

**\*\*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, October 18, 2011, at 8:00 pm in the Council Chambers of the Municipal Building.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

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

Absent: none

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

**COMPLIANCE STATEMENT:**

The Notice for this meeting required by Section 3(d) of the Open Public Meetings Act has been provided by the adoption of a resolution by the Park Ridge Zoning Board of Adjustment of January 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.

**NEW CASES:**

VON DER LIETH: Case 11-17, Park Ridge Board of Education, is not here, right now. I would like to start with Case 11-22.

<b><u>CASE:</u></b> 11-22 <b><u>Block:</u></b> 1508 <b><u>Lot:</u></b> 3	Application of <u>Thomas and Concetta Desiderio</u> , 55 North Maple Avenue for Use Variance to expand an existing two-family house and Floor Area Ratio, retaining walls, driveway variances and soil moving application.
--	--

WALKER: We have a new application.

- Item 1 is the application dated 8/22/2011.
- Item 2 is certification of service dated 9/06/2011.
- Item 3 is legal notification dated 9/02/2011.
- Item 4 is proof of payment of taxes dated 9/14/2011.
- Item 5 is the deed dated 6/16/1994.
- Item 6 is the survey dated 6/22/2011.
- Item 7 is elevations dated 8/16/2011.
- Item 8 is the seepage pit design dated 4/06/2011.
- Item 9 is soil moving application dated 9/08/2011.
- Item 10 is the Board Engineer's report dated 9/13/2011.
- Item 11 is the Board Secretary's letter dated 9/14/2011.
- Item 12 is an applicant's attorney email dated 9/16/2011.
- Item 13 is the Planning consultant's review dated 10/04/2011.
- Item 14 is Board Secretary's letter dated 10/04/2011.

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

VON DER LIETH: Thank you, Mr. Walker. Mr. Urdang.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 2

URDANG: This as we said before is a new application. We had a previous application before this Board a few months ago that was denied by the Board. Obviously, then the threshold issue for the Board is whether the doctrine of Brace Judicator applies that would preclude this application. We will have testimony on that, but just to give you a brief fore view of it, there have been substantial changes in the variances that were requested. I think that there were 7 variances before, 5 of those variances have either been eliminated or reduced substantially, and the other 2 that we are left with. That is obviously for the Board to make a determination.

TEN HOEVE: I don't think that it is necessary to present that much testimony on that issue. This is clearly a different application substantially reduced.

URDANG: Okay. We will have testimony today, from David Smith, who is the Architect who testified last time. He will give you a brief review of the property and also he will go into the changes in more detail. Unless there are any procedural questions, I will proceed with Mr. Smith.

TEN HOEVE: Just 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?

SMITH: I do.

TEN HOEVE: Your name and address please.

SMITH: David Smith, 16 Jessup Road, Warwick, New York.

TEN HOEVE: Thank you.

URDANG: Mr. Smith, you are a licensed Architect in the State of New Jersey?

TEN HOEVE: He qualified at the last application, did he not?

URDANG: You are obviously familiar with the site and environs, correct?

SMITH: I am.

URDANG: You prepared the architectural plans that are presently before the Board?

SMITH: I did.

URDANG: Just to refresh the Board's recollection, would you describe the existing conditions with respect to the lot. Where it is located? What zone it is in, and whatever nonconformity that exist?

SMITH: We are on the westerly side of North Maple Avenue. We are in an R-10 zone. The property has a number of existing nonconformities, lot area is undersized, lot width, front yard and side yard are all existing conditions that are undersized from its inception.

The topography of the property, it is a substantial slope from the street, at the front, to the back, considering that it is a walkout from the basement at the back, presently you are walking in, more or less, at grade of the front currently. Are there any improvements on the subject property.

URDANG: Are there any improvements on the property? If so, would you describe them?

SMITH: Yes, there is, probably, a 100 year old house, give or take, a 2 ½ story frame dwelling. It is currently a 2-family home. There is a 2-bedroom upstairs and then

the downstairs, main level and basement level are being used by the Desiderio's currently.

URDANG: And the, I think that we had indicated before, that if the application were granted, the Desiderio's would be in the first floor apartment and the basement and the upstairs apartment would be rented out. So, it would be an owner occupied home.

Can you also just briefly describe for the Board, the neighborhood? What does it consist of?

SMITH: It is a mix of older homes. A lot of them have been renovated, not all of them. There is a variety of styles, ages. There are some apartment buildings that are across the street, and past the house the property next door appears to be a double lot, which is not developed at the moment.

URDANG: Okay. Lets compare the present application with the prior application. Can you give us the date of the new plans that we are working off of?

SMITH: The date on the new plans is 16-11.

URDANG: Okay, that is your plan and is it correct that the site plan prepared by Azzolina and Feury Engineering is last revised on 6/22/11?

SMITH: Correct.

URDANG: These are the plans that we are working off of for the present application, correct?

SMITH: Correct.

URDANG: Okay.

SMITH: Essentially we are interested in putting an addition on the back side of the existing house. It is smaller than the previous addition. Previously there was a bump out that was going out in this direction as well as this direction. We have made the whole building smaller. We have come in from the property and we have narrowed the main part of this as well as removed the bump that was on the back side of the property previously.

We are still working with the basement level and then a direct area above that on the first floor, nothing on the second floor.

URDANG: Okay, lets turn to the variances that were requested at the previous application, and as the Board resolution states, there were 7 variances, which that resolution identified. I am going to ask you to go through each one of those to see what the present status is.

The first one is building height and the permissible height, in this zone, is 32 feet. What is the present height, the proposed height, I am sorry?

SMITH: The proposed height now, is 25.97 feet, which is well below the existing roof line and the legal requirement.

URDANG: The second variance identified in the resolution was building coverage. The allowable building coverage is 20%. What is the present status of that?

SMITH: We have lowered that to just under 20%, 19.9%. We have gotten that down to a point where we no longer need a variance for that.

URDANG: Okay. The third variance that was identified was impervious coverage. Permitted is 40%, provided in the prior application was 41.7%.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 4

SMITH: Again, by making the building, smaller, we have reduced that to 37.3%.

URDANG: So that is the third variance that has been eliminated?

SMITH: Correct.

TEN HOEVE: Just to correct, it says 38.5% on the plan? I think. It is obviously compliant.

SMITH: Yes, there is a slight difference between the Engineer's plan and my calculations. I had it at 37.3. I think that it is just a matter of a connection between the 2 buildings were slightly different from what the Engineer had to what I had. But, in either case, we are below.

TEN HOEVE: Thanks.

URDANG: Floor area ratio, permitted is 30%. The prior plan showed a floor area ratio of 35.2%, correct?

SMITH: Correct. In that calculation, we had not included the basement, because we didn't realize that it was a component of the FAR that required. There is a height relative to the exterior grade that increased our FAR.

URDANG: Okay, and that was something that was brought to your attention, during the course of the prior proceeding, correct?

SMITH: Correct.

URDANG: Okay, if you were to recalculate what the floor area ratio of the prior application should have been, can you tell us what that is?

SMITH: Including the other section, we would have been about 42%, 42.1%, not the 35.2%.

URDANG: Okay, so when properly set forth, the prior application was for a floor area ratio of 42.1%, and what is the floor area ratio being sought in the current submission?

SMITH: 36.6%.

URDANG: Now, that still requires a variance, does it not?

SMITH: It does.

URDANG: But, it substantially reduces the quantum of that variance from the previous application?

SMITH: Yes.

TEN HOEVE: The Engineer's plan, again, says something different. It says 38%.

URDANG: Well, why don't you go through the calculations?

TEN HOEVE: Just so we know.

URDANG: I think that we should really rely upon, since it is floor area ratio, the architect's set. When he goes through the different components, if you wish, but I believe that his figure is correct.

SMITH: I think that their chart also says, as per architect, or something to that effect.

TEN HOEVE: You don't have to go through all of the calculations unless one of our Professionals, wants you to. I just wanted to know which one is the correct to ultimately use in a resolution.

URDANG: The architect's.

TEN HOEVE: And that is how much?

URDANG: 36.6%.

TEN HOEVE: Thank you.

URDANG: And essentially, how is that reduction in floor area ratio accomplished?

SMITH: We have removed substantial floor square footage, from both the basement, and removal of this back piece that is back in here. It made the building, itself, smaller. We have decreased the amount of square footage, total square footage, on both the first floor and the basement level for this submission.

URDANG: Alright, the difference between a complying floor area ratio and what we are proposing, here, express in terms of square footage, is how many square feet are we talking about? Let me suggest 620 square feet.

SMITH: It is on here. The difference is about 620 square feet.

URDANG: Now, is it fair to say that the bulk that is being added to the house, is essentially bulk that is being added in the rear of the house?

SMITH: It is.

URDANG: With respect to the streetscape, the streetscape in regard to the house is really not changing?

SMITH: No.

URDANG: Is it also fair to say that of all the yards, front, rear, and side, that the rear is the largest yard dimension on the lot?

SMITH: It is.

URDANG: So it is located, it is more than a substantial amount from the rear property line.

SMITH: We are.

URDANG: And there is foliage around the rear property line?

SMITH: Yes.

URDANG: Now, in terms of the site's ability to accommodate this deviation from the FAR of 620 square feet, do you have an opinion as to that?

SMITH: Yes, I mean, we are still, you know, the size of the property being undersized from the get go, the fact that this is over the square footage, is not a noticeable difference relative to any of the houses around it. I think that we are still well within the visual from the street side of this house to all of its neighbors.

URDANG: Is there any way within your estimation, that as practical matter, you can make the rooms a components of the floor area ratio, any smaller.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 6

SMITH: At this point the rooms are a fairly modest size. The garage is about as small as we can make it. The living room space is 14 ½ feet by 17 feet, is very small. The master bedroom, we have that down to 17 by 12 feet. These are not giant size rooms that we are trying to have.

I really can't see the rooms themselves, getting much smaller and still functioning in the manner that they are supposed to.

