

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 (7:15), Brian Schaechter, Nelson Russell, Steve Bedell, Jim Staszak, Howie Weiss

Members Excused: Paul Ottavinia, Pat Walsh

Members Absent: David Koptyra

Professionals Attending: Chuck McGroarty, Planning Consultant, Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator

Professionals Excused: Eugene Buczynski, P.E., Tiena Cofoni, Esq.

APPROVAL OF MINUTES

October 18, 2012 Public Meeting

Motion: Jim Staszak
Second: Nelson Russell

Roll Call:

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

COMMITTEE REPORTS

MR. WEISS: Okay committee reports Brian anything from the Mayor?

MR. SCHAECHTER: The Mayor does not have a report tonight.

MR. WEISS: Mr. Walsh is not here so we have no Council report either. Nelson anything from the environmental commission meeting last night?

MR. RUSSELL: We got an update on the cancelled mud run and what changes have been made to preserve the trails. Some trails have fallen trees due to Sandy and the parks department will be cutting the trees during winter. Some trails will have to be rerouted. We discussed the well testing program and we plan to do it in April or May. We discussed the next round of plantings and we plan to get the planting recommendations together by February. Our next meeting is January 2 we moved our meetings to the first Wednesday of the month so we'll have a meeting before Council.

MR. WEISS: I'd like always Nelson too if you ever have any action required from the Planning Board you'll just send us a note and you would follow up in writing if you have anything for us?

MR. RUSSELL: Will do.

MR. WEISS: Joe anything from the ordinance committee?

MR. FLEISCHNER: No.

MR. WEISS: I have nothing from the street naming committee and Mr. Walsh is not here from the open space committee. Any other committee reports? Chuck do you have anything for us?

MR. MCGROARTY: No Mr. Chairman I don't.

MR. WEISS: And nothing from engineering. Mr. Buzak?

MR. BUZAK: Nothing thank you.

APPLICATION NO. PB 12-25 – TOMASA JALLAD

MR. WEISS: All right so our first item on the agenda this evening developmental matter PB 12-25 Tomasa Jallad which is a certification of a preexisting nonconforming structure located at 134 Flanders-Drakestown Road which is Block 7100, Lot 66. I take it Mr. Selvaggi is here? Welcome Mr. Selvaggi I just introduced your application so whenever you're ready.

MR. SELVAGGI: Oh thank you.

MR. GRUPPUSO: Planning Board hello my name is Anthony Gruppuso I'm Counsel for Carl Soranno and Elizabeth Soranno. If I may before the Board hears the Jallad's application just a clarifying question or two might help facilitate and expedite your consideration of the application. There has been as Mr. Buzak is aware there's been much debate at least amongst the parties as to what question is exactly before the Planning Board tonight on the Jallad's application. In recent correspondence from Mr. Buzak on behalf of the Planning Board to the parties in the Superior Court actions that are currently pending he has represented that the question before the Board tonight concerns solely whether the general store structure that exists on the property at 134 Flanders-Drakestown Road was in fact in existence prior to the adoption of the ordinance that rendered it nonconforming. And in open court yesterday on the record Mr. Buzak phrased the question presented as just that. There seems to be a dispute whether that is the precise question presented purely one of fact or whether the Board is considering what the Jallad's appear to be presenting a much broader legal question. And that is whether the general store structure is today a lawfully existing structure and the Soranno's contend and submit that that question subsumes many different questions of law that are outside this Board's per view. And quite frankly are within the jurisdiction of the Superior Court of New Jersey presently by way of complaint and by way of motion for partial summary judgment. I think that if the Planning Board gives us confirmation that the question is a very narrow one and that is that the general store structure in fact existed prior to the adoption of the ordinance that rendered it nonconforming. That may very well be the subject of stipulation. The Soranno's may not object to that whatsoever subject of course to their review of the language of the resolution. So I would ask the Board for some clarification as to exactly what the Board is considering this evening.

MR. WEISS: Please Mr. Buzak.

MR. BUZAK: Mr. Chairman this application is one that's been brought on behalf of the Jallad's by Mr. Selvaggi. Mr. Gruppuso has generally accurately represented what I said to the court that I thought the question was that the Board would be considering but the court declined to enter any order that would limit this Board's jurisdiction. My recommendation to the Board is to have Mr. Selvaggi present his application, Mr. Gruppuso on behalf of his client can evaluate what that application is and he can comment as he goes along and we'll deal with it as it comes. I would recommend we proceed in that fashion.

MR. WEISS: Thank you Mr. Buzak and with that being said just one last comment. I heard Mr. Gruppuso come up with some generalities and I think that it would only be fair to the applicant to let the applicant tell us why he's here tonight. We've already announced an application for certification for preexisting nonconforming structure anything more or less we'll leave it up to the applicant and of course Mr. Gruppuso can come back and respond to any testimony he hears tonight. With that being said Mr. Selvaggi the application is yours.

MR. SELVAGGI: Yes we have applied for relief under Section 68 of the Municipal Land Use Law. This is not an application that's seen very often but the essence of the application the relief that's being sought is perhaps in layman's terms is the best way to understand it is we're looking for a certification that the structure is grandfathered. And the burden of proof is ours and that burden involves establishing when the structure was created or established and then what was the ordinances that went into effect that rendered it nonconforming/grandfathered. The reason why we're doing this is the Municipal Land Use Law while it tries to eliminate nonconforming structures or nonconforming uses recognizes that people have certain vested rights in grandfathered structures and uses. So one way to affirmatively establish that is to petition the Zoning Board and this evening we'll be acting in that capacity for this certificate. It can actually be issued by your Zoning Officer if they choose within one year of the ordinance going into affect. Unfortunately in 1951 the owner at that time didn't have the foresight to do that but thereafter at any time by any interested party. So that's what we're trying to do and again it's very important we're not trying to establish the structure as a use a preexisting nonconforming use as a general store. It is really just to affirm that the structure itself is grandfathered and can remain there. And the reason why that's important is as you may be aware from some who

participated in the hearing back in March is that the building is close to existing front yard and side yard setback. So that's the relief we're looking for. Obviously the objectors will have a right as well as members of the public to you know offer evidence to the contrary or arguments to the contrary and we're prepared to have that kind of played out. So that's where we are.

