ALBANIS: No, absolutely not.

KUITERS: Alright, thank you.

VON DER LIETH: Thank you Mr. Kuiters. Are there any other questions from the Board members, be it possible for Mr. Burns or Mr. Petrillo? No, Mr. Albanis, thank you very much. We will discuss this after the meeting is over. Thank you.

**PENDING CASES:**

<b>CASE:</b> 10-14 Block: 1103 Lot: 10	Application of <u><i>Felix Rizo</i></u> , 33 Midland Avenue for Floor Area Ratio, two front yard, rear yard and building coverage variances for constructing addition to existing house in an R-15 residential zone without building permits. Hearing held January 18, 2011 and carried to February 15, 2011 for inspection by structural engineer, carried to March 15, 2011 at request of applicant and hearing continued on April 6, 2011. Application <b>denied</b> by voice vote. Resolution to be memorialized on May 17, 2011.
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VON DER LIETH: We have a resolution of denial this evening.

**WHEREAS, FELIX RIZO**, (hereinafter referred to as "Applicant"), being the owner of premises known as 33 Midland Avenue, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also known as Lot 10 of Block 1103 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 several variances from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge, specifically, a side yard variance, a rear yard variance, a building coverage variance, a maximum impervious coverage variance and Floor Area Ratio variance to permit the construction of an addition to the single family home existing on the premises; 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

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WHEREAS, Applicant has submitted a survey describing the proposed improvements to the premises prepared by Bernard W. Criscenzo, Licensed Land Surveyor of the State of New Jersey, dated June 11, 2003; and

WHEREAS, hearings were held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on January 18, 2001; March 15, 2011; and April 6, 2011, 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;

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 33 Midland Avenue, Park Ridge, New Jersey. At some time prior to October of 2010, the Applicant visited the Building and Zoning Offices of the Borough of Park Ridge to secure information with regard to the ability of the Applicant to construct an addition to the single family home, speaking to several Borough representatives at the time of said meeting. After speaking to Borough representatives, the Applicant failed to make any application for any variance or building permit and proceeded to construct an addition to the existing home without any municipal approvals.
2. As shown on the survey submitted to the BOARD, the Applicant constructed the home but 6.9 feet from the easterly side lot line rather than the 18 feet required by the Zoning Ordinance. Applicant also constructed the addition 30 feet from the rear lot line rather than the 435 feet required by the Zoning Ordinance. Applicant's addition also resulted in a lot coverage of 28%, exceeding the maximum 20% permitted by the Zoning Ordinance. Applicant's addition also resulted in a floor area ratio of 34% rather than the maximum 20% permitted by the Zoning Ordinance. Applicant's addition also resulted in an impervious coverage of 40% rather than the maximum of 35% permitted by the Zoning Ordinance. As stated, all of these violations were the result of the Applicant's failure to secure any zoning variances or any building permits whatsoever.
3. Applicant's illegal construction was discovered by the Zoning Officer of the Borough of Park Ridge and the Construction Code Official of the Borough of Park Ridge, both of whom issued notices to the Applicant advising him of the numerous zoning ordinance violations and building code violations. Applicant responded by submitting an application to the Zoning Board of Adjustment seeking all of the above referenced variances.
4. At the initial hearing on the application, Applicant testified that he had constructed the addition knowing that he was doing so in an illegal fashion. He stated that he did not secure any required municipal approvals because he was encountering personal family problems. He specifically stated that he was aware of the fact that he was constructing an illegal addition but concluded "if the get me I will have to pay the consequences."
5. The Applicant further testified that he had two licensed contractors who worked on the home and that both contractors advised him that he required permits before any work could be done. He testified that he ignored the advice of both contractors and went forward constructing the addition without any applications to the Borough. The Applicant further testified that he did not make an application to the town for a variance or for a building permit because he lacked the money to do so.
6. Applicant also testified at the first hearing that all work done on the project was completed in a workmanlike fashion and in compliance with all

requirements of all applicable building codes. He specifically stated that the work was done by a licensed professional. When questioned as to the name of the professional, Applicant refused to divulge the name of the contractor who performed the work. When questioned further, the Applicant then changed his testimony and advised that a professional had not done the work, but that he had done the work himself. When questioned again, the Applicant stated that he could not remember the name of the contractor. He also specifically stated that he had completed all electrical work in the addition because he was advised by the Land Use Administrator, (also secretary to the BOARD), that he was permitted to do so. The Land Use Administrator denied ever having made such a statement. The Applicant also testified at the initial hearing that the cost of constructing the addition had caused him to file bankruptcy.