URDANG: Lets turn the question around, if you were able to reduce the floor area ratio, by another 620 square feet, by allocating it between the rooms and the garage and whatever, in your estimation, would that reduction make a perceptible difference to any neighboring property? If you were standing on a neighboring property, would you be able to perceive the difference between what we are proposing and the complying FAR?

SMITH: No, I think that from the exterior, it would look very much the same.

URDANG: Lets turn to the retaining walls and the driveway. Just for the sake of moving it along, under the ordinance, the retaining walls are supposed to be 8 feet from the side property line, and we are at 0.5 feet. Is that correct?

SMITH: Correct.

URDANG: The driveway, driveways are supposed to be one foot from the property line and we are 5 feet, is that correct?

SMITH: Correct.

URDANG: Now, are the retaining walls made necessary so that the garage can be accessed?

SMITH: Correct.

URDANG: Can you tell us what the height of the retaining wall is and for how long of a distance, linear distance?

SMITH: Most of the retaining wall come along the edge of the property and are about a foot high. I think at their highest point they are 3 feet high, which is only for a small area up in here. Most of the time, it is a very shallow retaining wall.

URDANG: Okay, with respect to the location of the driveway, is there any other place that the driveway could be placed so that it could be compliant?

SMITH: No. It is necessary to get access to the garage.

URDANG: Is the location, the proposed location, of the driveway influenced by where the lot, I am sorry, where the house is located on the lot?

SMITH: Sure.

URDANG: Is the setback that we are proposing for the driveway influenced by the fact that the lot width is somewhat smaller than the lot width in the zone?

SMITH: Correct.

URDANG: Would you construe the provision of a garage as to number one, a normal amenity in the Borough of Park Ridge, and also a desirable one?

SMITH: Yes.

URDANG: Could you explain the Board, why?

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 7

SMITH: I mean it is, you know, everybody has the need for stuff to be stored, not in the house, but still under a roof. Putting the garage in is part of the town code, actually having an indoor parking area is part of the town code, I believe.

URDANG: Is there some aesthetic benefit derived, in your estimation, from taking a car that would otherwise be outside, and locating it in a garage?

SMITH: Sure, I mean definitely, it cleans up the yard, you know you don't want to, by getting the car inside, the yard becomes less cluttered, less visual noise going on outside.

URDANG: With respect to both of these variances, that is for the location of the retaining wall and for the driveway, either individually or collectively, is there any substantial negative aesthetic impact upon neighborhood, from those requested variances.

SMITH: No, I don't think so. We have shrubbery and hedges that are going to be along the property adjoining the neighbor, against that retaining wall. I don't feel that this is going to be a visual problem at all.

URDANG: Is there any substantial diminution of light and air to the neighboring properties?

SMITH: No.

URDANG: Is any increase in surface going to be handled by the seepage pit proposed on the Engineering plan?

SMITH: The Engineer's plan has that all the coverage, so we are not dumping water on to the neighbor's property.

URDANG: Now, there was a question raised, I think by Ms. Mancuso, about access to the garage. I believe that she indicated that she as Board Engineer believes that the maneuvering area should be 24 feet. Is this not the same standard as would be required for a commercial multi-spaced parking lot?

SMITH: Yes.

URDANG: Now, are there any litigating circumstances with regard to this particular garage on this location, as to why you would deem it to be sufficient, the maneuvering area?

SMITH: We have a fairly small garage that is going to be accessed through here. The 20 foot depth for the garage, you know, it has a 7 foot tall garage door. This is not a suburban sized garage, that you would be bringing a large vehicle into. We also went for the over wide garage door to give it a little more turning radius as you are backing out of the garage, both for pulling in and backing out. I think that there is plenty of room to get an average car in and out of this garage without issues.

URDANG: So is the fact that there is only one car a factor in your analysis?

SMITH: Yes, as I said it is a 1-car garage, and you are only going to be backing one car out of it. We are not going to have to maneuver to try and get around other vehicles.

URDANG: So there is no conflicting movements that are going to be present on the driveway. It is simply one car going in and one car coming out, correct?

SMITH: Yes.

URDANG: As you indicated the garage door has been made wider to increase the maneuverability and also to make a "K" turn. Is it also important in your estimation that

this is designed for the use of the property owner, so it is somebody that has familiarity, obvious familiarity with the property?

SMITH: Correct.

URDANG: So, in your estimation, you feel that the, notwithstanding, that the maneuvering room is not 24 feet, that it would be adequate, what is being provided, is adequate to provide access to and from the driveway to the garage?

SMITH: I think that there is plenty of room there.

URDANG: I don't have any further questions for Mr. Smith. I do have, if the Board should desire, we have a number of pictures which illustrate, which show the site. These picture were taken by Mr. Desiderio, who I would be happy to bring up to introduce these pictures and to explain what they are about. I have another set for the Board as well. Do you feel that the Board would desire this or .....

VON DER LIETH: That would be fine.

URDANG: Okay, we will do that after your done questioning Mr. Smith.

VON DER LIETH: I just have one question. The FAR, the prior application was at 35....I know it went up, my question is because the basement was not counted in the first one.

URDANG: Dr. von der Lieth, let me get the exact.....

VON DER LIETH: That is okay. That is what I wanted to know, looking at it, there is a smaller footprint, but now the FAR is larger. That is just because of the fact that basement was not counted before.

SMITH: It came to light during the last hearing, that the basement was, in fact, to be included. So the new figures include the portion of the basement.

VON DER LIETH: Got you. Okay.

WALKER: Mr. Urdang, I don't know if this applies to the gentleman's testimony, but, you said that you needed 2 variances. Looking at the Planner's report, there are, it looks like, 3 or 4 variances just for the parking area, that are required.

URDANG: I am sorry, I misspoke, of course there is also the issue of the *Use* variance, but I wasn't going to ask this witness to testify as to that. I think that is essentially a legal argument that Mr. Ten Hoeve and I can probably do battle on. We will try to keep that battle brief.

WALKER: I guess we will address this later on in the evening.

TEN HOEVE: Now, I think that is correct with regard to whether or not there is a *Use* variance or not, but, I though that the question dealt with parking concerns, not the *Use* variance.

VON DER LIETH: Whether or not certain parts of the driveway may need to be paved, whether or not there are enough parking spots for .....

URDANG: We are providing an asphalt driveway.

WALKER: Two asphalt driveways.

TEN HOEVE: Do you have the Planner's October 4<sup>th</sup> report? Take a look at paragraph 2 on the second page, dealing with driveways. That is what I think that Mr. Walker is addressing.

WALKER: Yes.

URDANG: Okay. The first section is a requirement that all garages have a paved driveway connecting it to the right of way. This is a paved driveway.

MANCUSO: The second driveway is gravel.

URDANG: There is a driveway there. It is shown on the plan as being asphalt.

MANCUSO: The second driveway is gravel.

WALKER: The other side of the house.

URDANG: Oh, I thought you that you said, it said all garages shall have a paved driveway. The access to the garage is asphalt. There is another area, a gravel area that has always existed for the parking for the tenants, or for visitors. I don't know what the point would be to eliminate that gravel. The essential access to the garage, though, is asphalt.

MANCUSO: All driveways are required to be paved.

TEN HOEVE: Yes, I don't think, the ordinance doesn't, I am not sure that the Planner's language is an exact quote from the ordinance. My recollection is that it doesn't deal with driveways that are servicing garages. I believe that, as Eve just said, the Park Ridge ordinance says that all driveways have to be paved.

URDANG: Well, again, even if we acknowledge that a variance is needed, basically what we are trying to do is, you know, calling this parking area a driveway, is sort of a misnomer. It is not providing really access. It is just providing a space where they can park. It is not a driveway that leads anywhere. It is simply providing a parking area that has always existed. If it has to be done in asphalt, then we will do it in asphalt.

SMITH: The plan shows to pave the apron of that existing gravel way, but to leave the rest of it as gravel.

URDANG: Again, if you go to subsection B of Ms. Bogart's report, I think we touched to fact that no part of the driveway should be located nearer than 10 feet to any other driveway on an adjoining parcel. Again, there is no, we didn't have much of an option where we can put either the garage or where we can put the driveway, given the location of the house, and given the fact that there was a substantial shortage in the lot width. If we had that additional lot width, which is a requirement in the zone, we probably could comply with these driveway situations. So, basically they are all part and parcel of the testimony that we are talking about here.

You think it is a salutary thing to have a garage. In order to have a garage, we need a driveway. We are putting in the driveway. It is the only place where we can locate it in. I understand it precipitates the need for a variance, but we think that the benefit derived from having a garage, both in terms of, and I think that it is a public benefit, incidentally, because it takes a car that would otherwise be exposed, and puts it into the garage.

I mean, that is of course, for the Board to judge, but that is our position.

WALKER: Is that other driveway be used currently? Do you have a tenant using it right now?

DESIDERIO: Not right now.

URDANG: There is no tenant upstairs. It is being remodeled.

TEN HOEVE: But the plan is to have a tenant, correct?

URDANG: Yes.

SMITH: That curb cut exists and has existed for quite awhile. It has always been there.

URDANG: Also it is a 2-bedroom apartment upstairs that is being remodeled. So, I mean it is an existing....

WALKER: Then potentially 2 cars .....

BOGART: Mr. Urdang, I thought that the original question was not whether the variances were justified, but was whether they were required.

URDANG: I am not going to argue with you on whether they are required. I accept that they are.

BOGART: I just want to make sure that we understand one another.

URDANG: Right, but, I think that that it is kind of implicit in what we have already said before. We are kind of limited on where we can locate the garage, and it also precipitates the need for the retaining wall because of the grade, the topography of the property. So, if there are these technical violations, you are also talking about the 2 curb cuts. I think that there was testimony the last time, that these were curb cuts that were installed by the Borough. This is relatively new. They have always had 2 curb cuts there and the Borough put them in, I think when they went through the repaving of North Maple Avenue.

