

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

**ROLL CALL:**

**Members Present:** Joe Fleischner, Dan Nelsen, Brian Schaechter, Nelson Russell, Steve Bedell, Jim Staszak, Scott Van Ness, Michael Koroski, Howie Weiss

**Members Excused:** John Mania

**Members Absent:** David Koptyra

**Professionals Attending:** Chuck McGroarty, Planning Consultant, Eugene Buczynski, P.E., Tiena Cofoni, Esq., Catherine Natafalusy, Planning Administrator

**Professional Excused:** Edward Buzak, Esq.

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**APPROVAL OF RESOLUTIONS**

**Resolution #PB 12-22 – Greg & Christine Heller - (Block 2900, Lot 1)**

Motion: Steve Bedell  
Second: Jim Staszak

**Roll Call:**

Joe Fleischner - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Howie Weiss - yes

**Resolution #PB 12-23 – Jon Gesell – (Block 2201, Lot 3)**

Motion: Joe Fleischner  
Second: Brian Schaechter

**Roll Call:**

Joe Fleischner - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Howie Weiss - yes

**Resolution #PB 12-12 – Old Hickory Estates – (Block 3107, Lot 10)**

Motion: Steve Bedell  
Second: Nelson Russell

**Roll Call:**

Joe Fleischner - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Howie Weiss - yes

**Resolution #PB 10-23 – Richard Bruno (Extension) – (Block 1201, Lot 2.02)**

Motion: Jim Staszak  
Second: Steve Bedell

**Roll Call:**

Joe Fleischner - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes

Howie Weiss - yes

**Resolution #07-40 ZBA – Lozier Estates – (Extension) – (Block 2801, Lots 11 & 14)**

Motion: Joe Fleischner  
Second: Nelson Russell

**Roll Call:**

Joe Fleischner - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Howie Weiss - yes

**Resolution #PB 12-25 – Mazouz & Tomasa Jallad – (Block 7100, Lot 66)**

Motion: Joe Fleischner  
Second: Brian Schaechter

MR. WEISS: Okay is there conversation?

MR. SORANNO: Mr. Weiss I have an objection.

MR. WEISS: Sit down please.

MR. SORANNO: Sure.

MR. WEISS: There is a conversation to be had about this. In your packet tonight gentlemen we do have an objection to the resolution from the objector's attorney and I certainly hope you've looked at it if you have any questions we can certainly talk about it. I just want to remind members of the Planning Board that the resolution is sent to the objector as a courtesy it is not a negotiated document as we know. I don't want to take the position that we're going to debate the resolution; the resolution is not a settlement document as we know it's simply a unilateral action taken by this Board. We don't really create these documents to make the applicant and certainly not the objector agree with it, this is certainly a resolution to summarize what we've discussed there's going to be no conversation about it with the acceptable between the Planning Board. If you review the letters and have any questions, if you review the resolution and have any questions we can talk about it otherwise is there any other conversation? Roll call.

**Roll Call:**

Joe Fleischner - yes

MR. SORANNO: Excuse me Mr. Weiss I'd like to be heard.

MR. WEISS: You cannot sit down.

**Roll Call (Continued):**

Dan Nelsen -

MR. SORANNO: I'd like to just make a record on that resolution.

MR. WEISS: Sit down please Mr. Soranno.

MR. SORANNO: Okay let the record note that I was prevented from commenting on the resolution.

**Roll Call – (Continued):**

Dan Nelsen - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Howie Weiss - yes

MR. WEISS: Mr. Soranno I could add if you' like to stay to the end we'll have an open session you can discuss anything you'd like. But we're not going to sit here and debate the resolution.

MR. SORANNO: Okay thank you Mr. Weiss I'll do that.

MR. WEISS: You're welcome.

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**COMMITTEE REPORTS**

MR. WEISS: Okay that brings us to committee reports. Brian anything from the Mayor?

MR. SCHAECHTER: The Mayor has nothing to report today.

MR. WEISS: Mr. Mania is not here. Nelson anything from the environmental commission?

MR. RUSSELL: Jim Smith was re-elected as Chairman.

MR. WEISS: Okay. Joe we're going to have an ordinance committee conversation let's table that to the end of the meeting it is on our report. But if there's anything else besides the meeting that was held certainly you can talk about that.

MR. FLEISCHNER: Could I just . . . I apologize but I just go back unfortunately Nelson wasn't able to attend the environmental commission meeting and we have set a date for the well testing which we did last year where residents were able to come to, I think we did it at the Senior Center or here I'm not sure but it's going to be the target date is the weekend of April 27 and 28 for homeowners to pick up their well water sampling kits and return them on the 29<sup>th</sup>. And there will be publicity around it so that people will know but people should be encouraged to, if they have a well to have their water tested.

MR. WEISS: Is there a process Joe on how that's going to be publicized will it be put on the Township website?

MR. FLEISCHNER: Nelson will probably be able to report on it more at the next meeting.

MR. BEDELL: Is that an annual thing Joe? Just out of curiosity.