MR. WEISS: I'm going to proceed with Mr. Selvaggi's application, when he's done you'll have the right to speak. I'm not going back and forth tonight.

MR. GRUPPUSO: I think respectfully

MR. WEISS: Mr. Gruppuso you didn't hear me, please sit down Mr. Selvaggi will continue with the meeting. No more, no sit down Mr. Gruppuso.

MR. GRUPPUSO: The way that the application was phrased

MR. WEISS: Mr. Gruppuso you're out of order.

MR. GRUPPUSO: The way the application was phrased was not correct. It does not recite the law.

MR. WEISS: If it happens again I will end this hearing. Mr. Selvaggi sorry for that.

MR. SELVAGGI: No, no, no that's fine Mr. Gruppuso is doing his job. Okay what I'd like to do is

MAYOR GREENBAUM: Mr. Chairman I actually have a point of order it's a legal question for Mr. Buzak. If this Board is acting in their zoning capacity does the Mayor and Councilman have to stand down off the Board, the Board's consideration similar to a use variance in that we're a combined Board and if so does Mr. Schaechter who's in my place actually have to recuse himself?

MR. BUZAK: That's a good question the answer is no because it's not a use variance application and I think Mr. Selvaggi has made that clear.

MR. SELVAGGI: Well it says any time to the Board of Adjustment. Now it's an interesting question in terms of with a combined Board because it identifies it as an application to the Board of Adjustment do you you know

MR. BUZAK: Well I agree with you Mr. Selvaggi but this Board acts as a Board of Adjustment in "C" variances for example and during that kind of proceeding the entire Board acts. So I think this falls within that category.

MR. SELVAGGI: Okay.

MR. BUZAK: And therefore the Board can hear it. I appreciate your comment.

MR. SELVAGGI: Okay I defer.

MR. WEISS: Mr. Selvaggi we'll need to swear her in.

MR. SELVAGGI: Oh yes I'm sorry.

(THEA DUNKLE SWORN IN FOR THE RECORD)

MR. BUZAK: Would you please state your name spelling you last name.

MS. DUNKLE: Thea Dunkle (D-U-N-K-L-E) I'm the town historian.

MR. BUZAK: Thank you Ms. Dunkle.

MR. SELVAGGI: Ms. Dunkle what is your position with respect to the Mount Olive Township Historical Society?

MS. DUNKLE: I'm currently the President of the Historical Society one of the founding members.

MR. SELVAGGI: Okay and what's the purpose of the Historical Society?

MS. DUNKLE: To identify, teach and preserve the history of Mount Olive.

MR. SELVAGGI: Okay and how long have you been involved with the organization?

MS. DUNKLE: Since October of 1997.

MR. SELVAGGI: Okay and is that when it was formed?

MS. DUNKLE: Yes.

MR. SELVAGGI: Are you familiar with the property at 134 Flanders-Drakestown Road?

MS. DUNKLE: Yes.

MR. SELVAGGI: Okay and you're aware that property has two structures on it?

MS. DUNKLE: Yes.

MR. SELVAGGI: Okay I'm going to focus on the structure I guess to the west or if you were looking at it to the right. That structure that's there what was that used for in the past?

MS. DUNKLE: It was a general store owned by the Stephens Brothers and was also served as a way station for the miners. That's what I found in my research.

MR. SELVAGGI: You actually had performed some research and issued a report did you not?

MS. DUNKLE: Yes.

MR. SELVAGGI: Okay and I'm going to show you what we'll mark as A-1. Are you familiar with A-1 and if so please identify it.

MS. DUNKLE: This being A-1?

MR. SELVAGGI: Yes.

MS. DUNKLE: Yes I identified this letter.

MR. SELVAGGI: And did you author that letter?

MS. DUNKLE: Yes I did.

MR. SELVAGGI: Okay and what does the letter, you don't have to read it, but what does the letter basically say?

MS. DUNKLE: It says that you know we were supporting the efforts of the general store and that we recognize it as a historic structure in our you know in what research that we had found that we you know that it's very historic to the Mount Olive Village and we're applauding the Jallad's for taking on this effort to try to save the structure.

MR. SELVAGGI: And what did your research reveal in terms of the approximate time the store was constructed?

MS. DUNKLE: The earliest that I could confirm was the 1868 atlas where it's clearly on the map listed as the store. It could be prior to that but I don't have any sound evidence. I did the deed search but that just does the land not the structure.

MR. SELVAGGI: I have nothing further for Ms. Dunkle.

MR. BUZAK: Okay do you want to move A-1 as exhibit A-1?

MR. SELVAGGI: Yes.

MR. BUZAK: I know you're referring to it.

MR. SELVAGGI: We'll move that.

MR. BUZAK: And that's the February 6, 2012 letter from the Mount Olive Township Historical Society.

MR. WEISS: Does anybody on the Planning Board have any questions for Ms. Dunkle? I'll open it to the public, is there anybody from the public have any questions for Ms. Dunkle based on the testimony she delivered this evening?

MR. GRUPPUSO: Yes Chairman Weiss.

MR. WEISS: Please.

MR. GRUPPUSO: Hi Ms. Dunkle.

MS. DUNKLE: Hi.

MR. GRUPPUSO: Anthony Gruppuso, Counsel for Carl Sorrano and Elizabeth Soranno. Ms. Dunkle you testified that you applaud the Jallad's for taking on the saving of the structure or words to that effect? Isn't that correct?

MS. DUNKLE: Yes.

MR. GRUPPUSO: But yet the Mount Olive Township Historical Society is not taking any role in overseeing how the structure is restored should it ever be restored is that right?

MS. DUNKLE: Well it's in their possession it's their property and we have no jurisdiction to tell them what they can do with the structure. It's historic but if somebody in the town owns a historic structure on their property they can do what they want with that property. We don't, we can't tell them what to do with it.