LUDWIG: Can I ask for a clarification on the Floor Area? You mentioned that it was 620 feet less than it was the last time.

URDANG: No, I meant that the deviation between what is permitted and what we are proposing now, comes to 620 square feet.

LUDWIG: What is the total amount of square footage being proposed now? There is a maximum square footage in addition to what you are saying.

URDANG: I am sorry.

SMITH: We are at 3,425 square feet is what we are proposing, which is also over the 3,333 square feet, which is allowed.

VON DER LIETH: Brigitte, do you have something further to add?

BOGART: In addressing the FAR issue. I know that the Attorney has said not get into calculation. Could you just walk me through the chart? You don't have to go in great detail, but I am just trying to figure out when I add up these numbers, they exceed what you have in totals. So, I am trying to figure out what part of the basement you excluded.

SMITH: There is a point where we the grade is 3 foot above the finished floor, from this corner of the building to this part of the building. All of this is included in the basement FAR. All of this is not because it qualifies as basement. We have the basement for FAR is 717 square feet. The first floor of the addition we are adding 637 square feet. The total for the FAR that we are adding is 1,355 square feet.

BOGART: So that is the 717 plus 637?

SMITH: Yes.

BOGART: So you are adding a basement addition that is not counted towards FAR?

SMITH: We are not adding, that is existing.

BOGART: Under your first line, you have basement and garage addition, 667?

SMITH: Oh, yes, I am sorry. There is an existing stairwell that is here, which is what the dotted line represents. So that is being removed, and just the nature of how the two pieces are coming together is why there is a difference in the math. You know 27 square feet or something like that. Is that what you are speaking of? We are removing square footage from the existing basement, a doorway, a foyer and stairs going up, so we are removing some of that space, which is in the new basement. That is where the conflict in numbers comes from.

BOGART: So in order to get your 342, you just added your 717 to the basement first floor to 1,866 and the second floor 841?

SMITH: I am sorry could you say that again? I am trying to follow you and I missed something. The 1,304, is the addition that we are adding, and 2,980 for the existing, I am sorry, 2,070 was the existing and 1,355 is what we are adding to get to 3,425.

BOGART: Okay, thank you.

VON DER LIETH: Eve, do you have anything to add to this?

MANCUSO: Yes, I would just like to clarify a couple of points that Mr. Urdang mentioned earlier. When I did prepare a report back in September, September 13<sup>th</sup>, I think, which the Board members may have before them.

When I was discussing the backup area of the car, I wasn't referring to the space within the garage, but the space outside of the garage. Typically, in a parking lot, when you have 90 degree parking, the pack up area is a minimum 24 feet, not 21 feet. Beyond that, now that there is a rather wide garage, to help with your maneuverability, I would suggest that you put an oversized door on it. You seem to have plenty of additional space there, a 9 foot door is rather standard. It is not small, but if you get a larger door that would certainly help in maneuvering the car in and out of the garage.

I just note that as a point, because it isn't an easy maneuver to back up into 21 feet, when you have a larger vehicle.

SMITH: We went from an 8 by 7 door to a 9 by 7 door, so we did make it, you know.....

MANCUSO: The plan says 9, so if it is going to be more than that, you know, anything more than that is fine, but the plan right now says 9 foot zero inches.

SMITH: Right, that is what we had intended. Rather than the 8 foot door, 8 by 7 would be your standard garage door, we went to a 9 foot wide, which is a little bit wider, again.....

URDANG: I think that Ms. Mancuso's question is, could you make it any wider?

MANCUSO: Yes, I would suggest that. It is a convenience to the owner. It doesn't impact the Borough. It is on site. I would just suggest to do that to make life easier for them. The maneuvering would be fully on the driveway. The more that you maneuver, the more you tend to rip up your driveway pavement.

There is just a clarification needed for the soil movement. I have 2 different applications. One application says 355 and then the second application says 406. It is just really an administrative matter.

URDANG: 406 is correct, and all of that is being exported.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 12

MANCUSO: In either event, they still need a soil moving permit, but the correct one should be noted. The 406 is from April 19<sup>th</sup>, the 355 is from September 8<sup>th</sup>. I just note that it should be consistent whatever the number is.

I did receive the soil movement calculations, percolations test are fine. I did not receive the architectural, but I believe that Brigitte has them and may have some comments on them in the future. That is all that I have to add.

VON DER LIETH: The tenants, I am sorry, the tenants are parking on the right side of the structure?

MANCUSO: That is something that needs to be clarified. There are 2 driveway curb cuts, as they were existing. One is going to serve the new garage, the second one is currently serving the gravel driveway. The plan does designate that the apron should be paved, but typically, we don't have 2 curb cuts per property and beyond that, typically driveway areas or parking area are paved. They are, the existing driveway is within the 5 foot offset, the proposed driveway is with the 5 foot offset as well. So, it is just something that should be noted as noted in, I think, page 2 of Brigitte's review letter. All of the variances were specifically outlined.

VON DER LIETH: You guys are just going with that because it has been gravel and it is gravel already, that is what is going to stay, right? I am just wondering, I just want to make sure.

FLAHERTY: If the gravel is paved, will that change the impervious coverage?

BOGART: Yes.

URDANG: The gravel is included in the impervious?

MANCUSO: He said "if", he said does the gravel affect the impervious coverage? So, yes, if you pave it, yes.

URDANG: It is a difference between paving or gravel, you are saying is impervious coverage.

MANCUSO: No, gravel is considered pervious and paving is considered impervious, so it does affect your coverage.

SMITH: Currently, that impervious coverage is a proposed of 38.5. So we would need a variance there then?

BOGART: If it is paved, yes.

URDANG: It may a rationale for not wanting it paved, if it is pervious. Why would you increase the impervious coverage there? I mean you are really not talking about a driveway, you are talking about a parking area. It is right adjacent to the curb cuts.

FLAHERTY: I am looking at the front of the house, this gravel one is to the right?

MANCUSO: Correct.

WALKER: There are 2 driveways. There is one along each property line.

URDANG: It may be illustrated in one of the photos that you have there.

BOGART: Just by way of background, the reason the Municipality put in effect that are outlined in paragraph 2, were to limit people from putting gravel in their entire front yard. The Borough had no regulations to limit the gravel, because it was considered pervious area. So, that is why they had the section 101-23 outlined, was to require a

garage for every single family home. It requires that any garage had a paved driveway and that the pavement was certain feet from the property line and that there weren't 2 curb cuts and so this whole section of ordinance was to eliminate gravel portions of the driveway, gravel front yards, and to put some regulations associated with the designed driveways and to limit sort of the concept that we see here today.

This is slightly different because it is a 2-family home and they required additional parking than a single family home does. So that needs to be taken into account. In general terms, 101-23 was designed to eliminate this fact.

I am not saying that the applicant may not need the additional parking, because there are 2 units there.

VON DER LIETH: Do you have anything to add to this, Mr. Ten Hoeve?

TEN HOEVE: I have no questions.

VON DER LIETH: I was just making an observation of the gravel. That gets into the whole area, now, of, okay, we don't want to pave it, and make it impervious, and we wouldn't be having this conversation if it wasn't, looking at the "D" variance, you know, expansion of the so called non-conforming use, right? I mean if it was conforming we wouldn't have that driveway because there wouldn't be any second floor tenant, right?

URDANG: If it were a single family house?

VON DER LIETH: Yes.

URDANG: But it is not. So, that is true, but uninformative.... Yes, if this were a single family house, you wouldn't need all of these things, but, again, it is not. It is an existing situation including the curb cuts.

VON DER LIETH: Nothing, John, okay. Does anyone have more questions from the Board? Is there anybody in the public here to speak on this tonight?

TEN HOEVE: Do you wish to testify or ....? 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: Your name and address please.

LINDSTRAND: Carl Lindstrand, 56 Linden Avenue.

TEN HOEVE: Thank you.

LINDSTRAND: Good evening ladies and gentlemen. I just wanted to come down tonight to say, look that driveway, gravel driveway, leave as a gravel driveway because the sewer line runs right through there, and if he has a sewer problem he is going to put in a whole new driveway up. So, I would say for a utility standpoint, it is easy to get at if anything happens on this.

Secondly, looking at the new plans, I have no objections to these. I would hope that the Board would work with Tom and his wife, so that he can get this thing moving, because it is not an asset to the community the way that it looks. Believe me, it has been a disaster in there for the last 6 or 8 months. I would like to see the house get completed and I think it will be an asset to the community. Thank you very much.

VON DER LIETH: Thank you, sir.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 14

TEN HOEVE: Do you want to mark those photos. I don't think you need testimony, if you would like to submit those. They can mark them as the next item.

URDANG: I think it will be pretty apparent as to what they represent.

WALKER: The item is 15.

URDANG: If you do have any questions on any of those pictures, Mr. Desiderio is here to answer. Those pictures were taken within the last couple of weeks.

VON DER LIETH: That is why I am waiting for them to go around. Mr. Urdang, you have nothing else to add, right, while we are looking at these photos?

URDANG: Just my summation.

MANCUSO: A soil moving permit is required, because it is over the 300 cubic yards. I believe that we determined that the Zoning Board could here that, rather than send them to the Planning Board?

TEN HOEVE: Absolutely. We have done that in the past. I think that we amended the ordinance to cover that.

MANCUSO: Okay, good.

VON DER LIETH: No questions, right guys, after looking at the pictures? Mr. Urdang, I think that you can begin your summation.

URDANG: During the course of the summation, you can feel free to interrupt. I would like to explain, if you are not understanding what I am saying, or have any questions on it.

As I said to you before, the threshold issue here is whether the ratio applied. I think that it is pretty clear that there have been substantial changes and in my estimation, it would bring it out of ratio de coda. Obviously, Mr. Ten Hoeve may have a comment on that and it certainly.....

TEN HOEVE: No, I agree.