7. Following the initial hearing, in an effort to determine whether the Applicant had complied with all building code requirements, the BOARD advised the Applicant, in writing, that it had continued the hearing on the application and that it was requesting the Applicant to secure the services of either a licensed Architect, or a licensed Engineer to perform an inspection of the construction to determine that the addition complied with all building code requirements. The Applicant then hired the services of a licensed architect, Joseph Bruno, who completed an inspection and provided the BOARD with a report dated March 9, 2011. Mr. Bruno also appeared before the BOARD with the Applicant and provided testimony at the March 2011 hearing date.
8. Mr. Bruno's report found numerous construction deficiencies with regard to the addition. The floor joists were constructed but ten inches above the finished grade, and the floor was constructed over dirt with no insulation provided. Mr. Bruno indicated that the existing flooring would have to be removed to expose all floor framing and to enable remedial work to be performed. Specifically, the dirt would have to be graded, a polyethylene vapor barrier installed, and a four inch concrete slab constructed. In addition, insulation would have to be provided, with plywood sub-flooring placed over existing floor joists. Mr. Bruno specifically indicated that no work could be performed until all floor area were inspected.
9. In addition, the Bruno report noted that the gypsum dry wall ceilings would have to be removed and galvanized hurricane anchors provided for each rafter. Galvanized framing angles would also have to be constructed on both sides of all rafters. The roof was also defective in that a ledger was attached to the wall of the existing home, but not bolted with lag bolts as required. In addition, vent flashing was not provided at the intersection of the roof and second story wall. The electrical box also was loose. Mr. Bruno also specifically noted that no work was to be performed until proper permits were secured.
10. Following the receipt and review of the Bruno report, the BOARD advised the Applicant, in writing, that it would again adjourn the application to provide the Applicant with an opportunity to remove the floor of the addition to allow Mr. Bruno to conduct the further inspection required. Prior to the next hearing date, however, the BOARD received a letter from Mr. Bruno dated April 5, 2011 advising that the Applicant did not remove the floor, that the Applicant had removed a portion of soil from below the addition to allow only a review of a portion of the floor and that his limited inspection of the floor disclosed that the floor framing system did not meet any minimally accepted trade practices nor the building code. Moreover, Mr. Bruno advised that someone had attempted to support the floor by nailing single two by four studs to the side, extending into the soil not supported by any footing. He further indicated that the insulation had been installed improperly. He concluded that the structure could not be occupied in a safe manner.
11. Both Mr. Bruno and the Applicant then appeared at the April 6, 2011 BOARD meeting. Mr. Bruno advised that he had been "fired" by the Applicant. He

testified that the floor construction was shoddy and failed to meet any minimal standards. While the Applicant stated that the ceiling had been removed, with all appropriate and required galvanized framing angles provided, Mr. Bruno testified that he was never summoned to the premises to inspect the rafters and/or ledger and that there was no way he could determine whether any work had been done, let alone whether required work had been done.

12. Mr. Bruno further described the work that had been done, and apparently was still being done without permits, in the most critical terms, call the work a “butchered job” and referring to the construction as being utterly in violation of codes. He further stated that the Applicant was intent on ignoring his recommendations and continuing work, without any permits, in a manner determined by the Applicant alone, or by others employed by the Applicant.
13. The Applicant also testified that he was in bankruptcy, that he could not afford to work on the addition any longer, and that he could not afford to pay any professionals. The Applicant also specifically refused to answer questions as to whether he intended to comply with all recommendations of the architect he had hired to determine what work needed to be done simply to determine whether the construction complied with code and, if not, what remedial action was required. Applicant again focused solely on his alleged persona hardship and lack of funds.
14. The BOARD finds and concludes that the Applicant, after having been advised of the need for variances and building permits, intentionally ignored both the advise provided by Borough Officials, the Zoning Ordinance of the Borough, and all applicable building codes, constructing the addition without any approvals. The Applicant also ignored advise provided to him by constructors who purportedly constructed the addition. The addition violates five separate portions of the Zoning Ordinance, including the applicable floor area ratio provisions, thus requiring four bulk or ( c ) variances and one ( d ) variance.
15. In an effort to assist the Applicant, and to at least place the Applicant in a position where the BOARD could review the application for requested variances, the BOARD attempted to provide the Applicant with an opportunity to establish that the structure, as built, at least complied with all applicable building requirements. Since the Applicant had constructed the entire addition without permits, periodic and normal Borough inspections could not be made by Borough Officials. The Borough could not inspect the foundations, the framing, the electrical system, or any other aspect of the improvement. The BOARD thus requested the Applicant secure professional evaluations to confirm that the structure complies and was safe for occupancy.
16. The BOARD further finds that the Applicant, after intentionally creating the situation that precluded inspections, has refused to take advantage of any of the opportunities provided. He has rejected the advise of his own architect. More importantly, all inspections have shown that the structure was constructed in an entirely shoddy manner, not in compliance with building code requirements, and that the structure is not safe for occupancy.
17. Most importantly, however, the Applicant has provided the BOARD with absolutely no evidence or testimony to justify the grant of either the several ( c ) variances nor the floor area ratio ( d ) variance. The Applicant has described no unique condition on the property creating any hardship. The only hardships the Applicant described are his own alleged family and financial hardship. The Applicant has presented no evidence or testimony that would support a conclusion that the construction of the addition, and the grant of the five variances required, would achieve any goal or purpose of the Municipal Land Use Law. The Applicant has presented no evidence or testimony to establish that a decision to grant the variance would not have a