MR. FLEISCHNER: We started it, when did we start it last year? Last year was the first year we did it.

MR. BEDELL: And you plan on doing it like that.

MR. FLEISCHNER: We hope to. The residents pay for it we don't pay for it.

MR. BEDELL: Yeah, yeah that's pretty neat.

MR. FLEISCHNER: But it tests their water and it works its good.

MR. RUSSELL: And it doesn't go to the Health Department.

MR. FLEISCHNER: It does not go to the Health Department, the results so that's all I can say.

MR. WEISS: You know we found that there's a nice way to communicate to a lot of people and maybe reach out to the Mayor and have him put it on his Face Book page also.

MR. FLEISCHNER: We can do that as well you might want to make a note of that.

MR. RUSSELL: Right.

MR. FLEISCHNER: Thank you.

MR. WEISS: Okay street naming committee there's nothing to report. Open space is a vacancy right now so we have no report. Is that correct Catherine we have nobody on the Open space?

MRS. NATAFALUSY: Open space is open.

MR. WEISS: Okay. Anything else, any legal committee report Tiena?

MS. COFONI: No.

MR. WEISS: Gene, Chuck any professional reports?

MR. BUCZYNSKI: No nothing right now.

MR. MCGROARTY: Just to tell you that the State Planning Commission yesterday did approve the map changes in Mt. Olive for the Foreign Trade Zone area and also down in Flanders which is a good thing.

MR. WEISS: For what it's worth I did speak to the Mayor about that and he praised both you and Catherine and I'm sure Gene although he didn't mention you by name Gene I thought maybe he . . .

MR. MCGROARTY: We all worked on it.

MR. BUCZYNSKI: We all worked on it.

MR. WEISS: There's no doubt and then the Mayor did point out today that he was very impressed with the effort that was made so thank you all for that effort made. We have two developmental matters this evening.

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**APPLICATION #PB 12-14 – JENNIFER & KEVIN POWERS**

MR. WEISS: The first one is developmental matter PB 12-14 Jennifer & Kevin Powers. Interesting on the application is that it expires at the end of this month Catherine has informed me that we're having trouble communicating with this applicant. The applicant is not here and what we're going to suggest is we dismiss the application without prejudice or giving the homeowner the opportunity to come back in front of the Planning Board within the next six months without having to post new fees and bonds. Is that correct Chuck?

MR. MCGROARTY: New fees, yes.

MR. WEISS: New fees.

MR. MCGROARTY: The fees that I guess you have you'll keep?

MRS. NATAFALUSY: Right. I mean we've had some issues with notice they didn't notice properly they had to renotice so we carried it. They noticed the paper they didn't notice so . . . and now the last time I heard from them they weren't sure if they can make tonight's meeting I told them what the meetings were in February and then I didn't hear from them again. So . . .

MR. WEISS: It expires on . . .

MRS. NATAFALUSY: January 31, 2013.

MR. WEISS: The end of January and we don't have an extension signed by the applicant therefore we need to act on it this evening. And the recommendation coming from my Chair is that we dismiss this application without prejudice. So unless there's other conversation I'd certainly entertain a motion for that recommendation.

MR. STASZAK: I'll make a motion we dismiss application PB 12-14 without prejudice.

MR. NELSEN: Second.

MR. WEISS: Any conversation? Roll call.

MRS. NATAFALUSY: Joe Fleischner - yes  
 Dan Nelsen - yes  
 Brian Schaechter - yes  
 Nelson Russell - yes

Steve Bedell - yes  
Jim Staszak - yes  
Scott Van Ness - yes  
Michael Koroski - yes  
Howie Weiss - yes

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**APPLICATION #PB 12-26 – TAKASHI & BETH BLAKEY**

MR. WEISS: Okay so our application tonight is 12-26 Takashi & Beth Blakey requesting variances for front/side yard coverage on their property located at 101 Mt. Olive Road, Block 7600, Lot 66.

MR. BEDELL: Mr. Chairman I just want to say for the record I served on the Library Board as president with Ms. Blakey who is the Treasurer. I don't see a need to recuse myself I just have it out there for the record.

MR. WEISS: Thank you Steve.

MR. SCHAECHTER: I also serve on the Library Board with her and I feel the same way.

MR. WEISS: Okay. You have no problem with that Tiena?

MS. COFONI: I do not as long as the applicant is okay with that.

MS. BLAKEY: Yes thank you.

MR. WEISS: Well first thing that we'll do is let's swear in Mr. & Mrs. Blakey. You'll both testify tonight I take it?

MS. BLAKEY: Yes.

MR. BLAKEY: Yes.

(TAKASHI BLAKEY SWORN IN FOR THE RECORD)  
(BETH BLAKEY SWORN IN FOR THE RECORD)

MS. COFONI: If you could both state your full name one at a time spelling your last name and giving your address for the record please.

MR. BLAKEY: Takashi Blakey (B-L-A-K-E-Y) 101 Mount Olive Road.