URDANG: Okay. So we will just move on to the next thing. Another question is really the same question that we raised during the course of the prior preceding, is this an expansion of a nonconforming use, required a D-2 variance. At the last hearing, I opined that it was not. Mr. Ten Hoeve seemed somewhat startled by that position, as was Ms. Bogart and I guess just to demonstrate, perhaps to both of them, that I had not made up this argument out of cold cloth, I did submit to Mr. Ten Hoeve, 2 cases which I thought were relevant. One is Engleside at West Condo Association, versus Land Use Board of Beach Haven. It is a 1997 case. It is a divisions case by Judge Serpentelli. The other one is an unpublished case, Rosenblum versus Zoning Board of Adjustment of Closter. That is a 2006 case decided by Judge Harris.

While technically not binding upon you, these are, in my estimation, these judges are pretty much land use heavy weights. I think it supports my position. I am not going to go into great detail, Mr. Ten Hoeve can expound upon it.

I think that the distinction is important because if it is a D-2 variance for expansion of a nonconforming use, number 1 a simple majority is required. And number 2 the standards are different from a "C" variance. As I say, I am sure that Mr. Ten Hoeve will weigh in on that position and based on my discussion with him this afternoon, I don't think that he has really changed his mind, but I will leave him to make his own comments.

Let's proceed on the assumption that a D-2 variance is required. Special reasons as a concept is somewhat vague. It certainly doesn't tell you very much in the statutory

language, you need to have special reasons. The special reasons that are required for a D-2 are not, in my estimation, the same type of special reasons that are required for a D-1 variance, where you are introducing a use that is not permitted in the zone.

In this situation, we have a 2-family house of long standing and the increase in the, assuming that it an increase in the nonconforming use, if we analyze that increase, we are still basically talking about 2 units, 2 residential units. In my estimation, that is not really increasing the intensity of the use because, again, there are 2 dwelling units and if we were to just take a single family house, there are no zoning restrictions on who may live in single family house. So, you could have 2 houses next door to one another, like cookie cutter houses, and in one you could have a senior citizen living alone, and in the other one you could have the Brady Bunch.

We just don't put those kind of restrictions on single family houses. So, in my estimation, you have a 2-family use of long standing. Nothing in it is being increased as to the number of units. What is being increased is the structure, but the structure is not necessarily housing more people. This is going to be an owner occupied unit below. As I stressed before, I don't know if it is precisely relevant to the D-2 variance, the bulk of the expansion is coming in the rear of the property, which takes advantage of the rather deep rear yard. So from a street point of view the street scape doesn't change. Because there is foliage, as shown in the pictures, all around, and if you look at the house immediately to the left, which impacts, which is nearest to the proposed driveway, there are no windows on the neighboring house. So, between the foliage and the fact that there is nothing in that house that looks out over the driveway. It will have a minimal impact. Incidentally, it is a one-story structure. There is no second floor.

Now, I don't think that the D-2 variance is in any way precluded by your ordinance provision that we discussed at the last hearing, which under certain circumstances allows an owner occupied 2-family house to be expanded under certain conditions. It is simply, that is an ordinance that confers a right. It doesn't mean that if you can't satisfy all of those conditions, that a variance should be denied.

That particular provision is no more absolute than any other provision in the ordinance. Zoning ordinances are always expressed in absolute terms but it doesn't preclude your ability to seek a variance from them. Actually, if you look at the ordinance, we comply with most of the provisions in terms of coverage. We comply with the coverage. We don't comply with the setbacks because it is a house some 100 years old and also as we explained, why we had to deviate from the setbacks for the purposes of putting in the driveway.

The portions of the ordinance that we violate have to deal with bulk and they are really kind of subsumed under the variances that we are requesting for them. So, you can, at least theoretically, in my estimation, give a variance from that ordinance provision that permits the owner occupied unit, owner occupied 2-family house to expand.

With respect to the FAR variance, which is a D-4 variance, again, the special reasons that are needed to justify that type of a variance is not the same as D-1 variance. Basically, the standard that is to be used is similar to the one that we use for a conditional uses and is established by the Randolph Town Center Case in applying to an FAR variance, the issue is whether the site can accommodate the deviation from the FAR. With regard to this, the Architect has done the very best that he can to reduce the size of the room. There has been a substantial reduction. He has testified, and I think credibly that there is no substantial impact and the implication of that is that the site can, indeed, accommodate this deviation from the FAR and in fact, he testified that if he were to reduce it by the 650 feet that we were over, that from a neighboring property there would not be a perceptible difference.

There would, however, be a difference with regard to the interior because if you start slicing off a foot or two from a room, it can render the room inutile if you chop off one or two feet from a side yard, it is not necessarily even perceptible to somebody standing at the periphery of the property.

With respect to the “C” variances, you need a variance for the retaining wall, which is supposed to be 8 feet away from the side property line. We are locating it half of the way. The driveway is supposed to be 5 feet away from the property line and it is one foot away. Both of these pertain to the new driveway. I think that this variance is supported by “C-1”. The topography is what makes the retaining wall necessary because you have a 10 foot deviation in grade. Something has to be done to install the driveway to retain the soil.

The lot is 10 feet narrower than the required width. If we had the required width, we could put the driveway and we could comply. Also, where we could put the driveway is affected by where the house is located. We have a house that is 100 years old. I specifically refer to the section of subsection C-1, C-1c, where it talks not only of the physical characteristics of the property, but also, and I think importantly, the structure is lawfully thereon. It is an existing nonconforming use. So, we have to take into account where the house is located, and I think in considering the variance, you have to take into account the fact that we are starting with an undersized lot width. That is simply how the lot exists. That is the situation that is presented to us and derivatively to you as a Board.

I think that the testimony has been that there will not be any substantial impact from these deviations. Again, the neighboring house has no window exposure on to that side. There is foliage all around and there really is no substantial affect. I think it could also be argued, and I will argue it, that it could be supported under a C-2 criteria because your ordinance requires, for good reason, that every house have at least a 1-car garage, and we are complying with that public purpose. Even if it weren't required by your ordinance, I think that it is generally conceded that from the point of what a neighborhood looks like, it is better to have a car housed in a garage than sitting on a driveway.

So, I think that a public benefit and it substantially outweighs any detriment because I don't think that there is any substantial detriment. You know, coming down, putting aside the legalities, you have to kind of look at what are we talking about here? We have an existing 2-family house. Regardless of what you do here, it is going to remain a 2-family house. What we are proposing to do, is first of all have an owner occupied house, a 2-family house, which I think is an advantage. You are talking about a dramatic aesthetic improvement to the house. There really is, when you think about what we are talking about here, although there are a number of variances that are implicated, the product that you are going to get at the end is better than the product that is there now.

I think that is kind of a common sense of looking at it. It can certainly fit under the legal requirements. If all things are considered, the legal requirements for a variance, and just the common sense thing that we... this is really an improvement to the property. I think that you can and should come to the conclusion that the variance should be granted. Thank you.

VON DER LIETH: Thank you very much. John, do you have any comments on this? Go ahead John.

TEN HOEVE: I have discussed it with you previously, and I don't know if you want any statements made now, so that it is on the record. But, I do disagree that the, with the general premise that the expansion of a pre-existing, nonconforming use would require a *Use* variance. I do know that our ordinance is unique in the sense that it provides, you can expand the owner occupied portion. I agree with you that the fact that you are converting a non-owner occupied 2-family house, into an owner occupied 2-family house is a benefit that can be considered by the Board. I also believe that this application unlike the prior application, where several bulk variances were required that related to the expansion of the use itself, building coverage, height, that have all been eliminated by this application and really, the only variances that are required are the parking driveway variances. I think that since the ordinance does say that you can expand the owner occupied portion of the 2-family dwelling, provided that you don't require additional bulk type of variances, I think that the type of variances that are being sought here, could be analyzed by the Board as C-2 variances or by “C” either C-1 or C-2

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 17

variances, as you mentioned, and not considered the expansion of nonconforming use variances.

So, while I don't agree with your general premise, and I have read the cases that you submitted, I think that in this unique situation, the Board could consider those to be "C" variances as opposed to "D" variances.

But, the Board will discuss it all.

VON DER LIETH: We will discuss it later and you are welcome to stay if you like, and you can contact Mrs. Beer in the morning. Thank you gentlemen.

BEER: Let the record show that Mr. Raman is leaving at 9:05 pm.

<b>CASE:</b> 11-23 <b>Block:</b> 1508 <b>Lot:</b> 3	Application of <u><i>Richard and Theresa Weissenborn</i></u> , 2 Chadwick Court, for front yard variance to construct in-ground swimming pool in an R-15 residential zone on a corner lot.
---	--

WALKER: Mr. Chairman, I have the following items to be marked into evidence in regard to this application.

- Item 1 is the application dated 9/27/2011.
- Item 2 is certification of service dated 9/28/2011.
- Item 3 is legal notification dated 10/07/2011.
- Item 4 is proof of payment of taxes dated 9/26/2011.
- Item 5 is the deed dated 7/14/1999.
- Item 6 is the proof plan dated 9/26/2011.
- Item 7 is 8 photographs undated.

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

TEN HOEVE: Would everyone raise their 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?

WEISSENBORN: I do.

WEISSENBORN: I do.

INSIGNARES: I do.

TEN HOEVE: Please state your names and addresses.

WEISSENBORN: Rich Weissenborn, 2 Chadwick Court, Park Ridge.

WEISSENBORN: Theresa Weissenborn, 2 Chadwick Court, Park Ridge.

INSIGNARES: Armando Insignares Pool Cleaning and Spa, Nanuet, NY.

TEN HOEVE: You are a representative of the pool company?

INSIGNARES: Yes.

VON DER LIETH: If you would just be kind enough to take us through what you would like done?

R. WEISSENBORN: What we are proposing to do is put an in-ground pool in our back yard. Our hardship, per say, is with respect to the positioning of our property. We are in a corner of Chadwick Court and Kinderkamack Road. So, as you probably know, the front yard is considered the front yard and our side yard is also considered our front yard.