negative impact on the Zoning Ordinance, the neighborhood or the zone scheme of plan of the Borough.

18. The Applicant has thus utterly failed to satisfy either the positive or negative criteria required for the grant of a variance. The Applicant's personal financial hardship (unsupported by any evidence), even if true cannot justify the grant of the many variances required. The Applicant's growing family of adopted children cannot justify the grant of the several variances. The Applicant's personal situation cannot justify the grant of variances.
19. In addition, the BOARD is cognizant of the fact that the Applicant has constructed the addition in violation of the Zoning Ordinance and in violation of all building codes knowing that he was acting in an illegal manner. His actions deprived the BOARD of any opportunity to shape the application (as it may or may not have done), so as to minimize the nature and extent of any required variances. The Applicant's repeated statements that he is governed by some higher, other law, do not excuse his intentional, illegal actions.

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 deny the Applicant's request for the four ( c ) variances described above and the floor area ratio or ( d ) variance also described above.

A motion to deny the application was offered by Mr. Sandler and seconded by Mr. Galdi.

**ROLL CALL:**

**Ayes:** Mr. Sandler, Mr. Raman, Mr. Galdi, Mr. Walker, Mr. Hoskins, Mr. Flaherty, Dr. von der Lieth

**Abstain:** Mr. Brennan

<b>CASE:</b> 11-05 <b>Block:</b> 1006 <b>Lot:</b> 9	Application of <b><i>Frank and Patricia Calabrese</i></b> , 30 Tuxedo Avenue for Building Coverage and Floor Area Ratio variances to construct a new house in an R-10 residential zone. Hearing begun March 15, 2011 and continued to April 6, 2011 for revised plans. Determination forthcoming this evening.
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FLAHERTY: We have a resolution in the affirmative for this application.

**WHEREAS, FRANK & PATRICIA CALABRESE** (hereinafter referred to as "Applicant"), being the owners of premises known as 30 Tuxedo Avenue, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also known as Lot 9 of Block 1006 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 building coverage and floor area ratio variances from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge to permit the construction of a new single family dwelling on the premises; and

WHEREAS, the premises are located in an R-10 Zoning District as same is defined by the Zoning ordinance of the Borough of Park Ridge; and

WHEREAS, Applicant has submitted a survey describing the proposed improvements to the premises prepared by John M. Tudor, Licensed Architect of the State of New Jersey dated January 22, 2011 and last revised on March 21, 2011; and