MR. GRUPPUSO: Okay so then the answer is yes the Mount Olive Township Historical Society is playing no role whatsoever in how the Jallad's restore this historical structure.

MS. DUNKLE: That is correct yes.

MR. GRUPPUSO: Okay so the Jallad's can paint it pink if they'd like correct?

MS. DUNKLE: That is correct.

MR. GRUPPUSO: Okay. What do you know Ms. Dunkle about the use of the general store structure, when did it cease being used in that capacity?

MS. DUNKLE: I have no idea when it ceased to be used as a general store.

MR. GRUPPUSO: Could you give us an estimate of when that might have been? Early twentieth century?

MS. DUNKLE: It's also on the 1887 atlas; I believe the Stephens lived up to the 1900's so I believe probably it probably went right up into the early 1900's I'm sure.

MR. GRUPPUSO: So early 1900's but after that you have no knowledge of the general store structure being used for any purpose correct?

MS. DUNKLE: That's correct.

MR. GRUPPUSO: Do you have any knowledge of the general store structure being maintained by any prior property owner?

MS. DUNKLE: It was owned by Mrs. McDavitt, I know she did some boarding up of the windows and things, when I first moved in the area I noticed that, but other than that I don't know. I'm not aware of any.

MR. GRUPPUSO: So as far as you know that was all that was done to the building was that it was boarded up, the windows and the doors were boarded up.

MS. DUNKLE: Yes that was there before I moved here.

MR. GRUPPUSO: So you have no personal knowledge of any other upkeep or repair or maintenance?

MS. DUNKLE: No.

MR. GRUPPUSO: Okay thank you.

MR. WEISS: Anybody else from the public have any questions for Ms. Dunkle? Thea seeing none thank you very much.

MR. SELVAGGI: Thank you. We'd next like to call James Glasson.

MR. WEISS: We'll swear in Mr. Glasson as well.

(JAMES GLASSON SWORN IN FOR THE RECORD)

MR. BUZAK: Please state your name and business address for the record spelling your last name.

MR. GLASSON: James Glasson (G-L-A-S-S-O-N) Civil Engineering, Inc. 1 Cove Street in Budd Lake, New Jersey.

MR. BUZAK: Thank you Mr. Glasson.

MR. SELVAGGI: Okay Mr. Glasson if you could just run through your experience and qualifications in the area of civil engineering.

MR. GLASSON: I've been a professional engineer in New Jersey and Pennsylvania for approximately 20 years. I've appeared before 50 to 60 Boards throughout northwestern New Jersey, I've appeared before this Board 30 or 40 times probably.

MR. SELVAGGI: And you've been accepted by this Board as an expert in the area of civil engineering?

MR. GLASSON: Yes. I graduated from New Jersey Institute of Technology with a Bachelor of Science in civil engineering.

MR. WEISS: I've got to imagine the Planning Board is familiar with the work of Mr. Glasson and we can accept him as an expert engineer this evening. Welcome back Mr. Glasson.

MR. SELVAGGI: Mr. Glasson you're familiar with the property at 134 Flanders-Drakestown Road correct?

MR. GLASSON: Yes I am.

MR. SELVAGGI: And you've actually had a recent occasion to go out there and do some field work correct?

MR. GLASSON: Yes I have.

MR. SELVAGGI: And what have you done?

MR. GLASSON: I was retained after the application before the Board for the conversion of the school to a residential dwelling to go out and first perform some soil testing for a septic system and get a septic system approved for the residential home. I also at the time prepared a variance map for your application tonight for the accessory structure on the property.

MR. SELVAGGI: Okay and the preparation of that variance map what were the things that you had to do?

MR. GLASSON: I was supplied with a survey by Morgan Land Surveying and that became my base map for what you see before you as the variance plan the single sheet that's before the Board tonight. Basically then we took the mathematics off of the survey and show the setbacks to the principal structure, the accessory structures and what not on the plan.

MR. SELVAGGI: Okay and in terms of confirming or considering the dimensions of the property did you do any historical analysis as to how the dimensions may have changed if at all?

MR. GLASSON: Yeah we looked at a couple of deeds. I took a deed which I have copies of before me, I took a deed from 1916 that's on file and I've highlighted on my sheet I don't know if you want to mark this first before I explain it.

MR. SELVAGGI: Mr. Buzak I have the deed that Mr. Glasson is referring to as well as the surveys he's referenced. We have it as a package or do you want to separate it?

MR. BUZAK: Why don't we separate them if you would? A-2 do you want that to be the deed?

MR. SELVAGGI: We'll do the deed from 1960.

MR. BUZAK: All right A-2 is the 1960 deed.

MR. SELVAGGI: And we'll call A-3, what's A-3?

MR. GLASSON: Deed plotting.

MR. BUZAK: That's a deed plotting of the 1960 deed Mr. Glasson?

MR. GLASSON: Correct.

MR. SELVAGGI: And then what's A-4?

MR. GLASSON: The Morgan Survey, a copy of the Morgan Survey.

MR. BUZAK: What was the name Mr. Glasson?

MR. GLASSON: A copy of the . . .

MR. SELVAGGI: I'll read you the exact name. A copy of the Morgan Survey dated September 29, 2010 revised June 7, 2012.

MR. BUZAK: And that's (M-O-R-G-A-N)?

MR. GLASSON: Yes.

MR. BUZAK: Thank you. That's A-4 Mr. Selvaggi?

MR. SELVAGGI: Yes.

MR. BUZAK: Let the record reflect that the deed which is marked A-2 is from Grace Salimon et.at. to Abraham Hill it looks like et. at., oh no I'm sorry and wife it looks like. So it's Salimon to Hill.

MR. SELVAGGI: And Mr. Glasson has the configuration or the dimension s of the property changed at all since 1916?

MR. GLASSON: No if you look at the second page of the deed I highlighted on the second page the bearings and distances which are actually in links and chains at the time. And then if you look at what would be your sheet A-3 that is a deed plotting of that highlighted description that's shown on the second page of the deed. It almost directly, if you look at the sheet A-4 which is the Morgan survey you'll notice across the front line of the Morgan survey the Flanders-Drakestown Road frontage it actually says the 501.60 number as the deed number. So it matches the deed exactly so what I show

you is that since 1916 this property has remained described in the exact same state as it is presently described and it's shown on the Morgan survey.