What we wanted to do is have to pool toward Kinderkamack Road, within the variance limitations there. We had 3 reasons why we wanted to move it to that side of the yard. The first one is that we have a fence, a vinyl fence, enclosing that side of the yard, but behind the vinyl we have a landscaped berm, which is 20 feet wide by 95 feet long and what we wanted to do is move the pool closer to that berm, to give us a second barrier and also give us more yard on the other side of the yard.

The way that our property goes, it kind of slopes towards, left to right, towards Kinderkamack Road. So, it is 18 inches higher on the one side then it is on the other. So water kind of cruises across the yard and collects by the berm. That side of the yard is always wetter and when we have our 9 year old up there with his friends, they naturally play on the dry side of the yard, which is over towards our neighbor, which is down the block.

So, the first thing is our existing buffering. We already have the fence there. We have the berm there, so we wanted to position the pool a little closer to the berm on that side. The second reason was the water disbursements. We have no issues with the cellar flooding or anything else. We do know that water does collect by the berm, so we were afraid that if we centered the pool more in the center of the yard, that we might cause some sort of water disbursement issue with not only our house, but also with the neighbor to the right of us, who already has a water issue that we know of.

He made the only request that whatever we could do to keep it away from his property line, he already has water problems in his basement and he doesn't want anything to worsen his case over there.

The third consideration was just a general consideration. If we move the pool closer to the berm, you are moving it away from any possible neighbor. The closes neighbor that we have is at 4 Chadwick Court. They are very nice people and we get along very great with them, but they have no children, so just a general consideration as far as we figure that a pool might add some noise to the back yard, and we have nice neighbors and we want to keep them as nice neighbors. We figured if we keep the kids a little further away from the property line that we share with them, it might make everybody happier in the neighborhood.

The other issue was that on that side of the yard there is no landscaping at all, so if we put the pool closer to the porch on the front property line, we would have to create a berm, landscape it, and obviously there would be associated cost with that. Their bedroom window, as they pointed out to us, is on that property line also, so they said that anything that you can do Rich, move the pool that way. That is the one thing that they requested and they are not here tonight, so that is their only request, so I figured that I want to try to honor their request.

We moved the pool approximately 12.2 feet closer to the berm and further in from the building setback line. So, we are still a good 9 feet away from the fence and away from the property line, but we are within the variance of the side property, so that is what we are here for.

The other variance that we were requesting was with regards to the pool equipment. On the original plan they were going to put the pool equipment in the back of the house right underneath our kitchen and dining room windows. We weren't too excited about that concept for 2 reasons. One being noise and the other being health concerns. We didn't want the exhaust being right under our kitchen window. Also, that position would also block one of our cellar windows. We have 3 windows in our cellar that during the daytime are a source of light in the cellar, so putting the equipment right there would actually block one of our cellar windows.

What we proposed to do is to extend the existing fence further up the side of the house and use that as a barrier, put the pool equipment on the side of the house, put landscaping around the pool equipment so that it is a second barrier and then have a second berm in the front of the house, between the road and the side of the house, which

also would function as a barrier, so we would have 3 barriers enclosing the equipment so no one would be able to see it from the road. Both of these variances really don't infringe on any of our neighbors. Being on the corner we only have one neighbor in the back and one neighbor on the side. All we want to do is really move it closer to Kinderkamack Road and closer to the berm and we don't really want to bother anybody else in the neighborhood. So that is what we are looking to do.

WALKER: The neighbor that is south on Kinderkamack, how far off of the lot line is their home?

T. WEISSENBORN: South of us, I don't know the exact feet, but we have a very deep lot, I think that we are 108 feet back, so he is back far enough away. She was going to come tonight, to testify for us, but she had a babysitting issue.

WALKER: That would be his side yard, right?

T. WEISSENBORN: Yes.

WALKER: Is that the garage side, do you know?

T. WEISSENBORN: Yes.

WALKER: It is a very good spot for a pool.

T. WEISSENBORN: Thanks.

FLAHERTY: Mr. Chairman, the way that I am interpreting it, the variance is because is what we look at as the backyard is considered the front yard?

VON DER LIETH: Right.

FLAHERTY: So, then this pool is supposed to not project beyond the front of the house, which in this case is the side of the house.

VON DER LIETH: Right.

FLAHERTY: Okay. What is the projection beyond and what is the side, the actual side of the house? How far does that go?

T. WEISSENBORN: I think 12.2 feet, of which 6 feet would be patio and 6 feet of pool.

FLAHERTY: So is the variance really just for the pool, or the patio?

TEN HOEVE: There is a 40 foot setback. It is in the R-20 zone. The front yard setback is 40 feet, so he is required to be 40 feet from both Chadwick and Kinderkamack.

WALKER: If it were a side yard it would be 18 or 20 feet?

TEN HOEVE: It would be 22 feet. He needs the variance because of the 40 foot dimension. The patio looks like it is 27.7 and the pool is 32.5. Even what is the distance between the property line and the curb?

MANCUSO: Generally 10 feet, but let me check over here. It depends on the right-of-way for Kinderkamack at that point. Over here on the scales for the plan, about 14 feet, so Kinderkamack is right-of-way is probably greater at that point. It is probably a 60 foot right-of-way.

TEN HOEVE: Right, so he is 47 or 48 feet from the curb line?

MANCUSO: Correct.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 20

VON DER LIETH: Are there any further questions from the Board members here? Is there anyone here to speak on this case. Yes, please come forward.

TEN HOEVE: 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?

MEYER: Yes.

TEN HOEVE: Please state your name and address.

MEYER: Dan Meyer, 109 Maple Terrace. I live directly behind Rich and Theresa. I came down here tonight to pretty much say that I saw what they were doing and just think that it great thing that they are doing, putting in a pool, and the location of the pool really doesn't affect anything and if you see where their house is located on Kinderkamack, there is a lot of room between the street and where their fence even starts. Where the pool is going to be, I just wanted to come down and say that we are for it and I know that Chris and Terry who live next door to us are for it, and we just wanted to show our trust in Rich.

VON DER LIETH: Thank you, that is very nice of you.

TEN HOEVE: 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?

MORAN: I do.

TEN HOEVE: Your name and address, please.

MORAN: Christopher Moran, 42 Kinderkamack Road, Park Ridge. I just came down to echo what my neighbor, Dan, said. We are all for the Weissenborn's putting in their pool. From where my house is, where our property line is, to where they want to put this pool, it really has no effect on my everyday life. We are all a tight knit community and we are all for what they want to do.

VON DER LIETH: Thank you very much. Okay, thank you. You can now contact Mrs. Beer in the morning. We will discuss it tonight and you can contact her tomorrow morning to see how it turned out. Thank you.

**PENDING CASES:**

<b>CASE:</b> 11-13 <b>Block:</b> 1103 <b>Lot:</b> 10	Application of <u><i>Felix Rizo</i></u> , 33 Midland Avenue for F.A.R., front yard, rear yard, and building coverage variances for constructing addition to existing house in an R-15 residential zone without building permits or variances. First application was denied on May 17, 2011. June 23, 2011 hearing postponed to July 19, 2011 at request of applicant, to August 16, 2011 and rescheduled by Board to October 18, 2011.
--	--

WALKER: Mr. Chairman, I have the following items to be marked into evidence in regard to this application.

- Item 1 is the application dated 5/20/2011.
- Item 2 is certification of service dated 6/07/2011.
- Item 3 is legal notification dated 6/10/2011.
- Item 4 is proof of payment of taxes dated 5/25/2011.
- Item 5 is the deed dated 6/23/2003.
- Item 6 is
- Item 7 is the site plan dated 5/17/2011.
- Item 8 is the Board secretary's letter dated
- Item 9 is Planner's review dated 6/21/2011.
- Item 10 is Board secretary letter 6/22/2011.
- Item 11 is Board secretary letter dated 6/27/2011.
- Item 12 is Applicant's letter dated 7/12/2011.

Minutes of the Park Ridge Zoning Board of Adjustment  
Meeting of October 18, 2011 – Page 21

Item 13 is Applicant's letter dated 8/15/2011.  
Item 14 is Board secretary letter dated 8/16/2011.  
Item 15 is Board secretary letter dated 9/12/2011.  
Item 16 is revised plan dated 8/31/2011.

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

VON DER LIETH: Thank you, Mr. Walker.

SPATZ: Good evening, my name is David Spatz. I am a licensed Planning Consultant and I am here representing Mr. Rizo. Rich Eichenlaub, who is our Project Engineer, is here also.

TEN HOEVE: Why don't we swear both of you in? 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?

SPATZ: I do.

EICHENLAUB: I do.

TEN HOEVE: Please state your names and professional addresses.

SPATZ: David Spatz, 60 Friend Terrace, Harrington Park, NJ.

EICHENLAUB: Rick Eichenlaub, of R. L. Engineering, 24 Wampum Road, Park Ridge, NJ.

TEN HOEVE: Thank you.

SPATZ: I haven't been before this Board before, I don't know, would you like me to give some qualifications before giving Planning testimony?

VON DER LIETH: Yes, that would be good.

SPATZ: Okay. I am the President of Community Housing and Planning Associates. I have a Masters in Urban Planning from New York University. I have been a licensed Professional Planner since 1986. I am currently the Planning Consultant for Union City in Hudson County and doing special projects for Edgewater in Bergen County. I have appeared before 50 or 60 Boards throughout the State, primarily in the northern portion.

VON DER LIETH: I think, if there are no objections, Mr. Spatz, we will be fine.

SPATZ: We are here representing Mr. Rizo. The project involves legalizing a rear addition to the house. It is a single family house, at 1 and ½ stories. The addition is to be used for a bedroom as has been stated, and as the Board knows, this was, the addition was built without the benefit of permits and variances. It appeared before the Board and the project was denied. He has made, what we believe, is a significant change to it, that would allow us to be back before the Board.