MS. BLAKEY: Beth Blakey (B-L-A-K-E-Y) 101 Mount Olive Road.

MS. COFONI: Thank you very much.

MR. WEISS: Okay Mr. & Mrs. Blakey we have copies of plans so we have a pretty good understanding of what you want to do. I was able to visit the site and I did see the property and I can tell you that the plans kind of represent what I've been told. If you would Mr. Blakey why don't you tell the Board what you want to do and what you want to do with your property. Again we have the plans we can talk you through it and why don't you summarize for the Planning Board what's going to happen.

MR. BLAKEY: Well I don't know if many of you remember we were here actually . . . . We were here back in July 2008 and basically submitted the very same footprint that you see in front of you. We went through the whole process through the Mt. Olive Planning and Zoning Board and they had approved this variance application for us to build this two-story addition. This is noted in your resolution dated August 18, 2008. We were obviously challenged by some existing zoning laws which our house basically the front and side yard we were granted relief for the front and side yard setback sections which was an issue and also the maximum building and impervious coverage provisions. Basically our house was built around the late 1940's, 1948 so obviously it couldn't conform to existing zoning laws. Basically what we're trying to do is on the first floor is expand our living space, when we were here four years ago we only had one child we have two children now so we're pretty cramped along with three little dogs in a very tight space with no play space. So our plan is to expand the first floor have a larger dining room as you can see and a much larger kitchen area but more importantly

where our existing living space is right now is to have a family room. And you see there it will say basically existing living and dining room, and of course slide the living room over to in as far as the new part of the addition on the first floor.

MS. BLAKEY: Can I interject?

MR. BLAKEY: Sure.

MS. BLAKEY: Right now our house is basically half of a colonial, a traditional center hall colonial when you walk in as you know the stairs are in front of you on the one side as the half of the house and on the other side of the other half of the house right now we have half of a house. And it was fine when we bought our house almost nine years ago because it was just the two of us and one small dog and as Takashi said we've expanded now to the two of us two children and three small dogs. So it's awfully tight and as our children are growing we're finding that we need more space in order to allow our children to grow.

MR. WEISS: So Mr. Blakey kind of testified that this is the same exact plan that you were approved a few years ago and I think that was the premise. Zoning Board Steve I believe that I saw the document you were the acting Chairman at the time.

MR. BEDELL: I believe so yeah.

MR. WEISS: I think what we might want to do, let's just state for the record your really requesting four variances. Those variances are there's an encroachment into the front yard setback for the principal structure which is the home, there's an encroachment into the side yard setback of your home, you exceed maximum permitted building coverage and you exceed maximum permitted impervious coverage. I know those are big words for us but we'll deal with that. There's a couple of items that we need to (inaudible) talk about and make sure we all understand. So does anybody have any questions so far as to what's happening? Jim.

MR. STASZAK: One quick question. They got approval for this in 2008 it just expired?

MRS. NATAFALUSY: Expired.

MS. COFONI: And you never did anything . . . .

MR. BLAKEY: No we let it go.

MS. BLAKEY: I got pregnant it happens.

MS. COFONI: I understand.

MR. FLEISCHNER: You can't blame us for that.

MS. BLAKEY: Yeah I know.

MR. WEISS: I suppose you know my only challenge Tiena maybe you can help us here is on . . . when we look at the . . . go through some of the bulk variances on the positive criteria what kind of testimony are we looking for from the applicant?

MS. COFONI: Well I think some of the testimony that's been elicited is the general design but way out of the house and as Mrs. Blakey said that it's essentially half of a house at this point and they were looking to expand for an expanded family.

MR. WEISS: Tiena would the age of the home fall under the positive criteria the fact that this was prior to our original zoning?

MS. COFONI: It's certainly . . . we still need to consider it.

MR. WEISS: It certainly problems that they're finding as a result . . . I think if we move, sometimes usually it's smarter to prove the negative criteria but in this case we're just going to ask a couple of questions that would help prove the other side of the coin. Talk about the community your neighbors, tell us how this fits into the community and to the neighbors and you know obviously the Planning Board doesn't want to design a home that sticks out amongst your neighbors, doesn't want

something that's so large and different than anything else to disrupt the neighborhood. So why don't you give us a little testimony about how that's going to affect the community around your home.

MR. BLAKEY: I don't think it's going . . . I think it's for one thing it will probably increase the home values around our area. And more importantly like she said, she hit the nail right on the head we're living in half a house. I mean realistically did they classify this house as a colonial but we're only living in half of a colonial.

MR. BEDELL: What's the square footage?

MR. BLAKEY: It's like around 1,300 square feet it's a tiny home.

MS. BLAKEY: And as far as the houses on our street actually if you head towards Route 46 there are a couple of homes that are fairly similar to what the end result of our house would be as far as the square footage, as far as the actual design.

MR. WEISS: What is your final square footage going to be?

MS. BLAKEY: It's going to be roughly about 2,000.

MS. NATAFALUSY: Excuse me Mr. Chairman the addition is 520 square feet okay my calculations for the existing house is about 600 square feet so it will be about . . .