MR. SELVAGGI: Okay and on the Morgan survey also then illustrated the existing structures on the property does it not?

MR. GLASSON: Correct.

MR. SELVAGGI: And if we focus to what would be the northwest corner which is identified as two-story barn, is that the location of the general store?

MR. GLASSON: Yes.

MR. SELVAGGI: Okay and what are the setbacks of that building?

MR. GLASSON: This is the larger sheet you have before you I believe tonight. It shows in the upper left hand corner of that sheet my one of one variance plan it is the same base map it cites it as general note number 3 lot dimensions from the Morgan survey. So it's the exact same survey. And in that upper left hand corner it shows a two-story barn with a setback off of what would be the right or westerly side line of .93 feet, and a setback off of the front property line of 40.34 feet. The front property line of this particular property is actually on the other side of the road and as you recall with your I believe your resolution of approval for the residential home there had to be a dedication given on that road. And that dedication is a dashed line although it is not counted in the area there is a dashed line shown inside of the property line just inside of the curb. And if you were to measure to that from the front yard once a dedication is made it would be approximately 17.5 feet to that new front property line.

MR. SELVAGGI: What is the . . . this would be the southwesterly setback from the adjacent Lot 63.01?

MR. GLASSON: It's actually .93 feet from Lot 65.

MR. SELVAGGI: Okay and the . . .

MR. BUZAK: Mr. Selvaggi before we continue why don't we mark this variance plan. This is the plan that was before the Board previously is that correct? We'll mark that A-5 and the record should reflect that the testimony that Mr. Glasson was giving with regard to this variance plan is related to A-5 which is the variance plan that was before this Board on the earlier July application.

MR. SELVAGGI: No it was actually . . . no when we submitted our request for the application for this evening we included this as one of the exhibits.

MR. BUZAK: Is this different from the variance plan map that was part of the other application?

MR. SELVAGGI: Yes it has far more detail than the prior application. And if you look that application was heard in March the origination date up here is October 24.

MR. BUZAK: All right but you are not applying for a variance.

MR. SELVAGGI: No, no it's just to establish the nonconforming nature, that hasn't changed that's all.

MR. BUZAK: The record should reflect that while the plan is captioned Variance Plan for Barn Structure Lot 66, Block 7100 dated 10/24/12 that it's being used not for obtaining or seeking a variance but for the purposes of the application that Mr. Selvaggi is presenting tonight before the Board related to the certificate is that correct Mr. Selvaggi?

MR. SELVAGGI: Yes. Yeah and all of the detail one of the things that was noted back in March this property is in the Highlands Preservation Area and Mr. Glasson was retained for purposes of preparing the drawings that were needed in support of the Highlands approvals. So that's what kind of gave rise to the level of detail on this plan. So Jim as far as you know the building has been situated in this approximate location to the property line since at least 1916?

MR. GLASSON: Well the property is described that way the deed does not describe when the building so I would defer to Ms. Dunkle.

MR. SELVAGGI: Okay so you heard Ms. Dunkle's testimony though I mean if the building has been there since the time she hypothesizes it's probably been offset that property line the same amount of time.

MR. GLASSON: Right.

MR. SELVAGGI: And I guess one of the interesting things is if the property line is across the street it probably actually meets the front yard setback. Anyway that's all I have for Mr. Glasson.

MR. WEISS: Anybody on the Planning Board have any questions for Mr. Glasson? Also note for the record that Mr. Nelsen is here. At this time I'll open it to the public if anybody has any questions for Mr. Glasson based on the testimony that he's delivered this evening?

MR. GRUPPUSO: Yes Chairman.

MR. WEISS: Absolutely.

MR. GRUPPUSO: Okay thank you. I'm going to hand out binders for everybody so they can see what I'm speaking to the witness about and we'll mark as we go.

MR. WEISS: Can you explain to us what these binders are?

MR. GRUPPUSO: They're binders of documents that may or may not be introduced into evidence this evening.

MR. SELVAGGI: I'm going to have to object I don't think you can . . .

MR. BUZAK: Well you can put them out if you want Mr. Gruppuso

MR. GRUPPUSO: I'm doing nothing different than Mr. Selvaggi is doing by presenting documents one by one. All of the documents are in here.

MR. BUZAK: I understand but you don't present documents on cross examination unless you have Mr. Glasson verify the documents which he I would assume doesn't even know anything about you permitted to do that sir but you need to do that on your case if you're going to present it here.

MR. GRUPPUSO: Is the Board instructing that I should not cross Mr. Glasson at this point in time and wait for my objector?

MR. WEISS: It's clearly not what was asked, you're asked not to present these documents at this time.

MR. GRUPPUSO: I'm going to show the witness a document and if he would like to see it then you let me know. Mr. Glasson you have been recognized as an expert in civil engineering by this Board on several occasions?

MR. GLASSON: Yes.

MR. GRUPPUSO: This document that I just handed you what does it appear to be in your professional experience and knowledge?

MR. GLASSON: It appears to be a survey.

MR. GRUPPUSO: Okay if you look to the lower left hand corner of the document minor subdivision of Lots 44 and 45, Block 34 situate in Township of Mount Olive Morris County, New Jersey. Is that correct?

MR. GLASSON: Yep. Yes that what it says.

MR. GRUPPUSO: And are you familiar with the parallelogram shaped lot that's depicted on this document?

MR. GLASSON: Familiar with it as in do I note that it's the lot next door to us?

MR. GRUPPUSO: Yes.

MR. GLASSON: It appears to be the lot next door to us I don't know the mathematics of that lot but it appears to be yes.

MR. GRUPPUSO: And the building depicted just off the property line of the southwest corner of the parallelogram shaped lot, do you recognize that as the general store structure that exists on the Jallad property lot?

MR. GLASSON: Yeah it appears to be.

MR. GRUPPUSO: Okay and on this survey it is identified as what Mr. Glasson? Can you read the writing there?