My review of your Planer's report, and speaking with Mrs. Bogart, that one of the significant concerns was the covered patio in the front of property that extended out on to Midland Avenue beyond the property line and encroached on the street. As part of these revised plans, that is being eliminated. The encroachment is being pulled back completely to the property line, so that there is no longer any encroachment into the street. The rear addition will remain as is and we will present testimony based on that.

VON DER LIETH: So, please, yes, can you take us through what has changed and what is making the difference from the last time?

SPATZ: The primary difference is that the encroachment over the property line. I understand that was a real sticking point that the Board was concerned that they wouldn't even have the ability to approve a project that extended beyond the property line into the street line. So, we have eliminated that completely. This serve to slightly reduce, just by small percentage points, the FAR variance that was being sought. The addition itself is constructed and will remain in its location although it will be brought up to code.

TEN HOEVE: I am not sure, I guess the best thing to do is to wait for some comments from the Planner with regard to that issue. I would agree that this Board can not grant a variance to permit a structure to be located in the right-of-way. I have, in fact, litigated that issue in the Superior Court. But, this is a pre-existing condition that you are talking about. Your proposal has nothing to do with that aspect of the dwelling, is that correct?

SPATZ: That is correct. The addition is completely in the rear. My understanding was that even though it is a pre-existing condition, that was enough of an issue that the Board felt that they couldn't grant any variance.

TEN HOEVE: That may or may not be, that is all that I am saying. You can address that in your testimony, but I guess we will hear from the other Professionals.

SPATZ: Do you want to deal with that issue first, because we wouldn't be able to proceed if that entire issue was not so, do you want me to just continue with the testimony?

TEN HOEVE: Yes.

VON DER LIETH: Yes, please, yes.

SPATZ: The project is on the southwestern corner of Midland Avenue and Randolph Street. The property currently contains a 1 ½ story single family dwelling, that faces Midland Avenue. There is also a small freestanding frame shed along the western property line. The site itself is relatively level. It slopes from the street frontages down to the southwestern corner of the property. We are in neighborhood of similar sized, single family dwellings, some of which recently renovated.

Number 47 Midland Avenue, just up the block, is undergoing what seems to be a large renovation. So, we are in character with the neighborhood. The single family dwelling is the permitted use in an R-15 zone, which we are located. The lot and the building, there are a number of pre-existing conditions that do not conform. Lot area, lot width, the street frontage along Midland Avenue, lot depth and then the front yard of the existing building on Midland Avenue, all of these are pre-existing conditions. They are not being affected in any way by what we are proposing. The addition is in the rear.

There is one "D" variance that is required as a result of the proposed addition, Floor Area Ratio. The zone permits 25% FAR, and we are at 31.87% with the proposed addition. There are also a few "C" variances created as a result of the addition as well. Minimum front yard setback, because we are on a corner lot, we front on 2 streets, so the Randolph Street side is also a front yard. A 30 foot setback is also required for front yards where the existing building varies from 7 feet 15 inches and 8.5 inches. The proposed addition is 6.3 inches in its smallest area. Minimal rear yard is 45 feet required, the addition at the rear, provides a rear yard of 37.5 feet. Then, lastly, building coverage. 20% is allowed and the proposed addition provides a coverage of 23.7%. So, there is one "D" variance, and then 3 "C" variances created as a result of what is being proposed.

So, the first item to deal with is obviously the "D" variance. It is a "D-2" variance. Mr. Urdang described the Randolph Town Center case shortly before our presentation and as he has indicated, when you have a principle use that does not meet the FAR, you don't need to make a determination as to whether the use is compatible with the surrounding neighborhood, just whether the site can support the increased FAR created from the addition and I believe that it does.

The addition is relatively small. It currently exists and we are seeking to legalize that. It is being used solely for bedroom purposes. The expanded FAR will not project any closer to adjacent properties than currently exists. Prior to the addition being constructed, there was wood deck, which wrapped around from the side to the rear. The building extension does not go any further to either the side or the front yard on Randolph Street as well as to the rear yard, then the deck currently did.

As I indicated, the rear wall of the proposed addition does not extend any further into the rear yard as well. There is no significant loss of rear yard caused by the addition, as the deck covered that portion as well. The Zoning Ordinance allows, on a fully conforming size lot, a maximum Floor Area Ratio of 4,250 square feet. The FAR on our property is actually is only 1,298.8 square feet. So, the FAR contemplates a much larger structure, of course on a much larger lot. I believe that 15,000 square feet is what is required in the Zone and we are at a little over 4,000 square feet. So, we are significantly undersized.

Because the subject site is significantly undersized, and fronts on 2 streets as I indicated and the lots on either side of our property are developed single-family homes, so there is really no possibility to acquire some additional land to increase the property size and therefore reduce the FAR, so we are limited by the hardship of that severely undersized property, which creates the larger FAR. But, we do have a structure that is smaller than would normally be allowed on the property and I think it is compatible with the neighborhood.

The next thing to look at is the positive criteria for the 3 Bulk variances that we are seeking. We are seeking them, basically, under the "C-1" standard in that we have a lot is significantly undersized. The width and depth are also, do not meet the ordinance. The dwelling exists in its current location, closer to the front yard, both in terms of Midland Avenue and Randolph Street. The addition was designed to follow the setbacks of the existing house as it relates to Randolph Street and then the deck in the rear yard, the building coverage variance that we are seeking is only 3.7% over what is permitted in the district. The existing lot, as I indicated, is significantly undersized.

If the lot was a conforming 15,000 square feet, the enlarged house would actually only cover 6.4% of what would be a conforming lot, so the undersized nature of our property significantly has an effect on what we can do, but the addition, I believe, is still very modest as it relates to the building. The rear yard variance, as I indicated, the deck already, the deck that was there prior to the addition being constructed, extended the same distance into the rear yard, so the rear yard, so there is no structure closer to that adjacent property. There is a significant distance, still, to that house. There is also a large hedge along that property line. It is the side yard of that property, which fronts on Randolph Street and the part of the building closest to our property is the garage, so there is no real effect on lot area and open spaces that relate to that property from the slightly smaller rear yard.

Again, if the depth of the property was conforming at 150 feet rather than the 82 feet that it is, then the rear yard would be a conforming rear yard. So, again, the undersized nature of the property is what generates the variance from a relatively small addition. This is the same situation as it relates to the side yard. The building itself, is not totally parallel to Randolph Street, but is sort of angled where it is a greater distance setback at the front of the building, from the rear of the building, the addition is built to follow the side building line that currently exists and just extend it further back. So, the closest we get to Randolph Street, is 6.3 feet from it.

There is also a fully grown hedge along this property line, that screens the property from Randolph Street and, I think, fully screens the addition from Randolph Street as well. There are no residences on that side, so there is, again, affect to light, air and open space, as would have a negative impact on the surrounding property. If this were treated as a side yard rather than a front yard, it would still be a variance, but instead of from a 30 foot setback, it would be an 18 foot setback. So, again, as a side yard it would be less of an impact.

The front deck encroached over the property line into Midland Avenue. It is being reduced to follow the property line. It still is too close to the front and the setback, but this is a pre-existing condition that is only made better by what is being proposed. So, I think that the positive criteria met for the 3 “C” variances that we are seeking.

Lastly, we need to look at the negative criteria for the variances as to whether what is being proposed, not just simply negatively impacts. All variances have some sort of a negative impact, but the question is a substantial negative impact, whether what we are doing would have a great impact on the surrounding properties, and I don't believe that they do. The variances, I believe, are relatively moderate in nature and are created by the significantly undersized nature of the property, as well as the location of the building on the site, as well as the frontage on 2 streets. The addition was designed not to extend further back and closer to property lines in the existing building but to meet the existing setbacks.

I don't believe that there was designed not to extend further back and closer to property lines in the existing building, but to meet the existing setbacks. I don't believe that there was any effect on light, air, and open space, by what is provided. There is no effect on parking. There is a driveway that would be able to provide parking for the 2 bedrooms that will now be on the property. There is significant screening both along Randolph Street as well as the rear property line.

I believe that we do meet the purposes of the zoning, as stated in the Municipal Land Use Law, as well as in the Borough's Master Plan and Zoning Ordinances. I still believe that a sufficient amount of light, air, and open space provided. This does preserve property values in a residential neighborhood, taking a small 1-bedroom property and adding a second bedroom without having any significant impact.

Lastly, I know this was a concern at the last meeting, the applicant has indicated that if the addition was approved, that it would be brought fully up to code with all building code requirements. So, I believe that on balance the positive impacts outweigh any negative impacts that might come from this small addition. We think that it would be proper to grant the variance.

VON DER LIETH: Thank you Mr. Spatz. Are there any questions or comments? Brigette, please go ahead.

BOGART: I have done a review dated June 21<sup>st</sup>, on this application. On page 2 the review outlines the 5 variances that are required. The first one being the Floor Area Ratio. The reason that I identified this first, is because it is typically the most significant variance, a “D” variance request. However, if you look at this lot and you look at the zone requirement, as you heard from the Planner, it is a 4,000 square foot lot in a 15,000 square foot zone. So, even though he sees the Floor Area Ratio, he is only at 1,300 square feet of floor area, where a maximum permitted is 4,200. So, he is still at about a third of what the maximum is.

It is the function of the lot. I had just asked the Planner to identify how this site fits into the neighborhood. I think he has done that. He said that it is in character to the neighborhood. The 4 other variances are “C” variances, building coverage, a rear yard setback, and the 2 front yard setbacks.

The building coverage proposed is 1.97% over what is permitted and it equates to 80 square feet, which is less than a third of what the addition is. So, I don't think that is a significant issue. The setback variances are a function, again, of the undersized lot. If you were to map the required setbacks, on this lot, you would have a building envelope that is approximately 7 feet by, I think, 2 feet wide. So, the reality is that nothing can be constructed on this lot without variances.

So, this Board just needs to weigh how the addition is placed on the property and the impacts that it will have on the surrounding area, and if the benefits of the addition in this area outweigh any negative impacts.