MR. WEISS: So (inaudible) approximately 2,000 square feet so the question is does that counting . . .

MS. NATAFALUSY: No it's two floors but I do the footprint.

MS. BLAKEY: Oh you're not talking about the interior square foot, gotcha.

MR. WEISS: Okay so the final home that you're done building will be in line with the other homes in the neighborhood.

MR. BLAKEY: Oh absolutely.

MS. BLAKEY: The other thing to note is our home there's only actually a neighbor on one side of our home we don't actually have any direct neighbors that we would be impacting. That one home is actually vacant right now it's up for foreclosure.

MR. WEISS: Tell us as you look at your home from the street tell me about the property to the left.

MS. BLAKEY: The property to the right is a Township owned property its wooded area, the property to the rear of our home is Township owned I believe?

MR. BLAKEY: Not quite sure but it's a wooded area.

MS. BLAKEY: Yeah it's wooded area and then there's a tract of land between our home and the property to the left of us that is also wooded area.

MR. WEISS: I think actually in my visit to the home in trying to get a look at that property to the right, I'm not sure where Drakestown is maybe that's to the west, and I did further check it's an undersized lot it's not a buildable lot at this point. I didn't really check if it was wet I don't believe it was Catherine remember we looked at that lot? The township owned property to the right.

MS. NATAFALUSY: It wasn't, according to the . . . I went on the Highlands website and it didn't look like that property was in a wetlands.

MR. WEISS: It's just undersized.

MS. NATAFALUSY: Yeah.

MR. WEISS: By itself it's not buildable.

MS. NATAFALUSY: But you know for the township to have it there's a reason why the town has it.

MR. WEISS: So there's no home to your immediate right.

MS. BLAKEY: Correct.

MR. WEISS: So would you agree if I was to say that on granting such a variance your requesting would not negatively impact or put a negative detriment to the community.

MS. BLAKEY: Yes correct.

MR. WEISS: Now I note that we have some issues that are beyond our control and it was discussed that, and Catherine and I had further conversation, you had an issue that held you up last time it had to do with some wetlands off your site on the neighboring property. I think you had told me you might want to talk to the Planning Board what you plan to do because if this Planning Board does agree to give you the variance it's not as simple as we think unfortunately.

MR. BLAKEY: Correct, correct.

MS. BLAKEY: We have some more information.

MR. WEISS: Why don't you share that with us Mr. Blakey as to what the problem is and what your plan of action you be to help that.

MR. BLAKEY: Well on the previous when we were here before the previous approval from the Mt. Olive Planning and Zoning Board to build our proposed addition was basically contingent upon demonstrating that we had received all the necessary approvals from the DEP. Because it was believe that there was indications of wetlands around our property. So as you guys know the DEP process is very time consuming and very costly process to any homeowner. So as part of our due diligence I wanted to in preparation of possibly having to satisfy this requirement I had initially spoken to Jeff Careaga of Careaga Engineering which I think some of you know and he's located in Budd Lake about his services, and also most recently Mr. James Glasson of Civil Engineering and he's also located here in Budd Lake. And to get estimates and in short after speaking to Mr. Glasson I was referred to Mr. Wade Wander of Wander Ecological Consultants he's based in Newton and he is environmental subcontractor who handles the majority of the environmental work on behalf of James Glasson through his engineering company. And what I was told through Mr. Wander is that basically a General Permit #8 needs to be filed through the DEP and he would do that as a Certified Wetlands Delineator. But yesterday as we started to talk more about this I basically sent him all of the information that I have, my plans that you have in front of you, some additional things such as land survey, the architectural drawing, soil map, preliminary wetlands map for his review and basically just to get an estimate on his services. And we then later followed up with a phone call last night and was talking to him. So basically upon his review on all of the stuff that I had sent him he said that the DEP approval process could easily take about six months not to mention that it's very costly like I mentioned before for the homeowner. But he said realistically he wouldn't see any possibility even if we started right now with us starting construction this year which was a little disappointing you know obviously to us. So basically in addition he said the combined services of his services plus Glasson's would be probably around excess of \$5,000.00. So one positive note and he did mention this last night, he said in lieu of filing for a General Permit #8 with the DEP and to help avoid us suffering financial hardship through having to go through this long and lengthy process he said that he suggested that he had done this through many township's and other municipalities for other homeowners in similar situations such as our where some township's and municipalities will accept an official letter from him as a Certified Wetlands Delineator to satisfy this environmental requirement. So he noted that he had been successful at doing this and I can tell you why, he said that wetlands are located near a property he said they require 150 foot transition area as a result all disturbances including construction of an addition within the 150 foot area are obviously regulated by the DEP. However since our house was built before July 1, 1988 and then our proposed limit of disturbance is less than the 750 square foot threshold you know our total area is 520. And also although we are in the Highlands Preservation Area he noted that it's not necessary for us to obtain a Highlands exemption. So in short under these conditions in his review of all of our materials he said if he had filed for the General Permit #8 to the DEP we'd have no problem being automatically approved for this construction to build this addition however, obviously filing the permit and the associate work and you know of course absorbing these huge fees is a huge financial burden to us. So you know in short he said he'd indicated the decision to basically accept this official letter from him as an acceptable alternative would be up to the Mt. Olive Planning Board you guys to decide. And I guess in closing you

know we just basically respectfully ask that you guys consider this as a viable option because it makes it very difficult for any homeowner in our situation to build and try to do something.