WHEREAS, hearings were held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on Marcy 15, 2011 and April 6, 2011, 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 lot located at 30 Tuxedo Avenue in the Borough of Park Ridge. Applicant seeks to demolish an existing dwelling on the lot and replace said home with a new dwelling. The existing home is a non-conforming structure, being located but 12.4 feet from the side lot line at its closest point. Applicant thus seeks to eliminate the existing non-conformity.
2. Applicant initially proposed to construct a dwelling having building coverage of 21.69%, slightly in excess of the maximum 20% building coverage permitted. Applicant also proposed to construct a dwelling having a floor area ratio of 35.14%, a percentage that exceeded the maximum 30% floor area ratio allowed in the zone. During the initial hearing, the BOARD noted that the Applicant required in additional variance since the proposed driveway was but three feet from the westerly side lot line rather than the five feet required by the Zoning Ordinance.
3. Applicant testified, and the BOARD members confirmed, that the proposed new dwelling would be in conformity with other new homes or enlarged homes in the area. Applicant indicated that the proposed 3,423 square foot home would not be excessively large. Applicant also noted that the dwelling, while requiring a floor area ratio variance, complied with all other bulk limitations. As noted above, the new home would also replace a dwelling that did not conform with the side yard setback requirements of the Zoning Ordinance.
4. During the initial hearing, BOARD members suggested that the Applicant could slightly reduce the width of the home and thus reduce the scope and extent of the required floor area ratio variance. In addition, BOARD members noted that the proposed configuration of the driveway resulted in a situation that made it difficult for vehicles to make the required turn when exiting the garage. The BOARD thus suggested that the Applicant reduce the width of the home.
5. Accordingly, Applicant submitted a revised survey and plan reducing the size of the dwelling. The plan modifications reduced the building coverage to 21.09% and the floor area ratio to 34.23%. The plan also resulted in an improved turning area for vehicles exiting the garage.
6. The BOARD finds that substantial reasons exist justifying the floor area ratio, building coverage and driveway setback variances. The Applicant modified the proposed plan to comply with the requests of the BOARD. The new dwelling will provide zoning benefits by virtue of the elimination of a nonconforming existing home and the construction of a new, attractive dwelling that is in conformity with other homes in the neighborhood.
7. The BOARD further finds that there will be no negative impact flowing from a grant of the requested variances. The building coverage variance is extremely minimal and will not negatively impact the neighborhood. The floor area ratio variance also will not result in a home that is not in conformity with other dwellings in the area. The new home will also replace a home that was substantially noncompliant with regard to setback requirements.
8. The BOARD finds that the grant of the proposed variances will have no negative impact whatsoever. The decisions to grant the requested variances 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 building coverage, floor area ratio and driveway setback variances to permit the construction of the proposed improvements subject to the following conditions:

- A. That Applicant construct the proposed improvements as set forth on the revised final plans submitted to the BOARD.
- B. The Applicant will be required to install seepage pits as required by the Borough Engineer at the time of her plan review.
- C. All improvements shall be constructed in such a fashion so as not to exceed the scope and extent of the improvements set forth on all final documents submitted and described in all testimony presented to the BOARD.
- D. 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.
- E. That Applicant, upon the completion of all improvements, shall be required to provide an "as-built" survey confirming that all improvements have been constructed in compliance with the final plans.

The resolution was offered by Mr. Hoskins and seconded by Mr. Raman.

**ROLL CALL:**

**Ayes:** Mr. Sandler, Mr. Raman, Mr. Walker, Mr. Hoskins,  
Dr. von der Lieth

**Abstain:** Mr. Brennan, Mr. Galdi, Mr. Flaherty

<b>CASE:</b> 11-06 Block: 2501 Lot: 6	Application of <b><i>Michael Lustig</i></b> , 236 Knoll Drive for constructing a second shed in the rear yard in an R-15 residential zone requiring a rear yard coverage variance( <i>application filed prior to the elimination of this variance</i> ). Approved by voice vote on April 6, 2011. Resolution to be memorialized this evening.
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WALKER: I have a couple of items to be added to the record here.

Item 9 is the Board secretary letter dated 4/07/2011.

Item 10 is the Board secretary letter dated 4/11/2011.

VON DER LIETH: We have a resolution of approval for this application.

**WHEREAS, MICHAEL LUSTIG** (hereinafter referred to as "Applicant"), being the owner of premises known as 236 Knoll Drive, in the Borough of Park Ridge, County of Bergen and State of New Jersey, said premises also known as Lot 6 of Block 2501 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 originally seeking a variance from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge to permit the construction of a shed in the rear of the premises; and

WHEREAS, the Zoning Ordinance of the Borough of Park Ridge limits rear yard accessory coverage to 10% of the rear yard; and

WHEREAS, the Applicant proposed shed resulted in a rear yard coverage of more than 10% as prohibited by the Zoning Ordinance; and

WHEREAS, a hearing was held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on April 6, 2011, 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;