That goes back to the comments that you heard in the beginning, was, if the remaining variances are insignificant, and are all centered around the fact that the lot is undersized, the one issue that remains is this covered patio that encroaches into the front yard, into the right-of-way actually. That is why the applicant's Planner had called me on this issue because he understood that this Board doesn't have a right to grant a variance for encroachment into a public right-of-way. That is why he felt that this was the most significant issue identified in the memo.

I just have a question about that. I know we don't have a variance and we don't have the right to grant that variance. My one concern with removing it, is what does it do to the face of the structure? It is such a small structure, it seems that a covered patio would essentially add to the character of it and I am afraid that we may be requesting that he remove it because we have no right to grant a variance. But, you are not requesting a variance from this Board and I just don't want him to make the aesthetics of the structure look any worse.

SPATZ: I mean, maybe Mr. Eichenlaub can describe it, but it really is just covered over the walkway. There will still be a walkway from the driveway to the front of the building, and a small porch area, which would be sufficient to get in, but, you would just, you know, I guess you could still maintain a small portion of that overhang, but the part that extends would be removed. I don't think that it would have a significant impact to the character of the building. I don't believe that there is any historic or particular architectural significance to the building itself, that it would have an impact on. I don't know if Mr. Eichenlaub would like to add to that.

EICHENLAUB: I certainly can. I mean, it is a shed roof supported by columns on the outside face of the porch. I don't, again, as David indicated, I don't think that is going to alter the character of the building significantly. It has a nice look to it, you know, an older county styled porch. When we say porch, it is really at grade. It is not an elevated deck type of porch. It simply covers the walkway from both the driveway and there is a walk directly off of Midland Avenue, connecting that covered patio area.

Our proposal would be to remove that roof as well as a portion of the patio area, so that the edge of that patio area is along the property line.

TEN HOEVE: If the Board didn't force you to remove that, I assume that you would rather leave it?

EICHENLAUB: I think that my client would, sure.

TEN HOEVE: You are speaking for your client?

EICHENLAUB: I am. I think that if at all possible, I think that we would like to leave it.

SPATZ: Unless it became something that we couldn't do any action if that was still there.

TEN HOEVE: Were you planning on providing testimony tonight with regard to the construction? Have you read the prior resolution?

EICHENLAUB: I did.

TEN HOEVE: And, there are, I was going to go through it. Do you plan to have Mr. Rizo testify this evening?

EICHENLAUB: I can certainly, and I did indicate on my notes, part of my submission, that if approved and allowed to maintain that rear addition, that the floor would be a poured floor. It would be a solid concrete floor.

TEN HOEVE: There were very specific requests that were made at the time of the last application that the applicant wasn't willing to comply with. They were requests that were made as a result of the licensed architect that he had hired. He had come in and gave a report to the Board. The recommendations that were made, as are set forth in detail on the resolution, were that all of the existing flooring would have to be removed to expose all floor framing.

EICHENLAUB: That was done.

TEN HOEVE: Excuse me, that was done? Did anybody inspect that, from the town?

EICHENLAUB: Not yet. You can see the framing.

TEN HOEVE: So there is no floor and you can not walk on it. You are walking on the floor beams?

EICHENLAUB: You would have to walk on the joists, correct.

TEN HOEVE: Okay, that all dirt would have to be regraded, a polyethylene vapor barrier installed, a 4 inch concrete slab provided. In addition, there would be plywood sub-flooring placed over the joists, none of the work could be done until inspections were performed, that the gypsum drywall ceilings would all have to be removed and hurricane, galvanized hurricane anchors provided for each rafter, that framing angles would have to be constructed on the sides of all rafters. There is a defective ledger attached to the wall, that is not bolted with lag bolts, no flashing was provided. These are all specific requirements that were supposed to have been done, that were never checked. I don't think, I think that work stopped and nothing was done, once this resolution was adopted, so that there hasn't been any Municipal review by the Construction Code Department at all, so I am just wondering, is it your testimony that all of these items are going to be addressed?

EICHENLAUB: I believe so. I think better, if you want to hear from Mr. Rizo. He has indicated to both of us that he will do all of the items.....

TEN HOEVE: It goes on, I mean if you look at the resolution, there is a lot more that is included in here as well.

EICHENLAUB: I have been told by Mr. Rizo that they have been taken care of.

TEN HOEVE: That is the problem, though, I think he came forward last time and he indicated yes we had all of this work done, but no one was called and no one was checked. He wouldn't identify the name of the contractor who had done the work. None of the ripping out so it could be inspected by either the Architect or Borough Officials was done. All of that, I suspect, the Board is going to require be done.

EICHENLAUB: My being on the property, the removal of items so that inspection could take place, has been accomplished.

TEN HOEVE; Including all of the ceilings and everything else that is in.....you can go through this resolution and you can go through the Architect's report. There are very, very specific requirements in terms of what needs to be done. I don't know what the Board is going to do, but my guess is that they are not going to act upon the variance requests until that is all done.

SPATZ: The question that I have, is, if the building was constructed without benefit of permits, and without variances, can he go ahead and make some of those improvements to an addition that is not created by variance. If you reject the variance this evening, then he will have done all of that construction to an addition that has to be torn down, so if those are conditions of an approval, and certainly has to be all building codes, I think he is certainly more than willing to do that.

VON DER LIETH: Mr. Spatz, that it where it gets a little hairy because it is not the fact we wouldn't want him to rip it down in actuality. However, we would want him to comply with, and let us know that he will comply, instead of denying us the right to go, not us personally, but the right to inspect and do everything in a proper manor. That is all.

TEN HOEVE: All that I am trying to say is I don't think the Board would grant a conditional approval. I think that the Board might want to have all of that work done, because what it requires is a substantial demolition of work that has been done there, in order to have everything checked. That was something that Mr. Rizo was not willing to agree to do the last time that he was here.

EICHENLAUB: We have spoken with him about the process and he has agreed, he has indicated to us that he is willing to fully comply with inspections and that. Again, (three people all speaking at the same time-inaudible)

VON DER LIETH: He has to come up and let us know.

EICHENLAUB: If I could just make one other... I have spoken to the Construction Code Official in town, Mr. Saluzzi, and the problem here is that initially it was denied. So, there was no reason to have an inspection because it was denied. It was an illegal structure. So there wasn't anything for him to inspect.

TEN HOEVE: No, but when the last hearing was held, there was a substantial amount of work that had been done, that had been done, that had been inspected by Mr. Bruno, an Architect who appeared and testified before this Board, with very specific recommendations as to what had to be torn apart in order for appropriate changes to be made and in order for appropriate inspections to be made. That is what Mr. Rizo, last time, stated that he wasn't willing to do.

I am assuming that no work could have been done subsequent to the date of that last resolution, because if that was done then it is even more work that is being done without permits or checking. So, we are at the same point we were at when that resolution was adopted. The Board made specific recommendations as to what it required. It made those recommendations based upon expert testimony from an expert that your client presented here. I suspect that they are going to make those same requirements, if they are going to act and they may, it will be discussed later tonight, but they may want that done before they even grant any approval, rather than condition an approval on that being done.

EICHENLAUB: I guess the concern here is that it is kind of a "catch 22". Because we go and we make all of those improvements and then we come back, or corrections and then we come back, and then it is denied, and he has to take it down. I think that is a concern.

TEN HOEVE: I understand that.

EICHENLAUB: That is the gamble that you have to take, that you are going to get your approval. It is just like any application. But, I think that was Mr. Rizo's concern.

VON DER LIETH: I know, but if it is done correctly, if they do rip out what was said to be ripped out, whatever Professional went in there to inspect and it was done correctly, I don't think that the Board would have a problem with that.

TEN HOEVE: The Board could also, I could recommend to the Board that it indicate that while it is not going to adopt the resolution, that it move to, based on the testimony received, if it agrees to do this, to, in essence, find that it would grant the variances if those things were done, require that the work be done and then adopt the resolution carrying the application until it was done. Again, I don't know if they are going to do that because they have to discuss that later tonight, but that is another way that it could be handled to address what the Chairman just recommended.

EICHENLAUB: Mr. Rizo indicated to me that if he could get the permits to do the work and bring it up to code, if that could be done prior to the actual resolution being adopted, he would certainly be willing to do that because that would allow him to have an addition that is fully up to code. A "CO" could be granted after you had your final approvals.

VON DER LIETH: Okay. I am sorry. I was listening, I want to know if he, Mr. Rizo, is agreeing, then, to take apart what Mr. Bruno had said, okay, to open up and let the inspectors in, the Professionals in, he is agreeing to do all of that which was written in the resolution per Mr. Bruno, in order to get it up to code. Mr. Rizo, come up if that is what you want to do.

TEN HOEVE: 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?

RIZO: I do.

TEN HOEVE: Please state your name and address.

RIZO: Felix Rizo, 33 Midland Avenue, Park Ridge, New Jersey.

VON DER LIETH: Hello, Mr. Rizo. How are you? I will personally keep it short. Obviously the 64 thousand dollar question would be.....

RIZO: Everything is done already. The room is ripped apart. It has cost me more to rip apart that room than the construction. There is no ceilings. There is no roof, there is no floor. Everything has been done that was complained. What happens is that room nobody could go in there, no body.

TEN HOEVE: I never spoke to you and never told you anything. Anything that has transpire has been at a hearing before this Board for which there are transcripts.

EICHENLAUB: Right, I guess I have one question. If a resident were to come in front and apply for a building permit, with the Building Department, and there were variances, they would deny that permit until they got the variances. So, that is what I am saying, it is kind of a "catch 22". Is Mr. Saluzzi going to issue those permits with these variances?

TEN HOEVE: I understand. I understand your question. That is something that will have to be discussed.

VON DER LIETH: That is a good thing though, what Mr. Rizo said, that everything is open and ready for inspection, right?