MR. WEISS: Gene go ahead.

MR. BUCZYNSKI: Just a couple of questions. You know I'm aware of the General Permit #8 that's one issue but also I don't know there was a concern relative to the wetlands on your site? Or behind your property correct?

MS. BLAKEY: Correct.

MR. BUCZYNSKI: Did he discuss the flood hazard regulations too that if you needed a flood hazard permit because of the Riparian Zone?

MR. BLAKEY: He did not mention that.

MS. BLAKEY: But he did see the map I imagine he would have . . .

MR. BUCZYNSKI: Because that's a separate permit I'd have to speak to him. Because if it's open waters then there's a 300 foot Riparian Zone Buffer.

MR. BLAKEY: What are you talking about that like a river or stream?

MR. BUCZYNSKI: Right. Or did he have to say there's no defined open waters back there?

MR. BLAKEY: No he asked me . . . .

MR. BUCZYNSKI: Because that would be a concern I don't know.

MR. BLAKEY: He did ask me that question if there's any streams and I said no not that I know of I didn't see anything. I mean I know before when I went through this process four years ago I went and I'm the one that actually went to Morristown I got the soil map, I went and got another thing I had to prove like the bodies of water that was close by and other pieces of paper so I'm not quite sure . . . .

MR. BUCZYNSKI: I can speak to Wade Wander and give him a call relative to . . . . so I'm satisfied that they don't need a flood hazard. Because I spoke to Jim Glasson yesterday and initially Wander told him that you would need a flood hazard permit so maybe that might have changed that he provided additional information. I just need to clarify that. Regarding the general permit, it is kind of straight forward its 750 feet. Now I just don't know if we on a local level can approve that legally I have to check into that I don't think we can.

MS. COFONI: I'm not aware of that . . .

MR. BUCZYNSKI: Because it's just like an exemption of the Highlands you still have to submit for the exemption even though you can an exemption. I'll have to check into that portion if we can do it, we can do it. I think as far as the application tonight I think it's approved subject to either getting the required approvals from either the municipality or the DEP.

MS. COFONI: And I think Gene you and I can probably work that out prior to adoption of the resolution anyway.

MS. BLAKEY: What would be needed?

MS. COFONI: If the Board so inclined to approve and give us direction you know you're welcome to do as much as you can to help out eliminate that burden.

MR. WEISS: Dan?

MR. NELSEN: Mr. Chair, Tiena is it alright we accept a letter from this environmental engineer as opposed to his testimony in person?

MS. COFONI: Oh with regard to the testimony of the property? I think Gene is able to confirm some of it and he's going to independently verify other portions of that testimony so given that . . . .

MR. BUCZYNSKI: And if I have to I can you know depending what my conversation is with Mr. Wander I can ask him to send us a letter regarding both issues the flood hazard permit why it's not needed and also the GP #8 it's very clear I might have a copy of it I was going to give it to you today in case you didn't have all of the information. So it's pretty clear its 750 feet and their expansion is 520 feet of footprint so it would be an automatic permit with the DEP but they'd have to go through the expense of doing it. I just don't know, and I will have to look into it, if we can do it on a local level.

MR. BLAKEY: Right I mean I would have not brought it up had he not mentioned it to me. Because as I went through and started to explain you know and he said look . . . he's a very honest guy and I have a lot of respect because I'm actually in the same industry I'm a commercial property manager. So I deal with a lot of contractors and the guy was very straight up with me he says I'm not here to take your money I want to be very clear and up front with you, he goes this is what I've done in other situations with some other homeowners at other municipalities it has worked. He goes I can't guarantee you but this is what I think and I said thank you very much sir I appreciate it.

MR. WEISS: Well this issue with the State certainly has nothing to do with the issue at hand which is your variance request.

MR. BLAKEY: Sure.

MR. WEISS: And I'm very glad to see that whatever we can do for you . . .

MR. BUCZYNSKI: Just for the Board to the General Permit #8 I will just read what it says right from DEP regs. It permits disturbance of freshwater wetlands and/or freshwater wetland transition area for the construction of addition or improvements to single-family home that was built prior to July 1988 and he gave testimony to that. And the total area of disturbance including any grading must not exceed 750 square feet. So it's kind of straight forward that they would get a GPA permit. Now can we just do that on a local level I think it's a general permit so I think we can as long as he gives us the same information and we're satisfied to that I don't think we need to go to DEP but I can check into that.

MR. WEISS: I would suppose, you know I don't want to speak for the Board but if you would approve this our condition would be based on answers to these open questions as whether we grant that permit or you need to go to the State.