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 236 Knoll Drive in the Borough of Park Ridge. Applicant seeks to construct a shed having dimensions of ten feet by sixteen feet as shown on plans submitted to the BOARD.
2. The Zoning Ordinance of the Borough limits rear yard accessory coverage to no more than 10% of the rear yard area. Applicant's shed would result in total accessory coverage of more than 10%.
3. The BOARD, however, is aware of the fact that the Borough is in the process of amending the Ordinance to delete said requirement and that the Ordinance will be adopted within the month.
4. Applicant's proposed shed further violates the Zoning Ordinance in that the shed has an area of 160 square feet, ten feet more than the maximum 150 square feet permitted by the Ordinance.
5. Applicant has agreed to reduce the size of the shed to ten feet by 15 feet, thus bringing the shed to compliance.
6. The BOARD finds that substantial reasons exist justifying the requested variance. The BOARD is cognizant of the fact that there is a pending amendment to the Zoning Ordinance that would eliminate the 10% rear lot coverage requirement currently contained in the Ordinance, and that the Planning Board of the Borough of Park Ridge (as well as the Borough Planner) has recommended that the provisions be eliminated. The Applicant would not require any variance when the Ordinance is adopted. The Borough obviously also believes that accessory coverage in excess of 10% of a rear yard will have no negative impact on the Borough.
7. The BOARD also recognizes that the Applicant is reducing the size of the shed to ten by fifteen.

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 coverage variance to permit the construction of the proposed shed subject to the following conditions:

- A. That the Applicant reduce the shed to no more than 150 square feet.

- 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. Raman and seconded by Mr. Flaherty.

**ROLL CALL:**

**Ayes:** Mr. Raman, Mr. Sandler, Mr. Galdi, Mr. Walker, Mr. Hoskins, Mr. Flaherty, Dr. von der Lieth

**Abstain:** Mr. Brennan

**NEW BUSINESS:**

None

**CORRESPONDENCE:**

None

**APPROVAL OF MINUTES:**

None

**DISCUSSION OF APPLICATIONS:**

The first application to be discussed was for Dean & Cynthia Albanis. The members felt that the sound issue would be hard to judge. The Planner felt that a meeting should occur with the Planner and the applicant on the site to determine what they would permit to be planted along the public right of way, and work with the applicant that way.

The attorney advised that several conditions could be included in any resolution. One of the conditions could be that it is subject to the applicant and the planner going on to the site and determining the location, nature and extent of the plantings that could be put up as a buffer, and then secure approval from the Mayor and Council to do that.

The members felt that you wouldn't know how loud it would be until it is done. The Planner felt that they could have periodic inspections for 6 months down the road after the outdoor dining is in place and if it is still loud, perhaps the landscaping could be modified if necessary. The Planner felt that combination of landscaping on the property line and the way that the architecture is designed would help the sound tremendously.

The attorney felt that a condition to the approval would have to include the a restriction that there would be no standing around out side that the patrons had to be seated at table and dining, and that would cut down on the noise level. The members agreed that it should be stipulated that the outdoor room can not be an extension of the bar area.

The Board authorized the attorney to draw a resolution of approval for the next meeting, with the conditions of possible additional buffering and a follow up meeting with the owner within 6 months of the opening date to discuss any complaints that may have arisen and how to mitigate them.

The next application to be discussed was that of Todd Walder. The members felt that it was a very creative idea as to the access to the Bilco doors. They felt that there was no negative aspects to the application and authorized the attorney to draw a resolution of approval for the next meeting.

The Board then discussed the application of *Thomas and Concetta Desiderio*. The attorney stated that he whole heartedly disagrees with the applicant's attorney's opinion on the expansion of a nonconforming use. He felt that the Planner would also agree with that.

The attorney advised that if he didn't require a bulk variance it would be allowed to expand an owner occupied portion of a nonconforming two family home. He stated that it would have to be a special reason variance. They have to show extreme hardship and no negative impact to gain approval.

The members felt that the applicant could cut down the FAR and building coverage, it would be easier to approve. The Planner stated that there are benefits to this application but there are also a number of negatives. The Board agreed and stated that they would love to see the house renovated but there are too many negatives.

The Attorney stated that the intent of the Mayor and Council when they adopted the Ordinance, was to permit people to expand owner occupied portions if they could do so without requiring any variances. The concept was that you weren't going to significantly enlarge the dwelling. You would be able to enlarge it so it would make it more comfortable for the owners and it might induce them improve the appearance of the dwelling. This application requires many big variances such as the FAR and building coverage.

Attorney authorized to draw a resolution of denial for the next meeting.

**ADJOURN:**

There being no further business to come before the Board, by motion Mr. Hoskins and seconded by Mr. Walker, the meeting was adjourned at 11:15 pm

Respectfully submitted,

Margot Hamlin,  
Transcriber