MR. GLASSON: I think it says abandoned building.

MR. GRUPPUSO: Okay I'd like to introduce this document as Objector's 1 please.

MR. SELVAGGI: Well I'm going to object only because we don't have the surveyor or the engineer who prepared the drawing. I have no way of determining whether the survey is accurate I will certainly note for the record that it says whatever purportedly says but beyond that Mr. Gruppuso could have prepared this document. Although he does know parallelogram which is pretty impressive.

MR. GRUPPUSO: But I can represent to the Board that this document was obtained from the Town's own documents pursuant to an Opra request.

MR. BUZAK: Well that doesn't necessarily make it an accurate document it's a document that the Township had.

MR. GRUPPUSO: Its part of the subdivision records for this particular lot that created adjacent lot which the Sorrano's currently own.

MR. WEISS: Mr. Buzak is it correct for me to assume that the objector can certainly state any kind of case he'd like when Mr. Selvaggi is done?

MR. BUZAK: Well yes he can present whatever he'd like so long as it's relevant to the issues that are before us and cross examination needs to be limited to the testimony that was given.

MR. WEISS: Well that was where I was going I don't have any objection to the objector presenting this the Planning Board would certainly take into account if we have a problem with the document that's presented but I think maybe there's a better time for this but maybe not now is the time.

MR. GRUPPUSO: I can present the document during direct examination of the individual who received it if the Planning Board would rather receive the evidence in that context.

MR. BUZAK: I don't know how we can receive it any other way Mr. Gruppuso. I'm not necessarily suggesting that we can receive it even based upon that we'll need to cross that bridge when we get to it.

MR. GLASSON: Can I ask a question?

MR. GRUPPUSO: Yes.

MR. GLASSON: Was the intention to make me read the word abandoned building or were you asking me is that an abandoned building?

MR. BUZAK: I think the question Mr. Glasson was for you to read what was on that and I believe that's the question

MR. GLASSON: That's what it says it says I'm acknowledging that it says on this survey of a property next door where the wording is abandoned building.

MR. BUZAK: And I think that was your testimony.

MR. GLASSON: That's not my professional opinion that it is or is not an abandoned building.

MR. BUZAK: Understood you were simply reading from the document that was presented to you. I think that's clear from the record and if it wasn't you've just made it clear.

MR. WEISS: Do we have any other questions for Mr. Glasson based on the testimony he presented tonight? Seeing none I'll close it to the public thank you Mr. Glasson. Mr. Selvaggi?

MR. SELVAGGI: Yes what I'd like to do and I know you're probably familiar with this but I'll mark this as A-6 and A-6 is the zoning ordinance . . . the first set of zoning ordinances for Mount Olive Township in 1950 it also includes the zoning map. Based on the zoning ordinances that went into effect in 1950 I would direct the Board's attention, this property was . . . the property in question we're talking about now was located in the District A which is Rural. And that use I'm reading, unfortunately the pages weren't numbered but it's the third page of A6. And when you look at specifically, well it begins on A4 it looks at the uses which were allowed which were just agricultural, horticultural, and family dwellings not more than four dwelling units on larger plots. It's actually kind of interesting to read this.

MR. BUZAK: Quite precise.

MR. SELVAGGI: Yeah it's I feel like the Land Use geek I guess this is interesting. And then it has the bulk requirements that we would probably talk about and that would be yard area and height restrictions. And specifically onto the next page it talks about placing private garages and other outbuildings. Excuse me, excuse me I'm reading the wrong section side and rear yards and it talks about no building other than garages or outbuildings shall be no more than 15 feet in height and shall be placed no closer than 10 feet to a side or rear property line. Based on Mr. Glasson's testimony I mean clearly in 1950 the general store was nonconforming with respect to that side yard requirement. One could argue that it might have even been the front yard although since the property line went across the street they may have actually met that requirement. So it's our position that when this ordinance went into effect in 1950 it was nonconforming with respect to the side yard requirement and that's basically we're just stipulating, or not stipulating we're presenting that in this ordinance. Now what I'd like to do

MR. GRUPPUSO: Excuse me. I'd like to object to the admission of A-6. There's no foundation for the document as Mr. Selvaggi pointed out earlier it's very possible that Mr. Selvaggi may have typed this document up last night. We have no idea, there's no foundation whatsoever that it accurately represents the zoning ordinances that were in place in 1950 this is just a pamphlet of several pages of documentation. And with respect to Mr. Selvaggi's statement that it somehow is probative of the nonconforming nature of the general store as of 1950 that's an inaccurate fact because the subdivision of the neighboring property didn't occur until 1980.

MR. SELVAGGI: I have no problem your Land Use Board Administrator who is the custodian of these records who is here was the person when I made the request to produce them. So I would certainly if the Chairman would like ask Ms. Natafalusy if A-6 is in fact an accurate reproduction of those 1950 ordinances.

MR. WEISS: I think that wouldn't be improper to ask Catherine to advise the Board if the document that she's holding is the same document that Mr. Selvaggi reproduced as A-6.

MS. NATAFALUSY: Mr. Selvaggi filed an Opra request

MR. BUZAK: Excuse me. Mr. Chairman Mr. Gruppuso makes an important point that we do need verification regarding this zoning ordinance. While it looks official it's possibly not official. So what I'd like to do is just put Ms. Natafalusy under oath because these proceedings should be under oath and this is an important document that the Board will have to consider. So Ms. Natafalusy will you just please raise your right hand? Do you swear that any testimony you will give tonight will be the truth the whole truth and nothing but the truth so help you God.

MS. NATAFALUSY: I do.

MR. BUZAK: And we've already established your name and position and since you keep the minutes you know how to spell your name so please proceed.

MS. NATAFALUSY: I know that Mr. Selvaggi submitted an Opra Request for a copy of the first ordinance. I have this in my office and we made a copy for him.

MR. BUZAK: And does A-6 the photocopy represent an accurate reproduction of the booklet that you have in your hand so we don't have to mark the booklet?

MS. NATAFALUSY: Yeah because we don't have many of these left. Yes as far as I can see from page to page I can go through it if you want.