RIZO: The last time this meeting was postponed was because the Planner was still planning the thing. Mr. Ten Hoeve, I swear to God, said to me, I opened the room and it is not being used and nobody goes in there. I say, Sir, nobody has touched that room after it was ripped apart. I am telling you the truth. You can go to a tape and listen to it. The only thing that was asked was the question and I said that we will not go into a room until you give us permission to go into it.

TEN HOEVE: The Chairman has a good suggestion though, because if everything has been ripped out that was required to be ripped out to provide for the appropriate inspections, then that inspection could be made and if the Zoning Official and Construction Code Official go there and confirm that is the case, then this matter is carried for one month, then it might be possible to approve it with just a condition that all the construction be appropriate.

VON DER LIETH: It is as easy as that.

RIZO: What happened between me and Mr. Bruno, was something very different from this Board. It is something more personal.

VON DER LIETH: The bottom line is that it is a good thing that everything is open and ready to go. So thank you Mr. Rizo.

RIZO: I did everything that I was asked to do. I have just waited. I have been sleeping on the floor with my son.

VON DER LIETH: That is why it is a good thing that it is open so we can get moving on this.

RIZO: No, for 6 months, just because I respect what the Board said to me, you can not go into that room without and inspection. I never complained or anything. I think it has been good for my back.

VON DER LIETH: Does anybody have any questions at this point? Is there anybody here to speak on this? I don't think so, so I will just say Mr. Eichenlaub are your finished, or Mr. Spatz?

EICHENLAUB: Yes, I think so.

SPATZ: I have nothing further.

HOSKINS: I have one question. You said there were columns coming down from the deck or somewhere.

EICHENLAUB: The front porch, the roof is a shed roof. It is not enclosed. It is open. So, the outer edge of the porch roof is supported by columns.

HOSKINS: Do they go into a footing?

EICHENLAUB: I can't verify that. I didn't look for footings.

HOSKINS: I think there was a question months back about the depth of the footings.

EICHENLAUB: The footings had to do with rear addition.

HOSKINS: I knew there was a question about footings, I didn't know it was inspected, to see if they were deep enough.

RIZO: That is why we removed the floor. There were no footings. So, now the floor has to be put in all over again..

EICHENLAUB: Okay, thank you. Gentlemen thank you very much. We will discuss this later tonight, obviously. You can call Mrs. Beer in the morning.

RIZO: The inspector from the town can come anytime that he wants.

#### **DISCUSSION OF APPLICATIONS:**

The first case to be discussed was for Thomas and Concetta Desiderio. The members of the Board was that it was an intensification of the use. The attorney pointed out that the ordinance states that you can improve the owner occupied portion of a 2-family home.

They were all in agreement that there are a considerable amount of variances required. The attorney advised that they could be looked at as "C" variances as opposed to the "D" variances. The Planner had a question regarding the possibility of leaving the gravel driveway, as it could just keep being expanded and that there would be no review done or calculations done. She felt that the driveway should be paved now so that you

would at least the driveway is and what was approved, and it couldn't be extended, which is one of the reasons that the Board adopted the resolution regarding driveway pavement.

Some members felt that perhaps pavers could be used as most of them are not considered pervious coverage, however they are quite expensive. It was mentioned that the Road Department prefers that driveways be paved so as not to have the gravel kicked out on to the road. The Borough Engineer also felt that if it were to be paved, runoff would have to be considered. It was also suggested to use grass pavers as a good option.

The Planner also mentioned that although there are a lot of variances required, it would be a large upgrade to a building that would most likely otherwise be a tenant occupied building with a minimum of maintenance being done.

The Attorney advised that the Board will have to decide whether or not to grant the variances and then if they do, what do they want to be done with the driveway.

The members agreed that they would go along with the variances but with the use of pervious pavers. The attorney was advised to draw a resolution of approval for the next meeting.

TEN HOEVE: For the record, The Board of Education has not attended. The secretary advised a representative of the Board and told them that they would have to be there tonight, that there were some open questions concerning the revised plans. They are not here, my suggestion is that we just carry it to the next meeting.

It is also my suggestion that Zoning Officer and the Construction Code Official go to the Rizo residence to inspect the place, with a copy of that resolution and perhaps, Mr. Bruno's report, to see if, in deed, all of the demolition work necessary to properly inspect the work that has been done, has been completed.

WALKER: If it hasn't would we allow him to do that demolition?

LUDWIG: There is a little bit of a conflict there. First he told us that he had never entered it after we told him not to. Then he said that he has taken it all apart so that now we can see everything.

WALKER: I think he meant that they weren't using the room. My recollection is that they were told that they couldn't sleep in the room and they couldn't use the room.

LUDWIG: I am just going by what he said. That was that no body entered the room after that.

VON DER LIETH: He said it was open.

LUDWIG: We are at a standstill here. We have to take a direction one way or the other. I think it was pretty well explained that they don't want to do the work until they have an idea that they are going to get a variance. They are not going to get a variance until they get an idea of .....

TEN HOEVE: The question tat I was asked was what happens if he hasn't? If he has done what he supposedly said was done, then I would recommend to the Board that it grant the variance with conditions that he get all of the necessary permits. When he comes back and everything that he has testified to, again, here tonight, was false, then...  
.....

VON DER LIETH: If it is true, please let them go in. I hope he got that from me, saying that we would be very inclined to move ahead on this. That is what we are going to do. We are going to go and inspect.

WALKER: Do we indicate that we are willing to grant the variance.

TEN HOEVE: If he did everything that he said he did, and it is all ripped out so our inspections can be done, and we can then grant the variances with conditions that the work be done in a certain fashion. I think that makes sense.

VON DER LIETH: Mr. Walker, when are you available to go on an inspection?

WALKER: Anytime. The Planner seemed pretty well versed on the property. (Everyone talking at the same time).

BEER: When he calls in the morning, I will tell him that the decision of the Board is that he has to call the Construction Office and make an appointment to have both the Construction Official and the Zoning Officer go over and inspect, based on Mr. Bruno's memo and it must be done before the next meeting and both of those people will issue their reports.

The next application to be discussed was Richard and Theresa Weissenborn. The members were in agreement that a variance could be granted. Some members drove by the property and felt that nothing could be seen. There is a fence and a hedge of pine bushes.

TEN HOEVE: In the application of Arlene Burgis, she is withdrawing her amended application, so we had denied the initial application. We didn't actually vote on it, because we had a resolution prepared, ready to be adopted. I suggest that we just adopt that resolution denying it and she can reapply.

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

**WHEREAS, ARLENE BURGIS**, (hereinafter referred to as "applicant"), being the owners of premises located at 22 Henry Avenue in the Borough of Park Ridge, County of Bergen, and State of New Jersey, said premises also known as Lot 4 of Block 2205 on the Tax Assessment Map for the Borough of Park Ridge, has applied to the ZONING BOARD OF ADJUSTMENT FOR THE BOROUGH OF PARK RIDGE seeking a variance from the terms and provisions of the Zoning Ordinance of the Borough of Park Ridge to permit the construction of a shed structure located in the rear yard of the premises in excess of the maximum size permitted by Section 101-21 of the Zoning Ordinance of the Borough of Park Ridge; and

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

WHEREAS, Applicant has submitted a survey describing the proposed improvements to the premises prepared by David A. Hals, Licensed Surveyor of the State of New Jersey, dated June 15, 2011; and

WHEREAS, a hearing was held before the ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF PARK RIDGE duly convened on August 16, 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 FOR THE BOROUGH OF PARK RIDGE that the BOARD hereby makes the following findings of fact:

1. Applicant is the owner of premises known as 22 Henry Avenue in the Borough of Park Ridge. Applicant's lot is improved with a two-story frame split level dwelling with a small existing shed located in the rear of the southeast corner of the property.
2. Applicant seeks permission to construct a structure originally purporting to be a shed located in the rear corner of the property and being but 10.00 feet off of

the rear property line and side property line at its closest points. Said shed would have dimensions of 384 square feet.

3. The Zoning Ordinance of the Borough of Park Ridge prohibits sheds having a dimension in excess of 150 square feet. The Zoning Ordinance also requires that accessory garage structures that exceed 325 square feet be situated no less than 20 feet from any property line.
4. Applicant testified that the proposed structure to be located in the rear yard would be used as a woodworking shop. Applicant indicated that the structure would contain woodworking equipment, that electric power would have to be provided to the structure, and that woodworking, painting and laminating activities would take place in the shed. Applicant further testified that the large size of the shed was required in order to permit the use of the structure as a woodworking shop.
5. Applicant provided no testimony whatsoever that would satisfy the requirements of the Municipal Land Use Law with regard to the granting of the requested variance. The proposed structure is actually not a shed, but a large structure not permitted under the Zoning Ordinance. The construction of the shed would achieve no zoning or planning benefits justifying the grant of a flexible "C" variance pursuant to the Municipal Land Use Law. The Applicant also provided no testimony as to any hardship or unique condition on the property that would justify the grant of the variance.
6. The BOARD is also concerned with the activities that would take place within the proposed woodworking shop. The Applicant would be using power equipment, painting, engaging in laminating activities and performing other woodworking tasks within a structure that is but 10.00 feet from an existing property line.
7. The BOARD thus finds that the Applicant has provided no evidence that would satisfy the positive criteria required to grant a variance. The BOARD finds that it is not necessary to even evaluate the negative impact of the requested variance since the Applicant has failed to satisfy the positive criteria.

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 hereby denies the Applicant's requested variance.

The resolution was offered by Mr. Brennan and seconded by Mr. Flaherty.

**ROLL CALL:**

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

**Abstain:** None

**NEW BUSINESS:**

None

**CORRESPONDENCE:**

N. J. Planner      Re: August 2011 - distributed

**APPROVAL OF MINUTES:**

None

**APPROVAL OF VOUCHERS:**

None

**ADJOURN:**

There being no further business to come before the Board, by motion of Mr. Capilli with a second from Mr. Walker, the meeting was adjourned at 10:05 pm.

Respectfully Submitted,

Margot Hamlin,  
Transcriber