MR. BUCZYNSKI: And we can determine that quickly.

MR. BLAKEY: Can we word that in the resolution?

MR. WEISS: Yeah we can add it into the resolution that we can . . . well Tiena will help us with the wording on it.

MS. COFONI: And it will depend on what Gene finds out.

MR. BUCZYNSKI: I was going to say we'll set up the resolution based on what the findings are regarding it.

MS. COFONI: Yes.

MR. WEISS: Those of us that have been on the Planning Board long enough just hate to see these type of situations. You have a very simple application, a very simple request your testimony was more than adequate in my mind and here we are State bureaucracy. So as I said certainly Gene . . .

MR. BUCZYNSKI: The person from the State before I tell you I hope that there's no defined stream back there because it's very expensive for them to go through the flood hazard permit that's not straight forward that takes some time.

MR. WEISS: And it's a much larger buffer.

MR. BUCZYNSKI: Yes.

MR. WEISS: All right Steve.

MR. BEDELL: So if we accept that Permit #8 I guess the letter from the environmental engineer I mean what does that do now? That will . . .

MR. WEISS: No I don't think that's where we're going. I think that's another issue that is beyond our scope here tonight.

MR. BEDELL: Oh okay, okay.

MR. WEISS: I think the resolution if it's approved will note that the applicant still needs certain documents. And that's up to the engineers whether it's ours or Mr. Glasson is that who you hired?

MR. BLAKEY: Yes.

MR. WEISS: Or whoever the engineer that you select. Does anybody have any questions? Do you have any other testimony?

MR. BLAKEY: No sir.

MR. WEISS: Anybody from the public have anything to say about this application? Seeing none I'll close it to the public. And with that no further testimony from the applicant. If we were to approve such a request Tiena would you perhaps tell the Planning Board what the conditions would be.

MS. COFONI: All the general conditions the only other condition will be relating to the DEP approvals that may or may not be needed and the form that that will take and we'll be ironing all that out with Gene once he gets the information he needs.

MR. WEISS: Pretty straight forward. With that being said I'll entertain a motion.

MR. NELSEN: I'll make a motion we accept PB 12-26.

MR. WEISS: Dan thank you and that's with the conditions as read by Tiena?

MR. NELSEN: Yes.

MR. FLEISCHNER: I'll second it.

MR. WEISS: Any further conversation? Seeing none roll call Catherine.

MS. NATAFALUSY: Joe Fleischner - yes  
Dan Nelsen - yes  
Brian Schaechter - yes  
Nelson Russell - yes  
Steve Bedell - yes  
Jim Staszak - yes  
Scott Van Ness - yes  
Michael Koroski - yes  
Howie Weiss - yes

MR. WEISS: Good luck to you I think your hard work starts now.

MR. BLAKEY: Thank you very much.

MS. BLAKEY: Thank you we appreciate it.

MR. WEISS: Good luck we're looking forward to seeing a nice addition.

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What I'd like to do with our agenda is I want to skip our discussion matter I'd like to open the meeting to the public. I don't want to keep Mr. Soranno and the Jallad's are here. I'd like to open it to the public I know Mr. Soranno wanted to address the Planning Board I don't want to make him wait any longer he's been very patient. So Mr. Soranno I know you want to address us if you would.

MR. SORANNO: Good evening everyone I'm going to keep it brief I actually only had a couple of comments on the resolution that was adopted PB 12-25 and a general comment. Specifically what was not noted in the resolution was the fact that the Board did not take testimony on the issue as to whether or not the general store structure was abandoned. Paragraph 10 of the resolution, I'm sorry I