MR. BUZAK: Did you make the copy originally Ms. Natafalusy?

MS. NATAFALUSY: The secretary made the copy. So the zoning ordinance with the zoning map Mount Olive Township New Jersey adopted July 21, 1950 published by the Township Committee of Mount Olive Township 1950.

MR. BUZAK: Let me just direct your attention Ms. Natafalusy to the relevant parts of the Code. It's probably on page 6 or so of that because we have double pages here it's the Section IV District A – Rural that Mr. Selvaggi was referring to it's the bottom.

MS. NATAFALUTY: Yes.

MR. BUZAK: Do you see that?

MS. NATAFALUSY: Yes.

MR. BUZAK: Is that accurately set forth in the document marked A-6?

MS. NATAFALUSY: Yes.

MR. BUZAK: I mean just read the you know top and the bottom words and . . .

MS. NATAFALUSY: Section IV District A – Rural (a) Use – The Rural Area is primarily for the use of agriculture and horticulture and their accessory uses.

MR. BUZAK: Correct.

MS. NATAFALUSY: And family dwellings of not more than four (4) family units on a larger plot of ground for . . . and it goes on.

MR. BUZAK: Right and can you flip to the next page please? And there is a section called Side and Rear Yards, do you see that on top left?

MS. NATAFALUSY: No building other than garages and other out buildings not more than 15 feet in height and as provided below shall be placed closer than 10 feet to the side or rear property line.

MR. BUZAK: That's it. All right thank you.

MR. GRUPPUSO: Mr. Buzak I'm sorry to interrupt. While Ms. Natafalusy is under oath we can do the same thing with this document.

MR. BUZAK: I understand. Mr. Selvaggi do you have any other questions of Ms. Natafalusy with regard to the ordinances?

MR. SELVAGGI: No.

MR. WEISS: I think what I'll do is I'll turn to the Planning Board if anybody has any questions of Catherine. But I think it became clear that A-6 was a photocopy of the original document that Catherine has certified to be the Zoning Ordinances established in 1950.

MR. BUZAK: And more importantly the first Zoning Ordinance of the Township Mr. Chairman.

MR. WEISS: Anybody else from the public have any questions for Ms. Natafalusy?

MR. GRUPPUSO: Yes please. Hello Ms. Natafalusy. Do you recognize Mr. Soranno?

MS. NATAFALUSY: Yes.

MR. GRUPPUSO: Had he made Opra requests to you as well?

MS. NATAFALUSY: Yes.

MR. GRUPPUSO: Do you recall him making an Opra request for the survey for the subdivision of these lots?

MR. WEISS: Mr. Gruppuso I'm going to stop this testimony.

MR. BUZAK: We'll do that

MR. WEISS: This had nothing to do with what Ms. Natafalusy just testified to and that's what I just requested. If you had any questions based on what you just testified to that was the time otherwise just save that for when you have your time.

MR. GRUPPUSO: Okay.

MR. WEISS: Seeing nothing else from the public we'll move on. Mr. Selvaggi?

MR. SELVAGGI: Yes I'd now like to call, and I think what we're trying to do is in anticipation of some of the arguments that the objectors are likely to raise and to get out ahead of that I'm going to call Eric Heidberg who is our structural engineer. We believe that we've already satisfied the elements and the burden of proof for this issuance of a certificate. However I anticipate since we had the benefit of the litigation, I don't know if I want to say the benefit of the litigation, but knowing what's been raised in the litigation where these arguments are going to go we would anticipate that there's going to be a question that the property is in such disrepair that it should no longer qualify for this certificate. Mr. Heidberg is intimately familiar with the property in his capacity as a structural engineer. So I'd like to call him to give a basis for that. Yes.

MR. BUZAK: Mr. Selvaggi are you suggesting that whether this structure is structurally sound is a question that this Board has jurisdiction to consider?

MR. SELVAGGI: Well and again maybe I'm not

MR. BUZAK: I'm asking you now.

MR. SELVAGGI: No, no, no here's what we had anticipated was, and really just to kind of shorten and streamline this thing is the question is going to be raised that under your ordinance the municipal ordinances it does allow, recognize the validity of nonconforming uses. It even goes so far as talking about nonconforming uses and structures. When those uses or structures lose their grandfathered status and what we were trying to get out in front of is to get the and maybe it's a profer and if the Board doesn't want to go in that direction basically it's the objector's anticipated argument that this building is in such disrepair that it's lost its status as being a preexisting nonconforming structure. And we're prepared to rebut that and do it this way and I just in anticipation that's the only reason why I'm doing it in this manner.

MR. BUZAK: Well let me suggest this Mr. Selvaggi. The Chairman has outlined what the application is and Mr. Gruppuso had repeated essentially accurately the language that I used during the course of the case management discussion, and that is that you're seeking a certificate that the structure was in existence prior to the time that the ordinance was adopted that rendered that structure nonconforming. And do you agree that that's the application that is before the Board?

MR. SELVAGGI: I'm looking for Under Section 68 a certificate in essence confirming that it's a lawful preexisting nonconforming structure.

MR. BUZAK: I want to be very careful here Mr. Selvaggi about the words because the Board has certain powers set forth in the Municipal Land Use Law and D68 under which you've made your

application provides that an interested party made apply in writing for the issuance of a certificate certifying that the structure in this case existed before the adoption of the ordinance which rendered the structure nonconforming. He can apply to the zoning officer or the administrative officer within the first year and then after that must apply to the Board of Adjustment. The consequence of the issuance of that certificate, what that certificate means and anything else is really not before the Board. The Board is simply being asked whether a certificate should be issued certifying what I just said. So unless you're changing the application that's before the Board I would ask the Board to . . . or suggest to Mr. Selvaggi that the testimony of the engineer with regard to the status of the structure whether it's sound or unsound in an engineering or otherwise sense is not an issue that's before this Board. That may be an issue somewhere down the line but it's not an issue before this Board.

MR. SELVAGGI: I'll stand by . . .