apologize, Paragraph 9 of the resolution noted on page 3 that the objectors did not produce any affirmative evidence despite the Board having issued sopennas I wanted the record to reflect that, and the resolution to reflect what accurately happened which was that the Board elected not to deal with the issue of abandonment on the advice of Counsel and that that matter was specifically reserved. There's no need to really delve into it tonight, clearly the issue as to whether or not that's applicable with respect to the certification application and whether it's applicable in general is going to be a matter left for the Superior Court of New Jersey. This matter was heard on January 11<sup>th</sup> last Friday and during oral argument in Morristown before Judge Weisenback Ms. Cofoni and I'm glad she is here stated on the record that the Board didn't deal with the abandonment issue because Mr. Buzak's office is as Board attorneys stated that they were not aware of the ability to abandon a structure in the same manor that you can abandon a use of a structure. Court noted that this is a matter of first impression in New Jersey frankly I don't necessarily agree that it is a matter of first impression in New Jersey I think that there's enough legal precedent out there that a structure can in fact be abandoned. But so with respect to paragraph 9 at least the record now will reflect that the objector's did not proceed on the abandonment issue because on the advice of the Planning Board's Counsel. The Planning Board did not address the issue as to whether or not the general store structure had been abandoned by the prior property owners. And the other comment was, and the other comments were minor frankly you know there's never been any evidence that the structure has ever been used as a barn, it keeps being referred to a barn structure. But in paragraph 10 the statement and use of the word "valid" I think was inappropriate in the resolution. We don't know frankly, none of us some of us weren't alive I certainly wasn't alive prior to 1950, whether or not that particular structure was valid or invalid. We simply do not know. What we do know is that it existed, that there was an ordinance in July 21, 1950 the zone that that building sits in required different setbacks and therefore it was rendered nonconforming. And I believe that's what the Planning Board did is to reach that. So I don't believe that should have been included in the resolution. And as a general comment I think that the Planning Board should take note of the fact that the advice of Counsel to the Planning Board if correct under New Jersey Law would result in a nonconforming structure existing in perpetuity. So that it could never be abandoned and I'm quite surprised that the Planning Board attorney and the township attorney of Mt. Olive is taking the position that would handcuff the township's and municipalities to the extent that a nonconforming structure that may or may not exist for years and years and years in perpetuity can simply sit until such time a future property owner decides to use it for some purpose. I don't believe that's the law in New Jersey and if that's in fact the direction that the Township of Mount Olive wants to go in in this Planning Board I think it's a mistake. But we'll leave that for the Superior Court and the Appellate Division to decide. And you know as a final note Mr. Weiss you know as interesting a comment you made and I wasn't planning on saying this tonight but since I have the opportunity I might as well, in the previous application you said the Planning Board doesn't want to improve something so large that it sticks out in the neighborhood. I can't think of a situation here I mean a situation that exemplifies that comment other than the structure we have here. So in closing thank you for giving me the opportunity to comment on the resolution, obviously once it's adopted you know we'll see how the situation progresses and await the Superior Court's decision and we'll see where this whole matter goes. But in future proceedings I would hope that the Planning Board takes that into consideration when hearing future applications involving this property and this structure. Thank you.

MR. WEISS: Mr. Soranno I do also want to thank you for respecting the process that I started tonight and I know you weren't happy with my decision but I do appreciate your appreciation of my order.

MR. SORANNO: Actually Mr. Weiss I'm glad you said that I think there's been a gross misunderstanding of my intentions with respect to this. I think you know there are obviously laws in the State of New Jersey and there are zoning laws and they are applied or they need to be applied in a uniform manner and you know I think there's been a complete misunderstanding I have no interest in exacerbating the situation, irritating the Planning Board the Planning Board has been very patient with respect to these various matters I'm sure there will be more matters before the Planning Board. And by the way I think ultimately in the event that our legal position is correct which is that a nonconforming structure can indeed be abandoned as a matter of law it will simply result in one of two, well actually maybe three potential possibilities. One, the building remains as it is until someone decides to act or it deteriorates; two, Mr. & Mrs. Jallad seek an appropriate variance application in which case the Planning Board will have an opportunity to consider the positive and negative criteria concerning the structure and hear from other owners who I do know have an opinion on the matter. Or three, the Planning Board will not grant a variance and then something will have to be done with the building. I simply do not think that that building can exist in perpetuity. And I guess another final, and then I'll close is that Ms. Cofoni it may have been Ms. Cofoni or it may have been Mr. Selvaggi in court commented that the building is not currently being used. That's stated in a resolution and I would submit that even an ornamental structure is a use. So I think that at some point this matter has to come before this Board

and the Board has to hear the appropriate application and we'll deal with it when we get there. But thank you very much I do appreciate your patience.

MR. WEISS: My pleasure. Tiena?

MS. COFONI: Yeah just in response I do want the Board to be aware that I did receive written comments on the resolution from Mr. Soranno's attorney. I reviewed them, took a look at them and determined that no changes needed to be made to the resolution as a result of that letter. In addition I wanted to let the Board know that I actually was present at the oral argument on the motion that Mr. Soranno mentioned and I'm perfectly able to go into closed session and discuss that with the Board if they so choose I'll leave it up to the Chair and/or the Board whether or not they're interested in that but I can certainly update you in closed session on that hearing and that oral argument.

MR. WEISS: Thank you.

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**DISCUSSION MATTER**

MR. WEISS: All right let's get back on our agenda we do have two issues for discussion the first one is simple the Rules of Procedure that we brought up that Joe brought up and we had a conversation with Ed that dealt with the Ethics Committee. And essentially Ed asked that we carry it he's still looking up some of the answers and processes and he'd like to be here to discuss it with us. So we're going to move it probably to March we have a February 14<sup>th</sup> meeting that Joe can't be at and out of respect to Joe it was his issue and I'd like Joe to be here for it so we're going to carry that Rules of Procedure open issue up until March.

**REVISIONS TO CHAPTER 400 – LAND USE ORDINANCE**

MR. WEISS: Which leads us with one discussion matter that's on the agenda which is revisions to Chapter 400 of the Land Use the Ordinance Committee had a meeting perhaps either the meeting where Steve was there, Scott was there and Joe was there, myself with Chuck and Catherine and Gene and we met on Tuesday to review some of the ordinances that need to be revised. Chuck maybe you want to highlight some of the items or Joe I'm not sure.

MR. FLEISCHNER: I think the big issue as Chuck has raised is the apartment issue. Am I correct Chuck I mean accessory apartments?

MR. MCGROARTY: That's one yeah.

MR. FLEISCHNER: One important issue and also we talked about definitions and we also talked about what is permitted in different zones and one do you allow depending on C-1, C-2, etc. R-1 houses of worship what would be the guidelines. We talked about automobile dealerships, motor vehicle Chuck do you want to . . . .

MR. WEISS: Let me interrupt real quick.

MR. FLEISCHNER: Sure.

MR. WEISS: I stepped out of order a little bit I opened the meeting to the public and I know the Jallad's are here. I didn't want to just automatically close it, is there anybody from the public have anything else? I did have an open session.

MS. JALLAD: No I just want to thank everybody for your consideration.

MR. WEISS: Our pleasure. And of course I should say we have our Boy Scout, what Troop are you from?

? 312.

MR. WEISS: Troop 312 is here and not the greatest meeting to learn Land Use we had one simple application but we hope that maybe you'll come back and see some real exciting testimony. And so with nothing else from the public we'll get back to our topic at hand and Joe was right we did spend a lot of time just cleaning up basic language. Joe you started to talk about automobile versus automotive.

MR. FLEISCHNER: Or motor vehicle, Chuck do you want to go into any details of . . . .

MR. MCGROARTY: I can if you like.

MR. WEISS: Well here is what I think we all agree that it's quite a lengthy process its way to much to have a Board discussion and I think having it done in committee we spent an hour and we probably could have spent another hour plus. So rather than beating it up and talking about the details I think because I was there I think we could fairly say the committee is making great headway to clean it up to change the things that need to be changed and make some simple corrections, bring our Land Use Ordinance Chapter 400 to . . . . so essentially when the committee is done meeting we'd like to think that our Chapter 400 Land Use Ordinances are going to be that much better and that much timely and represent today . . . .

MR. MCGROARTY: One thing the Board will do or will consider when the committee is finished putting all of this together is because the nature of some of these changes go beyond just changing titles and the like but actually recommend taking certain uses out of zones and allowing uses in zones and imposing certain conditional standards and so on and as Joe mentioned we're talking about accessory apartments for affordable housing. The Board will need to consider what is known as a reexamination report of the Master Plan and Development Regulations. We just did one last year that was a Highlands requirement so if the ordinance committee proceeds as we've been doing we anticipate that we'll have a draft reexam report for the Board in the next month or two to start looking at. Ultimately that does is sets the stage for the kind of changes in the ordinance that we're talking about.

MR. WEISS: Is that followed by a public hearing of the changes to the Master Plan?

MR. MCGROARTY: Yeah the reexamination report would be heard by this Board and then the recommendation would be to the Township Council for amendments to the ordinance.

MR. WEISS: Okay so rather than spending a lot more time talking about each individual item it's a general review clean up and Scott if you had anything else you want to add I know . . . .

MR. VAN NESS: No you pretty much . . . .

MR. FLEISCHNER: And we are going to look at almost all of the ordinances that would affect how we rule within the Planning Board within the next 8 months and hopefully get them all . . . . Catherine and I have spoken about this for a number of years so we want to get them all caught up.

MR. WEISS: Nelson?

MR. RUSSELL: What does the prior subject have to do with our procedures I want to make sure that the Zoning Board of Adjustment rules get incorporated into that.

MS. NATAFALUSY: Yes I have them.

MR. RUSSELL: Okay.

MR. WEISS: We'll have a full conversation about that in March. All right do we have any other business to discuss?

MS. NATAFALUSY: No that's it.

MR. RUSSELL: I'd like to go into closed session and get an update.

MR. WEISS: Okay Nelson I know Tiena offered does anybody else agree? We have to make a motion to go into closed session and for the reason of matter under litigation. So Russell I take it you made a motion to go into closed session for the reasons of litigation.

MR. RUSSELL: I so move.

MR. BEDELL: I'll second.

MS. COFONI: And the discussion just for the record is regarding the pending matter of Soranno versus Jallad.

MR. WEISS: And so for members of the public we will go into closed session when we return we'll simply adjourn the meeting there will be no further business. Your welcome to stay outside I can assure you that when we're done there will be no other business. So thank you for coming. Wait we didn't have a roll call on that motion to go to closed session.

MS. COFONI: All in favor.

MR. WEISS: All in favor?

EVERYONE: Aye.

(BOARD WENT INTO CLOSED SESSION TO DISCUSS LITIGATION MATTER)

MR. WEISS: Okay so back on the record, let the record show the meeting is opened back to the public and I will entertain a motion to adjourn.

MR. RUSSELL: Motion to adjourn.

MR. WEISS: All in favor?

EVERYONE: Aye.

MR. WEISS: All right gentlemen we'll see you on February 14.

(MEETING ADJOURNED AT 8:08 P.M.)

Transcribed by:  
Lauren Perkins, Secretary  
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