MR. BUZAK: I will ask the Chairman and the Board certainly that you can reserve your right that if somehow that issue arises during the course of this proceeding and you want to present Mr. Heiberg you can do so. But I don't see candidly Mr. Selvaggi any reason for you to raise that now.

MR. SELVAGGI: Okay that's fine.

MR. BUZAK: While you reserve your right you're not giving up your right to do that.

MR. SELVAGGI: Yes thank you.

MR. BUZAK: Is that satisfactory Mr. Chairman and the Board?

MR. WEISS: It sounds fine the Planning Board does not seem to object.

MR. BUZAK: Okay. Mr. Selvaggi?

MR. WEISS: You can continue then.

MR. SELVAGGI: Can I just have five minutes with my client?

MR. WEISS: Sure.

(RECESS TAKEN)

MR. WEISS: Mr. Selvaggi?

MR. SELVAGGI: In light of the direction or instruction from Mr. Buzak we're prepared to rest I think. The evidence shows that the building is there certainly before 1950. The ordinances in 1950 establish the setback particular on the side that in Mr. Glasson's testimony would show that it didn't meet that criteria in 1950 and on that basis we'd be entitled to the relief sought. So I'm keeping it simple.

MR. WEISS: Thank you Mr. Selvaggi. Is there anybody on the Planning Board have any questions for Mr. Selvaggi? Or anything in general to the application presented this evening? I see nothing from the Planning Board. At this time let me open it to the public, if anybody has any questions or comments that they'd like to direct about this application. Mr. Gruppuso before you do that and then I'll give you as much time as you need, is there anybody else from the public? I just want to give every a fair opportunity. And then seeing none I'm going to close it to the public . . .

MR. BUZAK: No you're not going to close it to the public.

MR. WEISS: You're right I'm not going to close it to the public. I will then now turn to Mr. Gruppuso who is expressing interest in speaking and at this point I'll give him the floor.

MR. GRUPPUSO: Thank you Mr. Chairman, Board members. I think the Soranno's objection is going to be a short one in light of what Mr. Buzak just stated on the record how he framed the question before the Board as simply whether the general store structure was in existence prior to the adoption of the ordinance rendering it nonconforming. And so that the Soranno's are clear the way that I interrupt the Planning Board's presentation of the question that means that the current lawfulness of the general store structure is not before the Board tonight and that therefore the question whether the right to continue the nonconformities in the general store structure are not before the Board tonight. Because

it's the Soranno's position that before this Board can deem as Mr. Selvaggi sought on behalf of the Jallad's the structure to be lawful it first must determine whether the rights to continue those nonconformities have been abandoned. And it's the applicant that bears that burden. Mr. Buzak if I may it is my understanding of the Board's position correct?

MR. BUZAK: Mr. Gruppuso I'm reluctant to have you state what the Board is not doing. The Board is going to do what it does and anything it does not do it does not do. I'm not prepared to have this Board make any representations as to what it is not doing. I stated what the application was, Mr. Selvaggi the applicant has concurred that that's the issue before the Board the Board will make a determination I will ask the Board to make a determination based upon the provisions of D68 as I have articulated them twice tonight. And I believe the Board will make a determination on that issue. That will be the issue upon which it makes the determination. What you draw from that you can draw and what Mr. Selvaggi wants to draw from that he can draw from that. The Board is going to make a decision on that issue.

MR. GRUPPUSO: Okay let me just state for the record a couple of things so that we're clear on this. Because if the application subsumes the question of abandonment, and I believe under governing New Jersey law it does, or excuse me if the application is to determine the lawfulness of the structure then the question of abandonment is subsumed within that question and the burden is on the applicant to show that the right to continue the nonconforming aspects of the structure have not been abandoned. That's the applicant's burden and so to that extent the application should be denied should it be that broad in scope because the applicant had the burden to show that the nonconformities were not abandoned, the applicant did not do so, the application should be denied if it's construed in that way. From a notice standpoint as well I would argue that there is a significant notice issue and hence a jurisdictional issue concerning whether the lawfulness of the structure is before the Board tonight. The notice given would not allow a layman to conclude that the Board was considering whether this structure, the rights to continue this structure where it is has been abandoned and could therefore remain in perpetuity. So by reserving those objections I think that we have nothing further.

MR. WEISS: Anybody from the Planning Board have any questions for Mr. Gruppuso? And then seeing nothing from the Planning Board does anybody from the public have any questions or comments based on the testimony or comments made by Mr. Gruppuso? Mr. Selvaggi?

MR. SELVAGGI: First of all the characterization that we didn't meet our burden if in fact the Board were to find that that was a burden we had this evening we did attempt to address it and was told that it was not necessary. I think, look the long and the short of it is the relief that any applicant is allowed to receive or apply for as set forth in the Statute is quite clear. And that's a certificate certifying that the use existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof that's what the Statute says. Once that certificate is issued the applicant has a right in my opinion to maintain the structure, the question of use becomes perhaps germane for instance if the Jallad's wanted to use this for a pool hall or

MR. BUZAK: Mr. Selvaggi excuse me and Mr. Chairman I'm going to ask you Mr. Selvaggi to refrain from speculating. I've been very, very careful about what the question is before the Board and I related to everyone here that if the Board determines that a certificate certifying that the structure existed prior to the adoption of the ordinance which rendered the structure nonconforming should be issued it will make that determination and the consequences of that that flow from that, flow from that.

MR. SELVAGGI: Okay.

MR. BUZAK: And you may have a view as to what flows from that, I'm sure Mr. Gruppuso has a view, I doubt those views coincide but maybe they do. There may be others here who have a view but that really is not relevant to the Board's determination. The Board will make the determination and the consequences of that will be what the consequences are. So if you're satisfied with that I'd ask that you refrain from getting into that whole issue because it's not germane.

MR. SELVAGGI: I'm satisfied with that.

MR. WEISS: Thank you Mr. Selvaggi. Is there anybody else from the public that has any questions for Mr. Gruppuso? Seeing none Mr. Gruppuso it's still your floor if you have anything else for the Board.

MR. GRUPPUSO: I'm sorry, just to again note for the record that with regard to the question of abandonment we reserve our objection with respect to that.

MR. WEISS: Okay anybody from the Planning Board?

MR. BUZAK: Mr. Chairman if I might, and I know I'll sound like a broken record, but it's important for the Board to have this precise, the application that's before it is whether the Board should issue a certificate certifying that this structure, this general store structure that has been testified to by the various witnesses existed prior or before the adoption of the zoning ordinance which rendered the structure nonconforming. The proofs have established that there's a structure there, there was testimony with regard to when that structure existed, there was presented evidence in A-6 that the first zoning ordinance that Mount Olive adopted was in 1950 and based upon the evidence that was presented that this structure this general store structure became a nonconforming structure under that Zoning Ordinance because of it's not meeting the side yard requirement of 10 feet in that A zone. This Board then has to determine whether the structure existed prior to, in this case based upon the evidence, the adoption of the 1950 zoning ordinance which made it nonconforming. That's the question before the Board if the Board is of the view that that structure existed prior to that time then a certificate certifying the same should be issued and the Board should vote affirmatively to issue that certificate that the structure existed prior to the adoption of the zoning ordinance which rendered it nonconforming. If the Board is not of the view then you decline or refuse to issue and deny the application. With that I'll pass it back to the Chair.

MR. WEISS: Okay and with that being said I will shortly entertain a motion and I don't believe that after in addition to what you said there are other conditions that would apply if we were to make such a motion to approve or not approve.

MR. BUZAK: That's correct Mr. Chairman this is a straight up application that's correct it's either a certificate is issued or it's not issued. There's no conditions on it and as I said earlier the consequences of it are the consequences and those are not issues that the Board needs to be concerned about.

MR. WEISS: Okay with that being said.

MR. STASZAK: I'd like to make a motion certifying the structure existed prior to the ordinance rendering it nonconforming.

MR. FLEISCHNER: I'll second.

MR. WEISS: Second by Joe. Any conversation? Seeing none Catherine roll call.

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

MR. BUZAK: Mr. Chairman we'll prepare a resolution that will memorialize the Board's determination that will be done at our

MS. NATAFALUSY: January 17th?

MR. BUZAK: Yes is that the second one?

MS. NATAFALUSY: That's the second one, reorganization is the 10th.

MR. WEISS: Catherine just noted, so before we do that the reorganization meeting then this application is closed?

MR. BUZAK: Yes sir.

MR. WEISS: Perfect thank you everybody. Catherine noted that we have a January 10th Reorganization meeting. As you know at that point the Planning Board will look to select our professionals.

MR. SORANNO: I think there was a mutual misunderstanding because a lot of the members of the public are here tonight.

MR. WEISS: This application has been closed I made it very clear that

MR. SORANNO: I don't think they understood it Mr. Weiss.

MR. WEISS: Okay that's possible.

MR. SORANNO: So maybe we should

MR. WEISS: We closed it. I'm not sure what else I can do (inaudible) how many opportunities can I give?

MR. SORANNO: I just want to give them an opportunity. There's so many people here that might want to say something and you won't hear it.

MR. WEISS: I find it hard to believe that everybody in the room didn't understand the direction given by the Chairman.

MS. SORANNO: This (inaudible) right here didn't understand

MR. WEISS: We had closed this issue.

MR. SORANNO: Okay you don't want to hear from the neighborhood.

MR. WEISS: Mr. Soranno.

MR. SORANNO: Yes sir.

MR. WEISS: Your comment is unacceptable. We heard the proofs needed I'm not sure if people from the public qualify to talk about the condition of a preexisting nonconforming structure. If they want to tell us about the barn or the general store but I'm not sure how that would have affected the decision at hand. So for you to just stand there and say these people had something to say, unless there's a professional out there that didn't introduce themselves I don't think it would have helped and the opportunity has passed now. We opened it to the public no one had anything to say from the public, I closed it.

MR. SORANNO: Mr. Weiss are we on the record?

MR. WEISS: I haven't closed the meeting.

MR. SORANNO: Okay so with all due respect I didn't mean any disrespect to you or to the Planning Board, I merely was attempting to accommodate the members of the public that came out so they could understand. I mean obviously you're a sophisticated Planning Board, Mr. Buzak is a sophisticated attorney, I'm an attorney, we understand what's happening. My only comment was that perhaps the public the people that did come out for or against should have an opportunity. I don't think they understood it properly and that was my only position. If you don't want to reopen the meeting that's perfectly fine.

MR. BUZAK: No Mr. Soranno that's not the point. The point is that the Chair opened the meeting on at least two occasions and perhaps three occasions and then the end opened it again. I don't know what the public understood or didn't understand and I'm not here to speculate and this Board shouldn't speculate. It has handled applications literally hundreds of applications in which this procedure has been followed and we've never had a situation where someone has indicated that they didn't understand. That's not being represented so we'll just go on.

MR. SORANNO: You know Mr. Buzak that's fine you know its fine with me I don't represent these individuals I'm really trying to accommodate them and point out to the Board. If the Board does not feel they want to reopen the meeting and everything is sufficient we'll call it a day.

MR. BUZAK: Thank you Mr. Soranno.

MR. WEISS: All right so to finish our conversation our reorganization meeting obviously we'll be approving our professionals, we'll be voting in our Chairman and Vice Chairman. I just want to let you know that I am looking for your support as Chairman and do believe Jim will be looking for your support as Vice Chair. With that said I'll look for a motion to adjourn.

MR. FLEISCHNER: Can I just say one thing?

MR. WEISS: Joe?

MR. FLEISCHNER: I'd like to thank Chuck and Ed for their professional services for the year. But most of all I'd like to thank Catherine because she has to deal with all of us through the year and let me tell you that it takes a special person so I just want to say I think it speaks for everyone here thank you Catherine.

MS. NATAFALUSY: Thank you Joe.

MR. WEISS: Yes thank you. Again happy and a healthy New Year, Merry Christmas and motion to adjourn?

MR. NELSON: So moved.

MR. STASZAK: Second.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 8:25 P.M.)

Transcribed by:
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